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MARIJUANA REGULATION IN THE STATES

In 2012, two states, Washington and Colorado, adopted significant changes to their drug policy as the result of popular votes to decriminalize the possession, transfer, and cultivation of marijuana for personal or recreational use. Both ballot measures passed by margins of approximately 56 percent in favor to 44 percent opposed.

Two years prior, several Wisconsin communities had popular votes of their own regarding marijuana. On November 2, 2010, Wisconsin voters in Dane County and the City of River Falls were asked if they support medical access to marijuana for seriously ill residents as long as their doctor recommends its use. The nonbinding referendum passed 75.5 percent to 24.5 percent in Dane County and 68 percent to 32 percent in River Falls. While the results of the advisory referenda do not change law in Wisconsin, they may reflect a public interest in legalizing the medical use of marijuana in the state.

Today Washington and Colorado remain the only two states to have decriminalized marijuana for nonmedical purposes, but other states are considering similar proposals. Nationally, 23 states and the District of Columbia (DC) have now adopted laws related to the medical use of marijuana in some form. This brief provides background information on the issue of marijuana regulation for medical and nonmedical uses, regulation of synthetic marijuana, and current law and legislation related to these substances in Wisconsin.

CURRENT LAW

Federal law classifies controlled substances into five different categories or "schedules." Schedules I and II include substances which have a high potential for abuse. Schedule I substances are deemed to have no medical utility and no safe dosage, while Schedule II substances are characterized as medically useful but potentially dangerous if abused. Schedules III, IV, and V contain substances with lower potentials for abuse for which there is a currently accepted medical use. Under the federal Controlled Substances Act, tetrahydro-cannabinols (THC), the hallucinogenic contained in marijuana, is classified as a Schedule I controlled substance. Federal law prohibits the possession, manufacture, distribution, and dispensing of any Schedule I controlled substance and makes no exemption for the use of marijuana for medical purposes.

In Wisconsin, the primary statutes governing drug-related crimes are contained in Chapter 961 of the Wisconsin Statutes, the Uniform Controlled Substances Act. It prohibits the manufacture, distribution, and delivery of marijuana, and the possession of marijuana with intent to manufacture, distribute, or deliver it (see Table 1 for the penalties).

The law also prohibits a person from possessing or attempting to possess marijuana. A person who violates this prohibition and who has no prior drug convictions is guilty of a misdemeanor and may be fined not more than $1,000, sentenced to a county jail for up to six months, or both. For a second or subsequent offense, a person is guilty of a Class I felony. Wisconsin law also contains certain prohibitions regarding drug paraphernalia, as outlined in Subchapter VI, Drug Paraphernalia, in Chapter 961, Wisconsin Statutes. Any violation of Chapter 961 can also result in a

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driver's license suspension for not less than six months and not more than five years. The Wisconsin Controlled Substances Board has the authority to add, delete, or reschedule substances enumerated in the five schedules by administrative rule.

Table 1: Manufacturing, Distributing, or Delivering the Controlled Substance THC and Possession of THC with Intent to Manufacture, Distribute, or Deliver

Amount	Penalty
200 grams or less, or 4 or fewer plants containing THC	Class I felony
Between 200 grams and 1,000 grams, or between 4 plants and 20 plants containing THC	Class H felony
Between 1,000 grams and 2,500 grams, or between 20 plants and 50 plants containing THC	Class G felony
Between 2,500 grams and 10,000 grams, or between 50 plants and 200 plants containing THC	Class F felony
More than 10,000 grams or more than 200 plants containing THC	Class E felony

MEDICAL MARIJUANA

The debate over legalizing medical marijuana has involved physicians, elected officials, scientists, and the general public.

Proponents of the legal use of medical marijuana argue that there should be a distinction between the medical and nonmedical use of marijuana. Marijuana, they claim, is a safe and effective treatment for dozens of conditions, including cancer, AIDS, multiple sclerosis, pain, migraines, glaucoma, and epilepsy. Proponents support reclassifying marijuana's status as a Schedule I controlled substance to a status that would allow for more comprehensive research to be done on its safety and efficacy in alleviating the symptoms or effects of certain debilitating medical conditions or treatments. A distinction between the medical and nonmedical use of marijuana would ensure that physicians are not deterred from discussing marijuana as a treatment option with their patients, and patients who use marijuana upon their physicians' advice are not penalized.

