

# The **NORML** Legislative Bulletin

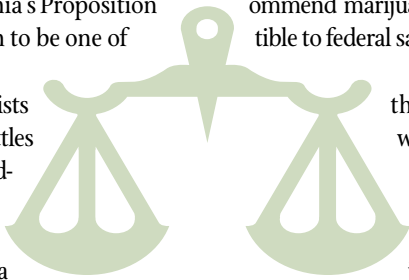
A guide to current marijuana policy developments from NORML

## Judges Affirm: "The Law Is The Law"

**FEDERAL AND STATE COURTS UPHOLD PROPOSITION 215**

**F**or marijuana law reformers, the courts have the potential to be our best friends or our greatest enemies. Fortunately, in the most recent legal wranglings over California's Proposition 215, the courts have proven to be one of our strongest allies.

Medical marijuana activists won a pair of major court battles this summer and fall upholding the scope and intent of Prop. 215, the nation's most prominent medical marijuana



legalization law. The rulings firmly establish that medical marijuana patients must be afforded statewide legal protections similar to other prescription drug users, and that physicians who recommend marijuana therapy are not susceptible to federal sanctions.

"These rulings affirm that the law means exactly what it says," says NORML Executive Director Keith Stroup. "Patients have a legal right to use marijuana under a doctor's su-

pervision in the state of California, and their physicians have a Constitutional right to recommend that therapy to them. These decisions make it abundantly clear that the law is the law, and that police, prosecutors and the Justice Department must abide by it."

The two rulings, one by the California State Supreme Court and the other by the Ninth U.S. Circuit Court of Appeals, focus squarely on the two communities most impacted by Prop. 215: patients and their physicians. In the first case, the court ruled unanimously that medical mari-

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## Election 2002 Wrap-Up

**STATEWIDE EFFORTS FAIL, BUT RESULTS NOT ALL DISAPPOINTING**

**N**ovember's election results brought both good and bad news to marijuana law reformers, as a trio of widely publicized statewide initiatives to liberalize marijuana penalties failed, but a number of local reform proposals roared to victory.

First the bad news. Three marijuana ballot initiatives — each targeting separate aspects of marijuana law reform — were rejected by voters. Arizona's proposal, which won 43 percent of the vote, would have replaced criminal penalties for minor marijuana offenses with a civil fine, and mandated the state to distribute medical marijuana free to qualified patients. Question 9 in Nevada, which won 39 percent of the vote, sought

to eliminate all penalties on the possession of three ounces or less of marijuana, and mandated state officials to implement a legally regulated market for adults. South Dakota's Initiative 1, which gained 38 percent of the vote, sought to establish a state-licensing system so that farmers could legally grow the non-psychoactive variety of cannabis known as hemp.

And now for the good news. Local marijuana reform initiatives fared much better in the election. In San Francisco, 63 percent of voters approved Proposition S, a local initiative proposed by former SF supervisor (now state assemblyman) Mark Leno which encourages the San Francisco Board of Supervisors

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Jenny Elig, Administrative Affairs

## NORML

1600 K Street, NW, Suite 501  
Washington, D.C. 20006-2832

Tel. 202.483.5500 • Fax 202.483.0057

Email: [norml@norml.org](mailto:norml@norml.org)

[www.norml.org](http://www.norml.org)

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# Time/CNN Poll: Majority of Americans Support Medical Marijuana for Patients, Decriminalization for Adults

The American public strongly supports NORML's goals regarding the legalization of medical marijuana and decriminalizing adult personal use. Just ask them.

According to a nationwide poll conducted by *Time Magazine* and CNN in October, 80 percent of Americans support the legal use of medicinal marijuana by patients, and 72 percent say that adults who use pot recreationally should be fined, but not jailed.

Only 19 percent of respondents favored jailing recreational pot smokers.

"There is a consensus among the American public that the government's war on marijuana is misguided, ineffective and unnecessarily punitive," says NORML Foundation Executive Director Allen St. Pierre. "The public recognizes that adults who smoke marijuana responsibly are not criminals and they do not want to spend our nation's limited police resources arresting and jailing them."

