23ND ANNUAL EDITION

THE MARGOLIN GUIDE™

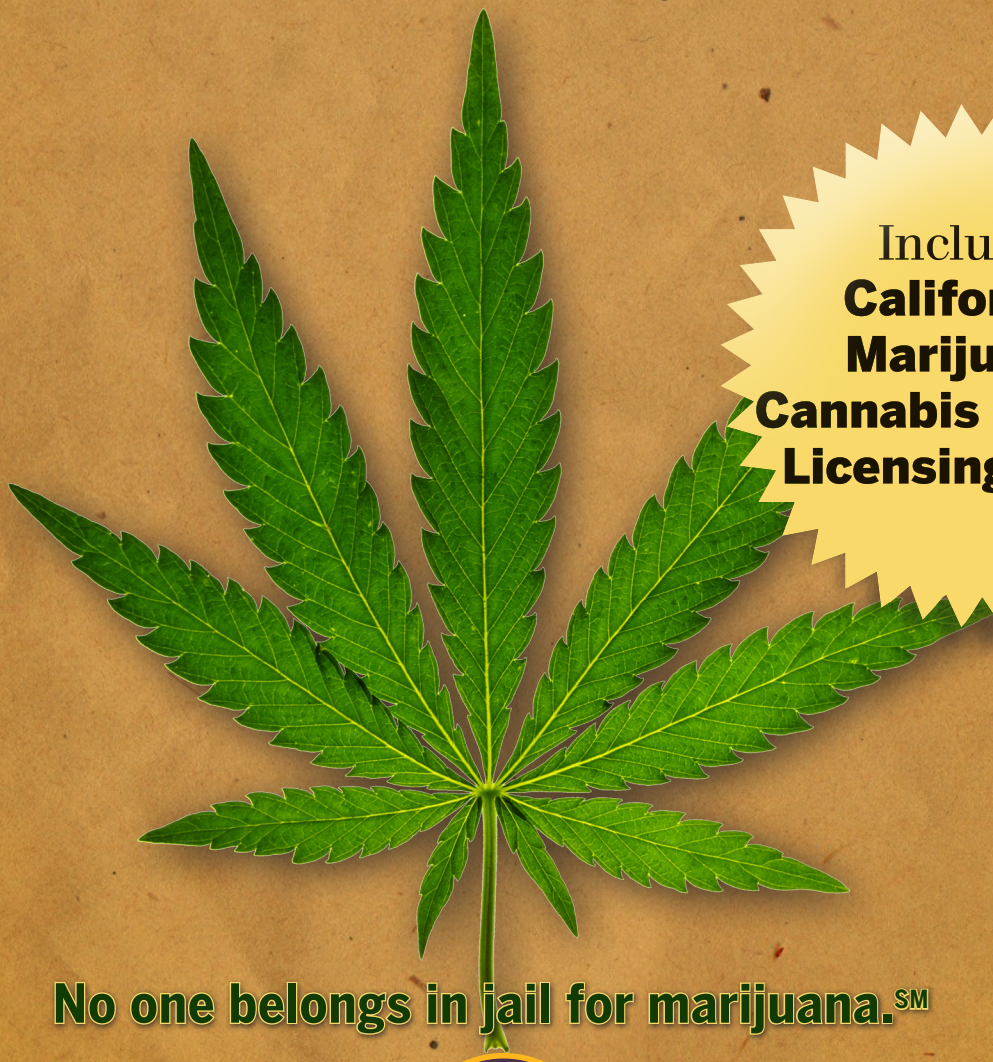
BY

BRUCE M. MARGOLIN
ATTORNEY AT LAW

California's & U.S Federal Marijuana/Cannabis Laws

Know The Laws And Your Rights!!

Possession, Cultivation, Sales, Transportation,
Dispensaries, Medical & Adult Use, DUI, CBD Products,
and Cannabis Business Licensing Laws, etc.



Includes:
California's Marijuana/ Cannabis Business Licensing Laws !

No one belongs in jail for marijuana.SM

OFFICIAL COURSE BOOK — OAKSTERDAM UNIVERSITY

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"For half a century, Bruce Margolin has been "the" defense attorney for marijuana cases."
-The Most Radical Weed Law & Democrats On DACA,
Vice News Tonight ''The Most Radical Weed Law & Democrats On DACA:'' *Jan 16, 2018*

"That someone – who has devoted his life's work to pursuing legalization fo marijiana –
is Bruce Margolin."- American Bar Association Journal AUGUST 2017

Margolin has spent most of his five-decade career fighting
pot cases and pushing for legalization of marijuana....
Since the passage of Proposition 64, he's gotten convicts
out of prison, spared others time behind bars and
successfully knocked felonies down to misdemeanors.
Brian Melley **Associated Press** *May 23, 2017*

"The indefatigable dean of cannabis law is keen to
educate the public on the continuing toll of human
suffering wrought by unjust marijuana laws"
"Bruce Margolin Is Just Getting Started! By Tom Hymes" **mg Magazine** August 2015 *(See Page 42)*

"Bruce Margolin is Synonymous
With Fighting Weed Busts in California.....
The Dean of Weed Defense Attorneys.
He has Defended 25,000 Pot Cases and Timothy Leary."
La Weekly *"Prop 19: Dreams of Legal Weed" October, 2010/Vol. 32/No.48 (See Page 40)*

"Finally someone has made the Marijuana Laws easy to understand."
"What you don't know can hurt you. Read this Book."
-Jack Herer, Hemp Advocate and Author,
The Emperor Wears No Clothes
R.I.P 1939-2010

"In our mission to provide quality training, Oaksterdam
University utilizes The Margolin Guide as a key component to our curriculum.
The Margolin Law Guide offers smart practices to stay compliant
with California Law. The entire community will understand their
constitutional rights and learn to have successful encounters
with law enforcement by following this guide."
-Dale Sky Clare, Executive Chancellor, **Oaksterdam University**.

The Law Office Of
BRUCE M. MARGOLIN
State And Federal Criminal Defense

Offices in Los Angeles, California

Phone: 310 652- 0991 or 1-800-420-LAWS
Fax: *310-652-1501*
Email: Margolinlawoffice@gmail.com
Website: 1800420LAWS.COM

To explore together the spiritual qualities of cannabis,
"the sacred herb" visit Bruce Margolin's
420Yoga.com

**Mr. Margolin is available to represent clients throughout
California and in all 50 states (pro hoc vice)**

Graphic Design by: Christopher Reale of RealeImageWorks

From the Author

By Bruce M. Margolin, Esq.

Dear Readers,

I offer my guide in hopes that its information will continue to help people stay out of trouble because, "No one belongs in jail for marijuana"[SM] ! Knowledge of the laws and your rights can be the key to freedom.

As a criminal defense attorney, I am pleased to have successfully defended more clients faced with marijuana related offenses than probably any other attorney in the country . To help ensure the protections afforded to you by the U.S. Constitution , including the right to remain silent, see the Invocation of Rights (wallet sized card) inserted in the centerfold of my guide.

Unfortunately, convictions of marijuana related offenses still have serious consequences, including jail (even prison in some cases), loss of professional and driver's licenses, loss of student aid, and deportation.

My Guide includes the California cannabis business licensing laws and regulations, which can help you if you are interested in the cannabis industry. Under U.S. Federal law, marijuana is still classified as a illegal Schedule1 drug even though 32 states, the District of Columbia, Guam and Puerto Rico have legalized medical marijuana and 9 states have legalized adult use.

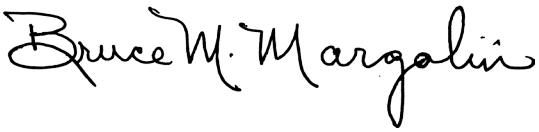
This booklet is not intended to be, nor is it, legal advice. It often requires continuing updates and corrections and errors may have occurred due to the editing and laws/regulations could have changed since last researched. Ultimately rely only on current statues, regulations, and case law, many of which are referenced herein.

I remain available to provide legal services if you, or someone you know, needs help regarding criminal matters or to obtain marijuana/cannabis business licenses.

Email: bmargolin@margolinlawoffice.com
Telephone : 1- 800- 420- LAWS (5297) or 1- 310- 652-0991

Visit 420laws.com to download copies, view updates on the guide and/or call my office to order printed copies

Keep The Faith,



Bruce Margolin, Esq.

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PART 1

CRIMINAL LAWS

Possession

As of November 8, 2016, with passage of Prop 64, it is now Legal to Possess (and Give) an ounce of Marijuana & 8 grams of Hashish; California Health & Safety Code § 11362.1, 11362.45;

LAW: POSSESSION, BY ADULTS OVER 21, OF AN OUNCE OR LESS OF MARIJUANA AND EIGHT GRAMS OF HASHISH IS LEGAL IN CALIFORNIA: It is legal to possess, process, transport, purchase, obtain or give away by and to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana, or eight grams of concentrated cannabis (hashish), including either amount contained in marijuana products. (See page 10, 11, and 12 regarding how to avoid conviction).

REDUCTIONS AND DISMISSALS OF PRIOR MARIJUANA FELONIES

Note from Bruce: PROP 64 AlSO PROVIDES FOR MOST PRIOR MARIJUANA FELONIES TO BE REDUCED TO MISDEMEANORS OR EVEN DISMISSED IN SOME CASES The law is retroactive, meaning defendants can have their conviction reduced to what it would have been at the time if Prop 64 had been in effect and in some cases dismissed altogether (H&S §11361.8)

Exceptions Include: transportation out of state, violation of environmental laws, prior sex offenses, and serious or prior violent felonies and marijuana convictions involving minors.

POSSESSION REMAINS ILLEGAL IN REGARDS TO THE FOLLOWING CASES:

- Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code **($100 infraction*)**.

  Note from Bruce: Smoking or ingesting marijuana in a condo or apartment where it has been prohibited by the landlord, owner, or condo manager can get you evicted!

- Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited. **($100 infraction*)**.

- Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center* while children are present at such a school, day care center, or youth center*, except in or upon the grounds of a private residence or in accordance with Section 26200 of, or Chapter 3.5 (commencing with Section 19300) of Division 8 of, the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center* while children are present **($100 infraction*)**.

- Possess an **open container or open package** of marijuana or marijuana products **while driving,** operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation **($250 infraction*)**. Per SB94, it is ok to store open containers in trunk. Patients with doctor recommendation or country issued health department card may have unsealed containers.

- Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center* while children are present **($100 infraction*)**.

- Manufacture concentrated cannabis using a volatile solvent*, unless done in accordance with a license under Chapter 3.5 (commencing with Section 19300) of Division 8 of, or Division 10 of, the Business and Professions Code. **(Felony Conviction: 3-5 Years in Prison)**

- Smoke or ingest marijuana or marijuana products **while driving,** operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation . **($250 infraction*)**

- **Smoke or ingest** marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present. **($250 infraction*)**.

- Nothing in this section shall be construed or interpreted to amend, repeal, affect, restrict, or preempt patient laws pertaining to the Compassionate Use Act of 1996. Except to the product must be in a sealed container while in the vehicle.

- For purposes of this section, "day care center" has the same meaning as in Section 1596.76.

- For purposes of this section, "smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated marijuana or marijuana product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoke" **includes** the use of an electronic smoking device that creates an aerosol or **vapor**, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.

- (a) For purposes of this section, "volatile solvent" means volatile organic compounds, including: (1) explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, Kerosene, O2 or H2; and (2) dangerous poisons, toxins, or carcinogens, such as Methanol, Isopropyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Trichloroethylene.

- (b) For purposes of this section, "youth center" has the same meaning as in Section 11353.1 of the Health & Safety Code

***Court Assessments on fines are added**

Possession of Over an Ounce

California Health & Safety Code § 11357;

Except as authorized by **the law**, possession of not more than 28.5 grams of marijuana, or not more than four/ eight grams* of concentrated cannabis, or both, shall be punished or adjudicated as follows:

ALL ADULTS 21 OVER IN CALIFORNIA

LAW: POSSESSION OF OVER AN OUNCE OF MARIJUANA AND/OR OVER 8 GRAMS OF HASH BY ADULTS OVER 21 IS A MISDEMEANOR: It is illegal to knowingly possess marijuana over an ounce and have it under your dominion and control. Possession of an amount over an ounce, is punishable by up to six months of jail, a $500 fine, or both.

POSSESSION BY ADULTS 18-21 H&S 11357 (B)(2)(b)

Not More than 28.5 grams of marijuana, or not more than 8 grams of concentrated cannabis

- Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars ($100, plus penalty assessments). H&S 11357 (a)(2)

Possession of More than 28.5 grams of marijuana, or more than four grams of concentrated cannabis

- May be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500,), or by both such fine and imprisonment. H&S 11357 (b)(2)

JUVENILES (UNDER 18) H&S 11357 (a)(1)

Not More than 28.5 grams of marijuana, or not more than 8 grams of concentrated cannabis

- Upon a finding that a first offense has been committed, complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days. H&S 11357 (a)(1)(A)
- Upon a finding that a second offense or subsequent offense has been committed, complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days. (a)(1)(B)

Possession of More than 28.5 grams of marijuana, or not more than 8 grams of concentrated cannabis

- Upon a finding that a first offense has been committed, complete eight hours of drug education or counseling and up to 40 hours of community service over a period not to exceed 90 days.
- Upon a finding that a second or subsequent offense has been committed, complete 10 hours of drug education or counseling and up to 60 hours of community service over a period not to exceed 120 days.

***Exceptions Include qualified Medical Marijuana/Cannabis Patients who are allowed to possess amounts deemed reasonably necessary for their current medical needs (Subject to local city and county regulations)**
***Penalty assessments on fines are added (i.e. $100 will become approximately $500)**

Note from Bruce: It is a felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor is punishable by up to 5 years if given to a minor over 14 years and punishable by up to 7 years if given to a minor under 14 years old.

Note from Bruce: Prop 215 (Compassionate Use Sct 1996) remains to provide additional protections to patients rights (unaffected by Prop 64)

California Health & Safety Code § 11362.3 (F)

Nothing in this section shall be construed or interpreted to amend, repeal, affect, or preempt laws pertaining to the Prop 215 (Compassionate Use Act of 1996). Prop 215 remains in affect, therefore patients may cultivate amounts reasonable for their current medical needs. (See People V. Kelly on Page 20)
(However, it is subject to local city and country regulations (see Kirby v. Fresno Ct. No. 14CECG00551)

Possession for Sale

California Health & Safety Code § 11359 b MISDEMEANOR *

LAW: POSSESSION FOR SALE IS A MISDEMEANOR UNDER MOST CIRCUMSTANCES: To sell means to exchange any amount of marijuana or hashish for anything of value. Note that "giving away" up to an ounce of marijuana is legal in the State of California involving adults over the age of 21. Refer to "Medical Marijuana Laws" on pages 16-17 to learn more the laws regarding patients, collectives, cooperatives, etc.

PENALTY: Possession of any amount for adults over 18 with the intent to sell is punishable by up to 6 months of jail, a $500 fine, or both. Persons under 18 who possess for sale requires participation in drug education/counseling, and community service over a limited period of time. **Providing cannabis to minors over 14 year of age is punishable by 3-5 years and providing cannabis to minors under 14 is 3-7 years in prison.** * **Felony offenses remain in effect** for those who involve minors, caused toxic or hazardous substances, watershed/environment harm, are registered sex offenders, export out of state, export more than 28 grams, or have prior super strike, face 16 months to 3 years, unless probation is granted. (See Penal Code 667 for definition of Super Strikers i.e. robbery is not a Super Strike). Persons who have 2 or more prior marijuana convictions for possession for sale potentially face a wobbler (felony or misdemeanor), punishable by county jail of up to a year, or three years in prison.

THE NUMBER OF PACKAGES AND THEIR SPECIFIC WEIGHTS: The number of packages seized is often the controlling factor relied upon by the prosecution. For example, a half pound of marijuana in one package may be charged as simple possession; however, the same 8 ounce package separately will often be charged as possession for sale, especially if the packages are in specific weights (eights, ounces, quarter pounds).

Note from Bruce: Suspects are often arrested and on occasion charged with felonies , even though the suspect's offense may qualify to be reduced to a misdemeanor. The defendant need to then make a motion to reduce to misdemeanor under Prop 64 if a felony charge is filed, or discuss the matter with the D.A. to have them move to amend to a misdemeanor or dismiss

Note from Bruce: ***Concerning What Can Be Proof Of Intent to Sell:*** A police officer's opinion alone, that the marijuana possessed is for sale rather than for personal use can be enough, if believed, to establish guilt of intent to sell. Their opinions are usually based on the excessive quantities of marijuana, the number of packages, the presence of packaging material (baggies), the presence of large amounts of money, scales, ledgers (pay and owe notes), cell phones, pagers, foot traffic to and from the premises, incriminating text messages and/or statements by witnesses or the defendant.

The defense has the right to call their own expert to testify that the amount of marijuana and other factors are consistent with personal use as opposed to possession for sale. The defendant may also choose to testify on his/her behalf and to call other witnesses in order to defeat an allegation that the marijuana was for sale rather than personal use.

My office has access to court qualified cannabis experts to testify on behalf of the defense. I am also the director of the National Institute of Court Qualified Cannabis Experts. For those interested in becoming an expert contact me at bmargolin@margolinlawoffice.com, or call me.

Non-citizens (Including Green Card Holders), any conviction for possession for sale or even simple possession of over 28.5 grams will result in deportation, exclusion from admission or reentry to United States, denial of naturalization, and amnesty.

Note from Bruce: ***About Second and Third Strike Laws and felony marijuana convictions:*** Strikes are serious or violent felony offenses. Marijuana offense are not "strikes." However, any felony marijuana conviction with one or more prior strikes mandates no probation and doubles the time. The judge may set aside the strike at the time of the sentencing (Romero Motion). Example: Transportation for sale of more than a ounce is a felony, when done by exporting/importing across California's border i.e. mailing or federal express weed to other states .

Cultivation

California Health & Safety Code §11362.2 & §11358 Misdemeanor /Felony

LAW: Adults 21 and over may grow up to 6 plants on their property subject to it not being visible from public view and locked and posses whatever amounts have been previously grown, and harvested (also in the residence).

Note from Bruce: You may want to keep the root-balls as evidence that what you possess is from what you grew from your own plants.

