

The 2017 Annual Gathering of The West Virginia State Bar



Charleston, WV

Annual Gathering & Banquet

SUNDAY, APRIL 2, 2017 · 7:00 P.M.—BANQUET

MONDAY, APRIL 3, 2017 · 8:30 A.M.

STATE BAR & YOUNG LAWYER SECTION ANNUAL BUSINESS MEETINGS

MONDAY, APRIL 3, 2017—SPEAKERS



9:30 TO 9:40 A.M.
Opening Remarks

9:40 TO 10:30 A.M.
Christina Steinbrecker Jack, Fastcase
Legal Research in the 21st Century



10:30 TO 11:20 A.M.
John Cruden, President Elect, American College of Environmental Lawyers
Reflecting on Environmental Enforcement: the Advent of Mega Cases



11:20 TO 11:30 A.M.
Sponsor Break

11:30 A.M. TO 12:00 P.M.
Linda Klein, President, American Bar Association
An Update from the ABA



12:00 TO 1:30 P.M.
Lunch on Your Own

1:30 TO 2:20 P.M.
Douglas Berman, Professor of Law, The Ohio State University Moritz College of Law
National, State and Local Marijuana Reform Developments

2:20 TO 3:10 P.M.
Robert Albury Jr., Director WV Lawyers Assistance Program
An Introduction to the New Era of Lawyer of Assistance Program

3:10 TO 3:30 P.M.
Sponsor Break

3:30 TO 4:45 P.M.
Judge Stephanie Thacker, United States Fourth Circuit Court of Appeals

Judge Elizabeth Walker, Supreme Court of Appeals of West Virginia

Hazel Straub Crews

Dina M. Mohler, Office of General Counsel, Charleston Area Medical Center

Women's Forum—A panel discussion of practicing law in West Virginia from the perspective of female attorneys



CREDITS: 6.1 including 2.0 in Law Office Management and Substance Abuse

Legal Research in the 21st Century



Christina Steinbrecker Jack
Fastcase

Christina Steinbrecker Jack

Christina Steinbrecker Jack is a staff attorney and legal content manager at Fastcase with responsibility for engaging partner organizations and internal teams to prioritize legal content and product development. She also designs and presents continuing legal education programs about legal research for partner organizations. Prior to joining Fastcase, Christina worked for the Honorable Judge McKeon, the Georgia Attorney General, and Bank Mutual's legal department.



LEGAL RESEARCH IN THE 21ST CENTURY

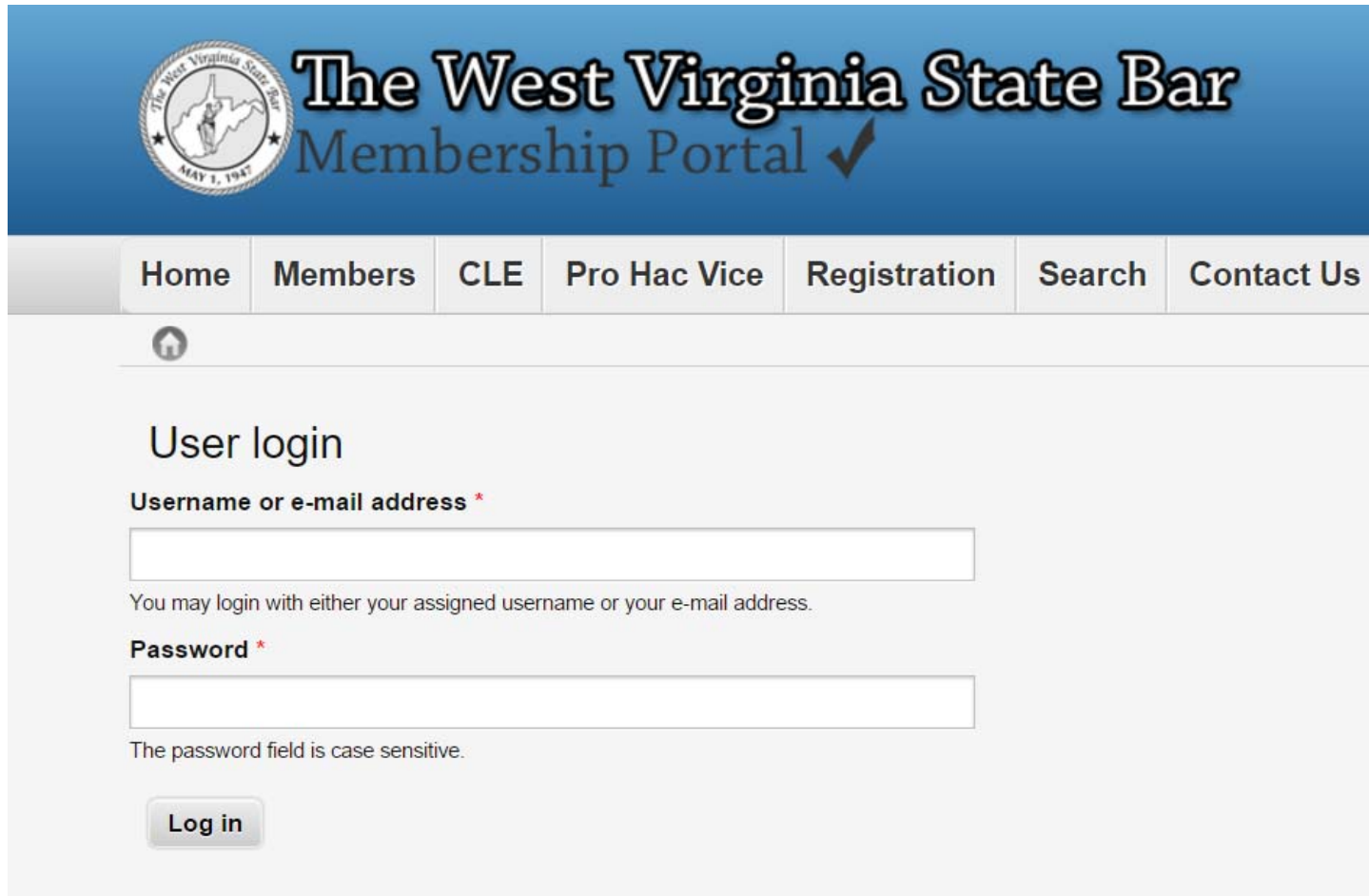


OUR TIME TOGETHER

- Free Legal Research through the WVSB
- Developing a Search Strategy
- Generating Search Terms + Keyword Search
- Using Analytics to:
 - Identify cases your search missed
 - Find subsequent citing cases
 - Discover important cases
- Organize your work
- Mobile



LOGGING IN:



The West Virginia State Bar
Membership Portal ✓

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🏠

User login

Username or e-mail address *

You may login with either your assigned username or your e-mail address.

Password *

The password field is case sensitive.

Log in

WHAT'S IN THE FASTCASE DATABASE?

Scope of Coverage

Law Libraries

Fastcase puts the whole national law library on your desktop, with online access to cases, statutes, regulations, court rules, and bar publications, right at your fingertips.

[Collapse All](#) | [Expand All](#)

☒ Federal Libraries

- ☐ U.S. Supreme Court | 1 U.S. 1 – Current
- ☒ All Federal Circuit Courts | 1 F.2d 1 – Current
 - ☐ U.S. Court of Appeals for the First Circuit
 - ☐ U.S. Court of Appeals for the Second Circuit
 - ☐ U.S. Court of Appeals for the Third Circuit
 - ☐ U.S. Court of Appeals for the Fourth Circuit
 - ☐ U.S. Court of Appeals for the Fifth Circuit
 - ☐ U.S. Court of Appeals for the Sixth Circuit
 - ☐ U.S. Court of Appeals for the Seventh Circuit
 - ☐ U.S. Court of Appeals for the Eighth Circuit

- Primary Law:
 - Cases
 - Statutes
 - Regulations
 - Court Rules
 - Constitutions
- HeinOnline Law Reviews



WEST VIRGINIA CONTENT

- West Virginia Supreme Court of Appeals to 1864
- West Virginia Code
- West Virginia Acts
- West Virginia Regulations
- West Virginia Attorney General Opinions
- West Virginia Court Rules

The screenshot displays the fastcase website's search interface. At the top, the fastcase logo is visible. Below it is a search bar with a magnifying glass icon on the left and a 'Go' button on the right. A search options bar below the search bar shows 'Search Options: Remove All All West Virginia Materials x'. The main content area is divided into two sections: 'Choose Libraries' and 'Recently Searched'. The 'Choose Libraries' section has a table with columns for Title, Type, Jurisdiction, and Court Level. The 'Type' column has a dropdown menu with 'All' selected. The 'Jurisdiction' column has a dropdown menu with 'All' selected. The 'Court Level' column has a dropdown menu with 'All' selected. Below the table, there is a list of links: 'Select all (6127)', 'All Case Law', 'All Regulations', 'All Statutes', 'All Court Rules', and 'All Constitutions'. The 'Recently Searched' section has a list of links: 'All Case Law', 'All Regulations', and 'All Statutes'. Below this, there is a 'State Jurisdictions' section with a dropdown menu showing 'WV'. Below the dropdown menu, there is a list of links: 'West Virginia Trial Court Rules (2014 Edition)', 'West Virginia Code (2016 Edition)', and 'West Virginia Code of State Rules (2017 Edition)'.

fastcase

Search Options: Remove All All West Virginia Materials x

Choose Libraries

Title	Type	Jurisdiction	Court Level
Type here to	All	All	All

Select all (6127)

- All Case Law
- All Regulations
- All Statutes
- All Court Rules
- All Constitutions

Recently Searched

- All Case Law
- All Regulations
- All Statutes

State Jurisdictions WV

- West Virginia Trial Court Rules (2014 Edition)
- West Virginia Code (2016 Edition)
- West Virginia Code of State Rules (2017 Edition)



DEVELOP A RESEARCH STRATEGY

On what issue or issues am I seeking answers?

What legal principles are involved?

Are there add'l search terms that may be useful?

How do judges talk about these concepts?

HYPOTHETICAL—*McFADDEN V. U.S.*

- Issue: Whether, to convict a defendant of distribution of a controlled substance analogue – a substance with a chemical structure that is “substantially similar” to a schedule I or II drug and has a “substantially similar” effect on the user (or is believed or represented by the defendant to have such a similar effect) – the government must prove that the defendant knew that the substance constituted a controlled substance analogue, as held by the Second, Seventh, and Eighth Circuits, but rejected by the Fourth and Fifth Circuits.



GENERATE SEARCH TERMS

- **Question:**

- Must the state prove defendant knew a substance is a controlled substance analogue to obtain a conviction for selling it?

- **Legal Principles:**

- Scierter / Mens rea
- Controlled substance laws
- Analogue Enforcement Act of 1986

- **Additional search terms:**

- Drug dealing; synthetic drugs



EXPAND YOUR SEARCH

- **Use synonyms:**
 - Drugs or marijuana or controlled substance
 - Sell or sale
- **Use wildcards:**
 - Mari?uana — Marijuana; Marihuana
 - Sell* — Selling; sell; sells.
- **Use proximity searches, not exact phrases:**
 - (sell* or sale) /10 ((synthetic or analog*) /5 (substance or drug*))





"a defendant must know he is selling a controlled substance analogue"

Go



Search Options:

Choose Libraries

Title	Type	Jurisdiction	Court Level
<input type="text"/>	All ▼	All ▼	All ▼

[Select all](#)

[All Case Law](#)

[All Regulations](#)

[All Statutes](#)

[All Court Rules](#)

[All Constitutions](#)

[All Educational Material](#)

[All Attorney General Opinions](#)

[All Ethics Opinions](#)

[All Law Reviews](#)

☐ Include historical editions

Dated From: to

Recently Searched

[All Case Law](#)

[All Statutes](#)

[All Idaho Materials](#)

State Jurisdictions

AL ▼

[Alabama State Supreme and Appeals Courts](#)

[All Alabama Materials](#)

[Code Of Alabama \(2007 Edition\)](#)

[Code Of Alabama \(2009 Edition\)](#)

[Code Of Alabama \(2011 Edition\)](#)

Sort Results By: Relevance ▼

☐ Show Search Tips



"a defendant must know he is selling a controlled substance analogue"

Advanced Search

Favorites

History

Print Queue

Help

FC7 ☐

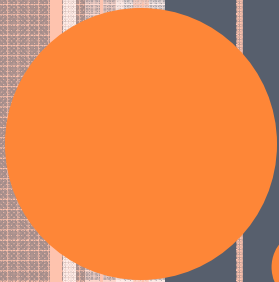


No Results Found

You can modify your search below or run a new search.

"a defendant must know he is selling a con"



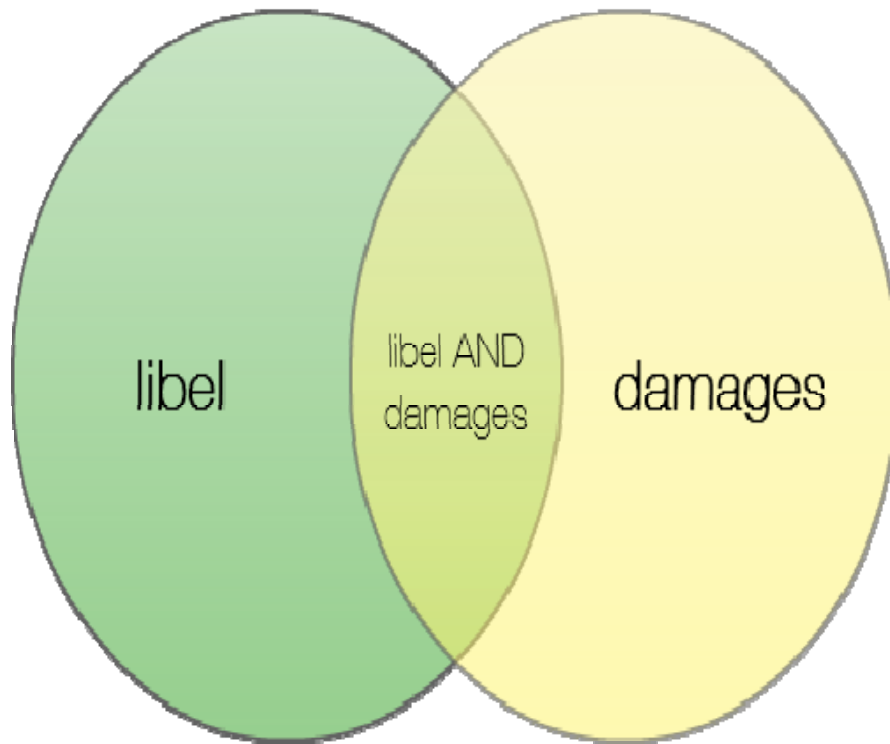


KEYWORD SEARCHES

OPERATORS FOR KEYWORD SEARCHES

Operator	Example	Description
AND, &	libel AND damages	Results must contain both “libel” and “damages”
OR	premarital OR prenuptial	Results must contain either “premarital” or “prenuptial”
NOT	negligence NOT criminal	Results must contain “negligence” but must not contain the word “criminal”
w/3, /3	custody w/15 interrogation	Select a number to limit the distance between words
, !	testif	Results must contain some variation of the stem “testif” such as testified, testifying, etc.
?	mari?uana	Results must contain a m-a-r-i-__-u-a-n-a with one letter being substituted for the question mark
“ “	“estate tax”	Results must contain the exact phrase: estate tax
()	(confront OR cross-examine)	Altering the order of operations (more later)

AND — LIBEL AND DAMAGES



Only returns cases at the intersection — ones containing both the words libel and damages.



OR — PRENUPTIAL OR PREMARITAL

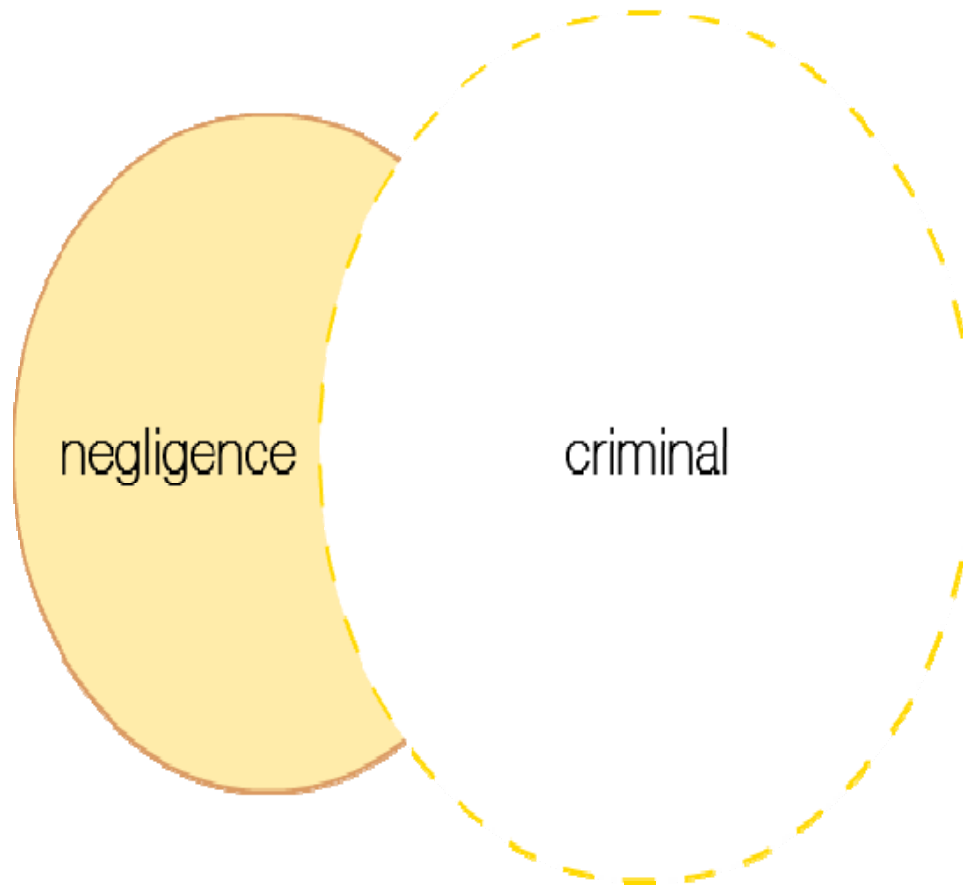


prenuptial OR
premarital

Returns all cases around the perimeter of the two words — either those using the word prenuptial or the word premarital.



NOT — NEGLIGENCE NOT CRIMINAL



Only returns cases mentioning
“negligence” without
referencing the word
“criminal.”



PROXIMITY OR WITHIN — W/# OR /#

custody /5 interrogation — return cases where **custody** appears within 5 words of **interrogation**

Sample matches:

in-**custody** **interrogation** of a suspect

(w/1 matches.)

unless in-**custody** police **interrogation** is

(w/2 matches.)

interrogation while in **custody** may give

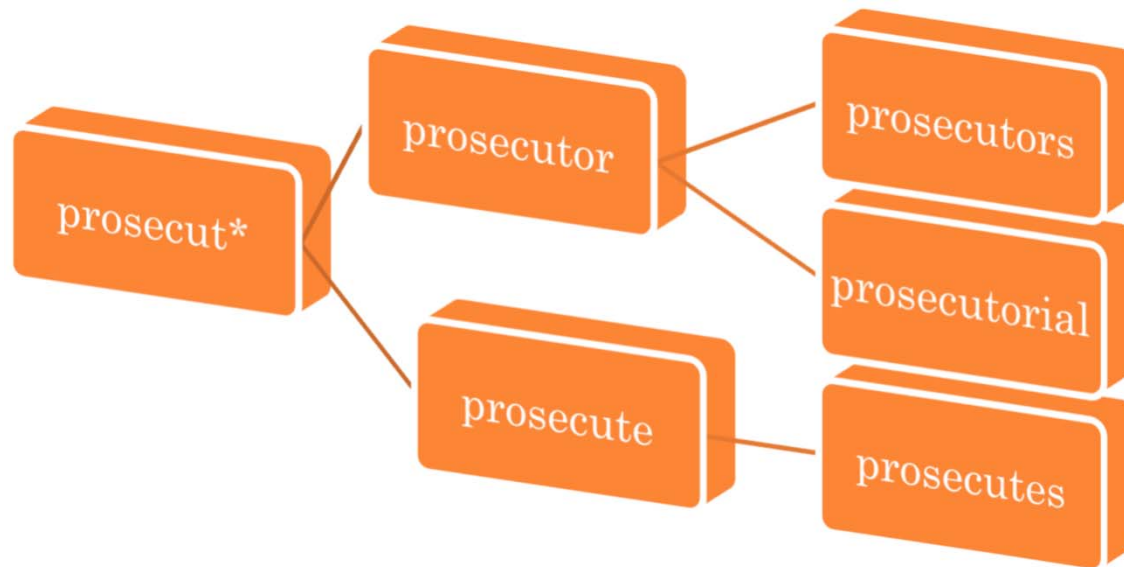
(w/3 matches.)

when in **custody** for purposes of **interrogation**

(w/4 matches.)



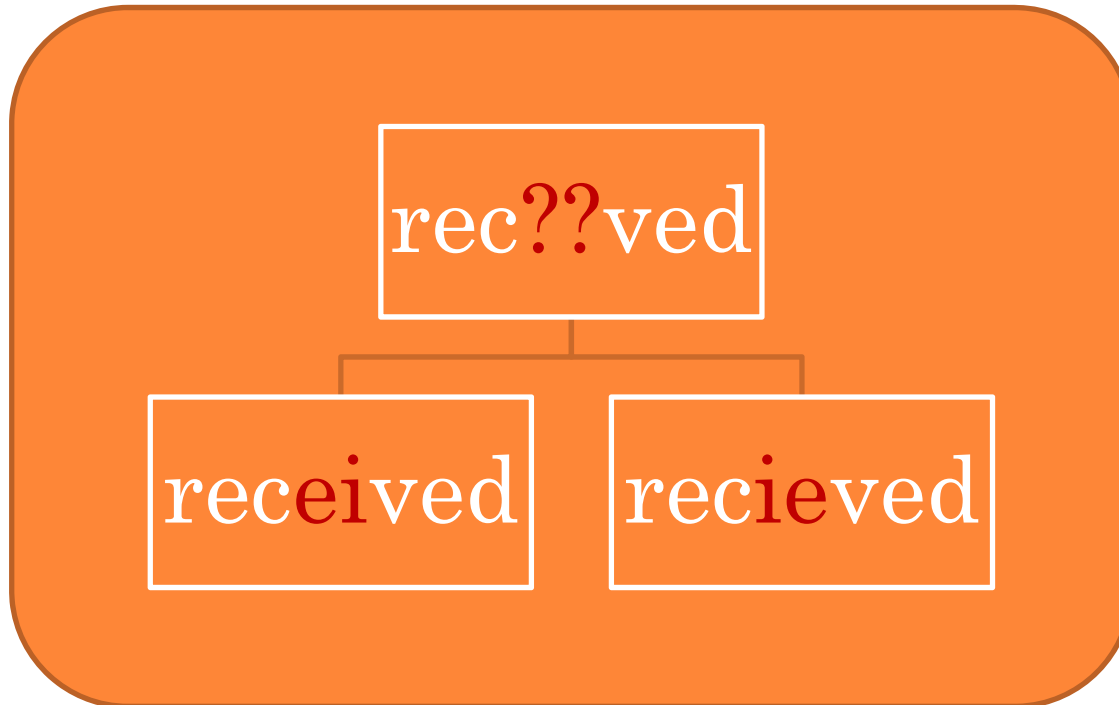
ROOT EXPANDER * OR !



Return all cases beginning with the letters prosecut — **important:** for a Boolean search, Fastcase doesn't return past-tense, future tense, gerunds, etc.



SINGLE LETTER WILDCARD — ?



`rec??ved` — return all cases with either spelling (correct or wrong) of received



QUOTATION MARKS “”

“notice of appeal” — returns only cases with the exact phrase notice of appeal

Sample matches:

Defendant timely filed her **notice of appeal** with

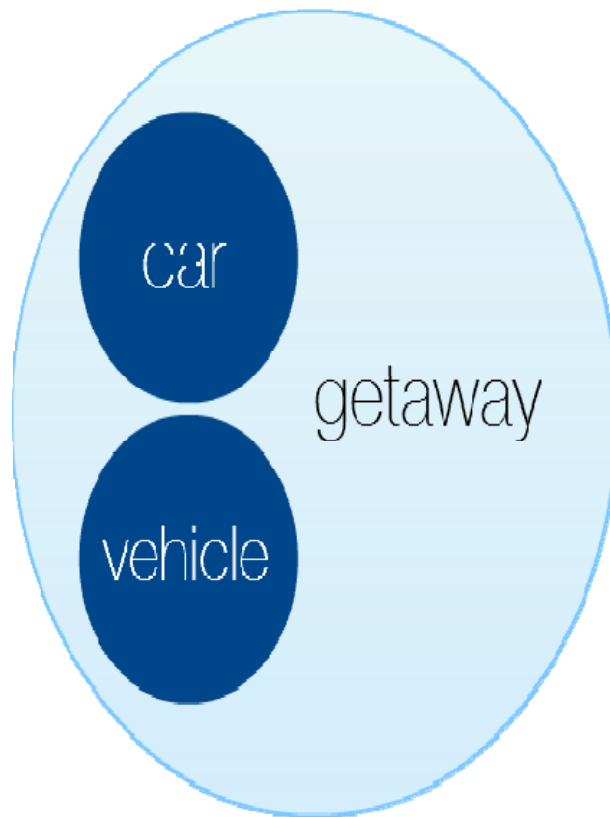
One must file **notice of appeal** with the prothonotary .
. . .

Not in search results:

Defendant erroneously filed two **notices of appeal** with
. . . .



