

Testimony on the Legalization of Marijuana

To the California Assembly Committee on Public Safety

October 28, 2009

By Dale H. Gieringer, Ph.D.

Director, California NORML – www.canorml.org

I thank the members of the California Assembly Public Safety Legislative Committee for holding this hearing on the legalization of marijuana. I am here today representing California NORML, the National Organization for the Reform of Marijuana Laws, a public-interest lobby representing the interests of the millions of responsible adult marijuana users.¹

Marijuana should be legal for the same reason that alcohol, tobacco, caffeine and other substances are legal: (1) millions of Californians value and enjoy its use; (2) their use poses no inordinate hazards to society; (3) the prohibition of marijuana artificially creates crime and black-market traffic in the same way as alcohol prohibition and (4) deprives our economy of legal business and revenues.

The laws against marijuana wrongly criminalize millions of otherwise law-abiding Californians. Three million Californians used marijuana last year and over 15 million have done so in their lifetimes.² Among them are noted professionals and business people, Nobel Laureates, artists and musicians, sports and entertainment stars, and luminaries in this Capitol.³

Despite California's 1976 (partial) decriminalization law, possession of one ounce or less remains a criminal misdemeanor punishable by a fine. Marijuana use may also be punished by loss of employment, public housing, child custody, security clearance, student loans, revocation of parole or probation, etc.

Moreover, the act of possession necessarily entails a felony – either cultivation or sales. Marijuana prohibition therefore accounts for millions of unreported felonies every year. Since 1976, California has recorded over 1,845,000 marijuana arrests, including 544,000 felonies.⁴ The promiscuous generation of crime for using a substance that is widely regarded as safer than alcohol violates fundamental principles of fairness and contributes to widespread disrespect for the law.

Economically, it makes no sense for California to be spending money to arrest, prosecute and imprison marijuana offenders when it could be raising

¹ NORML's Principles of Responsible Cannabis Use, http://www.norml.org/index.cfm?Group_ID=3417

² SAMHSA Surveys: <http://www.oas.samhsa.gov/2k6state/Ch2.htm#2.2>;
<http://oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.32A> Cp

³ For a list, see <http://www.veryimportantpotheads.com>.

⁴ Compiled from reports of California DOJ Bureau of Criminal Statistics.

employment and revenues from a legally taxed and regulated market. The appropriate way to do this is by licensing, taxing and regulating marijuana in a manner similar to alcohol, an approach that has been followed successfully in the Netherlands, India, and elsewhere.

The policy of legalization must be distinguished from that of decriminalization, in which personal use of marijuana is legal, but commercial sales and production are not. This is the same policy that was followed with regard to alcohol under Prohibition. By leaving the black market intact, decriminalization engenders the same crime and enforcement problems as prohibition while depriving the state of legal commerce and revenues.

The Case Against Marijuana Criminalization

A long line of official studies have consistently recommended against criminalizing marijuana use, among them the National Academy of Sciences' "Analysis of Marijuana Policy"(1982); the National Commission on Marihuana and Drug Abuse (the Shafer Report) (1973); the Canadian Government's Commission of Inquiry (Le Dain Report) (1970); the British Advisory Committee on Drug Dependency (Wooton Report) (1968); the La Guardia Report (1944); the Panama Canal Zone Military Investigations (1916-29); and Britain's monumental Indian Hemp Drugs Commission (1893-4).

All of these studies have found that the scientific evidence is clear that marijuana is if anything safer than other legal drugs. As stated twenty years ago by the California Research Advisory Panel (which recommended eliminating penalties for personal possession and cultivation), "An objective consideration of marijuana shows that it is responsible for less damage to society and the individual than are alcohol and cigarettes."⁵ More recent research has reinforced the scientific consensus that marijuana is on balance less harmful than other, legal drugs.⁶ The criminalization of marijuana accordingly violates fundamental principles of fairness and equal protection of laws.