Otherwise, outdoor and indoor (over 6 live plants) cultivation is subject to local land use laws, that can include complete bans and other conditions; i.e. Los Angeles County, have banned outdoor cultivation entirely, while others have local regulations that restrict, or increase, the amount that can be cultivated and the locations; i.e. secure greenhouses.

Cultivation of any amount exceeding 6 live plants is a misdemeanor in most cases*, unless you're a qualified medical marijuana patient or have obtained a cannabis business license, or are conforming to local regulations. City and county land use regulations apply (see page 26)

Third or aggravated priors of cultivation of over 6-plants, is a wobbler (felony or misdemeanor), punishable by county jail of up to a year, or three years in prison. In addition *Felony offenses remain in effect against those who involved minors, caused toxic or hazardous substances, watershed/environment harm, are registered sex offenders, export/import out of state, export for sale, or have prior super strike, face 16 months to 3 years, unless probation is granted. (See Penal Code 667 for definition i.e. robbery is not a Super Strike).

PENALTY: For every person 18 years **or over** who plants, cultivates, harvest, dries, or processes **more than** six plants sentencing includes probation, and as a condition can include up to 6 months in jail, a $500 fine, or both **(H&S 11358 (c)).** For Persons **18-21** (except qualified patients) (see page 10), cultivation of six plants **or less** is a $100 infraction. For **non-citizens** (including green card holders),are subject to deportation, exclusion from admission or reentry to United States, and denial of naturalization and amnesty.

PLANTS ALONE MAY BE CHARGED AS POSSESSED FOR SALE: The defense may be able to refute the prosecution's charge of possession for sale in cultivation cases by using a 1992 DEA Cannabis Yields Study that indicated that (saleable) marijuana buds comprise less than 10% of the total net weight of the plants.

TOO MANY PLANTS FOR DEFERRED ENTRY OF JUDGMENT PROGRAM: Even though possession for sale is not charged, the prosecution may object to DEJ by contending that the cultivation is not for personal use. The defendant is entitled to a hearing before a judge who decides whether or not DEJ or court diversion will be granted over the prosecution's objection before trial. (See page 11)

FEDERAL 5 AND 10 MANDATORY SENTENCING LAWS REMAIN: In Federal Courts and in some other states besides California, the number of plants determines the length of the sentence. Under Federal law, there is a mandatory sentencing of five years for 100+ plants, and a mandatory sentencing of 10 years for 1,000+ plants, no matter how big or what state they are in (even just rooted seedlings). (See Page 14)

THEFT OF ELECTRICITY: Persons who tap electric lines or bypass electrical metering will also face a felony/wobbler offense, meaning it can be charged as a misdemeanor or felony offense, punishable by up to 3 years. Wobbler felonies can be charged or reduced to misdemeanors (after a period of probation).

Note from Ed Rosenthal (Ask ED, author-activist)
"Using marijuana is not addicting but cultivating often is." :)

Transportation, Import/Export, Sale or Gift

California Health & Safety Code §11360: Felony or Misdemeanor

TRANSPORTATION LAW:

AN OUNCE IS LEGAL

Giving away and/or transporting up to an ounce of marijuana and 8 grams of hashish/concentrate within the state, for personal use, is legal by or for adults over 21.

PENALTY FOR TRANSPORTING OVER AN OUNCE

Offering, transporting or selling any amount over an ounce is a misdemeanor. The term "sale" refers to bartering or exchanging items for anything of value. Adults over 18 who transport or give away more than 1 ounce or 8 grams of hash will be subject to a misdemeanor conviction, punishable by up to 6 months, a $500 fine or both

FELONY PENALTIES FOR TRANSPORTATION (IMPORTING, EXPORTING, INVOLVEMENT OF MINORS)

Importing or attempted/offered to import into California, or transporting or attempted/offered to transport out of California for sale, marijuana or concentrated cannabis is a felony, punishable by up to 4 years, unless probation is granted.

In addition, under H&S Code § 11361, it's a felony conviction punishable by up to 3-7 years for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

Note from Bruce: Using Minors, even just as trimmers, is a felony (See above for more Info.)

TRANSPORTATION PENALTIES FOR NON-CITIZENS

Possession and transportation of over 28.5 grams is a offense that subjects **non-citizens to deportation,** even for those who possess green cards. Under immigration laws, it is considered an aggravated offense.

SENTENCING & PROBATION FOR TRANSPORTATION OFFENSES:

Under Prop 36 (see page 12), an alternative sentencing program may be granted for transportation and possession for personal use even when over an ounce. Deferred Entry of Judgment (DEJ) is not applicable to charges involving transportation unless the marijuana is for personal use. (see page 11).

Note from Bruce: Defining "Probation" The term probation does not necessarily mean that time in county jail will not be imposed. In felony cases, "probation" means that a prison sentence is not imposed. Probation terms can include up to 6 months as a misdemeanor or up to a year for a felony in county jail as well as probation of up to 3-5 years and search with out warrant condition. Other alternatives to jail include fines, house arrest, or community labor/service. In misdemeanor cases, probation means that part of or the entire county jail sentence may not be imposed. Almost without exception, in cases that I have been the attorney, first time convicted offenders receive probation in almost all CA State Courts, regardless of the amount of marijuana/cannabis involved (i.e. 700 plants, 100s pounds), unless guns were involved.

THE RIGHT TO REMAIN SILENT (MIRANDA RIGHTS):

When being detained during an investigation, suspects do not have to be advised of their Miranda rights; by choosing to talk, the statements you make can and will be used against you. Upon arrest, officers are required to advise a suspect of his or her Miranda rights; however, even if officers fail to give Miranda warnings, any statements made by the defendant are still admissible if he or she takes the stand, to impeach/contradict the defendant's testimony. Note that as of June 2010, the Supreme Court held that silence alone does not invoke one's right to remain silent. The suspect must say, "I want a lawyer," to an officer's request to waive his or her rights. To help protect your constitutional rights, see the wallet sized "Invocation of Rights" card in the centerfold of this guide.

Driving Under the Influence (DUI) When Impaired

Vehicle Code 23152e CA

PROP 64 DID NOT AMEND OR CHANGE LAWS REGARDING MARIJUANA DUI PROSECUTION

LAW: Even though possession of Marijuana is legalized, it remains unlawful to drive while under the influence of marijuana or any drug if impaired to the degree that one is unable to operate a motor vehicle safely.

PENALTY: For first time offenses, the maximum penalty amounts to six months in jail, a fine of $390-$1,000, a restricted license and a three years probation. If the person convicted is under 21 years old, he/she will be subject to lose their license for 1 year, and be subject to a DUI program if they have .01 alcohol content, even if not convicted. They may also be subject to an interlock ignition device. Medical marijuana patients are not exempt from statues that prohibit driving while impaired.

DOWNLOAD MY APP 420LAWS for information regarding how you may wish to interact with law enforcement while being detained & to record the conversation by pushing the "PANIC BUTTON".

Notes from Bruce:
Being under the influence is not necessarily impairment

Notes from Bruce:
The police officer's opinion regarding how the defendant performed on the field sobriety test is the #1 method, other than how the vehicle was driven, which is relied upon by the prosecution to establish impairment.

DUI SUSPECTS CAN REFUSE TO TAKE FIELD SOBRIETY TESTS AND TO ANSWER ANY QUESTIONS SUCH AS WHEN THEY LAST USED MARIJUANA: . If you are **arrested**, you are required to take a Breathalyzer and/or blood or urine test if requested. Otherwise, REFUSAL TO TAKE THOSE CHEMICAL TESTS WILL RESULT IN THE LOSS OF YOUR DRIVER'S LICENSE FOR A YEAR and may be used as an argument of consciousness of guilt.

DUI CASES INVOLVING THE USE OF MARIJUANA ARE OFTEN DIFFICULT FOR THE PROSECUTION TO PROVE IMPAIRMENT: Unlike the .08% blood alcohol level, which makes a defendant guilty in drunk driving cases, there is no legal standard amount of THC that presumptively establishes impairment in California. Other factors are used by the prosecution to try to get a conviction. These factors include driving violations, such as weaving and field sobriety tests such as walking a line, touching a nose, speech, or admissions of effects. Note that claiming to be tired only adds to the possibility of impairment. Police are not required to give Miranda Rights unless you're actually arrested, as opposed to being merely detained.

ALCOHOL AND WEED DON'T MIX! Studies show that alcohol with marijuana radically increases chances of impairment. These types of cases are less defensible. DON'T DO IT!

CHOOSING A BREATH, BLOOD, OR URINE TEST: Experts advise if option is provided to choose breath, blood or urine, to choose a breath test because it does not register THC. However, if you have not used marijuana for at least 3 days and an officer requests that you submit to a blood or urine test, choose the blood test; experts indicate that THC is usually detectable in the blood for up to two days. Otherwise, choose a urine test; even though a urine test will most likely show a positive marijuana metabolite result (up to 35 days or more), its presence alone is even less relevant than blood analysis to establish impairment, which is required to prove DUI.

Note From Bruce: Recently the Massachusetts Supreme Judicial Court determined the psychoactive effects of cannabis vary too greatly from person to person for an officer to make a confident decision about the motor vehicle operator's level of inebriation.

CALIFORNIA LAW LICENSE SUSPENSION: Adults over 21 convicted of a drug DUI including only marijuana, will lose their license for 6 months, unless they participate in a drug education program, which will limit suspension to 30 days, a 5 months restriction, to only drive to and from work and to the designated DUI programs, and they may now be required to install a car ignition interlock device per DMV instructions.

Adults may also lose their license when convicted of marijuana/cannabis offenses for up to three years when a motor vehicle is used [CA Vehicle Code §13202]. The judge may suspend or order the DMV to revoke a driver's license for possession for sale, transportation, or sale to a minor. When the defendant shows a "critical need to drive," he/she can attempt to obtain a restricted license [Vehicle Code §13202.5].

Drug Testing and Employment

Unfortunately notwithstanding the passage of Prop 64 (AUMA), the legalization of marijuana/cannabis in some instances, employers may still refuse to hire and fire persons that use marijuana/cannabis.

Ross v. Raging Wire Telecom [42 Cal. 4th 920 (2008)]- CA Supreme Court ruled that an employer may terminate or deny employment by a private company to anyone who merely admits to using or who uses marijuana, even if they are a qualified medical marijuana patient.

There is no constitutional protection from testing or for refusing a drug test unless one is employed by a governmental agency. Testing governmental employees has been struck down by courts in many types of work except where the employee's impairment could cause serious threat or harm, (i.e. a job as a train conductor). However, private employers may impose drug testing as a condition of employment and if the "dirty" employee can be fired.

An employee accused of having a positive drug test result should request a second independent laboratory test of the "dirty" sample. It has been reported that false positives can result from a number of reasons. False positives can force an employee into unnecessary rehabilitation programs or, even worse, result in an unwarranted firing. Firing a good employee is a loss to both parties.

Estimated lengths of time that marijuana use is detectable in the body by urine testing:

Single Use: 5 days
Double Use: 12-17 days
Heavy Use: 15-35 days

Note from Bruce: I am unaware of any chemical product that has proven effective in "cleansing" the system of THC. Abstaining, exercising, and drinking a lot of water are the only proven ways to rid the body of THC. You may purchase an over-the-counter kit that detects THC from most drugstores to do a confidential test.

EMPLOYERS NEED GUIDANCE: Employers should be informed and made to understand that the rational purpose for conducting drug testing is to determine whether or not an employee is impaired on the job. Since marijuana metabolite is detectable in urine for up to 35 days or more after use, its existence does not establish impairment. The scientific community generally agrees that the effects of marijuana last no more than about three hours after use.

Arguably, a more effective approach to ensure safety is to observe the employee's on the job behavior and to administer motor skill tests similar to those used in DUI cases, or some form of written tests. This type of policy reduces the cost of testing, protects the privacy and morale of the employees, and is a more effective way to uncover an employee's inability to perform his/her duties safely which could be for any number of reasons.

High THC levels indicate recent use but do not necessarily indicate impairment. Zero tolerance laws incriminate many un-impaired drivers.

The scientific basis for such laws is still being tested and remains unclear. There is no agreement on what threshold amount causes impairment; THC-COOH (Metabolites) has no bearing on impairment.

Note from Bruce: Prop 64, passed in 2016, has not changed the ability of employers to not to hire and fire employees who use marijuana/cannabis, medically or otherwise.

Note from Bruce: Prop 64 provides the California Highway Patrol $3,000,000 yearly to support scientific research to determine impairment resulting from the use of all drugs both legal and controlled i.e. ADVIL PM and other prescription and non-prescription drugs.

Forfeiture of Money and Property

California Health & Safety Code §11470(e)

Forfeiture laws allow state and federal governments to seize money and property that are proceeds of, or are used to, facilitate illicit drug activity. Forfeiture proceedings are usually filed separately from the criminal case in which the "defendant" is the money or property itself. The owner must file a claim opposing forfeiture and may be required to prove its legitimate source. Unlike Federal Law, California Law requires a conviction of forfeiture.

The State of California cannot forfeit seizures under $40,000 without a conviction and can no longer turn over seized assets to the Federal Government for forfeiture. The State police were doing it because there is no requirement of a conviction under the Federal rules and the Feds and State police were sharing the bounty.

U.S. V. BAJAKAJIAN (1998) 524 U.S. 321. The forfeiture of a defendant's property or money must be proportionate to the gravity of the offense committed. This Constitutional Right additionally protect against excessive forfeiture/ fines at a state and local level, as ruled in Timbs v. Indiana (2019) 586 U.S.

State and Federal governments can impose criminal punishment in addition to forfeiting the defendant's property and money.

The Federal courts held that the value of the forfeited property cannot be disproportionate to the crime. In 1995, the Ninth Circuit Court of Appeals stated, "If, for example, one marijuana/cannabis plant were found growing on the ranch, forfeiture of all 825,000 acres would be excessive" (U.S. v. 6380 Little Canyon R.D.), (1995) [59 F. 3d 974, 9th Circuit]. In some cases, California law protects innocent owners (see below). Under California statutes, a criminal conviction is required for forfeitures under $40,000.

The California Forfeiture Statue [Health and Safety Code §11470(e)] allows forfeiture of the following:

A) All controlled substances, except arguable for medical marijuana
B) All of the money and equipment involved in the crime
C) Any vehicle used, or intended to be used, in the transportation of marijuana (more than 10 pounds dry weight)

Motor vehicle forfeitures can be prevented if an innocent spouse is a co-owner, or has a community property interest, and if the defendant immediate family, having no knowledge of the illegal activity, uses the vehicle.

Maintaining a Place [H&S Code §11366] and Forfeitures: Homes and land (real property) are also subject to state forfeiture if the owner is convicted of maintaining the property for the purpose of manufacturing, distributing, or possessing marijuana for sale. However, if a property is used as a family residence or other lawful purpose, and is co-owned by an innocent person with no knowledge of the unlawful use, it may not be subject to forfeiture.

Note from Bruce: I have many clients who had their money seized at airports or when traveling in vehicles. The cops often use narcotics dogs to see if they have a "hit" (smell marijuana) on the currency and use that as a reason to seize the currency; however, the dog's smell alone may not be enough reason to forfeit the money. It often takes months for state or federal prosecutors to notify the defendant of their intent to proceed with forfeiture. The money becomes the defendant in civil proceedings, and is considered to be the unlawful proceeds used to facilitate unlawful drug activity. The claimant must file a notice to oppose the forfeiture within 30 days. Call my office if you need help with a forfeiture matter.

Search and Seizure Laws

The California Constitution and the 4th Amendment to the U.S. Constitution guarantee our right to be free from unlawful searches and seizures by police. Illegally seized evidence must be suppressed and excluded in any criminal prosecution against a defendant if his/her rights have been violated. With no admissible evidence, the case must be dismissed.

YOUR CONSTITUTIONAL RIGHTS INCLUDE (AMONG OTHERS):

- To refuse to have your personal property searched without a search warrant
- The right to no answer an officer's questions or make any statements
- To refuse to open the door to your home unless there is an emergency or a search warrant
- To refuse to be detained or questioned without your consent

Under Prop 64, Marijuana and marijuana products involved in any way with conduct deemed lawful under state and local law under H&S 11362.1 (5) (c) are not considered contraband nor subject to seizure, and no conduct deemed lawful by that section shall constitute the basis for detention, search or arrest. (Investigating unlawful possession or use of marijuana in the vehicle and the passenger compartment is not protected if there is probable cause of marijuana in the vehicle and are subject to ticket if it's not sealed or in a closed container.

Note from Bruce: See the "Invocation of Rights" wallet sized card inserted in the centerfold of my guide. This will help assure that your rights are invoked and thereby protected. See bottom of page 5 regarding Miranda Rights.

THE DEFINITION OF PROBABLE CAUSE:
"Probable cause" to search and seize must exist; otherwise, the evidence cannot be used against the defendant in court. There must be reasonable belief that a crime has been or is about to be committed (i.e. there is contraband present). In order to search homes or other private property, officers are required to have a warrant; however, automobiles can be searched without a warrant.

THE SMELL OF MARIJUANA: If officers or their trained dogs detect the smell of marijuana in a car, either burnt or fresh, they are able to search the suspect and the car because it's a possible traffic violation to have an open and/or unconcealed container in the passenger's compartment. Otherwise the smell of marijuana is not a basis to search one's person. .

Note From Bruce: The smell of marijuana and observation or detection of less than an ounce, or less than 6 plants, or less than 8 grams of hash by adults, do not create probable cause, and there is no basis to search or seize under those circumstance per 11362.1a5c H&S code (see Prop 64) **Exceptions include driver and passenger areas of a vehicle.**

REASONABLE EXPECTATION OF PRIVACY IS REQUIRED FOR A DEFENDANT TO HAVE "STANDING" IN ORDER TO SUPPRESS EVIDENCE: In California, many other states, and under Federal law, the defendant must have a reasonable expectation of privacy, also known as "standing", in the location of the search in order to challenge the admissibility of illegally-seized evidence and have it suppressed.

CAR PASSENGERS: Those who have their possessions (i.e. backpacks), in someone else's car have no standing to challenge an illegal search. There is no recognized right of privacy in someone else's car unless you are the driver at the time of the search. However, all persons have a reasonable expectation of privacy of the clothing they are wearing and anything on them. Passengers and Drivers can challenge an unreasonable cause for the stop.

