



CCAP Marijuana Task Force

Report and Recommendations On Potential Recreational Marijuana Legislation

October 2019



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Table of Contents

Introduction.....	2
Task Force Members	4
Proposed Resolutions	5
Recommendations	7

Introduction

In January 2019, Lt. Gov John Fetterman announced that he would be undertaking a statewide listening tour to discuss with Pennsylvanians their thoughts on whether the commonwealth should legalize recreational marijuana. This tour aimed to gauge public opinions and perceptions across all 67 counties in the commonwealth over the following five months, and was supplemented by the ability of residents to submit comments online as well. The Lt. Governor intends to compile the input from the tour to publicly share in a report.

While just a few pieces of legislation have been introduced in the current 2019-2020 session to legalize recreational marijuana, with the public interest generated by the Lt. Governor's tour, the CCAP Board felt it appropriate to begin to look at recreational marijuana from a county perspective. In particular, because counties continue to struggle to deal with the impacts of the state's medical marijuana law, enacted in 2016, the Association believes it is critical for counties to have a policy discussion prior to any legislative efforts to legalize recreational marijuana, so they can be prepared to offer input and advocate for resources and language that can help to mitigate any negative impacts at the local level.

To that end, CCAP reconvened its previous Medical Marijuana Task Force, comprised of CCAP policy committee chairs, affiliate members and staff, to identify those potential impacts. The ultimate goal of the Task Force was to develop a policy statement to be considered by full CCAP membership at the Annual Conference in August.

The CCAP Marijuana Task Force convened June 16 at the CCAP offices in Harrisburg, where members spent the day hearing presentations from a wide variety of stakeholders to learn about different approaches to and outcomes of legalization and commercialization of marijuana. In the morning, the Task Force reviewed Pennsylvania's current medical marijuana law and the impacts counties have been seeing, and heard presentations and viewpoints from key stakeholders, including the Commonwealth Prevention Alliance and The Liaison Group, a cannabis federal advocacy firm. The Task Force was also fortunate to be joined by Christina Kauffman, Press Secretary for the Lt. Governor, for an informal conversation about the Lt. Governor's listening tour and her assessment regarding the climate for marijuana legalization in the commonwealth.

In addition, the Task Force heard presentations from Colorado Counties Inc. staff regarding their experience with legal marijuana, as well as the New York State Association of Counties (NYSAC). While NYSAC had not yet legalized recreational marijuana, their Association had already spent considerable time having similar policy discussions, and shared their process and key points their counties had identified. The Colorado and New York presentations are included with this report, as is a chart comparing provisions of state laws throughout the country as of June 2019.

As a result of these discussions, the Task Force has proposed two resolutions for consideration by the membership, which would outline broad policy direction for the Association regarding marijuana. The Task Force members intended that this guidance would be used to create the

more specific recommendations in this report, providing flexibility to adapt to any legislative proposals that may come up within the established policy framework of the resolutions.

Task Force Members

Ed Bustin, Commissioner, Bradford County
Kevin Boozel, Commissioner, Butler County
Erick Coolidge, Commissioner, Tioga County
Kathi Cozzone, Commissioner, Chester County
George Hartwick, Commissioner, Dauphin County
Joe Kantz, Commissioner, Snyder County
Michelle Kichline, Commissioner, Chester County
Larry Maggi, Commissioner, Washington County
Daryl Miller, Commissioner, Bradford County
Leslie Osche, Commissioner, Butler County
Jeff Snyder, Commissioner, Clinton County
Blair Zimmerman, Commissioner, Greene County

Staff

Kelly Andrisano, Executive Director, PACAH
Melissa Anese, Government Relations Associate
Wayne Bear, Executive Director, PPJS
Brian Bornman, Executive Director, PCYA
Michele Denk, Executive Director, PACDAA
Lucy Kitner, Executive Director, PACA MH/DS
Brinda Penyak, Deputy Director
John Sallade, Managing Director, Insurance Programs
Lisa Schaefer, Acting Executive Director Appointee
Barb Zemlock, Insurance Boards Legal Counsel

Crystal Clark, CCAP Solicitor

Proposed Resolutions

The Task Force ultimately came to two conclusions as a result of the input it received and subsequent discussions at its June 17 meeting.

