

Garden State CLE presents:



A Joint Enterprise -

The coming legalization of marijuana

Lesson Plan

Introduction – Current Federal Law

- 1.) **The possession, distribution, or cultivation of marijuana, even for medical purposes, violates the federal Controlled Substance Act (CSA) and Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. See [21 U.S.C. § 841\(a\)\(1\)](#)**
- 2.) **Under the CSA, controlled substances are categorized into five schedules based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body. Marijuana is classified as a Schedule I controlled substance. 21 U.S.C. § 812 - Schedule I (c)(10) (classifying marijuana as a Schedule I controlled substance).**
- 3.) **Schedule I drugs are those considered to have a high potential for abuse, to lack currently accepted medical use in treatment, and to lack accepted safety for use under medical supervision. By classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, the manufacture, distribution, or possession of marijuana became a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration pre-approved research study. Additionally, as a Schedule I drug, physicians may not prescribe and pharmacists are precluded from dispensing marijuana. See [United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483, 490 \(2001\)](#).**

[But see *Kadonsky v. Lee*, ___ N.J. Super. ___ (App. Div. 2017) holding that the Division of Consumer Affairs has the authority to reclassify marijuana as a schedule IV substance.]
- 4.) **Simple possession of marijuana for personal use is a misdemeanor under federal law that carries a sentence of up to one year in federal prison and a maximum fine of \$100,000 for a first offense. See [21 U.S.C. § 844\(a\)](#); [18 U.S.C. § 3571\(b\)\(5\)](#). It is a disorderly persons offense under NJSA 2C:35-10(a)(4).**



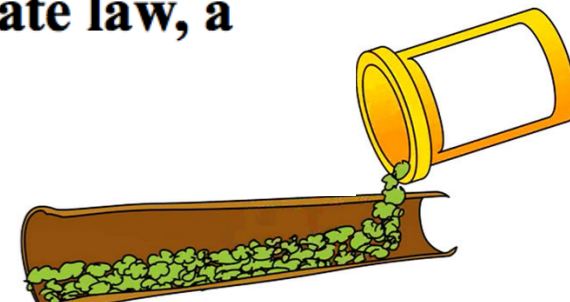
5.) Furthermore, the cultivation of marijuana is a felony under federal law; See [21 U.S.C. § 841\(a\)\(1\)](#).

6.) The growth of just one plant carries up to five years in federal prison and a fine of up to \$250,000 for a first offense. 18 USC [841\(b\)\(1\)\(D\)](#). Despite the widespread recognition of the potential therapeutic benefits of marijuana, repeated attempts to remove marijuana from the CSA or have it re-scheduled on the federal level have failed.

7.) While the federal government has authority to enforce its laws throughout the United States, it has no authority (apart from the taxing and spending powers) to require states to enforce federal law or to force states to have laws that are identical to federal law. State medical-marijuana laws are not preempted by the CSA because they do not conflict with the federal law, and states may continue to enact medical-marijuana legislation.

8.) The Supreme Court has never explicitly ruled that the CSA preempts state medical-marijuana laws. *Gonzales v. Raich*, [545 U.S. 1, \(2005\)](#). The CSA does not preempt state medical-marijuana laws because Congress did not intend to occupy the field of drug regulation when it enacted the CSA, and it sought to leave regulation of the practice of medicine to the states. Further, thus far, no state law has been found to conflict with the federal law. In short, the state and federal governments simultaneously occupy the field of drug regulation. Thus, while Congress enacts criminal drug laws as an exercise of its Commerce Clause power, states do so also pursuant to their police powers to enact legislation for the protection of the health of their citizens.

9.) When it was in office, the Obama administration vowed to refrain from prosecuting individuals who violate federal drug statutes if their actions are lawful under state law, a move that stands in stark contrast to the policies of both the Clinton and Bush administrations.