OVERNIGHT HOUSE GUESTS HAVE STANDING:
Overnight guests have the same right to object to an illegal search as the occupants of the home. Places such as campsites, motels and hotel rooms are also protected.

BACKYARD FENCES MAY CREATE RIGHT OF PRIVACY BUT NOT TRASH CANS OUTSIDE THE PROPERTY: Renters and homeowners with enclosed yards (a six foot fence, even with small cracks) are protected from any police peeping through the fence, but not from aerial observation. Police may not use ladders to see over an enclosed fenced yard. Trash cans that are left outside of the property can be searched without a warrant for plants or other incriminating items constituting probable cause are found, a search warrant can be issued for the residence and the entire property. In addition, aerial surveillance made, may not be as violation of privacy rights, unless the surveillance is persistence.

NO CONSTITUTIONAL PROTECTION WHILE IN JAIL AND IN PUBLIC ETC: There is no right of privacy in a police car, in jail, during telephone calls, or in visiting rooms or in the parking lots of jails; however, there is a right to have private conversations during in-person meetings with lawyers or clergy. There is no right while in a public place.

CONSTITUTIONAL PROTECTION REGARDING PHONES, TEXTS, INTERNET: Conversations on hard wire, on cell phones, and in telephone booths are protected, unless one party agrees to the police listening in. Cordless phone users do not have an expectation of privacy because neighbors can hear conversations with the same frequency. Police may confiscate a suspect's cell phone and read incoming text messages when making a lawful arrest for a drug offense. However, they need a search warrant to search through the cell phone's message log unless consent is given. However, if the text is visible in plain view on the screen they can use that information.

How to Avoid a Marijuana Possession Conviction for 18-21 Years of Age:

§11357(b) H&S

POSSESSION BY ADULTS 18-21 H&S 11357 (B)(2)(b)

Not More than 28.5 grams of marijuana, or not more than eight grams of concentrated cannabis

- Persons at least 18 years of age but less than 21 years of age shall be guilty of an infraction and punishable by a fine of not more than one hundred dollars ($100, plus penalty assessments). H&S 11357 (a)(2)

Possession of More than 28.5 grams of marijuana, or more than eight grams of concentrated cannabis

- May be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500,), or by both such fine and imprisonment. H&S 11357 (b)(2)

1. **DEFERRED ENTRY OF JUDGMENT (DEJ)** will prevent the loss of your license because there will be no conviction (subject to participating in the program), and then later dismissed. Refer to page 11 to learn more about DEJ. Non-citizens (even with Green Cards) will not be protected from being deported by diversion for possession of marijuana of over 28 grams. INS does not honor diversion.

2. **INFORMAL DIVERSION:** Some prosecutors or courts will agree to dismiss the case if the defendant agrees to participate in conditions like 5-15 Narcotics Anonymous meetings or community service.

3. **ILLEGALLY SEIZED EVIDENCE:** Refer to the previous "Search and Seizure" section of the guide. Illegally obtained evidence must be suppressed and cannot be used against the defendant in court. Then there would be no conviction or loss of license.

4. **PLEA BARGAIN:** Prosecutors may agree to dismiss the marijuana offense in exchange for a plea to other charges such as "Disturbing the Peace" [PC §415], or "Trespassing" [PC §602]. Then there will be no loss of license. In addition, try to get an infraction instead of a misdemeanor count.

5. **TRIAL** the defendant has the right to a trial, as he/she does not have to plead guilty or no contest which is the same as pleading guilty.

Destruction and/or Expungement of Arrest and Conviction Records

California Health & Safety Code §11361.5 Removing and Expungement (PC §1203.4) of your Marijuana Conviction

California law requires all governmental agencies to automatically destroy any records of marijuana possession charges and any records of charges for giving away or transporting up to one ounce of marijuana two years after the date of conviction or arrest, unless the terms of the sentence have not been satisfied; **not including cases concerning concentrated cannabis.**

Drug diversion records are also to be destroyed. Thereafter, no public agency may limit or deny an individual of any opportunity as the result of the conviction. The record should not be included in any subsequent probation report or be considered for any purpose by any subsequent sentencing court in any other matter [H&S §11361.7]. However, I have been advised that US federal records do not get destroyed. That also means that gun rights are not reinstated.

Unfortunately, felony marijuana convictions for sale, transportation, possession for sale and cultivation cannot be destroyed. However, they are subject to expungement under PC 1203.4, which gives the person the right to deny the conviction except when applying for public office, licensing by a state or local agency, or contracting with the state lottery. Nevertheless, the possession or use of a firearm can be used as prior for future convictions against an ex felon; expungement does not prevent the prosecution. Expungement does not remove a conviction from the defendant's records, but it would indicate that the conviction has been set aside, a not guilty plea is entered and the case is dismissed. Under Prop 64 almost all previous marijuana felonies and convictions can be reduced to misdemeanors or reduced retroactively.

Under new legislation of Senate Bill No. 393, a defendant that has suffered an arrest but was not charged or convicted, may petition for the sealing of his or her arrest record. (Contact our office for more information.)

Deferred Entry of Judgment (DEJ) Dismissal P.C. 1000

Charges for the possession of marijuana or hashish and for the cultivation of marijuana for personal use can be dismissed through successful completion of Deferred Entry of Judgment. DEJ is not applicable to charges involving possession for sale or transportation (unless the marijuana is for personal use). The defendant does not have to plead guilty under the new legislation, and the matter is continued for a year depending on the success of a court mandated drug rehabilitation program. After successful completion of an approved drug education program, the case will be dismissed. The program may require multiple drug education classes and may include drug testing. That defendants must waive their rights to speedy trial, a jury trial, the right not to be search without a warrant or probable cause while in the program. This program is an especially important option for non citizens to avoid deportation, etc., because they are no longer required to plead guilty. There may be costs involved of approx. $385 for the drug education programs. Non deferrable narcotics offenses must not have been committed concurrently.

The Requirements For Eligibility:

- The defendant has no prior convictions involving controlled substances
- The defendant did not involve a crime of violence or threatened violence
- Non deferrable narcotics offenses must not have been committed concurrently
- Probation or parole has never been revoked without being completed
- The defendant has not been previously diverted in the past five years
- The defendant has not had any felony convictions within the last 5 years

The Court Will Enter Judgment If The Defendant:

- Performs inadequately in the drug program
- Is convicted of any felony or misdemeanor that reflects a propensity for violence
- Engages in any criminal conduct rendering him or her unsuitable for DEJ

If the defendant fails the DEJ program, the law allows and provides him/her a possible alternative program. Proposition 36 is only used for cases involving possession and transportation for personal use. If the defendant refuses or fails in drug court, the court will impose a sentence.

Upon dismissal, the defendant can legally assert that he or she was not convicted, granted DEJ, or even arrested, except when applying for a position as a police officer or the state lottery. Note, DEJ will not protect non-citizens, even those with green cards, from deportation if more than 30 grams were involved in the crime.

DEFERRED ENTRY OF JUDGMENT IS NOT A FREE RIDE.
It involves a considerable time and expense to complete the required programs. DEJ is a trump card, available to the defendant only once every five years. It should not be used without carefully considering the ways to beat the case or to plea bargain to an alternative offense (e.g. "Trespassing" PC §602 or "Disturbing the Peace" PC §415) as an infraction. Informal diversion requires no guilty plea and means that the prosecutor agrees to conditions like a mandatory completion of Narcotics Anonymous meetings, and then dismissing the case. Prop 36 may still be an alternative after conviction.

Under the DEJ program, drug testing can be imposed. Dirty tests (the absence of THC reduction) will be the grounds for entry of conviction and imposing the sentence. Some organizations that oversee the programs do not drug test. The law is not settled regarding a patient's rights to use medicinal marijuana on DEJ. However, note that recent case law provided patient eligibility for treatment under Prop 36 and is a good argument for DEJ patients. Medical marijuana patients are eligible for Prop 36 treatment. See People v. Beaty (2010) 181 Ca App 4th, p.644.

Proposition 36 Alternative Drug Treatment Sentencing Program

California law mandates drug treatment instead of incarceration for the possession and for transportation of marijuana and other drugs for personal use. The defendant is eligible for a drug treatment program even after conviction, unlike Deferred Entry of Judgment which must be taken before trial. The program can require numerous meetings, counseling and the commitment to stop all drug use. If satisfactory completed, the conviction can be dismissed under Penal Code § 1203.4.

The program ranges from 6 to 12 months after-treatment. Defendants can expect to be drug tested in Prop. 36 programs. Probation may be revoked if the defendant fails to complete the drug treatment program or if he/she commits a violent offense. Defendants are allowed probation violations such as two failed drug tests or poor attendance, prior to being exposed to jail. The conviction will be set aside upon successful completion of the program, but the record will still remain.

Prior convictions for drug offenses such as possession for sales will not disqualify a defendant from protections under Proposition 36 unless the conviction is for a serious or violent felony committed within the past five years, e.g., a strike conviction as listed in CA Penal Code §667.5 or §1192.7. **Note from Bruce:** Medical marijuana patients are eligible for Prop. 36 treatment; see People v. Beaty (2010) 181 Cal. App. 4th 644.

Drug Court Sentencing Alternatives

A rehabilitation program can be an alternative to jail; a conviction for almost any offense committed due to substance abuse may qualify. The court has great discretion regarding which defendants they will accept. The defendant's history and record is considered, mainly any prior rehabilitation attempts and violent offenses. Typically the cases that are accepted are theft related crimes due to drug dependency.

Parolees: A person on parole who commits a non-violent drug possession offense or who violates a drug related condition of his/her parole may be eligible for Prop. 36 programs and avoid going to prison. The parolee must have no prior convictions at any time for serious/ violent felonies. Parole authorities (not the courts) set conditions.

Veterans: Alternative rehabilitation for 90 days through the VA and other favorable alternatives to incarceration are available where the defendant can establish a viable defense to why the crime occurred; such as mental impairment like PTSD.

Mental Impairment: New California legislation, AB 1810, updates diversion rules to allow ANY defendant charged with ANY misdemeanor or felony the chance to earn a dismissal of their case if they meet certain requirements, such having a mental illness that caused the offense to occur.

Entrapment

LAW: Entrapment occurs when police or informants use tactics that would convince an otherwise law-abiding person to commit a crime. A defendant is not guilty of any offense if the defendant's intent to commit the crime was created by the police or their informant. Under Federal law showing that the defendant had a prior propensity to commit the crime can defeat a claim of entrapment.

OFFERING AN OPPORTUNITY TO COMMIT A CRIME IS NOT ENTRAPMENT!

Undercover police or their agents (informants) may provide the opportunity for the crime to be committed. For example one might ask, "Hey, anyone here want to sell me some herb?" That is NOT considered entrapment, but offering a mere opportunity.

Note from Bruce: COPS CAN LEGALLY LIE! Undercover narcotics officers and their informants do not have to tell the truth about their role in undercover operations. Asking directly, "Are you a cop?" does not help.

Posting Bail and Schedule

Due to new legislation SB 10, that will go into effect November 2020, California "may" become the first state in the nation to abolish bail for suspects awaiting trial. The implementation of this legislation is currently waiting on the results of a referendum to overturn SB 10 that was set up after its SB10's passing.

Under the California law those arrested and charged with a crime won't be putting up money or borrowing it from a bail bond agent to obtain their release. Instead, local courts will decide who to keep in custody and whom to release while they await trial. Those decisions will be based on an algorithm created by the courts in each jurisdiction.

RELEASE ON YOUR OWN RECOGNIZANCE (O.R.) is a the defendant's promise to appear in court. In Los Angeles, if an arrested person is in custody after booking, he/she may call the Bail Commissioner prior to the court appearance in order to request an O.R; neither the attorney nor anyone else will be able to do it for the arrested person. Jailers provide the on duty Bail Commissioner's phone number and they will then attempt to verify employment, residence, etc. by calling the arrestee's references to see if he/she has sufficient local ties to justify O.R. The Bail Commissioner may consider the nature of the offense, opinion of the arresting officer, any prior records and/ or prior failures to appear in previous court cases (traffic citations are included). If the Bail Commissioner denies the O.R. release, the judge in court may either grant O.R. or reduce bail amount at the arraignment or after the preparation of an O.R. report.

IF YOU HAVE TO POST BAIL: Bail can be posted by cash or cashier's check for the full amount of bail, which will be returned if the defendant appears as directed at the court proceedings. -WARNING- Posting cash bail may result in money seizure for purposes of forfeiture, based on claims that they cash are the proceeds of drug trafficking.

Note from Bruce: A second option is to go to a BAIL BONDSMAN, who typically will charge a non-refundable premium of 8% (if you have attorney) or less of the amount for bail; for example, if the bail is $10,000, you pay the bondsmen $1,000 which you never get back. Bail bond agents usually have discretion regarding the type and the amount of collateral required. Some agents will waive the collateral altogether if the defendant's friends or family members have good jobs and guarantee payment of the full bail amount (usually resulting from the defendant's failure to appear, if not picked up or surrenders in 6 months.

UNDER THE FEDERAL SYSTEM, a release can be made on personal surety bonds (promise to appear), corporate surety bail bond companies, third party surety, a real property bond, and/or cash; collateral may be required.

YOUR PHONE CALL: In California, after an arrestee is booked, he/she has the right to make three completed phone calls to an attorney, to a bail bondsman, and to a relative or other person; however, be careful because these phone calls are not confidential.

BAIL ENHANCEMENTS: Be aware that depending on the county you are in, the bail can be raised considering the circumstances surrounding the arrest. Some counties have bail charts and enhancements listed online; for example, here is a list of existing bail amounts for **Los Angele County**:

EXAMPLES:

Sale Or Furnishing Substances Falsely Represented as Controlled Substance with Respect TO Certain Specific Or Classified Controlled Substances.....20,000

Marijuana/Cannabis: Cultivate Process.....10,000

Marijuana Possession For Sale
Person 18 Year or over with prior conviction 20,000

Persons 21 years or over while knowingly hiring employing or using person 20 years or younger to cultivate, transport, carry, sell, etc. 25,000

Marijuana Transportation, Sale, Furnishing,.....20,000
Marijuana Person 18 Years or Over Using Minor Under 14 in Sale Transportation giving to Minor.
Up to 25 lbs.....40,000
If Over 25lbs.....50,000
If Over 50lbs.....100,00

Manufacture Concentrated Cannabis Using Volatile Solvent With Or License. 50,000

Current U.S. Federal Policy and Sentencing for Marijuana Offenses

The States will usually prosecute marijuana offenses. However, based on my experience, the Federal Government may opt to prosecute offenders when the incident involves Federal property (U.S. national forests), cultivating very large quantities of marijuana, crossing state and national borders, exporting out of state, when organized crime is involved and/ or instances in which Federal agents conduct the investigation.

Be aware that Federal Courts mandate five to ten year prison sentences for marijuana/cannabis offenses. i.e over 100 plants or rooted seedlings are punishable by minimum five years; offenses involving 1,000 plants or rooted seedlings are punishable by a minimum of ten years. Unfortunately State Medical Marijuana Laws offer almost no protection in Federal Court. However, in my representation of client's regarding small amounts of marijuana on federal property, prosecutors had agreed to dismiss when they have a current Medical Marijuana Recommendation. However, in my last case in FED court for possession of weed, the prosecutor agreed to having the defendant complete a 4-hour online drug education course and dismissed the case 30 days later

The latest policies under the Trump Administration include an omnibus budget bill passed on March 23, 2018. Contained in that bill is a cannabis provision called the Leahy amendment (formally the Rohrabacher-Blumenauer Amendment), which prohibits the Department of Justice and the Drug Enforcement Agency from using tax dollars to interfere with medical marijuana/cannabis businesses and patients in states where medical marijuana/cannabis is legal. We will have to wait and see if the amendment will be expanded upon under the Trump administration to include non-medical adult use. The U.S government also passed the **Farm Bil**l in 2018, removing hemp from the Controlled Substances Act, thereby legalizing it, and allowing farmers to pursue federal hemp cultivation permits, while individual states are allowed to regulate the industry as they see fit. However it is currently unlawful under the FDA to introduce CBD from hemp into food or dietary substances. The FDA has reserved final say on this matter. **For additional information about the new Federal Farm Bill passed in December 14, 2018, in regards to Hemp and CBD, contact my office**

One of the simplest and most urgent measures would be to protect states with legal cannabis laws from federal interference. A promising bill to do so is the STATES Act by Sen. Elizabeth Warren (MA) and Cory Gardner (CO), which would make actions that are legal under state marijuana regulations also legal under federal law. In addition, there has also been the introduction of **Senate Bill 420** by Senator Ron Wyden, which hopes to decriminalize marijuana and allow for it to be taxed and regulated by the federal government.

Seedlings are assigned a weight of 100 grams; this means that 60 plants or 6,000 grams is equal to 6 kilos and is a level 14 offense punishable by up to a 15-21 month sentence. If a plant weighs more than 100 grams, the actual weight is used.

The Federal guidelines below are used by the judge to consider what sentence to impose and are considered to be the most relevant factor in determining the sentence; however, they are no longer mandatory.

The first offence for simple possession or marijuana is punishable by up to 1 year in federal prison and a $1000 fine. Possession for sale for more than 50 pounds (22.6kg) is punishable by up to 5 years and a $25,000 fine.

Since medical marijuana is not recognized, pursuant to U.S Congress, federal laws do not protect patients or members of collectives and cooperatives from prosecution. See U.S v. McIntosh 833 F.3d 1163 2016, 9th Circuit, which provides for the opportunity for a hearing to determine if the defendants actions are in compliance with the State Medical Marijuana Laws .

