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Bryan Alick Winter

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**Marijuana Law Reform in Texas**

**APPROVED BY  
SUPERVISING COMMITTEE:**

**Supervisor:**

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Dennis Darling

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Bill Minutaglio

# **Marijuana Law Reform in Texas**

**by**

**Bryan Alick Winter, BA**

## **Report**

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## **Abstract**

### **Marijuana Law Reform in Texas**

Bryan Alick Winter, MA

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Supervisor: Dennis Darling

Marijuana law reform has become a significant issue across the country. Many states have passed reform of one kind or another and even President Obama has come out in favor of medical marijuana. And Texas has started the conversation on whether to change its marijuana laws. This report looks at the efforts being taken by reform advocates and the challenges they face pushing new laws through the Texas legislature.

## Table of Contents

Text .....	1
References.....	16

## **Revolution in Texas**

Barbara Humphries, 31, is a single mother of two from Fort Worth, Texas who is battling stage three breast cancer. On top of everything else that cancer brings—two sessions of chemotherapy, losing her hair, losing her job at Starbucks—the pills prescribed as part of a treatment plan are making her even more sick. So she took matters into her own hands, and began self-medicating with marijuana.

“I didn’t know what else to do and I didn’t want to feel dead all the time,” said Humphries. Now that she uses marijuana to treat her pain she says she feels “amazing.”

Humphries feels so strongly about changing Texas’s marijuana laws that she has become the patient outreach coordinator of the Dallas/Fort Worth Chapter of the National Organization for the Reform of Marijuana Laws (NORML). She spends much of her time at the State Capitol building in Austin, covering almost all of her travel expenses herself, lobbying for reform.

And now, in her recent trips to Austin, she is more convinced than ever that the unthinkable can happen in Texas:

The state, she and other advocates say, is standing on the verge of a sea change in its laws governing marijuana use—just recently, state lawmakers made news by voting a marijuana law reform bill out of a committee in the Texas legislature. Despite years of trying, it had never happened before in the state’s history.

It was the clearest signal yet that Texas, long known as one of the most socially conservative places in the nation, has seen an extraordinarily unlikely coalition of advocates emerging in the last 10 to 12 months: An ensemble of disparate forces—ranging from hardcore Republican lawmakers to breast cancer survivors, from the police chief in Houston to military veterans – is taking shape. And, together, they are remaking

the face of the pro-marijuana-movement in the state that is home to arch-conservatives such as George W. Bush, Rick Perry and Tea Party stalwart Ted Cruz.

Texas puts more people to death than any other state, and more than many countries. Its prisons are often filled. It has an aggressive collection of detention centers for undocumented immigrants. There are zero tolerance policies throughout the state for various crimes – and many prosecutors still tend to throw the book at offenders. And that makes the possibility of marijuana law reform as unlikely as snow in August in Texas.

Perhaps the most staggering thunderclap came when, before leaving office in 2014, Governor Perry said: "What I can do as the governor of the second largest state in the nation is to implement policies that start us toward a decriminalization and keeps people from going to prison and destroying their lives."

Then there was this cannon shot from Houston, America's 4<sup>th</sup> largest city and not a place often associated with liberal policies and politics: Late last year, Houston Police Chief Charles McClelland told a local radio station that he thinks the pot laws in Texas are out of touch with reality – especially as they relate to minorities:

"We cannot criminalize such a large population of society that engage in casual marijuana use," the chief told radio station KPFT in Houston. He hopes that more money can be put into job training and crime prevention and that less money is spent on building jails and prisons.

"A lot of young men who are minorities in their early 20s have a felony conviction on their resume and now they're unemployable," said McClelland. "We wonder why they don't have jobs, why they're not contributing to society."

According to a 2013 ACLU study, African Americans in Texas are anywhere between 4 and 34 times more likely to be arrested for marijuana possession depending on

the county. This is despite African Americans and Caucasians having a very similar estimated percentage of marijuana use among their own demographics.

The governor, the breast cancer survivor and the cop might be on to something: A poll conducted by the University of Texas and *The Texas Tribune* found that almost 8 out of 10 Texans support marijuana reform in one form or another—and now, even some legislators are apparently listening.

“When I speak to [legislators] behind closed doors I get an overwhelming sense of positive reinforcement from them,” Humphries said.

