

# Life Sentences

## The Collateral Sanctions Associated with Marijuana Offenses

Richard Glen Boire, JD  
Senior Fellow in Law & Policy  
Center for Cognitive Liberty & Ethics



## **Life Sentences: The Collateral Sanctions Associated with Marijuana Offenses**

### **Executive Summary**

- A conviction for a marijuana offense results in two different categories of punishment: (1) the punishment directly imposed by the judge, and (2) a range of collateral sanctions that are triggered by the conviction.
- Current marijuana policy focuses almost entirely on the direct punishment imposed by the judge, and has almost entirely ignored the collateral sanctions that result from a conviction. Yet, the collateral sanctions associated with a marijuana conviction are significant, and in many cases far exceed (in both severity and duration) the direct punishment.
- In most cases, a felony marijuana conviction (for example growing marijuana) triggers the same collateral sanctions as those triggered by a conviction for murder, rape, or kidnapping. In many cases, the collateral sanctions for a marijuana-related conviction actually *exceed* those for a violent crime.
- Collateral sanctions triggered by a marijuana conviction can include: revocation or suspension of professional licenses, barriers to employment or promotion, loss of educational aid, driver's license suspension, and bars on adoption, voting and jury service. For people who depend upon public assistance, a marijuana conviction can trigger a bar on receiving food stamps and restrict access to public housing. In some states, these sanctions continue *for life*.
- The 10 states with the most severe collateral sanctions with regard to marijuana convictions are (in descending order of severity): Florida, Delaware, Alabama, Massachusetts, New Jersey, Oklahoma, Virginia, Utah, Arizona, and South Carolina.
- The 10 states with the least severe collateral sanctions (in ascending order) are: New Mexico, New York, Rhode Island, Missouri, Maine, Vermont, District of Columbia, Pennsylvania, Kansas, and California.
- In 38 states, a misdemeanor marijuana conviction (for example personal possession of marijuana) can result in a bar on adopting a child. In 7 of these states, this bar can operate *for life*.

- In 12 states, a felony marijuana conviction (for example growing a marijuana plant) results in a *lifetime* bar on receiving food stamps or temporary assistance for needy families. In 7 states even a *misdemeanor* marijuana conviction can result in a bar or restriction on receiving food stamps or temporary aid for needy families. In 3 states, a misdemeanor marijuana conviction can result in a *lifetime* ban. Only felony drug offenses result in this ban; not robbery, not kidnapping, not even murder.
- In 20 states, occupational licensing and certification agencies may deny, revoke, or suspend a professional license based on a *misdemeanor* marijuana conviction, even if the offense is completely unrelated to the person's duties.
- In 28 states, a student who is convicted of possessing any amount of marijuana will be denied federal financial aid for a year, and may also be denied state educational aid for a year or longer.
- In 21 states, and the District of Columbia, a misdemeanor conviction for personal possession of marijuana can result in a driver's license suspension for at least six months.
- In 47 states, a conviction for growing marijuana (or any other marijuana-related felony) results in at least some period of time during which the person is barred from voting. In 6 of these states, the bar on voting lasts for *life*.
- In 46 states, *any* marijuana conviction (and in some cases merely an *arrest*) can result in a bar from public housing, usually for at least 3 years.
- These collateral sanctions should be recognized and included in a rational debate about marijuana policy and social justice, and carefully considered when crafting or revising legislation.

## Introduction

In any given year, approximately 750,000 people are arrested for marijuana offenses, and approximately six percent of these arrests result in felony convictions (King & Mauer, 2006).<sup>1</sup> These people join the estimated 65 million Americans (approximately one-third of the adult population) with criminal records (Martin, 2004).

Beginning in the early 1970s, legislators began a trend to reduce the harshness of the sentences imposed for marijuana offenses. These efforts often distinguished marijuana from other illegal drugs, and singled out marijuana-related offenses for reduced punishments (MacCoun & Reuter, 2001).

Over the past two decades, however, legislators have passed a long list of laws that impose a variety of restrictions on people who suffer criminal convictions. In most cases, these collateral sanctions<sup>2</sup> are automatically triggered by a criminal conviction (they are not tailored by a judge, nor even imposed by a judge), and they apply regardless of the specifics of the offense. In many cases, these collateral sanctions are often more severe and of longer duration than the direct sentence imposed by the judge. As Robert M. A. Johnson, former president of the National District Attorney's Association, wrote in 2001, "Increasingly we see situations in which the collateral consequences of a criminal conviction exceed the consequences that are imposed by a judge upon sentencing." (Johnson, 2001).