PARENTHESES — ()

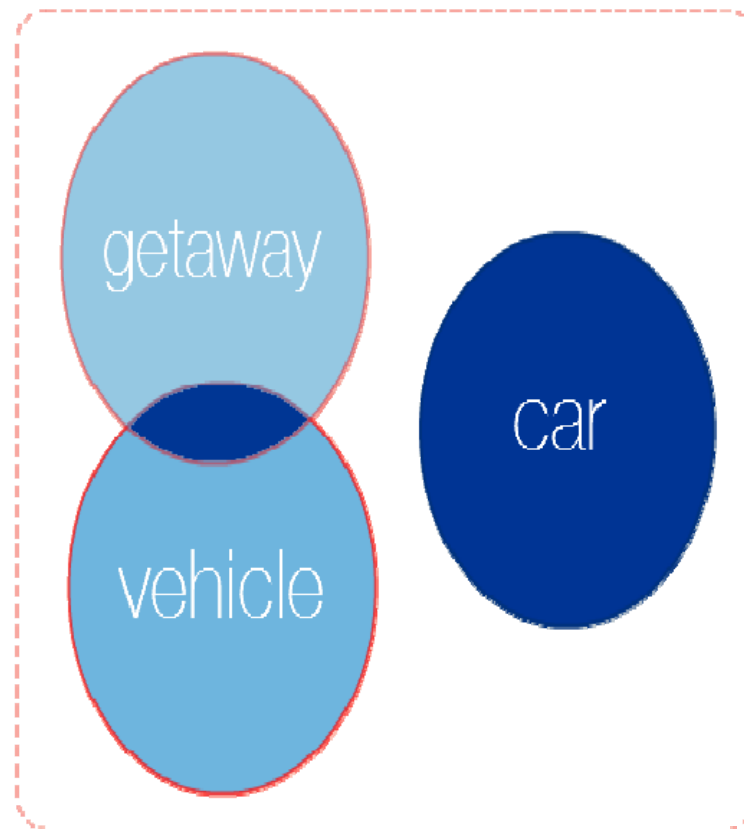


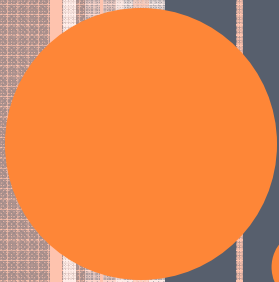
- Consider the following search: **car OR vehicle AND getaway**



CAR OR VEHICLE AND GETAWAY

- What Fastcase actually sees:
- (vehicle AND getaway) OR car





ANALYTICS

FORECITE

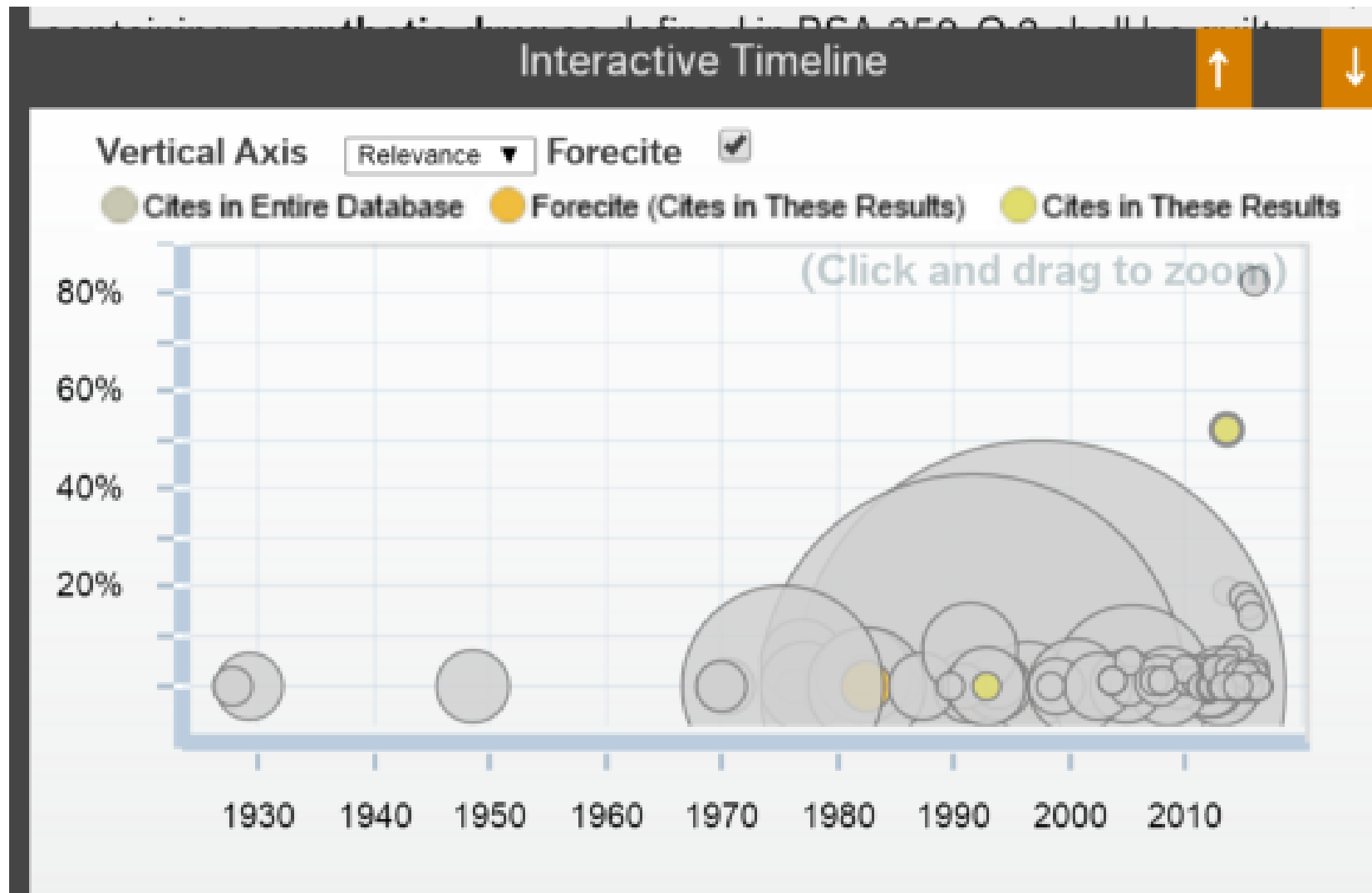


AUTHORITY CHECK

<div><div><div><div></div><div>(sell* or sale) /10 ((synthetic or analog*) /5 (substance or drug*))</div></div><div>Advanced Search</div><div><div>Favorites</div><div>History</div><div>Print Queue</div><div>Help</div><div>FC7</div></div></div></div>				
Relevance	Document	Date	Authority Check	
			Results	Database
100%	1. N.H. Code Admin. R. Saf-C 3603.04 Caller Information (New Hampshire Administrative Rules (2014 Edition)) to remain anonymous, and if not, the name, address, and telephone number of the caller; (c) Name, address and telephone number of the individual who may be possessing, manufacturing, selling , dispensing or possessing with an intent to sell, any controlled drug or analog , if known; (d)	-	-	-
100%	2. N.H. Code Admin. R. Saf-C 3603.04 Caller Information (New Hampshire Administrative Rules (2015 Edition)) to remain anonymous, and if not, the name, address, and telephone number of the caller; (c) Name, address and telephone number of the individual who may be possessing, manufacturing, selling , dispensing or possessing with an intent to sell, any controlled drug or analog , if known; (d)	-	-	-
82%	3. United States v. Carlson (8th Cir., 2016) were charged with violating provisions of the Food Drug and Cosmetic Act (FDCA), the Controlled Substances Act (CSA), and the Controlled Substance Analogue Enforcement Act of 1986 (Analogue Act) for selling misbranded synthetic drugs at a head shop in Duluth, Minnesota. The jury found the defendants guilty on several counts	Jan 14, 2016	0	0
81%	4. NH Stat. 284:21-h Authorization; Sale of Tickets; Advertising. (New Hampshire Statutes (2016 Edition)) be sold at any locations to minors. III-a. (a) Any owner of a retail establishment or sale outlet who sells or distributes any substance containing a synthetic drug as defined in RSA 359-O:2 shall be guilty of a violation. (b) The lottery commission shall deny	-	-	-



INTERACTIVE TIMELINE



TAG CLOUD

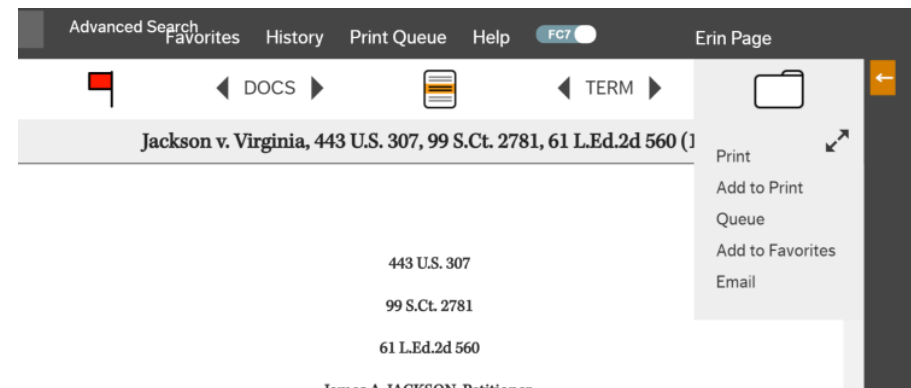


ORGANIZE BY BOOKMARKING

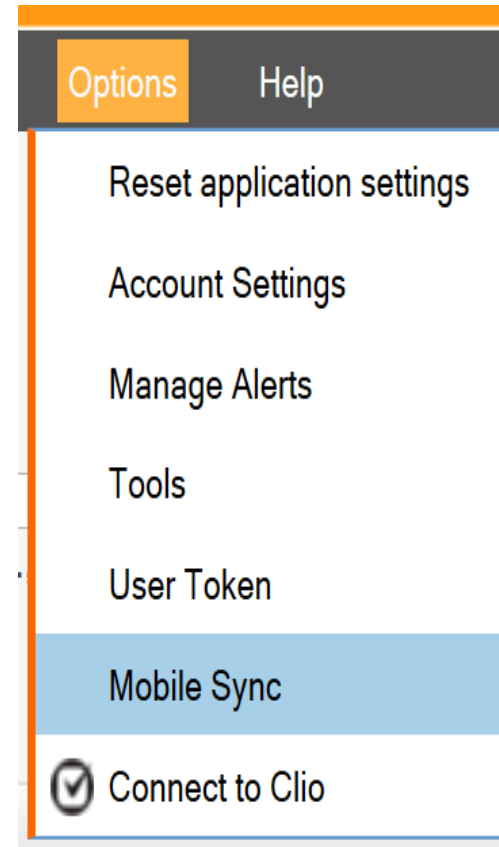
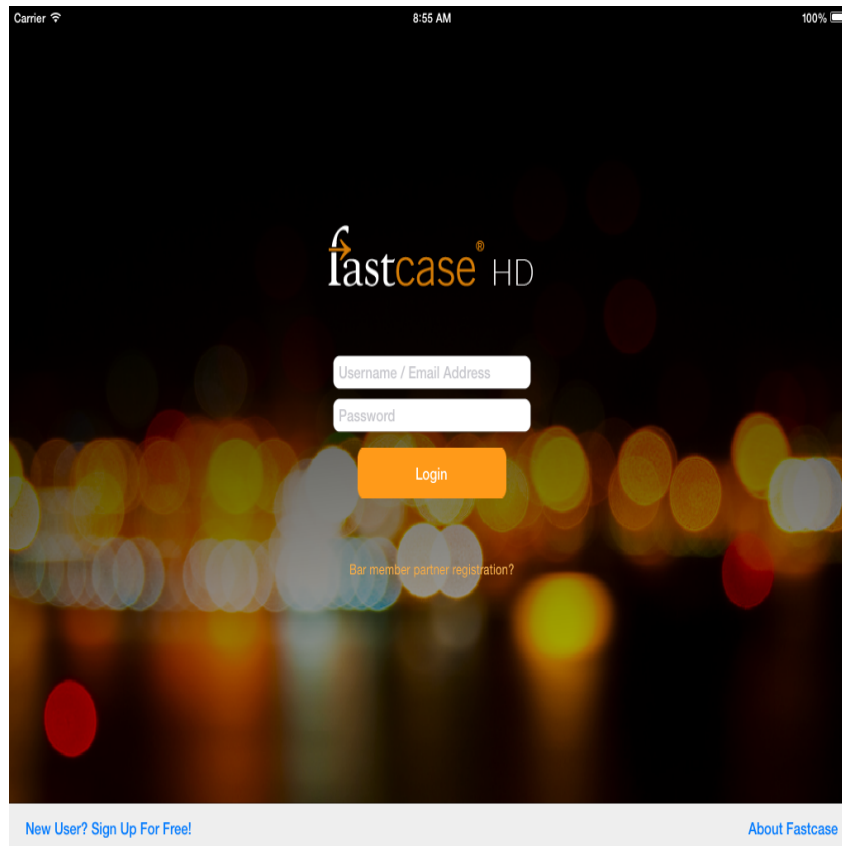
Relevance	Case	Decision Date	These Results	Entire Database
Forecite: Fastcase has identified 3 additional decisions that may be relevant to your research topic, but do not contain one or more of your search terms. View Results				
100%	1. United States v. Wurie (1st Cir., 2013) A smaller number of courts have rejected warrantless cell phone searches, with similarly disparate reasoning. In <i>United States v. Park</i> , No. CR 05-375 SI, 2007 WL 1521573 (N.D. Cal. May 23, 2007), for example, the court concluded that a cell phone should be viewed not as an item immediately associated with the person under Robinson and Edwards but as a possession within an arrestee's immediate control under Chadwick, which cannot be searched once the phone comes into the exclusive control of the ...	May 17, 2013	0	0
99%	2. State v. Patino (R.I. Sup. Ct., 2012) Attempting to reconcile the conflicting precedents, the Rhode Island legislature recently approved a bill mandating that law enforcement agencies conduct electronic data searches. Governor Lincoln D. Chafee vetoed the bill, stating that it would infringe on privacy rights in electronic communications ...	September 4, 2012	0	0
98%	3. United States v. Alabi (S.D. Cal., 2013) On February 22, 2013, Olatunji Oguntoyinbo contends that the warrantless search of his cell phone is unconstitutional and that he has ...	April 30, 2013	0	0
85%	4. U.S. v. Maali, 346 F.Supp.2d 1152 (S.D. Cal., 2004) The Master Affidavit had explained that the search incident to arrest was still clearly valid, once an arrestee is physically separated from an item within his reach. And, some aspects of computer expert for electronic "residue." (See <i>U.S. v. Maali</i> , 346 F.Supp.2d 1152, 1155 (S.D. Cal. 2004)).	August 8, 2004	1	2
83%	5. Smallwood v. State (Fla., 2013) The Master Affidavit had explained that the search incident to arrest was still clearly valid, once an arrestee is physically separated from an item within his reach. And, some aspects of computer expert for electronic "residue." (See <i>U.S. v. Maali</i> , 346 F.Supp.2d 1152, 1155 (S.D. Cal. 2004)).	May 2, 2013	0	0

FAVORITES AND EMAILING DIRECT

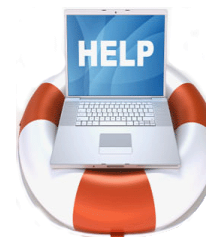
- Adding a document to favorites allows you to easily find documents later
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***Reflecting on Environmental Enforcement:
The Advent of Mega Cases***



John Cruden
*Former Assistant Attorney General:
US Environment and Natural Resources Division*



John C. Cruden
Former Assistant Attorney General

John C. Cruden was confirmed by the U.S. Senate on December 16, 2014 as the Assistant Attorney General (AAG) for the Environment and Natural Resources Division (ENRD).

Before becoming AAG, Mr. Cruden served as President, the Environmental Law Institute, a nationally-recognized bipartisan organization well-known for its work in educating, publishing, and researching environment, energy, and natural resource issues.

Mr. Cruden has a long history of public service at the Department of Justice and in the military. From 1991-1995 he was the Chief, Environmental Enforcement Section, ENRD and then from 1995 to 2011 a career Deputy Assistant Attorney General for ENRD.

Before joining the Department of Justice, Mr. Cruden was the Chief Legislative Counsel of the Army. After graduating from West Point, Mr. Cruden served in Airborne, Ranger, and Special Forces units in Germany and Vietnam. After law school, he attended the Army's Judge Advocate General's year-long Graduate Course, where he was named outstanding graduate, and simultaneously obtained his Master's degree from the University of Virginia in Government and Foreign Affairs. His subsequent military assignment include: criminal prosecutor in Germany and civil trial lawyer in the Pentagon; Chief of Litigation Branch, Europe; General Counsel, Defense Nuclear Agency; Staff Judge Advocate in Germany; and Director of Administrative and Civil Law, Judge Advocate General's School, Charlottesville, Virginia. His military education includes being a Fellow, Army War College, and the Command and General Staff College.

Mr. Cruden has on three occasions received the Presidential Rank Award from three different Presidents. He has also received the Department of Justice's Muskie-Chaffee Award, the Federal Bar Association's Younger Award, and the American Bar Association's Mary C. Lawton Award for Outstanding Government Service. Mr. Cruden's military awards include the Bronze Star, Legion of Merit, Defense Meritorious Service Medal, Air Medal with Oak Leaf Clusters, and the Vietnamese Cross of Gallantry with Silver Star.

Mr. Cruden was the first government attorney to be elected and serve as the President of the District of Columbia Bar, the second largest bar in the nation. He was also the first government attorney to be selected as the Chairman of the American Bar Association's Section of Environment, Energy, and Natural Resources. He is a past member of the Board of the National Conference of Bar Presidents, the Board of the District of Columbia Bar Association, and the Judicial Conference of the District of Columbia Circuit's Standing Committee on Pro Bono Legal Services. John is a frequent lecturer for the American Bar Association and the American Law Institute and is listed in Who's Who in the World, Who's Who in America, and Who's Who in American Law. In 2007, he was listed by a national magazine as one of the top 500 lawyers in America. In 2014 he was named as a "Legend of the Bar," by the DC Bar.

Mr. Cruden was raised in Michigan and is a graduate of the United States Military Academy, University of Santa Clara (summa cum laude, 2006 Alumni Special Achievement Award), and the University of Virginia.

He is also a volunteer swim coach for the Special Olympics and a past recipient of Fairfax County's Volunteer of the Year award for his work with mentally handicapped children. He is married and has two adult children.

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Wednesday, January 18, 2017

Environment and Natural Resources Division and National Association of Attorneys General Announce Guidelines for Joint State-Federal Civil Environmental Enforcement

The Department of Justice's Environment and Natural Resources Division and the National Association of Attorneys General announced the availability today of Guidelines for Joint State/Federal Civil Environmental Enforcement Litigation. A workgroup of litigators from the Environment and Natural Resources Division, the NAAG's National Attorneys General Research and Training Institute, and state attorney general offices developed these guidelines as a revision to a document originally issued in 2003.

The Guidelines provide a general framework for cooperation between sovereigns in joint civil environmental enforcement litigation and derive from lessons learned in such cases over many years. They include both organizational and substantive suggestions on common topics that arise in joint civil enforcement matters, including case management and settlement issues, pre-filing considerations, and information sharing. They also include several appendices with sample documents and reference information.

"Cooperative federalism is fundamental to the structure and effectiveness of our Nation's environmental laws, and the Environment and Natural Resources Division vigorously pursues opportunities to partner with our state and local counterparts in environmental enforcement," said Assistant Attorney General John C. Cruden. "In doing so, we combine sovereigns, reduce costs, and obtain more comprehensive results for the American people. These Guidelines draw on the expertise of a variety of litigators and will be a valuable resource to environmental enforcement colleagues at all levels of government. I am grateful to the National Association of Attorneys General for partnering with the Division on this project."

"The National Attorneys General Training and Research Institute appreciated the opportunity to work with U.S. Department of Justice's Environment and Natural Resource Division staff in this collaborative effort to provide information that it anticipates will be helpful to our members," said Chris Toth, Deputy Executive Director of the National Association of Attorneys General and Director of the National Attorneys General Training and Research Institute (NAGTRI). "Most importantly, NAGTRI would like to offer an extended thank you to attorneys from the New York and Michigan Offices of the Attorney General who worked diligently on this endeavor."

You can access the [Guidelines](#) on the [ENRD website](#).

17-086

[Environment and Natural Resources Division](#)

Topic:

Environment

Updated January 18, 2017

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, January 11, 2017

Volkswagen AG Agrees to Plead Guilty and Pay \$4.3 Billion in Criminal and Civil Penalties; Six Volkswagen Executives and Employees are Indicted in Connection with Conspiracy to Cheat U.S. Emissions Tests

VW to Pay \$2.8 Billion Criminal Fine in Guilty Plea and \$1.5 Billion Settlement of Civil Environmental, Customs and Financial Violations; Monitor to Be Appointed to Oversee the Parent Company

Volkswagen AG (VW) has agreed to plead guilty to three criminal felony counts and pay a \$2.8 billion criminal penalty as a result of the company's long-running scheme to sell approximately 590,000 diesel vehicles in the U.S. by using a defeat device to cheat on emissions tests mandated by the Environmental Protection Agency (EPA) and the California Air Resources Board (CARB), and lying and obstructing justice to further the scheme, the Justice Department announced today.

In separate civil resolutions of environmental, customs and financial claims, VW has agreed to pay \$1.5 billion. This includes EPA's claim for civil penalties against VW in connection with VW's importation and sale of these cars, as well as U.S. Customs and Border Protection (CBP) claims for customs fraud. In addition, the EPA agreement requires injunctive relief to prevent future violations. The agreements also resolve alleged violations of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

The Criminal Case:

VW is charged with and has agreed to plead guilty to participating in a conspiracy to defraud the United States and VW's U.S. customers and to violate the Clean Air Act by lying and misleading the EPA and U.S. customers about whether certain VW, Audi and Porsche branded diesel vehicles complied with U.S. emissions standards, using cheating software to circumvent the U.S. testing process and concealing material facts about its cheating from U.S. regulators. VW is also charged with obstruction of justice for destroying documents related to the scheme, and with a separate crime of importing these cars into the U.S. by means of false statements about the vehicles' compliance with emissions limits. Under the terms of the plea agreement, which must be accepted by the court, VW will plead guilty to all these crimes, will be on probation for three years, will be under an independent corporate compliance monitor who will oversee the company for at least three years, and agrees to fully cooperate in the Justice Department's ongoing investigation and prosecution of individuals responsible for these crimes.

In addition, a federal grand jury in the Eastern District of Michigan returned an indictment today charging six VW executives and employees for their roles in the nearly 10-year conspiracy. Heinz-Jakob Neusser, 56; Jens Hadler, 50; Richard Dorenkamp, 68; Bernd Gottweis, 69; Oliver Schmidt, 48; and Jürgen Peter, 59, all of Germany, are charged with one count of conspiracy to defraud the United States, defraud VW's U.S. customers and violate the Clean Air Act by making false representations to regulators and the public about the ability of VW's supposedly "clean diesel" vehicles to comply with U.S. emissions requirements. The indictment also charges Dorenkamp, Neusser, Schmidt and Peter with Clean Air Act violations and charges Neusser, Gottweis, Schmidt and Peter with wire fraud counts. This case has been assigned to U.S. District Judge Sean F. Cox of the Eastern District of Michigan.

Schmidt was arrested on Jan. 7, 2017, in Miami during a visit to the United States and appeared in federal court there on Monday. The other defendants are believed to presently reside in Germany.

Today's announcement was made by Attorney General Loretta E. Lynch, EPA Administrator Gina McCarthy and Assistant Administrator Cynthia Giles, Deputy Attorney General Sally Q. Yates, FBI Deputy Director Andrew McCabe, Acting Deputy Secretary Russell C. Deyo for the Department of Homeland Security, U.S. Attorney Barbara L. McQuade of the Eastern District of Michigan, Assistant Attorney General Leslie R. Caldwell of the Justice Department's Criminal Division, Assistant Attorney General John C. Cruden of the Justice Department's Environment and Natural Resources Division and Principal Deputy Assistant Attorney General Benjamin C. Mizer of the Justice Department's Civil Division.

"Volkswagen's attempts to dodge emissions standards and import falsely certified vehicles into the country represent an egregious violation of our nation's environmental, consumer protection and financial laws," said Attorney General Lynch. "Today's actions reflect the Justice Department's steadfast commitment to defending consumers, protecting our environment and our financial system and holding individuals and companies accountable for corporate wrongdoing. In the days ahead, we will continue to examine Volkswagen's attempts to mislead consumers and deceive the government. And we will continue to pursue the individuals responsible for orchestrating this damaging conspiracy."

"When Volkswagen broke the law, EPA stepped in to hold them accountable and address the pollution they caused," said EPA Administrator McCarthy. "EPA's fundamental and indispensable role becomes all too clear when companies evade laws that protect our health. The American public depends on a strong and active EPA to deliver clean air protections, and that is exactly what we have done."

"This wasn't simply the action of some faceless, multinational corporation," said Deputy Attorney General Yates. "This conspiracy involved flesh-and-blood individuals who used their positions within Volkswagen to deceive both regulators and consumers. From the start of this investigation, we've been committed to ensuring that those responsible for criminal activity are held accountable. We've followed the evidence—from the showroom to the boardroom—and it brought us to the people whose indictments we're announcing today."

"Americans expect corporations to operate honestly and provide accurate information," said Deputy Director McCabe. "Volkswagen's data deception defrauded the U.S. government, violated the Clean Air Act and eroded consumer trust. This case sends a clear message to corporations, no matter how big or small, that if you lie and disregard rules that protect consumers and the environment, you will be caught and held accountable."

"Blatant violations of U.S. customs and environmental laws will not be tolerated, and this case reinforces that," said Acting Deputy Secretary Deyo. "These actions put our economy, consumers and citizens at risk, and the Department of Homeland Security and U.S. Customs and Border Protection will continue to take every step necessary to protect the American people."

According to the indictment, the individuals occupied the following positions within the company:

1. **Heinz-Jakob Neusser:** from July 2013 until September 2015, Neusser worked for VW as head of Development for VW Brand and was also on the management board for VW Brand. From October 2011 until July 2013, Neusser served as the head of Engine Development for VW.
2. **Jens Hadler:** from May 2007 until March 2011, Hadler worked for VW as head of Engine Development for VW.
3. **Richard Dorenkamp:** from 2003 until December 2013, Dorenkamp worked for VW as the head of VW's Engine Development After-Treatment Department in Wolfsburg, Germany. From 2006 until 2013, Dorenkamp led a team of engineers that developed the first diesel engine that was designed to meet the new, tougher emissions standards in the United States.

4. **Bernd Gottweis:** from 2007 until October 2014, Gottweis worked for VW as a supervisor with responsibility for Quality Management and Product Safety.
5. **Oliver Schmidt:** from 2012 through February 2015, Schmidt was the General Manager in charge of the Environment and Engineering Office, located in Auburn Hills, Michigan. From February 2015 through September 2015, Schmidt returned to VW headquarters to work directly for Neusser, including on emissions issues.
6. **Jürgen Peter:** Peter worked in the VW Quality Management and Product Safety Group from 1990 until the present. From March 2015 until July 2015, Peter was one of the VW liaisons between the regulatory agencies and VW.

According to the charging documents and statement of facts filed with the court, in 2006, VW engineers began to design a new diesel engine to meet stricter U.S. emissions standards that would take effect by model year 2007. This new engine would be the cornerstone of a new project to sell diesel vehicles in the United States that would be marketed to buyers as “clean diesel,” a project that was an important strategic goal for VW’s management. When the co-conspirators realized that they could not design a diesel engine that would both meet the stricter NOx emissions standards and attract sufficient customer demand in the U.S. market, they decided they would use a software function to cheat standard U.S. emissions tests.

VW engineers working under Dorenkamp and Hadler designed and implemented a software to recognize whether a vehicle was undergoing standard U.S. emissions testing on a dynamometer or it was being driven on the road under normal driving conditions. The software accomplished this by recognizing the standard published drive cycles. Based on these inputs, if the vehicle’s software detected that it was being tested, the vehicle performed in one mode, which satisfied U.S. NOx emissions standards. If the software detected that the vehicle was not being tested, it operated in a different mode, in which the vehicle’s emissions control systems were reduced substantially, causing the vehicle to emit NOx up to 40 times higher than U.S. standards.

Disagreements over the direction of the project were articulated at a meeting over which Hadler presided, and which Dorenkamp attended. Hadler authorized Dorenkamp to proceed with the project knowing that only the use of the defeat device software would enable VW diesel vehicles to pass U.S. emissions tests. Starting with the first model year 2009 of VW’s new “clean diesel” engine through model year 2016, Dorenkamp, Neusser, Hadler and their co-conspirators installed, or caused to be installed, the defeat device software into the vehicles imported and sold in the United States. In order to sell their “clean diesel” vehicles in the United States, the co-conspirators lied to the EPA about the existence of their test-cheating software, hiding it from the EPA, CARB, VW customers and the U.S. public. Dorenkamp, Neusser, Hadler, Gottweis, Schmidt, Peter and their co-conspirators then marketed, and caused to be marketed, VW diesel vehicles to the U.S. public as “clean diesel” and environmentally-friendly.

Around 2012, hardware failures developed in certain of the diesel vehicles. VW engineers believed the increased stress on the exhaust system from being driven in the “dyno mode” could be the cause of the hardware failures. In July 2012, VW engineers met with Neusser and Gottweis to explain what they believed to be the cause of the hardware failures and explained the defeat device. Gottweis and Neusser each encouraged further concealment of the software. In 2014, the co-conspirators perfected their cheating software by starting the vehicle in “street mode,” and, when the defeat device realized the vehicle was being tested, switching to the “dyno mode.” To increase the ability of the vehicle’s software to recognize that it was being tested on the dynamometer, the VW engineers activated a “steering wheel angle recognition feature.” With these alterations, it was believed the stress on the exhaust system would be reduced because the engine would not be operating for as long in “dyno mode.” The new function was installed in existing vehicles through software updates. The defendants and other co-conspirators falsely represented, and caused to be represented, to U.S. regulators, U.S. customers and others that the software update was intended to improve durability and emissions issues in the vehicles when, in fact, they knew it was used to more quickly deactivate emission control systems when the vehicle was not undergoing emissions tests.

After years of VW selling their “clean diesel” vehicles in the United States that had the cheating software, in March 2014, West Virginia University’s Center for Alternative Fuels, Engines and Emissions published the results of a study commissioned by the International Council on Clean Transportation (ICCT). The ICCT study identified substantial discrepancies in the NOx emissions from certain VW vehicles when tested on the road compared to when these vehicles were undergoing EPA and CARB standard drive cycle tests on a dynamometer. Rather than tell the truth, VW employees, including Neusser, Gottweis, Schmidt and Peter, pursued a strategy to disclose as little as possible – to continue to hide the existence of the software from U.S. regulators, U.S. customers and the U.S. public.

Following the ICCT study, CARB, in coordination with the EPA, attempted to work with VW to determine the cause for the higher NOx emissions in VW diesel vehicles when being driven on the road as opposed to on the dynamometer undergoing standard emissions test cycles. To do this, CARB, in coordination with the EPA, repeatedly asked VW questions that became increasingly more specific and detailed, and tested the vehicles themselves. In implementing their strategy of disclosing as little as possible, Neusser, Gottweis, Schmidt, Peter and their co-conspirators provided EPA and CARB with testing results, data, presentations and statements in an attempt to make it appear that there were innocent mechanical and technological problems to blame, while secretly knowing that the primary reason for the discrepancy was their cheating software that was installed in every VW diesel vehicle sold in the United States. The co-conspirators continued this back-and-forth with the EPA and CARB for over 18 months, obstructing the regulators’ attempts to uncover the truth.

The charges in the indictment are merely accusations and each defendant is presumed innocent unless and until proven guilty.

The case was investigated by the FBI and EPA-CID. The prosecution and corporate investigation are being handled by Securities and Financial Fraud Unit Chief Benjamin D. Singer and Trial Attorneys David Fuhr, Alison Anderson, Christopher Fenton and Gary Winters of the Criminal Division’s Fraud Section; Trial Attorney Jennifer Blackwell of the Environment and Natural Resources Division’s Environmental Crimes Section; and from the U.S. Attorney’s Office for the Eastern District of Michigan, Criminal Division Chief Mark Chutkow and White Collar Crime Unit Chief John K. Neal and Assistant U.S. Attorney Timothy J. Wyse. The Justice Department’s Office of International Affairs also assisted in the case. The Justice Department also extends its thanks to the Office of the Public Prosecutor in Braunschweig, Germany.