The case for legalization was set forth by a 2002 special select committee of the Canadian Senate.⁷ The committee endorsed legalizing the possession and distribution of marijuana for anyone over 16 years of age, concluding: "We believe ... that the continued prohibition of cannabis jeopardizes the health and well-being of Canadians much more than does the substance itself or the regulated marketing of the substance."⁸

⁵ California Research Advisory Panel, 1989 Annual Report (commentary addendum)

⁶ For example, contrary to expectations, marijuana does not seem to be a risk factor in lung cancer, and may even have anti-carcinogenic properties. Steve Fox, Paul Armentano and Mason Tvert, *Marijuana Is Safer: So Why are We Driving People to Drink?* Chelsea Green Publishing, 2009.

⁷ Canadian Special Senate Committee on Illegal Drugs. 2002. *Cannabis: Our Position for a Canadian Public Policy*. Ottawa

⁸ Ibid. See specifically Summary Report. p. 45: "In addition, we believe the continued criminalization of cannabis undermines the fundamental values set out in the *Canadian Charter of Rights and Freedoms* and confirmed in the history of a country based on diversity and tolerance. ... It is for [these] reason[s] that the

Supporting the Select Committee's recommendation were the following findings of fact regarding marijuana's relative safety:

- Marijuana is not a gateway to the use of hard drugs.⁹
- Marijuana use does not lead to the commission of crime.¹⁰
- Marijuana users are unlikely to become dependent¹¹
- Marijuana use alone has little impact on driving.¹²
- Liberalizing marijuana laws is unlikely to lead to increased use.¹³
- Marijuana prohibition poses a greater risk to health than marijuana use.¹⁴

These findings imply that any risk presented by marijuana smoking falls within the ambit of choice we should permit the individual in a free society. NORML accordingly recommends legalizing, taxing and regulating marijuana in a manner similar to alcohol.

Ineffectiveness of Penalties on Marijuana Use

Objections to legalization focus on concerns that looser enforcement would lead to increased use and unacceptable health and social costs. Given marijuana's relatively low health hazards, there is no evidence that this is the case. Assuming that usage increased under legalization, this would not necessarily be detrimental insofar as marijuana substituted for more harmful drugs such as alcohol and opiates. Several studies have suggested that this is the case.¹⁵

Committee recommends that the Government of Canada amend the *Controlled Drugs and Substances Act* to create a criminal exemption scheme, under which the production and sale of cannabis would be licensed."

⁹ Ibid. See specifically: p. 15, "Cannabis itself is not a cause of other drug use. In this sense, we reject the gateway theory."

¹⁰ Ibid. See specifically: p. 15, "Cannabis itself is not a cause of delinquency and crime; and cannabis is not a cause of violence."

¹¹ Ibid. See specifically pp. 16-17: "Most users are not at-risk users ... and most experimenters stop using cannabis. ... Heavy use of cannabis can result in dependence requiring treatment; however, dependence caused by cannabis is less severe and less frequent than dependence on other psychotropic substances, including alcohol and tobacco."

¹² Ibid. See specifically p. 18: "Cannabis alone, particularly in low doses, has little effect on the skills involved in automobile driving. Cannabis leads to a more cautious style of driving. [Cannabis does have] a negative impact on decision time and trajectory [however] this in itself does not mean that drivers under the influence of cannabis represent a traffic safety risk."

¹³ Ibid. See specifically p. 45: "Data from other countries ... indicate that countries ... which have put in place a more liberal approach have not seen their long-term levels of cannabis use rise. ... We have concluded that public policy itself has little effect on cannabis use trends and that other more complex and poorly understood factors play a greater role in explaining the variations."

¹⁴ Ibid. See specifically p. 45: "We might wish for a drug-free world, fewer smokers or less alcoholics or less prescription drug dependency, but we all know that we shall never be able to eliminate these problems. More importantly, we should not opt to criminalize them. The Committee believes that the same healthy and respectful approach and attitude should be applied to cannabis."

