Texas’ big cities ease pot penalties

Prosecutors in large areas dismissing more cases that involve recreational amounts of marijuana.

By Tony Plohetski and Cody Winchester tplohetski@statesman.com cwinchester@statesman.com

Dale Turner, of Cisco, wears a marijuana leaf costume at a rally in support of medicinal marijuana use at the Capitol in May 2015.

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Perry Moore, of Waxahachie, flies a marijuana flag and holds a tomato plant to symbolize the plant to show his support of medicinal marijuana use at a rally at the Capitol in May 2015. Some state officials are planning to introduce legislation to allow broader use of therapeutic marijuana.

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Around 10:30 p.m. on Dec. 6, 2012, John Myers was returning home from visiting a friend when a Lakeway officer pulled him over along RM 620 for a broken taillight on his Ford pickup.

After questioning, Myers, then 42, confessed to hiding marijuana under his seat and stashing a pipe in the center console.

Within minutes, the decades-long recreational pot smoker — who had been arrested for pot possession previously — was on his way to jail, charged with a Class A misdemeanor for 3.9 ounces of marijuana, police said.

But when his file reached Travis County prosecutors’ desks three months later, they dismissed it after Myers agreed to 20 hours of community service.

“I never appeared in court. I never talked to a judge. I never talked to a prosecutor,” said Myers, who spe

“I thought it was a fair way to treat the case.

I was pleased, really happy.”

Myers’ case marks a shift in how prosecutors now handle low-level marijuana cases in every major county in Texas. As lawmakers have wrestled in recent years with easing restrictions on marijuana use — an issue they likely again when they convene in January — prosecutors in the state’s most populated areas are relaxing their pursuit of cases that involve recreational a drug.
An American-Statesman analysis shows those practices are resulting in a spike of marijuana dismissals in Harris, Dallas, Bexar, Travis and Tarrant counties. In each of the five counties, the rate of dismissal has risen since 2011 — drastically in some places. The trend also appears to be playing out statewide, where of all misdemeanor marijuana cases were dismissed in 2011. In 2015, nearly a third were dropped.

Yet that doesn’t mean Texas is witnessing de facto legalization; the number of new misdemeanor marijuana cases filed by police has stayed relatively stable.

The rate of dismissals is increasing fastest in North Texas. According to data kept by the Texas Office of Court Administration, Tarrant County prose ses dismissed just 9 percent of cases five years ago to 24.3 percent last year. In Dallas County, the dismissal rate more than doubled, from 18 percent to 41 percent last year.

Someone nabbed with a small amount of marijuana in Harris County in 2011 had about a 1 in 5 chance of getting the case dismissed; now it’s about 2 in 5. Authorities developed a deferral program in which defendants have their cases thrown out if they meet certain qualifications.

In Travis County, prosecutors in recent years have dismissed a greater percentage of marijuana cases. But much like in Bexar County, the frequency was already significantly higher than in other counties. For instance, Travis County in 2011 dismissed 42.6 percent of all resolved cases, compared with an average of 22.9 percent.

**Just say no (problem)**

Court officials in Travis County say they have simply decided to prioritize more serious crimes instead of spending personnel and money to prosecute possession cases.

"Jurors would look at us like we are crazy," said Assistant Travis County Attorney Dan Hamre. "You are spending your time, our time and the court’s small amount of personal marijuana?"

In other counties, officials say the growing number of dismissals are the result of programs similar to that of Harris County, in which cases are resolved through informal prosecution if defendants complete anti-drug classes.

"Nobody goes through three years of law school and becomes prosecutors so they can rap the knuckles of someone for smoking a joint," said Shan Jackson, who heads governmental relations for the Texas District and County Attorney’s Association. "It’s not what draws them to the profession or gets them about doing justice.

"I certainly think prosecutors have higher priorities than strictly enforcing that statute," he said.

The prosecutorial shift in mindset and approach has drawn few critics. Several lawmakers agree that local authorities must decide how to manage crime.

"Whatever kind of case we are talking about, we expect law enforcement and prosecutors to use discretion and put the resources in the best place," said state Rep. Bryan Hughes, R-Mineola.

Jackson County Sheriff AJ Louderback, legislative director for the Sheriff’s Association of Texas, said that although the organization is against a formal decriminalization of marijuana possession, it supports decision-making by local authorities, even if it means less aggressive prosecution.

"That’s the best way for our criminal justice system to work," he said.

