

Amending the Penalties for Marijuana Possession

CITY COMMISSION WORK SESSION

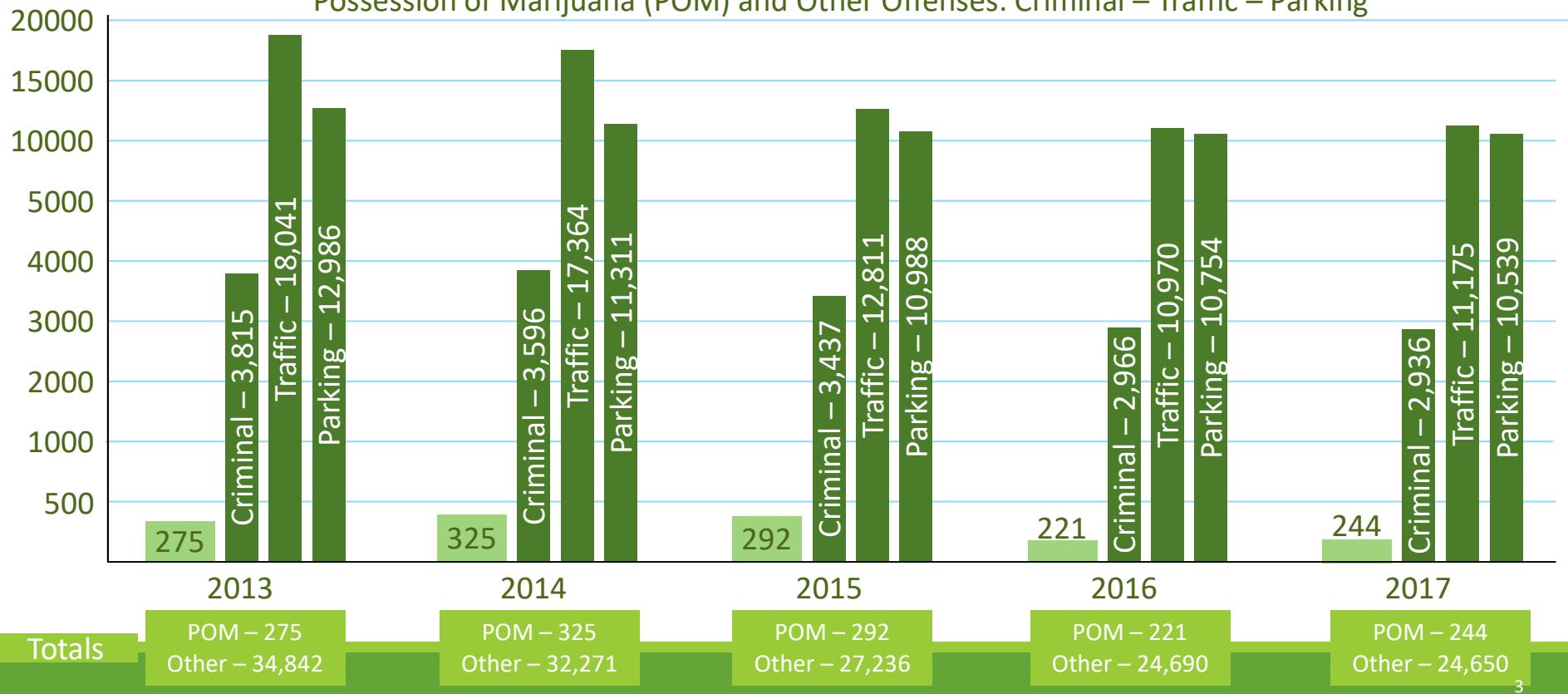
OCTOBER 9, 2018

Overview

- Statistics on Marijuana Charges in Municipal Court
- Current Local & State Law
- Diversion Agreements
- Comparing Penalties for Other Municipal Offenses
- Can the City Legislate In This Area?
- Wichita Ordinance
- Options

Charges Issued 2013-2017

Possession of Marijuana (POM) and Other Offenses: Criminal – Traffic – Parking



Local Law vs. State Law

CURRENT CITY CODE

➤ 14-902 - Penalties

1st offense: \$200 - \$1000 and/or imprisonment up to 180 days

2nd offense: up to \$2500 and/or imprisonment up to 1 year

➤ 14-904(C)&(D)