10.) State laws cannot protect individuals from federal prosecution, but they can offer considerable protection to patients. State and local law enforcement are responsible for about ninety-nine percent of marijuana-related arrests. The federal government has not prosecuted anyone living in the states with effective medical-marijuana laws for small amounts of marijuana. Thus, state lawmakers are in a position to afford patients almost absolute protection from prosecution related to medical-marijuana use.

Our Legislature's response to this is set forth under the new law:

a. Law enforcement agencies in New Jersey shall not cooperate with or provide assistance to the government of the United States or any agency thereof in enforcing the Controlled Substance Act, 21 U.S.C. 801 et seq., solely for actions consistent with [this Act], except as pursuant to a valid court order

b. No agency or subdivision of an agency of the State of New Jersey may refuse to perform any duty under [this Act] on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law.

c. The division may not revoke or refuse to issue or renew a license [this Act] on the basis that manufacturing, distributing, dispensing, possessing, or using marijuana is prohibited by federal law.



Part I. - Legislative Findings and Public Policy

a.) Political considerations - The driving political force behind this Act is the potential tax revenues that legalized marijuana may generate. The Legislature was greatly influenced by the experience of other states. Accordingly, in an effort to build market demand and generate revenue, the tax rate on the sale of personal-use marijuana will escalate as follows:

Year 1 = 7%

Year 2 = 10%

Year 3 = 15%

Year 4 = 20%

Year 5 = 25%



b.) The Legislature finds and declares that:

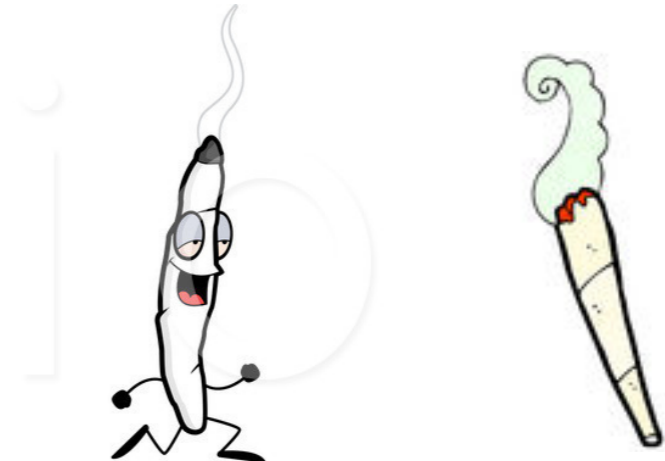
a. It is the intent of the people of New Jersey to adopt a new approach to our marijuana policies by taxing, controlling and legalizing marijuana like alcohol for adults;

b. It is the intent of the people of New Jersey that the provisions of this act will prevent the sale or distribution of marijuana to persons under 21 years of age;

c. This act is designed to eliminate the problems caused by the unregulated manufacture, distribution, and use of marijuana within New Jersey;

- d. This act will divert funds from marijuana sales from going to illegal enterprises, gangs, and cartels;**
- e. New Jersey law enforcement officers made over 24,000 arrests for marijuana possession in 2012, more than in the previous 20 years;**
- f. In 2012, a person was arrested for marijuana possession in New Jersey approximately every 22 minutes;**
- g. Black New Jerseyans are nearly three times more likely to be arrested for marijuana possession than white New Jerseyans, despite similar usage rates;**
- h. Marijuana possession arrests constituted three out of every five drug arrests in New Jersey in 2012;**
- i. New Jersey spends approximately \$127 million per year on marijuana possession enforcement costs;**
- j. Taxing, controlling, and legalizing marijuana for adults like alcohol will free up precious resources to allow our criminal justice system to focus on serious crime and public safety issues;**
- k. Taxing, controlling, and legalizing marijuana for adults like alcohol will strike a blow at the illegal enterprises that profit from New Jersey's current, unregulated marijuana illegal market;**
- l. New Jersey must strengthen our support for evidence-based, drug prevention programs that work to educate New Jerseyans, particularly young New Jerseyans, about the harms of drug abuse;**
- m. New Jersey must enhance State-supported programming that provides appropriate, evidence-based treatment for those who suffer from the illness of drug addiction;**
- n. Controlling and regulating the manufacture, distribution, and sale of marijuana will strengthen our ability to keep marijuana away from minors;**
- l. New Jersey must strengthen our support for evidence-based, drug prevention programs that work to educate New Jerseyans, particularly young New Jerseyans, about the harms of drug abuse;**