Amount of Marijuana	Sentence/Months	Offense Level
<1kg	0-6 months	6
1 kg -2.5 kg	0-6 months	8
2.5 kg - 5 kg	6-12 months	10
5 kg - 10 kg	10-16 months	12
10 kg - 20 kg	15-21 months	14
20 kg - 40 kg	21-27 months	16
40 kg - 60 kg	27-33 months	18
60 kg - 80 kg	33-41 months	20
80 kg - 100 kg	41-51 months	22
100 kg - 400 kg	51-63 months	24
100kg or More		
400 kg - 700 kg	63-78 months	26
700 kg - 1000 kg	78-97 months	28
1000 kg - 3000 kg	97-121 months	30
1000k or More		
3.000 kg - 10,000 kg	121-151 months	32
10,000 kg - 30,000 kg	151-188 months	34
30,000 kg - 90,000 kg	188-235 months	36
90,000 kg or More	235 - 293	38

LEVEL ADJUSTMENTS

Early Plea & Acceptance Responsibility
-2 or -3 at level 16

Organizer or Leader +4

Manager Or Supervisor +3

Lesser Leader +2

Minimal Participants -4

Between Minimal & Minor -3

Abuse Of Position Of Trust +2

Use of Special Skill +2

Obstruction +3

There are numerous factors (i.e. criminal convictions history) that affect the guidelines and sentencing

PART 2

MEDICAL MARIJUANA

Current Status of CA Medical Marijuana Laws

Prop 215 (Compassionate Use Act)

Although California legalized the use of recreational medical marijuana as of January 1, 2018, it did not replace the protections of California's medical marijuana law, the **Compassionate Use Act of 1996 (Prop. 215)**

Currently, adults age 21 and over may legally possess up to one ounce of weed or eight grams of concentrated cannabis and cultivate up to six live plants. However, under Prop 215, those that are qualified Medical Marijuana Patients are not necessarily subject to these limits. Under Prop 215, individuals under 21 can legally use medical marijuana with a doctor's recommendation or approval and if they are under 18, require the consent of a parent. Patients using medical marijuana are also allowed higher possession limits and less restrictive purchase limits, as long as they are within the scope of their current medical needs. Protections can also apply to a patient's primary caregiver, as long at the Primary Care Giver meets the required definition of such a designation under the law. (See next page for more information)

Any licensed physician (M.S., D.O.) may orally, or in writing, approve or recommend the use of marijuana for the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, and any other condition or illness for which marijuana provides relief. A doctors letter should be accompanied by a **Physician Attestation.**

Dispensaries

As of January 9, 2019 all nonprofit collectives and cooperatives dispensing cannabis to medical patients became illegal in California; repealing H&SC 11362.775. After that date all cannabis collectives must be licensed under the new state laws, except for individual patient and caregiver gardens serving no more than five patients.

In 2015, the Californian State Legislature passed AB 266 and Prop 64 was passed in November 8, 2016; authorizing licensing to provide marijuana/cannabis to adults over 21 for profit and subject to taxation. This has replaced the marijuana/cannabis laws of Senate Bill 420 when licensing took effect in 2018. See pages 16-17.

Dispensaries, are subject to regulations by cities and counties since the State of California started issuing licenses in 2018. Previous laws pertaining to **"medical marijuana dispensaries"** are now regulated under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), subject to local regulations by cities and counties regarding licensing.

Dispensaries are permissible only if the local city or county allow them through their legislation or initiatives.

Note from Bruce:

Currently, the Los Angeles City Department of Cannabis Regulation allows for the licensing of retail marijuana

Currently Los Angeles has 157 licensed dispensaries. However, this summer of 2019, the city of LA is going to provide approximately 400 applications for additional 100 dispensaries.

Call Bruce, if you're interested in getting a cannabis business license.

Senate Bill 420 / Medical Marijuana Program (MMP)

Health and Safety Code §11362.765

Medical marijuana patients keep their existing rights under Prop 215 to possess and cultivate as much as reasonably necessary for personal medical use so long as they have a doctor's recommendation, regardless of the Prop 64 limits for adult users. Beware though that local governments may still restrict cultivation via nuisance ordinances (except for the six indoor plant minimum allowed for personal use).

A Patient's doctor may recommend or approve excess amounts that the patient reasonably requires for his/her medical needs or if they city or county allows greater amounts. A doctor's letter may not sustain the burden of proof without the doctor's testimony that is accepted by the court or jury, that the amounts were necessary for current needs.

The act provides that a physician (M.D. or O.D.) may recommend or approve marijuana use if he/she has conducted a medical examination, taken responsibility for an aspect of the medical care, and has concluded that the patient has a serious medical condition requiring the medical use of marijuana [H&S Code §11362.7].

In order to give law enforcement some much-needed guidance on the amount of marijuana that is presumptively legal and to provide protections to qualified patients against unnecessary arrest, confiscation and prosecution, the California Legislature enacted Senate Bill 420. Senate Bill 420 provides legal defenses for patients. Senate Bill 420 also provides patient protections from arrests and seizures.

Note from Bruce: The Compassionate Use Act (Prop 215), passed in 1996, protects qualified patients from conviction only, not from arrest, seizure or prosecution. Arrest and seizure of over 6 plants is at the digression of the investigating officer.

The Supreme Court of California held in January 2010 that patients need only to raise a reasonable doubt in court that the amounts confiscated were consistent with the patient's current medical needs, otherwise it would violate the legal defenses established by initiative under Prop 215 (CUA) (People v. Kelly (2010) (47 Cal. 4th 1008)).

Under current law, the County of Health Department ID Program provides government approved Patient Identification Cards. The program identifies patients and their primary caregivers. Note that a county issued ID card is not required for court proceedings or otherwise.

TO OBTAIN A COUNTY HEALTH ID PROGRAM CALL 866-621-2204 AND DIAL "0".
Cards are $50 or $100 for MediCal Patients

POLICE OFTEN IGNORE DOCTOR'S LETTERS; HOWEVER, THEY CURRENTLY MUST RECOGNIZE COUNTY ISSUED CARDS. Unless they have reason to believe they are forged. Also the records must be subpoenaed to the court from the custodian of doctor's records. Police, judges or jurors, and prosecutors do not have to accept a doctor's letter of recommendation as proof of the patient's legitimacy. The police often ignore a physician's recommendation letter by claiming that they cannot determine if the document is legitimate or forged; however, the law mandates police to acknowledge County Health Department ID Cards. Patients are strongly urged to obtain a **County Issued ID Card for the best protection against arrest and criminal liability** (see Kirby V. Fresno) and seizures. The department shall establish and maintain a 24 hour, toll free telephone number that will enable law enforcement officers to have immediate access to any information necessary to verify the validity of an identification card issued by the department, until a cost effective Internet based system can be developed for this purpose. Current makes it **mandatory** for law enforcement to comply; see Health and Safety Code §11362.78.

THE ID SYSTEM IS ALSO DESIGNED WITH THE SAFEGUARD NEEDED TO PROTECT PATIENT PRIVACY.
It criminalized confidentiality breaches or "information provided to, or contained in the records of the department or of a county health department of the county's designee pertaining to an identification card program" [H&S Code §11362.81(d)]. This means that it is illegal to report confidential information about medical marijuana use to outside agencies, including the Federal Government.

What Is A Primary Caregiver?

Health and Safety Code §11362.7 (Prop 215 Remains In Effect)

WHO: A primary caregiver is an individual who is designated by the patient to consistently assume responsibility for a patient's housing, health and safety. At a minimum, a primary caregiver must prove that he/she (1) consistently provides care for the patient; (2) provides care that does not have anything to do with medical marijuana; and (3) provides care at or before the time that the primary caregiver assumed responsibility for assisting with the patient's medical marijuana needs. For more information, refer to People v. Mentch (2008) 42 Cal. 4th 274.
See recent legislation under Prop 64 that limits the number to 5 patients.

REASONABLE COMPENSATION IS ALLOWED BUT NOT FOR PROFIT*: Prop. 64 added Section 26033 to the Business and Professions Code, **protecting patients and primary caregivers** who cultivate an **unspecified amount** for themselves or no more than five patients and 500 square feet, if they receive compensation only under Subdivision (c) of Section 11362.765 of the Health and Safety Code. This includes reasonable compensation for any services provided for the care of the patient and out of pocket expenses. Note that the term profit is not defined by the law and is up to the discretion of the jury. Please refer to People v. Mentch (2008) 45 Cal. 4th 274 and People v. Windus (2008) 165 Cal. App 4th 634.

Note from Bruce: providing marijuana alone does not qualify a person to be a patient's primary caregiver. For more information, see People v. Windus (2008). In addition, cannabis clubs or dispensaries do not qualify as primary caregivers (People ex rel. Lundgren v. Peron (1997)).

Health and Safety Code 11362.765(b)(3) extends protections to individuals providing assistance to a qualified patient or an individual with an identification card, or to his/her primary caregiver when administering medical marijuana/cannabis or acquiring the skills to cultivate or administer marijuana/cannabis.

HOW TO: There is no requirement stating that a primary caregiver must be designated in writing. However, currently under Prop 64 includes provisions for county health departments to issue an ID card for primary caregivers as well. See page 17 on how to obtain County Health Department ID cards.

Note from Bruce:

1. The "primary" caregiver is the individual rather than the organization. An individual or agency can be deemed a "caregiver" when a patient receives either medical care, supportive services, or both from a clinic, a health care facility, a hospice, or a home health agency.
2. The "primary caregiver" can care for up to five patients
3. There is not one case that states that a patient must be unable to grow his or her own marijuana as a condition for having a caregiver.
4. Designated primary caregivers are also eligible for Health Department ID cards
5. Qualified patients or their primary caregivers will be exempted from retail sales tax on medical cannabis, medical cannabis concentrate, edible medical cannabis products.

How Many Plants Can a Patient Grow?

As of November 8th, 2016, as a result of the passage of Prop 64, Adult Use of Marijuana Act, adults over 21 can grow up to 6 live plants for their personal use. These plants can only be grown in residence, however outdoor and greenhouses are subject to local regulation by the city and counties. Cities and counties have the right to control land use to the extent that they can ban dispensaries, business licensing, and outdoor, cultivation, as well as impose civil fines and up to 6-months in jail.

However, Prop 215, Compassionate Use Act, will remain in effect and allow patients and their caregivers to grow amounts that are reasonably necessary for their current medical needs. If grown outside, they must not be able to be seen from public places and be in a locked area.

Permissible Amount of Plants For and By Patients

Pursuant to Proposition 215 (Compassionate Use Act of 1996) there are no limits indicated to how many plants or how much marijuana a patient (or their caregiver) may possess or cultivate. Patients may possess or cultivate any amount that is consistent with their current medical needs. See People v. Kelly (2010) under "Landmark Cases." Subject to local city and county regulations.

Note that a doctor's letter alone does not have to be accepted by the police; therefore, it is recommended to have a county health department issued patient or caregiver identification card to help avoid being arrested, subject to criminal liability and having your plants confiscated. There must also be no evidence of sales made from the cultivation.

Defense Notes From Bruce:

The still current U.S. Federal Program when defending against prosecution, is still providing 7 remaining patients with about 6 pounds per year (See Internet, Patient Robert Randell 1948-2001). A large number of plants are needed to cultivate that amount of bud, especially if it is an outdoor grow, since it is limited to one crop annually.

A doctor's evaluation of the patient's medical needs could be the most helpful evidence. Some doctors have been providing 99 plant recommendations. However, in my opinion, the 99-plant recommendation in and of itself is not enough to establish a effective defense. Therefore, it is important to make sure when you discuss your use and medical needs that your doctor be available to testify the amount of marijuana you need for the your medical needs.

Defense In Court:

The 1992 DEA Cannabis Yields study concluded that the weight of dried, manicured, medical grade bud from a growing plant only provides for 7-10% of the plant's total weight while being cultivated.

Defense cannabis expert testimonies may explain the factors involved in growing and harvesting medical marijuana in order to help the judge or jury determine whether the number of plants seized was reasonably required to meet the then-current medical needs of the patient.

Cannabis experts use some of the following factors in their opinions to determine whether the amounts are reasonably necessary:

- The expected yield of medical-grade marijuana buds from the plants in question
- Whether the grow is indoors or outdoors. Outdoor grows can only be harvested once a year, whereas indoor grows may yield less per crop, but may yield two to three harvests each year
- How the patient ingests or uses marijuana. For example, patients who eat marijuana may need to consume up to four times the amount to get the same medicinal effects as the patients who smoke it
- Whether the patient has built up a tolerance due to prior use of marijuana, pharmaceutical or street drug use. Such patients may require higher dosages of medical marijuana in order for it to be effective
- The effect of weather, insects and other natural variables that affect yields
- How much medicine a patient must set aside for his or her reasonably expected needs

Medical Marijuana While On Probation, Parole, or In Jail

QUALIFIED PATIENTS MAY DEFEAT A PROBATION VIOLATION.

PEOPLE v. TILEHKOOH (2003) [113 Cal. App. 4th 1433] – Probationers may be allowed to use medical marijuana, even when on probation for marijuana or controlled substance offenses. Federal laws are not enforced in our state courts. The term "obey all laws" as a condition of probation does not pertain to federal laws. (See People v. Kha (2007)[157 Cal. App. 4th 355]) However in People v. Bianco (2001) [93 Cal. App. 4th 748] held that judges have the discretion to refuse to give permission for medical marijuana use during probation or prohibit its use during probation. In addition, in People v. Moret (2009) [180 Cal. App. 4th 839], the court had the right to require the defendant to turn in his medical marijuana card during his probation sentence.

Probationers and parolees may be allowed to use medical marijuana with the approval court or parole board [California Health and Safety Code § 11362.5].

Note from Bruce: Patients may be able to convince the judge for medical marijuana if convinced that it is the best treatment for the patient's conditioned. **Discuss this with you doctor.** Medical marijuana patients are eligible for Proposition 36 sentencing alternative treatment. See People v. Beatty (2010) [181 Cal. App. 4th at 644].

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Medical, and Adult Use of Concentrated Cannabis

CA Health & Safety Code §11357(a) vs. Health & Safety Code §11362.5

The Compassionate Use Act (Proposition 215) does not explicitly address the question of whether the use of concentrated cannabis or "hashish" is protected. However under Prop 64, 8 grams of hash is legal for adults 21 and over, and is an infraction for those under 18 (see Page 2). The most recent edition of the Judicial Council's Jury Instructions (CalCrim §2377) requires judges to instruct juries that Hash possession is protected under Prop 215 (Compassionate Use Act). This rule follows the former California Attorney General's opinion (86 Ops. Cal. Atty. Gen. 180, 194 (2003)). Also see People v. Colvin (2012) [203 Cal 4th 1029], which also confirmed that concentrated cannabis is subject to the protections afforded to patients.

Note from Bruce: ***Manufacturing Hashish/ Dabs ,*** even for medical purposes, is **illegal and dangerous** when made with **butane** or other specified chemical processes (See MAUCRSA). Refer to People v. Bergen (2008) [166 Cal. App. 4th 161] which states, "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others."This violation is punishable by up to **3, 5, or 7 years in prison.** I have had numerous clients that have used butane to manufacture hash and consequently have been seriously injured, burnt, and/or have caused serious damage to a property. The policy of Los Angeles District Attorney Office, in the event of an explosion, is to refuse to plea bargain for less than five years.

Some Landmark Appellate Court Cases On Medical Marijuana

A PATIENT HAS A RIGHT TO A HEARING TO DISMISS THE CASE BEFORE TRIAL PEOPLE v. MOWER (2002) [28 Cal. App. 4th 457]: When a defendant is charged with a felony marijuana offense and proves that he/she is a qualified patient, the case should be dismissed pretrial. It is up to the prosecutor to prove that the amount of cannabis in question is beyond the extent allowed by Proposition 215. The California Supreme Court ruled unanimously that patients and caregivers are entitled to a pre-trial hearing in order to dismiss possession and/or cultivation offenses; thus, patients should not be burdened with having to proceed to trial.

PATIENTS ARE ENTITLED TO HAVE THEIR MEDICAL MARIJUANA RETURNED TO THEM THE CITY OF GARDEN GROVE v. THE SUPERIOR COURT, FELIX KHA [(2007) 157 Cal. App. 4th 355]: By providing a verified statement from their doctor, patients can affirm their right to have any seized medical marijuana returned to them. In addition, they are not required to provide information regarding the source of the marijuana. Federal laws pertaining to conspiracy, aiding and abetting are not applicable because the city is merely abiding to a court order. Possession of medical marijuana is not a crime in the State of California.

A DOCTOR'S ORAL RECOMMENDATION AND PATIENT'S TESTIMONY ALONE IS ENOUGH PEOPLE v. JONES (2003) [112 Cal. App. 4th 341]: A patient's testimony of oral approval from a doctor is sufficient enough to raise reasonable doubt. Also see People v. Windus (2008) [165 Cal. App. 4th 634

THE JUDGE CAN DISMISS THE PATIENT'S CASE IN THE INTEREST OF JUSTICE PEOPLE v. KONOW (2004) [32 Cal. App. 4th 995]: A patient/defendant may "informally suggest" that the court dismiss the complaint "in the interests of justice," and the court has the power to do so.

TO QUALIFY AS A CAREGIVER, ONE MUST DO MORE THAN PROVIDE MARIJUANA AND OCCASIONALLY PROVIDE OTHER SERVICES TO A PATIENT PEOPLE v. WINDUS (2008) [165 Cal. App. 4th 634]: As a caregiver, one's services must be consistent. In People v. Mentch [45 Cal. 4th 274, 283], the Supreme Court of California ruled that one must consistently assume responsibility before there is any marijuana provided to qualify as a caregiver. In addition, one must also be able to provide care giving without providing marijuana.

TRANSPORTATION IS PERMITTED AS LONG AS THE AMOUNT IS REASONABLY RELATED TO THE PATIENT'S NEEDS PEOPLE v. TRIPPET (1997) [56 Cal. App. 4th 1532]: "The quantity possessed by the patient or the primary caregiver and the form and manner in which it is possessed must be reasonably related to the patient's current medical needs."

THE REASONING BEHIND A DOCTOR'S RECOMMENDATION IS CONFIDENTIAL AND IS NOT TO BE SECOND GUESSED BY THE JUDGE, JURY OR PROSECUTORS PEOPLE v. SPARK (2004) [121 Cal App. 259]: "The compassionate use defense (H&S Code §11362.5) does not require a defendant to present evidence that he or she was 'seriously ill…' the question of whether the medical use of marijuana is appropriate for a patient's illness is a determination to be made by a physician… not to be second-guessed by jurors who might not deem the patient's condition to be 'sufficiently serious'".

A PATIENT/ DEFENDANT MAY POSSESS AND CULTIVATE ANY AMOUNT FOR THEIR PERSONAL MEDICAL NEEDS PEOPLE v. KELLY (2010) [47 CAL. 4TH 1008]: The Supreme Court recently ruled that the quantitative guidelines established in SB 420 were unconstitutional when applied to in-court prosecutions of patients. This does not mean that there are no limitations on what a patient may grow or possess, but that these limitations must be reasonably related to the patient's current medical needs.

