



The Limits of Legalization: Part I

Legal and Private Limitations on Cannabis Use in Maryland

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Overview

- Introduction to legalization
- Criminal/civil penalties
 - Possession offenses
 - Distribution offenses
 - Driving offenses

References with hyperlinks are included at the end of the presentation; specific citations may be found in the slideshow notes, which will be made available after the training.



What is cannabis legalization?

- State legalization of cannabis possession, use, and sale
 - Sets specific limits on the amounts of cannabis that can be possessed by individuals
 - Strictly regulates cannabis production, distribution, and sale by licensed businesses
 - Retains civil and criminal punishments for certain violations
 - Sets specific requirements for medical cannabis use distinct from the personal adult-use limits
- What is not included in legalization:
 - Federal law
 - Private institution policies





Limitations on Personal Cannabis Use



Criminal Penalties – Possession

Personal Use Amount:

- Up to 1.5 oz usable cannabis
- Up to 12 grams concentrated cannabis
 - Includes vape liquids and chemically concentrated cannabis products
- Products containing up to 750 mgs delta-9-THC
 - Cannabis edibles

Civil Use Amount:

- Over 1.5 oz, up to 2.5 oz usable cannabis
- Over 12 grams, up to 20 grams concentrated cannabis
- Products containing over 750 mgs, up to 1,250 mgs delta-9-THC



Criminal Penalties – Possession

	Personal Use Amount	Civil Use Amount	Over the Civil Use Amount
Individuals 21 and Over	Legal	Civil Offense (\$250)	Misdemeanor Crime (6 months and/or \$1,000)
Individuals Under 21	Civil Offense (\$100 and/or education/treatment)	Civil Offense (\$250 and/or education/treatment)	Misdemeanor Crime (6 months and/or \$1,000)



Criminal Penalties – Medical Cannabis

- Medical cannabis patients are permitted to possess up to the amount authorized by their certifying provider, which is typically higher than the civil use amount and is intended to constitute a 30-day supply.
- A defendant who does not have a medical cannabis certification who has been charged with cannabis possession can raise as a defense certain medical uses:
 - Cannabis use must be medically necessary; OR they have been diagnosed with a debilitating medical condition, their condition is resistant to conventional medical treatment, and cannabis is likely to provide relief.
 - A caregiver for someone meeting these conditions can raise this defense as well.



Criminal Penalties – Distribution and “Possession with Intent to Distribute”

- Distribution of cannabis is a felony offense (unless it is done through a state-licensed cannabis dispensary).
 - "Adult sharing" of cannabis up to the personal use amount between individuals at least 21 years old without compensation is not considered distribution and is allowed.
 - However, a "gift" of cannabis alongside a separate reciprocal transaction is considered distribution, and is still a crime.
- "Possession with intent to distribute" means possession of cannabis in a quantity that indicates intent to unlawfully sell or distribute to others. This is also a felony offense.
 - Possession of an amount of cannabis **up to the civil use amount** does not by itself indicate intent to distribute.



Penalties – Other

- Smoking cannabis in a public place - Civil offense, fines up to \$50 for first offense or \$150 for subsequent offenses
- Cultivation offenses – misdemeanor crimes, imprisonment up to 3 years and/or fines up to \$5,000
 - Cultivating cannabis in public view
 - Cultivating cannabis in a manner not secure from unauthorized or youth access
 - Cultivating cannabis on private property without the consent of the lawful possessor
 - Cultivation by an individual under the age of 21
 - Cultivating more than two cannabis plants per residence (Medical patients aged 21 and older can cultivate up to four cannabis plants)



Cannabis and Driving - Impairment

- A person may not drive any vehicle while impaired by any drug, including cannabis.
- The severity of the penalty for driving while impaired or under the influence depend on these factors:
 - Whether the driver was legally authorized to consume cannabis (i.e., either 21 years or older or a medical patient)
 - Whether the driver was transporting a minor in the vehicle
 - Whether the driver has a prior conviction for impaired driving



Cannabis and Driving – Use in Vehicles

- A **driver** may not **consume** cannabis inside a motor vehicle, either driving or parked.
 - subject to a misdemeanor conviction and a fine up to \$500.
- A **passenger** may not **smoke** cannabis inside a motor vehicle.
 - subject to a civil citation and a fine up to \$25.



Cannabis and Driving – Law Enforcement

- Law enforcement officers are prohibited from initiating a search of a person or motor vehicle based solely on cannabis odor.
- However, if the “totality of the circumstances” create probable cause that a crime has been committed, the police may still conduct a search. Some factor other than cannabis odor must support this conclusion, such as:
 - Erratic driving
 - Visible signs of intoxication
 - Impaired speech or cognition while interacting with the officer



Cannabis and Driving – Testing Impairment

- Unlike alcohol, there is no universally-accepted chemical test that can measure current level of cannabis impairment.
- THC tests (based on a hair, urine, or blood sample) can indicate cannabis consumption, but do not indicate how long ago consumption occurred or whether the driver is currently impaired.
- Officers rely on personal observation of the driver's capacity to drive, where the officer observes their behavior in real time.



Questions?

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Citations – Statutes and Regulations

- Md. Alc. Bev. & Cann. § 36-1201.
- Md. Cts. & Jud. Proc. § 3-801.
- Md. Crim. Law § 5-101.
- Md. Crim. Law § 5-601.
- Md. Crim. Law § 5-602.
- Md. Crim. Proc. § 1-211.
- Md. Transp. § 21-902.
- Md. Transp. § 21-903.