- m. New Jersey must enhance State-supported programming that provides appropriate, evidence-based treatment for those who suffer from the illness of drug addiction;**
- n. Controlling and regulating the manufacture, distribution, and sale of marijuana will strengthen our ability to keep marijuana away from minors;**
- o. A controlled system of marijuana manufacturing, distribution, and sale must be designed in a way that enhances public health and minimizes harms to New Jersey communities and families;**
- p. The regulated marijuana system in New Jersey must be regulated so as to prevent persons younger than 21 years of age from accessing or purchasing marijuana;**
- q. A marijuana arrest in New Jersey can have a debilitating impact on a person's future, including consequences for one's job prospects, housing access, financial health, familial integrity, immigration status, and educational opportunities;**
- r. The tax revenue generated from a controlled marijuana manufacture, distribution, and retail sales system in New Jersey will generate hundreds of millions of dollars to bolster effective, evidence-based drug treatment and education, and to reinvest in New Jersey communities;**
- s. New Jersey cannot afford to sacrifice its public safety and civil rights by continuing its ineffective and wasteful marijuana enforcement policies.**



Part II. Proposed Regulatory Structure

The Division of Marijuana Enforcement (Division) will be established within the Department of Law and Public Safety.

It will be headed by a Director. The Division shall have plenary authority to:

- (1) regulate the purchase, sale, production, processing, transportation and delivery of marijuana items in accordance with the provisions of this act.**
- (2) To grant, refuse, suspend or cancel licenses for the sale, processing, or production of marijuana items, or other licenses in regard to marijuana items, and to permit, in the division's discretion, the transfer of a license between persons.**
- (3) To investigate and aid in the prosecution of every violation of the statutory laws of this State relating to marijuana items and to cooperate in the prosecution of offenders before any State court of competent jurisdiction.**
- (4) To adopt, amend, or repeal regulations as necessary to carry out the intent and provisions of this act.**
- (5) To exercise all powers incidental, convenient, or necessary to enable the division to administer or carry out the provisions of this act, or any other law of this State that charges the division with a duty, function, or power related to marijuana.**



Part III. Proposed Commerical Structure

Authorized Licensees

“Licensee” means a person who holds a license issued under this act that is designated as either a Class 1 Marijuana Cultivation Facility license, herein also referred to as a Marijuana Producer license, or a Class 1 Marijuana Product Manufacturing Facility license; herein also referred to as a Marijuana Processor license, a Class 2 Marijuana Wholesaler license; a Class 3 Marijuana Retailer license; or a Class 4 Marijuana Transportation license.

A marijuana producer must have a Class 1 Marijuana Cultivation Facility license

A marijuana processor must have a Class 1 Marijuana Product Manufacturing Facility license (Marijuana Processor license) issued by the division for the premises at which the marijuana is produced.

A marijuana wholesaler must have a Class 2 Marijuana Wholesaler license issued by the division for the premises at which the marijuana is warehoused. The division shall determine the maximum number of licenses but, providing there exist qualified applicants, shall issue a sufficient number of licenses to meet the wholesaler demands that implementation of this act requires.

A marijuana retailer must have a Class 3 Marijuana Retailer license issued by the division for the premises at which the marijuana is retailed. A retailer may not have any interest in manufacturing or wholesaling.



No person, partnership, employee cooperative, association, nonprofit corporation, corporation, or the agents thereof, shall hold more than three marijuana establishment licenses at any time.