The Civil Resolutions:

The first civil settlement resolves EPA’s remaining claims against six VW-related entities (including Volkswagen AG, Audi AG and Porsche AG) currently pending in the multidistrict litigation before U.S. District Judge Charles R. Breyer of the Northern District of California. EPA’s complaint alleges that VW violated the Clean Air Act by selling approximately 590,000 cars that the United States alleges are equipped with defeat devices and, during normal operation and use, emit pollution significantly in excess of EPA-compliant levels. VW has agreed to pay \$1.45 billion to resolve EPA’s civil penalty claims, as well as the civil penalty claim of CBP described below. The consent decree resolving the Clean Air Act claims also resolves EPA’s remaining claim in the complaint for injunctive relief to prevent future violations by requiring VW to undertake a number of corporate governance reforms and perform in-use testing of its vehicles using a portable emissions measurement system of the same type used to catch VW’s cheating in the first place. Today’s settlement is in addition the historic \$14.7 billion settlement that addressed the 2.0 liter cars on the road and associated environmental harm announced in June 2016, and \$1 billion settlement that addressed the 3.0 liter cars on the road and associated environmental harm announced in December 2016, which together included nearly \$3 billion for environmental mitigation projects.

A second civil settlement resolves civil fraud claims asserted by U.S. Customs and Border Protection (CBP) against VW entities. VW entities violated criminal and civil customs laws by knowingly submitting to CBP material false statements and omitting material information, over multiple years, with the intent of deceiving or misleading CBP concerning the admissibility of vehicles into the United States. CBP enforces U.S. customs laws as well as numerous laws on behalf of other governmental agencies related to health, safety, and border security. At the time of importation, VW falsely represented to CBP that each of

the nearly 590,000 imported vehicles complied with all applicable environmental laws, knowing those representations to be untrue. CBP's relationship with the importing community is one based on trust, and this resolution demonstrates that CBP will not tolerate abrogation of importer responsibilities and schemes to defraud the revenue of the United States. The \$1.45 billion paid under the EPA settlement also resolves CBP's claims.

In a third settlement, VW has agreed to pay \$50 million in civil penalties for alleged violations of FIRREA. The Justice Department alleged that a VW entity supported the sales and leasing of certain VW vehicles, including the defeat-device vehicles, by offering competitive financing terms by purchasing from dealers certain automobile retail installment contracts (i.e. loans) and leases entered into by customers that purchased or leased certain VW vehicles, as well as dealer floorplan loans. These financing arrangements were primarily collateralized by the vehicles underlying the loan and lease transactions. The department alleged that certain of these loans, leases and floorplan financings were pooled together to create asset-backed securities and that federally insured financial institutions purchased certain notes in these securities. Today's FIRREA resolution is part of the department's ongoing efforts to deter wrongdoers from using the financial markets to facilitate their fraud and to ensure the stability of the nation's financial system.

Except where based on admissions by VW, the claims resolved by the civil agreements are allegations only.

The civil settlements were handled by the Environmental and Natural Resources Division's Environmental Enforcement Section, with assistance from the EPA; the Civil Division's Commercial Litigation Branch; and CBP.

* * *

Court documents:

[VW AG Plea Agreement](#)

[VW AG Third Partial Consent Decree](#)

[VW AG Notice of Third Partial Consent Decree](#)

[VW AG Third Superseding Information](#)

[Firrea Settlement Agreement](#)

[VW AG CPB Settlement](#)

[VW AG Second Superseding Indictment](#)

17-037

[Civil Division](#)

[Criminal Division](#)

[Environment and Natural Resources Division](#)

[Office of the Attorney General](#)

Updated January 11, 2017

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, December 20, 2016

Volkswagen to Recall 83,000 3.0 Liter Diesel Vehicles and Fund Mitigation Projects to Settle Allegations of Cheating Emissions Tests on Volkswagen, Audi and Porsche Vehicles

Settlement Requires Volkswagen to Offer to Buy Back Older Vehicles, and Spend \$225 Million to Mitigate NOx Pollution. Volkswagen Will Also Repair Newer Vehicles to Comply With the Standards to Which They Were Certified.

In a second partial settlement announced today by the U.S. Department of Justice, the Environmental Protection Agency (EPA) and the State of California, automakers Volkswagen AG, Audi AG, Porsche AG and related entities (collectively referred to as Volkswagen), have agreed to recall 83,000 model year 2009 through 2016 3.0 liter diesel vehicles sold or leased in the U.S. that are alleged to be equipped with “defeat devices” to cheat emissions tests, in violation of the Clean Air Act and California law.

For the older vehicles, Volkswagen is required to offer to buy back the vehicles or terminate leases, and must also offer an emissions modification to substantially reduce emissions if one is proposed by Volkswagen and approved by regulators. For the newer vehicles, if Volkswagen demonstrates it can make the vehicles compliant with the certified exhaust emission standards, it will have to fix the vehicles and will not be required to buy the vehicles back. Volkswagen is also required to spend \$225 million to fund projects that will reduce emissions of nitrogen oxide (NOx).

Today’s partial settlement does not resolve any pending claims for civil penalties, nor does it address any potential criminal liability. The settlement also does not resolve any consumer claims, claims by the Federal Trade Commission or claims by individual owners or lessees who may have asserted claims in the ongoing multidistrict litigation. The state of California has secured a separate resolution for the 3.0 liter violations that addresses issues specific to vehicles and consumers in California.

The affected older vehicles (referred to as “generation 1” vehicles) are the 2009 through 2012 Volkswagen Touareg and Audi Q7 diesel models. The affected newer vehicles (referred to as “generation 2” vehicles) are the 2013-2016 Volkswagen Touareg diesels, 2013 through 2015 Audi Q7 diesels, 2013 through 2016 Porsche Cayenne diesels and 2014 through 2016 Audi A6 quattro, A7 quattro, A8, A8L and Q5 diesel models.

“The settlement marks another significant step in holding Volkswagen accountable for cheating Americans out of the promise of cleaner air by selling vehicles equipped with defeat devices,” said Assistant Attorney General John C. Cruden. “This consent decree provides a remedy for every affected vehicle which will be removed from the road or meet enforceable standards that will reduce emissions, and will also require VW to provide additional funding to address the harmful impacts to human health and the environment from VW’s violations.”

“EPA has a public health imperative to hold Volkswagen accountable and remedy the illegal pollution their cars put into the air,” said Cynthia Giles, EPA’s Assistant Administrator for Enforcement and Compliance Assurance. “From the start, our team vigorously pursued this case to ensure these cars were

fixed or taken off the road. Today we've secured another important settlement that delivers on EPA's essential public health mission."

"This settlement highlights the fact that cheating to get a car certified has consequences for air quality and the public's health – and that cheaters will be caught and held accountable," said CARB Executive Officer Richard Corey. "Because California is able to enforce its vehicle regulations, CARB was instrumental in uncovering the cheating in the 3 liter, and before that, in the 2 liter diesel engines. The mitigation in this settlement will now help California address its serious air quality and climate challenges with a focus on putting the very cleanest vehicles in disadvantaged communities where they are needed most."

According to the civil complaint against Volkswagen filed by the Justice Department on behalf of EPA on Jan. 4, 2016, and amended on Oct. 7, 2016, Volkswagen allegedly equipped its 3.0 liter diesel vehicles with illegal software that detects when the car is being tested for compliance with EPA or California emissions standards and turns on required emissions controls only during that testing process. During normal driving conditions, the software renders these emissions control systems inoperative or reduces their effectiveness, resulting in increased emissions. This is known as a defeat device. By using a defeat device, these cars meet emissions standards in the laboratory, but emit up to nine times or more above the EPA-compliant levels for NOx during normal on-road driving conditions. The Clean Air Act requires manufacturers to certify to EPA that vehicles will meet federal emissions standards. Vehicles with defeat devices cannot be certified.

Because Volkswagen cannot modify the affected 2009 through 2012 Volkswagen Touareg and Audi Q7 generation 1 diesel vehicles to meet EPA-certified exhaust emissions standards, the settlement requires Volkswagen to offer owners of generation 1 vehicles the option to have the company buy back the car and to offer lessees a lease cancellation at no cost. If a plan is proposed by Volkswagen and approved by EPA and CARB to substantially reduce emissions from the generation 1 vehicles, Volkswagen will also have to offer that as an option for consumers.

For the generation 2 vehicles, Volkswagen will recall and fix these vehicles so they meet their certified exhaust emissions standards, after the technical solution is approved by regulators. If after extensive testing the solution does not perform as expected and is not approved, Volkswagen must offer to buy back the vehicles. In that case, the company can also seek approval of an emissions modification plan to substantially reduce emissions and, if approved, can offer that as an additional option for generation 2 vehicles.

Under the terms of the settlement, Volkswagen must achieve an overall recall rate of at least 85 percent for each of the generation 1 and generation 2 vehicles recall programs or pay additional sums into the mitigation trust fund. The buyback and lease termination program for generation 1 vehicles will begin within 30 days following court approval of the settlement. Vehicle modifications will become available to eligible owners and lessees once the modifications are approved by regulators.

Vehicle owners and lessees will receive updated information from Volkswagen, Audi and Porsche concerning their available buyback or modification options after today's settlement is approved by the court, and can also obtain information about these options at: www.VWCourtSettlement.com and www.AudiCourtSettlement.com.

The settlement requires Volkswagen to pay \$225 million to fund projects across the country that will reduce emissions of NOx where the 3.0 liter vehicles were, are or will be operated. This funding is intended to fully mitigate the past and future NOx emissions from the 3.0 liter vehicles. That money will be placed in the same mitigation trust to be established under the partial settlement for the 2L vehicles. This \$225 million is in addition to the \$2.7 billion that Volkswagen is required to pay into that trust under the prior settlement. The mitigation trust will be administered by an independent trustee. Beneficiaries, which may include states, Puerto Rico, the District of Columbia and Indian tribes, may obtain funds for designated NOx reduction projects upon application to the trustee.

The emissions reduction program will help reduce NOx pollution that contributes to the formation of harmful smog and soot, exposure to which is linked to a number of respiratory- and cardiovascular-related health effects as well as premature death. Children, older adults, people who are active outdoors (including outdoor workers) and people with heart or lung disease are particularly at risk for health effects related to smog or soot exposure. NO2 formed by NOx emissions can aggravate respiratory diseases, particularly asthma, and may also contribute to asthma development in children.

The provisions of the settlement are contained in a proposed consent decree filed today in the U.S. District Court for the Northern District of California, as part of the ongoing multi-district litigation, and will be subject to public comment period of 30 days, which will be announced in the Federal Register in the coming days. The consent decree will be available for viewing at www.justice.gov/enrd/consent-decrees.

16-1511

[Environment and Natural Resources Division](#)

Topic:

Environment

Updated December 20, 2016

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, September 9, 2016

Volkswagen Engineer Pleads Guilty for His Role in Conspiracy to Cheat U.S. Emissions Tests

James Robert Liang, a Volkswagen engineer, pleaded guilty today for his role in a nearly 10-year conspiracy to defraud U.S. regulators and U.S. Volkswagen customers by implementing software specifically designed to cheat U.S. emissions tests in hundreds of thousands of Volkswagen “clean diesel” vehicles, the Justice Department announced today. Liang’s plea agreement provides that he will cooperate with the government in its ongoing investigation.

Liang, 62, of Newbury Park, California, pleaded guilty today to one count of conspiracy to defraud the United States, to commit wire fraud and to violate the Clean Air Act. He was indicted under seal on June 1, 2016, by a federal grand jury, and the indictment was unsealed today. The case has been assigned to U.S. District Judge Sean F. Cox of the Eastern District of Michigan.

According to the plea agreement, from 1983 until May 2008, Liang was an employee of Volkswagen AG (VW), working in its diesel development department in Wolfsburg, Germany. Liang admitted that beginning in about 2006, he and his co-conspirators started to design a new “EA 189” diesel engine for sale in the United States. According to Liang’s admissions, when he and his co-conspirators realized that they could not design a diesel engine that would meet the stricter U.S. emissions standards, they designed and implemented software to recognize whether a vehicle was undergoing standard U.S. emissions testing on a dynamometer or being driven on the road under normal driving conditions (the defeat device), in order to cheat the emissions tests. Liang admitted that he used the defeat device while working on the EA 189 and assisted in making the defeat device work. In May 2008, Liang moved to the United States to assist in the launch of VW’s new “clean diesel” vehicles in the U.S. market, according to the plea agreement. While working at VW’s testing facility in Oxnard, California, he has held the title of Leader of Diesel Competence.

According to the plea agreement, employees of VW and its U.S. subsidiary met with the EPA and the California Air Resources Board (CARB) to seek the certifications required to sell each model year of its vehicles to U.S. customers. Liang admitted that during some of these meetings, which he personally attended, his co-conspirators misrepresented that VW diesel vehicles complied with U.S. emissions standards and hid the existence of the defeat device from U.S. regulators.

As part of the certification process for each new model year, including model years 2009 through 2016, the co-conspirators continued to falsely and fraudulently certify to EPA and CARB that VW diesel vehicles met U.S. emissions standards and complied with the Clean Air Act, according to the plea agreement. Liang admitted that during this time, he and his co-conspirators knew that VW marketed its diesel vehicles to the U.S. public as “clean diesel” and environmentally-friendly, and promoted the increased fuel economy. Liang and his co-conspirators knew that these representations were false and that VW’s diesel vehicles were not “clean,” he admitted.

In connection with pleading guilty, Liang admitted that he helped his co-conspirators continue to lie to the EPA, CARB and VW customers even after the regulatory agencies started raising questions about the vehicles’ on-road performance following an independent study commissioned by the International

Council on Clean Transportation, which showed that the diesel vehicles' emissions on the road were up to 40 times higher than shown on the dynamometer.

The FBI's Detroit Office and EPA-CID are investigating the case. Deputy Chief Benjamin D. Singer and Trial Attorney Alison L. Anderson of the Criminal Division's Fraud Section, Trial Attorney Jennifer L. Blackwell of the Environment and Natural Resources Division, and Criminal Division Chief Mark Chutkow and Economic Crimes Unit Chief John K. Neal of the U.S. Attorney's Office of the Eastern District of Michigan are prosecuting the case.

16-1030

[Criminal Division](#)

[Criminal Fraud](#)

[Environment and Natural Resources Division](#)

[USAO - Michigan, Eastern](#)

[Download Liang Rule 11 Agreement](#)

[Download Liang indictment](#)

Updated September 9, 2016

Attorney General Loretta E. Lynch Delivers Remarks at Press Conference Announcing Settlement with BP to Resolve Civil Claims Over Deepwater Horizon Oil Spill

Washington, DC
United States

~
Monday, October 5, 2015

Remarks as prepared for delivery

Good morning and thank you all for being here. I am joined by Secretary [Penny] Pritzker from the Department of Commerce; Secretary [Tom] Vilsack from the Department of Agriculture; Administrator [Gina] McCarthy of the Environmental Protection Agency; Deputy Secretary [Michael] Connor from the Department of Interior; Admiral [Paul] Zukunft, Commandant of the U.S. Coast Guard, who served in 2010 as the Federal On-Scene Coordinator for the Deepwater Horizon oil spill; and Assistant Attorney General [John] Cruden of the Justice Department's Environment and Natural Resources Division. We are here today to announce a major step forward in our effort to deliver justice to the Gulf region in the wake of the Deepwater Horizon tragedy – the largest environmental disaster our nation has ever endured.

Five and a half years ago, the world watched as the Deepwater Horizon oil rig exploded, burned and sank into the Gulf of Mexico. Deep below the surface, BP's Macondo well had blown out and was gushing oil into the Gulf. The oil began spreading hundreds of miles from the well, coating the sea floor, forming vast slicks across the surface and staining more than 1,300 miles of coastline. With that explosion, lives were lost. The Gulf was flooded with oil. And the Gulf coast way of life – a uniquely American way of life – was hanging by a thread. Over the course of nearly three months, the Gulf region was inundated with more than three million barrels of oil. And by the time the torrent stopped, it had inflicted unprecedented harm on the economy, the environment and the population of the Gulf region. Ecosystems were disrupted, businesses were shuttered and countless men and women lost their livelihoods and their sense of security.

That's why, in December of 2010, the Department of Justice filed a lawsuit against BP to hold the company accountable and to provide vital relief for the people of the Gulf region. That's exactly what we did. At trial, our litigation team proved that the spill was the result of BP's gross negligence. But our efforts did not stop with the issue of liability. Ensuring that liability translated into real relief for all the inhabitants of the Gulf – people, businesses, fish and wildlife – was the essential next step. Today, I am pleased to announce that we have secured a historic resolution of our pending claims against BP totaling more than \$20 billion – making it the largest settlement with a single entity in American history. The resolution includes civil claims under the Clean Water Act, for which BP has agreed to pay a \$5.5 billion penalty – the largest civil penalty in the history of environmental law. It includes natural resources damages claims under the Oil Pollution Act, for which BP has agreed to pay \$7.1 billion – on top of the \$1 billion it previously committed to pay for early restoration work. And it includes economic damages claims, for which BP has agreed to pay \$4.9 billion to the five Gulf states and up to \$1 billion to local governments.

Once approved by the court, this agreement will launch one of the largest environmental restoration efforts the world has ever seen. Under the RESTORE Act, 80 percent of the \$5.5 billion Clean Water Act penalty will go to help the Gulf recover from the injuries it has suffered. In addition, BP's payments for natural resources damages will help fund Gulf restoration projects that will revitalize damaged habitats, such as coastal wetlands and support the revival of wildlife populations, including marine mammals, sea turtles, oysters and birds. This work will be guided by a comprehensive restoration plan that we are also announcing today and which was developed by a Trustee Council made up of four federal agencies and trustees from all five Gulf states.

Taken as a whole, this resolution is a strong and fitting response. BP is receiving the punishment it deserves, while also providing critical compensation for the injuries it caused to the environment and the economy of the Gulf region. The steep penalty should inspire BP and its peers to take every measure

necessary to ensure that nothing like this can ever happen again. And the resolution's focus on restoring the vitality of the affected areas will add to the important relief work already underway, will provide significant resources to assist the region's ongoing recovery and will help to ensure that Gulf communities emerge from this disaster stronger and more resilient than ever before.

I am proud that the Department of Justice has helped lead the way from tragedy to opportunity. I am thankful for the many partnerships that were crucial to achieving this result. And I am confident that the resolution we have announced today will restore, preserve and protect the precious Gulf environment for many generations to come.

Today's extraordinary resolution would not have been possible without the tireless efforts of the Deepwater Horizon trial team, which is composed of remarkable women and men from the Justice Department's Environment and Natural Resources Division and also our Civil Division. I would also like to recognize and thank our outstanding partners at the EPA; at the Departments of Commerce, Agriculture, Interior and Homeland Security; and in state and local governments throughout the Gulf region. Finally, I would like to acknowledge my predecessor, Eric Holder, who launched this case five years ago and faithfully supervised it for the remainder of his tenure as Attorney General.

At this time, I'd like to introduce Secretary [Penny] Pritzker, who will provide additional details on today's announcement.

Topic:

Environment

Environment and Natural Resources Division
Office of the Attorney General

Speaker:

Attorney General Loretta E. Lynch

Updated November 14, 2016

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Monday, October 5, 2015

**U.S. and Five Gulf States Reach Historic Settlement with BP to
Resolve Civil Lawsuit Over Deepwater Horizon Oil Spill**

***Total Value of Global Settlement Will Top \$20 Billion Largest with a Single Entity in
Justice Department History Assures Continued Restoration of the Gulf Coast***

The United States today joins the five Gulf states in announcing a settlement to resolve civil claims against BP arising from the April 20, 2010 Macondo well blowout and the massive oil spill that followed in the Gulf of Mexico.

This global settlement resolves the governments' civil claims under the Clean Water Act and natural resources damage claims under the Oil Pollution Act, as well as economic damage claims of the five Gulf states and local governments. Taken together this global resolution of civil claims is worth \$20.8 billion, and is the largest settlement with a single entity in the department's history.

Also today, consistent with the settlement, the Deepwater Horizon Trustees Council, made up of representatives of the five Gulf states and four federal agencies, has published a draft damage assessment and restoration plan and a draft environmental impact statement. The plan includes a comprehensive assessment of natural resource injuries resulting from the oil spill and provides a detailed framework for how the trustees will use the natural resource damage recoveries from BP to restore the Gulf environment.

"Building on prior actions against BP and its subsidiaries by the Department of Justice, this historic resolution is a strong and fitting response to the worst environmental disaster in American history," said Attorney General Loretta Lynch. "BP is receiving the punishment it deserves, while also providing critical compensation for the injuries it caused to the environment and the economy of the Gulf region. I am proud that the Department of Justice has helped lead the way from tragedy to opportunity, and I am confident that our actions today will help to ensure that Gulf communities emerge from this disaster stronger and more resilient than ever before."

"Five years after one of the worst environmental disasters in our nation's history, which claimed 11 lives and caused untold damage, we have reached a historic milestone with today's settlement," said Secretary of Commerce Penny Pritzker. "With this settlement, federal, state and local governments and the Gulf coast communities will have the resources to make significant progress toward restoring ecosystems, economies, and businesses of the region. We are committed to ensuring the Gulf Coast comes back stronger and more vibrant than before the disaster. If made final, the settlement will provide the U.S. and Gulf states with the resources and certainty needed for effective restoration planning and improvements."

"This agreement brings renewed hope for a fully restored Gulf of Mexico to millions of Americans who value the Gulf for its contributions to our economy, our environment and plentiful recreational opportunities," said Interior Secretary Sally Jewell. "Today's settlement is a significant step in restoring the natural resources that were impacted by the Deepwater Horizon oil spill and a breakthrough for building back the resilience of this region. The Trustees will continue to work with people along the coast to ensure they have every opportunity to be engaged in these meaningful recovery and restoration efforts that will generate jobs, improve water quality, support our tribal responsibilities and result in an improved wildlife habitat for migratory birds and hundreds of vulnerable species."

"Through this historic settlement, USDA will continue working with rural communities, landowners and other partners to conserve watersheds and working lands," said Agriculture Secretary Tom Vilsack. "This work will benefit the Gulf of Mexico and its associated natural resources as well as help local economies that were damaged by the Deepwater Horizon Oil Spill."

“Today is a day of justice for every family and every Gulf community whose health, land, water, and livelihoods were threatened by the Deepwater Horizon disaster,” said Administrator Gina McCarthy of EPA. “This settlement puts billions of dollars to work to help restore the Gulf, and holds BP publically accountable for changes to its practices, to prevent this kind of disaster from happening again.”

“Today’s settlement ensures that BP repays the Government for its costs in responding to the Deepwater Horizon tragedy,” said Admiral Paul Zukunft of the U.S. Coast Guard Commandant. “The historic civil penalty also sends a clear message of accountability for those who pollute the U.S. environment. In addition, this settlement is a positive step toward restoring our Gulf Coast to health and to ensure that it remains a national centerpiece for economic prosperity, a place of recreation and, most importantly, a pristine home to the generations of Americans who work and reside along its bays, rivers and estuaries.”

On April 10, 2010, less than 50 miles off the coast of Louisiana, the Macondo well suffered a catastrophic blowout. The ensuing explosion and fire destroyed the Deepwater Horizon drilling rig, killing 11 men aboard and sending more than three million barrels of oil into the Gulf of Mexico over a period of nearly three months. Oil flowed within deep ocean water currents hundreds of miles away from the blown-out well, resulting in oil slicks that extended across more than 43,000 square miles, affecting water quality and exposing aquatic plants and wildlife to harmful chemicals. Oil was deposited onto at least 400 square miles of the sea floor and washed up onto more than 1,300 miles of shoreline from Texas to Florida.

The spill damaged and temporarily closed fisheries vital to the Gulf economy, oiled hundreds of miles of beaches, coastal wetlands and marshes and killed thousands of birds and other marine wildlife, among other economic and natural resource injuries.

On Dec. 15, 2010, Attorney General Eric Holder announced a civil lawsuit against BP and several co-defendants, seeking to hold them accountable for the Deepwater Horizon disaster. The federal lawsuit culminated in a three-phase civil trial in which the United States proved, among other things, that the spill was caused by BP’s gross negligence.

Each of the Gulf States – Alabama, Florida, Louisiana, Mississippi and Texas – also filed civil claims against BP relating to the spill, including claims for economic losses and natural resource damages.

Under the terms of a consent decree lodged in federal court in New Orleans this morning, BP must pay the following:

- \$5.5 billion federal Clean Water Act penalty, plus interest, 80 percent of which will go to restoration efforts in the Gulf region pursuant to a Deepwater-specific statute, the RESTORE Act. This is the largest civil penalty in the history of environmental law.
- \$8.1 billion in natural resource damages, this includes \$1 billion BP already committed to pay for early restoration, for joint use by the federal and state trustees in restoring injured resources. BP will also pay up to an additional \$700 million, some of which is in the form of accrued interest, specifically to address any later-discovered natural resource conditions that were unknown at the time of the agreement and to assist in adaptive management needs. The natural resource damages money will fund Gulf restoration projects that will be selected by the federal and state trustees to meet five different restoration goals and 13 restoration project categories. These include restoration focusing on supporting habitats such as coastal wetlands, but also provide for specific resource types, such as marine mammals, fish and water column invertebrates, sturgeon, submerged aquatic vegetation, oysters, sea turtles, birds and lost recreational use, among others.
- \$600 million for other claims, including claims for reimbursement of federal and state natural resource damage assessment costs and other unreimbursed federal expenses and to resolve a False Claims Act investigation due to this incident.

The payments will be made over time and are backed by parent company guarantees from BP Corporation North America Inc. and BP P.L.C.

Additionally, BP has entered into separate agreements to pay \$4.9 billion to the five Gulf states and up to a total of \$1 billion to several hundred local governmental bodies to settle claims for economic damages they have suffered as a result of the spill.

Notice of both the consent decree and the draft damage assessment and restoration plan are published in the federal register. Both will be available for public comment for 60 days. The materials and instructions for commenting on the consent decree can be found at <http://www.justice.gov/enrd/deepwater-horizon>. The materials and instructions for commenting on the draft damage assessment and restoration plan and draft environmental impact statement can be found at www.gulfspillrestoration.noaa.gov. A series of public meetings will be held in the Gulf region and Washington, D.C. to solicit comments on the proposed consent decree and the draft restoration plan.

Earlier settlements:

The settlements announced today are in addition to several earlier criminal and civil settlements of federal government claims concerning the Deepwater Horizon disaster.

First, on Feb. 17, 2012, MOEX Offshore 2007 LLC, which had a 10 percent stake in the well, agreed to settle its liability for the Deepwater Horizon oil spill in a settlement with the United States valued at \$90 million. Approximately \$45 million of the \$90 million settlement was dedicated to directly benefit the Gulf in the form of penalties, as well as coastal and habitat protection projects.

On Jan. 29, 2013, BP Exploration and Production Inc. pleaded guilty to illegal conduct leading to and after the 2010 Deepwater Horizon disaster, and was sentenced to pay \$4 billion in criminal fines, penalties and restitution, including \$2.4 billion for natural resource restoration.

On Feb. 14, 2013, Transocean Deepwater Inc., the Deepwater Horizon's owner and operator, pleaded guilty to violating the Clean Water Act and was sentenced to pay \$400 million in criminal fines and penalties, for its conduct in relation to the disaster. A separate civil settlement imposed a record \$1 billion Clean Water Act penalty on Transocean and required the company to take significant measures to improve its performance and prevent recurrence of this conduct.

15-1231

[Environment and Natural Resources Division](#)

[Office of the Attorney General](#)

Topic:

Environment

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Updated November 14, 2016

An Update from the ABA



Linda Klein
President, American Bar Association

Klein official bio

http://www.americanbar.org/groups/leadership/aba_officers/klein.html

Linda A. Klein



LINDA A. KLEIN
PRESIDENT,
AMERICAN BAR ASSOCIATION
2016 – 2017

Linda Klein is the senior managing shareholder at Baker Donelson Bearman Caldwell & Berkowitz and president of the American Bar Association.

Klein's practice, based in Atlanta, includes most types of business dispute resolution, including contract law, employment law and professional liability, working extensively with clients in the construction, higher education and pharmaceutical industries.

In June 1997, Klein became the first woman to serve as president of the State Bar of Georgia. During Klein's term, she devised a proposal and advocated for the state to allocate funding for Georgia Legal Services and Atlanta Legal Aid to hire lawyers to help indigent victims of domestic violence. She organized a statewide group of community organizations and local and minority bar associations that together convinced the General Assembly to appropriate \$2 million. Since then, the annual appropriations have helped thousands in Georgia with legal issues related to domestic violence.

Klein was one of the first women to lead a prominent Georgia law firm. She served as managing partner of Gambrell & Stolz beginning in 2001 and led the firm's 2007 merger with Baker Donelson, becoming a Baker Donelson board member and Georgia managing shareholder.

She served as chair of the ABA's House of Delegates, the second highest office in the organization, from 2010–2012. She has also served as chair of the Tort Trial and Insurance Practice Section, chair of the Committee on Rules and Calendar of the House of Delegates, chair of the Coalition for Justice, and chair of ABA Day, the Association's Congressional outreach effort. She is a member of the Council of the ABA Section of International Law and also serves as a columnist and on the Board of Editors of Law Practice Management Magazine. In 2004, the American Bar Association honored Klein with the prestigious Margaret Brent Women Lawyers of Achievement Award.

