

From the Author

By Bruce M. Margolin, Esq.

Dear Readers,

I hope that the information contained in this guide will help everyone stay out of trouble because, "No one belongs in jail for marijuana"! Knowledge of the laws and your rights can be the key to your freedom. I trust that you will find my guide easy to read and that it will make the laws and your constitutional rights simple to understand.

For over 40 years as a criminal defense attorney, I have successfully defended thousands of clients faced with marijuana related charges and many others accused of all types of criminal offenses. Over the many years that I have spent defending marijuana cases, I have seen that many people have not only been the victims of unjust marijuana laws, but also lacked understanding of how to protect their constitutional rights. To help ensure your constitutional rights, including your Miranda rights, see the Invocation of Rights (wallet sized card) inserted in this guide. Be aware that even if you choose to invoke your rights it's important to remain respectful to law enforcement.

Even though there is limited legalization and business licensing for some Marijuana activities, convictions of marijuana offenses can still have serious consequences; including; jail or even prison, years of probation, loss of professional licenses, driver's licenses, student aid and possible deportation (even with a green card).

The Margolin Guide includes information about medical and non-medical California marijuana laws and the new legislation creating licensing or the provision of commercial (for-profit) marijuana. California's current marijuana laws are unique because they provide rights and protections to qualified patients and adults over 21.

Under U.S. Federal laws marijuana remains classified as an illegal Schedule 1 drug for all purposes, even though 30 States have legalized medical marijuana and 9 have legalized adult use. For information regarding current Marijuana Laws in all 50 states, visit NORML.org

Please understand, this is only a guide and is not intended to be, nor is it legal advice. Errors may have occurred due to the editing process, and laws/regulations could have changed since last researched and originally published. Readers should ultimately rely only on the most current statutes, regulations, and case law.

Please feel free to call my office to make an appointment if you, or someone you know, needs help regarding criminal matters or obtaining marijuana/cannabis business licenses.

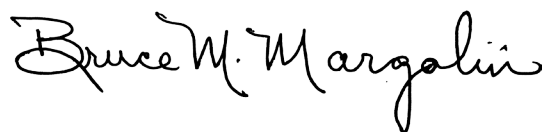
Call 1-800-420-LAWS (5297) or 310-276-2231.

Email at bmargolin@margolinlawoffice.com

Visit 420laws.com for updates of my guide and to download copies.

You may also call my office to order a printed copy.

Keep The Faith,

A handwritten signature in black ink that reads "Bruce M. Margolin". The signature is written in a cursive, flowing style.

Bruce Margolin, Esq.

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Possession of up to an ounce

Reductions and Dismissals of Prior Marijuana Felonies

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).

PROP 64 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.

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

See LA Time Article on Mr. Margolin's efforts to establish on-site consumption locations (Page 52).

However, the following are restrictions on marijuana possession:

- 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***).
 - 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.
 - 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 laws pertaining to the Compassionate Use Act of 1996.
 - 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.
 - (d) 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.
 - For purposes of this section, "youth center" has the same meaning as in Section 11353.1.
- *Penalty assessments on fines are added (i.e \$100 can become approximately \$500)**

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

Not More than 28.5 grams of marijuana, or not more than four 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 four 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)

More than 28.5 grams of marijuana, or not more than four 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.
- **Note** Anyone who is under the age of 21 and who is convicted for any amount of marijuana will lose their driver's license for one year; regardless of whether or not the offense was related to driving.

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

***Exceptions Include qualified Medical Marijuana/Cannabis Patients who are allowed to grow any amount deemed reasonably necessary for their current medical needs (see pages 15-16) (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 with a conviction punishable by up to 3-7 years.

Note From Bruce: Prop 215 (Compassionate Use Act) Remains In Effect And Protects Patients Rights 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 19) (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 15-16 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. 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.