THE COURT HAS THE DISCRETION TO PROHIBIT USE OF MEDICAL MARIJUANA (AND EVEN LEGAL MARIJUANA) WHEN IMPOSING PROBATION PEOPLE v. LEAL (2012) [210 Cal. App. 4th 829]: The court granted Leal three years formal probation and prohibited him from any form of marijuana use. The defendant was later found guilty of possession for sale of marijuana. Although the defendant was a medical marijuana patient, the court found that "he is much more likely to engage in future criminal activity selling marijuana again if he is in possession of it for medical use" and upheld the previous probationary restrictions. (Note from Bruce: In my experience, I've found that judges may concede on the use of Marijuana if it has been established that Medical Marijuana is the only viable alternative treatment for the patient's condition.)

PARENTAL USE OF MEDICAL MARIJUANA ALONE DOES NOT ESTABLISH THAT A CHILD IS IN RISK OF PHYSICAL HARM OR ILLNESS IN RE DRAKE M. (2012) [Cal. App. 2nd]: When Drake was nine months old, he was referred to the Department of Children and Family Services because his mother had a history of drug abuse and DCFS was already involved due to a case with another child she previously had. When investigating the living situation, the social worker found that the father and mother used medical marijuana. DCFS sought for the removal of Drake from his parent's custody. The court ordered the father to avoid taking care of his son when under the influence, to take part in counseling and parenting courses and to submit to random drug testing along with the mother. When the case was appealed, the court found insufficient evidence to support that Drake had suffered in any way because of his father's marijuana use. The court made the distinction between "drug use" and "drug abuse," stating that the two terms do not have the same meaning.

PART 3

BUSINESS LICENSING

PROP 64 & MAUCRSA

City of Los Angeles Proposition M

In March 2017, the citizens of the city of Los Angeles resounding voted for Proposition M, which gave the Los Angeles Mayor and City Council the authority to regulate commercial cannabis businesses in the City of Los Angeles.

Since the passage of the previous regulations under Proposition D (2013), the City's Attorney's office has initiated over 1,700 criminal filings against individuals and entities regarding non-immunized cannabis businesses and shut down over 800 non-immunized medical cannabis businesses. However, despite this aggressive enforcement of Prop D, an unknown number of medical cannabis business, including growers, delivery apps, and delivery service continued to open, close, and reopen in Los Angeles, with no regulatory authorization from the City.

In March 2017, Los Angeles citizens voted for the approval of cannabis regulation known as Proposition M. Proposition M gave the Los Angeles Mayor and City Council comprehensive oversight of commercial cannabis in an effort to clean up years of convoluted regulations, sporadic enforcement and an often-adversarial relationship between the cannabis industry and the City of Los Angeles

Under Prop. M, the City of LA's marijuana businesses underwent major taxation and regulatory reform.
Below are only some of the significant portions of Prop M:

TAXATION

Proposition M's tax rates call for medical cannabis businesses to only pay 5% for every $1,000 earned. Recreational businesses pay tax based upon the type of business with taxes mostly in the range of 1-2% per $1,000 earned for most businesses, including cultivators and manufacturers, and 10% per $1,000 for dispensaries.

The Proposition also allows businesses to pay their taxes in cash until better banking solutions can be achieved. Proposition M also addresses a common misunderstanding that many businesses under Prop D have encountered by making it clear that while taxes must be paid, simply paying taxes does not mean the business is "licensed" to operate (even if you have BTRC). Except for CBDs, CBD Oils or Hemp Products per CAL BUS & PROF Code 26001 and Business License from DRC (Department of Cannabis Regulation) . In addition, it makes it a misdemeanor for any person operating a non-medicinal cannabis business to display an improper, expired, suspended, or unauthorized tax and/or license certificates.

REGULATION

Under Proposition M, it is unlawful to own, set up or operate a medical and/or non-medicinal cannabis business without a city issued license, permit or authorization. Proposition M provides the City of Los Angeles with the clear ability to enforce these regulations, including banning all unlicensed operations as of January 1, 2018 and permitting penalties against the businesses and individuals operating without a license. In addition, Proposition M allows the Department of Water and Power to shut down utility services if a business or individual is in violation of the ordinance. (Section SEC .45.19.7.3)
Any person in violation of this law shall be guilty of a misdemeanor punishable by a fine of not more than $1,000, imprisonment of up to six months, or both, and may as well become ineligible to obtain a cannabis business license.

In addition, once an injunction has been placed on the unauthorized business, each day the unauthorized business continues to operate shall be deemed as a new an separate offense and subject to a **maximum civil penalty of $20,000** for each and every offense.

BE AWARE!! Landlords, Employees & Volunteers (Including Bud Tenders) !
Proposition M violations also include penalties to **employees, contractors, agents and volunteers** of the unauthorized businesses, as well as **landlords** who lease, rent or otherwise allow the establishment to occupy any portion of land.

Note from Bruce:
I've obtained good results defended clients and corporations accused of City of LA Cannabis business violations, nevertheless if you're not in compliance with Prop M **Close Down Immediately** to avoid prosecution from violation and/or injunction.

FEDERAL & STATE HEMP & CBD

CAN I BUY, SELL, AND PRODUCE THEM?

FEDERAL LAW

As of September 2018, the federal Drug Enforcement Administration issued a memorandum announcing that drugs including CBD with THC content below 0.1% would be taken off of Schedule 1 of the controlled substances schedules and moved to Schedule 5.

This allows CBD products to be sold through traditional pharmacies with a doctor's prescription so long as the particular product is first approved by the FDA. The order prohibits importing and exporting of CBD products without a permit.

In addition, on December 20, 2018, the federal government removed industrial hemp and all derivatives of cannabis with less than 0.3% THC – including CBD products – from the Controlled Substances Act. This means that CBD products are no longer an inherently illegal substance under federal law, so long as they contain less than 0.3 percent THC. However, THC content above 0.3% remain classified as a Schedule 1 controlled substance, subject to severe criminal sanctions.

The federal government continues to restrict the products for use of CBD in specific circumstances, therefore it is illegal to Market CBD Products with Certain Health Claims Without FDA Approval and also to "introduce into interstate commerce" any CBD product that is marketed with a claim of therapeutic benefit, or any other disease cure or other benefit claim, without the product first having been "approved by the FDA for its intended use." This includes cannabis and cannabis-derived products that claim therapeutic benefit, or with any other disease claim drugs.
It is Illegal Under Federal Law to Add CBD to Food. It remains illegal under federal law to add either THC or CBD to any food products.

Overall, under federal law CBD products may be produced, bought, and sold, as long as they are not marketed with any claims of therapeutic benefit, and so long as CBD is not added to food or marketed as a dietary supplement.

CALIFORNIA AND OTHER STATES LAW

As of Aug.,30, '19 the California Senate Appropriations Committee failed to pass AB 228. Ab266 is to allow hemp to make CBD, therefore the sale of CBD products made from hemp will remain illegal until at least the 2020 Legislative session. Currently, cannabis licensees may only sell CBD products that are extracted from cannabis rather than industrial hemp.

Since the Federal Farm bill has legalized hemp, many States have allowed CBD and other Hemp-Based products to be Produced and Sold. As of August 2018, 39 states had some kind of industrial hemp cultivation or production program.

Approximately 16 states have authorized and licensed commercial hemp production despite federal prohibition, and many other states allow commercial cultivation despite federal law.

The states with existing commercial hemp programs are:

Arizona	Massachusetts	South Carolina
California	Minnesota	Tennessee
Colorado	Montana	Vermont
Indiana	North Dakota	Virginia
Kentucky	Oregon	West Virginia
Maine	Rhode Island	

Now that the farm bill has legalized hemp, some states are updating their regulations on hemp and hemp-derived CBD, with more expected to follow suit in the near future. In order to determine whether any CBD-based business is allowed, it is important to research current state and local laws to make sure the business is only selling and producing products in jurisdictions that allow them.

For updated information call or e mail my office for a consultation.

AUMA Prop 64 (Adult Use Marijuana Act 2016) Licensing Provisions

Note: See Senate Bill 94 **MAUCRSA** (January 11th, 2017) regarding the definition, clarification and additions of licensing laws under, AUMA, Prop 64, MAUCRSA (see page 25), AB226, etc.

LICENSE TYPES: Under Prop 64, the license types are:

(1) Type I = Cultivation; Specialty outdoor; Small – same as MRCSA (Formally MMRSA), AB266 etc.

(2) Type IA == Cultivation; Specialty indoor; Small – same as MRCSA

(3) Type IB = Cultivation; Specialty mixed-light; Small – same as MRCSA

(4) Type 2 = Cultivation; Outdoor; Small – same as MRCSA

(5) Type 2A = Cultivation; Indoor; Small – same as MRCSA

(6) Type 2B = Cultivation; Mixed-light; Small – same as MRCSA

(7) Type 3 = Cultivation; Outdoor; Medium – same as MRCSA

(8) Type 3A = Cultivation; Indoor; Medium – same as MRCSA

(9) Type 3B = Cultivation; Mixed-light; Medium – same as MRCSA

(10) Type 4 = Cultivation; Nursery – same as MRCSA

(11) Type 5 = Cultivation; Outdoor; Large – not available till 2023

(12) Type 5A =Cultivation; Indoor; Large – not available till 2023

(13) Type 5B = Cultivation; Mixed-light; Large – not available till 2023

(14) Type 6 = Manufacturer 1 – same as MRCSA

(15) Type 7 = Manufacturer 2 – same as MRCSA

(16) Type 8 = Testing – same as MRCSA

(17) Type 10 = Retailer – same as MRCSA

(18) Type 11 = Distribution – mandatory requirement in Prop 64, there is simply no restriction against it being owned by holders of other licenses as there is in the MCRSA. Micro business type licensees can also do their own distribution.

(19) Type 12 =Microbusiness (MCRSA's type 12 license for transportation, which is not required under Prop 64)

The requirements in an application for a city and county include:

The exact requirements may vary by local city and county jurisdiction. Typically, they fall into the following areas:

Some cities and counties will require more than the below, and some will not require documents to support each of these categories.

(1) Business plan: a business plan that outlines the objectives and operating structure of the company as well as the key management and officers will be required. The plan will also require projected operating costs and revenues, planned relationships with suppliers and/or distributors, and an operational overview of how the business will work and what will be accomplished in the first 12-24 months.

(2) Zoning and Land Use: Is the property far enough from sensitive use areas? Is it in the correct zoning for land use purposes according to the municipal or county code (manufacturing, industrial, commercial vs. residential)?

The state law requires that any marijuana business be at least 600 feet from a school. Some local jurisdictions have also included parks, day care centers, and areas where youth congregate as "sensitive use." Additionally, some have required 1,000 feet of distance. Also note that federal law has enhanced criminal penalties for marijuana distribution within 1,000 feet of schools.

(3) Security plan: many applications require a detailed security plan that shows alarms, personnel and strategy relating to securing the premises for retail (dispensaries) or cultivation operations.

(4) Insurance: some applications will require that you show proof of insurance for your operation.

(5) Site plans: some applications will require you to hire a civil engineer or architect to draw up site plans for your cultivation operation.

(6) Environmental impact / Waste management: some applications will require a waste management plan and/or statement of water usage and how potential adverse consequences will be avoided.

(7) Live Scan / Criminal History: Some jurisdictions will require a live scan of the applicants and a disclosure of any criminal history. Some have written the laws so that you will only be disqualified if your prior criminal history involves a crime of moral turpitude. Other regulations state that past marijuana crimes will not count against you so long as they were non-violent. However, check with your local jurisdiction.

(8) Tax Returns: some jurisdictions require prior tax returns for the persons involved and the entity, if it has been in operation in the past.

Examples of State of California Licensing Provisions

These are some of the requirements for all Marijuana Business License operations as set forth in the current legal framework of the state. In addition to the application form published by the state under MAUCRSA (Medicinal and Adult-Use Cannabis Regulation and Safety Act) , applicants must provide information and documents in support of their eligibility to the licensing authority. Below are some the of the guidelines that are common in the Cannabis Licensing regulations

GENERAL REQUIREMENTS

Submit Electron Fingerprints to the DOJ for Clearance

Submit Criminal History information for all applicants

Provide evidence of legal right to occupy the property proposed for operation

Landowner - Deed or Title to Property

Lessees - Acknowledgment and Lease from owner or property

Provide evidence of a compliant location for operation

For Applicants with 20+ Employees - Training Program & Peace Agreement

Provide Valid Seller's Permit Number

Submit application fees as designated by the licensing authority

Provide evidence of a Bond established to cover the costs in the event of non-compliance

Provide a copy of the Operating Procedures

List each person with a financial interest in the business

Statement under penalty of perjury regarding truthfulness of application materials

Cannabis Tax Provisions

Consult the Business & Professions Code and local regulation for guidance

Retailers

15% of average market price of each retail side

Cultivators

FLOWER/ BUD

$9.25 per dry weighed ounce.

LEAF

$2.75 per dry weight office

MAUCRSA Cultivation Licensing Requirements

MAUCRSA REQUIREMENTS

i. Provide Statement declaring applicant an "agricultural employer"

ii. Identify sources of water proposed for cultivation

iii. Affirm intent to use only CA authorized pesticides

iv. Identify & mitigate risk to water and wildlife resources

CA DEPARTMENT OF FOOD & AGRICULTURE PROPOSED REGULATIONS

i. Provide a list of number and types of all cannabis licenses for all applicants

ii. Permits from Department of Fish & Wildlife & Water Resources Control Board

iii. Affirm intent to use only CA authorized Pesticides

iv. Proposed Cultivation Plan

v. Identify power source for; illumination, heating, cooling & ventilation

vi. Attestation that no owner is a licensed retailer of alcoholic beverages

MAUCRSA Manufacturing Licenses

Requirement for Manufactured Edible Cannabis Products

CA DEPARTMENT OF FOOD & AGRICULTURE PROPOSED REGULATIONS

i. Not designed to be appealing to children

ii. Not designed to be easily confused with commercially sold cannabis-free candy/foods

iii. Produced with a maximum (10) milligrams tetrahydrocannabinol (THC) per serving

iv. Delineated or scored into standardized serving sizes if more than one serving per product

v. Homogenized to ensure uniform disbursements of cannabinoids throughout the product

vi. Meet sanitation standards established by the CA Department of Public Health

vii. Provide information to enable the informed consumption of the product

viii. Be marked with a universal symbol, as determined by the State Department of Public Health

ix. Limit risk of explosion, combustion, or any other unreasonably dangerous risk to public safety

The Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA)

California's laws regulating cannabis were substantially revised as of 2018 by this comprehensive new legislation.

MAUCRSA establishes a uniform licensing regime for both medical and adult-use cannabis. Consisting of two separate bills sponsored by the Governor's office, SB 94 and AB 133, MAUCRSA supplants prior legislation known as MCRSA (formerly MMRSA), which applied only to medical cannabis. It also makes adjustments to California's legalization law, the Adult Use of Marijuana Act (AUMA) a.k.a. Prop 64, consistent with the intent of the initiative.

Licenses under MAUCRSA are to be issued according to regulations promulgated by the Bureau of Cannabis Control and its affiliated agencies, the Department of Food and Agriculture (for cultivation) and the Department of Public Health(for manufacturing, packaging and labeling). Information is posted at the California Cannabis Portal.

Existing, non-licensed medical marijuana collectives, which were authorized by state law SB 420, have ceased to be lawful as of January 9, 2018. Now only licensed cultivators and caregivers gardens (for up to five patients) are legal and **subject to state law and local control.** Persistent to CUA (Prop 215), medical patients and caregivers will still be entitled to grow however much is required for their personal medical needs. Adult over 21 are limited to six live plants per residence under AUMA (Prop 64).

SUMMARY OF MAUCRSA

MAUCRSA adopts the same basic framework as MCRSA/MMRSA, but with a number of significant revisions. In particular, MAUCRSA:

- Changes references to "marijuana" to "cannabis" throughout California law and renames the chief regulatory agency the Bureau of Cannabis Control.

- Extends the basic license types in MCRSA (cultivator, manufacturer, retailer, distributor, testing) to both medical and non-medical applicants. Includes both specialty cottage and microbusiness licenses for small-scale producers. Eliminates the separate transporter license in MCRSA. Provides for large-scale cultivation licenses pursuant to AUMA (Prop 64) as of Jan 1, 2023.

- Requires separate license applications for medical and adult-use facilities, but lets applicants combine the two in the same facility.

- Authorizes the Bureau to issue 12-month temporary licenses during the transition time when licensing begins in 2018.

- Allows applicants other than testing labs and large-scale cultivators to file for any combination of licenses, repealing previous MCRSA restrictions on vertical integration. In particular, allows cultivators and manufacturers to operate as their own distributors, which was forbidden in MCRSA.

- Deletes a provision in MCRSA authorizing counties and cities to ban deliveries into their jurisdiction from state-licensed delivery services. Local governments must allow transport of cannabis by licensees on public roads , but "transport" doesn't necessarily include "delivery." (BPC 26090(e))

- Specifies that retailers can conduct sales exclusively by delivery. (BPC 26070 (a)1)

- Repeals AUMA's prohibition on licenses to out-of-state applicants.

- Repeals the area-based 100 square ft. per patient medical cultivation guideline from MCRSA, as well as the collective cultivation provision allowing 5 patients to grow up to 500 square feet together without a state license. However, Prop. 64 added Section 26033 to the Business and Professions Code, protecting patients and primary caregivers who cultivate an unspecified amount for themselves or no more than five patients, if they receive compensation only under Subdivision (c) of Section 11362.765 of the Health and Safety Code.

  Note From Bruce: Under Prop 215, patients are still entitled to grow and possess whatever amount of marijuana is consistent with their medical need, but is subject to local limits and land-use restrictions.

- Redefines "volatile solvent" as one that "is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures" (eliminating mention of alcohol, which was in AUMA). (HSC 11362.3)

- Authorized then existing non-profit medical cannabis corporations under SB 420 to re-organize as for-profits in conformity with the new law (BPC 26231).

City and County's Land Use Rights Have Priority Over Cannabis Licensing etc.