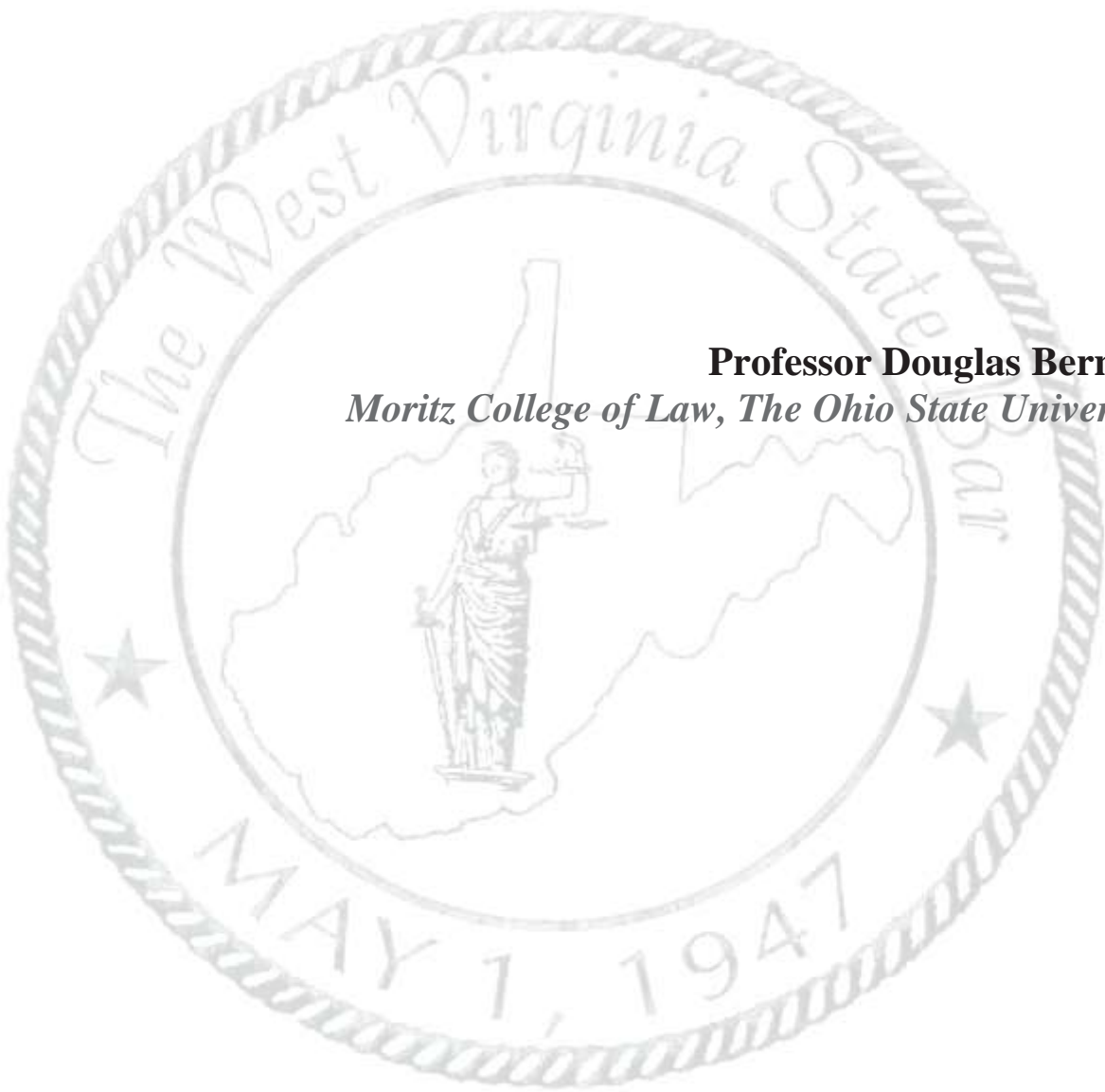
She was an early member of the Board of Directors Network, a nonprofit organization whose mission is to increase diversity on corporate boards and general counsel positions. Her other community activities include leadership in Southface Energy Institute and the Buckhead Coalition. In June, Klein received the Distinguished Service Award, the highest honor bestowed by the State Bar of Georgia. In 2009, Klein was honored with the Randolph Thrower Award for Lifetime Achievement from the State Bar of Georgia and was named to the YWCA Academy of Women Achievers.

Klein is listed in "The Best Lawyers in America", "Who's Who in America" and "Chambers USA." She is regularly named to the "Super Lawyers" top 100 lawyers in Georgia, an honor bestowed upon only nine women in 2014. She is also regularly named one of the top 50 female lawyers in Georgia by "Super Lawyers." In 1998, "Georgia Trend Magazine" named her one of the 100 most powerful and influential Georgians.

Klein earned her J.D. at Washington & Lee Law School in Virginia and her B.A. at Union College in New York.

For a high-resolution image of Linda Klein, click [here](#).

National, State and Local Marijuana Reform Developments



Professor Douglas Berman
Moritz College of Law, The Ohio State University

Douglas A. Berman

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Education:

- A.B., Princeton University, Philosophy
- J.D., Harvard Law School

Areas of Expertise:

- Clinical Education
- Criminal Law
- Death Penalty
- Sentencing

Professor Douglas A. Berman attended Princeton University and Harvard Law School. In law school, he was an editor and developments office chair of the *Harvard Law Review* and also served as a teaching assistant for a Harvard University philosophy course. After graduation from law school in 1993, Professor Berman served as a law clerk for Judge Jon O. Newman and then for Judge Guido Calabresi, both on the United States Court of Appeals for the Second Circuit. After clerking, Professor Berman was a litigation associate at the law firm of Paul, Weiss, Rifkind, Wharton, and Garrison in New York City.

Professor Berman's principal teaching and research focus is in the area of criminal law and criminal sentencing, though he also has teaching and practice experience in the fields of legislation and intellectual property. He has taught *Criminal Law*, *Criminal Punishment and Sentencing*, *Criminal Procedure – Investigation*, *The Death Penalty*, *Legislation*, *Introduction to Intellectual Property*, *Second Amendment Seminar*, and the *Legislation Clinic*.

Professor Berman is the co-author of a casebook, [*Sentencing Law and Policy: Cases, Statutes and Guidelines*](#), which is published by Aspen Publishers and is now in its second edition. In addition to authoring numerous publications on topics ranging from capital punishment to the federal sentencing guidelines, Professor Berman has served as an editor of the [*Federal Sentencing Reporter*](#) for more than a decade, and also now serves as co-managing editor of the *Ohio State Journal of Criminal Law*.

During the 1999-2000 school year, Professor Berman received The Ohio State University Alumni Award for Distinguished Teaching, which is given to only 10 people each year from an eligible pool of nearly 3,000 faculty members. Professor Berman was one of the youngest faculty members to ever receive this award, and he was subsequently asked to chair the university committee that selected recipients in the 2002-03 school year.

Professor Berman is the sole creator and author of the widely-read and widely-cited blog, [Sentencing Law and Policy](#). The blog now receives nearly 100,000 page views per month (and had over 20,000 hits the day of the Supreme Court's major sentencing decision in *United States v. Booker*). Professor Berman's work on the Sentencing Law and Policy blog, which he describes as a form of "scholarship in action," has been profiled or discussed at length in articles appearing in the *Wall Street Journal*, *Legal Affairs* magazine, *Lawyers Weekly USA*, *Legal Times*, *Columbus Monthly*, and in numerous other print and online publications.

In addition, Sentencing Law and Policy has the distinction of being the first blog cited by the U.S. Supreme Court (for a document appearing exclusively on the site), and substantive analysis in particular blog posts has been cited in numerous appellate and district court rulings, in many briefs submitted to federal and state courts around the country, and in dozens of law review articles.

Professor Berman frequently is consulted by national and state policymakers, sentencing commissioners, and public policy groups concerning sentencing law and policy reforms. He has testified before the U.S. House of Representatives and before numerous sentencing commissions. He also is frequently contacted by media concerning sentencing developments by national and local media concerning sentencing developments.

In recent years, Professor Berman has appeared on national television and radio news programs and has been extensively quoted in newspaper articles appearing in nearly every major national paper and many local papers, including *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *Legal Times*, and in pieces from the Associated Press, Reuters, and Knight-Ridder news services.

Professor Berman sometimes serves as a consultant to lawyers working on important or interesting sentencing cases. In most instances, Professor Berman's consulting has been on an *ad hoc* and *pro bono* basis, and it usually involves a quick review of draft briefs and other court filings and then providing general advice on litigation strategies. On some occasions, however, Professor Berman has been formally retained to play a more sustained role in certain cases, including being retained by law firms to provide consulting service on various cutting-edge federal sentencing issues.

National & State Marijuana Laws and Reforms

2017 West Virginia State Bar's Annual Gathering

Douglas A. Berman

Robert J. Watkins/Procter & Gamble Professor of Law,
The Ohio State University Moritz College of Law

1. History of Marijuana Prohibitions and Reforms Nationwide

- A. Early federal prohibition laws enacted right after alcohol Prohibition repealed
- B. Severe early state prohibitions/punishment and 1970 federal CSA scheduling
- C. State decriminalization (including Ohio) and medical marijuana laws
- D. Impact and import of DOJ's 2009/2011/2013 Ogden/Cole Memoranda
- E. Close failure of California legalization initiative in 2010

2. Modern Status of Marijuana Laws and Reform Nationwide

- A. Recreational/adult use in eight states:
 - CO, WA (2012)
 - AK, OR, DC (2014)
 - CA, MA, ME, NV (2016)
- B. Diverse medical marijuana laws in 20 additional states
 - Maryland, Ohio and Pennsylvania as notable nearby programs
- C. Limited CBD "epilepsy oil" laws in 17 states (mostly in south)
 - Kentucky and Virginia in this group
- D. Congress expiring limit on DOJ concerning medical regimes, CARERS bill

3. Continued 2017 Reform Discussions with Extra Uncertainty

- A. Perhaps many more state joining list of medical marijuana states in 2017/18
- B. Perhaps more states joining list of adult use marijuana states in 2017/18
- C. Continued reforms proposed in Congress, but unlikely unless...
- D. Talk by Trump Administration/new AG Sessions of new enforcement priorities

4. Wide Array of Legal Issues for Array of Lawyers

A. Difficult legal issues/conflicts/uncertainty (due in part to federal prohibition)

- Contracts, tax and banking laws and enforcement realities
- Lawyering, legal ethics and formal bar rules
- Labor and employment law
- Family law questions, especially for parental rights
- Administration of criminal laws

B. Difficult legal issues/conflicts/uncertainty for states considering reform

- “Best” regimes for manufacturers and retailers (medical/recreational)
- “Best” regulations for (public?) use and limiting underage access
- Regulation of edibles, vaporizing and other new types of consumption
- Structure/application of DUID laws (*per se*, THC levels, other)
- Tax law details and enforcement seeking to eliminate black market
- Civil/criminal law enforcement challenges and resources

5. Issues/Questions to Watch Closely in Months/Years Ahead

- A. Do more state legislatures embrace/expand medical marijuana programs?
- B. Does any state become first to legalize recreational use via regular legislation?
- C. How do new “Midwestern” medical programs unfold in OH and western PA?
- D. Does more evidence emerge on marijuana reform and opioid problems?
- E. Do any significant congressional reforms proposals move forward?
- F. How can and will Trump Administration move forward on these issues?
- G. Do international developments (e.g., Canadian legalization) matter?
- H. Do any West Virginia leaders look to champions reforms in this arena?

(**Note:** West Virginia Center on Budget and Policy published in August 2016 a report extolling potential economic and budgetary benefits of marijuana reform in the state: <http://www.wvpolicy.org/wp-content/uploads/2016/08/Marijuana-legalization-paper-final.pdf> .)

August 18, 2016

Modernizing West Virginia's Marijuana Laws

Potential Benefits of Decriminalization, Medical Marijuana and Legalization

Tara Holmes

Over the last two decades, states across the country have modernized their marijuana laws to reflect the growing evidence that doing so will help reduce criminal justice costs, help treat some medical conditions, and boost tax revenues and their state's economy. As of 2016, four states and the District of Columbia have legalized the recreational use of marijuana for adults, 25 states (and DC) allow for marijuana to be used for medical purposes, and 21 states have decriminalized possession of small amounts of marijuana. With several states considering ballot measures this November and public support for legalization rapidly growing (53% of Americans support legalization) among all age groups, the number of states taking action to undo restrictions on marijuana is likely to grow.

While most states have taken at least one step toward modernizing their marijuana laws, West Virginia has not. However, bi-partisan legislation has been introduced in West Virginia over the last several years to legalize medical marijuana and tax marijuana for retail sales to adults. A 2013 poll found that a majority of West Virginians supports decriminalizing marijuana and legalizing it for medical use, while 46 percent supported regulating it like alcohol.

As West Virginia continues to be plagued by large budget deficits (a projected \$300 million for FY 2018), an undiversified economy with a fading coal industry, and poor health outcomes, modernizing the state's marijuana laws could be a step in addressing these problems and could help save the state money in the long run.

This report provides an overview of the states that have modernized their marijuana laws in recent years— including decriminalization, medical marijuana, and recreational use – and the implications for West Virginia if it decided to pursue a similar path. It provides an overview of federal and state marijuana laws (Section 1), an estimation of the potential tax revenue from legalizing recreational marijuana in West Virginia (Section 2), an evaluation of some potential benefits from modernizing West Virginia's marijuana laws (Section 3), and recommendations on reforming West Virginia's marijuana laws (Section 4).

KEY FINDINGS

- If marijuana was legalized and taxed in West Virginia at a rate of 25 percent of its wholesale price the state could collect an estimated \$45 million annually upon full implementation. If 10 percent of marijuana users who live within a 200-mile radius of West Virginia came to the state to purchase marijuana, the state could collect an estimated \$194 million.

- In 2010, it is estimated that West Virginia spent more than \$17 million enforcing the state's marijuana laws. Legalizing or decriminalizing marijuana in West Virginia could reduce the number of marijuana-related arrests, especially among African Americans, which in turn, could reduce criminal-justice-related costs.
- The marijuana industry has the potential to add jobs both directly and indirectly. As of September 2015, Colorado had 25,311 people licensed to work in its marijuana industry and over 1,000 retail marijuana businesses. If marijuana were legal in West Virginia it could also have the effect of increasing tourism to the state, particularly in regions with outdoor recreational activities.
- Marijuana may potentially have a positive impact on West Virginia's opioid-based painkiller and heroin epidemic by offering another, less-addictive alternative to individuals who are suffering from debilitating medical conditions.

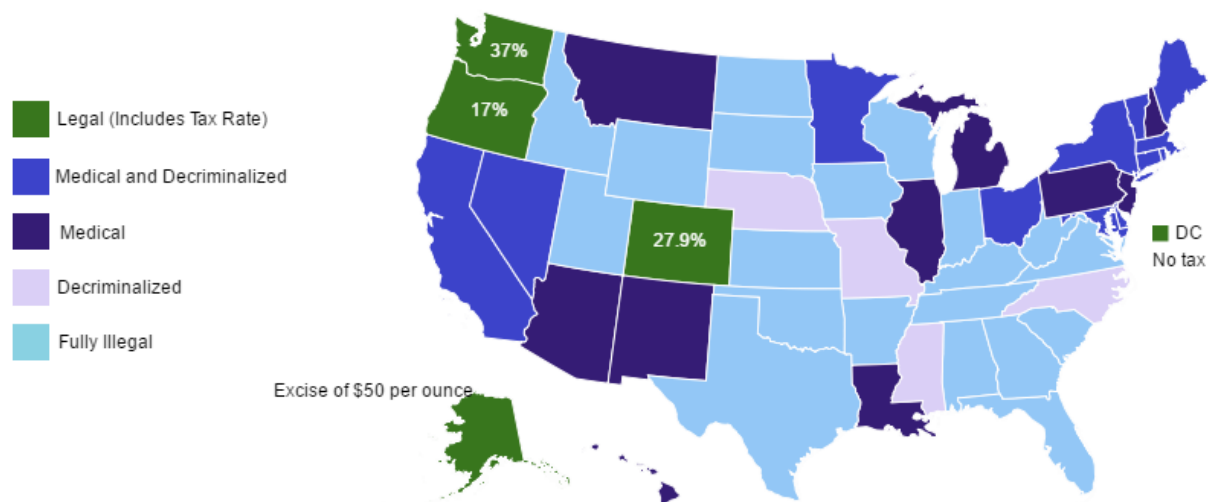
SECTION 1: THE STATE OF MARIJUANA LAWS; DECRIMINALIZATION, MEDICAL USE AND LEGALIZATION

While marijuana has been illegal under federal law since 1972 and is listed as a Schedule 1 drug (along with heroin and LSD) on the Controlled Substances Act (CSA) as a substance with “no accepted medical use,” the federal government has not pursued any direct action to stop states from legalizing it for medical or recreational purposes. Altogether, there are four broad categories of marijuana laws, including states where it is legal, decriminalized, used for medical purposes (aka “medical marijuana”), and fully illegal. A total of four states have legalized and taxed marijuana use for retail sales to adults, while the District of Columbia has legalized it but cannot tax it. Twenty-one states have decriminalized marijuana, 25 have adopted medical marijuana laws, and 20 states have done neither (**Figure 1**). This section will explore these differences. It is important to first explore how the U.S. Department of Justice (DOJ) is handling state action on relaxing their marijuana laws.

While the DOJ has released several agency memoranda since 2009 attempting to define the contours of how the federal government would enforce its existing marijuana laws, the most recent was on August 29, 2013 when former DOJ Attorney General James Cole released an enforcement policy memorandum (Cole Memo) to all U.S. attorneys detailing DOJ priorities when it came to enforcing federal marijuana laws in states with legalized and decriminalized marijuana. The Cole Memo listed eight enforcement priorities in states with modernized marijuana laws, from preventing distribution of marijuana to minors to preventing growing of marijuana on public lands. The Cole Memo stated: “Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.” The Cole Memo further emphasized that its guidance rested on the expectation that “state and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”

While the Cole Memo is a set of agency guidelines to be interpreted by individual U.S. attorneys rather than official statements of law, there is nothing preventing a new administration from reversing course and nullifying these provisions. However, given the massive scale of legalized medical and recreational marijuana across the states, and the significant leeway federal prosecutors have granted states, the trend is toward allowing a stronger state regulatory enforcement of federal marijuana laws is apparent but tenuous.

Figure 1: Current Marijuana Laws in the U.S.



Source: VOX and the Tax Foundation.

21 states have decriminalized marijuana

As of August 2016, 21 states and the District of Columbia have decriminalized the possession of small amounts of marijuana to either a civil infraction or a low-level misdemeanor, with no possibility of jail for qualifying offenses. While this means no criminal record or arrest, there are still more severe penalties for the cultivation, sale, and possession of larger amounts. For example, in North Carolina, possession of less than half an ounce of marijuana carries a \$200 maximum fine and no jail time, while possession of more than one and a half ounces is a felony punishable by three to eight months in prison.¹

The decriminalization of marijuana began in the early 1970s. In March 1972, President Richard Nixon commissioned *The Report of the National Commission of Marijuana and Drug Abuse*, commonly known as the Shafer Commission. It recommended that Congress amend federal law so that the use and possession of marijuana would cease to be a criminal offense and that state legislatures do the same.² While Nixon commissioned the report, he did not agree with the findings and shelved it, saying that when it came to marijuana, an all-out war was needed on all fronts.³

The first state to follow the Shafer Commission recommendations was Oregon in 1973. From 1973 to 1978, 10 states decriminalized the possession of small amounts of marijuana. No decriminalization

policies were passed again until 2001 when Nevada decriminalized the possession of up to one ounce of marijuana and, since then, 10 states have followed suit. The first offense of marijuana possession carries the penalty of a fine ranging anywhere from \$100 in many states to \$300 in Nebraska, or in the case of states where it is now legal, no penalty whatsoever. The amount decriminalized and the fine levied varies from state to state, but the average amount is one ounce or less with a fine of \$100 for adults (See Appendix).

Medical marijuana is legal in 25 states

In 1996, voters passed Proposition 215, making California the first state to legalize marijuana for medical use. Alaska, Oregon, and Washington followed closely behind, legalizing medical marijuana in 1998, with Maine legalizing it in 1999. Currently 25 states and the District of Columbia allow medical marijuana.⁴ Almost all of the states that have adopted medical marijuana have decriminalized it as well. The number of states with medical marijuana laws may grow by the end of 2016. Arkansas and Florida have approved measures for the November 2016 ballot, while North Dakota has submitted signatures for approval on the November 2016 ballot.

Each state sets limits on the amount of medical marijuana people can possess. While some states limit possession based on prescribed supply (e.g. 30 days), other states limit possession based on weight (e.g. ounces). Most of the states that have legalized medical marijuana apply a sales tax to the product, and levy fees on permits and applications on dispensaries and producers. Twelve states apply a state and/or local sales tax, while some states apply an excise tax, gross receipts tax, or a surcharge on medical marijuana.

Ways of qualifying for medical marijuana vary by state. In order to have access to medical marijuana, most states require that the patient have either a medical marijuana card or be listed in a registry.⁵ To become a medical marijuana patient in the majority of states, a physician must either prescribe or recommend medical marijuana; but in New Hampshire, Vermont, and Minnesota, all that is required is that a physician certify the individual has one of the qualifying illnesses for medical marijuana use.⁶

Because marijuana is illegal under federal law a physician cannot “prescribe” marijuana regardless of state law. The laws in Louisiana, Virginia, and Wisconsin use the word “prescribe” and for this reason they are not effective.⁷ In order to navigate around this issue, physicians offer their professional opinion as a “recommendation,” and because it is not a legal document, it is not technically illegal under federal law. This simultaneously allows patients with a physician’s recommendation to meet their state’s legal requirements for medical marijuana while also protecting the physician from federal sanctions.⁸

The Drug Enforcement Agency claims the reason marijuana is still illegal under federal law and is classified as a Schedule 1 substance is that the science does not definitively support its medicinal benefits.⁹ In August 2016, the DEA reaffirmed its decision to not reschedule marijuana because the Food and Drug Administration concluded that the medical and scientific research do not prove that marijuana is safe and effective as a medicine.¹⁰ However, the DEA announced its intent to expand the number of places allowed to grow marijuana for studies and research. As of now, the University of Mississippi is the only institution which is federally licensed to grow marijuana for research purposes.¹¹ Although the DEA

declined to reschedule marijuana, the expanded opportunities for research could prove valuable to the future of marijuana policy.

Marijuana is legalized and regulated in four states

In January 2014, Colorado became the first state to allow the sale of recreational marijuana, with Washington State following closely behind that July. In 2015, the District of Columbia and Oregon also legalized marijuana and Alaska passed a measure in 2016, although retail sales have not yet started. There are five states – Arizona, California, Maine, Massachusetts, and Nevada – set to vote on legalizing marijuana for recreational use this November.

In each case, sellers must be licensed through the state and meet particular health and safety requirements.¹² The state regulation of marijuana often resembles that of state control of alcohol. For instance, Washington directed its Liquor and Cannabis Board to regulate marijuana retailers much like they regulate the sale of liquor.¹³ The Oregon Liquor Control Commission will soon regulate the retail sale of marijuana, but, until then, the Oregon Department of Revenue will collect a temporary tax as it has since January 1, 2016. Prior to that marijuana was untaxed.¹⁴ The regulation of marijuana in Alaska also falls under the Alcohol & Marijuana Control Office.¹⁵

In all states where marijuana is legalized and regulated, sales are for adults age 21 or over and it remains illegal to use marijuana in public, drive under its influence, and transport it outside the state.¹⁶ Each state also has regulations on the quantity and type of marijuana each individual may possess. In Washington, adults can purchase up to one ounce of “bud” (the flowering part of the plant), 16 ounces of edible solids, 72 ounces of marijuana-infused liquids, or 7 grams of concentrates or lotions.¹⁷ In Colorado, residents can purchase up to one ounce of any kind of marijuana product and non-residents can purchase up to a quarter of an ounce.¹⁸

Each state has structured its tax differently but as a certain percentage of the retail or wholesale sales price (see Appendix).¹⁹ In Colorado, there is a 15-percent tax on the wholesale price of marijuana, a 10-percent special sales tax on retail marijuana, along with the state sales tax of 2.9 percent, bringing the total tax rate to 27.9 percent.²⁰ However, Colorado’s 10-percent special sales tax on retail marijuana is scheduled to be reduced to eight percent on July 1, 2017.²¹

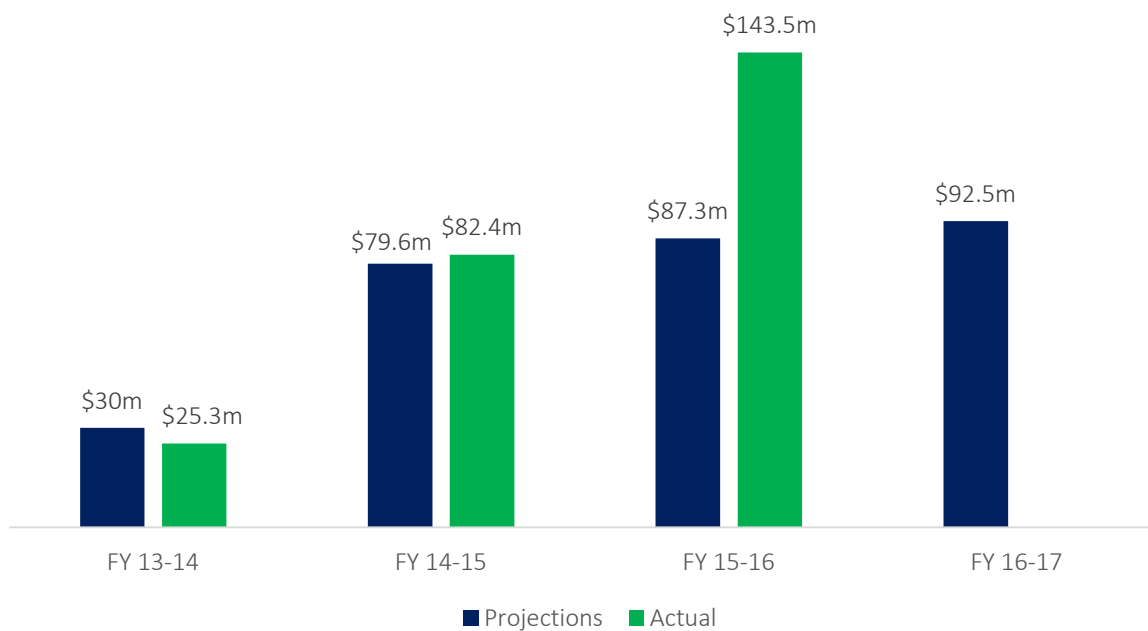
Washington has a 37-percent excise tax on retail marijuana sales, plus the state Business and Occupation gross receipt tax, on top of the state sales tax of 6.5 percent, and local taxes.²² Oregon’s proposed tax was a type-of-product tax rather than an excise tax: \$35 per ounce of marijuana flowers, \$10 per ounce of leaves, and \$5 per immature plant. After legislators became concerned over enforceability, they imposed a 17-percent sales tax instead that will take effect later in 2016.²³ Finally, Alaska has decided to impose a \$50 per ounce tax on marijuana paid by the cultivator when the product is transferred to a retail store or marketing facility.

While marijuana is technically legal in the District of Columbia, it is quite different than in the states mentioned above. In February 2015, it became legal for any person who is at least 21 years old to possess up to two ounces of marijuana and transfer up to one ounce of marijuana to another adult as long as there is no payment made.²⁴ Meaning, of course, that the possession of marijuana is legal, but

not the sale; a person can still be arrested for selling any amount of marijuana to another person.²⁵ In fact, the District is prohibited from establishing any sales structure or state regulation of marijuana.²⁶

In fiscal year 2015, Colorado collected \$135 million in marijuana-related revenues while Washington State collected \$77.8 million. Oregon is on track to collect an estimated \$42 million in 2016, while Alaska predicts it will collect between \$5.1 million and \$19.2 million. Each state differs in how it allocates its marijuana revenues. Colorado dedicates most of its revenue to K-12 public education and local governments, while Washington State allocates 40 percent to the general revenue fund and local governments and 60 percent for substance-abuse prevention, research, education, and health care. Oregon sends 40 percent to schools, 20 percent to mental health, alcoholism, and drug services, 15 percent to state police, 10 percent to cities, 10 percent to counties, and the remaining five percent to the Oregon Health Authority.²⁷ Alaska is expected to dedicate most of its revenues toward corrections, health and social services, and public safety.²⁸

Figure 2: Colorado's Marijuana Tax Revenue Has Exceeded Projections



Source: Revenue projections are from the Colorado Legislative Council Staff, Economics Section 2015 Economic and Revenue Forecast.²⁹ The Fiscal Year 2013-2014 actual revenue is from the 2015 Colorado Department of Revenue Annual Report³⁰ and the actual revenue from Fiscal Years 2014-2016 is from the Colorado Department of Revenue Marijuana Tax Data section on the website.³¹

SECTION 2: ESTIMATING TAX REVENUES FROM LEGALIZED MARIJUANA IN WEST VIRGINIA

It is difficult to estimate the size of an illegal market and how many people will choose to switch a legal one. Estimating revenue from state marijuana taxes is a difficult task. Also, the possibility of nearby states choosing to legalize and regulate marijuana is an important factor.³² A Marijuana Policy Group study suggests that 41 percent of the marijuana consumed is procured from the black market.³³

According to the Institute of Taxation and Economic Policy (ITEP), there are several other factors that make predicting revenues from state marijuana taxes difficult. First, the illegal status of marijuana under federal law makes it difficult to accurately predict potential revenue because, at any point, a future administration could change enforcement priorities and decide to intervene in state-sanctioned marijuana sales.³⁴ Second, large-scale legalization of marijuana production could lead to a drop in marijuana prices by up to an estimated hundred-fold.³⁵ The severity of the drop in prices depends on the extent to which states limit the scale of marijuana sales, but prices could still drop by 90 percent through the use of legal small-scale indoor growing operations.³⁶ It is not clear how much of the market will be taken over by small home-grown marijuana operations, but, since they would go untaxed, it could have a negative impact on the amount of revenue collected.