If, as recognized beginning in the 1970s, marijuana offenses are considered less of an affront to civil society than violent crimes such as murder, rape, or kidnapping, or even less of an affront than other drug offenses, our study shows that this consideration is rarely found in any of the collateral sanctions. A person convicted of growing marijuana (a felony in most states) is often subjected to the same, and sometimes greater, collateral sanctions as a person convicted of

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<sup>1</sup> According to the Uniform Crime Reporting Program, 786,545 people were arrested for marijuana offenses in 2005. (<http://www.fbi.gov/ucr/05cius/>.) Statistics showing the annual number of *misdemeanor* marijuana convictions are not easy to find.

<sup>2</sup> The American Bar Association defines "collateral sanctions" as a "legal penalty, disability, or disadvantage, however denominated, that is imposed on a person automatically upon that person's conviction for a felony, misdemeanor, or other offense, even if it is not included in the sentence." (ABA Standards, 2004). As explained in a draft report by the National Conference of Commissioners on Uniform State Laws, "The term 'collateral sanction' is used here to mean a legal disability that occurs by operation of law because of a conviction but is not part of the sentence for the crime. It is 'collateral' because it is not part of the direct sentence. It is a 'sanction' because it applies because and only because of conviction of a criminal offense." (NCCUSL, Draft March 2007).

murder, rape, or robbery.<sup>3</sup> As Margaret Colgate Love, former US pardon attorney, and Chair of the ABA's task force on collateral sanctions, points out, "[I]t seems to have become both politically expedient and socially acceptable to lump all criminals together into a common category marked for discrimination and exclusion." (Love, 2006.) As another leading commentator observed:

Although the public considers murder, rape and kidnapping more serious offenses than drug possession or distribution, the collateral consequences imposed on drug offenders tend to be more severe than those imposed on murderers, rapists and kidnapers. Drug offenders suffer from them disproportionately because many collateral consequences target them specifically. Next to sex offenders, drug felons and drug misdemeanants have borne the brunt of civil sanctions. Within the last fifteen years, the panoply of civil sanctions applicable to them has increased dramatically (Demleitner, 2002).

As a result of these collateral sanctions, many marijuana offenders are surprised to find that the sentence actually imposed by the judge pales in comparison to the severity and long-lasting social and legal consequences that follow from conviction. For example, it is not unusual for even a misdemeanor conviction for possession of marijuana to result in a bar on educational aid, a bar on serving as a foster parent, denial of federal housing assistance, revocation or suspension of occupational licenses, and suspension of one's driver's license. A felony conviction for growing marijuana can result in all of these sanctions as well as a bar on adoption, a lifetime bar on receiving food stamps, and a bar on voting in local, state, and federal elections, serving on a jury, or possessing a firearm.

Again, none of these sanctions are directly imposed by the judge nor are they specifically calibrated to the particular facts of the offense. Indeed, many judges are only partially aware (if aware at all) of the scope and degree of these collateral sanctions. They are scattered across multiple codes of any given state, with no central organization or index. As noted by the ABA, "[c]ollateral sanctions have been promulgated with little coordination in disparate sections of state and federal codes, making it difficult to determine all the penalties and disabilities applicable to a particular offense." (ABA, 2004). Indeed, even if a judge is aware of the collateral sanctions that will follow from a marijuana conviction, in most cases the judge is powerless to excuse or reduce them. Instead, they are automatically triggered by a conviction.

Moreover, judges are required to inform a defendant of the direct consequences of a plea, they are not required to advise a defendant of the collateral consequences. As noted in a recent report by the American Bar Association:

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<sup>3</sup> As discussed in Section II, *infra*, only marijuana and other drug convictions (but not murder, rape, kidnapping, or other violent offenses) can result in a loss of federal educational aid, food stamps, temporary aid for needy families, or suspension of one's driver's license.

the Constitution does not require that a defendant pleading guilty to a drug felony with an agreed sentence of probation be told that, even though she may walk out of court that very day, for practical purposes, her life may be over: Military service, higher education, living in public housing, even driving a car, may be out of the question (NCCUSL, 2005).