Note from Bruce: Suspects are often arrested and even charges with felonies, even though the suspect's offense may qualify to be reduced to a misdemeanor. The defendant may make a motion to reduce to misdemeanor under Prop 64 if a felony complaint is filed by district attorney

Non-citizens (Including Green Card Holders), any conviction for possession for sale or even simple possession of over 30 grams is a deportable offense and will result in deportation, exclusion from admission or reentry to United States, denial of naturalization, and amnesty.

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 to establish guilt of intent to sell. Their opinions are usually based on the quantity 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 present his/her 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.

A SEARCH WARRANT FOR THE RESIDENCE MAY BE OBTAINED NO MATTER WHERE THE BUST TAKES PLACE: No matter where the location of the arrest for possession for sale takes place (it can even be a car 100s of miles away), police may still be able to obtain a search warrant for the defendant's residence.

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: on Second and Third Strike Laws and felony marijuana convictions: A strike is a serious or violent felony offense. Marijuana offenses do not count as "strikes." However, any felony marijuana conviction with one or more prior strikes mandates no probation and doubles the time. Note that the judge may set aside a previous strike at the time of the sentencing (Romero Motion). Example: Transportation 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: Cultivation of up to 6 live plants of Marijuana is legal per residence for adults over 21; and you may possess 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 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 the amount that can be cultivated and the locations; i.e. secure greenhouses.

Otherwise, 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 local license, or are conforming to local regulations.

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 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 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), illegal cultivation of six plants **or less** is a \$100 infraction. Persons under the age of 21 are subject to lose their driver's license for one year. For **non-citizens** (including green card holders), this will result in 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.

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)

FENCES AS PROTECTION FROM POLICE: Fully enclosed residential yards with 6 foot fences are legally protected from police observation by Case Law. However, if officers can view plants in other ways, such as from a neighbor's property or from aircraft, they can obtain a warrant for the home and buildings. The existence of Google Maps, as one judge opined in a court hearing, destroys the expectation of privacy.

HIGH ELECTRIC BILLS AND PROBABLE CAUSE FOR A SEARCH WARRANT:

Indoor cultivation busts are often the result of unusually large electric bills (compared to others in the neighborhood) combined with informant tips, and/or the smell detected from outside the property. Electric bills are not constitutionally protected, so they may be obtained without a warrant or probable cause. However there must be persecutive amounts that exceed 6 live plants or 8 grams of hash.

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



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

PENALTY: To Persons 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. Exporting marijuana by persons 18 or over is subject to a felony conviction, punishable by 16 months, 2 or 3 years, unless probation is granted.

LAW: TRANSPORTING OR GIVING AWAY MORE THAN AN OUNCE IS A

MISDEMEANOR: Offering, transporting or selling any amount over an ounce is a misdemeanor. However, exporting/importing (i.e. mailing) over an ounce of marijuana/cannabis across state lines remains a felony under Prop 64. The term "sale" refers to bartering or exchanging items for anything of value. Please refer to "Medical Marijuana/Cannabis Laws" on page 15 to learn more about a patient's legal defenses and protections.

Refer to "Medical Marijuana Laws" on page 15 and "Landmark Medical Marijuana Appellate Cases" on pages 18-21 to learn more about laws regarding transportation by patients, caregivers, member of Co-ops and collectives.

PENALTY: Transportation over state lines is punishable by up to 4 years, unless probation is granted.

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 as trimmers, is a felony (See above for more Info.)

Under Prop 36, 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 10).

Possession and transportation of over 30 grams is a deportable offense for **non-citizens**, even those who possess green cards. Under immigration laws, it is considered an aggravated offense. DEJ is not a defense against deportation. Under 8 USC 1227 (a)(2)(b)(i), a simple possession of 30 grams or less for one's personal use is not applicable.

Refer to "Medical Marijuana Laws" on page 15 and "Landmark Medical Marijuana Appellate Cases" on pages 18-21 to learn more about cases regarding transportation by patients, caregivers.

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 to contradiction if he or she takes the stand to testify, to impeach, to contradict him/or her. 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 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 statutes 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 for 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: Anyone under 21 who is convicted of DUI or any other marijuana offense will lose his/her California driver's license for one year. 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. **California NORML has sponsored pending legislation, that will provide protections for patients from lose of employment.**

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.

