

Editorial: An impasse over pot laws in Norfolk

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Norfolk Commonwealth's Attorney Greg Underwood is determined to change the way his office — and, by extension, the city — approaches simple possession of marijuana charges.

He contends that prosecuting those cases, when there are no other charges, represents a poor use of limited resources, arguing that strict enforcement of that law tends to disproportionately affect minorities and low-income individuals.

Even misdemeanor convictions are a mark that can be difficult to remove, since it can be difficult to escape the criminal justice system once entangled in it. It's why Underwood frames this decision as part of a broader reform effort, to refocus attention on crimes that have a profound effect on public safety.

It makes sense that those on the ground and closest to these cases would be best positioned to shape how the legal system can be fair, equitable and effective for all. And the commonwealth's attorney makes a compelling argument that prosecuting low-level pot cases does more harm than good.

In Saturday's Pilot, reporter Jonathan Edwards cited numbers provided in court by Deputy Commonwealth's Attorney Ramin Fatehi that more than 1,560 people were charged with first- or second-offense marijuana possession in 2016 and 2017. Of them, 81 percent were black in a city that's 47 percent white and 42 percent black.

Edwards also reports that, since Underwood announced his decision to stop prosecuting those cases, about two dozen people have appealed their convictions. "Of those 23 defendants, 22 are black and one is Hispanic. Eighteen are black men," he wrote.

That's consistent with numbers from a variety of sources, including the Brookings Institution, the American Civil Liberties Union and the Cato Institute. And those figures confirm that while Americans of different races use marijuana at similar rates, black Americans are far more likely to face criminal charges for doing so.

The evidence of racial inequality in enforcement lends support to those calling for reform of marijuana laws, be that decriminalization for possession of small amounts at one end of the spectrum to full legalization such as Colorado, Oregon, California and other states have embraced on the other.

Like many states in the south, Virginia has been more reluctant to pursue dramatic reform along those lines. The commonwealth approved medical marijuana in 2015 and has worked to fine-tune that program since. And each legislative session seems to see Virginia move towards greater leniency when it comes to pot.

But decriminalization still seems a ways off, if Virginia will ever get there. And legalizing recreational use is, well, a pipe dream for marijuana advocates.

That leaves officials such as Underwood in a tough spot. He can see that enforcement of these punitive, non-violent possession offenses serves no good purpose, but he is limited in his ability to affect change.

To wit: When the commonwealth's attorney's office moved to stop prosecuting those cases, Norfolk's Circuit Court judges have objected, saying that Underwood needs to make his case to lawmakers, not to the bench. The eight judges on that court are united in opposing the change in approach.

According to Pilot reporting, Fatehi argued in court that Underwood is exercising the executive power granted to him by voters and said that prosecutorial discretion allows the commonwealth's attorney to change how the office handles these cases.

Thus, Norfolk's criminal justice system finds itself at an impasse. Meanwhile, those charged with simple possession are caught in the middle, still facing the punishment that comes from a criminal conviction but backed by a commonwealth's attorney who would rather not prosecute the offense.

Underwood has indicated he may ask the state Supreme Court to step in but has yet to do so, and that seems like an attractive course of action for the short term.

But ultimately, changes to pot laws are the dominion of the General Assembly, as the judges maintain, and lawmakers should act to make them less strict and more equitable.