A marijuana transporter must have a Class 4 Marijuana Transportation license issued by the division.

Marijuana handlers. a. An individual who performs work for or on behalf of a person who holds a license under [this Act] shall have a valid permit issued by the division under this section if the individual participates in:

(1) the possession, securing, or selling of marijuana items at the premises for which the license has been issued; or

(2) the recording of the possession, securing, or selling of marijuana items at the premises for which the license has been issued.



Part IV. Decriminalization - In general

Personal use of marijuana – Generally speaking, the Bill permits personal possession and use by a person who is 21 years old or older in an amount up to one ounce. (28.38 grams) Greater amount, up to 50 grams would be handled as a civil violation with a small fine.

Notwithstanding any other provision of law, the following acts are not unlawful and shall not be a criminal offense or a basis for seizure or forfeiture of assets under N.J.S.2C:64-1 et seq. or other applicable law for persons 21 years of age or older:

a. Possessing, using, purchasing, or transporting: marijuana paraphernalia; one ounce or less of marijuana; 16 ounces or less of marijuana infused product in solid form; 72 ounces or less in liquid form; 7 grams or less of marijuana concentrate; and up to 6 immature marijuana plants subject to the provisions of subsection b. of this this section.

b. Transfer of one ounce or less of marijuana; 16 ounces or less of marijuana infused product in solid form; 72 ounces or less in liquid form; 7 grams or less of marijuana concentrate; and up to 6 immature plants, without marijuana cultivation facility to a person who is of or over the legal age for purchasing marijuana items, provided that such transfer is for non-promotional, non-business purposes.

c. Consumption of marijuana items, provided that nothing in this section shall permit a person to smoke or otherwise consume marijuana items openly in a public place.

d. Assisting another person who is of or over the legal age for purchasing marijuana items in any of the acts described in subsections a. through c. of this section.

Part V. Decriminalization - Age Restrictions



Prohibition of Persons under the Legal Age Purchasing Marijuana.

- a. No person, either directly or indirectly by an agent or employee, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost, give, or furnish, to a person under 21 years of age, any marijuana items.**
- b. Any licensee or employee or agent of a licensee who allows a person under the age of 21 to procure marijuana items is guilty of a disorderly persons offense and subject to a civil penalty of not less than \$250 for the first violation; \$500 for the second violation; and \$1,000 for the third and each subsequent violation; in addition, subject to a hearing, a licensee's license may be revoked;**
- c. The establishment of all of the following facts by a licensee, employee, or agent, allowing any such person under the age of 21 to procure marijuana items shall constitute a defense to any prosecution pursuant to the provisions of subsections a. and b. of this section:**
- (1) That the purchaser of the marijuana or marijuana product falsely represented, by producing either a United States passport; driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission; a similar card issued pursuant to the laws of another state; United States military identification card; or a photographic identification card issued by a county clerk, that he was of legal age to make the purchase;**
 - (2) That the appearance of the purchaser was such that an ordinary prudent person would believe him to be 21 years of age or older, of legal age to make the purchase; and (3) That the sale or distribution was made in good faith, relying upon the production of the identification in paragraph (1) of this subsection, the minor's appearance, and in the reasonable belief that the purchaser or recipient was actually of legal age to make the purchase.**
- d. It shall be unlawful for a person under the age of 21 to attempt to purchase, or acquire a marijuana item, even if such marijuana items may be legally purchased by persons at or above the legal age for purchasing marijuana items.**

For purposes of this subsection, purchasing a marijuana item includes accepting a marijuana item, and acquiring a marijuana item includes consuming a marijuana item.

e. It shall be unlawful for a person under the age of 21 to present or offer to a marijuana establishment or the marijuana establishment's agent or employee any written or oral evidence of age that is false, fraudulent, or not actually the person's own, for the purpose of:

(1) Purchasing, attempting to purchase, or otherwise procuring or attempting to procure marijuana or marijuana products; or