¹⁵ Medical marijuana users report significant reductions in use of opiates and other prescription drugs: <http://www.akpress.org/2007/items/oshaghnessys>. Studies have also found substitution between non-medical marijuana use and alcohol: Ronald Kadden et al., "Abstinence Rates Following Behavioral Treatments for Marijuana Dependence," *Addict Behav.* 32(6) 122-36 (2007); Frank Chaloupka and Adit Laixuthal, "Do Youths Substitute Alcohol and Marijuana? Some Empirical Evidence," Working Paper No.

More importantly, there is no evidence that tough laws are effective in deterring marijuana use. Studies have found that states with punitive marijuana laws have no lower rates of marijuana use than those where it has been decriminalized.¹⁶ An international survey of national drug policies by the World Health Organization came to similar conclusions:¹⁷

"The US, which has been driving much of the world's drug research and drug policy agenda, stands out with higher levels of use of alcohol, cocaine, and cannabis, despite punitive illegal drug policies... The Netherlands, with a less criminally punitive approach to cannabis use than the US, has experienced lower levels of use, particularly among younger adults. Clearly, by itself, a punitive policy towards possession and use accounts for limited variation in nation-level rates of illegal drug use."

Of special relevance to California, a comparative study of cannabis in San Francisco and Amsterdam found "no evidence to support claims that criminalization reduces use or that decriminalization increases use."¹⁸

The Failure of California's Marijuana Prohibition Regime

The historical record is clear that marijuana prohibition has failed in California. California first prohibited marijuana or "Indian hemp," in 1913, at a time when its use was virtually unknown. The law was pushed through by the State Board of Pharmacy on the theory that even though cannabis was not a problem, a law was needed to prevent East Indian "Hindoo" immigrants from spreading its use.¹⁹

Only after being prohibited did marijuana become widely popular, eventually spreading to millions of Californians. Felony penalties for possession failed to deter an escalation of marijuana use in the 1960s. By 1975, enforcement costs had become so high that the legislature decriminalized possession from a felony

4662, National Bureau of Economic Research, Cambridge Mass. (1994); K.E. Model, "The Effect of Marijuana Decriminalization on Hospital Emergency Room Episodes: 1975-8," *Journal of the American Statistical Association*, 88:423, 737-47 (1992).

¹⁶ "Overall, the preponderance of the evidence which we have gathered and examined points to the conclusion that decriminalization has had virtually no effect either on the marijuana use or on related attitudes and beliefs about marijuana use among American young people in this age group." Lloyd Johnston, Patrick O'Malley and Jerald Bachman, "Marijuana Decriminalization: the Impact on Youth 1975-1980," *Monitoring the Future Occasional Paper Series #13*, Institute for Social Research, U. Michigan 1981.

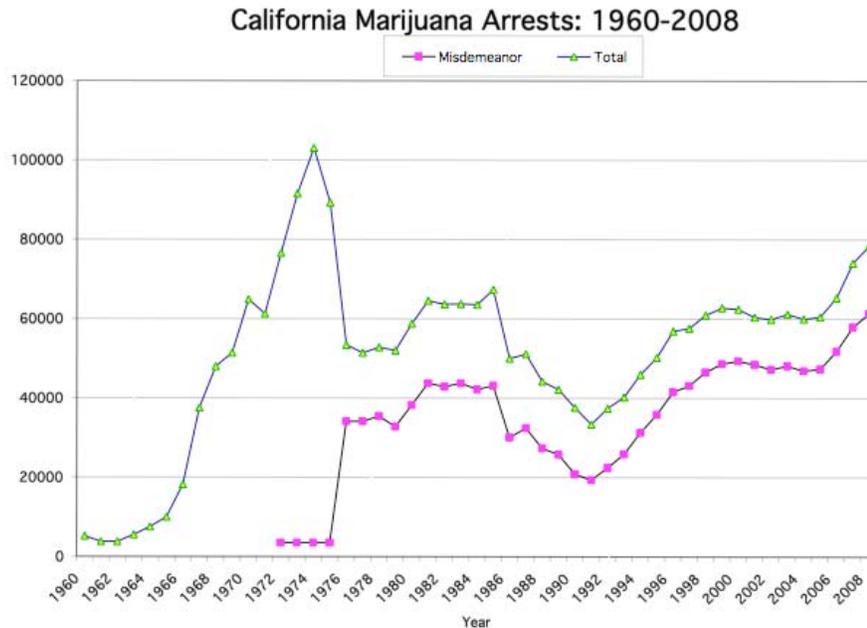
"The available evidence indicates that the 'decriminalization' of marijuana possession had little or no impact on rates of use " Eric Single, "The Impact of Marijuana Decriminalization: an Update", *Journal of Public Health Policy* 10#4 : 456-66 (1989)