Further, because a marijuana conviction results in a criminal record, it has serious and long-lasting implications for the person's future employment, promotions, and a wide range of occupational licenses such as those required in many states to sell insurance, real-estate, or to practice cosmetology, accounting, medicine or law.<sup>4</sup> To note just one example, a physician who is convicted of growing a marijuana plant in his or her backyard can have his or her license to prescribe medications revoked by the DEA. (See 21 U.S.C. § 824(a)(2)).

In most states, even a misdemeanor marijuana conviction saddles a person with a criminal record for the rest of his or her life. In the age of increasingly fast, cheap, and prevalent background checks (widely available instantly on the Internet for as little as \$9.95) a marijuana conviction can haunt and debilitate a person's life for decades. In the vast majority of states, employers are permitted to deny employment offers or promotions based on a marijuana possession conviction that occurred years earlier. In some states, merely an arrest for marijuana *without a subsequent conviction* can lead to a lifetime of employment discrimination.

In short, collateral sanctions are a vast expanse of the law, where the punishment is anything but tailored to the specific offense or the offender. As a result, what may appear to be a minor offense (e.g., personal possession of a small amount of marijuana) results in a disproportionate penalty, and one that bears little if any relationship or rationality to the offense.<sup>5</sup>

## II. Marijuana Misdemeanors & Felonies

Under state and federal law, criminal offenses are typically divided into misdemeanors and felonies. In most states, misdemeanors are defined as criminal offenses that are punishable by a maximum of one year of confinement, usually in a county jail. Felonies are typically defined as offenses that are punishable by a term of incarceration greater than one year in prison.

Our study adopts the misdemeanor and felony designations of the *State Guide to Marijuana Penalties*, published by the National Organization for Reform of Marijuana Laws. (NORML,

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<sup>4</sup> Other occupations that frequently require state licenses include architects, barbers, bus-drivers, and dry-cleaners.

<sup>5</sup> As observed by Robert M.A. Johnson, “[a]t times, the collateral consequences of a conviction are so severe that [prosecutors and judges] are unable to deliver a proportionate penalty in the criminal justice system without disproportionate collateral consequences.” (Johnson, 2001).

2006). Although the designation of misdemeanor versus felony marijuana offenses varies widely from state to state, states generally categorize personal possession of marijuana as a misdemeanor. Felony marijuana offenses typically include growing or selling any amount of marijuana.

### **III. Marijuana Crimes & Collateral Sanctions: A Summary of Findings**

#### **Collateral Punishments that Hinder Family Life**

##### ***Eligibility for Adoption or Foster Parenting:***

Our study found that states currently vary with regard to the effect of a marijuana conviction on the right to adopt a child, or to serve as a foster parent. In 38 states, a misdemeanor marijuana conviction (for example personal possession of marijuana) can result in a bar on adopting a child.<sup>6</sup> In 7 of those states, this bar can operate for *life*.<sup>7</sup>

Under the Federal Adoption and Safe Families Act of 1997, a state is required to impose a five-year ban on adoption or foster parent approval for any person convicted of a list of offenses, including drug-related felonies.<sup>8</sup> A state's failure to impose this five-year ban results in the forfeiture of certain federal funds for adoptive and foster parent programs, unless the state's governor or legislature affirmatively opts out of the ban.<sup>9</sup> Further, beginning on October 1, 2008, a new federal act known as the Adam Walsh Child Protection and Safety Act of 2006 (PL. 109-248) does away with the opt out provision, requiring all states to impose the ban no later than October 1, 2008. Thus, effective October 1, 2008, a conviction for growing marijuana (or any other marijuana-related felony conviction) will result in a bar on adopting a child or on serving as a foster parent.

##### ***Eligibility for Public Housing:***

One of the most basic human needs is shelter; a place to live. This is especially true for anyone with young children. Without a place to live, it is exceedingly difficult to successfully integrate

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<sup>6</sup> Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>7</sup> Alabama, Arizona, Arkansas, Delaware, Florida, Massachusetts, and Oregon.

<sup>8</sup> 42 U.S.C. § 671 (a)(20)(A)(ii) (2006).

<sup>9</sup> 42 U.S.C. § 671(a)(20)(B) (2006).

into society following a criminal conviction. Yet, in all but 4 states,<sup>10</sup> *any* marijuana conviction (and in many cases merely an *arrest*), can result in a bar from public housing, usually for at least 3 years.