State Rep. Marisa Marquez, D-El Paso, has introduced a bill in the 2015 legislature that would allow Texans to legally obtain medical marijuana—and create regulated, licensed dispensaries. It is one of 12 marijuana bills in the current Texas legislature—seven more than were introduced in the 2013 legislative session.

One long-time Texas legislator, someone who has pushed for marijuana reform since 2007, says change is in the air:

“Eventually Texas will legalize medicinal marijuana,” Naishtat said. “I don't think there is a question about that. It may take a few months or a few years but it will happen.”

But those who hope to access marijuana for recreational use in Texas might have a longer wait. The Marijuana Policy Project, a national marijuana law reform advocacy group, has set a 2019 goal to pass a recreational marijuana law in Texas – but even that date is probably a little too ambitious because Texas faces one unique challenge to passing marijuana reform: its own constitution.

Legalization in Washington and Colorado was spurred by citizen’s initiatives. Activists in those states were able to gather enough signatures on petitions to add



legalization to the ballot, allowing citizens to bypass the legislatures in those states. In contrast, every citizen in Texas could sign a petition and it would mean nothing. So reform is squarely in the hands of Texas legislators, and, as anyone who follows Texas politics knows, lawmakers in this state are unpredictable and many are disinclined to make any move that might rile up their socially conservative base.

At least one expert says it is highly unlikely that this will be the year Texas joins Colorado, Washington and other states that have deeply overhauled their laws—but he certainly doesn't rule it out for the future. “The first time we can really think about legalization...would be in the 2023 session,” said Mark P. Jones with the Baker Institute for Public Policy in Houston.

### **Shifting Paradigm**

If and when it happens, it will represent a long march – almost exactly a century old – from the days when Texas first officially tried to regulate marijuana:

In 1919 Texas became only the second state in the nation to create a marijuana law as part of a broader bill prohibiting the selling of narcotics. It essentially was a joke, a farce, because the amount of marijuana being shipped across the Mexican border grew over the decades. From 2013 to 2014, the United States Border Patrol seized almost 875,000 pounds of marijuana along the Texas side of the border from El Paso to McAllen—it was as if every man, woman and child in the city of San Antonio, America's 7<sup>th</sup> largest city, were allotted more than a half a pound marijuana each.

Beyond that historically constant flow of the drug from Mexico, marijuana has settled into the very ethos of the state: Perhaps the most popular Texan of them all, Willie Nelson, openly smokes and endorses marijuana use. He is unique in state culture – worshipped by hippies and

rednecks alike – and Austin commemorated a statue in his honor at 4:20pm on April 20th, 2012. Some observers said the time and date were sly, numeric, drug culture references to marijuana.

The irony of a statue devoted to the state’s most legendary pothead is not lost on many people in Texas: Nelson has also made national headlines for being busted for pot in Texas – as have Matthew McConaughey, Timothy Leary, Snoop Dogg, Fiona Apple and many other famous folks.

But, now, perhaps taking a cue from the lenient proclivities in other states, various municipalities in Texas are looking the other way. In Austin, home to major music festivals, police will walk by people openly smoking marijuana—and the same thing is apparently happening in the more conservative cities of Houston and Dallas. Some police officials around the state simply say that they are reprioritizing when it comes to marijuana:

David Carter, a former city cop in Austin and now the University of Texas at Austin Chief of Police, says his officers often make judgement calls when deciding what crime to attack. “If there is somebody who is being assaulted or there is a robbery in progress, we’re going to respond to that call first before we respond to a call for a lower level, non-violent crime,” he says.

That shift in law enforcement priorities has perhaps made pot easier to buy than ever before, even in a state like Texas where you can still face stiff fines or jail time:

“You can get it anywhere,” Humphries says. “I could probably walk out of my apartment, stand there, and start yelling ‘who has marijuana’ and someone would come over to me.”

But you still run that risk: Get caught in Texas with two ounces or less of marijuana, and you could be put in prison for up to 180 days, or fined \$2000. The offense is a Class B misdemeanor, which can never be expunged from your record, following you around for the rest

of your life. The Texas Department of Public Safety reported in 2013 that just over 70,000 people were arrested in Texas for marijuana possession. That number represents 57% of all drug possession arrests in the state.

Humphries doesn't care about the risks.

"My health is more important than politics," she argues.

### **Marijuana in the 2015 Legislative Session**

Of the 12 marijuana law reform bills introduced this legislative session in Texas, four are receiving the most attention from both advocates and detractors.