(2) Gaining access to a marijuana establishment.

f. Except as permitted by the division by rule or regulation, or as necessary on an emergency basis, a person under legal age for purchasing marijuana items may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of persons under legal age for purchasing marijuana items, unless accompanied by and supervised by a parent or legal guardian.

g. Any person who shall violate any of the provisions of subsections d., e., or f. of this section shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$500.



h. The prohibitions of this section do not apply to a person under the legal age for purchasing marijuana items who is acting under the direction of the division or under the direction of State or local law enforcement agencies for the purpose of investigating possible violations of the laws prohibiting sale of marijuana items to persons who are under the legal age for purchasing marijuana items.

i. The prohibitions of this section do not apply to a person under the legal age for purchasing marijuana items who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of marijuana items to persons who are under the legal age for purchasing marijuana items.

j. A person under the legal age for purchasing marijuana items is not in violation of this section, and is immune from prosecution under this section if: (1) The person contacted emergency medical services or a law enforcement agency in order to obtain medical assistance for another person who was in need of medical assistance because that person consumed a marijuana item and the evidence of the violation of this section was obtained as a result of the person's having contacted emergency medical services or a law enforcement agency; or (2) The person was in need of medical assistance because the person consumed a marijuana item and the evidence of the violation of this section was obtained as a result of the person's having sought or obtained the medical assistance.

(3) Paragraph (1) of this subsection does not exclude the use of evidence obtained as a result of a person's having sought medical assistance in proceedings for crimes or offenses other than a violation of this section.



Part VI. Decriminalization - Marijuana establishments: (Retailers, Cultivators, Manufacturers, Testing facilities.)

Lawful operation of marijuana establishments

Notwithstanding any other provision of law, the following acts are not unlawful and shall not be a criminal offense or a basis for seizure or forfeiture of assets under N.J.S.2C:64-1 et seq. or other applicable law for persons 21 years of age or older:

- a. manufacture, possession, or purchase of marijuana paraphernalia or the sale of marijuana paraphernalia to a person who is 21 years of age or older.**
- b. possessing, displaying, or transporting marijuana items; purchase of marijuana from a marijuana cultivation facility; purchase of marijuana items from a marijuana product manufacturing facility; or sale of marijuana items to consumers, if the person conducting the activities described in this subsection has obtained a current, valid license to operate as a marijuana retailer or is acting in his capacity as an owner, employee, or agent of a licensed marijuana retailer.**





Part VII. Prohibited Acts

- b. Nothing in [this Act] is intended to allow driving under the influence of marijuana items or driving while impaired by marijuana items or to supersede laws related to driving under the influence of marijuana items or driving while impaired by marijuana items.**
- c. Nothing in [This Act] is intended to permit the transfer of marijuana items, with or without remuneration, to a person under the age of 21 or to allow a person under the age of 21 to purchase, possess, use, transport, grow, or consume marijuana items.**
- d. Nothing in [this Act] shall prohibit a person, or any other entity that occupies, owns, or controls a property from prohibiting or otherwise regulating the consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana items on or in that property, provided that local government units may not prohibit possession permitted by section 3 of [this Act] on or within a public place.**
- e. Nothing in [this Act] is intended to permit any person to possess, consume, use, display, transfer, distribute, sell, transport or grow marijuana items in a school, hospital, detention facility, adult correctional facility, and youth correction facility.**
- f. Nothing in [this Act] is intended to permit the smoking of marijuana in any place that any other law prohibits the smoking of tobacco. Any fines that may be assessed for the smoking of tobacco in designated places shall be applicable to the smoking of marijuana.**

NJSA 2C:35-5(a)(11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

NJSA 2C:35-10(a)(3) and (4) - Possession of 50 grams or more of marijuana, including any adulterants or dilutants, or more than five grams of hashish is guilty of a crime of the fourth degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed; or

(4) Possession of more than one ounce (28.38 grams) but less than 50 grams, of marijuana, including any adulterants or dilutants, is a disorderly person.