The *Time/CNN* results regarding the legalization of medical marijuana are similar to those of other national polls, St. Pierre noted, but he added that the support for decriminalization appears to have risen in the past year. According to a nationwide Zogby Poll commissioned by the NORML Founda-

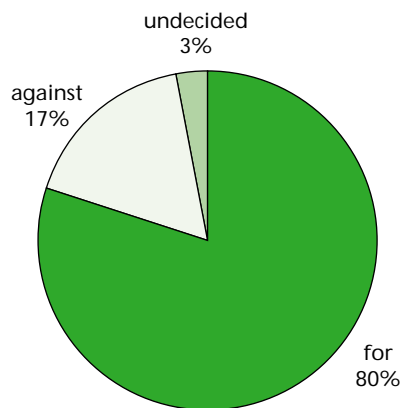
tion last year, 61 percent of Americans opposed arresting and jailing marijuana smokers.

In addition, 40 percent of respondents to the *Time/CNN* poll answered that they favored the legalization of small amounts of marijuana. That figure is more than double the percentage of Americans who endorsed legalization in a similar 1986 poll. Fifty-one percent of respondents said they opposed the legalization of small quantities of pot, and nine percent were unsure.

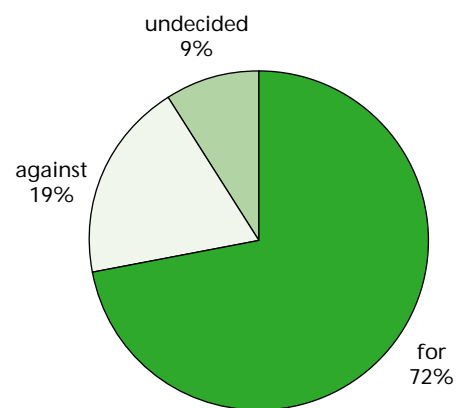
St. Pierre said that the shift in U.S. public opinion is indicative of a sea change taking place worldwide regarding marijuana policy. "From Europe to Australia to Canada, governments are recognizing that marijuana prohibition is more damaging to society than marijuana use, and enacting reforms to abolish criminal penalties for the responsible use of cannabis by adults. Here in America, more and more people are coming to the conclusion that marijuana is less harmful than alcohol or tobacco, and should be legalized and regulated similarly."

The *Time/CNN* poll also noted that 47 percent of Americans admit having tried marijuana, up from 31 percent in 1983. This figure is dramatically higher than the percentage re-

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Medical Marijuana



Decriminalization



## INTERNATIONAL

### Legalize and Regulate Cannabis, Canadian Senate Committee Says

#### **SPECIAL REPORT CALLS FOR LICENSED DISTRIBUTION OF MARIJUANA FOR RECREATIONAL AND MEDICAL PURPOSES**

**M**embers of a special Canadian Senate committee unanimously urged Parliament to amend federal law to allow for the regulated use, possession and distribution of marijuana for recreational and medicinal purposes, in a 600-page report released in September by the Senate Special Committee on Illegal Drugs.

“Scientific evidence overwhelmingly indicates that cannabis is substantially less harmful than alcohol and should be treated not as a criminal issue but as a social and public health issue,”

said Senator Pierre Claude Nolin, who oversaw the Committee’s two-year inquiry. “Whether or not an individual uses marijuana should be a personal choice that is not subject to criminal penalties. [Therefore,] we have come to the conclusion that, as a drug, it should be regulated by the state much as we do for wine and beer, hence our preference for legalization over decriminalization.”

Several previous government-appointed committees, including



*Canadian Senate  
Committee Chair,  
Pierre Claude Nolin*

the U.S. National Commission on Marijuana and Drug Abuse (aka The Shafer Commission), have recommended decriminalizing marijuana. However, Canada’s Special Senate Committee is one of the first government-appointed commissions to recommend legalizing marijuana.

“In our opinion, Canadian society is ready for a responsible policy of cannabis regulation,” the report concludes. “[We therefore] recommend that the government of Canada amend the Controlled Drugs and Substances Act to create a criminal exemption scheme, under which the production and sale of cannabis would be licensed ... to permit persons over the age of 16 to procure cannabis and its derivatives at duly licensed distribution centers.”

