

To the Mayor and Members of the City Council

March 7, 2023

Page 1 of 2

**SUBJECT: ENFORCEMENT OF MARIJUANA LAWS IN TEXAS**

This Informal Report provides information on state laws related to the possession of marijuana, efforts taken by other cities to address marijuana possession, and proposed legislation related to marijuana enforcement.

State Law and Marijuana Possession

Section 481.121 of the Texas Health and Safety Code makes possession of marijuana a criminal offense. The punishment for possession of marijuana ranges from a Class B misdemeanor to a felony, depending on the amount of marijuana possessed.

Section 370.003 of the Texas Local Government Code prohibits cities from adopting policies that do not fully enforce state and federal laws related to drugs.

In October 2022, President Biden issued a Presidential Proclamation pardoning all federal offenders who were convicted of simple marijuana possession. He also asked the Secretary of Health and Human Services and the Attorney General to review marijuana's Schedule 1 classification under Federal law.

Decriminalization Efforts in Texas Cities

Several cities have sought to decriminalize marijuana possession for small amounts of marijuana. Voters in Austin, Killeen, San Marcos, Harker Heights, Elgin, and Denton approved ballot measures that established city ordinances decriminalizing possession of fewer than 4 ounces of marijuana. Some of the ordinances prohibited officers from using the smell of marijuana as probable cause and prohibited cities from funding marijuana testing.

It should be noted that all of the decriminalization ordinances only prohibit enforcement **by the city's local police department**. County and other officials would not be prohibited from arresting and prosecuting for possession of marijuana under these ordinances.

There have been different responses to these voter-initiated ordinances:

- The Hays County District Attorney has requested an Attorney General's Opinion on whether the San Marcos ordinance is constitutional. That request is pending.
- The Harker Heights City Council repealed their marijuana ordinance on the basis that it was inconsistent with state law.
- The City of Killeen amended their marijuana ordinance to take out the provision on smell and probable cause. Bell County has authorized a lawsuit against the City of Killeen seeking a declaratory judgment that the ordinance is unconstitutional.
- The City of Denton staff recently addressed enforcement at a Council meeting and stated that state law required police officers to enforce state laws, no matter what the ordinance stated. However, the Police Chief did state that marijuana enforcement remains a low priority for enforcement.

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Page 2 of 2

**SUBJECT: ENFORCEMENT OF MARIJUANA LAWS IN TEXAS****Fort Worth Police Department Policy**

The majority of individuals found by Fort Worth police officers to be in possession of a usable amount of marijuana are issued citations for Possession of Drug Paraphernalia. Possession of Drug Paraphernalia is a Class C misdemeanor, punishable by a fine of up to \$500. The Fort Worth Police Department General Orders also authorizes officers to enforce marijuana laws issuing "cite and release" citations to non-violent individuals in possession of fewer than 2 ounces of marijuana. Under this policy, the individual would still be charged with a Class B misdemeanor, however they would not be arrested.

Proposed Legislation

Several bills have been filed in the Legislature that seek to decriminalize marijuana possession or lower the penalty for marijuana possession:

- Senate Bill 209 seeks to legalize marijuana
- House Bills 127, 218, 382, and 388 seek to reduce the penalties for marijuana possession

If you have any questions concerning this information, please contact Laetitia Coleman Brown, Deputy City Attorney, at 817-392-6639 or laetitia.brown@fortworthtexas.gov.

**David Cooke
City Manager**