House Bill (HB) 507, introduced by State Rep. Joe Moody, D-El Paso, decriminalizes possession of up to an ounce of marijuana. Those caught with that amount or less will be given a civil citation—similar to a parking ticket—and charged a \$100 fine.

"One thing that's clear to us is that even if we are hesitant about moving towards legalization, the current model we have of arrest, of prosecution in our county courts, it's not working," said Ellic Sahualla, Moody's chief of staff and a practicing attorney. He says people with a drug conviction on their record risk losing their jobs, being deported, losing student loans or the ability to get a loan for a house.

"It doesn't make sense for our tax dollars and it doesn't make sense for the future of our young Americans who are going to get past these youthful indiscretions hopefully and get into the job market, raise families, and not want to be haunted by stupid stuff they did when they were young," Sahualla said. "Its costing tens of millions of dollars...it is literally taking [police] officers off the streets."

After almost voting down HB 507 during the initial vote, the Criminal Jurisprudence committee called a second vote and passed the bill on May 4th, 2015. The next step is sending it to the calendars committee, which will decide whether or not to send it to the House floor. This history-making progression – the first time a bill like it moved out of a committee – does not ensure immediate passage into law. The legislation still has a fight in front of it and Naishtat refers to the calendars committee as “the black hole of Texas government.” Any member is allowed to blackball a bill from being added to the House’s schedule.

But aides to Moody are cautiously optimistic. Sahualla says he has “gotten commitments from lots of Republicans and virtually every Democrat on a favorable vote” if the bill does get a vote on the House floor.

Still waiting to be voted on by the same committee is HB 837—Naishtat’s “affirmative defense”—bill that would allow people arrested for using illegally obtained marijuana for medical reasons to provide a doctor’s note to a judge in order to get the case thrown out. “My bill doesn’t even legalize it,” Naishtat said. He hopes the more conservative approach will help push the bill through the Texas legislature.

But some medical professionals say there’s a problem with his approach. Drug dealers often don’t know what kind of cannabinoids—the various compounds within the marijuana plant such as Tetrahydrocannabinol( THC) or Cannabidiol (CBD)—are in the products they sell so a patient might not be receiving the treatment they need. Not every strain of marijuana has the same medicinal values and true treatment requires someone who knows how to match different strains to medical conditions.

But, in the end, perhaps the most ambitious marijuana reform bill ever filed in the history of the state is HB 2165, authored by an almost unlikely proponent: State Rep. David Simpson, R-Longview. His proposal simply removes all mention of marijuana from Texas’ laws.

“He does not believe in government bureaucracies and red tape and registries and all that ridiculous government regulation,” said Simpson’s legislative director, Michael Bullock. The lawmaker, says his aide, believes there should not be “oversight of a product that people should be able to use for their own benefit.”

As the only Republican to put forward a marijuana law reform bill, some advocates hope that Simpson is a symbol that the hardcore Texas GOP might be changing its mind on the issue. There are other indications that the GOP resistance is softening: Three Republican legislators - Simpson, State Rep. Jonathan Stickland, R-Bedford, and State Rep. Bryan Hughes, R-Mineola - have also signed onto the Democrat Moody’s decriminalization bill as co-authors.

“It’s a myth that Democrats are for this kind of thing and Republicans are against it,” Sahualla said. What is happening in Texas seems to have corollaries to the national stage: A recent study released by the Pew Research Study shows that Republican support of full marijuana legalization nationally has increased from 24% in 2010 to 39% in 2015.

Many witnesses who testified at committee hearings in Texas introduced themselves as conservative, Republican or Christians. The majority of witnesses at those hearings spoke in favor of marijuana law reform. At a Criminal Jurisprudence Committee hearing on April 7th, 170 people registered in favor of Simpson’s bill, while only 22 registered against the bill.

During that hearing, Ann Lee, co-founder of a group called Republicans Against Marijuana Prohibition (RAMP), pleaded for lawmakers to “put RAMP out of business.”

“Prohibition doesn’t work,” she said. “It makes a crime out of that which is not a crime. We can help Texans. Please stand up for Texans.”

And the GOP’s Bullock believes that the government will do just that sooner rather than later. “I think some form of marijuana [reform]—either penalty reduction or something else—will go through this session,” he said.

