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MARIJUANA LAWS AND WISCONSIN

This brief examines state and federal laws relating to marijuana possession and use in Wisconsin and discusses the issue of legalization of marijuana for medicinal and recreational purposes.

WHAT IS MARIJUANA?

Marijuana refers to the dried leaves, flowers, stems, and seeds from the hemp plant, *Cannabis sativa*. The plant contains the psychoactive chemical delta-9-tetrahydrocannabinol (THC) and other compounds, according to the National Institute on Drug Abuse, and is the most commonly used illicit drug in the United States. Marijuana may be consumed in a variety of ways, including by smoking, eating, drinking, and inhaling.

WHAT ARE MARIJUANA'S EFFECTS?

According to the National Institute on Drug Abuse, marijuana impairs short-term memory, learning, judgment, and problem-solving; distorts perception, alters senses, and changes one's mood; and can negatively affect performance. Use of marijuana, especially in combination with alcohol, can make it dangerous to drive an automobile by slowing reaction time and impairing motor coordination. According to the National Conference of State Legislatures, in a recent article entitled "State Medical Marijuana Laws," marijuana has been shown to have potential therapeutic value for pain relief, control of nausea and vomiting, and appetite stimulation and can be effective in relieving some of the symptoms of HIV/AIDS, cancer, glaucoma, and multiple sclerosis.

FEDERAL LAW PROHIBITS MARIJUANA POSSESSION

Federal law prohibits the use, possession, cultivation, and distribution of marijuana. The Controlled Substances Act (21 U.S.C. 13 §§ 801-904), which lists substances whose use has been determined to have a high potential for abuse and little medical utility, classifies "marihuana" and tetrahydrocannabinols as Schedule I (c) "hallucinogenic substances." Under the supremacy clause of Article VI, Section 2, of the U.S. Constitution, this prohibition applies throughout the nation, regardless of any state or local laws that permit or decriminalize distribution, possession, or use, whether for medicinal or recreational purposes, of any amounts of marijuana.

Under federal law, simple possession of marijuana, without the intent to distribute, is subject to a sentence of imprisonment of not more than one year, and a fine of a minimum of \$1,000, or both. However, possession of a small quantity that the attorney general has specified by regulation as being a "personal use amount" is a civil penalty punishable by a forfeiture not to exceed \$10,000. Conviction may, at the discretion of the court, make a person ineligible for any federal benefits for up to one year, among other penalties.

LAWS IN OTHER STATES: MEDICINAL AND RECREATIONAL USE

Medicinal. According to the National Conference of State Legislatures, California voters passed Proposition 215 in 1996, making California the first state to allow for the medicinal use of marijuana. Since then, 23 more states, the District of Columbia, and

Guam have enacted similar laws. In almost half of these states, the laws were either initiated or ratified by the voters. The jurisdictions that have medicinal marijuana laws are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Washington, DC.

Eleven other states have limited-access marijuana product laws: Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin (discussed below). For example, Alabama's law allows the University of Alabama-Birmingham to conduct effectiveness research using low-THC products for treating seizure disorders.

Recreational. Four states, Alaska, Colorado, Oregon, and Washington, have either decriminalized or specifically legalized the manufacture, distribution, possession, and use of marijuana for recreational purposes. In addition, the District of Columbia voters approved a ballot measure in November 2014 that is not yet in effect as it undergoes congressional review.

WISCONSIN LAWS

The possession and distribution of marijuana in Wisconsin remains illegal under both federal and state laws. Under the state's Uniform Controlled Substances Act, Section 961.41 (3g) (e), Wisconsin Statutes, marijuana is a Schedule I substance, and a first-offense conviction subjects a violator to a fine of not more than \$1,000, imprisonment for not more than six months, or both. A person who is convicted of a second or subsequent violation is guilty of a Class I felony and may be punished by "a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, or both" (§ 939.50 (3) (i), Wis. Stats.).

Local Ordinances. Sections 59.54 (25) and 66.0107 (1) (bm), Wisconsin Statutes, allow local governments to enact and enforce ordinances prohibiting the possession of marijuana. For example, Section 23.20, City of Madison General Ordinances, provides for a forfeiture of up to \$100 for casually possessing marijuana in a public place, and specifically states that a violation is not a crime, and that "No entry or other record may be made which indicates that a person alleged or found to have violated this ordinance has been arrested for, charged with, prosecuted for, or convicted of a crime." Madison's ordinance, which applies to the possession of not more than 28 grams of cannabis, or 112 grams of marijuana, also provides that a person may casually possess either substance in a private place and that such casual possession is not a crime and is not subject to forfeiture. The City of Milwaukee's law (Section 106-38, Milwaukee General Ordinances) applies to possession of marijuana in an amount of 25 grams or less and provides for a penalty of a forfeiture of not less than \$250 nor more than \$500, or the performance of community service work and attendance of substance abuse education and counseling in lieu of the forfeiture.