Under the United States Housing Act, public housing leases must contain a clause stating that “any drug-related criminal activity on or off [the] premises engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.”<sup>11</sup> The federal law makes no distinction between misdemeanor and felony drug offenses, nor does it exclude marijuana offenses. Further, because the law uses the word “activity” rather than “conviction,” some housing authorities deny public housing access based only on a marijuana arrest that never led to a conviction.

In 2002, the United States Supreme Court held that public housing agencies even have the authority to evict a tenant for drug related activity that the tenant knew nothing about. (*Dep’t of Hous. & Urban Dev. V. Rucker*, 535 U.S. 125 [122 S.Ct. 1230] (2002)). Thus, an entire family can be evicted from public housing if one member of the family, or even a visitor to the house, is caught in possession of a single marijuana joint.

#### ***Eligibility for Food Stamps & Temporary Assistance to Needy Families (TANF):***

Like housing, food is a basic human necessity. Under federal law, a person convicted in federal or state court “of any offense which is classified as a felony by the law of the jurisdiction involved, and which has as an element the possession, use, or distribution of a controlled substance...” is rendered ineligible for food stamps or temporary assistance for needy families.<sup>12</sup>

Any marijuana-related felony conviction suffered in state or federal court triggers this federal ban.<sup>13</sup> *The ban is for life*. Only felony drug offenses result in this ban; not robbery, not

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<sup>10</sup> Alabama, California, Illinois, and South Carolina.

<sup>11</sup> 42 U.S.C. § 1437d(1)(6) (2006). See also 42 U.S.C. § 1437d(1) (defining “drug-related criminal activity” to mean “the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance (as defined in [21 U.S.C.802]”). While all leases for federally funded housing are required to include the drug-related activity clause, each state or local Public Housing Agency (PHA) has discretion whether to actually evict a tenant who is in violation of the clause.

<sup>12</sup> 21 U.S.C. § 862a (2006). This felony drug ban was an amendment to a large and complex welfare reform bill, and was reportedly subjected to only two minutes of debate. (Rubenstein & Mukamal, 2002).

<sup>13</sup> 21 U.S.C. § 862a (2006).



kidnapping, not even murder.<sup>14</sup>

States are authorized to opt out of the provision entirely, or to limit the length of the ban by passing a law that expressly exempts residents of the state from application of the federal ban.<sup>15</sup> Our study found that all but 12 states have softened the ban, opting out entirely, shortening the length of the ban, or otherwise modifying its scope.<sup>16</sup> We also found, however, that 7 states go further than the federal ban by banning or placing various conditions on the receipt of food stamps or TANF for those suffering a *misdemeanor* marijuana conviction.<sup>17</sup> In these states, an entire family may be subjected to an extended period of hunger because of a parent's marijuana conviction. Indeed, in Virginia, Minnesota, and South Carolina, a parent who suffers a misdemeanor conviction for possessing a small amount of marijuana, and subsequently has a problem while on probation, may find that his or her access to food stamps and other cash assistance is forfeited *for life*.

## **B. Collateral Punishments that Hinder Professional Life**

### ***Criminal Records: Employment & Professional Licensing:***

Our study found that a marijuana conviction can serve as a lifetime barrier to employment or career advancement. One study found that a felony conviction depresses a person's subsequent annual income by as much as 30 percent. (Waldfogel, 1994).

In many states, any marijuana conviction (misdemeanor or felony) may be considered by private or public employers as grounds for dismissal or refusal to hire, regardless of actual work performance. In Alabama, any felony marijuana conviction results in a lifetime bar from any government employment.

In addition, many occupations require state certification or licensing. Just a few examples of professions or occupations that require state-licenses are: real-estate sales, insurance sales, practicing medicine or law, pharmacy, accounting, taxi driving, cosmetology, and day care providers. In 20 states, occupational licensing and certification agencies may deny, revoke, or suspend a professional license based on a person's misdemeanor marijuana conviction, even if the offense is completely *unrelated* to the person's duties.<sup>18</sup> In other states, occupational

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<sup>14</sup> 21 U.S.C. § 862a(d) (2006.)

<sup>15</sup> 21 U.S.C. § 862a(d)(1) (2006).

<sup>16</sup> The 12 states that maintain lifetime bans are: Alabama, Alaska, California, Georgia, Indiana, Mississippi, Missouri, New York, North Dakota, South Dakota, Texas, and West Virginia.

