

Legal Status of Marijuana in Massachusetts

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A Very Brief (and incomplete) History of Marijuana in the US

- Early use of cannabis in the US
- The beginnings of regulation
- The move to prohibition
- The Controlled Substances Act

Massachusetts Legal Overview

- Possession for personal use
- Distribution, cultivation, and possession with intent to distribute
- Other marijuana crimes
- Medical marijuana

Possession for Personal Use

- Voters decriminalized the possession of 1 ounce or less of marijuana for personal use in a 2008 ballot initiative
- If caught possessing an ounce or less the punishment is a \$100 fine. If the possessor is under the age of 18 they also must attend a drug awareness program (M.G.L. ch. 94C § 32L)
- Punishment for possessing more than an ounce for personal use remains criminal (M.G.L. ch. 94C § 34):
 - First offense – up to 6 months incarceration, fine of \$500
 - Subsequent offenses – up to 2 years incarceration, fine of \$2,000
 - If a person's first possession offense is also their first offense under the Controlled Substances Act, they should be sentenced to probation rather than incarcerated

Marijuana: Class D Controlled Substance

- Despite possession of small amounts for personal use being decriminalized, marijuana remains a Class D Controlled Substance (M.G.L. ch. 94C § 31)
- No matter how small the amount of marijuana involved is, distributing, dispensing, cultivating, or possessing with an intent to distribute remains criminalized
- Difference between possession for personal use and possession with intent to distribute is often based on looking at the circumstances at the time of the arrest

Punishment Based on Weight

- Under 50lbs (M.G.L. ch. 94C, § 32C)
 - First Offense – up to 2 years incarceration, fine of \$5000
 - Subsequent Offenses – 1 to 2.5 years incarceration, fine of \$10,000
- Over 50lbs (M.G.L. ch. 94C, § 32E)
 - Everything over 50lbs is considered trafficking and subject to a mandatory minimum sentence and a maximum penalty of 15 years in prison
 - Penalties increase with weight, going from 1-15 years imprisonment and up to a \$10,000 fine for 50-100lbs to 8-15 years and a \$200,000 fine for more than 10,000lbs

Other Notable Marijuana Crimes

- School Zones – distribution, cultivation, or possession with intent to distribute within 300 feet of a school or 100 feet of a public park is punished by mandatory minimum sentence of 2 years with a maximum of 15 years, and a fine of up to \$10,000 (M.G.L. ch. 94C, § 32J)
- Inducing a minor to commit an offense is punished by a mandatory minimum sentence of 5 years with a maximum of 15 years, and a fine of up to \$100,000 (M.G.L. ch. 94C, § 32K)

Medical Marijuana

- Voters approved the use of medical marijuana in a 2012 ballot initiative
- This allows patients who need marijuana for medical purposes to receive a registration card with a recommendation from their physician
- This card allows an individual to purchase and possess up to a 60 day supply of medical marijuana from a licensed dispensary
- There is a hardship waiver available to some patients to allow them to cultivate their own marijuana plants for medical purposes

Controlled Substance Act

- Passed into law in 1970
- The Act categorizes drugs into 5 “Schedules” based on their potential for abuse, status in international treaties, and any medical benefits they may provide.

Schedules

	Schedule I	Schedule II	Schedule III	Schedule IV	Schedule V
Potential for abuse	The drug or other substance has a high potential for abuse	The drug or other substance has a high potential for abuse	The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II	The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III	The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV
Medical use	The drug or other substance has no currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions	The drug or other substance has a currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States	The drug or other substance has a currently accepted medical use in treatment in the United States
Consequences of abuse	There is a lack of accepted safety for use of the drug or other substance under medical supervision	Abuse of the drug or other substance may lead to severe psychological or physical dependence	Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence	Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III	Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV

Schedule I

- “No accepted medical benefit and a high potential for abuse”
- Lead to states criminalizing possession of these substances
- Biomedical investigators interested in including marijuana in their research must first obtain a special license from the DEA, and then apply for access to the supply kept by the NIDA for research purposes.

Enforcement

Offense	Penalty	Incarceration	Max. Fine
Possession			
Any amount (first offense)	misdemeanor	1 year	\$1,000
Any amount (second offense)	misdemeanor	15 days* - 2 years	\$2,500
Any amount (subsequent offense)	misdemeanor or felony	90 days* - 3 years	\$5,000
Sale			
Less than 50 kg	felony	5 years	\$250,000
50 - 99 kg	felony	20 years	\$1,000,000
100 - 999 kg	felony	5 - 40 years	\$500,000
1000 kg or more	felony	10 years - life	\$1,000,000
Cultivation			
Less than 50 plants	felony	5 years	\$250,000
50 - 99 plants	felony	20 years	\$1,000,000
100 - 999 plants	felony	5 - 40 years	\$500,000
1000 plants or more	felony	10 years - life	\$1,000,000

1996

- Proposition 215 passed in CA
- Federal Government Reaction
 - Threatened to suspend prescription privileges of physicians
 - Raids

Cole Memo

- Preventing distribution to minors
- Preventing revenue of sales from going to criminal enterprises
- Preventing diversion from states where it's legal to states where it's illegal
- Preventing state-authorized marijuana activity from being used as a cover for trafficking
- Preventing violence and firearm use in the distribution of marijuana
- Preventing drugged driving and adverse public health risks
- Preventing the growing of marijuana on public lands as well as any adverse environmental impacts
- Preventing use or cultivation on federal property

DEA Memo

- Marijuana will remain a schedule I substance
- However, the DEA announced a policy change designed to foster research by expanding the number of DEA- registered marijuana manufacturers. This new policy will allow additional entities to apply to become registered with DEA so that they may grow and distribute marijuana for FDA-authorized research purposes.