

Making Marijuana the Lowest Law Enforcement Priority

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Last week, a legislative committee at the General Assembly rejected a bill that would have permitted medicinal use of marijuana. The *News and Observer* covered the story [here](#), and the bill itself is [here](#). There doesn't appear to be any chance that the legislature will follow Colorado and Washington and make recreational marijuana legal under state law. So, for good or for ill, statewide marijuana reform appears to be off the table for now. (Note that marijuana is already treated differently than some other controlled substances. For example, [G.S. 90-95\(d\)\(4\)](#) prohibits active sentences for low-level marijuana possession crimes.)

Advocates for reform of the marijuana laws may be coming home from the General Assembly empty-handed, but they have at least one tool in their toolbox that doesn't depend on the state legislature. They may seek to have their cities or counties declare that marijuana offenses are the lowest law enforcement priority.

I only recently became aware of so-called LLEP laws, but they appear to be a familiar tactic for organizations like the [Marijuana Policy Project](#), which encourages citizens to “[w]ork to get your city council to pass an ordinance making marijuana offenses the city’s lowest law enforcement priority.” Likewise, the North Carolina [website](#) of the National Organization for the Reform of Marijuana Laws (NORML) says:

[W]e start at the local level to coordinate city and campus campaigns to push ballot initiatives that will make marijuana the lowest priority for police. These Lowest Law Enforcement Priorities (LLEP) are largely symbolic as state law still says marijuana possession is a crime. However, once enough cities pass these resolutions in North Carolina, that will send a message to the legislators in the General Assembly.

We haven't exactly reached the tipping point envisioned by NORML. As far as I know, no North Carolina city or county currently has such a law. (Please post a comment or let me know if you are aware of any, or of any law enforcement agency that has itself adopted a policy deprioritizing enforcement of the marijuana laws.) Nationwide, however, [this Wikipedia page](#) states that at least the following jurisdictions have LLEP laws:

- Eureka Springs, Arkansas
- Fayetteville, Arkansas
- Berkeley, California
- Oakland, California
- Santa Barbara, California
- Santa Cruz, California
- San Francisco, California
- Santa Monica, California
- West Hollywood, California
- Denver, Colorado
- Hawai'i County, Hawai'i
- Columbia, Missouri
- Missoula County, Missouri
- Seattle, Washington

- Tacoma, Washington

The details of the laws differ. For example, some purport to be binding while others are just recommendations; some address only possession and use of very small quantities of marijuana while others are more encompassing; and some address only law enforcement actions while others seek to guide prosecutors as well. Furthermore, the above list isn't complete, as shown by [this story](#) about the success of a recent LLEP initiative in Ypsilanti, Michigan. And of course, some of the laws have been superseded by recent events, such as Denver's law, which doesn't make much sense after Colorado's legalization. Finally, an LLEP law does not make marijuana use legal. Marijuana use is illegal nationwide under federal law, and it is a violation of state law in most states.

There are a few cases involving proposed LLEP laws and the electoral process. *See, e.g., Davidson v. Wright*, 151 P.3d 812 (Id. 2006) (holding that a city clerk improperly refused to process an initiative petition that, in part, would have made enforcement of the marijuana laws the city's lowest law enforcement priority); *Detroit Coalition for Compassionate Care v. Detroit City Clerk*, 2002 WL 31379844 (Mich. Ct. App. Oct. 22, 2002) (unpublished) (ruling that a city clerk properly rejected a similar petition as violative of the city charter).

I couldn't find any cases in which law enforcement had challenged the laws as a usurpation of police authority. In the municipal context, such challenges might face an uphill battle: the police department is a department within city government, and generally must march to the tune of the city council. On the other hand, I can imagine an argument that deciding which crimes to prioritize is inherently a matter for the police to determine. A similar argument was made in the now-defunct litigation over the Fayetteville City Council's authority to order the police to refrain from conducting consent searches during traffic stops, described [here](#). (One possible distinction between the two situations is that there is a statute expressly permitting police officers to undertake consent searches, see G.S. 15A-221; as far as I know, there isn't a statute expressly allocating to the police chief the power to set law-enforcement priorities.)

In the county context, the sheriff is an independent elected official and generally may establish his or her own priorities. The county commission has the "power of the purse" and so has at least some indirect influence over the sheriff's operations, but it may lack the direct authority to set the sheriff's priorities. Accordingly, an LLEP law enacted by a county commission might be more vulnerable to a legal challenge.

It should go without saying that the School of Government is neutral on LLEP laws. As I said, I've only recently learned about them and thought that they were interesting. If you have experience with, or opinions about, such laws, please post a comment.

Finally, those interested in promoting, or preventing, reform of the marijuana laws may be interested in [this half-day CLE program](#) sponsored by the North Carolina Bar Association. My colleague Richard Whisnant has helped organize it, so I suspect that it will be first rate.