<sup>17</sup> Arizona, Indiana, Kentucky, Minnesota, South Carolina, Utah, and Virginia.

<sup>18</sup> Alaska, Arizona, Florida, Illinois, Indiana, Kansas, Massachusetts, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah,

licenses may not be denied unless the offense is found to be “directly” or “substantially” related to the duties of the employee or licensee. Unfortunately, even in states that require a direct or substantial relationship, few have defined the meaning of “directly or substantially related.”<sup>19</sup>

***Federal Student Loans and Educational Aid:***

A marijuana conviction – even a misdemeanor conviction for possession of a single marijuana joint – can result in the loss of federal and state educational aid. A provision added to the federal Higher Education Act (HEA) in 1998 bans federal student loans and other educational assistance to students with federal or state drug convictions.<sup>20</sup> The ban applies to any conviction for possession or sale of a controlled substance, whether a misdemeanor or a felony, and regardless of the drug. Drug offenses are the only crimes that result in exclusion of financial aid.

According to a report by the Coalition for Higher Education Act Reform (CHEAR) published in 2006, more than 180,000 college students have been denied or delayed federal financial aid as a result of a drug conviction. (Mulligan, 2006). As originally enacted, the drug provision blocked federal financial aid to any student with a drug conviction suffered before, or during, college. A misdemeanor marijuana possession conviction resulted in a one-year ban on receiving financial aid. A conviction for the sale of marijuana, or a second possession conviction, resulted in a two-year ban.<sup>21</sup>

Effective July 1, 2006, the federal provision was modified so as to apply only to drug convictions suffered while a student is enrolled and receiving federal financial aid. Under the amended provision, “A student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table.”<sup>22</sup>

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Vermont, West Virginia, Wyoming.

<sup>19</sup> The American Bar Association’s Commission on Effective Criminal Sanctions has identified the following seven states as those with legislation defining the meaning of “direct” or “substantial” relationship: Connecticut, Kentucky, Minnesota, New Jersey, New York, North Dakota, Virginia. (ABA Report III, 2007).

<sup>20</sup> 20 U.S.C. § 1091(r) (2006).

<sup>21</sup> In addition, eligibility for a federal “Hope Scholarship Credit” of up to \$1,500 is denied to “a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.” 26 U.S.C. § 25A(b)(2)(D).

<sup>22</sup> 20 U.S.C. § 1091(r) (2006).

<b>Possession of a controlled substance:</b>	<b>Sale of a controlled substance:</b>
First Offense - 1 year	First Offense - 2 years
Second Offense - 2 years	Second Offense – Indefinite
Third Offense - Indefinite	

While the HEA drug provision only applies to *federal* financial aid, the CHEAR report found that the majority of states also use the federal provision as a proxy to also denying *state* financial aid. Thus, in 28 states, a student who is convicted of possessing any amount of marijuana will not only be denied federal financial assistance for a year, but may also be denied state aid for a year or longer.<sup>23</sup>

***Driver’s License Revocation:***

A recent national study found that over 128 million Americans commute to work, with the average commute time of just over 25 minutes. (Pisarki, 2006). For most adults, especially those who live outside of urban areas, the ability to pursue their livelihood and provide for their family is dependant upon their ability to drive.

Under a 1993 federal appropriations act,<sup>24</sup> states lose ten percent of particular federal highway funds unless the state enacts a law that automatically suspends, for at least six months, the driver’s license of any person convicted of any drug offense, even if entirely unrelated to a motor vehicle. This provision applies to both misdemeanor and felony marijuana convictions.

A provision of the federal act allows states to opt out of the ban only if the state’s governor signs the following written statement:

I (Name of Governor), Governor of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that I am opposed to the enactment or enforcement of a law that conforms to 23 U.S.C. 159(a)(3)(A) and that the legislature of the (State or Commonwealth) of \_\_\_\_\_, has adopted a resolution expressing its opposition to such a law.<sup>25</sup>

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<sup>23</sup> Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Texas, Virginia, and Washington.

<sup>24</sup> Dep’t of Transportation and Related Agencies Appropriations Act of 1993, 23 U.S.C. § 159 (2006).

