

The penalties of the Marihuana Tax Act are frequently criticized. However, I find that most of the criticism is either by persons who are not fully informed, or by persons who want to legalize possession of marihuana. When properly analyzed, the penalties for possession under the Marihuana Tax Act are not really a matter of significant concern, in view of the enforcement and prosecutive policies of the Federal Government and the other procedures available to persons who are prosecuted under the act.

First, the Bureau of Narcotics endeavors to apply the act against traffickers only. Our practice is to gain evidence by making purchases of marihuana whenever possible. In 1966, we presented a total of 423 marihuana violators to various U.S. attorneys for prosecution; 309 were for sales offenses, and 114 were for possession offenses. The typical violator was almost 29 years old; he either sold or possessed over a pound of marihuana; he was not a student; and he had a prior criminal record in 60 percent of the cases.

Second, the Department of Justice has directed that charges carrying mandatory penalties may be filed only against persons having prior felony convictions, when the violation involves smuggling, or when the person is an important trafficker.

Aside from this, all persons under the age of 18 years are treated as juvenile delinquents, and not subjected to the regular marihuana penalties. Also, the provisions of the Federal Youth Corrections Act are available to all persons over 18 years but under 22 years old. Additionally, many persons over 22 years but under 26 years old are eligible for special handling under the Federal Youth Corrections Act. Thus, the probability of a college student who possesses a marihuana cigarette being subjected to mandatory penalties of the act is absolutely nil.

Why make possession a violation of law? The basic reason is that the punishment provisions deter use by countless reasonable and responsible persons. This, consequently, sets up a barrier to proselytizing. Concern for public safety, health, and welfare requires that there must be restrictions on persons to prevent them from having unauthorized possession of marihuana. Otherwise, we would be condoning potential sources of supply and proselytizing, which would defeat the very purpose of our attempts to control abuse of marihuana. We can make one generalization: Marihuana abuse spreads from person to person—the users who possess marihuana are the ones who breed new users. By restricting possession, we are better able to reduce the availability of marihuana to many persons who might otherwise come in contact with the drug through a friend or acquaintance. If there is no criminal sanction against possessing marihuana, many people will regard this as tacit approval of its use.