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

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.

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, still has not changed the ability of employers to hire people who use marijuana/cannabis, medically or otherwise, either though personal possession has been legalized of up to an ounce (28.5 grams)

Note from Bruce: Prop 65 provides \$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.

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.

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 \$25,000. However, the state police agencies may turn the property or money over to the Federal government; in this case, a criminal conviction is not required under federal laws.

The California Forfeiture Statute [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 officers. 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
- To refuse to 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

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 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 is no applicable)

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, either burnt or fresh, they are able to search the suspect's person and car without a warrant only if they have reasonable suspicion to believe its over the legal amount. Only if they have probable cause to believe its over an ounce, or over 6 plants, or over 8 grams of hash, can they also use it as the basis to obtain a search warrant for a home or other place.

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, 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. Some examples are listed below

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 can challenge an unreasonable cause for the stop.

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 if plants or other incriminating items constituting probable cause are found, a search warrant can be issued for the residence and the entire property.

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; 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; for example, there might be a police camera directed towards your driveway.

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. There has been a great increase of governmental use of electronic surveillance such as wire-tapping; the laws have made it much easier for police to access electronic surveillance. Legal rulings regarding the use of cell phone locators are under consideration. There is no warrant required to disclose information stored by your INTERNET PROVIDER (i.e. Hotmail, Gmail, AOL.) 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.

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

§11357(b) H&S (And Save Your Driver's License While Doing So)

Note from Bruce: Under California law, anyone younger than 21 years old who is convicted of a marijuana offense will lose his/her driver's license for one year, even if the offense is not driving related; this is subject to the discretion of the Judge.

- 1. DEFERRED ENTRY OF JUDGMENT (DEJ):** will prevent the loss of your license because the conviction is deferred (held until the conditions are met), and then later dismissed in 18-36 months. Refer to page 10 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 30 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 BY JUDGE:** the defendant has the right to a trial by judge (if the D.A. doesn't object) in which he/she does not have to plead guilty or no contest (nolo contendere is the same as pleading guilty or no contest).

Destruction 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

PC §1000 & 100.94 (LA County)



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 must plead guilty to the offense prior to trial; however, the conviction is not entered, and the sentence remains deferred pending successful completion of the court-mandated drug education program. After successful completion of an approved drug education program, the case will be dismissed in 18-36 months. The program requires about 20 hours of classes and may include drug testing.

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 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 Program

California Penal Code § 1210

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



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 Angeles 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 conviction20,000

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 lbs40,000

If Over 25lbs50,000

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 have agreed to dismiss when they have a current Medical Marijuana Recommendation.

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 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. There is pending bi-partisan legislation before congress that would amend the Controlled Substances Act prohibiting its application to States that have legalized marijuana. This includes the manufacture, production, possession, distribution, dispensation, administration or delivery of marijuana..

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.

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. Macintosh 833S3.1163 2016, 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	LEVEL ADJUSTMENTS
<1kg	0-6 months	6	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
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	

Medical Marijuana Laws

CA Health and Safety Code §11362.5 etc.

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



SB420 protections Medical Marijuana Laws regarding collectives will sunset January 9, 2019. At which time, it will be replaced by MAUCRSA and Prop 64 which authorizes marijuana to be provided to patients and others for profit; subject to licensing, taxation and robust regulation.

Prop 215 (Compassionate Use Act of 1996) remains the law, which allows patients, and their caregivers to grow, possess, and transport marijuana based on their current medical needs (see *People v. Kelly*) (Also see city and county regulation on permissible growing See *Kirby v. County of Fresno*). Any licensed physician (M.D., 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.

Note from Bruce: Understanding medical marijuana laws are often confusing. This is partially due to the fact that the courts of appeals have not yet had the opportunity to rule on their interpretation in all circumstances. Many of the most relevant appellate “*Landmark Cases*” regarding marijuana are included here in my guide on **pages 18-21**.