Note: See Senate Bill 94 (January 11th, 2017) and Assembly Bill 110 (June 9th, 2017) regarding the definition, clarification and additions of licensing laws under, AUMA, Prop 64, MCRSA, AB226, etc.

As a result of AB266 and AUMA (Adult-Uses Of Marijuana Act Prop 64). Every county and city has the discretion to either allow licensing or not; for the distribution, manufacturing etc. or ban entirely all cultivation of marijuana/cannabis. However, as a result of Prop 64, this no longer includes denying those in California (Adults over 21) from growing 6 live plants and possessing an ounce, or 8 grams of hash, and the amounts that result from the growing of the six plants. Also Prop 215 (Compassionate Use Act) remains in effect, which allows patients and their caregivers to grow any amount reasonably necessary for the patient's current medical needs. (See Page 17)

The locations below are example of those jurisdictions that have cannabis business licensing. However there is licensing in many locations as well.

Check county or city websites for updates.
Call my office for a consultation regarding the latest opportunities of licensing.

Partial List of Cities/Counties that have allowed licensing and businesses.
(Additional Locations Occur Often)

- ADELANTO
- DESERT HOT SPRINGS
- COACHELLA
- COALINGA
- MONTEREY COUNTY
- GONZALES
- SALINA
- SANTA CRUZ COUNTY
- SANTA 4V
- WATSONVILLE
- GREENFIELD
- KING CITY
- HUMBOLT COUNTY
- LA MESSA
- COSTA MESSA
- PERRIS
- CITY OF SAN BERNARDINO
- RIO DELL
- STOCKTON
- LONG BEACH
- LYNWOOD
- CALIFORNIA CITY
- SAN LUIS FERGUSON
- CALIFORNIA CITY
- SAN BERNADINO
- CITY OF LOS ANGELES
- MAYWOOD
- INGLEWOOD
- RANCHO MIRAGE
- CULVER CITY
- PALM SPRINGS
- SANTA MONICA

Call my office for additional information on other locations

Legalized Marijuana Laws (Prop 64: AUMA)

AUMA (Nov. 8, 2016) Adult Use of Marijuana Act

(Prepared by California NORML 2017 (including comments))

Prop 64 includes licensing that mimics much of AB 266 however there are differences (for example, applicant qualifications). Please call and make an appointment with my office to discuss these matters and how and where you can obtain a license under the new legislation

AUMA is an elaborate, 62-page initiative which writes hundreds of new provisions and regulations into state law. Its basic thrust is to:

(1) allow adults 21 years and older to possess up to one ounce of marijuana and cultivate up to six plants for personal use;

(2) regulate and tax the production, manufacture, and sale of marijuana for adult use; and

(3) rewrite criminal penalties so as to reduce the most common marijuana felonies to misdemeanors and allow prior offenders to petition for reduced charges.

Due to its unusual length and complexity, AUMA contains a few glitches and inconsistencies that will have to be ironed out by the courts or the legislature. It also includes a number of restrictions and oversights that many users find objectionable (for example, it makes it illegal to consume in any public place except for specifically licensed premises; continues to let local governments ban medical marijuana cultivation and sales; bans vaporization in non-smoking areas; and imposes an unduly high, 15% + tax increase on medical marijuana). Fortunately, Section 10 of the act allows for most provisions to be modified by the legislature.

Prop 64 will not be the last word on marijuana reform; further changes in state and federal law will be needed to guarantee affordable medical access, protect employment and housing rights, facilitate banking and allow interstate commerce. Regardless of these problems, Prop 64 compares favorably to similar legalization measures in other state.

Note From Bruce:
CA NORML is currently supporting legislation (AB 2069) that will bar California employers from discriminating against workers (including firing or hiring) solely because of their status as a medical marijuana patient, or due to testing positive for marijuana use.

PERSONAL USE

POSSESSION:
In general, AUMA makes it lawful under both state and local law for adults 21 or over to possess, process, transport, obtain, or give away to other adults no more than one ounce (28.5 grams) of marijuana (AUMA Sec. 11362.1).

The initiative sets inconsistent limits for marijuana concentrates, allowing possession of up to 8 grams in Sec. 11362.1 (a)2 , but penalizing more than 4 grams in Sections 11357(a), (b) and (c) and 11360. This contradiction will have to be resolved by the courts or the legislature.

CULTIVATION:
Adults could cultivate up to six plants and possess the marijuana from these plants at their residence for personal use (Sec. 11362.1(3)). No more than six plants per residence. (N.B: These limits don't apply to medical users, who may in principle grow whatever is necessary for their medical use under Prop. 215. However, local governments may restrict and even prohibit cultivation in some circumstances by local nuisance ordinances, Prop. 215 notwithstanding. Otherwise, MMRSA allows patients up to 100 square feet of growing space per person, with collective gardens limited to 5 patients unless they obtain a state license).

All plants and harvested marijuana in excess of one ounce must be (1) kept with the person's private residence or on its grounds, (2) in a locked apace, and (3) not visible from a public place. (11362.2). Violations of (1) – (3) are punishable as infractions with a maximum $250 fine. Cities and counties may regulate and restrict personal use cultivation, but cannot completely prohibit cultivation inside a private residence or accessory structure that is "fully enclosed and secure." Local bans on outdoor cultivation are permitted at present, but only until such time as federal law is changed to allow adult use marijuana (11362.2(b)).

CONSUMPTION:
The initiative makes it lawful to smoke or ingest marijuana, but forbids consumption in any public place except for licensed dispensaries when authorized by local governments. Violations are a $100 infraction. "Public place" is commonly construed broadly to include any business or property that is open to the public. This will greatly reduce the locations where medical patients can inhale their medicine, as they can presently consume legally in streets and public areas where smoking is permitted. Also forbidden is consumption within 1,000 feet of a school or youth center while children are present, except on residential property or on licensed premises and provided the smoking is not detectable by the kids. (11362.3(a)3).

SMOKING AND VAPORIZERS RESTRICTED:
Smoking cannabis is prohibited except in tobacco smoking areas (11362.3(c)). Violations are a $250 infraction. Smoking is defined to include the use of vaporizers and e-cigs, despite compelling scientific evidence that smokeless electronic vaporizers pose no public health hazard. The initiative goes on to declare that this section does not override laws regarding medical use; however, no state laws currently protect patients' right to vaporize or consume in non-smoking areas, so this point is moot except in the handful of localities (San Francisco, Sebastopol) that have local ordinances allowing on-site medical marijuana smoking or vaporization in dispensaries.

USE IN VEHICLES:
Current laws against driving while impaired are unchanged. Consumption or possession of an "open container" of marijuana

or marijuana products is prohibited while driving or riding as a passenger in a motor vehicle, aircraft, vessel, or other transportation vehicle. Violations are a $100 infraction. It is not clear what constitutes an "open container" of marijuana, for example, in the case of edibles or e-cigs. (Note: at present, there is no law prohibiting legal Prop 215 patients from possessing medical marijuana in open containers.) Exception: AUMA permits consumption in the passenger compartment of vehicles specially licensed for on-site consumption (11362.3(a) 4,7-8).

DRIVING WITH MARIJUANA:
Sec. 11362.1 states that it is lawful for adults to transport one ounce of marijuana for personal use. This provision is intended to override an existing law (VC 23222(b)) that makes it a $100 infraction to drive in possession of marijuana. It is possible that some law enforcement officers might wrongly try to issue citations for VC 23222(b) after Prop 64 passes, but such charges should be dismissable in court.

SCHOOL GROUNDS:
Possession or use on school grounds is banned while children are present, as is already the case under current law. (11362.3a(5)).

MANUFACTURE WITH VOLATILE SOLVENTS
Unlicensed manufacture of concentrates using volatile or poisonous solvents (not including CO2 or ethanol alcohol) are subject to heavy felony penalties, as under current law (11362.4(a)6).

EMPLOYMENT RIGHTS:
The initiative does not interfere with the right of employers to discriminate against marijuana users, medical or otherwise, both on and off the job (11362.45(f)).

PARAPHERNALIA:
Marijuana accessories would be legal for adult use and manufacture. (In practice, paraphernalia offenses are rarely prosecuted in California since passage of Prop 215). 11362.1 (a) 5.

MEDICAL USE

The initiative does not alter the protections of the Compassionate Use Act of 1996 (Prop 215) allowing medical use of marijuana (11362.45(i)). Physician recommendations must conform to minimal standards already established under MMRSA and current medical marijuana legislation (11362.712).

ID CARDS:
Both AUMA and current law allow patients to voluntarily obtain official state medical marijuana identification cards from their county board of health. Under AUMA, patients who do obtain ID cards are exempted from the 7.5+% sales tax currently imposed on marijuana sales (34011(g)) effective immediately. However, beginning in Jan, 2018, all marijuana will be subject to an additional 15% excise tax plus a $9.25/ounce cultivation tax. No card is required to enjoy the standard legal protections of Prop. 215. The cost of the state patient ID card is limited to $100, or $50 for Medi-Cal patients; free of charge for indigent patients (11362.755) effective immediately; this is a reduction from the prevailing fees in most counties. Identifying information in the ID cards is made subject to the Confidentiality of Medical Information Act (11362.713).

CPS/CHILD CUSTODY:
Qualified patients may not be denied child custody rights merely because of their status as medical marijuana users. 11362.84.

PHYSICIAN RECOMMENDATIONS (SB 643): There are several new provisions clarifying the duties of medical cannabis physicians; however, they don't substantially affect or impair patients' current access to medical recommendations:

- The Med Board's enforcement priorities are amended to include "repeated acts of clearly excessive recommending of cannabis for medical purposes, or repeated acts of recommending without a good faith of prior exam" (SB 643, 2220.05). This is identical to existing language regarding controlled substances, which has generally been assumed to apply to MMJ heretofore.
- It is unlawful for physicians to accept, solicit, or offer remuneration to or from a licensed facility in which they or a family member have a financial interest.
- The Med Board shall consult with the California Center for Medicinal Cannabis Research in developing medical guidelines for cannabis recommendations.
- This recommending persona shall be the patient's "attending physician" as defined in HSC 11362.7(a). Contrary to popular misconception, this is nothing new and in no way limits patients to their primary care physician. It merely restates the past language in SB 420.
- Physician ads must include a warning notice that MMJ is still a federal Schedule I substance.
- Identifying names of patients, caregivers, and medical conditions shall be kept confidential (AB 266,19355).

REGULATION AND SAFETY

OVERSIGHT:
The Bureau of Medical Marijuana Regulation in the Department of Consumer Affairs is renamed the Bureau of Marijuana Control and given chief authority to regulate the industry. The Bureau/DCA is charged with licensing transport, distribution and sale; the Dept of Food and Agriculture with licensing cultivation; and the Dept of Public Health with licensing manufacturing and testing (Sec 26010-12).

The Bureau is to convene an advisory committee of knowledgeable stakeholders to help develop regulations and issue reports (26014).

The Governor is to appoint an independent, three-member Appeals Board to adjudicate appeals subject to standard procedures (26040).

TRACK AND TRACE PROGRAM:
The DFA shall implement a unique identification program for all marijuana plants at a cultivation site, to be attached at the base of each plant. The information shall be incorporated into a "track and trace" program for each product and transaction (SB 643, 19335 and AB 243 11362.777(e)). Cultivation in violation of these provisions is subject to civil penalties up to twice the amount of the license fee, plus applicable criminal penalties.

LICENSING:

The initiative establishes 19 different license categories parallel to those in MMRSA, covering cultivation, manufacturing, testing, distributing, retailing, and distributing. Licenses for adult use facilities are distinct from those for medical facilities issued under MMRSA. (26050)

LICENSE TYPES:
Along with Senate Bill 643, AB 266 establishes the following license types:

Type 1: Cultivation; Specialty outdoor. Up to 5,000 sq ft, using exclusively artificial lightin
- **Type 1A:** Cultivation; Specialty indoor. Up to 5,000 sq ft, using exclusively artificial lighting
- **Type 1B:** Cultivation; Specialty mixed-light. Up to 5000 sq ft, using combination of artificial & natural light

Type 2: Cultivation; Small outdoor. 5001 – 10,000 sq ft
- **Type 2A:** Cultivation; Small indoor. 5001 – 10,000 sq ft
- **Type 2B:** Cultivation; Small mixed – light. 5001 -10,000 sq ft

Type 3: Cultivation; Outdoor. 10,001 sq ft – 1-Acre
- **Type 3A**: Cultivation; Indoor. 10,000 – 22,000 sq ft
- **Type 3B:** Cultivation; Mixed-light. 10,001 – 22,000 sq ft

Type 4: Cultivation; Nursery
Type 6: Manufacturer 1 for products not using volatile solvents
Type 7: Manufacturer 2 for products using volatile solvents
Type 8: Testing
Type 10: Dispensary; General
- **Type 10A:** Dispensary; No more than three retail

Type 11: Distribution
Type 12: Microbusiness (MCRSA's type 12 license for transportation, which is not required under Prop 64)

See Page 23 regarding licensing provisions for patients and adults under AUMA Prop 64

LARGE CULTIVATORS:
A new category of Type 5 "Large" cultivation licenses is created for farms over the MMRSA limit of ½ acre indoors or 1 acre outdoors. No limit is set on the size of Type 5 gardens. No Type 5 licenses are to be issued before Jan 1, 2023. (26061(d)).

MICROBUSINESSES:
A new category of Type 12 microbusiness licenses is established for small retailers with farms not exceeding 10,000 sq. ft. (26067 (e) 2). and to act as a licensed distributer, Level 1 (non volatile solvent) manufacturer, and retailer. Like licensed retailers, licensed microbusinesses may deliver cannabis and a local jurisdiction may allow for the smoking , vaping, and ingesting of cannabis or cannabis products on the premises of a licensed microbusiness .

VERTICAL INTEGRATION:
Unlike MMRSA, AUMA does not prohibit vertical integration of licenses. In general, a licensee may hold any combination of licenses: cultivator, manufacturer, retailer, and distributor. Exceptions are testing licenses, and type 5 large cultivators, who may not hold distribution or testing licenses (26061(d)). In contrast, MMRSA allows applicants to have at most two different license types, effectively prohibiting direct farm-to-consumer sales (AB 266, B&P Code 19328).

DISTRIBUTORS:
Unlike MMRSA, AUMA does not prohibit licensed distributors (Type 11 licensees) from obtaining other kinds of licenses, except for large-scale Type 5 cultivation licenses. Thus other cultivators, manufacturers, and retailers may apply to be distributors themselves.

APPLICANT QUALIFICATIONS:
(SB 643, 19322) Applicants must provide proof of local approval and evidence of legal rights to occupy proposed location. Applicants shall submit fingerprints for DOJ background check. Cultivation licensees must declare themselves "agricultural employers" as defined by the Alatore-Zenovich-Dunlap Berman Agricultural Labor Relations Act.

LICENSE CONDITIONS:
Licenses may be denied based on various factors, including restraints on competition or monopoly power, perpetuation of the illegal market, encouraging abuse or diversion, posing a risk of exposure to minors, environmental violations, and excessive concentration in any city or county (26051).

"Excessive concentration" is defined quite loosely to include any concentration in a local census track that is higher than elsewhere in the county (26051(c)). Taken literally, this would include any new facility in a county that doesn't already have one. An exception is made for denying applications that would "unduly limit the development of the legal market." The overall effect is to give regulators a blank check to determine for themselves what constitutes excessive concentration. Local governments can also impose their own limits on concentration.

APPLICANTS WITH PRIOR CONVICTIONS:
Licenses may be denied for convictions of offenses "substantially related" to the business, including serious and violent felonies, felonies involving fraud or deceit, felonies for employment of a minor in controlled substance offenses. Except in rare cases, a prior conviction for a controlled substance offense may not in itself be the sole grounds for rejecting a license (26057(b)5). This is a departure from MMRSA, which makes past CS offenses valid grounds for license denial. CS offenses subsequent to licensing are grounds for revocation.
Note: Under Prop 64, convictions for marijuana offenses are not a basis for disqualification for licensing.

RESTRAINT OF TRADE:
Licensees are barred from price fixing, restraint of trade, price discrimination between different locations, and selling at less than cost to undercut competitors. (26052)

NO ALCOHOL OR TOBACCO LICENSES may be held by marijuana licensees (26054(a)).

SCHOOL BUFFER ZONES:
No licensee shall be located with 600 ft. of a school or youth center in existence with the license was granted, unless a state or local licensing authority allows otherwise. (26054(b)).

RESIDENCY:
All licensees must be continuous California residents as of Jan 1, 2015. This restriction sunsets on Dec 31, 2019 (26054.1).

PRIORITY TO EXISTING OPERATORS:
Licensing priority shall be given to applicants who can demonstrate they have acted in compliance with the Compassionate Use Act since Sept 1, 2016 (26054.2(a)).

TRANSPORT & DELIVERY:
Unlike MMRSA, AUMA does not have a separate license category for transportation between licensees. The Bureau shall establish standards for types of vehicles and qualifications for drivers eligible to transport commercial marijuana (26070(b)). Local government may not prevent delivery of marijuana on public roads by licensees in compliance with the initiative and local law (27080(b)). Like MMRSA, AUMA does require a special license for retail deliveries to

customers. Under MMRSA, local governments are entitled to ban deliveries of medical marijuana to residents in their jurisdiction. There is nothing in AUMA to change this by requiring local governments to allow deliveries.

NON-PROFITS:
The Bureau is to investigate the feasibility of creating nonprofit license categories with reduced fees or taxes by Jan 1, 2018 (Sec.27070.5). In the meantime, local jurisdictions may issue temporary local licenses to nonprofits primarily providing marijuana to low income persons, provided they are registered with the California AG's Registry of Charitable Trusts. This section is of questionable effect because marijuana non-profits are not allowed on the registry due to federal law. Nonetheless, there is nothing to prevent non-profits from registering as commercial entities under the act.

MANUFACTURING and TESTING LABS are regulated by the Dept. of Public Health along similar lines as MMRSA. (26100)

LABELS & PACKAGING:
Products shall be labeled in tamper-evident packages with warning statements and information specified in Section 19347.

The act prescribes specific label warnings on every package of marijuana and marijuana products (26120):

> "GOVERNMENT WARNING: THIS PACKAGE CONTAINS MARIJUANA, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. MARIJUANA MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. MARIJUANA USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF MARIJUANA IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(The Schedule I warning is to be deleted if the federal government reschedules).