Third, with any tax comes some level of tax evasion.³⁷ While there is no way to predict the degree to which tax evasion would occur, ITEP suggests the potential is fairly high based on the high level of cigarette tax evasion. Lastly, there is some evidence that marijuana consumption could become a substitute for alcohol consumption which means the revenue from liquor, beer, and wine excise taxes could decrease if recreational marijuana is legalized.³⁸

Another reason it is difficult to estimate revenues is that they are likely to decline as more states legalize marijuana. Also, revenue gain is likely to be very slow initially. In Colorado and Washington, revenue started out slowly, both as consumers became familiar with the new system and as state and local authorities set up the new regulatory infrastructure.³⁹ Keeping this in mind, this section provides estimates of the revenues the state could collect if it taxed marijuana similarly to other states.

Estimating potential tax revenue in West Virginia

In order to estimate what West Virginia could collect in marijuana revenues, it is crucial to estimate how much marijuana is consumed in West Virginia, how much money is spent on marijuana, how many people will remain in the illegal market, and what tax rate to levy.

To determine how many West Virginians consume marijuana on a monthly basis, this analysis uses the most recent data from the National Survey on Drug Use and Health (NSDUH), published by the U.S. Department of Health and Human Services.⁴⁰

The amount of money spent on marijuana in West Virginia's illegal marijuana market every year was determined by multiplying the mid-level estimate of 532,044 ounces by the average price per ounce of marijuana in West Virginia (\$358 per ounce)⁴¹ resulting in an estimated \$190.5 million.

It is difficult to estimate the amount of marijuana people would consume after regulation and legalization. Removing criminal penalties could result in a small increase in consumption. These estimates take into account that a percentage of the marketplace will continue to remain untaxed including medical marijuana, individuals who grow marijuana in their own homes for personal use, and others who will continue to procure their product from the illegal marketplace. Following an analysis by New Jersey Policy Perspective, this study estimates that once the marijuana regulatory structure is fully in place, six percent of consumers would remain outside of the taxable marketplace.⁴²

Table 1: Amount of Marijuana West Virginians Consume Each Year

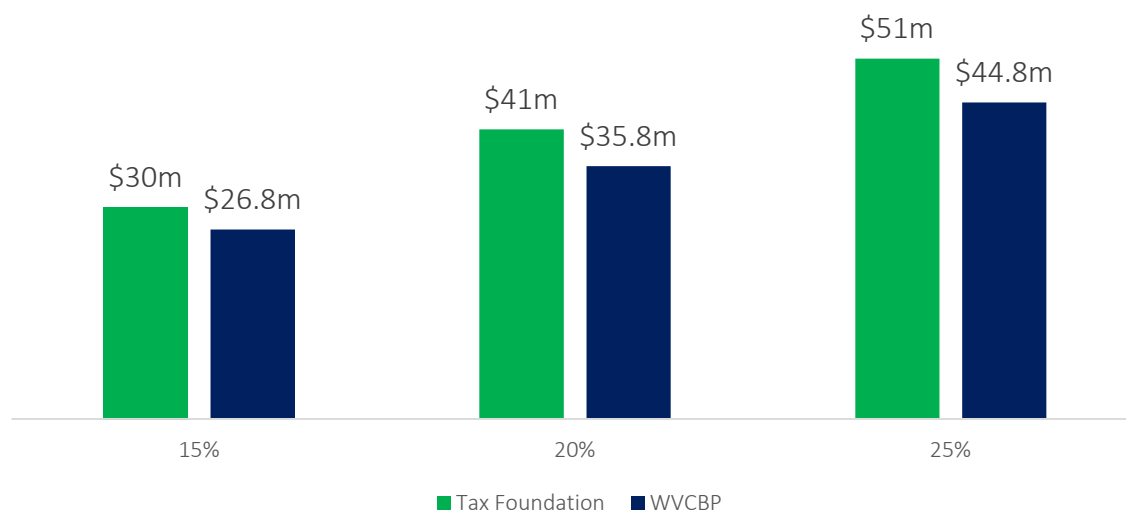
User Frequency in Days per Month	Average Grams per Month	Total Number of Users	Total Ounces Consumed per Year
<1	.30	33,727	4,284
1-5	1.2	29,230	14,844
6-10	5.6	10,118	23,988
11-15	11.7	7,870	38,976
16-20	18	5,621	42,828
21-25	29.9	6,133	77,616
26-31	44.8	17,376	329,508
Total:			532,044

Source: WVCBP analysis of NSDUH 2014 data Note: There is an adjustment made to the population of people who consume marijuana to account for underreporting on the NSDUH survey. The reason for underreporting is attributed to an unwillingness to admit using an illegal substance, presence of users outside the sample frame, and misrepresentation of marijuana use.⁴³ The suggested adjustment is 22.2 percent to all but the top two use frequency cohorts and an 11.1 percent adjustment is applied to the heavy-use cohorts.⁴⁴ This data was combined with estimates on frequency of use in a recent RAND Corporation analysis⁴⁵ and then multiplied by the number of estimated consumers in each category to reach the estimated amount of marijuana consumed in West Virginia per year: 532,044 ounces.⁴⁶

Tax revenue estimates from West Virginia residents alone are \$44.8 million

It is impossible to know the exact amount of marijuana consumed in West Virginia's illegal market. The following graph shows the estimate of potential tax revenue if West Virginia legalized the recreational use of marijuana. The following estimates do not include any anticipated revenue from out-of-state visitors coming into West Virginia to buy marijuana. According to these calculations, tax revenues would range from \$26 million at a 15-percent tax rate to \$44.7 million at a 25-percent tax rate.⁴⁷ The graph includes estimates by the Tax Foundation for comparison.

Figure 3: How Much Would West Virginia Gain in Tax Revenue By Legalizing Marijuana?



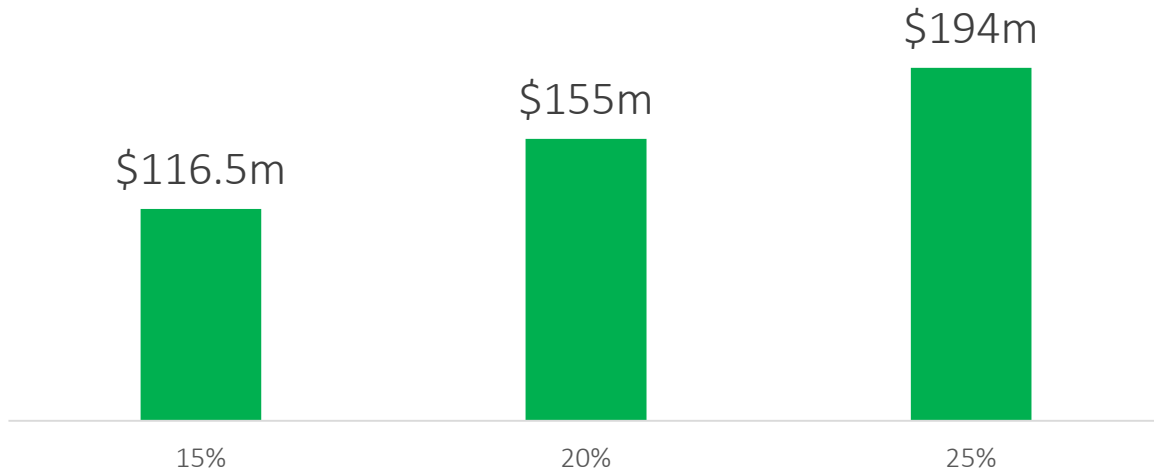
Source: Tax Foundation and the West Virginia Center on Budget and Policy.

Including out-of-state demand, tax revenues could reach \$194 million

Based on a Research and Development Corporation (RAND) analysis for the state of Vermont, if West Virginia were to legalize marijuana, it would be feasible for users to come from a 200-mile radius in order to procure marijuana. (To be clear, this study does not advocate any out-of-state residents breaking the laws of their home state.) The estimate for spending on marijuana in West Virginia by state residents is about \$190 million a year, and about 25 times as many marijuana users live within a 200 mile radius of West Virginia than there are in the state itself.⁴⁸ Total marijuana spending on marijuana including state residents and out-of-state users living within a 200-mile radius of West Virginia has the potential to reach \$5.8 billion a year.⁴⁹

While it is not feasible that West Virginia would capture all of its neighbors' spending, it certainly may pick up a fraction of it – especially if West Virginia is the only state on the east coast in which the sale and cultivation of recreational marijuana would be legal. While it is unlikely that all out-of-state marijuana users in a 200-mile radius would come to West Virginia to legally buy their supply, the following revenue estimates will begin with the assumption that 10 percent of people would do so.⁵⁰ This population would spend an estimated \$586.3 million, resulting in \$194 million in revenues based on a 25-percent tax rate.

Figure 4: Out-of-State Demand for Legalized Marijuana Demand Could Greatly Increase Tax Revenues



Source: West Virginia Center on Budget and Policy analysis of National Survey of Drug Use and Health.

Marijuana regulatory system will require start-up costs

The implementation of a new regulatory system for marijuana will take time and money before it is fully operational, including the development of new rules, hiring and training regulators and administrators, and tracking inventory. For instance, from mid-2012 to fall 2014, the Washington State Liquor and Cannabis Board spent almost \$9 million to develop regulations, process and distribute licenses, conduct training, and obtain marijuana-tracking systems.⁵¹ Many of these costs were incurred before the retail stores opened in July 2014.⁵² Even after the regulatory systems are fully operational, there are annual

expenditures. For example, the Colorado Marijuana State Licensing Authority spent \$8.6 million in Fiscal Year 2015, including enforcement, administration, and taxation services, which comes out to be about nine percent of the total revenue collected from marijuana fees and taxes.⁵³

Designing a tax structure for recreational marijuana can also be time consuming and complicated. Applying state and local sales tax to marijuana is fairly simple: the general rate can be applied to the cost of the marijuana product being sold. Calculating an excise tax on marijuana has proven to be more difficult because it is necessary to balance taxing the product heavily enough to offset negative externalities, like second-hand smoke and driving under the influence, but not so heavily as to result in proliferation of black-market sales.

Typically excise taxes are applied on a per-unit basis rather than a percentage of the final sale price. This is difficult in the case of marijuana because the substance takes so many different forms. Since marijuana can be purchased as a cigarette, bud, live plant, edible, liquid, wax, or a lotion, all with a wide variety of concentrations, a specific excise tax would be difficult to implement. Another disadvantage of a per-unit excise tax is that it does not take into account the amount of THC that the marijuana contains. A flat, per-ounce excise tax could potentially incentivize the cultivation of stronger marijuana because it would have a higher sale price, but be subject to the same tax rate as marijuana with lower THC levels.⁵⁴ Some suggest that the per-unit excise tax would function more effectively if it were applied to the level of THC contained rather than the marijuana's weight, mirroring the taxation of alcohol.⁵⁵

Another option is implementing a value-based excise tax. One advantage this has over a per-unit tax is that it would capture the same percentage of overall spending on marijuana even if the price of the substance increases or decreases.⁵⁶ Value-based excise taxes also have the benefit of being more closely linked to the potency of the marijuana being sold: high THC strains are generally more expensive than weaker strains so they would inherently be taxed more heavily. Colorado, Washington, and Oregon have all taken a value-based approach in designing their tax structures.

SECTION 3: POTENTIAL BENEFITS OF MODERNIZING WEST VIRGINIA'S MARIJUANA LAWS

While regulation and taxation of recreational marijuana could potentially boost West Virginia's revenues, the state could also benefit from decriminalizing marijuana and allowing it to be used for medicinal purposes. This section will explore those potential benefits and how some of the drawbacks from legalizing marijuana could be addressed.

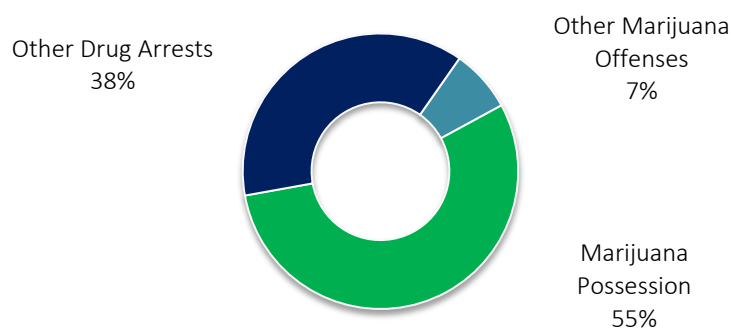
Decriminalization or legalization of marijuana could reduce criminal justice costs

Under current West Virginia law, possession of any amount of marijuana is a misdemeanor punishable by not less than 90 days nor more than 6 months in jail and a fine of not more than \$1,000.⁵⁷ But for first-time offenders of possession of less than 15 grams of marijuana, the court can give the offender probation including drug testing.⁵⁸ Possession with the intent to distribute can result in a felony punishable by no less than one year and no more than five years imprisonment and a fine of up to \$15,000.⁵⁹ The penalty for cultivation of marijuana depends on the aggregate weight of the plants found and whether or not there was intent to distribute.⁶⁰ While the possession, cultivation, and distribution

of marijuana is punishable by law in West Virginia, Senate Bill 447 was passed in 2002 that allows farmers to “plant, grow, harvest, possess, process, and sell hemp” commercially that has no more than one percent THC.⁶¹⁶²

According to data from the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program, there were 7,986 drug arrests in West Virginia in 2010, with the majority (63 percent) being for marijuana.⁶³ Approximately 88 percent of marijuana arrests in 2010 were for simple possession.⁶⁴ According to a recent report from the American Civil Liberties Union (ACLU), the direct annual fiscal cost of marijuana possession enforcement in 2010 (not including any downstream factors) in West Virginia was \$17.4 million.⁶⁵

Figure 5: Marijuana Accounts for More than Half of All West Virginia Drug Arrests

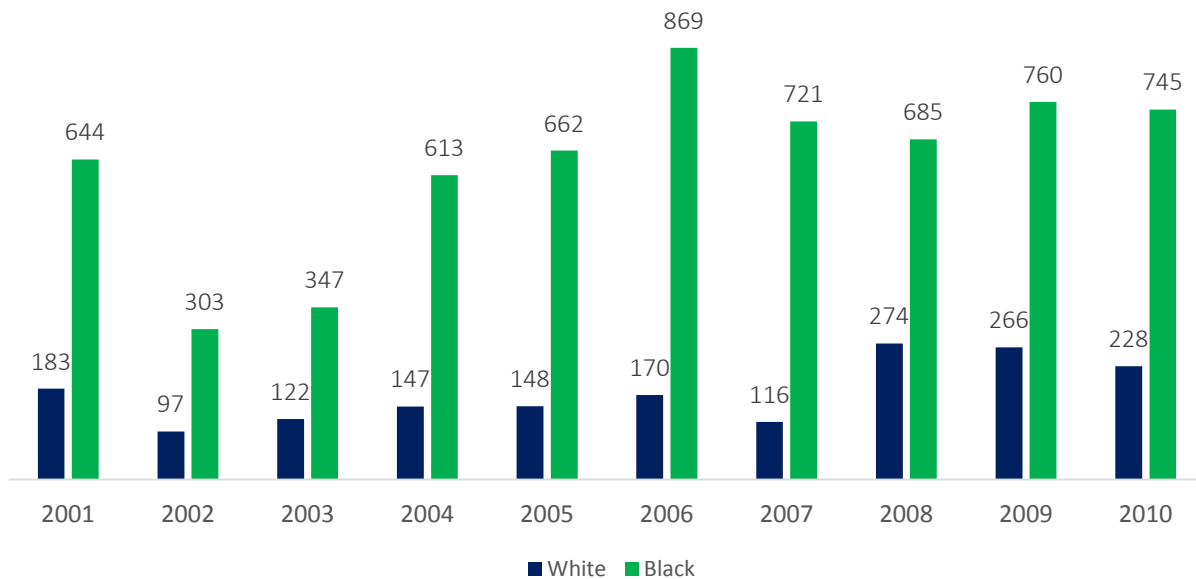


Source: American Civil Liberties Union, June 2013

While it is too early to draw any definitive conclusions about the potential effects of marijuana legalization on public health and safety due to a lack of historical data, a report by the Colorado Department of Public Safety finds marijuana arrests dropped in Colorado by 46 percent from 2012 to 2014.⁶⁶ Also, in 2012, marijuana was responsible for six percent of all arrests, while in 2014 that number fell to three percent.⁶⁷ Colorado’s property crime rate decreased three percent from 2009-2014 while the violent crime rate decreased by six percent.⁶⁸

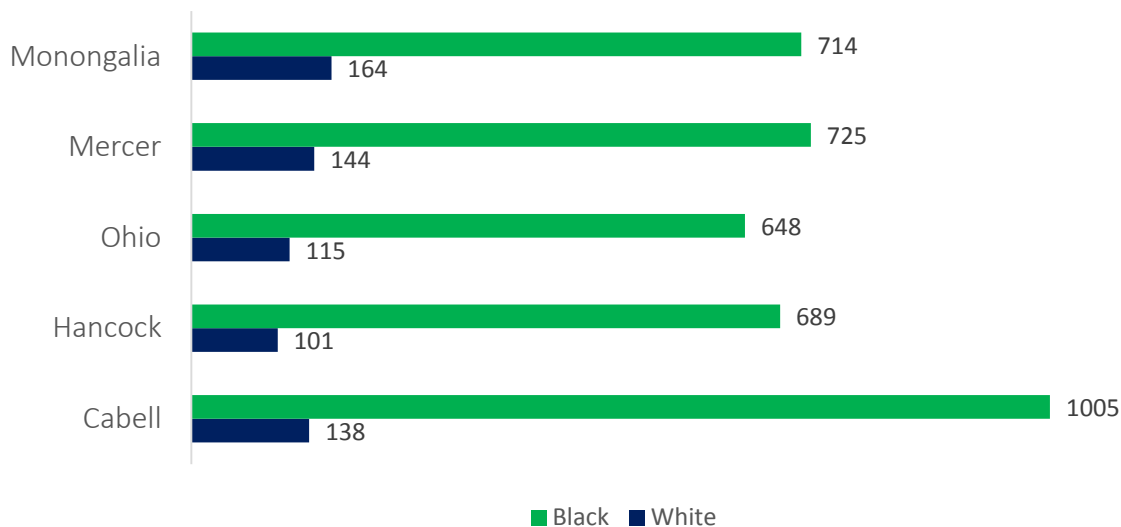
Decreasing marijuana-related arrests is also a racial-justice issue. Although whites and blacks use marijuana at roughly the same rates, according to the ACLU, blacks in West Virginia are about 3.3 times more likely than whites to get arrested on a marijuana possession charge.⁶⁹ This rate varies significantly by county. In Cabell County, African-Americans are 7.3 times more likely to get arrested for marijuana possession; in Wood County, 8.8 times more likely; and in Kanawha County, 3.2 times more likely.⁷⁰ There are 15 counties in West Virginia with racial disparity in arrest rates on marijuana-related charges higher than the national average.⁷¹

Figure 6: Statewide, Blacks More Likely to Be Arrested for Marijuana-Possession Crimes



Source: American Civil Liberties Union and the Federal Bureau of Investigation.

Figure 7: Some West Virginia Counties Have Large Racial Disparities in Arrest Rates



Source: American Civil Liberties Union.

Note: All arrest rates are per 100,000 people and are based on 2010 data.

The repercussions of an arrest for marijuana possession can have a longer-lasting impact than just spending some time in jail. In many states, the possession of marijuana can result in a felony conviction, often times preventing the person from voting, owning a firearm, or enlisting in the military.⁷² A conviction on drug charges can also have consequences for education: in 2014, around 200,000 college students lost their federal financial aid eligibility because of a drug conviction.⁷³ Of course, not all drug charges result in a felony conviction: only about six percent of marijuana cases lead to felony

convictions, with the rest treated as misdemeanors.⁷⁴ And although these arrests may not result in a felony conviction, they end up on a person's record. A misdemeanor conviction can also result in negative consequences including suspension of a driver's license, the inability to get insurance, and loss of access to public housing.⁷⁵ Because there is a huge racial disparity in marijuana-related arrests, these consequences disproportionately affect people and communities of color.

The decrease in marijuana-related arrests would not only benefit individuals, but the state budget as well. According to the ACLU the low-level estimated cost of a marijuana possession arrest is \$750 plus \$95 a day in jail costs. With an average time spent in a local jail or county correctional facility of 5.5 days, just one marijuana possession arrest can cost the state over \$1,200.⁷⁶

If marijuana were legal or decriminalized, it would reduce the number of people in jail and who have criminal records for non-violent, marijuana possession related crimes, while saving the state money in corrections costs.

Medical marijuana can help treat debilitating conditions and help with opioid epidemic

Since West Virginia has the third-highest cancer-related death rate in the nation, its residents may benefit from access to medicinal marijuana.⁷⁷ There is evidence that medicinal marijuana helps with nausea and vomiting due to chemotherapy, as well as reducing pain.⁷⁸ There are numerous international and U.S.-based health organizations supporting legal access to medical marijuana.⁷⁹ In a poll conducted by Public Policy Polling in July 2014, 56 percent of West Virginians supported allowing "seriously terminally ill patients to use medical marijuana if their doctors recommend it."⁸⁰⁸¹ Some of the debilitating conditions that usually qualify for a medical marijuana license include cancer, cachexia, chronic pain, Crohn's, glaucoma, HIV/AIDS, severe nausea, ALS, epilepsy, multiple sclerosis, muscular dystrophy, Parkinson's disease, severe fibromyalgia, and Tourette's syndrome.⁸²

Because marijuana is listed as a Schedule 1 drug on the CSA, it is difficult for researchers to conduct extensive research on the therapeutic capabilities of marijuana. Between 2010 and 2015, the federal government provided marijuana for research purposes to an average of nine researchers a year.⁸³ One ongoing study on the use of marijuana to treat veterans with PTSD has been struggling for more than five years to get off the ground.⁸⁴ That said, a recent study found that medical marijuana reduced the frequency of migraine headaches in patients from 10.4 to 4.6 per month.⁸⁵ A 2016 study found that medical marijuana laws are associated with significant drops in violent crime, while a 2013 study found that medical marijuana legalization is associated with an eight to 11 percent reduction in traffic fatalities.⁸⁶

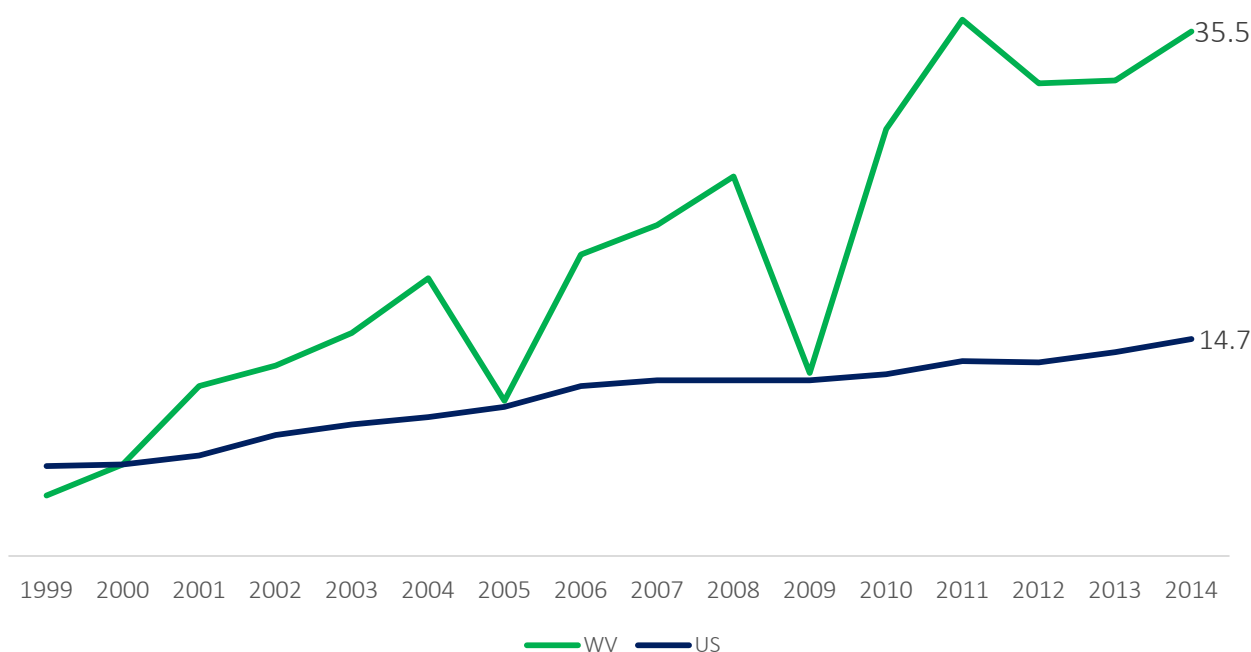
While the research on the medicinal effects of marijuana is limited, there is evidence that suggests that it could serve as a substitute to opioid-based prescription painkillers for treating chronic pain. According to the findings of a 2015 study published by the National Bureau of Economic Research, access to state-sanctioned medical marijuana dispensaries is linked to a decrease in both prescription painkiller abuse and painkiller overdose.⁸⁷⁸⁸⁸⁹ The same study shows that states with medical marijuana saw 24.8 percent fewer deaths from painkiller overdoses than those that do not allow medical marijuana.⁹⁰

West Virginia is in the midst of an opioid epidemic, particularly with recent revelations about prescription painkiller distributors fueling pill mills in southern counties.⁹¹ The opioid epidemic began with the over-prescription of legal painkillers. In the 1990s, doctors began to see that America had a serious pain problem. They used opioid-based painkillers like OxyContin, Percocet, and Vicodin as a solution.^{92,93} A recent report shows that West Virginia has the third-highest opioid prescription rate in the nation, with 137.6 prescriptions per 100 residents,⁹⁴ which has led to widespread abuse and overdose deaths. The subsequent crack down caused people to switch to cheaper, more potent opioids like heroin and fentanyl.⁹⁵

Since 2000, the U.S. has experienced a 137 percent increase in drug-overdose deaths, with a 200 percent increase in the rate of overdoses involving opioid painkillers and heroin.⁹⁶ In 2014, 47,055 drug overdose deaths occurred in the United States.⁹⁷ In West Virginia from 2013 to 2014, there was a 10.2 percent increase of the rate of opioid-related overdose deaths from 32.2 to 35.5 per 100,000 residents. West Virginia led the nation with the highest rate of opioid-related overdose deaths in both years.⁹⁸ In 2014, the rate of opioid-related overdose deaths in West Virginia (35.5) was more than double the national rate (14.7).⁹⁹ Overdoses from prescription painkillers are a driving factor in the increase in opioid overdose deaths: at least half of all opioid overdose deaths involve a prescription opioid.¹⁰⁰

Figure 8: West Virginia Lead the Nation in Opioid-Related Overdoses, 2013

State Had 35.5 Opioid-Related Deaths Per 100,000 Residents



Source: Deaths are classified using the International Classification of Diseases, Tenth Revision (ICD-10). Drug-poisoning deaths are identified using underlying cause-of-death codes X40-X44, X60-X64, X85, and Y10-Y14. Age-adjusted death rates were calculated using the direct method and the 2000 standard population.^{101,102}

While opioid-related abuse and overdose deaths are on the rise, many Americans are still suffering from chronic pain that needs to be treated. According to one study, 30.7 percent of people in the United States suffer from chronic pain.¹⁰³ Socioeconomic status is also a factor, with an increased likelihood of chronic pain suffered by those at the lowest income level.¹⁰⁴ Rather than prescribing opioid-based painkillers, it is important to explore other options such as medical marijuana.¹⁰⁵¹⁰⁶¹⁰⁷ A 2015 study conducted by the Journal of the American Medical Association (JAMA) found that chronic-pain sufferers experienced a 30 percent or greater reduction in pain when consuming marijuana compared to a placebo.¹⁰⁸ This study found evidence to support the use of cannabis for the treatment of chronic pain and spasticity.¹⁰⁹ A 2013 poll shows that 57 percent of West Virginians believe that the use of medical marijuana is a safer treatment than OxyContin for debilitating pain.¹¹⁰

A study published in July 2016 in *Health Affairs* found that there was a decrease in prescription medication use in Medicare Part D in states where a medical marijuana law was in effect.¹¹¹ The study suggests that when a medical marijuana law is implemented, there is a reduction of between 265 daily doses and 1,826 daily doses filled per physician per year with the largest decrease being for chronic pain (1,826).¹¹² Not only did the study show a decrease in prescriptions, it also found that this decrease led to savings in prescription drug spending in Medicare Part D. In fact, states with medical marijuana laws saved a combined \$165.2 million between 2010 and 2013.¹¹³ Although this study only focused on a very small percentage of people who use medical marijuana and who are Medicare Part D enrollees, it could have broader implications. With the third-highest opioid-prescription rate in the nation, West Virginia could likely benefit from any reduction in prescription medication.