¹⁷ Louisa Degenhardt et al. "Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys," *PloS Medicine* Vol 5#7. July, 2008. <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0050141>

¹⁸ Criag Reinerman, Peter Cohen and Hendrien Kaal, "The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco," *American Journal of Public Health* 2004: 94: 836-42.

¹⁹ Dale Gieringer, "The Forgotten Origins of Cannabis Prohibition in California," *Contemporary Drug Problems* Vol. 26 # (1999): <http://www.canorml.org/background/caloriginsmjproh.pdf>

to misdemeanor under the Moscone Act. Decriminalization saved the state an estimated \$100 million each year in enforcement costs.²⁰



Despite dire predictions by opponents, decriminalization had no perceptible effect on marijuana use, either in California or in other states that tried it.²¹ Nonetheless, production and distribution remained illegal, causing continued prohibition-related problems. In order to combat widespread outdoor cultivation, the state launched the CAMP helicopter eradication program, pushing growers onto public lands and wilderness and into energy-guzzling grow-houses.

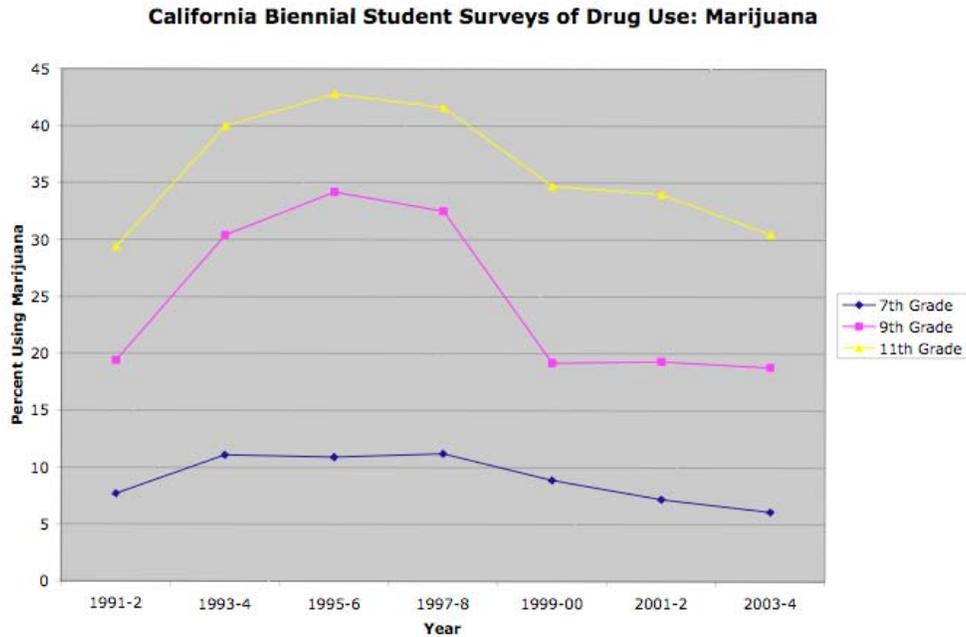
In 1996, California voters legalized the medical use of marijuana by Proposition 215 (though neglecting to establish a legally regulated supply system). Since 1996, California has developed a growing network of legal medical cannabis suppliers, who generate an estimated \$800 million to \$2 billion in revenues annually, enough to generate some \$100 million in sales taxes.²² Contrary to the

²⁰ Michael Aldrich and Tod Mikuriya, "Savings in California Marijuana Law Enforcement Costs Attributable to the Moscone Act of 1976 – A Summary," *Journal of Psychoactive Drugs* 20(1): 75-81, Jan-Mar 1988

²¹ Eric Single, op. cit.

