



OFFICE OF THE RAMSEY COUNTY ATTORNEY

John J. Choi

TO: All Assistant Ramsey County Attorneys in the Criminal Division and Juvenile Division

FROM: John J. Choi, Ramsey County Attorney

J.C.

DATE: February 28, 2019

RE: *Charging Policy Regarding the Sale of a Small Amount of Marijuana*

I. BACKGROUND

Announced in 1982, the federally-declared *War on Drugs* resulted in changes in federal policy by Republican and Democratic Administrations over the next decade which provided millions of dollars in Byrne grants, driving the proliferation of drug task forces and drug enforcement; reallocated billions in public funding from food and public housing assistance to corrections; and instituted a ban effectively barring anyone convicted of a felony drug offense – including simple possession of marijuana – from accessing welfare or food stamps.¹

These policies both directly fueled mass incarceration and disproportionately impacted select segments of our population. Incarceration rates in the United States were relatively stable until the mid-1980s, when the modern trend of mass incarceration began, resulting in a 500% increase over the past four decades in the number of people in jails and prisons,² far outpacing that of any other country.³

According to recent data from the U.S. Department of Justice:⁴

- the number of women in prison has increased at twice the rate of men since 1980;
- more than 60% of people in prison are people of color:

¹ Alexander, M. (2012) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York, NY: The New Press.

² The Sentencing Project. (June 2018). *Trends in U.S. Corrections*. [Fact Sheet] Retrieved from <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>

³ Walmsley, R. (2018). *World Prison Population List*. Institute for Criminal Policy Research. Retrieved from http://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf

⁴ Carson, E.A. (2018). *Prisoners in 2016*. Bureau of Justice Statistics. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6187>

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- Black men are more than 6 times as likely to be in prison as White men;
- Latino men are nearly 3 times as likely to be in prison as White men; and close to half of people confined to federal prisons had been sentenced for drug offenses.

As central players in the justice system, it is both our professional responsibility and a moral imperative that we understand the detrimental impacts of mass incarceration and the resulting collateral consequences of convictions, so we can ensure the discretion we employ is well-informed. As we continue to revisit our policies and procedures to ensure they are fair, just, and proportionate, it is incumbent upon us to reconsider the impact of laws criminalizing small amounts of marijuana.

II. POLICY GUIDELINES

As you know, Minnesota Statute Section 152.01, subd. 16, defines a “small amount” of marijuana (excluding the resinous form of marijuana) as 42.5 grams or less. While possession of a small amount of marijuana is a petty misdemeanor punishable by a fine of up to \$300, the sale of a small amount is a felony.

Effective immediately, our office will not charge cases involving the sale of a small amount of marijuana unless there is a clear and compelling public safety need to do so. If you feel there is a public safety purpose in charging such a case, please bring the issue to your manager, who will then discuss the case with me.

When you raise the issue with your manager, please be prepared to articulate the clear and compelling need by describing the facts which raise public safety concerns, including, but not necessarily limited to:

1. Whether an aggravating factor identified by the legislature in Minn. Stat. § 152.01, subd. 24 is present;
2. Whether the offender possessed a firearm or simulated firearm along with the marijuana;
3. Whether the offender also possessed more than a trace amount of other controlled substances;
4. Whether the substance is THC oil or wax;
5. Whether a child was present during the marijuana sale; or
6. Other clear and compelling public safety reasons.

III. CONCLUSION

As a practical matter, our office receives relatively few cases from law enforcement agencies involving the sale of small amounts of marijuana. However, following this new protocol will reinforce responsible law enforcement and help ensure our criminal justice response is fair, just, proportionate, and focused on the needs of public safety. Thank you.

A handwritten signature in black ink, appearing to be 'R. M.', is located at the bottom right of the page.