Opponents of medical marijuana argue that there is no reliable evidence that marijuana has medical value since existing evidence is anecdotal, unscientific, or not replicated. Some argue that marijuana is too dangerous to be used as a medicine, citing scientific studies that show marijuana as a harmful and addictive drug. Opponents also believe that medical marijuana is unnecessary because certain FDA-approved drugs, including Marinol, a prescription pill that contains a pharmaceutical formulation of THC, work better than marijuana for certain conditions. Public safety is another argument used against the medical use of marijuana: specifically, marijuana will lead to harder drug use and criminal activity. Opponents believe that legalizing the use of medical marijuana may lead to increased access to the drug by young people and that the push to legalize it is a wedge to loosen the nation's drug laws.

MEDICAL MARIJUANA LAWS IN OTHER STATES

Twenty-three states and Washington, DC, have enacted laws that legalize the medical use of marijuana (see Table 2). Most of the early state medical marijuana laws in the 1990s originated as voter initiatives or ballot measures that resulted from direct action by voters, but in the 2000s the laws increasingly came from legislatures adopting their own legislative bills with no direct involvement from the public.

The laws in the 23 states and DC vary, but they all allow certain individuals to cultivate and use marijuana for medical purposes to some degree. The individuals must comply with the respective state's medical marijuana law.

Table 2: Twenty-Three States and DC Have Enacted Laws That Legalize Medical Marijuana

State	Year Passed	How Passed (Yes Vote)
Alaska	1998	Ballot Measure 8 (58%)
Arizona	2010	Proposition 203 (50.13%)
California	1996	Proposition 215 (56%)
Colorado	2000	Proposition 215 (56%)
Connecticut	2012	House Bill 5389 (96-51 House, 21-13 Senate)
Delaware	2011	Senate Bill 17 (27-14 House, 17-14 Senate)
District of Columbia	2010	Amendment Act B18-622 (13-0 vote)
Hawaii	2000	Senate Bill 862 (32-18 House; 13-12 Senate)
Illinois	2013	House Bill 1 (61-57 House, 35-21 Senate)
Maine	1999	Ballot Question 2 (61%)
Maryland	2014	House Bill 881 (125-11 House, 44-2 Senate)
Massachusetts	2012	Ballot Question 3 (63%)
Michigan	2008	Proposal 1 (63%)
Minnesota	2014	Senate Bill 2470 (46-16 Senate, 89-40 House)
Montana	2004	Initiative 148 (62%)
Nevada	2000	Ballot Question 9 (65%)
New Hampshire	2013	House Bill 573 (284-66 House, 18-6 Senate)
New Jersey	2010	Senate Bill 119 (48-14 House; 25-13 Senate)
New Mexico	2007	Senate Bill 523 (36-31 House; 32-3 Senate)
New York	2014	Assembly Bill 6357 (117-13 Assembly, 49-10 Senate)
Oregon	1998	Ballot Measure 67 (55%)
Rhode Island	2006	Senate Bill 0710 (52-10 House; 33-1 Senate)
Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)
Washington	1998	Initiative 692 (59%)

Source: ProCon.org, "Medical Marijuana: Pros and Cons." Accessed August 15, 2014. http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881.

In addition to the laws in the table above, as of July 2014, two state legislatures, Ohio and Pennsylvania, are still considering medical marijuana legislation this session, and Florida voters will decide on Ballot Initiative #2, "Use of Marijuana for Certain Medical Conditions," in the November 2014 general election.

LEGISLATION IN WISCONSIN

Unlike many states that have adopted medical marijuana laws through direct voter initiatives, Wisconsin does not provide a statewide ballot process whereby voters have the power to change law. In Wisconsin, advisory referenda can be placed on ballots, as they were in Dane County and River Falls, but the results of the referenda are nonbinding. They are used only to measure opinions on a policy issue and may not necessarily lead to legislation.