Our study found that in 21 states and the District of Columbia, a misdemeanor conviction for personal possession of marijuana can result in a driver's license suspension for at least six months and sometimes longer.<sup>26</sup> While most states offer some method for mitigating the economic hardship of a driver's license suspension (usually by permitting the person to drive to and from work during the suspension period), not all states are so accommodating. Ronald Susswein, Assistant Attorney General for New Jersey, remarked on New Jersey's mandatory suspension, by noting, "we tell people...that if your job was important to you, you should have thought about that before you used drugs." (Shaffer, 1994.)

In one reported case, William Rushworth was arrested and charged with possession of marijuana after a single marijuana joint was found in his car. There was no evidence that he was under the influence of marijuana. He pled guilty and was fined \$500. His driver's license, however, was suspended for one year. As a result of the suspension, he lost his job as a truck driver, which paid \$400 per week.<sup>27</sup> A man named James Peterson was arrested for possession of two ounces of marijuana found inside his home. He was convicted of possession of marijuana with intent to distribute, and sentenced to two years probation with 30 days in jail. His driver's license was suspended for two years. He owned a home thirty miles away from his job, and there was no public transportation.<sup>28</sup>

Thus, because of the driver's license suspension, a minor marijuana offense can result in unemployment, withdrawal from school, and effective isolation and inability to engage in such basic acts as traveling to buy groceries, driving one's kids to school, or visiting friends and family.

### **C. Collateral Punishments that Hinder Civic Participation**

#### ***Voter Disenfranchisement:***

Voting is more than our representative democracy's mechanism for peacefully participating in the selection and direction of one's local, state, or national government, "[v]oting appears to be part of a package of prosocial behavior that is linked to desistance from crime." (Uggen &

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<sup>25</sup> 23 U.S.C. § 159 (2006), 23 C.F.R. 192.5 (2)(c)(1).

<sup>26</sup> Alabama, Arkansas, Delaware, Florida, Indiana, Iowa, Georgia, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Wisconsin, and the District of Columbia.

<sup>27</sup> *Rushworth v. Registrar of Motor Vehicles*, 413 Mass. 265, 268, 596 N.E.2d 340 (1992).

<sup>28</sup> *Ibid.*

Manza, 2004).

State law governs the right to vote in local, state, and even federal elections. Over 30 years ago, the U.S. Supreme Court held that states have the power to disenfranchise people convicted of crimes.<sup>29</sup> Each state is thus entirely free to determine what effect, if any, a marijuana-related conviction will have on a person's right to vote.

In all but 3 states, a conviction for growing marijuana (or any other marijuana-related felony) results in at least some period of time during which the person is barred from voting.<sup>30</sup> Our study identified 6 states in which a felony marijuana conviction can result in a lifetime bar on voting.<sup>31</sup> A 2005 study by The Sentencing Project reported that nearly five million Americans have lost their right to vote due to criminal convictions. (Mauer & Kinsal, 2005).

### ***Bar on Jury Service:***

Like a person's right to vote, the right to serve on a jury is one central means by which a democratic society empowers its citizenry to affect the relationship between the individual and the state. Also like the right to vote, the right to serve on a jury is governed by state law. Our study identified 23 states and the District of Columbia, in which a felony marijuana conviction results in a *lifetime* bar on jury service.<sup>32</sup>

### ***Right to Possess a Firearm:***

Under the Federal Gun Control Act, it is a federal crime for any person to possess a firearm after having been convicted in any court (federal or state) of a crime punishable by imprisonment for a term exceeding one year [i.e., a felony], or who is an "unlawful user of or addicted to any controlled substance."<sup>33</sup> The offense is punishable by up to 10 years in federal prison.<sup>34</sup>

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<sup>29</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1974) [holding that because U.S. Const. amend. XIV, § 2, contained language suggesting that the practice of depriving felons of voting rights was acceptable, and because this practice was historically viewed as valid, respondents were not entitled to register as voters under the Equal Protection Clause of U.S. Const. amend. XIV].

<sup>30</sup> The 3 states in which a felony marijuana-related conviction has no effect on voting rights are Maine, Mississippi, and Vermont.

<sup>31</sup> Alabama, Connecticut, Kentucky, Tennessee, Virginia, and Wyoming.

<sup>32</sup> Alabama, Alaska, Arkansas, California, Delaware, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nebraska, New York, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Wyoming, and the District of Columbia.

<sup>33</sup> 18 U.S.C. § 922(g) (2006).