²² Dale Gieringer and Richard Lee, "Revenue & Taxes from Oakland's Cannabis Economy: Report to Measure Z Oversight Committee (2006) <http://www.canorml.org/background/OakZFinancialReport.pdf>

predictions of opponents, marijuana use by youths declined substantially after Proposition 215 – calling into question the supposed link between liberal marijuana laws and abuse.²³



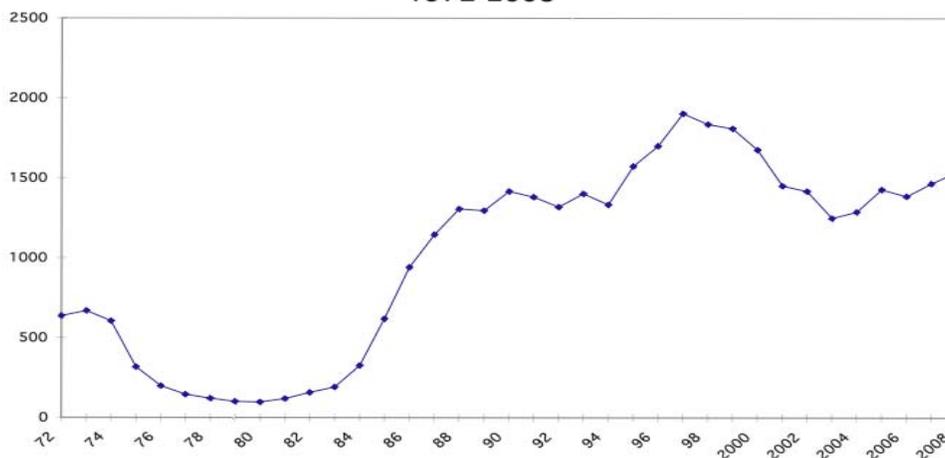
Nonetheless, despite Prop. 215, arrests for marijuana continue unabated. This is because medical users constitute only a small fraction of California's total marijuana-using population (approximately 350,000 out of a total user population of 3 million).²⁴ In 2008, marijuana-related arrests increased to 75,701 — their highest level since the Moscone Act. California now has over 1,500 marijuana prisoners in state prison, more than 15 times as many as in 1980, plus an unknown number more in jails.

²³ For 11th graders, marijuana use in the past six months declined from 43% in 1995-6 to 30% in 2005-6 (a 30% reduction); for 9th graders, from 34% to 19% (a 45% reduction), and for 7th graders, from 11% to 7% (36% reduction). Source: California Attorney General's Office: Biennial Student Surveys of Drug Use.

²⁴ California was estimated to have some 350,000 legal medical marijuana patients as of 2007, according to a survey by *O'Shaughnessy's: The Journal of Cannabis in Clinical Practice*, Winter/Spring 2007. <http://www.akpress.org/2007/items/oshaughnessys>.

Chart2

Marijuana Prisoners in California
1972-2008



Meanwhile, marijuana is said to account for 61 percent of the illicit drug traffic from Mexico, where prohibition-fueled gang wars have killed over 6,800.²⁵ In California, CAMP agents eradicated a record 5 million illegal plants last year, up more than tenfold since 2003.²⁶ After nearly a century of prohibition, the state is further from eradicating marijuana than when it began.