Drug Abuse Evaluation mandatory for conviction and diversion of possession of marijuana, and discretionary for drug paraphernalia

Drug abuse education, counseling or treatment may be required by the court

CURRENT STATE LAW

K.S.A. 21-5706

- 1st conviction Class B misdemeanor
 - Fine up to \$1000, imprisonment up to 180 days or both (*no minimum fine)
- 2nd conviction Class A misdemeanor
 - Fine up to \$2500, imprisonment up to one year or both
- 3rd or subsequent conviction Felony – prosecuted by District Attorney

Prosecutor's Recommended Terms Upon Conviction

- \$200 fine (the minimum allowed by current city code)
- Substance Abuse Evaluation – complete recommendations (class or treatment)
- 90 day jail sentence, suspended (the person does not serve the sentence unless a subsequent violation occurs)
- 6 month unsupervised probation
 - No law violations
 - Pay fines or do community service work
 - Pay court costs
 - Appear in court monthly or every two months until all obligations are satisfied
- 2nd offense, same except \$300 fine and 12 month probation

Drug Abuse Evaluation

- The purpose of the drug abuse evaluation is to identify and address need for intervention.
- Defendant pays cost of evaluation and education/treatment to educator/treatment provider.

What is Diversion?

- A diversion agreement is a contract between the accused and the prosecutor's office that sets forth the terms and conditions which a defendant must fulfill in order to have the charges against him/her dismissed.
- If diversion terms are successfully completed, the case is dismissed (and the charge does not appear on the person's criminal record)

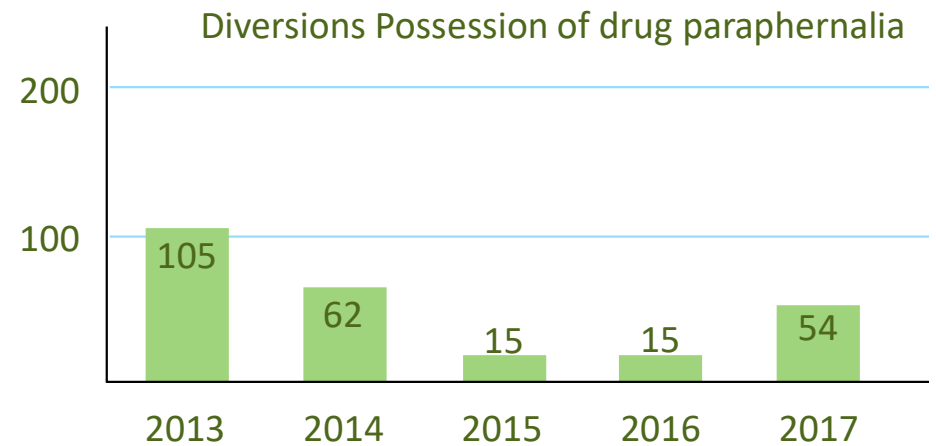
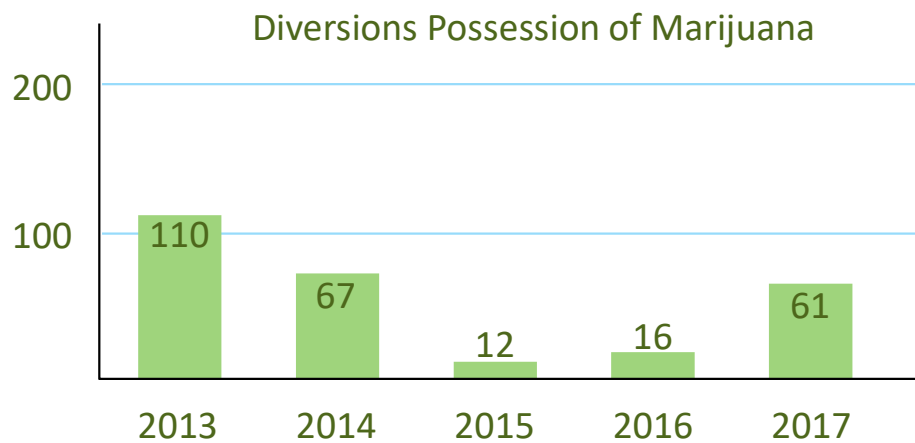
Typical Diversion Terms:

12-month diversion term;

Payment of diversion fee (\$300) and court costs (\$63.00) and completion of drug abuse evaluation and recommendations of treatment provider