Over the last several years, legislators in West Virginia have introduced bills to approve medical marijuana. In 2014, Delegate Mike Manypenny introduced House Bill 4264, or “The Compassionate Use Act for Medical Cannabis.” Two years later, Senator Jeff Kessler introduced a similar bill (Senate Bill 640) with bi-partisan support and Delegate Bill Flanigan also introduced bi-partisan legislation (House Bill 4680) to create a medical exemption to the state’s current criminal laws regarding marijuana use. In June of 2016, Delegate Mike Pushkin introduced bipartisan legislation (House Bill 114) to decriminalize, legalize and allow for medical marijuana.

Legalization could grow jobs and boost tourism

In September 2015, there were 25,311 people in Colorado with occupational licenses related to the marijuana industry¹¹⁴ and as of August 1, 2016 there were 440 licensed retail marijuana stores, 583 cultivations, and 198 product manufacturers. A cultivation facility employs an average of around 15 employees, a manufacturing facility employs about 18, and an average retail dispensary employs around 10 employees per \$1 million in annual sales and 20 employees per \$2 million.¹¹⁵ Assuming these employment estimations are accurate, there are potentially 16,000 to 20,000 jobs in Colorado directly related to the retail marijuana industry.

The presence of a cultivation facility, a manufacturing facility, and a retail dispensary in one town has the potential to create up to 53 full-time jobs. According to a report by the Marijuana Policy Group, the average annual earnings for low-skill positions in cultivation, manufacturing, and dispensary operations

is \$25,000 and for high skill positions/management is \$50,000, resulting in an estimated \$1.25 million in total labor income related to marijuana cultivation, production, and sales.

It is difficult to know exactly how many people are currently working in the marijuana industry because the Bureau of Labor Statistics does not keep track of these occupations because marijuana is illegal under federal law. While there is not much reliable information on the subject of job creation, if these estimates are accurate, it could prove very beneficial to the state of West Virginia. As of June 2016, West Virginia was tied for the fourth-highest rate of unemployment with 6.2 percent.¹¹⁶

Because the recreational use of marijuana is legal in so few states, legalizing it in West Virginia could bring in out-of-state visitors. The Colorado Department of Revenue found that around 44 percent of its metro area and 90 percent of its mountain community sales of recreational marijuana were to out-of-state visitors.¹¹⁷ Tourist-driven marijuana revenues, however, could be short-lived if more states, particularly surrounding states, legalize retail marijuana sales.¹¹⁸

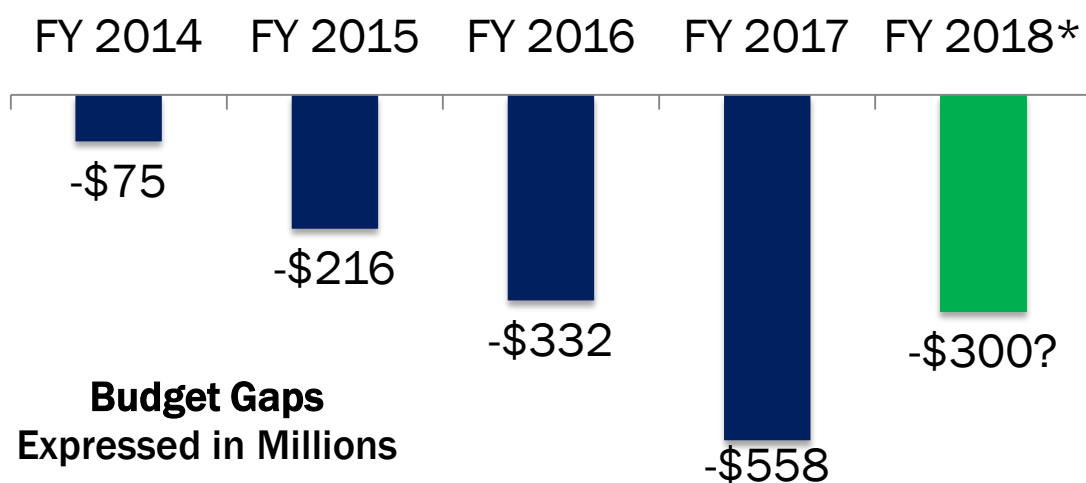
Marijuana legalization could boost tax base and address chronic budget gaps

West Virginia has experienced large budget shortfalls over the last several years. The estimated budget gap for 2018 is expected to top \$300 million. While the coal-industry downturn and low natural gas prices have played a part, phased in tax cuts over the last decade have reduced the state's tax base by at least \$425 million annually. While taxing and regulating marijuana retail sales will not solve the state's budget woes, it could, over time, provide additional revenue to help meet the state's budget priorities.

Revenues from marijuana could also help address the state's opioid crisis by investing in additional substance-abuse-treatment programs. According to the National Institute of Drug Abuse, every dollar invested in addiction-treatment programs generates a return of between \$4 and \$7 in reduced drug-related crime and criminal-justice costs.¹¹⁹ When adding in savings related to health care, total savings can exceed costs by a ratio of 12 to 1.¹²⁰

Figure 9: No Clear End for West Virginia's Budget Deficit

Base budget gap for FY 2018 is projected to be over \$300 million*



Source: West Virginia State Budget Office.

Marijuana is not harmless, but states are finding solutions for its drawbacks

While marijuana has been shown to have some medicinal benefits, it may also have some negative side effects. A recent study found that secondhand smoke from marijuana may impair vascular function.¹²¹ Another recent study published by JAMA has shown that between 2009 and 2015 there was an increase in the number of hospital visits for marijuana exposure in young children,¹²² the vast majority of which came from ingesting THC-infused edibles. Edibles pose a unique problem because they are marijuana-infused products designed to take an appetizing form. As of 2014, Colorado has implemented several preventative regulations in order to minimize potential harm to children, including warning labels, child-resistant packaging, dose limitations, public health education, as well as marketing and advertising limitations.¹²³ Another preventative measure will begin October 1, 2017 that prohibits production and sale of edibles in the shape of humans, animals, or fruits in order to make the products less appealing to children.¹²⁴

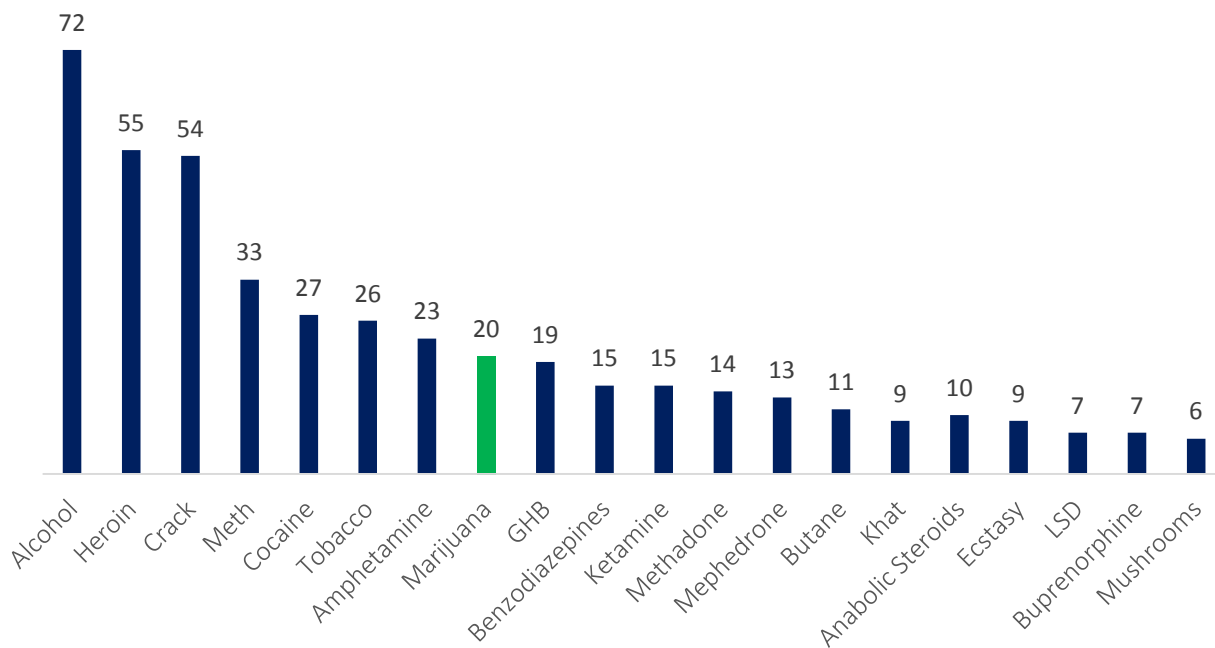
A common claim by opponents of marijuana legalization is that marijuana functions as a gateway drug. Research has shown that the risk of hard-drug use is based more on an individual's propensity to use drugs and the opportunities to use them, than on marijuana use alone.¹²⁵ The marijuana gateway effect may exist if people who are purchasing marijuana in the black market experience an increase in exposure and access to hard drugs.¹²⁶ If marijuana were legalized, users would have the option of buying marijuana legally rather than taking part in the black market, thus potentially decreasing their exposure to hard drugs.

Many believe that marijuana is a very addictive drug when, in fact, it has a much lower risk of dependence than many other drugs. For instance, 32 percent of tobacco smokers, 23 percent of heroin users, and 15.4 percent of alcohol drinkers developed a dependency whereas only nine percent of marijuana users did.¹²⁷ Marijuana users are at far less risk of becoming dependent than tobacco smokers and those who drink alcohol, yet both of these substances are legal and regulated.

Not only does marijuana have a lower risk of dependence, it is also not as harmful overall as many other drugs. A study conducted by the Independent Scientific Committee on Drugs ranked drugs on a scale of 1-100 based the harmfulness of the drug to the user and its harm to others. The study found that alcohol was the most harmful drug overall.¹²⁸ In the United States, there are more than 480,000 tobacco-use-related deaths annually and excessive drinking of alcohol caused approximately 88,000 deaths from 2006-10.¹²⁹

As discussed above, West Virginia is experiencing a very serious drug epidemic. Offering access to marijuana could prove beneficial in helping curb overdose deaths because it is virtually impossible to overdose on marijuana, making it far safer than a majority of legal and illegal drugs. For instance, the median lethal dose for alcohol is .40 percent blood alcohol content (BAC) and the lethal dose of tobacco ranges from 40-60mg.¹³⁰¹³¹ It would take about 10 times the "normal" amount of alcohol (two-12 ounce beers) within 5 or 10 minutes to potentially result in death.¹³² However, in order to induce death by smoking marijuana, that person would have to consume 20,000 to 40,000 times as much marijuana as is generally contained in one marijuana cigarette.¹³³ To put this in perspective, aspirin could potentially induce a lethal response in some people at 20 times the recommended dose, or 40 aspirin for an adult.¹³⁴

Figure 10: Marijuana is Less Harmful than Alcohol and Tobacco
Harm level on a scale of 1-100



Source: Independent Scientific Committee on Drugs¹³⁵

A concern of those who oppose marijuana legalization is that crime would increase. While it is still too early to have data that proves or disproves this argument, one study has shown that the legalization of medical marijuana is not predictive of higher crime rates and may, in fact, be linked to reductions in homicides and assaults.¹³⁶ Legalization would also reduce criminal-justice costs and improve overall social welfare by eliminating criminal charges for minor marijuana offenses.¹³⁷

CONCLUSION AND RECOMMENDATIONS

There are a variety of ways policymakers could modernize West Virginia's marijuana laws, from taking steps to decriminalize small amounts of marijuana to full legalization and regulation. Decriminalization, medical use, and legalization of marijuana all have benefits, depending on the goals of lawmakers. Policymakers should also be cognizant of the interplay with federal law and how this could impact marijuana legalization for recreational and medical uses.

The decriminalization of marijuana possession has the potential to decrease marijuana-related arrests and, in turn, decrease the amount spent on marijuana-law enforcement. While this could result in a more cost-effective criminal justice system, the more important impact would be in addressing the racial inequality of marijuana-possession arrests. The legalization of medical marijuana could have a positive impact on the current heroin and opioid painkiller epidemic the state is facing while also helping West Virginians with painful and debilitating conditions.

If the goal of policymakers is to modernize the state's marijuana laws in order to generate revenue, there are certain considerations to keep in mind. Lawmakers should think carefully about the approach to taxing and regulating marijuana while paying attention to short-term as well as long-term effects of setting up a regulated system. One of the most important details is creating a regulated and taxed marijuana market that will end the black market. This means not taxing so heavily as to give marijuana consumers an incentive to stay in the black market. One approach that the state could take to help shut down the black market is to phase-in the implementation of marijuana taxes gradually as the legal market becomes fully operational.¹³⁸

Lawmakers could also earmark the revenue to pay for particular public services like education. For instance, Colorado budgeted the first \$40 million each year for public school construction and Washington dedicates 15 percent of marijuana tax revenue for a substance-abuse program. The earmarked funds could be directed toward programs that offset the negatives externalities of marijuana consumption, like drug abuse prevention and treatment programs, or other health care-related programs. The argument can be made that marijuana should not be legalized because it is not necessarily a harmless substance. Yet, alcohol and tobacco could be seen as more harmful yet are legal. Their potential dangers are offset through the appropriate level of taxation. It makes little sense not to do the same with marijuana.

APPENDIX

States with Medical Marijuana Laws

State	Year Passed	Statutory Language	Date First Effective	Possession Limit	Taxes
Alaska	1998	Statute Title 17, Ch. 37	March 4, 1999	1 oz usable; 6 plants (3 mature, 3 immature)	
Arizona	2010	Prop. 203	May 7, 2013	2.5 oz usable; 12 plants	5.6% sales tax; local taxes vary
California	1996	SB 420	November 6, 1999	8 oz usable; 6 mature or 12 immature plants	7.5% sales tax; local taxes vary
Colorado	2000	Amendment 20	June 1, 2001	2 oz usable; 6 plants (3 mature, 3 immature)	2.9% sales tax; local taxes vary
Connecticut	2012	HB 5387	October 1, 2012	2.5 oz usable	6.35% state sales tax
DC	2010	SB 17	July 27, 2010	2 oz dried	6% sales tax
Delaware	2011	L18-0210	July 1, 2011	6 oz usable	Gross receipts tax if above \$1.2 million in revenue
Hawaii	2000	SB 862	December 28, 2000	4 oz usable; 7 plants	
Illinois	2013	HB 1	January 1, 2014	2.5 oz usable	7% excise tax at wholesale level; 1% sales tax
Louisiana	2016	SB 271	August 1, 2016	30 day supply of non-smokable	

Maine	1999	LD 1296	December 22, 1999	2.5 oz usable; 6 plants	5% sales tax; 7% meals/rooms taxes for edibles
Maryland	2014	SB 923	June 1, 2014	30 day supply	
Massachusetts	2012	Question 3	January 1, 2013	60 day supply	
Michigan	2008	Prop. 1	December 4, 2008	2.5 oz usable; 12 plants	
Minnesota	2014	SF 2471	May 30, 2014	30 day supply of non-smokable	
Montana	2004	SB 423	November 2, 2004	1 oz usable; 4 plants	
Nevada	2000	NRS 453A NAC 453A	October 1, 2001	2.5 oz usable; 12 plants	2% excise tax at wholesale retail level
New Hampshire	2013	HB 573	Signed into law July 23, 2013; not yet effective	2 oz usable	
New Jersey	2010	SB 119	Signed into law January 18, 2013; 5 dispensaries operational as of March 1, 2016	2 oz usable	7% sales tax
New Mexico	2007	SB 523	July 1, 2007	6 oz usable; 16 plants (4 mature, 12 immature)	Receipts tax of 5% to 9%
New York	2014	A6357	January 7, 2016	30 day supply non-smokable	7% excise tax; 7% sales tax
Ohio	2016	HB 523	Signed into law June 8, 2016		5.75% state sales tax; local taxes vary
Oregon	1998	SB 161	December 3, 1998	24 oz usable; 24 plants (6 mature, 18 immature)	
Pennsylvania	2016	SB 3	Signed into law April 17 2016; effective 30 days after passage	30 day supply	Growers/ processors pay 5% tax
Rhode Island	2006	SB 185	January 3, 2006	2.5 usable; 12 plants	Compassion center surcharge of 4%; 7% sales tax
Vermont	2004	SB 17	May 30, 2007	2 oz usable; 9 plants (2 mature, 7 immature)	
Washington	1998	SB 5073	November 3, 1998	24 oz usable; 15 plants	Treated same as retail

Source: National Conference of State Legislatures and Procon.org.

Recreational Marijuana Tax Rates by State

State	Statutory Language	Marijuana Retail Sales Began	Marijuana Tax	Other Taxes
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Colorado	1 CCR 212-2	January 1, 2014	15% tax on wholesale marijuana price	10% special sales tax; 2.9% sales tax; business license fees; local marijuana sales tax
Washington	RCW 69.50.535; WAC 314-55-089	July 8, 2014	37% excise tax on sales price.	State Business and Occupation (B&O) taxes; state and local sales tax
Oregon	ORS Chapter 475B	October 1, 2015	25% excise tax on sales price. Drops to 17% in late 2016	Localities can add another 2% tax
Alaska (not yet in effect)		Late 2016	\$50 per oz on marijuana cultivator, or approximately 20% effective tax rate.	
Washington, D.C.	B21-0023	February 26, 2015	Federal law prohibits DC from taxing marijuana	

Source: Tax Foundation.

Decriminalization Laws

State	Year Law Passed	Amount of Marijuana Policy Applies to	First Offense Penalty	Subsequent Offense Penalties	Classification for First Offense	Citations
Alaska	2014	1 ounce, six plants	No penalty for those 21 and older	No penalty for those 21 and older	N/A	Alaska Stat. 17.38.020
California	1976; expanded in 2010	28.5 grams or less	\$100 fine	Same as first offense	Infraction	Cal. Health & Safety Code 11357
Colorado	2012 (legal); 1975 and 2010 (fining possession)	Adults 21 and older: no penalty for up to 1 ounce, six plants. Under 21: fine applies to 2 ounces and under	No penalty for those 21 and older; \$100 fine for those under 21	No penalty for those 21 and older	N/A for 21 and up: Criminal class 2 petty offense for others	Colorado Constitution Article XVIII, Section 16: C.R.S. 18-18-406 (1)-(3)
Connecticut	2011	Less than half an ounce	\$150 fine	\$200-\$500 fine and drug awareness counseling for 3rd offense	Civil violation	C.G.S.A. 21a-279a

Delaware	2015	1 ounce or less	\$100 civil fine if 18 or older	Same as first offense if 21 and older; \$100 criminal fine for people 18-20	Civil violation	Del. Code Ann. Title 16 4764
DC	2014	Adults 21 and older: up to 2 ounces outside the home, 6 plants. Under 21: fine applies to up to 1 ounce	No penalty for adults 21 and older; \$25 fine for those under 21	Same as first offense	N/A for adults 21 and older; civil violation for others	D.C. Official Code 48-904.01 and 48-1203
Illinois	2016	Up to 10 grams	A fine between \$100-\$200	Same as first offense	Civil ordinance violation	Not yet codified
Maine	1976; expanded in 2009	2.5 ounces or less	\$350-\$600 for 1.25 ounces or less; \$700-\$1,000 fine for between 1.25 and 2.5 ounces	Same as first offense	Civil violation	22 M.R.S.A. 2383
Maryland	2014	Less than 10 grams	\$100 fine	2nd offense: \$250 fine; 3rd and subsequent offenses: \$500 fine, mandatory drug education, and assessment for substance abuse treatment	Civil Offense	Md. Code Ann., Crim. Law 5-601.1
Massachusetts	2008	1 ounce or less	\$100 fine	Same as first offense	Civil Offense	M.G.L.A. 94C 32L-32N
Minnesota	1976	42.5 grams or less	\$300 fine	Same as first offense	Criminal petty misdemeanor	M.S.A. 152.027 (4)
Mississippi	1977	30 grams or less	\$100-\$250 fine	2nd conviction within 2 years, \$250 fine and 5-60 days in jail; 3rd conviction in 2 years is a misdemeanor	Civil summons	Miss. Code Ann. 41-29-139
Missouri	2014	Up to 10 grams	\$250-\$1,000	Up to 1 year in jail and a fine of up to \$2,000	Infraction	Mo. Rev. St. 579.015

Nebraska	1978	1 ounce or less	\$300 fine	2nd conviction: \$400 fine, up to 5 days in jail; 3rd conviction: \$500 fine, up to 7 days in jail	Civil infraction; criminal misdemeanor	Neb. Rev. Stat. 28-416
Nevada	2001	1 ounce or less	Up to \$600 fine	2nd conviction: up to \$1,000 fine	Criminal misdemeanor	N.R.S. 453.336
New York	1977	25 grams	Fine of up to \$100	2nd conviction in 3 years, up to \$200 fine; 3rd conviction in 3 years, \$250 fine and/or 15 days in jail	Civil violation	N.Y. Pen. Law 221.05: 221.10
North Carolina	1977	Half ounce or less	Up to a \$200 fine	2nd to 5th offenses: up to \$200 fine	Criminal misdemeanor	N.C.G.S.A. 90-95
Ohio	1975, expanded in 2012	Less than 100 grams	\$150 fine	Same as first offense	Minor misdemeanor	O.R.C. 2925.11
Oregon	2014 (legal); 1973 (fining possession)	21 and older: no penalty for up to 8 ounces, four plants; Under 21: fine applies to less than 1 ounce	\$650 fine for under 21	Same as first offense	Civil violation under 21	OR Rev. Stat. 475.864
Rhode Island	2012	1 ounce or less	\$150 for those 18 and older	3rd conviction within 18 months, misdemeanor, \$200-\$500 fine and/or 6 months in jail	Civil offense	R.I. Gen. Laws 21-28-4.01
Vermont	2013	1 ounce or less; up to 5 grams of hash	Up to \$200 fine	Up to \$300 or \$500 fine	Civil infraction	18 V.S.A. 4230a-d
Washington	2012	21 and older can possess 1 ounce	No penalty 21 and older	No penalty 21 and older	N/A	RCW 69.50.325

Source: Marijuana Policy Project.

Use Frequency by Yearly Users 21 in U.S.¹³⁹

Times Per Month	Share of Population
<1	30%
1-5	26%
6-10	9%
11-15	7%
16-20	5%
21-25	6%
26-31	17

Source: Marijuana Policy Group.

Population of WV who smoke according to the NSDUH survey plus the 22.2% and 11.1% adjustment to account for underreporting suggested by the MPG study:

West Virginia Low Estimate (NSDUH estimate of how many people have smoked in the last month: 75,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	22,500	22.2%	27,495
1-5	26%	19,500	22.2%	23,829
6-10	9%	6,750	22.2%	8,248
11-15	7%	5,250	22.2%	6,415
16-20	5%	3,750	22.2%	4,583
21-25	6%	4,500	11.1%	5,000
26-31	17%	12,750	11.1%	14,165
			Total	89,735

West Virginia Medium Estimate (NSDUH estimate of people who have smoked in the last month: 92,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	27,600	22.2%	33,727
1-5	26%	23,920	22.2%	29,230
6-10	9%	8,280	22.2%	10,118
11-15	7%	6,440	22.2%	7,870
16-20	5%	4,600	22.2%	5,621
21-25	6%	5,520	11.1%	6,133
26-31	17%	15,640	11.1%	17,376
			Total	110,075

West Virginia High Estimate (NSDUH estimate of people who have smoked in the last month: 112,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	33,600	22.2%	41,059
1-5	26%	29,120	22.2%	35,585
6-10	9%	10,080	22.2%	12,318
11-15	7%	7,840	22.2%	9,581
16-20	5%	5,600	22.2%	6,843
21-25	6%	6,720	11.1%	7,466
26-31	17%	19,040	11.1%	21,153
			Total	134,005

Quantity used by marijuana users during each day of consumption, by user type

Use Days Per Month	Avg. Grams per Month
<1	.30
1-5	1.2
6-10	5.6
11-15	11.7
16-20	18

21-25	29.9
26-31	44.8

Source: NJ Report and Marijuana Policy Group

Total Estimated Monthly Market Demand for Marijuana in West Virginia

Freq. of Use	Usage Amount in Grams		
Per month	Low	Mid	High
<1	8,249	10,118	12,318
1-5	28,595	35,076	42,702
6-10	46,189	56,661	68,981
11-15	75,056	92,079	112,098
16-20	82,494	101,178	123,174
21-25	149,500	183,377	223,233
26-31	634,592	778,445	947,654
Total:	1,024,675	1,256,934	1,530,160

Market Size Estimate viewed using different units of measure (Monthly)

Unit of Measure	Low	Mid	High
Grams	1,024,675	1,256,934	1,530,160
Pounds	2,259	2,771	3,373
Metric Tons	1.02	1.26	1.53
Ounces	36,144	44,337	53,975

Estimated Ounces per Year Consumed in WV

	Low	Mid	High
Ounces	433,728	532,044	647,700

Average price per ounce of marijuana in West Virginia is \$358.¹⁴⁰

Estimated Amount Spent on Marijuana Per Year In West Virginia¹⁴¹

	Low	Mid	High
Ounces	433,728	532,044	647,700
Total Pretax Est. Amt.	\$155,274,624	\$190,471,752	\$231,876,600

Estimated Revenue Per Year in West Virginia According to Various Tax Models

Tax Model	Low	Mid	High
	(\$155,274,624)	(\$190,471,752)	(\$231,876,600)
10%	\$15,527,462	\$19,047,175	\$23,187,660
15%	\$23,291,194	\$28,570,763	\$34,781,490
17% (Oregon)	\$26,396,686	\$32,380,198	\$39,419,022
20%	\$31,054,925	\$38,094,350	\$46,375,320
25%	\$38,818,656	\$47,617,938	\$57,969,150
37% (Washington)	\$57,451,610	\$70,474,548	\$85,794,342

Mid-level estimates with New Jersey Policy Perspective suggestion of 6% of people participating in untaxable marketplace- \$179,043,447

Tax Rates: 15%- 26,856,517, 20%- \$35,808,689, 25%- \$44,760,862

Estimates for Pretax Spending on Marijuana¹⁴²

Location	Pretax Amt.
West Virginia	\$190,471,752
200 mi. Radius	\$5,863,050,846
Total:	\$6,053,522,598

Source: WVCBP analysis.