## **Is Marijuana a Miracle Drug?**

Chris Schickedanz, an Iraqi War veteran from Fort Worth, TX, also admits to self-medicating.

Schickedanz served two tours in the Middle East and now suffers from severe Post Traumatic Stress Syndrome (PTSD). Doctors gave him medications for his depression and suicidal thoughts but nothing worked. He says marijuana is the only thing that has improved his quality of life.

Don Stephens is a Vietnam War veteran from Houston who also suffers from PTSD. Stephens claims that he was on 13 different medications for his PTSD and other medical issues, but they didn't help. So he began self-medicating. Now, he says, the two things that get him through his pain are "the Lord and marijuana."

Lawmakers have learned to lean on these personal accounts: "These [are] people who come forward and they're sick and they're courageous and they say, 'I'm admitting to a public record that I smoke marijuana...and here's why...and here's how it helps,'" Naishtat said.

While most people associate marijuana with smoking, it can also be taken in a number of other forms. Some Texas patients using marijuana for medicinal reasons—especially children and the elderly—are often using edibles, oils, tinctures, lotions, and oral spray. Alexis Bortell from Rowlett, Texas has become a sort of poster child for using cannabidiol (CBD) oil to treat epilepsy.

After traditional medications did nothing to stop Bortell's crippling seizures, her family relocated to Colorado to see if cannabis would work any better. CBD oil is taken by using a pipette to drop the medication under the tongue. In April 2015, Alexis' father, Dean Bortell,

wrote on the Team Alexis Facebook page: “Since the first dose, she has not had a single symptom or seizure.”

The Bortell family—as well as many other medical refugees—hope to see marijuana law reform soon so they can return to their Texas homes. If they do come back, they might be surprised to find that the Texas has done something else historically unlikely – the state has become a haven for cutting-edge research into that medical marijuana that many claim they so desperately need:

Two doctors in Texas are also working on a new study they hope will prove how effective cannabis really is as a medical tool. Dr. David Yang at the MD Anderson Cancer Center in Houston, has said marijuana is “safe and effective” and he cited neuropathy and AIDS as specific conditions that the plant could be helpful in treating during a Public Health Committee debate on Marquez’s medical marijuana bill.

Yang’s partner, Dr. Elias Jackson, president of Vyripharm Pharmaceuticals, said during the same committee hearing in April 2015 that, “the people on the front line, our physicians and clinicians, they need to have every weapon in their arsenal.”

## **The Opposition**

Denton County Sheriff Will Travis is perhaps the leading voice against marijuana reform in Texas. Travis organized the Sheriff’s Association of Texas (SAT) to fight any legislation that would lessen penalties or make marijuana more readily available. He co-wrote a 26-page memo outlining his concerns, distributed it to the Texas legislature, and also created an anti-reform resolution that was passed by the SAT’s general membership.

“Medicinal marijuana was created by the groups seeking to legalize marijuana as a step on the path to achieve full legalization,” Travis’ report states. “[It] has become a device used by special interest groups to exploit the sick and dying and well-meaning voters for their own purposes.” (Attempts to reach Travis by telephone and email were unsuccessful)

Raymond and Tammy Castro, two parents from Irving, Texas, agree with Travis, and feel that even having a conversation about marijuana law reform is causing great damage. At a Criminal Jurisprudence committee hearing held by Texas lawmakers in April 2015, they tearfully testified that their son Joey was put on a fatal “slippery slope” to a heroin overdose through a marijuana habit. They claim that he rejected any attempt to get him off that path because it was “embedded in his mind” that nothing was wrong with marijuana.

Phillip Martin, the deputy director of a liberal lobbying group in Austin called Progress Texas, says the Texas sheriffs and their supporters are just not looking at all the facts. “They’re stuck in the past,” said Martin, whose group is pushing for marijuana reform. “They’re unwilling to listen to new information. They make arguments that are valid concerns—if the data didn’t refute their concerns.”

The law reform lobbying efforts from people like Martin are clearly more aggressive and organized than ever before in Texas – and they also appear to be more proactive than the efforts to keep the state’s marijuana laws intact: At a recent Public Health Committee meeting, testimony lasted five hours—and not a single person testified against the marijuana law reform bills on the table.