<sup>34</sup> 18 U.S.C. § 924(a)(2) (2006). The term "unlawful user" was defined in *United States v.*

All 50 states have independent counterparts to the Federal Gun Control Act. Under the vast majority of these laws, a felony marijuana conviction automatically result in the temporary or permanent loss of the right to possess a firearm. Our study found that in 7 states and the District of Columbia a marijuana-related *misdemeanor* conviction results in a period of time in which the person is prohibition of possessing a firearm.<sup>35</sup> In 5 of these states, the firearm prohibition can operate *for life*.<sup>36</sup>

For some people, loss of the right to possess a firearm may not be important, but it can be extremely significant for someone in the military or law enforcement. For them, this sanction can mean the loss of their livelihood, and associated benefits such as health insurance. For others, the prohibition results in the end of hunting, target shooting, or owning a gun for home security reasons.

#### IV. Policy Recommendations

- States should enact the Uniform Collateral Sanctions and Disqualifications Act (UCSDA), which is currently being developed by the National Conference of Commissioners on Uniform State Laws. Among other things, this Act would: collect all collateral sanctions in one title, require court's to advise defendants of the collateral sanctions triggered by a plea, define the judgments that qualify as "convictions," limit the collateral sanctions applicable to employment, educational benefits, housing, occupational licensing, and voting, and provide for Certificates of Rehabilitation that would permit qualifying individuals to have their rights restored in whole or in part. (NCCUSL, 2007).
- Like the NCCUSL, the American Bar Association recently completed four reports that examine collateral sanctions, and which culminate in six specific recommendations that the ABA urges federal, state, territorial, and local governments to develop or enact. (ABA Reports I-IV, and Summary of Recommendations, 2007). All six of these recommendations would benefit persons convicted of marijuana-related offenses, and should be adopted.
- In some states, marijuana offenders can avoid a criminal conviction by successfully

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*Purdy* (2001) 264 F.3d 809, 813, as a person who takes "drugs with regularity, over an extended period of time, and contemporaneously with his purchase or possession of a firearm." Under this definition, occasional use of marijuana, or use of marijuana prior to obtaining a firearm, is not proscribed by the Act.

<sup>35</sup> Delaware, Georgia, Massachusetts, Minnesota, New Jersey, New York, Ohio, and the District of Columbia.

<sup>36</sup> Georgia, Massachusetts, New Jersey, and Ohio.

completing a “diversion” or “deferred entry of judgment” program.<sup>37</sup> With respect to collateral sanctions, these programs are extremely important because nearly all collateral sanctions are triggered by a *conviction*. By avoiding a conviction, a person avoids the collateral sanctions. Thus, our study underscores the importance of diversion and deferred entry of judgment programs for marijuana offenses, and instructs that legislators who are seeking to reduce the penalties associated with marijuana offenses would do well to focus on programs that not only reduce the direct penalties associated with conviction, but equally importantly, provide a method by which a period of probation results in *no conviction*. In most cases, this is the only way to avoid the collateral sanctions examined in our study.

- States should consider enacting provisions that *automatically* expunge and/or seal some or all marijuana-related convictions after successful completion of the sentence or probation. Section 11361.5 of California’s Health & Safety Code serves as a workable model for such a provision.

## V. Conclusion

In nearly every state, a person who commits a marijuana offense, and fully serves his or her sentence (or successfully completes probation), is nonetheless subject to continuing and long-lasting professional debilitation, barriers to family life, and limits on civic participation. Across the United States, thousands of people convicted of marijuana offenses have lost their right to vote, to obtain professional licenses, to receive public assistance or public housing, or even to adopt a child. Further, under the laws of many states, employers may lawfully refuse to hire or promote a person because of a marijuana conviction (or, in some states, merely because of a marijuana *arrest*). Thousands of young people convicted of marijuana offenses have had their educations sidetracked or ended by being denied educational aid.

These are all collateral sanctions associated with a marijuana conviction, and for many people they can result in a lifetime of hardship – an unrecognized punishment that continues long after they have served their criminal sentence or completed probation.

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<sup>37</sup> States vary in how their diversion or deferred entry of judgment programs operate. In some, a defendant is required to enter a plea of guilty as a condition of participation in the program, thereby still resulting in a conviction and the attendant collateral sanctions. In other states, the criminal proceedings are suspended and completion of a prescribed program or probationary term results in dismissal of the charge without any conviction. This latter style of program avoids collateral sanctions. (Belenko, 2000).

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