First, while use of marijuana is now legal under Pennsylvania law for medical purposes, marijuana remains on the federal Drug Enforcement Agency's list of scheduled drugs as a Schedule I substance, meaning it remains illegal under federal law. As counties have discovered, and as originally outlined by the Medical Marijuana Task Force, this means the most challenging aspect of the state's medical marijuana law has been the lack of clear guidance due to the disconnect between state and federal law as it applies to workplace policies, insurance programs, program requirements and funding eligibility of federally funded programs, and prosecution of those using medical marijuana.

The Task Force strongly believe this disconnect must be resolved with policy and statutory clarity before the state undertakes any efforts to further legalize use of marijuana, including recreational use. This would also address other outstanding matters; for instance, many banks remain reluctant to work with marijuana businesses because of overarching federal laws, and in 2018 the Pennsylvania Bankers Association confirmed that to their knowledge, no bank in the commonwealth has been willing to work with the marijuana industry, With no or limited access to financial institutions, it is unclear how marijuana businesses will pay taxes, pay employees and handle large quantities of cash.

Proposed resolution no. 1:

Amend Article II by adding a subsection to read:

11. The Association believes any efforts by the commonwealth to change laws to further legalize use of marijuana are premature at least until the federal government removes marijuana from the list of Schedule 1 drugs.

It is important to note that this resolution is not intended to imply that CCAP or its members would take a position on further legalization of marijuana should the federal government determine that marijuana should no longer be classified as a Schedule I drug.

Second, following feedback and recommendations from other state associations of counties, as well as other stakeholders, the Task Force emphasized that counties must be included as part of any discussion to further legalize marijuana. Moreover, this discussion must address the broad range of impacts legalizing marijuana can have locally, such as those related to workplace policies, local regulation and counties' role in addressing behavioral health issues.

Proposed resolution no. 2:

Amend Article II by adding a subsection to read:

11. The Association believes that if state legislation moves forward to legalize marijuana, counties must be brought to the table as part of those discussions to address the local impacts, costs and benefits, including but not limited to issues related to commercialization, environmental and land use impacts, behavioral health and other human services impacts, workplace and employee policies, ability of local governments to regulate the growing, dispensing and use of recreational marijuana, social justice impacts, and impacts to the court and correctional systems, as well as reimbursement of costs to counties.

The Resolutions Committee reviewed these proposed resolutions at its June 27 meeting, and recommended approval of both; it later recommended striking the word "recreational" from the resolution so it more broadly speaks to the need for counties to be at the table for any discussion related to marijuana, regardless of how it is used. Both resolutions were discussed by the full membership during the CCAP Annual Conference in early August, and approved by vote of the membership via electronic ballot later that month.

Recommendations

To set the context for the development of the resolutions, and the more detailed recommendations and considerations that follow from those, the Task Force first had a significant discussion on the difference between decriminalization, legalization and commercialization. For these purposes, decriminalization refers to a decision not to pursue what would otherwise be criminal acts, while legalization refers to making something permissible by law and commercialization refers to openly allowing and encouraging the growing and sale of these substances.

As an overriding principle, the Task Force agreed that any effort to decriminalize marijuana must be done on a statewide basis and must apply uniformly in all counties. In addition, as indicated in the proposed resolutions, counties must be actively involved in policy discussions that may take place, including a seat on any official advisory boards that may developed.

The Task Force also believes that more medical and scientific research is needed to fully understand the long-term impacts of marijuana on physical and behavioral health if legislation is approved to allow for its consumption. However, counties also recognize that research can be difficult to undertake because the substance remains illegal under federal regulations.

The Task Force offers the following recommendations within the parameters of the proposed resolutions.

Commercialization

- As noted, many banks remain reluctant to work with marijuana businesses because of overarching federal laws, and in 2018 the Pennsylvania Bankers Association confirmed that to their knowledge, no bank in the commonwealth has been willing to work with the marijuana industry. With no or limited access to financial institutions while marijuana remains classified as a Schedule I drug, policy makers must take into consideration how marijuana organizations will pay taxes, pay employees and handle large quantities of cash.
- All required local approvals (e.g., zoning/land use or other local regulations) must be obtained before any state license or other approval can be granted to a marijuana business.

Environmental and land use impacts

- Strict guidelines should be implemented in regard to the growing and farming process of marijuana, and cultivation of marijuana should not be permitted to interfere with commercial hemp farming.
- Guidelines should be adopted for use of vehicles and heavy machinery, such as tractors and other pieces of construction, highway and farm equipment, related to the cultivation of marijuana.
- Local governments must retain the capability to zone and establish setbacks and other land use considerations for growing and for retail, including the need to deal with impacts such as odors.