Since 1997, several bills to legalize the medical use of marijuana have been introduced. None of the proposals have passed. During the 2009-10 legislative session, two bills related to the medical use of marijuana were introduced, Senate Bill 368 and an identical companion bill, Assembly Bill 554, both of which failed to pass out of committee.

The bills, if passed, would have established a medical necessity defense to marijuana-related prosecutions and forfeitures for persons having or undergoing certain debilitating medical conditions or treatments, including cancer, glaucoma, multiple sclerosis, AIDS or HIV, Crohn's disease, and post-traumatic stress disorder. To qualify for this defense, a person would have to obtain a valid registry identification card from the Department of Health Services (DHS) or a valid out-of-state registration card or have a written certification from a physician documenting the person's debilitating medical condition or treatment. A qualifying patient would be able to invoke the defense if he or she acquires, possesses, cultivates, transports,

or uses marijuana for a medical condition or treatment, as long as the amount does not exceed the maximum authorized amount and only under certain circumstances. For example, patients could not drive or operate heavy machinery while under the influence of marijuana, and they could not smoke it in schools, parks, and many other public spaces.

Qualifying patients would be allowed to grow up to 12 marijuana plants or buy up to three ounces of marijuana from nonprofit corporations, known as compassion centers. DHS would be required to license and regulate these compassion centers, as well as establish and administer a state registry for medical users of marijuana.

The bills from 2009 were introduced again in both houses during the 2011 and 2013 sessions, but failed to pass in either session.

However, during the 2013 session, Assembly Bill 726, and a companion, Senate Bill 685, were introduced. The bills sought to have cannabidiol, an extract derived from marijuana that has no intoxicating effects but is used to treat certain medical conditions, categorized separately from other marijuana-related substances so that it could be prescribed as medicine. AB-726 was introduced by Representatives Kahl and Krug on February 4, 2014, then referred to the Assembly Committee on Children and Families. The committee amended the original bill to require that only licensed physicians be permitted to dispense cannabidiol, and that it be dispensed only after a physician has obtained certain medical approvals from the federal government for its use to treat a seizure disorder. The committee then passed the bill on to the full assembly where the amendment was adopted and the bill passed to the senate on a voice vote. The bill passed the senate by unanimous roll call vote and was messaged to the governor, who signed it into law on April 16, 2014, as 2013 Wisconsin Act 267.

NONMEDICAL MARIJUANA

Even before states began considering the debate over medical marijuana there was some disagreement on the proper way to regulate the cultivation, sale, possession and/or use of marijuana for nonmedical purposes. Critics of marijuana's designation as a Schedule I controlled substance have complained that the "high potential for abuse" described in the Controlled Substances Act and readily apparent with the use of some controlled substances like heroin or cocaine is incompatible with the "high potential for abuse" presented by the use of marijuana. The Drug Enforcement Agency responded to that argument in its "Notice of denial of petition to reschedule marijuana" in 2001, which read in part:

> When it comes to a drug that is currently listed in schedule I, if it is undisputed that such drug has no currently accepted medical use in treatment in the United States and a lack of accepted safety for use under medical supervision, and it is further undisputed that the drug has at least some potential for abuse sufficient to warrant control under the CSA, the drug must remain in schedule I. In such circumstances, placement of the drug in schedules II through V would conflict with the CSA since such drug would not meet the criterion of "a currently accepted medical use in treatment in the United States."

In spite of the fact that it remains illegal under federal law, two states have adopted laws that permit nonmedical marijuana, and others have considered the idea in recent years.

NONMEDICAL MARIJUANA LAWS IN OTHER STATES

Colorado and Washington are currently the only two states in the union that permit the possession, use, cultivation, or distribution of marijuana for nonmedical reasons. Marijuana remains illegal under federal law, but Colorado and Washington have amended their state laws to decriminalize the drug.

The federal government still has the power and authority to criminalize marijuana within those states – federal agents could arrest cultivators, wholesalers, retailers, or customers for violating federal drug laws, or the federal government could sue Colorado and Washington, arguing that federal law preempts state law in matters of drug control. In spite of those options, the federal government's Justice Department and Drug Enforcement Agency have signaled that they will tentatively permit states to proceed under their own marijuana laws for the time being.