Following the enactment of, but prior to the effective date of, [this Act], possession of up to 50 grams of marijuana shall constitute a civil violation not subject to arrest, and limited to a fine of up to \$100, notwithstanding the provisions of N.J.S. 2C:35-10.

NJSA 39:4-49.1 - Except as authorized by [this Act], no person shall operate a motor vehicle on any highway while knowingly having in his possession or in the motor vehicle any controlled dangerous substance as classified in Schedules I, II, III, IV and V of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.) or any prescription legend drug, unless the person has obtained the substance or drug from, or on a valid written prescription of, a duly licensed physician, veterinarian, dentist or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals or unless the person possesses a controlled dangerous substance pursuant to a lawful order of a practitioner or lawfully possesses....

Criminal Investigation.

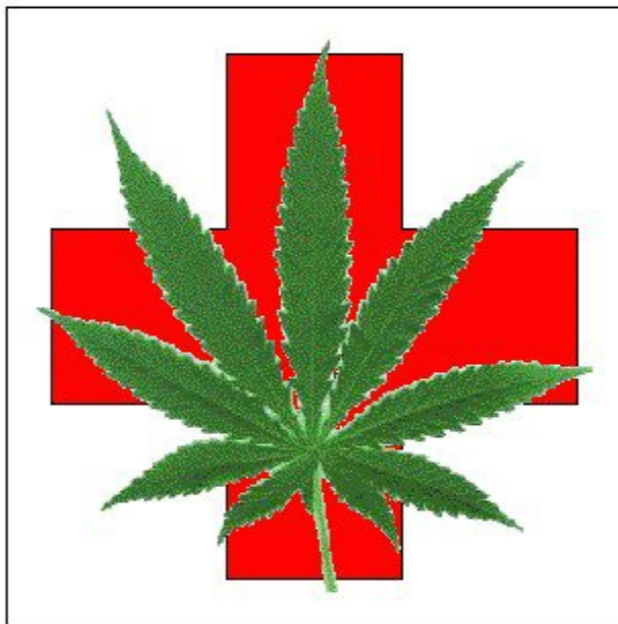
a. None of the following shall, individually or in combination, constitute reasonable articulable suspicion of a crime:

(1) The odor of marijuana or burnt marijuana;

(2) The possession of or the suspicion of possession of marijuana without evidence of quantity in excess of one ounce;

(3) The possession of marijuana without evidence of quantity in excess of one ounce in proximity to any amount of cash or currency;

b. Subsection a. of this section shall not apply when a law enforcement officer is investigating whether a person is driving under the influence of marijuana or driving while impaired by marijuana in violation of R.S.39:4-50.



Part VIII. Expungements

Expungement. Any person convicted of marijuana possession as defined in paragraph (4) of subsection a. of N.J.S.2C:35-10 prior to the effective date of [this Act] shall, following the enactment of [this Act] , be eligible to present an application for expungement to the Superior Court pursuant to the provisions of chapter 52 of Title 2C of the New Jersey Statutes.



IX. Local government ordinances

Section 11 of the Act provides for local governmental entity regulations or ordinances. The bill provides that each local governmental entity shall enact an ordinance or regulation specifying the entity within the local governmental entity that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the local governmental entity and for the issuance of such licenses, should the issuance by the local governmental entity become necessary because of a failure by the division to adopt regulations or to process and issue licenses.

The local governmental entity may enact ordinances or regulations, not in conflict with the provisions of the bill, that address the following:

- governing the time, place, manner and number of marijuana establishment operations;**
- establishing procedures for the issuance, suspension, and revocation of a license issued by the local governmental entity;**
- establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a local governmental entity in accordance with the provisions of the bill and a licensing fee shall only be due if a license is issued by a local governmental entity; and -- establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such local governmental unit.**

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