Revenue Estimates including Out-of-State Visitors¹⁴³

Tax Model	Projected Tax Revenue
	(\$776,776,837)
15%	\$116,516,525
17%	\$132,052,062
20%	\$155,355,367
25%	\$194,194,209
37%	\$287,497,429

States with Proposed Legislation for the Legalization of Recreational Marijuana

State	Proposed Tax Rate	Other Information
Nevada	15% excise tax on wholesale price plus state sales tax	Voters will consider Question 2 in November 2016
Arizona	Excise tax ranging from 10%-15%	Ballot initiatives circulating
Arkansas	Excise tax of 5%	Ballot initiatives circulating
California	Excise tax ranging from 5%-15%	Ballot initiatives are circulating. Previously rejected legalization in 2010 by a vote of 46% to 54%
Maine	Excise tax of 10%	Ballot initiatives circulating
Massachusetts	Excise tax of 3.75%, with cities and towns permitted an additional 2%	Study done by the Special Senate Committee on Marijuana chaired by Sen. Jason Lewis (D) estimated tax revenue of \$50-\$60 million
Michigan	One proposed initiative specifies it shall be subject to no tax, fines, or regulations. Another is an excise tax of 10%	Revenue from 10% excise tax: 40% dedicated to transportation, 40% to education, and 20% to localities
Missouri	Excise tax ranging from 25%-75%	Ballot initiatives circulating
Montana	Excise tax of 20%	Ballot initiatives circulating
North Dakota	Excise tax of no more than 20%	Ballot initiatives circulating

Source: Tax Foundation

END NOTES

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- ⁴⁶ This is a mid-range estimate. There are low and high range estimates in the appendix.
- ⁴⁷ WVCBP estimates account for 6 percent of consumers not participating in the taxable market.
- ⁴⁸ The 200 mile radius from the WV border was estimated using <https://www.freemaptools.com/radius-around-point.html>. After the radius was determined, I used the NSDUH state and sub-state data (<http://www.samhsa.gov/data/sites/default/files/substate2k12-AgeGroupTabs/NSDUHsubstateAgeGroupTabs2012.pdf>) in order to discern how many people reported using marijuana in the last month in whole states or particular regions, depending on whether or not the state was fully or partially included in the 200 mile radius.
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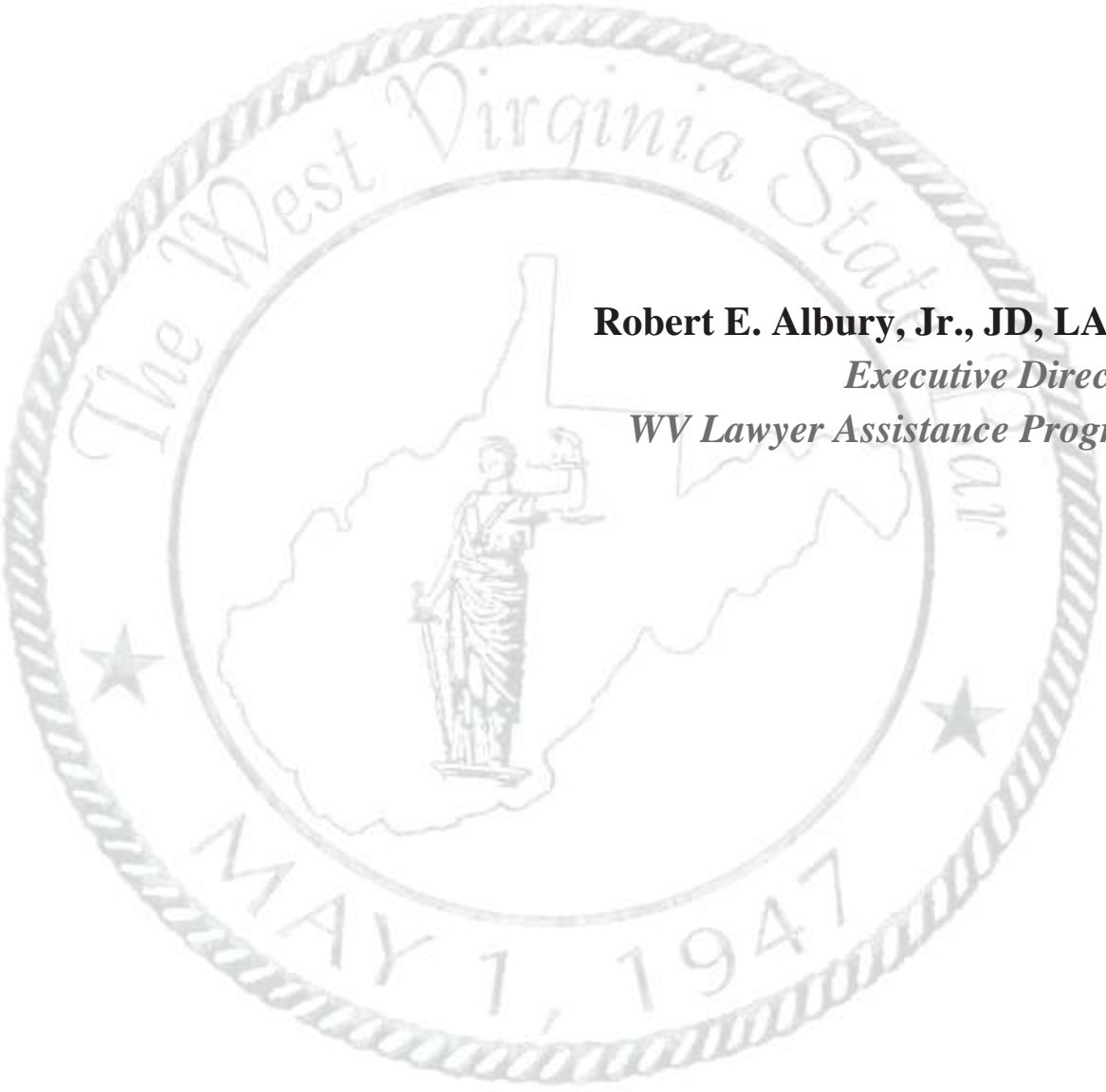
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- ¹³⁹ The frequency of use is based on the frequency of use of the US as a whole as reported by the MPG study. I cannot access the frequency data for WV based upon the NSDUH survey because it is in NSDUH's R-DAS (restricted-use data analysis system) and not available for public access.
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¹⁴¹ Assuming that all transactions are through a legal outlet, we are multiplying the estimated amount of ounces per year consumed by the average price of an ounce of marijuana in order to get the pre-tax estimate.

¹⁴² The estimates in this table are based on the assumption that 100% of the people reported smoking marijuana in the last month would buy it through legal channels. The 200 mile radius estimations are based on the bold assumption that every person who reported smoking marijuana in the past month would come to West Virginia to legally buy their supply. This estimate is based on the mid-level range of West Virginia and the states/regions in a 200 mile radius.

¹⁴³ This includes the estimated pretax revenue from West Virginia as well as the estimated revenue from states in a 200 mile radius. Again, this estimate assumes that we would capture only 10 percent of out-of-state visitors.

An Introduction to the New Era of Lawyer Assistance Programs

The seal of The West Virginia State Bar is a circular emblem. It features a central figure of a woman in classical robes holding a scale of justice. The figure is set against a background of the state of West Virginia. The outer ring of the seal contains the text "The West Virginia State Bar" at the top and "MAY 1, 1947" at the bottom, separated by two stars.

Robert E. Albury, Jr., JD, LADC
*Executive Director,
WV Lawyer Assistance Program*



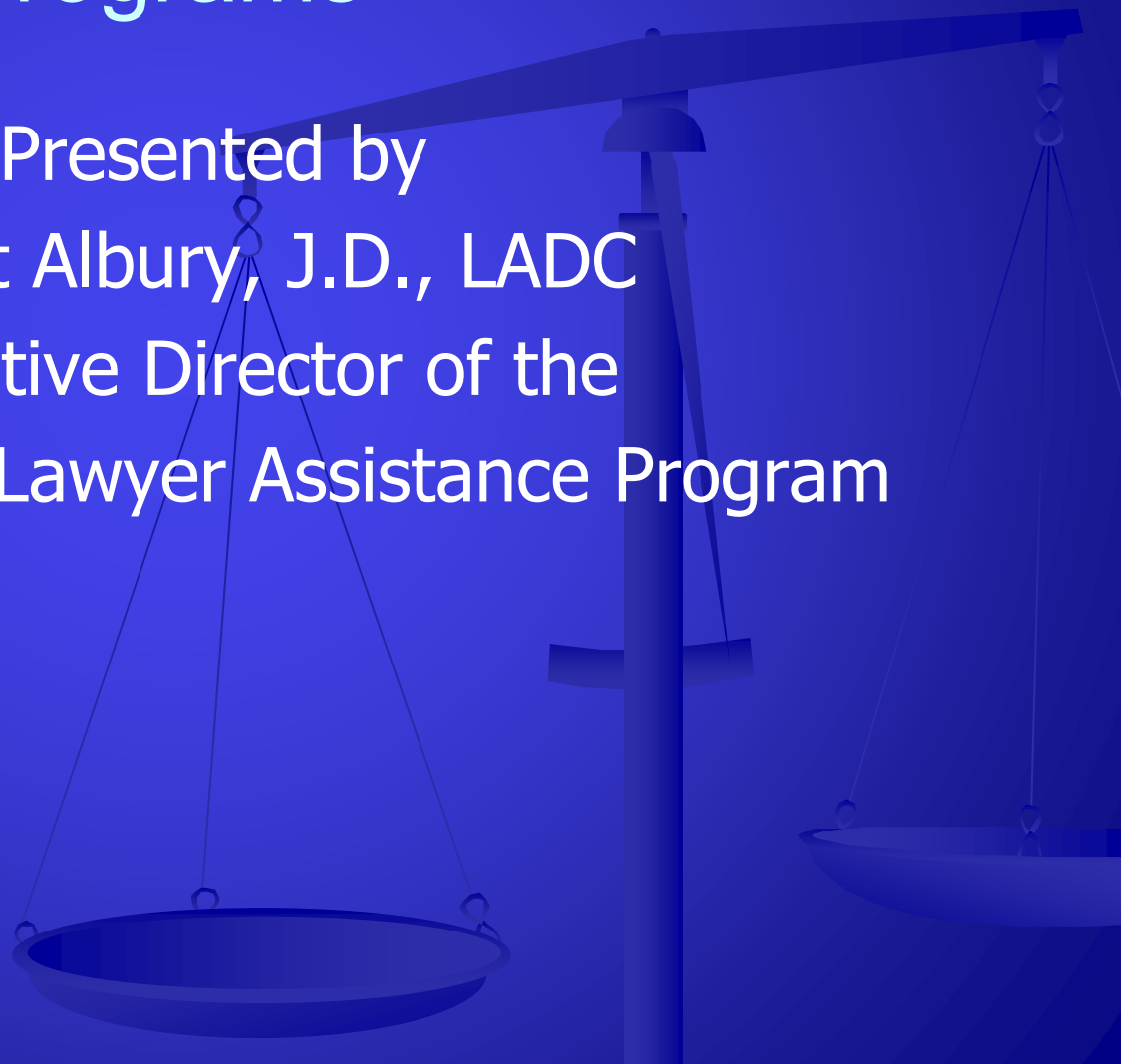
Robert E. Albury, Jr., JD, LADC

Executive Director

- **Robert Albury, Jr., JD, LADC** is the Executive Director of the West Virginia Lawyer Assistance Program.
- Robert is a former practicing attorney and licensed healthcare professional with 35 years' experience in the legal profession & behavioral healthcare.
- Robert is also the former Executive Director of the Tennessee Supreme Court's Lawyer Assistance Program, as well as the past Program Director for Cumberland Heights' Professionals and Extended Care treatment programs.
- Robert received his BS in Finance from Florida State University; his JD from the University of Miami School of Law and has been a member of The Florida Bar since 1981.

An Introduction to the New Era of Lawyer and Judicial Assistance Programs

Presented by
Robert Albury, J.D., LADC
Executive Director of the
West Virginia Lawyer Assistance Program



THE MISSION OF WV LAP

- To Confidentially Assist members of the legal profession to identify quality of life issues, access continuing care resources and engage in an ongoing personal program of recovery;
- To Protect the interest of clients, litigants, and the general public from harm caused by impaired lawyers or judges;
- To Educate the bench, the bar, and the public to the types, causes and remedies for impairments affecting members of the legal profession.

SCOPE OF SERVICES

WVLAP can help with the following:

- Stress/Anxiety
- Burnout
- Depression
- Substance Abuse/
Alcoholism
- Co-dependency/
- Grief
- Trauma
- Retirement
- Closing Law Practice
- Work/Life Balance
- Conflicts with Colleagues
or Family
- Sex Addiction
- Gambling
- Compulsive Behaviors

**No Problem Is Too Big Or Too Small*

How to Make a Referral

- WVLP
- WVLP BOARD MEMBER IN YOUR REGION
- WVLP REGIONAL PEER VOLUNTEER



WVLAP – REFERRALS

- (a) Self Referral: Any lawyer admitted to practice law in West Virginia may voluntarily contact the WVLAP seeking assistance.
- (b) Referrals from Third Parties: WVLAP shall receive referrals concerning any member of the legal profession from any source. The identity of the referring third party shall be held in confidence by WVLAP unless the third-party consents to disclosure.
- (c) Disciplinary Authority Referrals: WVLAP shall receive referrals from the West Virginia Supreme Court, the Lawyer Disciplinary Board, the Office of Disciplinary Counsel, Judicial Investigation Commission, or the Board of Law Examiners (individually referred to hereafter as a "referring authority") of any lawyer whom the referring authority determines or believes should be contacted by WVLAP.
- (d) In the event an impaired lawyer resists all efforts of assistance by WVLAP, the executive director or the Board may notify the initial referral source of the lawyer's resistance for the sole purpose of allowing the referral source to pursue other recourse or resources.

All referrals by third parties are confidential, unless the third party chooses to participate in an intervention.

Who We Help

- Attorneys
- Judges
- Law Students
- Bar Applicants



National Statistics

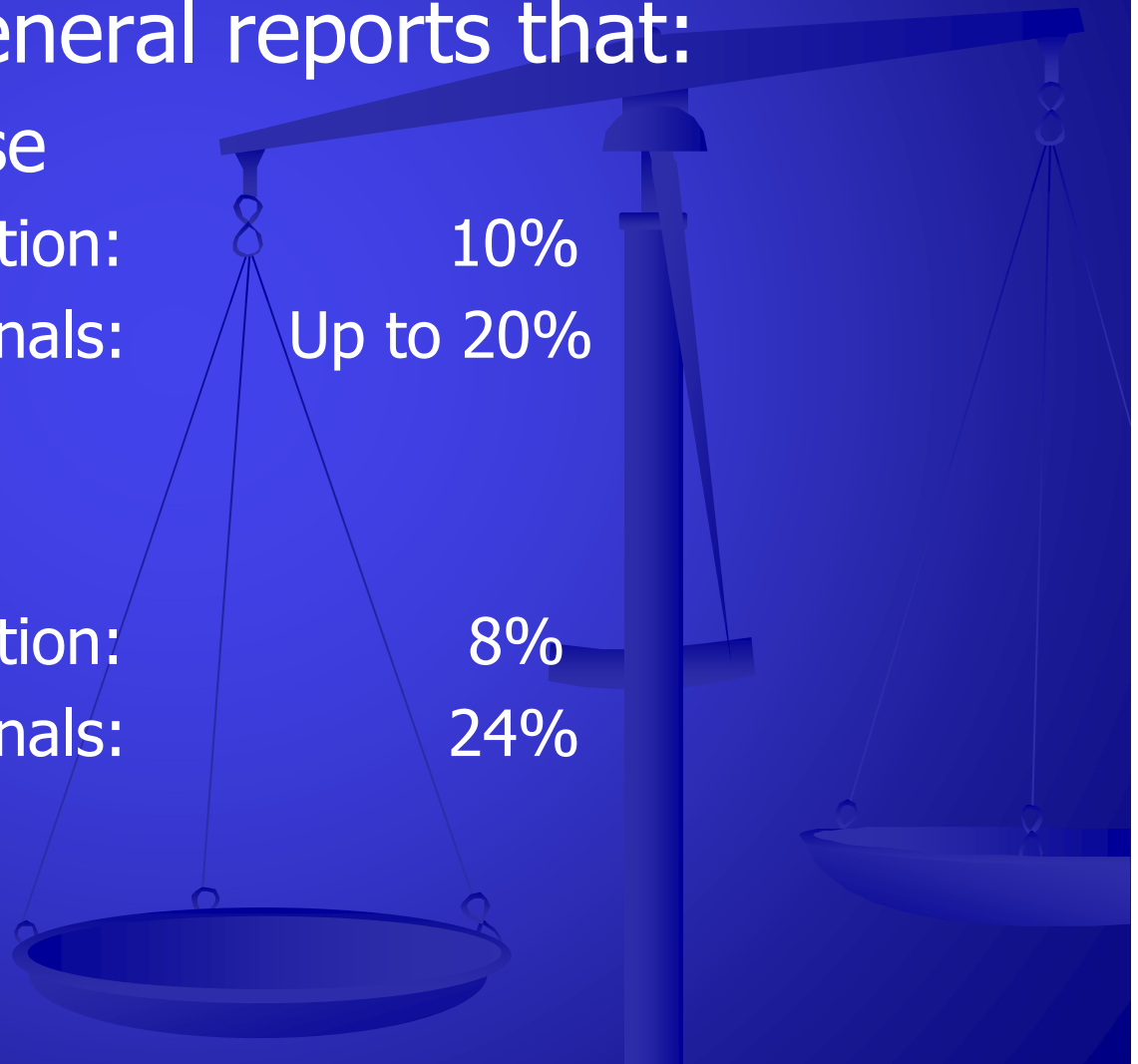
- The Surgeon General reports that:

- Substance Abuse

- General Population: 10%
- Legal Professionals: Up to 20%

- Depression

- General Population: 8%
- Legal Professionals: 24%



"THE PREVALENCE OF SUBSTANCE USE AND OTHER MENTAL HEALTH CONCERNS AMONG AMERICAN ATTORNEYS"



**19
States**



Anonymous

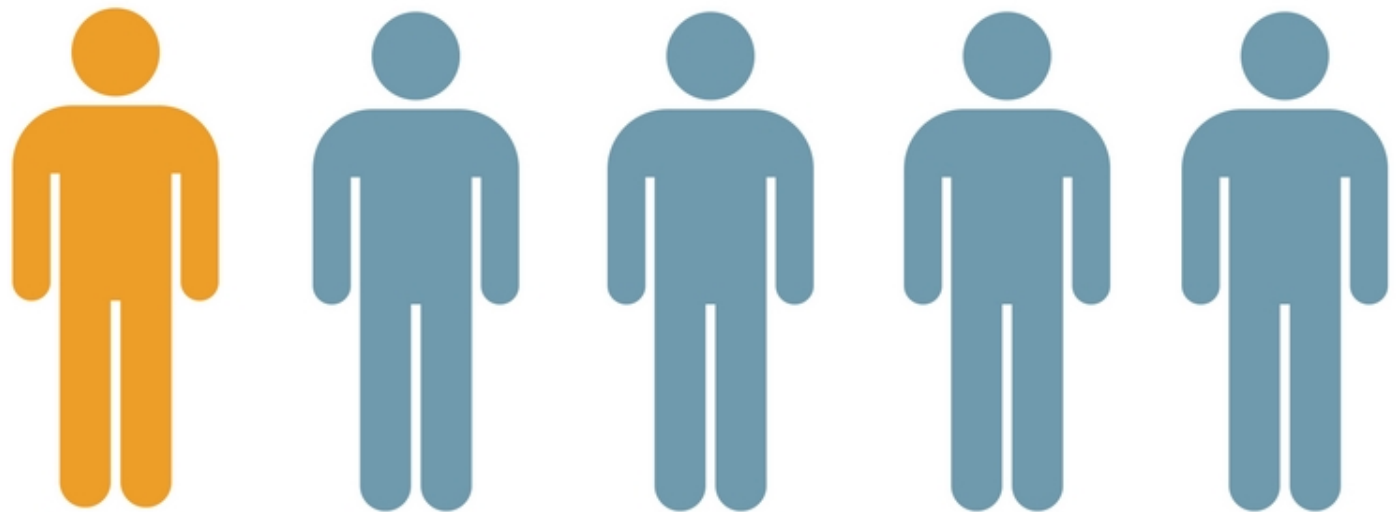


**14,895
Participants**

1 out of 5

Alcohol Use

Of the 11,278 participants analyzed who completed all 10 questions on the AUDIT, 20.6 percent screened **positive for hazardous, harmful and potentially alcohol-dependent drinking.**

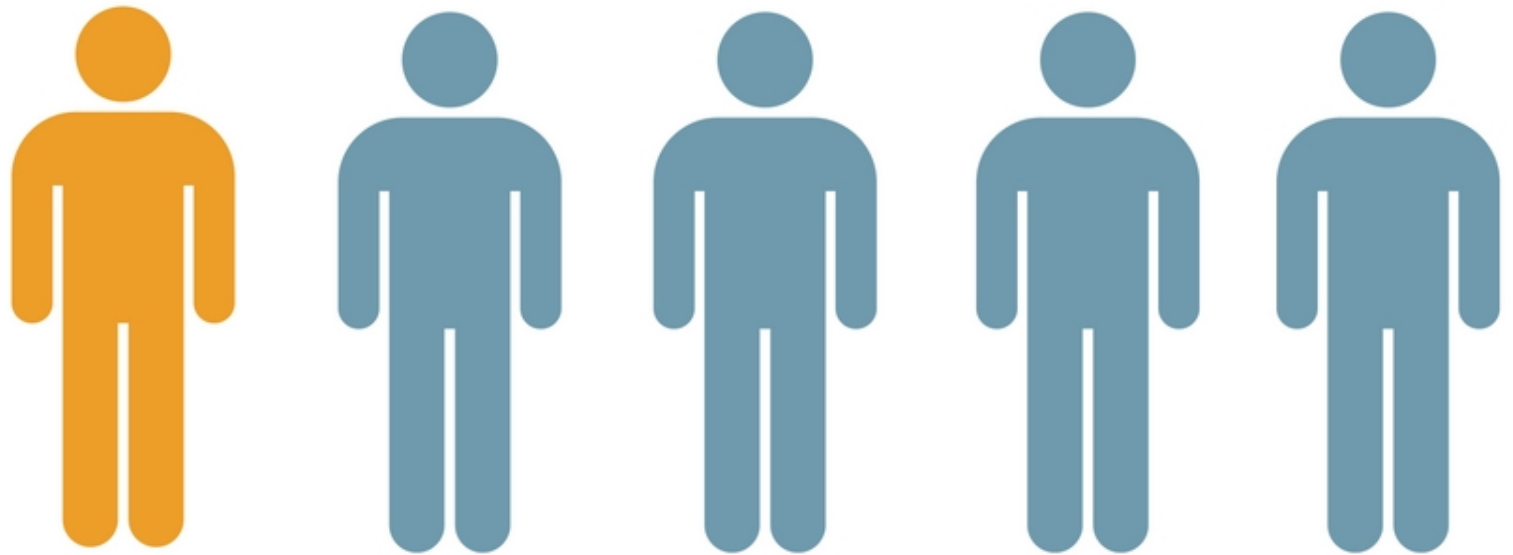


Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Vol.10(1), Jan/Feb 2016, pp. 46-52. Notes: AUDIT-C measures frequency and quantity consumed.

1 out of 5

Alcohol Use

22.6 percent participants reported they felt their use of alcohol/other substances **was problematic at some point in their lives.**



Weekly Rates

Drug Use

Only 26.7 percent of participants completed the entire DAST. Of those reporting use of a specific substance group within the past year, **the highest weekly rates**

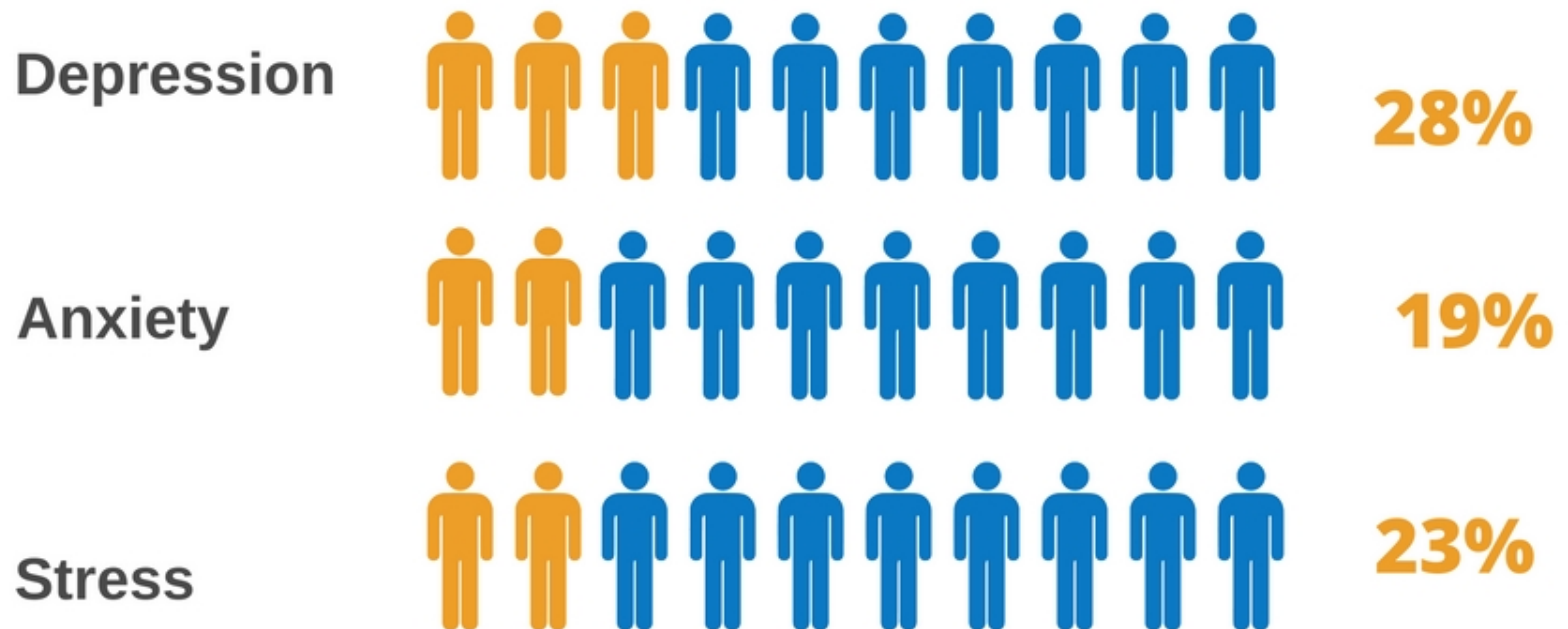
were:



Symptoms

Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the following **reported symptoms of depression, anxiety and stress:**

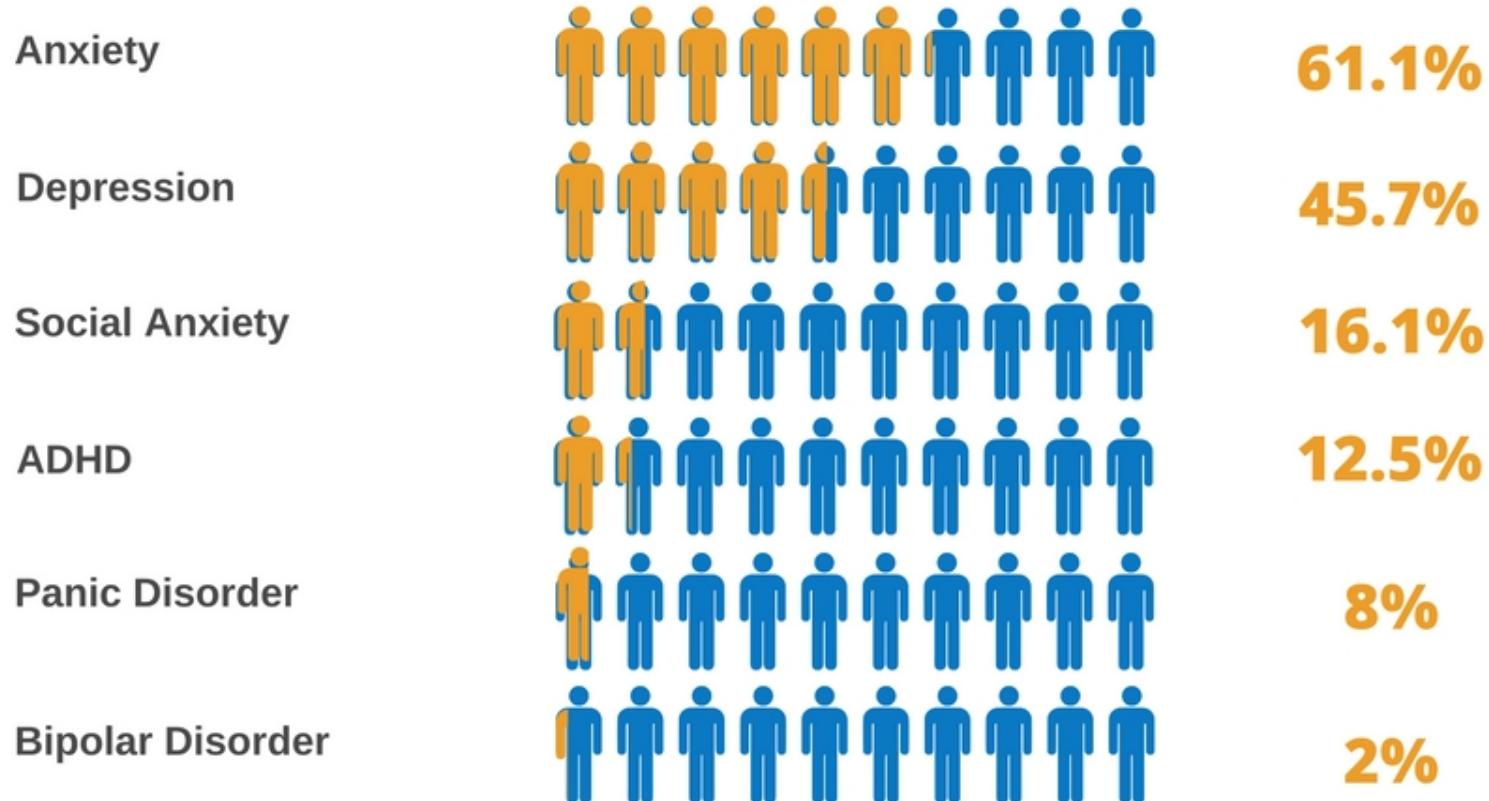


Concerns

Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the **most common mental health concerns over the course of an entire career self-reported**

as:



Self Harm

Mental Health

Of the 11,516 participants (or 89.8 percent), who completed the DASS-21 questionnaire, the following related to **self harm or suicidal ideation** was self-reported:

Suicidal thoughts at
some point in career



11.5%

Self-injurious behaviors



2.9%

At least one prior suicide
attempt



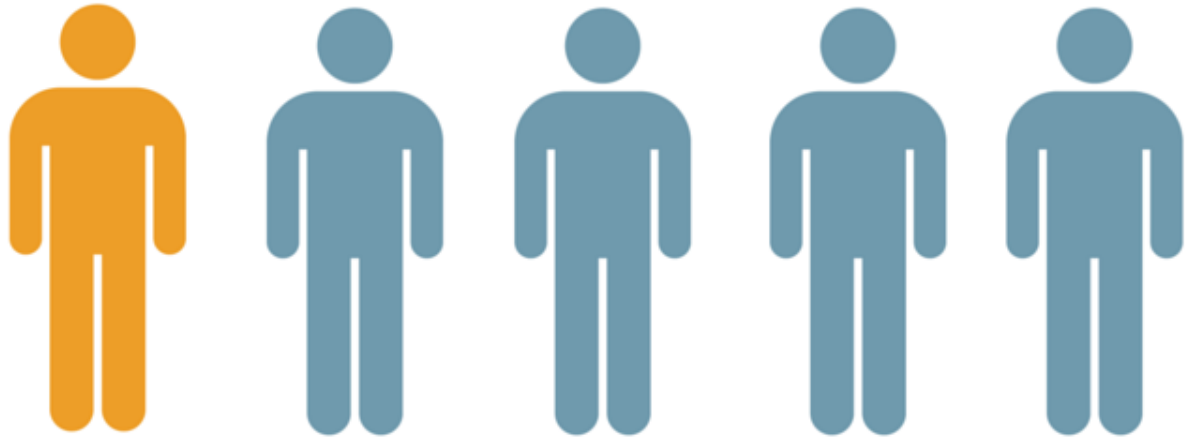
0.7%

Programs

Treatment

6.8 percent of participants reported past treatment for alcohol or drug use. Of those, 21 percent reported **participation in a treatment program specifically tailored to legal professionals.**

- Those who participated in a treatment program specifically tailored to legal professionals had significantly lower AUDIT scores than those who attended a treatment program not tailored to legal professionals.