Limited Medical Marijuana to Treat Seizure Disorders. 2013 Wisconsin Act 267 created a limited medicinal marijuana law and provides that cannabidiol (CBD), without psychoactive effect, is not tetra-hydrocannabinidiol (THC), allows for limited dispensing of CBD, and allows possession of CBD as a treatment for a seizure disorder. The act does not specifically permit CBD to be manufactured in the state.

Driving Under the Influence of Marijuana. Section 346.63, Wisconsin Statutes, provides that a person may not operate a motor vehicle, or cause injury to another person while operating a motor vehicle, while under the influence of an intoxicant (such as alcohol), a controlled substance (such as marijuana), or any combination to a degree

that “renders him or her incapable of safely driving” or “the person has a detectable amount of a restricted controlled substance in his or her blood.”

PROPOSED WISCONSIN LEGISLATION

Legalizing Recreational and Medicinal Use. 2015 Assembly Bill 224, authored by Representative Melissa Sargent and released for cosponsorship on April 13, 2015, proposes legalizing both recreational and medicinal possession, cultivation, and use of marijuana products under state law. The proposed legislation is similar to 2013 Assembly Bill 480 and 2013 Senate Bill 363, which related to medical marijuana, and 2013 Assembly Bill 810, which related to recreational marijuana.

2015 Assembly Bill 224 would allow a Wisconsin resident who is over the age of 21 to possess no more than one-half ounce of marijuana. Generally, under the bill, persons who possess more than this amount, but not more than 28 grams, would be subject to a civil forfeiture not to exceed \$1,000 or imprisonment not to exceed 90 days, or both. Possession of amounts above those higher limits would be a Class B misdemeanor.

Under Assembly Bill 224, a person may obtain a permit to sell marijuana for recreational use and pay a tax equal to 25 percent of the sales price. In addition, under the bill, a person may obtain a permit for a \$250 annual fee to cultivate no more than 12 marijuana plants at one time. Marijuana use in public would be illegal, subject to a civil forfeiture penalty of not more than \$100. Driving with a THC concentration of 5.0 ng/mL or higher, instead of a detectable amount as under current law, in one’s blood would be prohibited.

Assembly Bill 224 would require the Department of Health Services (DHS) to create “a registry for persons who use marijuana for medical use,” and a registrant would be allowed to use marijuana “to alleviate the symptoms or effects of a specified debilitating

medical condition or treatment.” DHS would “license and regulate nonprofit corporations, known as compassion centers, that distribute or deliver marijuana” to eligible patients or their caregivers. Compassion centers would pay a \$5,000 annual fee.

Also in April 2015, news media reported that Senator Van Wanggaard was circulating for cosponsorship legislation to amend 2013 Wisconsin Act 267, so as to allow persons to obtain CBD oil, used to treat a seizure disorder, without a prescription.

INDIAN TRIBES: GROWING AND SELLING MARIJUANA ON TRIBAL LAND

On January 23, 2015, Governor Scott Walker rejected the Wisconsin Menominee Tribe’s proposal to establish a long-sought casino on off-reservation land in the City of Kenosha to financially support tribal operations. The *Milwaukee Journal Sentinel*, in a February 20, 2015, article, reported that the tribe may consider growing marijuana on their reservation. Craig Corn, a tribal legislator, tweeted: “Now we embark on a new economic endeavor . . . We are gonna fast track a (sic) effort to legalize Marijuana.”

The *Journal Sentinel* reported that, in an interview, “Corn acknowledged the tribe has numerous legal hurdles it must overcome before it could legally plant and sell marijuana,” and the article quoted Carl Artman, an Indian law attorney and the former head of the U.S. Bureau of Indian Affairs, as saying: “It’s a very gray area right now. There are still a whole lot of things to overcome before they could do it.”

The U.S. Department of Justice, in an October 28, 2014, memorandum to U.S. Attorneys, titled *Policy Statement Regarding Marijuana Issues in Indian Country*, directed federal prosecutors not to seek to prevent tribes from growing or selling marijuana on their reservations, even in states that ban the practice. The *International Cannabis*

News, relying on information from the Indian Country Today Media Network, reported on January 27, 2015, that the Pinoleville Pomo Nation in northern California was set to be the first tribe to grow and manufacture medical marijuana on tribal land which would be sold only to medical users and dispensaries in accordance with California state law.

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