Colorado implemented its new marijuana laws on January 1, 2014, with Washington following in July 2014. Consumer interest led to immense demand in both states, which tested all aspects of their statutory schemes, from maintaining adequate supply from licensed growers, to ensuring that minors could not purchase marijuana through retail storefronts.

The laws in Colorado and Washington have some differences, but they share certain features that are seen as indispensable. Most significantly, both states now permit personal possession of a certain amount of marijuana without criminal penalty. Neither state permits those under the age of 21 to cultivate, distribute, or possess the drug. Both states continue to criminalize the open consumption of marijuana, but the violations are civil, like speeding tickets, rather than criminal, so they won't result in arrest and risk of incarceration. Both states also continue to prohibit drug paraphernalia to some degree.

Colorado and Washington's laws result in heavy involvement by the government in any commercial activity involving marijuana. The marijuana business is regulated at every level, from cultivation to wholesale to retail, with various permits, licenses, fees, and taxes required depending on the circumstances. In this way, Colorado and Washington are able to maintain some control over marijuana while still permitting legitimate business. As a result, Colorado and Washington expect to enjoy a significant increase in revenue resulting from the fees and taxes related to the marijuana trade. Colorado reported approximately $11 million in tax revenue resulting from recreational marijuana sales in just the first six months of 2014.

Voters in Alaska and Oregon are scheduled to vote on decriminalization of nonmedical marijuana in their November 2014 general elections.

LEGISLATION IN WISCONSIN

2013 Assembly Bill 810, which sought to decriminalize marijuana for all purposes, was introduced on February 24, 2014, by Representatives Sargent and Ohnstad. The bill was referred to the Assembly Committee on Criminal Justice but failed to report out.

Assembly Bill 810 would have allowed Wisconsin residents age 21 or older to possess a limited amount of marijuana, or marijuana-derived products, without penalty, and it would have created a permit system for the legal sale of marijuana by certain distributors. It would have also created a penalty for possession or attempted possession of marijuana by those under the age of 21. The bill was the first legislative attempt to decriminalize marijuana for nonmedical purposes since the 1977 session. Because it failed to report out of committee before the last floorperiod ended, it is unlikely to be revived during the 2013 session, but the proposal may be introduced again in the 2015 session.

SYNTHETIC MARIJUANA

Simultaneous to the debate in the states over the deregulation of marijuana for medical and nonmedical purposes, there has been a debate over the proper way to regulate synthetic versions of marijuana.

For decades states have criminalized the possession and distribution of counterfeit controlled substances (that is, noncontrolled substances deliberately portrayed as legitimate controlled substances by a seller or dis-

tributor), on the theory that the potential for violence present in the sale of legitimate controlled substances is also present when only one party knows that the substance in question is not, in fact, an actual controlled substance. There are also concerns that the true contents of counterfeit controlled substances may be even more hazardous than the controlled substances they imitate.

It's only in the last decade, however, that states have had to consider the regulation of controlled substances that are not counterfeit imitations of actual controlled substances, but are instead synthetic versions of controlled substances that cause identical or similar effects to their nonsynthetic equivalents when consumed.

SYNTHETIC MARIJUANA LAWS IN OTHER STATES

Synthetic controlled substances are difficult to regulate by law because they are not easily described. Traditional controlled substances are readily identifiable and can be specified by their popular names, and also by their chemical compositions (e.g., the plant marijuana or the chemical THC). But synthetic controlled substances are not easily identifiable because they are distinct from the controlled substances they recreate, and their active chemicals are different than the active chemicals in controlled substances, though they often cause the same effects in users as their traditional equivalents.

In the case of synthetic marijuana, the chemical composition of the active ingredients in the plant are recreated in a lab, infused into a liquid solution, and then often sprayed on a green, leafy herb or plant in order to deliver the synthetic product in a way that can be smoked to mimic the consumption of actual marijuana. Law enforcement warns that the chemicals used, and even the leafy plant that they're sprayed on, can be incredibly toxic, and effects can vary greatly from product to product because the production of these synthetics is not regulated in any way.