**Uneven enforcement**

The level of punishment for marijuana possession in Texas — particularly among defendants who have small amounts that do not indicate drug trafficking — has been a contentious issue for years.

Under state laws in place for decades, violators who have less than 2 ounces may be charged with a Class B misdemeanor, punishable by up to 180 days in jail. While suspects with between 2 to 4 ounces can face up to a year behind bars if convicted of a Class A misdemeanor. Those found with marijuana paraphernalia face the lowest punishment: a ticket and fine.

Suspects who have larger quantities of marijuana, and those with ties to larger drug rings, face stiffer felony charges and far more serious consequences.

Prosecutors in Travis County have not wavered in the seriousness with which they treat those cases.

The debate has almost entirely focused on smaller amounts of the drug.

The state signaled a softer stance in 2007, when lawmakers who were seeking to ease crowding at county jails and free officers from the hours it can take to transport and book a suspect adopted "cite-and-release" laws. Those allowed police officers to ticket suspects for seven specific Class A or Class B offenses, including marijuana possession.

Supporters said the move was part of a smart-on-crime approach, but critics said the new law was not punitive enough to deter future crime.

The cite-and-release law leaves the decision of whether to ticket defendants for marijuana a matter of officer discretion, and local departments can choose whether to adopt practices permitting them to do so. Officials say that has resulted in patchwork of policies statewide, resulting in the jailing of some and a ticket for others, depending on where they are caught. The Austin Police Department is among several agencies in the region that frequently instead of arresting them.

Last year, the Legislature took another step aimed at legalizing some marijuana use.

They approved a law allowing an extremely narrow use of marijuana for medical purposes, permitting patients who suffer from a certain form of epilepsy treated with cannabidiol, a marijuana compound known as CDB. The law allowed state-regulated entities to legally grow and dispense it.
In June, the American-Statesman reported that some state officials are planning in January to introduce legislation that would allow broader use of marijuana.

Proponents have said they hope the Legislature will vote next year to allow CBD to treat other diseases — such as amyotrophic lateral sclerosis, or ALS; traumatic encephalopathy, or CTE, a degenerative brain disease often found in athletes; post-traumatic stress disorder; and autism.

Ultimately, Heather Fazio, Texas, political director of the Marijuana Policy Project, said she hopes the Legislature will enact laws treating low-level marijuana possession cases as a civil offense for which offenders are ticketed.

“Something that would eliminate a criminal record that follows someone for life,” she said. “It hinders access to higher education and employment, cases are a resource problem for law enforcement.”

**Hitting the books**

Some local prosecutors have not waited for legislative direction, though. And what is happening in counties such as Harris and Travis highlights the approaches taken by prosecutors.

Prosecutors in Dallas and Tarrant counties — two counties that have seen the most dramatic spikes in the percentage of dismissals — did not respond to multiple interview requests to discuss their efforts.

To preserve resources and help first-time offenders, Harris County prosecutors in October 2014 put a new program in place for people who have been caught with 2 ounces or less of marijuana and have no criminal history.

Suspects are not arrested but instead given a court date for a hearing where court staff assess their risk of offending again. If the risk is deemed low they are allowed to participate in 60-to-90-day education classes that address healthy decision-making and how drugs can alter your physical and mental states.

Once they successfully complete them, their cases are dismissed.

“Our DA decided there needed to be an alternative way to divert those cases out of the court system,” said Harris County Assistant District Attorney Nicole Clark.

Travis County prosecutors said the standard with which they evaluate marijuana cases has been the same for several years, resulting in a dismissal rate of more than 40 percent from 2011 to 2015. Hamre said he believes their approach represents a “community standard” about how residents view the crime.

Hamre said it is rare for the office to take such cases to trial, and that they have had difficulty in seating a jury because most prospective jurors do not have an adverse opinion of personal marijuana use.

Prosecutors typically dismiss cases involving less than 2 ounces of marijuana after taking into consideration a suspect’s criminal history, Hamre said. Otherwise clean records are often diverted to educational classes or community service.

Prosecutors more rigorously scrutinize cases involving up to 4 ounces of marijuana, but ultimately may resolve them in a similar manner.

Travis County’s approach also utilizes anti-drug classes.

“We focus on assault and assault family violence cases and DWIs,” Hamre said. “There are only so many hours in the day to try so many cases.”

Contact Tony Plohetski at 512-445-3605.

Contact Cody Winchester at 512-445-1740.

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