The Committee calls on Parliament to enact a similar exemption on the production of marijuana for

*continued on page 8*

### Key Findings By the Canadian Senate Special Committee on Illegal Drugs

- **Marijuana is not a gateway to the use of hard drugs.** “Cannabis itself is not a cause of other drug use. In this sense, we reject the gateway theory.”
- **Marijuana use does not lead to the commission of crime.** “Cannabis itself is not a cause of delinquency and crime; and cannabis is not a cause of violence.”
- **Marijuana users are unlikely to become dependent.** “Most users are not at-risk users ... and most experimenters stop using cannabis. ... Heavy use of cannabis can result in dependence requiring treatment; however, dependence caused by cannabis is less severe and less frequent than dependence on other psychotropic substances, including alcohol and tobacco.”
- **Marijuana use has little impact on driving.** “Cannabis alone, particularly in low doses, has little effect on the skills involved in automobile driving. Cannabis leads to a more cautious style of driving. [Cannabis does have] a negative impact on decision time and trajectory, [however] this in itself does not mean that drivers under the influence of cannabis represent a traffic safety risk.”
- **Liberalizing marijuana laws is unlikely to lead to increased marijuana use.** “Data from other countries ... indicate that countries ... which have put in place a more liberal approach have not seen their long-term levels of cannabis use rise. ... We have concluded that public policy itself has little effect on cannabis use trends and that other more complex and poorly understood factors play a greater role in explaining the variations.”
- **Marijuana prohibition poses a greater risk to health than marijuana use.** “We believe ... that the continued prohibition of cannabis jeopardizes the health and well-being of Canadians much more than does the substance itself or the regulated marketing of the substance. In addition, we believe that the continued criminalization of cannabis undermines the fundamental values set out in the Canadian Charter of Rights and Freedoms.”

## Election 2002 Wrap-Up

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to enact legislation authorizing the cultivation and distribution of medicinal pot by city officials. In Massachusetts, voters in 19 State House districts approved non-binding resolutions instructing their state representative to vote in favor of making marijuana possession a civil rather than a criminal violation. Voters in Massachusetts' 14th Worcester District also endorsed a non-binding resolution supporting the use of medical marijuana, and voters in the state's 2nd Franklin District endorsed a proposal to legalize hemp cultivation.

In addition, Maryland voters elected former U.S. Congressman Robert Ehrlich to serve as governor. As a Congressman, Ehrlich was one of a handful of Republicans willing to co-sponsor H.R. 2592, "The State's Rights to Medical Marijuana Act," and many reformers believe he will be equally supportive of statewide medical marijuana reform in Maryland — which has debated the merits of similar legislation for the past three years.

Broader statewide drug reform initiatives yielded mixed results. An Ohio initiative (Initiative 1) mandating treatment rather than incarceration for non-violent drug offenders gained only 33 percent of the vote, and an Arizona proposal (Prop. 302) re-instituting probation and incarceration for some non-violent drug offenders passed with 69 percent of the vote. However, Washington DC's Initiative 62

mandating alternative sentencing for some drug offenders passed overwhelmingly. Like all DC laws, the initiative must still be authorized by Congress before it can be enacted.

NORML Executive Director Keith Stroup said that the conservative mood of the nation made gaining statewide electoral victories especially difficult in this year's election. "Certainly, the political climate of this year's election was decidedly conservative, as evidence by the gains made by Republicans in both the House and Senate and the defeat of several other liberal, but non-drug reform initiatives around the country," he said.

Nevertheless, Stroup admitted that there were many lessons drug law reformers could learn from this year's mixed election outcome. "Specific to marijuana law reform, it's apparent that although a majority of the public supports the legalization of medical marijuana as well as the decriminalization of small amounts of marijuana for personal use, much of the public remains skeptical of broader-reaching proposals — particularly those that mandate the state to become involved in either the distribution or regulation of pot. Drug law reformers also need to do a better job countering some of our opponents' concerns, such as the issue of marijuana and driving as well as the rising use of marijuana by adolescents, as it is clear that much of the voting public also shares these anxieties."

Stroup also noted that the overwhelming success of local ballot initiatives in this year's



*Proposition S sponsor Mark Leno at last year's national NORML conference in San Francisco*

election underscores their role as a viable means of promoting marijuana law reform. "Local initiatives, such as those successfully promoted by Mass CANN/NORML in Massachusetts, provide a practical and relatively low-cost opportunity to enact tangible pot law reform," he said. "In smaller towns and municipalities, local initiatives may be passed by only a few hundred or thousand votes. In larger cities, drug law liberalization proposals may be enacted by persuading a simple majority of five or six city council members to vote in favor of them. And while local reforms should never be seen as ends unto themselves — that goal remains ending state and federal marijuana prohibition — they may be utilized by activists as a way to enact immediate local change while laying the groundwork for more substantive national and statewide reforms in the future."