Forty-one states have banned synthetic marijuana in its various forms and several other states are poised to do so before the end of their legislative sessions.

LEGISLATION IN WISCONSIN

Because synthetic controlled substances must be described in statutes using the chemicals and processes that create them, the individuals who manufacture such substances will make small changes to the procedure in an attempt to evade the specific descriptions in the law. Their end product may be substantially the same as the prohibited product, and produce the same effects, but because it's chemically different, it does not fall under statutory prohibitions. This situation requires states to continue to amend their statutes in an effort to keep up with the latest renditions of synthetic controlled substances, or to attempt to adopt a statute broad enough to encompass any synthetic, regardless of its individual composition or creation.

In Wisconsin, 2013 Senate Bill 325, which sought, in part, to regulate synthetic controlled substances, was introduced on October 2, 2013, by Senators Harsdorf and Jauch, then referred to the Senate Committee on Judiciary and Labor. It reported out of committee days later and was adopted by voice vote in the senate on November 5, 2013. It was then message to the assembly where it was referred to the Assembly Committee on Rules. After reporting out of committee it was adopted by the assembly, again by voice vote, on January 21, 2014, and was signed into law as 2013 Wisconsin Act 351 on April 22, 2014.

Act 351 describes synthetic controlled substances using a number of different chemical names and processes, ultimately prohibiting, in the case of synthetic marijuana:

> Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl,

haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl) ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

Penalties for the manufacture, distribution, or delivery of synthetic marijuana are identical to the penalties for manufacture, distribution, and delivery of actual marijuana listed in Table 1, but they specify only the weight of the substance, rather than considering the number of plants involved.

FOR MORE INFORMATION

Drug Laws

For more information on drug laws in Wisconsin, see the Wisconsin Legislative Council Legal Memorandum, *Drug Laws in Wisconsin: Offenses and Penalties Under Ch. 961, Stats. [The Uniform Controlled Substances Act]*, at: http://www.legis.state.wi.us/lc/publications/lm/lm_2003_05.pdf.

For more information on the Federal Controlled Substances Act, see: http://www.law.cornell.edu/uscode/text/21/chapter-13/subchapter-I.

View Chapter 961, Wisconsin Statutes, Uniform Controlled Substances Act at: http://www.legis.state.wi.us/statutes/Stat0961.pdf.

Medical Marijuana

For more resources on the medical use of marijuana, see the Wisconsin Legislative Reference Bureau's *Tap the Power*, "Medical Marijuana," at: http://legis.wisconsin.gov/lrb/pubs/ttp/ttp-01-2010.pdf.

For more information on medical marijuana laws in other states, see the National Conference of State Legislatures' page on the subject at: http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx.

View a copy of 2009 Senate Bill 368 at: https://docs.legis.wisconsin.gov/2009/related/proposals/sb368.pdf.

View a copy of 2009 Assembly Bill 554 at: https://docs.legis.wisconsin.gov/2009/related/proposals/ab554.pdf.

View a copy of 2013 Wisconsin Act 267 at: https://docs.legis.wisconsin.gov/document/acts/2013/267.pdf.

Nonmedical Marijuana

For more information on medical and nonmedical marijuana laws in other states, see the Office of National Drug Control Policy's page on the subject at: http://www.whitehouse.gov/ondcp/state-laws-related-to-marijuana.

View a copy of Washington's Initiative 502 at: http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

View a copy of Colorado's Amendment 64 at: http://www.fcgov.com/mmj/pdf/amendment64.pdf.

View a copy of 2013 Assembly Bill 810 at: https://docs.legis.wisconsin.gov/2013/related/proposals/ab810.pdf.

Synthetic Marijuana

View a copy of 2013 Wisconsin Act 351 at: https://docs.legis.wisconsin.gov/document/acts/2013/351.pdf.

For more information on synthetic marijuana laws in the states see the National Conference of State Legislatures' page on the subject at: http://www.ncsl.org/research/civil-and-criminal-justice/synthetic-cannabinoids-enactments.aspx.