MINORS MAY BE SNITCHES:
As in the alcohol industry, minors may be employed as peace officers to try to entrap marijuana dealers into illegal sales. (26140)

ADVERTISING:
Misleading claims and marketing to minors are banned. No billboards along interstate highways, and no use of cartoon characters, language, or music known to appeal to kids. (26150-5).

LOCAL CONTROL:
No person shall engage in commercial activity without BOTH a state license and a license, permit, or other authorization from their local government (AB 266, 19320(a); AB 243, 11362.777(b)).

Local governments may restrict or completely prohibit any type of business licensed under the act, as is also true under MMRSA (26200).

However, local governments stand to lose grant funding under Section 34019 (f) 3(C) if they prohibit retail sales or cultivation, including outdoor personal use cultivation. Section 34019 (f) C authorizes state grants to local governments to assist with law enforcement, fire protections, or other public health and safety programs associated with implementing AUMA.

ON-SITE CONSUMPTION:
Local governments may permit on-site consumption at licensed retailers and microbusinesses provided: access is prohibited to persons under 21, consumption is not visible from any "public place" or non-age-restricted area, and sale or consumption of alcohol or tobacco aren't allowed (this effectively ends the current practice of allowing beer and wine at medical marijuana expos (26200(d)).

LABOR LAWS IN EFFECT:
The Division of Labor Standards Enforcement and Occupational Safety and Health shall apply the same labor standards as apply to medical producers under MMRSA, including the requirement that all businesses with 20 or more employees have a labor peace agreement (34019(a)7).

CULTIVATION

Cultivation regulations are similar to those established under MMRSA:

- Cultivators must comply with conditions set by Dept. of Fish and Wildlife and State Water Resources Control Board, plus all other state and local environmental laws (26060, 26066).
- The Dept. of Pesticide Regulation is to issue standards for use of pesticides.
- The state shall establish an organic certification program and standards for recognizing regional appellations of origin (26062-3).
- Marijuana to be regulated as an agricultural product by the Dept of Food and Agriculture (26067).
- The Dept. shall establish an identification program with unique identifiers for every marijuana plant.

MARIJUANA TAXES

All retail sales, medical and non-medical, are subject to a 15% excise tax in addition to the regular state sales tax, effective Jan 1, 2018.

All marijuana is also subject to a cultivation tax of $9.25/ounce dry-weight for flowers or $2.75 for leaves, effective Jan 1, 2018. Other categories of harvested product are to be taxed at a similar rate based on their relative price to flowers (34012).

Patients with state ID cards are exempt from the current 7.5+% sales tax (effective immediately), but not from the excise or cultivation taxes. (34011)

Cities and counties are free to impose their own additional business taxes on facilities cultivating, manufacturing, processing, selling, distributing, providing, storing, or donating marijuana (34021). Many cities already impose such taxes on medical marijuana. (Technical exception: AUMA does not allow cities to impose an extra, BOE-collected "sales and use" tax on marijuana).

INSPECTIONS
The board and other law enforcement officers may inspect any place where marijuana is sold, cultivated, stored to assure taxes are collected. (34016).

TAX REVENUES
Tax Revenues are allocated to a new California Marijuana Tax Fund. (34018).

Proceeds go to:

- Reasonable enforcement costs of the Bureau and other regulatory agencies not compensated by other fees (34019)

- $10 million per year from 2018 thru 2028 for California public universities to study and evaluate the implementation of the act
- $3 million per year from 2018 thru 2022 to the California Highway Patrol to establish protocols to determine whether drivers are impaired.
- $10 million per year beginning in 2018, increasing by $10 million per year to $50 million in 2022-23 to the Governor's Office of Business and Economic Development for a community reinvestment program, at least 50% of which in grants to community nonprofits, for job placement, mental health and substance abuse treatment, legal and other services to communities disproportionately affected by the war on drugs.
- $2 million per year to the California Center for Medicinal Cannabis Research for research on efficacy and safety of medical marijuana.
- Of the remaining revenues:
  - 60% are allocated to a Youth Education, Prevention, Early Intervention and Treatment Account for youth programs to prevent drug abuse.
  - 20% to an Environmental Restoration and Protection Account for environmental cleanup and restoration.
  - 20% to a State and Local Government Law Enforcement Account for CHP DUI programs and grants to local governments relating to enforcement of the Act. Only local governments that permit retail sales, cultivation, and outdoors personal use cultivation are eligible for these grants (34019(f)C3).

CRIMINAL OFFENSES

Current marijuana laws (Health and Safety Code 11357-111360) are rewritten with a new penalty structure. In all cases, offenders under 18 are not liable to criminal punishment, but to drug education and community service.

POSSESSION (HSC 11357):
Illegal possession of an ounce by persons 18- 21 continues to be a $100 infraction. Illegal possession of more than an ounce by adults continues to be a misdemeanor, punishable by $500 and/or six months in jail. Possession of less than an ounce upon a school ground during school hours by a person over 18 is a misdemeanor punishable by a fine of $250, or $500 plus 10 days in jail for repeat offenses. In the case of concentrated cannabis, Section 11357 makes possession of more than four grams an infraction; however eight grams are authorized under Section 11362.1(a)2. According to AUMA's authors, their intent was to allow eight grams; hopefully this will be affirmed by the courts.

CULTIVATION (HSC 11358):
Illegal cultivation of six plants or less by minors 18-21 is a $100 infraction. Illegal cultivation of more than six plants is a misdemeanor punishable by $500 and/or 6 months. The current mandatory felony penalty for cultivation is eliminated, but felonies may be charged in the case of repeat offenders, persons with violent or serious priors, and various environmental offenses.

POSSESSION FOR SALE (HSC 11359):
Penalties are dropped from current mandatory felonies to misdemeanors ($500 and/or 6 months). Felony enhancements allowed for repeat offenders, serious or violent priors, and sale to minors under 18.

TRANSPORTATION, IMPORTATION, SALE OR GIFT (11360):
Penalties are dropped from current mandatory felony to misdemeanors ($500 and/or 6 months). Felony enhancements allowed for importing, exporting, or transporting for sale more than 1 ounce of marijuana or 4 grams of concentrate.

RELIEF FOR PRIOR OFFENDERS:
Persons previously convicted of offenses that would not be a crime or would be a lesser offense under AUMA may petition the court for a recall or dismissal of their sentence. The court shall presume the petiioner is eligible unless the state provides clear and convincing evidence to the contrary (11361.8).

AMENDMENTS

INDUSTRIAL HEMP: SECTION 9
The initiative enables legal production of industrial hemp under California's existing hemp law, which has been in suspense pending approval by the state Attorney General and federal government.

AMENDMENT: SECTION 10
The legislature may by a 50% majority vote (1) reduce any penalties in the act, (2) add protections for employees of licensees, or (3) amend Section 5 (Medical Use) or Section 6 (Regulation and Safety) consistent with the intent and purposes of the act. A 2/3 vote is required for other amendments, consistent with the intent and purposes.

INTERPRETATION: SECTION 11
No provision of this act shall be construed in a manner to create a positive conflict with federal law, including the Controlled Substances Act.

SEVERABILITY: SECTION 12
If any provision of this act is ruled invalid or unconstitutional, remaining provisions of the act remain in full force and effect.

*Prepared by California NORML 2017 (including comments)

http://www.canorml.org/Cal_NORML_Guide_to_AUMA

Contact the Law Office Of Bruce Margolin regarding cannabis business licensing, regulations and representation.

Call1-800-420-LAWS (5297) or 310-276-2231.

PART 4

EXCERPTS

MORE ABOUT BRUCE

Southwestern Journal

Published by Sigma Lambda Sigma Legal Fraternity
Southwestern University School of Law

Vol. 3, No. 4 FEBRUARY, 1969 Page 1

Banquet Speaker Advocates Legalizing Marijuana

By John E. Norblom
Associate Editor

Los Angeles attorney and South western alumnus Bruce M. Margolin spoke of narcotics problems and suggested that marijuana be legalized in his talk before a capacity crowd at Sigma Lambda Sigma's December Banquet.

Mr. Margolin who graciously consented to speak when scheduled speaker A. L. Wirin was stricken with Hong Kong Flu, is a 1966 graduate of Southwestern University

After passing the Bar, he opened a small office in the Statler Hilton Building in downtown Los Angeles. By chance, he defended a marijuana possession case for a $25 fee. From this small beginning he has developed a very large legal practice. Most of his cases involved either the possession or sale of marijuana.

He now has a staff of attorneys and handles about 50 cases a week. It is not unusual for his staff to have 15 court appearances per day. He estimates that he has personally defended over 700 cases.

If possible he never lets his cases get to trial. " You lose at trial" says Margolin. 90% of the cases are won on illegal search and signature issues.

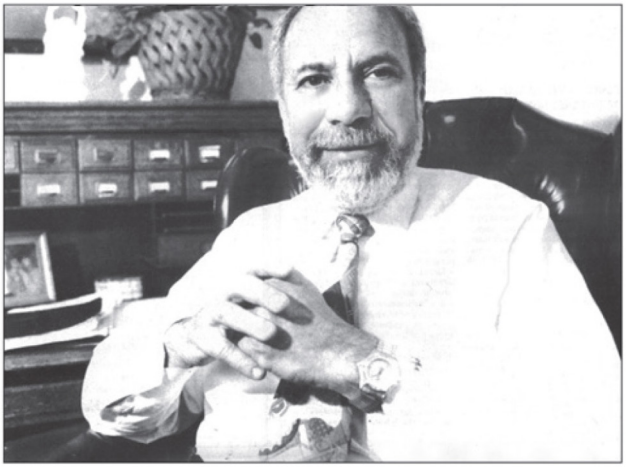
Many cases are won on the basis of Penal Code Section 844, which requires demand of entry, identity and explanation before forcible entry. Mr. Margolin states, "enforcement of the law should not result from violation of the law." The following are some of Mr. Margolin's observations from his recent experiences:

50% of the Superior Court Criminal cases involve narcotics; one out of every ten high school students has either been arrested or has a close personal friend who has been arrested for possession of marijuana/ cannabis;

90% of all marijuana/cannabis comes from Mexico.

Mr. Margolin is a dedicated attorney who identifies with his clients. In his talk Mr. Margolin based his advocacy of legalizing marijuana on his determination that marijuana is not physically addicting, and that most users do not graduate to hard narcotics.

Daily Journal Articles



Hip Helper

West Hollywood criminal **defense attorney** Bruce M. Margolin no longer defends **drug cases** in exchange for yoga lessons as he did back in the 1960s, but he's still dedicated to **helping others**.

January 8, 1996 (Excerpt)

When Bruce M. Margolin graduated from law school in 1967, the time was right for a criminal defense practice specializing in drug charges.

"It was the advent of middle-class hippies getting busted for marijuana and I started getting hundreds of cases," says Margolin, who still practices in West Hollywood just off the Sunset Strip, saw that the law was so unfair and unjust"; putting these young kids in jail along with the murderers, robbers, and rapists and I decided that they needed a defense beyond the courts."

"The feedback I got from representing that kind of defendant was powerful and spiritually awakening."

Another plus for his practice was the Supreme Court decision in Mapp v. Ohio (81 S.Ct. 1684).

"I was very up on constitutional law, "says Margolin, who during his first three years in practice handled as many as four cases a day regarding search and seizure issues. "Police officers often didn't know the new case laws, and the courts almost always granted dismissals."

Los Angeles Daily Journal

Attorneys Running in Recall Have Big Plans

Policies Include Legalizing Pot, Saving Business, Trying Socialism

September 2, 2003

(Excerpt from Bruce's Campaign For Governor)
(Ballot designation Marijuana Legalization Attorney)

Margolin's plan includes using the state attorney general's office to mount a challenge to federal drug laws, using a state's rights argument. Next up would be to take a careful look at other drugs to see whether they should be decriminalized. Drug abusers would be funneled through drug court-type rehabilitation programs, (instead of incarceration). "We have to look at all drug laws and evaluate whether we are getting the right effect".

He stresses that he isn't promoting marijuana, just a change in the laws and an end to the marijuana prohibition.

"Criminal enforcement of drug laws is expensive, and the money could be better spent elsewhere," Margolin said. "For instance, enforcement dollars could go toward a school program that, as early as third grade, educates children about the consequences of criminal actions, including drug laws."

"In the meantime, marijuana is potentially the largest cash crop in California," says Margolin. "If it were legalized, the states sales tax alone would bring in a tremendous amount of tax revenue.

Bruce's Campaign for Governor

Ballot designation Marijuana Legalization Attorney

L.A. Yoga Magazine, 2003

Win or lose, Attorney Bruce Margolin, a yoga practitioner for 30 years, is making a case for issues few serious politicians are even willing to talk about. And Mr. Margolin, despite the twinkle in his eye and the chaos in his West Hollywood law office, is very serious indeed. A fiscal conservative and a social liberal, he puts individual rights and human rights at the top of his political agenda, meditation and yoga class at the end of his day.

Yoga Candidate runs for Governor

by Bob Belinoff

We don't know how many of the 135 candidates running for Governor practice yoga, odds are there are more than a few. But meet a candidate who is making a calm mind and an open heart two of the attributes he would bring to the statehouse if elected Governor in the recall election.

Win or lose Attorney Bruce Margolin, a yoga practitioner for 30 years, is making a case for issues few serious politicians are even willing to talk about. And Mr. Margolin, despite the twinkle in his eye and the chaos in his West Hollywood law office, is very serious indeed. A fiscal conservative and a social liberal, he puts individual rights and human rights at the top of his political agenda, meditation and yoga class at the end of his day.

The candidate's yoga practice today still mainly focuses on meditation, which he does nightly and before all meals. He is a long-time student of Mas Vidal and he also practices at Yoga Works.

One of the things Margolin would do, given his knowledge of Constitutional law, is to help turn California into a Haven for the Billion Dollar Holistic Healthcare industry by providing protection from the FDA for both patients and practitioners of yoga and Ayurveda.

Phones ring, interns and assistant rush in and out, suddenly with his name on the ballot there are interviews, press arrangements and a campaign to put together, despite the campaign he's been running for 30 years – to reform unjust drug laws.

Margolin is the criminal defense attorney who handled the Timothy Leary case. His relationship to Leary stemmed from his friendship with Ram Das, with whom Margolin traveled in India in the 1970's. Like Ram Dass, Margolin gave up his successful professional practice and came back from India re-incarnated, so to speak, as a man with a mission.

Margolin's platform is built on individual rights, prison reform, and legalization of marijuana. "Californians," says Margolin, "are tired of seeing people incarcerated over this benign, mislabeled, mis-scheduled, and misunderstood medicinal herb... the drug war is a waste of tax dollars." Those dollars should be spent on rehabilitation and education, he believes. Drug laws and the enforcement of them, including maintaining non-violent offenders in prison, costs billions. And billions more, Margolin believes, could become State income, instead of income for drug dealers, if marijuana was taxed.

"This is an issue no one wants to touch," Margolin says, "not even my friend Jerry Brown when he was Governor in the 70's."

"Why should you be elected Governor?" I ask him.

"My whole life has been dedicated to service... and I know how to get things done.

It may not be a movement, but yoga and a new take on how to govern has been quietly sneaking into politics lately.

By Bob Bellenoff

LA WEEKLY FREE

October 22-28, 2010

Dreams Of Legal Weed

By: David Futch (Excerpt)

Barely on the legal side of 21, The Kid was facing a felony conviction, four months in jail, thousands of dollars in fines, expulsion from his upscale university, severely teed-off parental units, and a pouty girlfriend. And The Kid's lawyer wasn't just anybody, his name is synonymous with fighting weed busts in California: Bruce Margolin. All this for selling a 10-Pack of marijuana plants to an undercover LAPD officer?

As for The Kid, his future was being decided this day in a San Fernando Valley courthouse by Superior Court Judge, Lloyd Nash, who has a reputation for handing out serious jail time for the same offense that might get you probation on L.A.'s Westside.

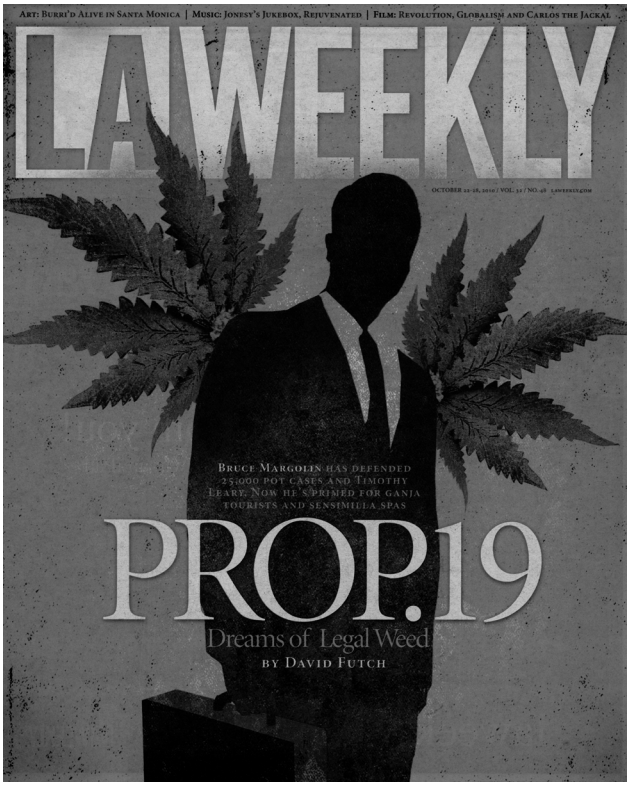
The Kid was scared. His parents were terrified. So they asked around, which is how they came to write a check to hire Southern California's undisputed champ of marijuana defense.

Bruce Martin Margolin: State Bar of California membership No. 39755, was born in Cleveland in the midst of World War Two. By war's end, Margolin's dad, a U.S. Marine Drill Instructor, moved to California and started an ice plant and later a paint business in the San Fernando Valley.

Margolin, 69, looks like a slim, shorter, version of Mr. French, the quintessential 1960's sitcom butler, but, back in 1967, when the LAPD chief, Ed Davis, vowed to preserve law and order from the throngs of pot smoking hippies roaming and ruling Sunset Boulevard.