Note from Bruce: A doctor’s opinion regarding a patient’s medicinal needs, along with a court qualified cannabis expert, can be the most important testimony for the defense. Patients and caregivers should have a discussion with their doctors in order to establish the doctor’s commitment to testify on their behalf, in the event that the patient faces prosecution.

Note from Bruce: Transportation by the patients of marijuana for their current medical needs is also lawful, but it is not lawful to store marijuana in the vehicle (*People v. Wayman* (2010) [189 Cal. App. 4th 215] (Page 18))

Medical Marijuana Program Act (Senate Bill 420) (These Patient Collective Laws EXPIRE January 9, 2019) Health and Safety Code §11362.7-11362.85

This act protects patients from arrest and seizure for marijuana/cannabis amounting to 8 ounces of dried flowers and 6 mature or 12 immature plants. However, a patient’s doctor may recommend or approve excess amounts that the patient requires for his/her medical needs or if the city or county allows greater amounts. A doctor’s letter alone does 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 need.

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; it includes the formation of collectives and co-operatives used to cultivate and provide marijuana to their members. Senate Bill 420 also provides patient protections from arrests and seizures.

This act greatly expanded medical laws by authorizing patient’s collectives and cooperatives Please see page 22 to learn more about Health and Safety Code §11362.775. See above regarding the sunset of these laws in 2019.

Note from Bruce: The Compassionate Use Act (Prop 215), passed in 1996, protects qualified patients from conviction only, not from arrest, seizure or prosecution. Senate Bill 420 additionally provides protection from arrest, seizure, prosecution and conviction.

The limits are set to 8 ounces of mature marijuana (flower/buds) and 6 live plants (flowering) or 12 immature plants in order to gain protections from this legislation. Doctors will usually provide a letter confirming that their patient’s use of marijuana has been recommended and approved.

Health and Safety Code §11362.77 states that only dry processed flowers (buds) are to be considered when evaluating the permissible amounts; leaves and stalks are not to be considered.

The Supreme Court of California held in January 2010 that the limits set in Senate Bill 420 are not applicable in the prosecution of a patient. 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)).

Medical Marijuana Laws (continued)

County Health Department Patient I.D. Program



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".**

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** (even in city or county land use marijuana cultivation violations; see Kirby V. Fresno Ct. No. 14CECG00551) and seizures. SB 420 states that "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.

SB 420 criminalize 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.

Note from Bruce:

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).

Medical Marijuana Program (MMP), Health and Safety Code §11362.765 (Senate Bill 420): Patient's collectives, cooperatives and dispensaries (EXPIRES January 9, 2019 and replaced by licensing requirements of Prop 64.)

SB 420 protects qualified patients who cultivate marijuana collectively and cooperatively for medical use, solely on that basis. Patients shall not be subject to state criminal sanctions for marijuana offenses, including:

For more information on Collectives, Cooperatives, and Dispensaries as well as the interpretation of these laws, see pages 18-21

Possession	Health and Safety Code §11357
Cultivation	Health and Safety Code §11358
Possession for Sale	Health and Safety Code §11359
Sale, Possession, Transportation, Maintaining a Location	Health and Safety Code §11360, 11366, etc.

Health and Safety Code §11362.79: The following are not afforded protections under SB420. A qualified patient or person with an identification card cannot engage in smoking medical marijuana under any of the following circumstances:

- (a) Any place where smoking is prohibited by law
- (b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence
- (c) On a school bus
- (d) While in a motor vehicle or boat that is being operated

Under Prop 215 (CUA), there are no prohibitions on using marijuana in a public. However, AUMA Prop 64, now prohibits marijuana usage in public places, with violations subject to a fine ranging from \$100 to \$250. (See Page 1 of the Guide)

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 of patients allowed and the area of grow to 5 patients.

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.

HOWTO: 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 16 on how to obtain County Health Department ID cards.

