

# Medical Marijuana: The Legal Landscape

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# Virginia's Medical Marijuana Law

Currently, possession of even a single joint is punishable by:

- \* Up to 30 days in jail
- \* And a \$500 fine

# Virginia's Medical Marijuana Law

However, since 1979, VA law has allowed “[p]ossession or distribution of marijuana for medical purposes.”

# Virginia's Medical Marijuana Law

Code of Virginia § 18.2-251.1. A.

*No person shall be prosecuted [...] for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.*

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# Virginia's Medical Marijuana Law

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No person shall be prosecuted [...] for the possession of marijuana or tetrahydrocannabinol when that person possesses or uses pursuant to **a valid prescription** issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.

# Virginia's Medical Marijuana Law

Prescription vs.  
**Recommendation**

# Federal Law

## States' Rights

- \* Federal law does not prevent states from removing state criminal penalties for the medical use of marijuana.
- \* Nothing in the U.S. Constitution or federal law prohibits states from enacting penalties that differ from federal law.

# Federal Law

## *Conant v. Walters*

- \* In 2002, a federal circuit court found that the First Amendment right to free speech protects a physician's ability to **recommend** medical marijuana.

# Federal Law

Cole Memo, Aug. 2013

- \* Eight enforcement priorities (including distribution to minor, diversion to other states, gang activity, etc.)
- \* Dept. of Justice **will not interfere** in states with “strong and effective regulatory and enforcement systems” to control cultivation, distribution, sale, and possession of marijuana.

# Federal Law

## Legislative Victory in Congress

- \* In May this year, the House of Representatives voted (219-189) to block the DEA from spending funds to interfere with state medical marijuana programs.

# Four Criteria for an Effective Law

- \* Patient protection from criminal conviction
- \* Realistic access to medical marijuana
- \* Variety of marijuana strains containing a variety of cannabinoids
- \* Either smoking or vaporizing marijuana allowed

# Overview of State MMJ Laws

Since 1996, 23 states and the District of Columbia have enacted effective medical marijuana laws.

The states are: Alaska, Arizona, California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Washington, and Vermont.

# Overview of State MMJ Laws

In each state, a doctor's recommendation or certification is required for a patient to qualify.

In all of those laws, except California, Massachusetts, and Maryland's, a patient must have a specific serious medical condition or symptom to qualify.

The laws generally include cancer, AIDS, multiple sclerosis, severe or debilitating pain, and severe nausea.

# Overview of State MMJ Laws

The laws require physicians to make constitutionally-protected “recommendations,” rather than “prescriptions.”

All allow for designated caregivers who may assist one or more patients, such as by picking up their medicine.

In all but WA, patients + caregivers can obtain ID card.

# Overview of State MMJ Laws

Most do not allow marijuana to be smoked in public or possessed in correctional facilities.

Generally, employers do not have to allow on-site marijuana use or employees working while impaired.

Most specify that insurance is not required to cover the costs of medical marijuana.

# Overview of State MMJ Laws

Fifteen of the laws allow some limited home cultivation (usually about 4-6 plants).

Three of those 15 states have “hardship” provisions.

Seventeen states + D.C. allows for state-regulated dispensaries.

# Ineffective CBD-only Laws

In 2014, 11 states enacted ineffective “high-CBD” or “CBD-only” laws.

These laws were intended to allow patients with intractable seizure disorders to use certain strains of medical cannabis preparations.

# Ineffective CBD-only Laws

## **How do these laws fall short?**

- \* Seizure or epilepsy disorders only = leaving most patients behind
- \* Little or no THC = undermines entourage effect, fails to help many patients
- \* Most have no realistic provisions for access
- \* Many use language that conflicts with federal law or policy

# Decriminalization

According to the ACLU, in Virginia:

- \* **Every 28 minutes**, someone is arrested for possession of marijuana.
- \* African-Americans are nearly **3 times** more likely to be arrested than their white neighbors.
- \* The state spent **\$67,244,864** enforcing marijuana laws in 2010.

# Decriminalization

A conviction or even an arrest record, could lead to a lifetime of harsh collateral consequences.

Areas affect:

- \* Education, financial aid
- \* Employment, professional licenses
- \* Housing

# Decriminalization

More than **107 million** Americans have tried marijuana.

But due to discriminatory enforcement, these collateral consequences disproportionately affect minority communities.

Nineteen states have replaced criminal penalties with a fine, similar to a parking ticket.

# Thank you!

For more information, please visit:

[MarijuanaPolicy.org](http://MarijuanaPolicy.org)