NORML affiliates in Florida, Missouri and Seattle will be sponsoring similar marijuana decriminalization initiatives at the municipal level in 2003, Stroup added. "Despite some of the temporary setbacks we as a movement experienced during this past election, I'm still expecting to see a great deal of legislative progress in 2003 at both the state and local level," Stroup emphasized. "The race for marijuana law reform remains a marathon, not a sprint, and NORML remains determined to finish first." ■

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## Election 2002 Analysis

### LESSONS LEARNED AND REGROUPING FOR THE FUTURE

Setbacks are inevitable. The key is that we as a movement learn from them. The defeat of several state-wide drug law reform initiatives in the 2002 midterm elections was disheartening to those of us who work in this field. Nevertheless, this outcome also offers us an opportunity to review our strategies, and better identify our movement's strengths and weaknesses. We can strengthen our message and tactics in several ways.

1. **Limit initiatives to single, winnable issues.** The core purpose of an initiative is not to sway or build public opinion, but to establish laws that reflect the current will of the voters. As such, initiatives should be limited to issues that we know a majority of the voting public already understands and supports (such as enacting legal protections for qualified medical marijuana patients, or decriminalizing personal-use amounts of pot by adults). In addition, including too many provisions in an initiative effort risks turning off potential supporters who agree with us on some elements, but disagree on broader issues. Ultimately, while we as a movement are fond of stating that the voters are ahead of the politicians on marijuana law reform, we must also insure that we do not sponsor initiatives that are too far ahead of the public.
2. **Humanize the issue.** While messages countering our opponents' misinformation on issues such as pot potency or the potential harms of marijuana smoke are informative, they do not reach voters' emotions. Just as the campaign for medical-marijuana law reform has successfully focused on patients, the broader campaigns for marijuana legalization and drug law reform must put a human face on the thousands of victims needlessly hurt by criminal prohibition. Our opponents are adept at rolling out supposed "victims" of drug use; we must be equally adept at showing voters the victims of drug prohibition.
3. **Better convince voters that the law requires changing.** Though it may be hard for NORML members to believe, the truth is that many Americans (including some pot-smokers) are not convinced that the existing laws are so extreme they require changing. This thinking likely stems from

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While we as a movement are fond of stating that the voters are ahead of the politicians on marijuana law reform, we must also insure that we do not run initiatives that are too far ahead of the public.

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the fact that many marijuana smokers never come in contact with the criminal law, and remain unaware of how many people do and how serious the repercussions can be. Therefore, we need to better educate these voters that hundreds of thousands of Americans

are arrested each year, at a tremendous cost to society and the individual; pot offenses do carry strict penalties in many states; and that we as a society are all better off if these laws are reformed.

4. **Paint a better portrait of what life will look like after liberalization.** Our opponents claim the sky will fall when marijuana laws are liberalized. Federal studies prove this allegation is baseless. In states that have decriminalized marijuana possession, pot use and attitudes toward the drug are no different than in surrounding areas. Relaxation of medical marijuana laws has also not resulted in increased recreational use. We need to make this information clear to voters — many of whom may be unaware of what the law is in their own state, and may not realize that more than nearly one-third of the U.S. population already lives under marijuana decriminalization.

Every movement inevitably experiences bumps in the road. Fortunately, the temporary setbacks the marijuana law reform community experienced on Election Day can be readily overcome. The American public stands solidly against arresting and jailing responsible adult marijuana-smokers, and despite some of Election 2002's disappointing results, we will continue to make gains on our core issues, in the public and legislative arenas and at the ballot box. ■

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## The Law Is The Law

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juana patients are endowed with the same legal protections as are other lawful prescription drug users. The ruling, handed down in July, was the first time the state Supreme Court had ever addressed the scope of Proposition 215, and rebutted arguments from law enforcement that the 1996 law only offered patients an affirmative defense of medical necessity at trial.

“In light of its language and purpose, [Proposition 215] reasonably must be interpreted to grant a defendant limited immunity from prosecution, which not only allows a defendant to raise his or her status as a qualified patient or primary caregiver as a defense at trial, but also permits a defendant to raise such status by moving to set aside an indictment ... prior to trial on the ground of the absence of reasonable or probable cause to believe that he or she is guilty,” Chief Justice Ronald M. George wrote for the court. Under the state law, “the possession and cultivation of marijuana is no more criminal — so long as its conditions are satisfied — than the possession and acquisition of any prescription drug with a physician’s prescription.”