Margolin was a 25-year-old graduate of Southwestern School of Law. His first reefer client paid him $25, Margolin got him off on illegal search and seizure.

Margolin, working in a converted, 1920's era house just off Sunset Blvd., squeezed in between Mirabelle restaurant and another house from the same era. One of his most notable clients was Timothy Leary, the late Harvard professor-turned psychedelic guru, who was



Bruce Margolin
Dean Of Weed Defense Attorney

busted in Santa Ana in 1973 for possessing two ounces of pot.

Leary thought his sentence was unfair and jail wasn't to his liking. So he decided to escape. He climbed a fence, shimmied over power lines, shaved his head, and with the help of the radical Weathermen, flew to Algeria to join Black Panther Eldridge Cleaver in exile. Leary still felt like a prisoner. He was captured in Kabul, Afghanistan, and extradited to California to face trial.

Margolin took the Leary escape case. In a novel defense, he set about trying to convince the jury that, if an unconscious prisoner were unable to understand he was committing a criminal act, then the same should hold true for his client.

Leary was not guilty of fleeing jail, Margolin explained, because he was in the grip of a "super conscious" state brought on by LSD flashbacks.

Margolin went on to defend hundreds just like The Kid he's defending today, eventually becoming the oft-quoted L.A. director of NORML, the National Organization for the Reform of Marijuana Laws.

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For the Cannabis
PROFESSIONAL

BRUCE MARGOLIN IS JUST GETTING STARTED!

The indefatigable dean of cannabis law is keen to educate the public on the continuing toll of human suffering wrought by unjust marijuana laws and why the 2016 initiatives are so vital.

Article by Tom Hymes

August 2015

For cannabis advocates, these may be the best of times and the worst of times. The mile high view reveals an industry gaining steady ground in terms of legitimacy, revenue, professionalism and investor interest, with states falling over themselves to embrace cannabinoids in one form or another. At ground level, however, it's often a different story. Throughout the nation, people continue to be arrested by the thousands for mere possession, with thousands more facing felony charges for cultivation, distribution for sale, operating illegal dispensaries and other crimes. But even in cannabis-loving state like California, a de facto war is being waged by law enforcement against not just the medical marijuana industry as it currently exists, but against a citizenry stuck within Catch 22-like grey areas of the law that even the lawyers and prosecutors are unable to define prior to a prosecution.

One criminal defense attorney whose articulation on the subject is matched only by his singular 46-year career as the dean of cannabis law is criminal defense attorney Bruce Margolin, author of the regularly updated The Margolin Guide to Marijuana Laws (available for download from his website).

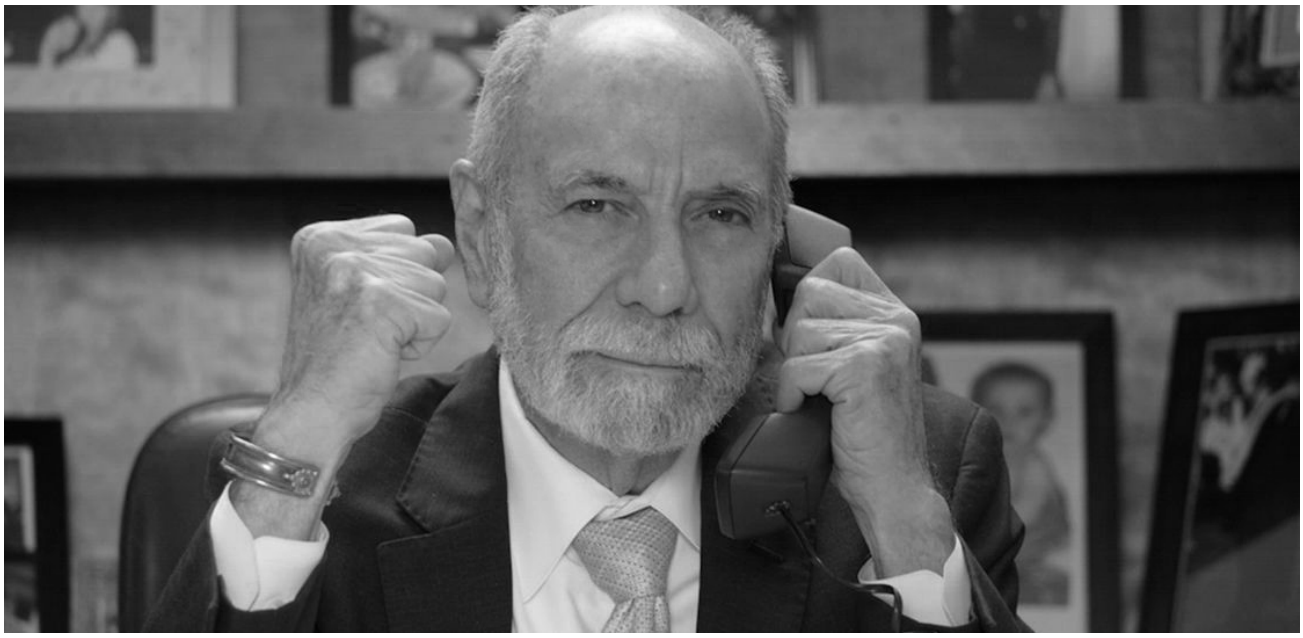
73-years-young, with the energy of someone half his age, Margolin fights an unrelenting daily battle to keep his clients out of jail. Juggling 25-50 cases at a time out of a West Hollywood bungalow he's inhabited for over 40 years, he and his associates and staff field a half dozen calls a day from citizens and businesses often desperate for help. Time is always of the essence, and a conversation with Margolin is often punctuated by incessant interruptions as he takes calls from clients or colleagues during exhausting days spent traveling from courthouse to courthouse.

But as hectic as Margolin's law practice is, he also finds time to devote to his longtime role as director of the Los Angeles chapter of NORML, the pro-cannabis lobbying group founded in 1973. Margolin had started his own organization a few years earlier, but joined forces with the nationally-focused organization where he quickly became a fixture. It's all part of the story of his initiation into the cruel realities of cannabis law as a "young pup" lawyer starting out in Los Angeles.

"The reason I got involved not just with defending marijuana cases but also changing the laws happened when I first became a lawyer in 1967 at the age of 25," he told me as we drove from his home in Beverly Hills to the Ventura County courthouse where two cases awaited him. "I got a case involving about 25 kids who came to California and had one of these hippie houses in Hollywood. We didn't worry about conflicts back then, but took everyone on and charged them $25 each. I remember standing in court downtown with the 25 of them all in a row, and it was great. But at the end of the day, one of them had to take the heat for the rest, and when it came time for sentencing I told the judge, 'Your honor, my understanding of the law is that under the American Bar Association standards regarding punishment, the court should consider the intended wrong in order to punish. In my mind, there is no intended wrong with people involved with marijuana. They didn't intend to hurt anybody, didn't try to coerce anyone or take advantage of anybody. There is no basis to punish them, your honor, so how can you justify punishing this young man?'

"'Counsel, he broke the law.'

"So at that point I realized we had to do more than just be in the courtroom fighting these cases; we had to go outside the courtroom and change the law. And that's how I got involved with the politics of pot, and I have been involved ever since."



THE DIRECTOR OF LA'S NORML CHAPTER BREAKS DOWN THE COMPLICATIONS OF WEED GOING LEGIT

04/5/2017

For the past half-century, Bruce Margolin has been instrumental in the fight to legalize cannabis. We caught up with the longtime advocate to discuss the future of California's weed industry.

By Gooey Rabinski

All photos by the author

For nearly 50 years, Los Angeles attorney Bruce Margolin has been defending cannabis consumers in Southern California. The lawyer has been instrumental in defending thousands of clients from prosecution and has also helped pass some of the most progressive marijuana laws in the nation.

Margolin's life quest to help cannabis consumers began in 1971 when he retired from general practice and took a trip to India with spiritual leader Baba Ram Dass. After experiencing a spiritual enlightenment, Margolin returned to Los Angeles to practice law, with a focus on defending those who he believed had been unfairly charged with marijuana-related crimes. In 1973, he became Executive Director of the Los Angeles chapter of NORML, the largest such organization in the nation. 44 years later, Margolin continues to lead this influential group.

His half-century of dedication defending cannabis consumers has involved many twists and turns. In 1999, Margolin was awarded the Criminal Defense Attorney of the Year award by the Century City Bar Association. In the California recall election of 2003, Margolin unsuccessfully ran for governor on a platform of cannabis legalization; if elected, he planned to free all cannabis prisoners. Margolin has even represented some famous clients, including icons like Timothy Leary, Linda Lovelace, Christian Brando, and members of the band Guns n' Roses. He is also the author of The Margolin Guide to Marijuana Laws (which is priced at $4.20, naturally).

With the recent passage of Proposition 64 last November, the Golden State is now faced with the arduous task of developing industry regulations and compliance oversight for cannabis businesses. MERRY JANE recently sat down with Margolin at his office in West Hollywood to discuss the state of cannabis legalization and the opportunities for cannabis businesses in California.

California's Legal Pot Law Helps Reduce, Erase Convictions

California's law legalizing marijuana has allowed thousands of drug convicts to apply to have their criminal history cleared or reduced.

By BRIAN MELLEY, **Associated Press 2017**

LOS ANGELES (AP) — Jay Schlauch's conviction for peddling pot haunted him for nearly a quarter century.

The felony prevented him from landing jobs, gave his wife doubts about tying the knot and cast a shadow over his typically sunny outlook on life.

So when an opportunity arose to reduce his record to a misdemeanor under California's voter-approved law that legalized recreational marijuana last year, Schlauch wasted little time getting to court.

"Why should I be lumped in with, you know, murderers and rapists and people who really deserve to get a felony?" he said.

This lesser-known provision of Proposition 64 allows some convicts to wipe their rap sheets clean and offers hope for people with past convictions who are seeking work or loans. Past crimes can also pose a deportation threat for some convicts.

It's hard to say how many people have benefited, but more than 2,500 requests were filed to reduce convictions or sentences, according to partial state figures reported through March. The figures do not yet include data from more than half of counties from the first quarter of the year.

While the state does not tally the outcomes of those requests, prosecutors said they have not fought most petitions.

Marijuana legalization advocates, such as the Drug Policy Alliance, have held free legal clinics to help convicts get their records changed. Lawyers who specialize in pot defense have noted a steady flow of interest from new and former clients.

Attorney Bruce Margolin said he got two to three cases a week, many of them decades old.

Margolin has spent most of his five-decade career fighting pot cases and pushing for legalization of marijuana, even making it a platform for unsuccessful runs for state Legislature and Congress.

A coffee table in the waiting room of his office is covered with copies of High Times magazine, a book

In this Jan. 19, 2017 photo, attorney Bruce Margolin stands by a sign outside his office in West Hollywood, Calif. Margolin, has crusaded for marijuana legalization for decades and is now helping convicts get their felony convictions reduced to misdemeanors under a lesser-known provision of the voter-approved ballot measure that legalized recreational marijuana in California. (AP Photo/Brian Melley)

called "Tokin' Women," a history of women and weed, and copies of Margolin's own guide to marijuana laws in every state. His office in the back of a bungalow in West Hollywood has the faint whiff of pot in the air.

Since the passage of Proposition 64, he's gotten convicts out of prison, spared others time behind bars and successfully knocked felonies down to misdemeanors.

But he's also encountered a lot of confusion about the law that went into effect immediately in November.

"They were totally unprepared," Margolin said of judges and prosecutors in courts he's appeared in throughout the state. "It's amazing. You would have thought they should have had seminars to get them up to speed so we don't have to go through the process of arguing things that are obvious, but we're still getting that."

That has not been the case in San Diego, where prosecutors watched polls trending in favor of marijuana legalization and moved proactively to prevent chaos, said Rachel Solov, chief of the collaborative courts division of the district attorney's office.

Los Angeles Times

Excerpts about Bruces' campaign for on-site consumption licensing

L.A. is set to be a hot market for marijuana sales. But there might not be many places to smoke it

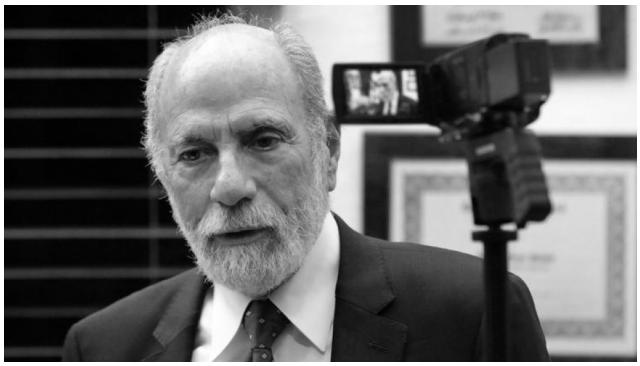
September 25, 2017
By Emily Alpert Reyes

Los Angeles lawmakers are laying the groundwork for what is widely expected to be one of the hottest markets for marijuana in the country, one that could bring more than $50 million in taxes to city coffers next year.

The city is drafting rules to allow greenhouses that grow cannabis, industrial facilities that process it, and new shops that sell it for recreational use, not just medical need.

But anyone expecting L.A. to become the next Amsterdam may be disappointed: It has held back, so far, on welcoming cafes or lounges where customers could smoke or consume cannabis.

That has troubled some marijuana advocates and attorneys, who warn that even after California legalizes the sale of recreational pot, many tourists and renters could be left without a safe, legal place to use it in Los Angeles.



"It's ridiculous that the city doesn't consider that," said attorney Bruce Margolin, executive director of the L.A. chapter of the National Organization for the Reform of Marijuana Laws.

Margolin said he was offended that even as cannabis was on the verge of local legitimacy, "the City Council is still treating marijuana users like criminals."

The question is one example of the thorny debates that Los Angeles faces as it crafts new regulations on cannabis businesses, an industry still in limbo between California and Capitol Hill.

Under draft regulations released earlier this year, it would be illegal for L.A. pot shops and other cannabis businesses to allow marijuana consumption on site.....

..... Margolin said the idea is hardly new, pointing to the famed shops of Amsterdam. San Francisco already allows consumption lounges at a small number of medical marijuana dispensaries, and as it prepares for recreational pot, a city task force has recommended allowing cannabis consumption at retailers.....

.....One councilman said he was open to the idea of cannabis lounges.

"It's hard to say you can't smoke in your home — especially for medical marijuana, where people have real needs — and yet we won't let you smoke somewhere else," said Councilman Paul Koretz, who has concerns about how secondhand smoke affects tenants. "Either people need to be able to smoke in their apartments or they need some other places set aside."

Koretz added, however, that the city should first scrutinize the hazards of people driving while high. Those concerns were echoed by Councilman Mitch Englander, who said if Los Angeles considers allowing marijuana consumption at businesses, the overriding question must be, "Can they be regulated in a way that they would be safe?"

"I'M PLEASED TO JOIN IN SUPPORTING THE MARGOLIN GUIDE TO ALSO HELP PEOPLE STAY OUT OF TROUBLE"

-LIL' ZEKE'S BAIL BONDS

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Phone: 310 652-0991 or 1-800-420-LAWS
Fax: *310-652-1501*
Email: Margolinlawoffice@gmail.com
Website: 1800420LAWS.COM

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Mr. Margolin is available to represent clients throughout California and in all 50 states (pro hoc vice)

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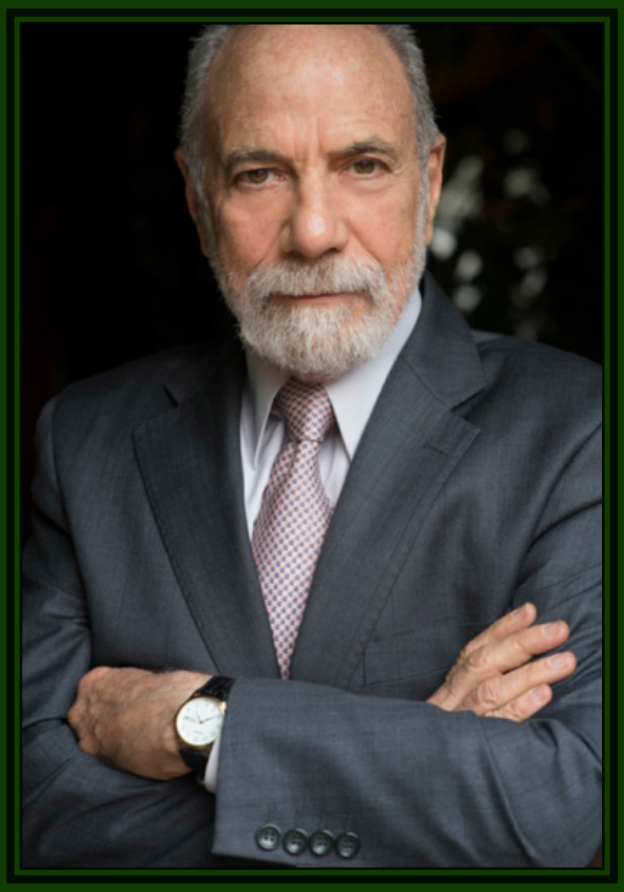
Awarded Super Lawyer, Criminal Defense Attorney of the Year and Trailblazer of the Year

BRUCE M. MARGOLIN

ATTORNEY AT LAW



Since 1967, Bruce Margolin has represented his clients in all types of criminal matters and he has successfully defended more marijuana cases than probably any other attorney in the country.

Bruce is pleased to now be able to help his clients stay out of trouble by obtaining Cannabis Business Licenses

Mr. Margolin has served as chairman for the ethics Committee for the **N.A.C.D.L** (National Association For Criminal Defense Lawyers).

He was awarded the certificate of appreciation from the **A.C.L.U.** (American Civil Liberties Union) as well as received honors for his work on behalf of the Constitutional Rights Foundation.

Since 1973, he has been director of Los Angeles National Organization for the Reform Of Marijuana Laws **(NORML)**, an advisor for **Proposition 215** (Californians For Compassionate Use), served as legal council for **Jack Herer's California Hemp Initiative,** and represented many notable clients such as Timothy Leary, members of Guns and Roses, Linda Lovelace, and renowned attorney Tony Serra.

As a designated Marijuana Legalization candidate for **Governor of California** in 2003, and **US Congress** in 2012 and **California Assembly** in 1970-74 he established the credibility of marijuana legalization policies.

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