Behavioral health

- Funding must be provided to address the increased need for substance abuse prevention, drug treatment and counseling services, and overdose prevention.
- Additional funding must also be offered to counties for mental health services.

Other human services impacts

- The state must provide ongoing funding for research-based youth drug education, drug use prevention, substance use treatment and services to high-risk youth.
- Counties and school districts should use PAYS data to understand the perceptions children in their communities have regarding marijuana. The trends in this data should also be evaluated and considered by state and local governments, including school districts, during discussions on policy and overall funding and prevention strategies related to marijuana.
- If edibles are permitted in legislation, the amount of allowable THC in a serving, as well as quality standards and product packaging and labeling, must be clearly defined by law or regulation.
- Children and youth
 - If use of marijuana remains illegal under federal law, it must be clear how a caseworker is to handle an investigation of a report of child abuse when they enter a house and see, or become aware, that someone in the house is using marijuana.
 - If use of marijuana remains illegal under federal law, counties must retain the right to exercise discretion on the approval of foster or kinship families, or any contracted employee.

Workplace and employee policies

- Any legislation must take into account the implications for personnel who are engaged in public safety positions, or those working with vulnerable populations.
- Counties must have the ability to control the use of marijuana within its workforce, including hiring and discipline processes, and retain their rights to implement a drug free workplace, especially as mandated by federal law for certain departments.
- Legislation must provide a defined impairment standard. This Task Force and the Medical Marijuana Task Force heard that science has shown that marijuana can stay in the body for a long time, and the same amount given to two individuals could have two different physical effects. The question of what constitutes “under the influence” was not clearly resolved in the state’s Medical Marijuana law, and more adequate guidance must be provided for both medical and recreational use.
- Education will be needed, for counties as well as law enforcement, on how to distinguish between medical marijuana and recreational marijuana in a person’s system.

Local government regulation of growing, dispensing and use

- Significant discussion needs to take place as to whether counties and/or municipalities should retain the option to regulate cultivation, sale, delivery, security, inventory control and/or use of marijuana within their jurisdictions, recognizing that while local control is

preferable as a policy matter, other states have seen increased difficulties for law enforcement in effectively and consistently enforcing what is legal and what is not.

- Any local regulation should be opt-in, rather than opt-out, and counties and/or municipalities must be able to create more stringent requirements than the state's law if they so choose.
- The state's Clean Indoor Air Act should be amended to extend the prohibitions on smoking in public places to include marijuana. In the event state law is not amended, localities must have the capability to prohibit/restrict smoking and use in public areas.
- Localities must also be able to adopt and enforce regulations to prevent marijuana storefronts from becoming "attractive nuisances," to prohibit the display of edibles, or to address other community concerns such as open/public use and home growing.

Social justice impacts

- Data has suggested that different demographics may be more likely to be arrested for marijuana possession regardless of its legal status; localities must be given the ability to work within their communities to assure that historically disadvantaged communities are treated fairly.
- Legislation should provide for expungement of prior convictions for small possession/use.

Courts and correctional systems

- Legislation must provide for support for statewide options for diversion from prosecution, similar to the ARD options for similar offenses.
- Purchase and possession of marijuana by those under the age of 21 should remain illegal.
- As noted above, defined impairment levels must be included in any legislation for law enforcement purposes.

Reimbursement of costs to counties

- Revenues derived from license fees, the sale of marijuana or other sources related to legalization or commercialization of marijuana should be dedicated to funding, including grants, to counties for innovative or evidence-based services to include:
 - Youth drug education
 - Substance abuse and overdose prevention, substance use treatment, counseling services
 - Mental health therapy
 - Services to high-risk youth
- Any state revenues generated from the legalization or commercialization of marijuana must be available for use at the county's discretion and for a wide array of purposes.
- Counties must be offered local options to generate revenue from the marijuana industry to address the impacts on county programs and services related to marijuana, opiates and other drugs. These should include upfront options such as permit or licensing fees, as other states have reported that marijuana businesses are not paying their taxes.

- However, counties should also consider that any fees or taxes will likely be paid in cash, which will require additional infrastructure to count, handle and transport
- The commonwealth should dedicate funding generated by the legalization of marijuana to ongoing research into the health effects and social impacts of marijuana.