NORML’s Stroup summarized the decision more succinctly: “The court is essentially telling California cops to keep their hands off qualified marijuana users.”

The federal government was also told to keep its hands off Californians — California

doctors, that is. In October, the Ninth Circuit Court of Appeals unanimously upheld a prior U.S. District Court ruling enjoining the Justice Department from revoking physicians’ federal licenses to prescribe medicine if they discussed medicinal cannabis with their patients. In eight states, the possession and use of medicinal marijuana is legal if a physician recommends it.

Writing for the Court, Chief Judge Mary Schroeder opined that the federal government’s threats to sanction doctors who advised their patients about medical marijuana struck “at core First Amendment issues of doctors and patients.”

“The government’s policy in this case seeks to punish physicians on the basis of the content of their doctor-patient communications,” she wrote. “Only doctor-patient conversations that include discussions of the medical use of marijuana trigger the policy. Moreover, the policy does not merely prohibit the discussion of marijuana; it condemns an expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient. Such condemnation of particular views is especially troubling in the First Amendment context.”

Schroeder further added that a doctor’s recommendation “does not itself constitute illegal conduct,” and therefore “does not interfere with the federal government’s ability to enforce its laws.”

In his concurring opinion, Justice Alex Kozinski said the government’s policy threatens to deny patients “information critical to

their well-being.” Kozinski also noted that locally grown medical marijuana “does not have any direct or obvious effect on interstate commerce;” therefore, federal efforts to prohibit it exceed Congress’ power under the Commerce Clause of the Constitution.

“[As] much as the federal government may prefer that California keep medical marijuana illegal, it cannot force the state to do so,” he wrote.

Plaintiffs in the case, a coalition of California physicians and patients, initially challenged the government’s policy in 1997, shortly after federal officials threatened to sanction any doctors who complied with Proposition 215. U.S. District Judge Fern Smith issued a preliminary injunction against the Justice Department in 1997. That injunction was made permanent in 2000.

So now that the courts have ruled in favor of California doctors and patients, what are the chances of getting them to bar the Feds from prosecuting California medi-pot growers and caregivers? A pair of recent lawsuits filed by California patients against the federal Justice Department intend to find out, arguing that the Feds’ actions against California’s medical marijuana dispensaries are unconstitutional because locally grown medical cannabis fails to fall under the definition of interstate commerce. Will the courts once again be our friends? That verdict remains to be seen.

*For more information on these most recent lawsuits, please visit: [http://www.norml.org/index.cfm?Group\\_ID=5431](http://www.norml.org/index.cfm?Group_ID=5431). ■*

## GAO Says State Medical Marijuana Laws Working As Voters Intended

**REPORT SAYS LAWS ARE SELDOM ABUSED, NOT A SIGNIFICANT BURDEN FOR POLICE**

State laws legalizing the use and possession of medical marijuana under a doctor’s supervision are operating primarily as voters intended and have not led to widespread abuses, according to a new General Accounting Office (GAO) report examining the implementation of state medi-pot laws in Alaska, Hawaii, Oregon, and a handful of California counties. Eight states have enacted medical marijuana legalization laws since 1996.

“Officials from over half of the 37 selected federal, state, and local law enforcement organizations we interviewed in the four states said that the introduction of medical marijuana laws had not greatly affected their law enforcement activities,” the GAO determined. “[In addition,] none of the federal officials we spoke with provided information to support a statement that abuse of medical marijuana laws was routinely occurring in any of the states, including California.”

NORML Executive Director Keith Stroup was not surprised by the GAO’s findings. “Available evidence has consistently shown that these state laws are working primarily as voters envisioned they would,” Stroup said. All but one of the eight states that have enacted medical marijuana laws have done so by voter initiative.

Preliminary data compiled by the GAO reported that the majority of patients using medi-

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## NEWS YOU CAN USE

### FCC Rules on NORML Complaint: Says White House Drug Office Must Be Identified as Sponsor of Anti-Drug Ads, Television Content

Public service announcements (PSAs) broadcasted under the auspices of the White House's \$2 billion "National Youth Anti-Drug Media Campaign" must identify the Office of National Drug Control Policy (ONDCP) as a paid sponsor of the programming, the Federal Communications Commission (FCC) ruled this past November. The ruling rejected an appeal from the Ad Council, a not-for-profit organization that produces and evaluates public service campaigns (including several for the ONDCP), to exempt the ONDCP from federal laws requiring sponsors of on-air content to be clearly identified. The NORML Foundation and the Media Access Project had filed comments opposing the Ad Council's request.