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:

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 more than one person. However, SB 420 prohibits caregivers from having more than one patient residing outside the county of the caregiver. This may be an unconstitutional restriction and is subject to challenge. (See Prop. 64)
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.

Appellate Court “Landmark Cases” Medical Marijuana



SB420 will remain in effect only until January 9th 2019. At which time Senate Bill 420, which allows patients to provide marijuana/cannabis to other patients for no profit, will no longer be in effect. It will be replaced by AB266 and Prop64 which authorizes marijuana/cannabis to be provided to patients and non-patients for profit; subject to taxation and robust regulation.

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.

GROWERS MAY NOT PROVIDE TO DISPENSARIES (UNLESS THEY ARE A MEMBER OF A CO-OP OR COLLECTIVE)

PEOPLE v. GALAMBOS (2002) [104 Cal. App. 4th 1147]: The limited immunity created by medical marijuana laws does not establish the same immunity for growers who furnish marijuana to dispensaries. However, refer to SB 420 on page 15 for more information regarding co-op and collective member patient protections that allow patients to cultivate marijuana and provide it to other patient members.

ONCE A PATIENT HAS A DOCTOR'S APPROVAL OR RECOMMENDATION IT DOES NOT EXPIRE AUTOMATICALLY AND THE DOCTOR CAN TESTIFY ABOUT THE CURRENT AMOUNTS NEEDED

PEOPLE v. WINDUS (2008) [165 Cal. App. 4th 634]: Windus had a recommendation that was expired when he was arrested. His doctor testified at a trial that the 1.6 pounds Windus had when he was busted was reasonably related to his medical needs at that time. The court held that the CUA does not state that recommendations expire or that they must be renewed once given. NOTE THAT THE DOCTOR'S LETTER DID NOT HAVE AN EXPIRATION DATE IN THIS CASE, ALTHOUGH MOST LETTERS DO.

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.

PATIENTS AND CAREGIVERS ARE ALLOWED TO TRANSPORT MARIJUANA FOR COLLECTIVES AND CO-OPS

PEOPLE v. COLVIN (2012) [203 Cal. App. 4th 1029]: Patients and caregivers who are members of collectives or co-ops may transport medical marijuana for that purpose. AG Guidelines permit members of collective or co-ops to perform other participant work besides cultivation for their collective or co-op.

Appellate Court “Landmark Cases”

Medical Marijuana (continued)

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.” Prop. 215, a ruling that allows transportation, is protected.

TRANSPORTATION FOR PERSONAL USE IS PROTECTED FOR MEDICAL PATIENTS PEOPLE v. WRIGHT (2006) [40 Cal. App. 4th 81]: In this case, the defendant/patient denied that he had marijuana in the car, but the cop found numerous baggies totaling slightly over a pound and a scale in the vehicle. The defendant was charged with possession for sale and transportation; the jury was instructed on simple possession. In court, his doctor testified that he had approved self-regulating doses for his patient and that a pound every two or three months was consistent with his medical needs. The court held that the defendant was entitled to assert the defense under H&S Code §11362.77b and was not limited to any particular amount. In addition, patients are protected from charges of Vehicle Code §23222, possession of marijuana in a vehicle.

Note from Bruce: Because the FAA (Federal Aviation Association) is under Federal law, traveling by airplane with medical marijuana is a violation of the Federal law, even if state law allows for the transportation of medical marijuana. However, I am not aware of any Federal charges brought involving small quantities

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 DOCTOR’S RECOMMENDATION MUST BE OBTAINED BEFORE THE BUST PEOPLE v. RIGO (1999) [69 Cal. App. 4th 409]: A doctor’s approval obtained post-arrest is not a defense.

Note from Bruce: A post-arrest Doctor’s recommendation may be helpful in plea bargaining and defending any charges of possession of marijuana for sale.

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.