Still, some Texas sheriffs are taking a cautious, wait-and-see approach – and some are essentially trying to find the safest public stance as possible:



“We will enforce any law the state legislature puts forward,” said Rodger Wade, the spokesman for the Travis County Sheriff’s Office in Austin, “but otherwise [Sheriff Greg Hamilton] has no opinion on the subject.”

### **What Happens When Marijuana Laws are Reformed**

Currently, 24 states and the District of Columbia offer legal medical marijuana and four states and the District of Columbia offer legal recreational marijuana.

“People are seeing that the sky is not falling in these other states where they’re making changes to their laws,” claims Heather Fazio with the Texas branch of the Marijuana Policy Project.

Mark Bailey, an Assistant Attorney General in Colorado, says that he hasn’t seen any “real big impact one way or the other” since legalization happened. According to the 2014 FBI Uniform Crime Report, there was a 7.7% drop in crime in Colorado between January and October 2014 and the same time period in 2013. In Washington, the number of misdemeanor marijuana possession charges dropped from 5,531 in 2012 to 120 in 2013.

Texas proponents of law reform say that the numbers indicate the state could clear out its overloaded court system and free up police resources to address more pressing needs. Some say there is also an economic benefit: In January 2015, Washington made \$1,775,307 from recreational marijuana taxes. In 2014, Colorado collected over \$76 million in marijuana taxes, licenses, and fees—a number so much higher than previous estimates that, according to the Colorado Taxpayer Bill of Rights, the state might have to refund some of it back to the public.

One online financial site, [nerdwallet.com](http://nerdwallet.com), calculated that if Texas used a taxing system similar to Washington's, the state could make over \$166 million dollars in marijuana tax revenue per year.

Zoe Russell, the assistant executive director of RAMP, believes the economic benefits would be very real if legalization happened in Texas: "I think that [marijuana tax income] would save the state money and make the state money," she said. Russell also thinks that the state shouldn't "tax it back into the black market."

Because marijuana is still illegal federally, legal stores are forced to pay federal taxes on the money they spend on state taxes—this essentially doubles the amount they have to pay. And the lobbyists and advocates in Texas closely studying how Colorado, Washington, Oregon and other states have gone about their efforts to overhaul marijuana laws – and balance state's right versus federal guidelines:

"We pretty much lose money on every item that we sell and we're trying to make it up with volume," Ike Eisenberg, owner of Uncle Ikes—one of the most popular recreational marijuana stores in Seattle—says. "We are the proverbial business 101 joke. It's not survivable."

Cass Kazzemini, a cab driver in Seattle, says he uses marijuana recreationally but the creation of a legal market hasn't meant much to him. "I don't go to the [marijuana] stores," he says. "It's too expensive. I've got a guy."

At least one pot dealer in Texas, Jason Smith (whose real name is not being used to protect his identity) believes that sentiment would be the same if legalization happened in Texas: "[Legalization] would be a heyday for me because there would be a higher demand—because people would feel more

comfortable smoking,” Smith said. “But in the meantime, who’s going to deliver to you? Even when there are dispensaries, it’s legal, but people still go to their hook-up.”

## **The Future of Marijuana in Texas**

Beau Kilmer, a senior policy researcher and co-director at the RAND Drug Policy Research Center, thinks that Texas — and the rest of the country — shouldn’t jump to conclusions about what they are seeing in Colorado and Washington.

“These markets are very much in transition,” Kilmer said. “There is data lag. It’s going to take a while before we have the information we need. Its just to early to tell whether this is a good idea or a bad idea.”

But investors are already thinking ahead: Last year, the first “Marijuana Investment” conference was held in Houston and attracted 100 attendees paying \$1,000 each to hear up to 20 speakers. The fact that the conference was not held in liberal Austin but in Houston, the conservative home to many big oil companies and former President George H.W. Bush, was not lost on many people.

Katharine Neill, also at the Baker Institute, thinks entrepreneurs are all about making money – and that the interest in the marijuana business might help keep the legalization momentum going. "Anytime you get money behind an idea in politics, it has a better chance of survival," she says.

For advocates of marijuana law reform in Texas, that means trying to convince lawmakers, law enforcement officials and ordinary citizens that new laws will mean both a fatter bottom line – and very little chance of crime increasing.

But whatever happens during the 2015 Texas legislative session, it is clear that the conversation on marijuana law reform isn't going away. "We've just moved from giggling about marijuana to having a serious conversation about it," Martin said. "That's an important step."

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