Solution: Legalizing, Taxing and Regulating Marijuana

The only effective solution to these problems is to legalize production and sale of marijuana to adults through licensed outlets in the same way as alcohol or tobacco, thereby undercutting the criminal market. In a legal market, consumers would have no incentive to patronize criminal traffickers, since marijuana would be available in licensed shops at prices well below current black-market price.

Profit margins for growers would be drastically cut by elimination of prohibition. In a totally unregulated market, the price of marijuana would presumably drop as low as that of other legal herbs such as tea or tobacco – on the order of a few dollars per ounce - 100 times lower than the current prevailing price of \$300 per ounce - or a few cents per joint. Because this is extraordinarily cheap relative to comparable intoxicants such as beer and wine, a strong case can be made for using taxation and licensing to raise the price so as to discourage abuse, though not so high as to encourage illicit marijuana moonshiners. As with

²⁵ Marijuana accounts for \$8.5 billion of the \$13.8 total income of Mexican drug traffickers according to Drug Czar John Walters, quoted in AP article by Mark Stevenson, "Marijuana Big Earner for Mexico Gangs," Feb 22, 2008.

²⁶ CAMP reports, various years, plus Nov 19, 2008 press release by US Attorney McGregor Scott, Eastern District of California

alcohol and tobacco, taxation of marijuana could yield substantial revenues to the state.

California NORML recommends an excise tax on the order of \$25 - \$50 per ounce (\$.50- \$1 per joint) as one that (1) realistically reflects marijuana's potential health harms; (2) is consistent with the price of other social intoxicants; (3) is low enough to undercut today's illegal market price, but high enough to discourage careless abuse.²⁷

Overall, we estimate that a \$50/ounce tax would generate about \$770 -900 million in revenues in an overall retail market of some \$3 - \$4.5 billion. Another \$240 - \$360 million would be generated from sales taxes.²⁸ Finally, the state would save \$200 million in enforcement costs for arresting, prosecuting, and imprisoning marijuana offenders, bringing the total economic benefits to the state treasury up to \$1.2 billion per year. Legal marijuana could be expected to generate further revenue from spin-off business such as tourism, coffee shops, cannabis edibles, paraphernalia and industrial hemp.

Successful Models for Legalization

There is nothing new or unprecedented about legal marijuana. Historically, cannabis was sold over-the-counter in pharmacies prior to being prohibited in the last century. More recently, non-medical sales of cannabis have been prohibited throughout the world pursuant to the U.N. Single Convention Treaty of 1961.

Today, the closest model to legalization may be found in the Netherlands, where cannabis is available for sale to anyone over 18 through a system of licensed coffee shops (technically, sales and possession remain illegal, but under Dutch law these offenses are officially disregarded). Despite this open availability, the rate of cannabis consumption in the Netherlands is markedly less than in the U.S. and many other countries with stricter laws.²⁹ The Dutch experience poignantly demonstrates the practicality of legalized marijuana in a modern post-industrial society.

The Dutch model is not strictly speaking one of complete legalization, because production is still prohibited. The price of cannabis in the coffee shops is thus supported by raids on illicit growers (prices in the Netherlands are on the order of 5 - 6 Euros per gram, around 30% lower than prices in California's medical marijuana market). The coffee shops in turn pay a tax to the government. There are some 730 coffee shops in the Netherlands, generating an estimated \$600

²⁷ Dale Gieringer, "The Economics of Marijuana Legalization," in Ed Rosenthal, ed. *Hemp Today* (Quick Publishing, 1994) <http://www.canorml.org/background/mjeconomics.html>.

²⁸ California NORML Report, "Marijuana Legalization Could Yield California Taxpayers Over \$1.2 Billion Per Year," Oct. 2009. http://www.canorml.org/background/CA_legalization2.html.