Source: "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," Journal of Addiction Medicine, Vol.10(1), Jan/Feb 2016, pp. 46-52.

Barriers

Treatment

Those who got treatment were asked about barriers that impacted their ability to obtain treatment. Those with no prior treatment were asked about hypothetical barriers in event they were to need future treatment.

Not wanting others to find out they needed help

Treated



50.6%

Not Treated



25.7%

Concerns about privacy or confidentiality

Treated



44.2%

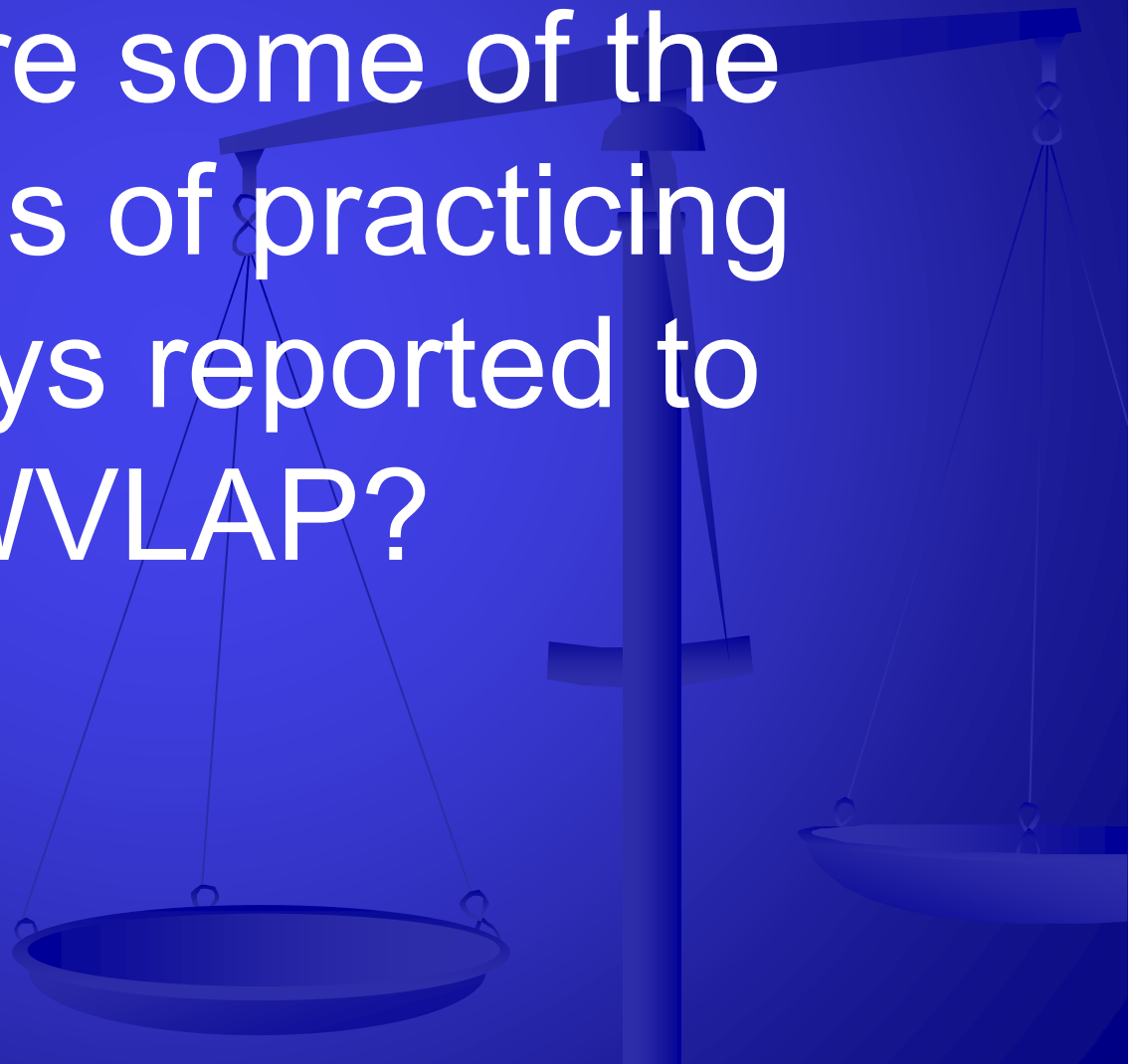
Not Treated



23.4%

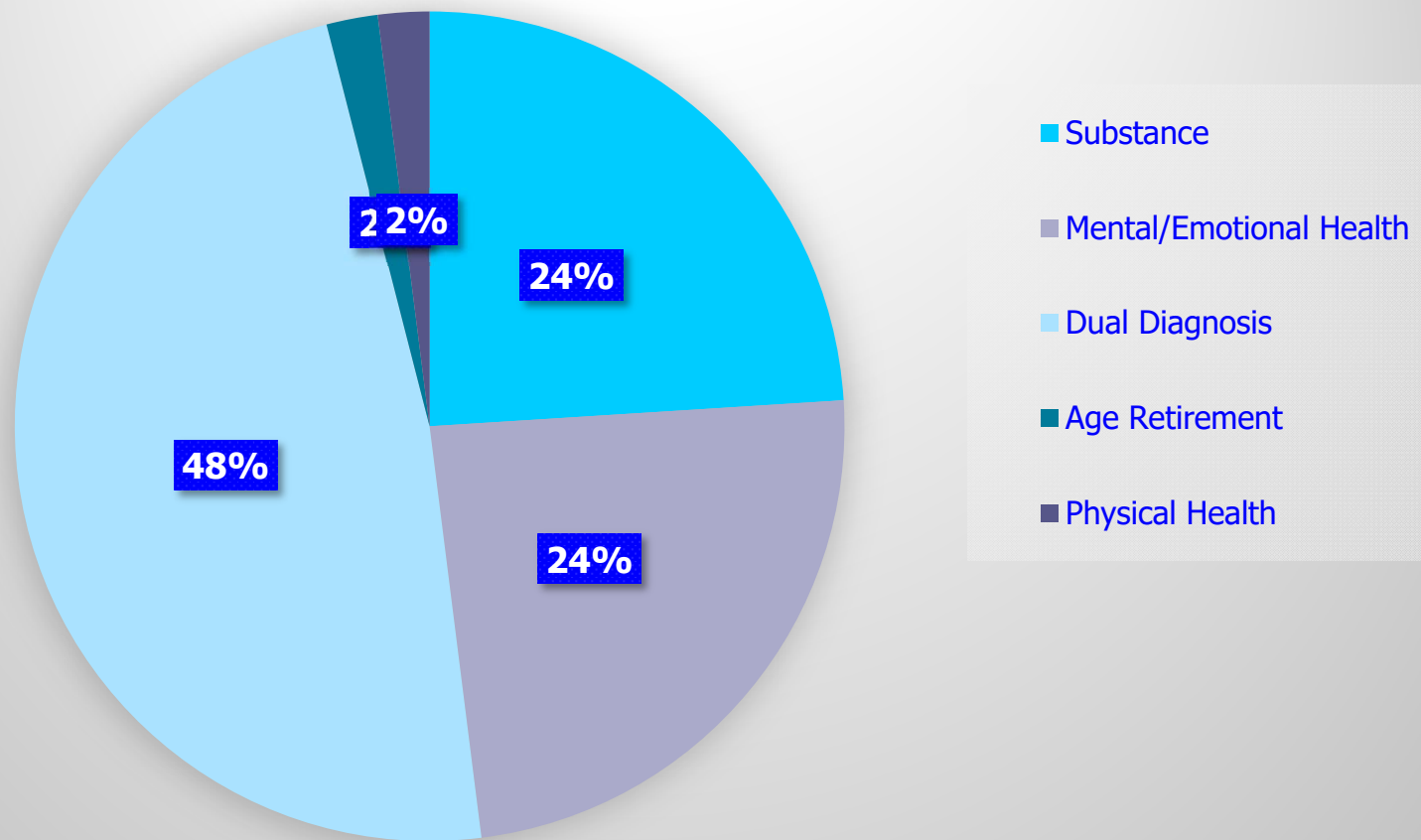
Question

What are some of the concerns of practicing attorneys reported to WV LAP?



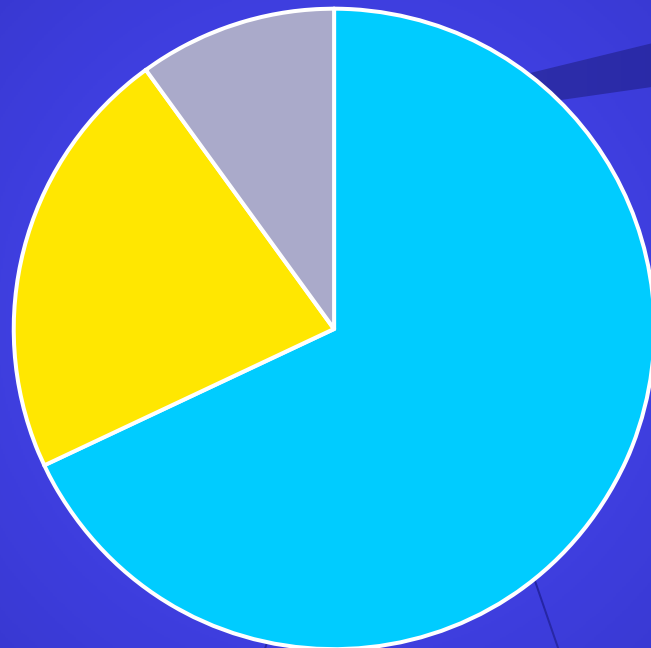
Most Common Concerns

West Virginia



Sources

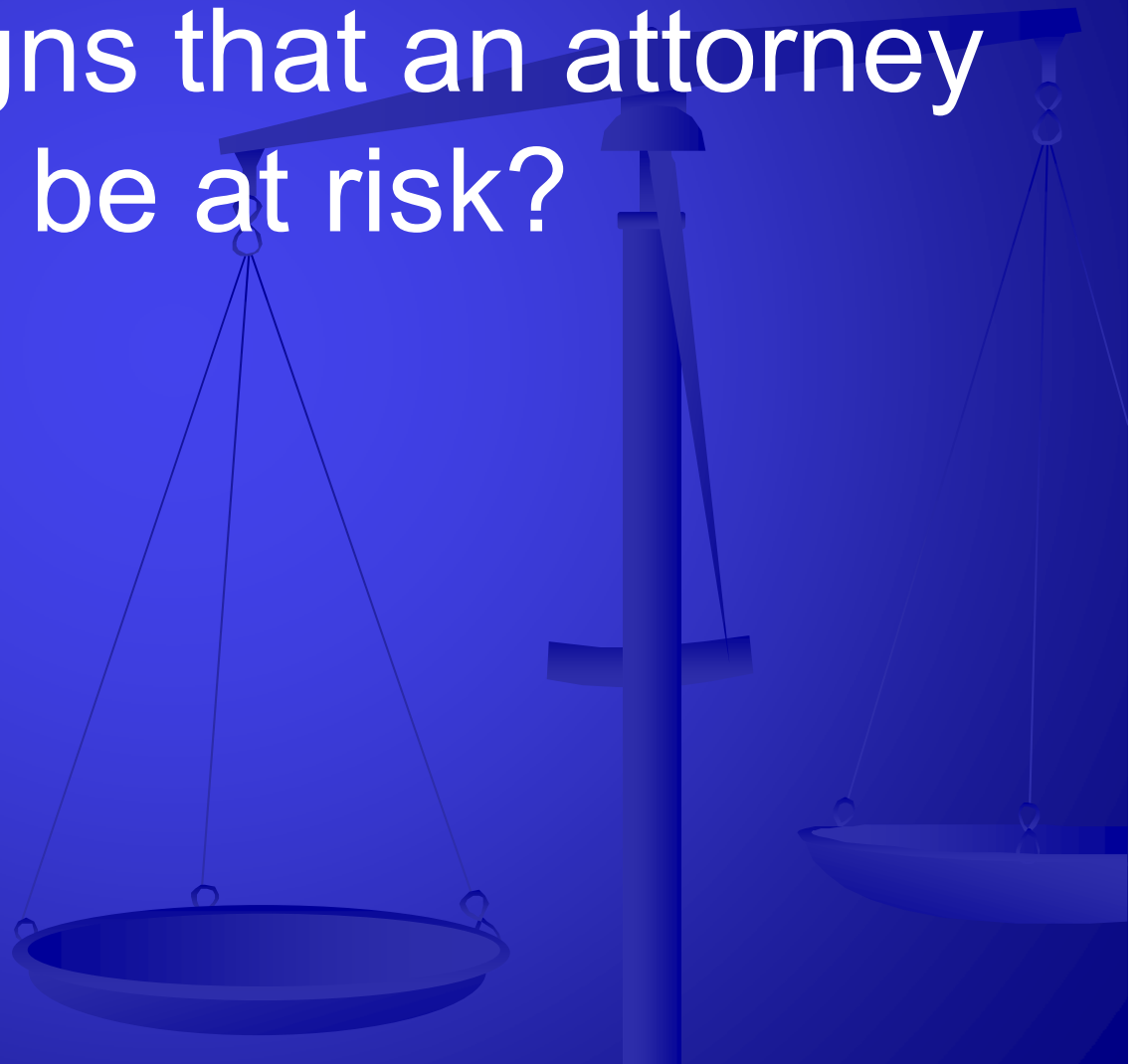
Referrals



■ Third Party ■ Self ■ Official ■

Question

What are signs that an attorney
may be at risk?



Professional Warning Signs

- Missing deadlines
- Failure to file responses, court papers
- Hours decline, little work achieved after lunch
- Greatly reduced revenue production
- Frequent long weekends, late arrivals, early departures
- Forgetting court appearances, appointments
- Neglecting correspondence, messages
- Ability to perform fiduciary duties impaired
- “Borrowing” from trust funds
- Ghost Billing / Hourly

Early to Late Warning Signs

Client neglect, unreturned calls, late for depositions, cancelled appointments, numerous sick days

1st DUI, open container, disorderly conduct

Late for hearings, technical trust violations, last minute filings, diligence slides

Missing hearings, intoxicated in court, inappropriate appearance or mood, abandoned practice

DWI 2+, controlled substance charge, domestic violence, open container, disorderly conduct

Substantive trust violations, statute of limitations violations, dishonesty to tribunal

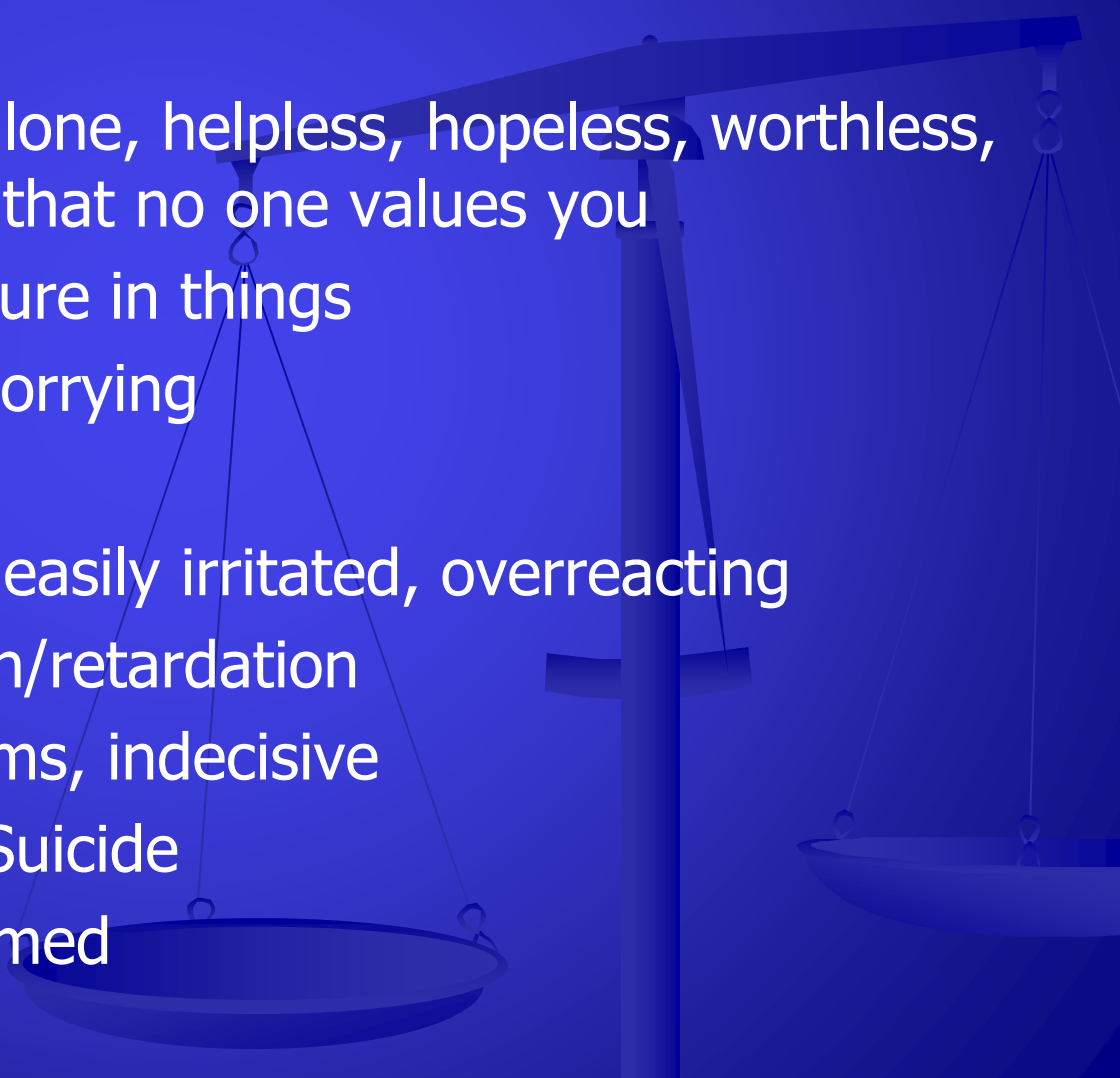
Harrell and Buchanan

Signs and Signals of Alcohol Trouble

- Protecting supply
- Alcohol = the event
- Blackouts
- Unexplained injuries, delayed treatment
- Fine tremors
- Defensiveness, “Just fine,” “Mind your own business”
- Financial problems



Signs of Depression

- Poor appetite or overeating
 - Fatigue, loss of energy
 - Sleep disturbances
 - Feeling sad, empty, alone, helpless, hopeless, worthless, critical self thoughts, that no one values you
 - Loss of interest/pleasure in things
 - Excessive crying or worrying
 - Isolating
 - More tense, anxious, easily irritated, overreacting
 - Psychomotor agitation/retardation
 - Concentration problems, indecisive
 - Thoughts of death / Suicide
 - Chronically Overwhelmed
- 

Claims Against Attorneys

Substance abuse is a factor in about half of all malpractice and disciplinary claims



Discipline and Malpractice Allegations

- Oregon's Professional Liability Fund determined over 50% of the attorneys admitted to its alcoholism treatment program had already been sued for malpractice.
- New York and California surveys revealed 50-70% of all disciplinary cases involve alcoholism.
- 75% percent of attorneys who sought help with substance abuse problems in California in 2008 were also involved in disciplinary proceedings.

Marjorie Silver
Wendy Patrick

Is This Familiar?

- “Stress went on for too long in my own life as a litigator. I had, indeed, entered the realm of anxiety. For me, this anxiety felt like I had a coffee pot brewing 24/7 in my stomach. I became hyper-vigilant, and each file on my desk felt like ticking time-bombs about to go off. Over time, the litigation mountain became harder to climb as the anxiety persisted over a period of years.”

Dan, *Lawyers with Depression*

Burnout defined

- Exhaustion of physical or emotional strength or motivation
- Mental or emotional fatigue - pervasive, complete, prolonged
- Depersonalization of those you must deal with



SIGNS OF BURNOUT

- Exhaustion
- Fatigue
- Detachment
- Boredom
- Irritability
- Paranoia
- Depersonalization
- Annoyance
- Reduced sense of accomplishment
- Drained
- Loss of hope



Dealing with Burnout

- If you are burned out, it's good to
 - Recognize the situation and the signs that led to it
 - Reverse the tide
 - Reduce your stress load
 - Seek support
 - Find resilience
 - Seek Professional Help



West Virginia Lawyer Assistance Program

- Attorneys
- Judges
- Law students
- Bar Applicants





**FOR
ASSISTANCE
CALL**

(304)553-7232

or go to

www.wvlap.org



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ASK YOURSELF:

Depression is about a chemical imbalance in the brain. It should always be taken seriously. Recognizing its symptoms are important. If the following conditions persist for two weeks or more, you, or a person you know, may suffer from clinical depression.

1. Loss of pleasure or interest.
2. Change in eating or sleeping habits.
3. Difficulty concentrating.
4. Persistent sadness and/or depressed mood.
5. Feelings of guilt or worthlessness.
6. Slowed movements or restlessness.
7. Fatigue or decreased energy.
8. Thoughts of death or suicide.

Substance Abuse:

1. Because of my drinking or drug use, have I felt any regrets the morning after, guilt, remorse, depression, loneliness, severe anxiety, terror, or a feeling of impending doom?
2. Does my drinking or drug use lead me to questionable environments or situations?
3. Do I ever feel I need a drink or drug to face a certain situation?
4. Do I need a drink or drug to steady my nerves?
5. Do I plan my office routine around drinking or drug use?
6. Have I missed or adjourned closings, court appearances or other appointments because of my drinking or drug use?
7. Do I want to take a drink or drug the next morning?
8. Is someone concerned about my drinking or drug use?

If you have answered “Yes” to two or more of the above questions, then you owe it to yourself, your family, and your clients, to contact the West Virginia Lawyers Assistance Program.

***Problems are not a
sign of failure but an
opportunity for
growth***

304-553-7232

West Virginia Lawyer Assistance Program

Assisting West Virginia Attorneys,
Judges, Bar Applicants and
Law Students

**ALL COMMUNICATIONS ARE
CONFIDENTIAL**

(304) 553-7232

Robert E. Albury, Jr., JD, LADC
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Charleston, WV 25311-1231
Executive Director
alburyr@wvbar.org

The West Virginia Lawyer Assistance Program ("WVLAP")

was established by order of the West Virginia Supreme Court in 2013 and its mission is set forth in the Rules of the West Virginia Supreme Court.

WVLAP is a free and confidential assistance program providing consultation, referral, intervention, crisis management, monitoring and peer support for lawyers, judges, bar applicants and law students who are struggling with retirement, stress, anxiety, depression, substance abuse, suicidal ideation or other mental/physical/emotional health issues.

WVLAP's work also contributes to the protection of the public and the improvement of the integrity and reputation of the legal profession. Statistics support that assistance to an affected lawyer often prevents future consequences and ethical violations, thereby reducing the number of legal, employment and disciplinary actions.

The MISSION of WVLAP is threefold:

To **Confidentially Assist** members of the legal profession to identify quality of life issues, access continuing care resources and engage in an ongoing personal program of recovery;

To **Protect** the interest of clients, litigants and the general public from harm caused by impaired lawyers or judges; and

To **Educate** the bench, the bar, and the public to the types, causes and remedies for impairments affecting members of the legal profession.

Research has shown that Lawyers, Judges, and Law Students are more vulnerable to personal and professional problems than the general population, and that few occupations are as stressful. Competition, administrative responsibilities, long hours, high expectations and win-lose scenarios can wear down even the most energetic lawyer. This can lead to depression, stress, career problems, relationship issues, financial problems and substance abuse. WVLAP offers assistance to those who are experiencing issues that may affect their ability to practice or serve.

WVLAP can help with issues such as retirement, stress, anxiety, burnout, depression, work/life balance, substance abuse, co-dependency/relationship issues, conflicts with colleagues or family, compulsive behaviors, grief, trauma, and more. No problem is too big or too small.

WVLAP can help identify problems or impairments, provide peer intervention and support, and refer for professional help when necessary.

ALL REFFERALS & COMMUNICATIONS TO WVLAP ARE CONFIDENTIAL, WHETHER BY THE INDIVIDUAL OR A CONCERNED THIRD PARTY, WITH THE PRIMARY OBJECTIVE BEING TO HELP THE PARTIES INVOLVED.

Women's Forum:
***A Panel Discussion of Practicing Law in West Virginia from
the Prospective of Women Attorneys***

Judge Stephanie Thacker, *United States Fourth Circuit Court of Appeals*

Justice Elizabeth Walker, *Supreme Court of Appeals of West Virginia*

Hazel A. Straub, *Retired*

Dina M. Mohler, *Office of General Counsel, Charleston Area Medical Center*

Judge Stephanie D. Thacker

Born 1965 in Huntington, WV

Federal Judicial Service:

Judge, U. S. Court of Appeals for the Fourth Circuit

Nominated by Barack Obama on September 8, 2011, to a seat vacated by M. Blane Michael. Confirmed by the Senate on April 16, 2012, and received commission on April 17, 2012.

Education:

Marshall University, B.A., 1987

West Virginia University College of Law, J.D., 1990

Professional Career:

Private practice, Pittsburgh, Pennsylvania, 1990-1992

Assistant attorney general, Environmental Division, West Virginia, 1992

Private practice, Charleston, West Virginia, 1992-1994, 2006-2012

Assistant U.S. Attorney, Southern District of West Virginia, 1994-1999

U.S. Department of Justice, Child Exploitation and Obscenity Section, 1999-2006; trial attorney, 1999-2002; deputy chief for litigation, 2002-2004; principal deputy chief, 2004-2006

Justice Elizabeth D. Walker

Justice Elizabeth "Beth" D. Walker was elected to the Supreme Court of Appeals of West Virginia on May 10, 2016, becoming the first Justice elected in a non-partisan race. She took office on January 1, 2017.

Justice Walker was raised in Huron, Ohio. She is a 1987 summa cum laude graduate of Hillsdale College in Hillsdale, Michigan. She earned her law degree in 1990 from The Ohio State University, where she was Articles Editor for The Ohio State Law Journal. During her years of private practice, she participated in courses offered by the Program on Negotiation at Harvard Law School, including its Mediation Workshop.

Immediately after graduating from law school, Justice Walker moved to West Virginia and joined the law firm of Bowles Rice McDavid Graff & Love (now Bowles Rice) in Charleston. During her twenty-two years at Bowles Rice, she concentrated her statewide practice on labor and employment law and mediation. Justice Walker served on the firm's Executive Committee and in several other leadership roles.

After moving from Charleston to Morgantown in 2011, Justice Walker became Associate General Counsel for the West Virginia United Health System (also known as West Virginia University Medicine). In that role, she advised WVU Medicine's hospitals and other affiliates regarding labor and employment matters from 2012 until she resigned in 2016 to take office.

In 2012, Justice Walker was elected a Fellow of the College of Labor and Employment Lawyers. She is a 1999 graduate of Leadership West Virginia.

A lifelong Girl Scout, Justice Walker is former chairwoman and current member of the board of directors of Girl Scouts of Black Diamond Council. She has been an active community volunteer and served as chairwoman of the boards of Leadership West Virginia and Kanawha Pastoral Counseling Center.

She is married to Mike Walker and stepmother to Jennifer. They live in Morgantown.

Hazel Straub Crews

B.A. from WVU 1964, J.D. from WVU in 1967. Admitted to N.Y. and W.Va. bar associations. Taught school at John Marshall High School in Moundsville for five months before entering law school in fall of 1964. Attorney in State Road Commission legal division for about six months until became first Clerk of Court of Claims. There for about one year and then moved to New York. Worked for Port Authority of New York and New Jersey for several years in contract division while it was building the World Trade Center. Returned to W.Va and was law clerk for the Honorable Dennis Knapp, Judge for the Southern District of W.Va. Went into solo private practice in 1975. Part time Hearing Examiner for Workers Compensation during this time. Then worked for older lawyer for the next six or seven years. Went back into solo private practice until married Richard W. Crews (J.D., W.Va. 1965). We practiced law together until his illness forced him to retire. Retired last year when husband became terminally ill. Now happily retired with five cats and one dog.

Dina M. Mohler

Dina graduated from WVU in 1976 in political science and English, magna cum laude. She graduated from WVU School of Law in 1979. She started her career as an assistant prosecutor in Kanawha County where she served until 1988. In 1988 she joined the firm of Love, Wise & Woodrow that subsequently merged into Kay, Casto & Chaney. She served as a partner in that firm until 2002. While at the firms, she was a litigator, working on everything from bank trust cases to federal criminal defense to medical malpractice defense. In 2002, she became in-house counsel at Charleston Area Medical Center where she managed claims and litigation. She remains with CAMC on a part-time basis and is currently working on policy development and implementation.