"This decision affirms that the Drug Czar's office must abide by the same federal laws as everyone else," said NORML Director Keith Stroup. "When an entity, particularly the fed-

eral government, purchases on-air time to persuade the public audience, the public has a legal right under the law to know that they are hearing or viewing content which has been paid for, and they also have a legal right to know who has paid for it. Just because that content is sponsored by the ONDCP under the guise of fighting the 'war on drugs' does not waive this federal requirement."

The FCC found unpersuasive the Ad Council's arguments that identifying the ONDCP would undermine the PSA's credibility or jeopardize the number of media organizations willing to participate in the program. "It is not the nature of the message conveyed in the broadcast material that determines whether an identification is required, but rather whether or not a station receives valuable consideration for broadcasting it," the FCC determined.

The Ad Council is appealing this decision.

Earlier this year, an evaluation of the ad campaign's PSAs by the Annenberg Public Policy Center at the University of Pennsylvania found that audiences who most often viewed the Feds' anti-drug ads were more likely to try drugs than non-viewers. Nevertheless, Congress opted this fall to continue funding the ad campaign — which requires participants to match dollar-for-dollar ad time purchased by the ONDCP on their networks — for an additional five years at current levels, approximately \$180 million per year. Under an arrangement agreed upon by both the networks and the ONDCP, television networks may also earn "credit" with the agency if they air approved anti-drug content and themes in their programming.

To read the FCC's ruling online, please visit: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-02-268A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-02-268A1.txt). ■

### Medical Marijuana Laws

Continued from page 6

cal marijuana are males over 40 years of age. Only one state, Alaska, reported registering a medical marijuana patient under age 18.

"Obviously, the fear that these laws were going to be abused by adolescents seeking to gain access to marijuana is unfounded," Stroup said.

Most patients qualified to use medical marijuana under the state laws used it to treat symptoms of chronic pain and/or multiple sclerosis, the GAO found.

The GAO report, "Marijuana: Early Experiences With Four States' Laws That Allow Use For Medical Purposes," is available online at: <http://www.gao.gov/new.items/d03189.pdf>. ■

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## Time/CNN Poll

Continued from page 2

ported by annual government surveys, which maintain that approximately one-third of Americans have smoked marijuana. However, NORML has long maintained that federal surveys generally under-report illicit drug use. A white paper published by the Office of National Drug Control Policy (ONDCP) found that Americans under-reported their use of tobacco and alcohol by some 15 to 30 percent.

“There is no greater indictment of the failure of our government’s marijuana policy than the fact that nearly one out of every two Americans admit they have broken the law,” St. Pierre concluded. “It’s time for America’s marijuana’s laws to reflect the mores and values of the American culture.”

For additional polling information, please visit: [http://www.norml.org/index.cfm?Group\\_ID=4420](http://www.norml.org/index.cfm?Group_ID=4420). ■

## Canadian Senate

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personal use, as well as to provide amnesty for any person convicted of pot possession under current or past legislation. Over 50 percent of all Canadian drug violations involve marijuana possession, the Committee found. Among the general population, 30 percent of Canadians have used marijuana in their lifetime, and approximately 50 percent of high school students admit to having used it within the past year.

“A look at trends in cannabis use, both among adults and young people, forces us to admit that current policies are ineffective,” the report concluded.

Regarding the use and regulation of marijuana for medicinal purposes, the Committee determined that there are “clear therapeutic benefits” of inhaled cannabis in the treatment of various conditions — including chronic

pain and multiple sclerosis — and recommended Health Canada “provide new rules regarding eligibility, production and distribution” of medical pot. Although Canada legalized the use and cultivation of medicinal marijuana to qualified patients last year, the government has since backtracked on its promise to establish a regulated, medicinal pot distribution system.

Following the release of the Canadian Senate report, Drug Czar John Walters threatened to enact trade sanctions against Canada if Parliament decides to move forward with the Senate’s recommendations. Nevertheless, Canadian Prime Minister Jean Chretien and Justice Minister Martin Cauchon have pledged that Parliament will move forward on decriminalization legalization within the first four months of 2003.

All four volumes of the Canadian Senate report are available online at: <http://213.130.160.30/reports/cancon/default.htm>. ■

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