

Recommendation from the Greensboro Criminal Justice Advisory Commission on hemp versus marijuana

Purpose

The NC legislatures had the opportunity to ban smokable hemp and chose not to in 2019. There is a serious loophole in the full legalization of Hemp when Marijuana is still illegal and now it is up to municipalities to determine how to rectify this. The NC legislators has begun the process of making expungements easier for non-violent offenders

Materials used in making this determination

“There is no easy way for law enforcement to distinguish between industrial hemp and marijuana. There is currently no field test which distinguishes the difference. Hemp and marijuana look the same and have the same odor, both unburned and burned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant. In order for a law enforcement officer to seize an item to have it analyzed, the officer must have probable cause that the item being seized is evidence of a crime. The proposed legislation makes possession of hemp in any form legal. Therefore, in the future when a law enforcement officer encounters plant material that looks and smells like marijuana, he/she will no longer have probable cause to seize and analyze the item because the probable cause to believe it is evidence of a crime will no longer exist since the item could be legal hemp. Police narcotics K9’s cannot tell the difference between hemp and marijuana because the K9’s are trained to detect THC which is present in both plants. Law enforcement officers cannot distinguish between paraphernalia used to smoke marijuana and paraphernalia used to smoke hemp for the same reasons. The inability for law enforcement to distinguish the difference between hemp and marijuana is problematic in all marijuana prosecutions, from small amounts to trafficking amounts of plant material. “

-North Carolina State Bureau of Investigation

“The North Carolina Senate recently passed legislation loosening the requirements to expunge a criminal record. Offenders could wipe out multiple nonviolent misdemeanor or low level felony convictions, regardless of age, and the bill expands expunctions for misdemeanors and minor felonies committed by 16- and 17-year olds. Currently, only nonviolent, first-time convictions qualify.

The bill also automatically wipes away charges that resulted in a not guilty verdict or were dismissed. Countering decades of tough-on-crime legislation, North Carolina is among a growing number of states making it easier to wipe records clean.”

- Associated Press: “North Carolina moves to help offenders clear their records”

Long term consequences that were factored in to NOT changing the SB 315

“The unintended consequence upon passage of this bill is that marijuana will be legalized in NC because law enforcement cannot distinguish between hemp and marijuana and prosecutors could not prove the difference in court. Every quantity of hemp and/or marijuana is important for police investigations, from the cigarette to the “dime” bag to a bale.”

-North Carolina State Bureau of Investigation

GCJAC Proposal Regarding Conflation of Hemp and Marijuana

Hemp, including smokable hemp, was declared lawful by the North Carolina legislature in 2015. It has been shown that the odor and appearance of hemp are the same as marijuana, which remains illegal in North Carolina. As stated by the North Carolina Special Bureau of Investigation, "Hemp and marijuana look the same and have the same odor, burned and unburned. This makes it impossible for law enforcement officers to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant."

Thus, any police stops, searches and seizures without warrants based on the odor or appearance of alleged marijuana are no longer grounded on a reason, but rather a guess. Such a guess is insufficient for such stops, searches and particularly arrests, and will not meet a probable cause standard under *Illinois v. Gates*, 462 U.S. 213 (1983). Arrests have far-reaching adverse consequences for employment, livelihood, and education of the person arrested, even if there is no conviction that results. Further, data shows that marijuana arrests 3.6 times more likely to occur with African Americans than with White persons. Even though usage among both races is similar. There is also no consensus across the country that marijuana prosecution serves even a weak government purpose. In fact, at least 27 states and the District of Columbia have decriminalized marijuana.

Recommendation of the GCJAC

- As marijuana and hemp are indistinguishable from each other by field tests, the presence of the odor of hemp or marijuana should not be used as a reason for probable cause to search.
- Marijuana be deprioritized within the City of Greensboro and the Greensboro Police Department. Due to the indistinguishable nature of hemp and marijuana, the GCJAC is recommending that marijuana be deprioritized and to immediately cease possession charges for marijuana. Unless possession can be determined by other means.

Supporting Documents

We Change Laws

<https://www.mpp.org/states/north-carolina/>

NORTH CAROLINA STATE BUREAU OF INVESTIGATION

Industrial Hemp/CBD Issues

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/NC%20SBI%20-%20Issues%20with%20Hemp%20and%20CBD%20Full.pdf

North Carolina moves to help offenders clear their records

Associated Press; By Amanda Morris, May 26, 2019

<https://apnews.com/ceb0954746464edab5e8a6b01aa8b6de>

A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM

<https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>