No law violations during the diversion term

Diversions - Possession of Marijuana Possession of Drug Paraphernalia (POM/PODP)



*disposition date

Not all paraphernalia charges are marijuana related

Penalties for Other Municipal Offenses

Possession/consumption of alcohol by minor

➤ Conviction

- \$300-\$500 fine
- 30 day jail (suspended)
- 12 month probation
- Substance Abuse Evaluation – follow recommendations.
- 30 day driver's license suspension

➤ Diversion

- 8 hour class prior to application
- \$400 fee
- 12 month diversion

Possession/Consumption of open container alcohol in public

➤ Conviction

- \$200 fine
- 30 day jail (suspended)
- 6 month probation

➤ Diversion

- \$300 fee
- 12 month diversion
- Substance Abuse Evaluation – follow recommendations depending on facts.

Can we legislate in this area or has the state preempted the field?

Home Rule Power

Kan. Const. art. 12, § 5(b)

- Cities are empowered to determine their local affairs and government by passing local ordinances.
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- The “[p]owers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.”
- But, the power is not unlimited. A local law may not conflict with uniform state law.

Wichita Ordinance

- In January 2015, the City Council votes to submit a question to the electors at a special election regarding decriminalizing marijuana offenses.
- The Kansas Attorney General advises that Wichita would exceed its Home Rule power by decriminalizing marijuana.
- A majority of voters vote to decriminalize first time, personal use marijuana possession to a \$50 maximum infraction, no jail time or rehabilitative measures.
- The State of Kansas sues Wichita
- The Kansas Supreme Court declares the ordinance invalid because of filing issues with the City Clerk's office. The substantive issue was not reached.
- In June 2017, Wichita passes an ordinance allowing the judge to assess a \$50 fine, but it is not a mandatory maximum. The conviction is a misdemeanor, not an infraction.

The Wichita Ordinance

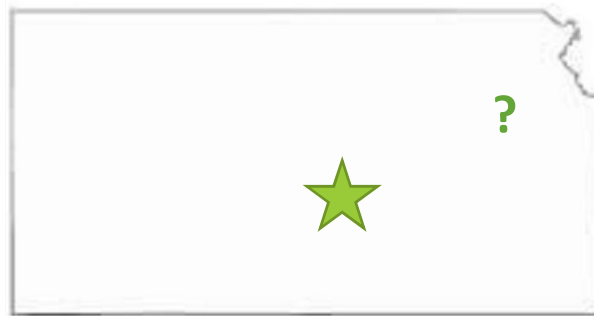
- Wichita's current ordinance identifies the history behind the 2015 vote.
- It defines a "small quantity" of marijuana as thirty-two (32) grams or less
- It states that marijuana possession, first offense, is a misdemeanor for which there is a fine of up to one thousand dollars (\$1,000.00), and/or imprisonment of up to six (6) months in jail.

The Wichita Ordinance

(d) Unless the arrest of an individual is required by state or federal law, a valid court order, or the identity of the individual cannot be determined, when any Wichita police officer suspects any individual over the age of twenty-one (21) years of age, other than those excluded herein, of possession of a small quantity of marijuana or marijuana paraphernalia, that person shall not be required to post bond, suffer arrest, be taken into custody for any purpose or detained for any reason other than the issuance of a summons, suffer incarceration, suffer loss of driver's license, or any other punishment or penalty other than the issuance of a summons and, if found guilty, **a fine of up to fifty (50) dollars and all applicable court costs and laboratory fees. There shall be a strong presumption that the proper disposition of any such case by the court is limited to the assessment of a fifty (50) dollar fine and all applicable court costs.**

What are other cities around us doing?

- Besides Wichita, the League of Kansas Municipalities reports that no other cities in Kansas have decreased the penalty for marijuana possession.



Some options moving forward

Option 1

Adopt Wichita's model and allow the municipal court judge to assess a lower penalty for first-time, personal use marijuana possession, under certain conditions. The ordinance would state that the judge may assess up to a \$1,000 fine but that there is a strong presumption that the penalty should be a lesser amount, as determined by the City Commission and/or remove the mandatory drug evaluation.

Option 2

Continue with the current fine and mandatory drug evaluation but apply a portion of the fine to the cost of the mandatory drug evaluation (so the cost is reduced for the defendant).

Option 3

Maintain the current law and monitor the issue.