²⁹ The rate of past-month adult (15-64) use of cannabis is 3.3% in the Netherlands, versus 6.2% in the U.K. and 4.8% in France, where laws are much stricter. The corresponding U.S. rate is 5.8% (6.7% in California). Data from SAMHSA and European Monitoring Centre for Drugs and Drug Addiction: <http://www.emcdda.europa.eu/stats08/gpstab12>

million in tax revenues and \$3 billion in business.³⁰ Although the Dutch have not stopped illegal cultivation, they have eliminated illegal sales, which currently account for the great majority of marijuana felonies in California.

A model for total legalization may be found in India, where cannabis was legal in several states until the government reluctantly prohibited it in 1986 under international pressure. Under the Indian system, producers and vendors were licensed and taxed by the state. Regulations differed from state to state, in some cases including limits on the number of licensees, shops, the quantity that could be possessed or grown, etc. The price and availability of cannabis were regulated by a combination of licensing and excise taxes. Unlicensed cultivation was prohibited, though a considerable amount of low-grade cannabis escaped regulation, being harvested from fields of feral hemp. Overall use was on the order of 1% of the Indian population.³¹

The Indian system was exhaustively studied by the British Indian Hemp Drugs Commission of 1893-4. The Commission rejected prohibition as unnecessary and impracticable, arguing that it might offend local sensibilities and encourage use of more deleterious drugs. Instead, it recommended a policy of control and restriction, aimed at suppressing excessive use.³² In particular, the Commission concluded, "The combination of a fixed duty with license fees for the privilege of vend constitutes the best system of taxation for the hemp drugs."³³

Conclusions and Recommendations

NORML recommends a similar system for California. In specific:

- Commercial producers and vendors of marijuana should be licensed by the state.
- Licensed producers should be required to submit their product to an inspection facility, where it would be tested for contaminants, graded for content and potency, and subject to an excise tax.
- Ideally, the tax should be assessed proportionally to the potency of the product as measured by THC content, at a rough equivalence of \$.50 - \$1 per joint (\$25 - \$50 per ounce).
- After being inspected and taxed, marijuana would be available for sale to and by licensed retail distributors.
- As with alcohol, sales should be restricted to adults.
- Local communities should have some control over location, number, hours and licensing of cannabis outlets.

³⁰ Crossroads Magazine (Maastricht), NIS News, May 5, 2008. Total Dutch cannabis business is estimated at 2 billion euros. <http://crossroadsmag.eu/2008/05/state-earns-400-million-euros-a-year-from-cannabis-bars/>

³¹I.C. Chopra and R.N. Chopra, "The Use of the Cannabis Drugs in India," UNODC *Bulletin on Narcotics* 0 1957 #1: http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1957-01-01_1_page003.html

³² Report of the Indian Hemp Drugs Commission, 1893-1894, Chapter XVIII, Summary.

³³ Ibid. Chapter XVI, "Provincial Systems Examined," Sec. 635.

- To encourage competition and discourage market control by large-scale vendors, licenses should be apportioned in such a way as to encourage modest-sized, family-scale operations.
- NORML strongly believes that individuals should be permitted to cultivate a certain quantity for their own personal use, as recommended in 1990 by the Research Advisory Panel. Just as Californians are currently allowed to brew home beer and wine, basic principles of fairness and personal freedom dictate that consumers should be allowed to grow their own marijuana and not be forced to depend on licensed commercial monopolists.
- Violations of regulations on production, sale and distribution should be treated as misdemeanors, in the same way as alcohol is regulated today, punishable mainly by fines and loss of licenses, with felony penalties reserved for only exceptionally egregious offenses.

In conclusion, from the standpoint of public safety, legalization offers the benefits of eliminating millions of marijuana criminals, taking marijuana out of the hands of criminal traffickers, street dealers, pirate growers, grow houses and foreign smugglers, and putting it into the hands of legal businesses subject to regulation and oversight, whose products can be monitored for safety and quality, and who have a strong incentive not to sell to children. On behalf of the millions of Californians who value the right to use marijuana, we believe this policy offers benefits to all of our fellow citizens, and would happily pay taxes in a legal market in exchange for being recognized as equal citizens under the law.