ATTORNEY GENERAL GUIDELINES ARE RELEVANT IN EVALUATING THE LEGALITY OF DISPENSARIES/ COLLECTIVES PEOPLE v. HOCHANADEL (2009) [176 Cal. App 4th 997]: Dispensary/collective owners have a 4th Amendment protection (standing) in regards to the location of the collective/dispensaries. The Court held that the Attorney General Guidelines were instructive in the determination of the legality of a collective/ dispensary. HS Code §11362.5 instructs the Attorney General to formulate guidelines related to the application of medical marijuana law.

STOREFRONT DISPENSARIES THAT ARE PROPERLY ORGANIZED AS COOPERATIVES OR COLLECTIVES MAY OPERATE LEGALLY, BUT MAY NOT QUALIFY AS PRIMARY CAREGIVERS PEOPLE v. HOCHANADEL (2009) [176 Cal. App. 4th 997]: Any monetary reimbursements that members provide should only be the amount necessary to cover overhead costs and operating expenses. The 2008 California Attorney General Guidelines have considerable weight in evaluating the legitimacy of the organization and their activities. New proposed Attorney General Guidelines have been published, but have not yet been approved. (The entire AG Guidelines are on our website; refer to them for more information on the security and non-diversion of marijuana grown for medical use).

Appellate Court “Landmark Cases”

Medical Marijuana (continued)

A SEARCH WARRANT MUST INCLUDE THE DESCRIPTION OF THE MEDICAL MARIJUANA FACILITY UNITED STATES v. \$186,000.00 527 F. SUPP. 2D 1103: The police cannot omit any facts when they apply for a search warrant that fails to describe the existence of a medical marijuana organization. In this case, the federal appeals court held that a warrant was invalid since the dispensary was most likely legal under CA laws.

THE LAW CONTEMPLATES THE FORMATION OF MARIJUANA/CANNABIS COOPERATIVES THAT COULD RECEIVE REIMBURSEMENT FOR MARIJUANA/CANNABIS AND SERVICES PROVIDED PEOPLE v. URZICEANU (2005) [132 Cal. App. 4th 747]: This case is a dramatic change for the prohibition of use, distribution, and cultivation of marijuana for individuals, qualified patients and primary caregivers. The law evaluates the formation and operation of medical marijuana cooperatives that receive reimbursements for marijuana cultivation and other services provided in conjunction with the oversight of marijuana. Please see page 22 for more detailed facts and information about this very important case.

PATIENTS ARE ENTITLED TO CULTIVATE (NON-PROFIT) FOR THEMSELVES AND THEIR COLLECTIVE NO MATTER HOW LARGE THE COLLECTIVE MAY BE. PEOPLE v. JOVIAN JACKSON (2012) [210 Cal. App. 4th 525]: Even if a collective has 1600 members, the number of members does not delegitimize the collective. Jackson is entitled to offer evidence under the Medical Marijuana Program Act (H&S Code §11362.7). In this case, Jovian Jackson had testified that he and five others were cultivating and providing marijuana to themselves and approximately 1,600 other members of the collective. Jackson offered no testimony regarding the method in which the collective was governed, but did testify that the collective did not generate profit for either himself nor the other 4 or 5 participants. He had testified that he and fellow members were paid only for the expenses acquired from cultivating marijuana and operating the dispensary. In addition, there were no membership meetings or any attempts to contact members regarding the operations. Although there were high volume purchases made by members, this did not mean that the defendants made any profit. The failure to maintain financial records is considered by the jury or judge in evaluating whether profit was being accrued.

THE DEFENDANT MUST PROVIDE EVIDENCE TO SUPPORT THE CLAIM THAT HE/SHE IS NOT GAINING ANY PROFIT FROM CULTIVATING MARIJUANA FOR A COLLECTIVE PEOPLE v. LONDON (2014) [228 Cal. App. 4th 544]: In this case, the defendant was deemed guilty for cultivating marijuana with the intent to garner profit from his local medical marijuana collective. The defendant argued that the “profit” made was merely reimbursement for his labor and any other costs and expenses incurred in growing the plants. However, the court ruled that sale or possession for sale of marijuana was illegal “even as a nonprofit organization” so any arguments about compensation or salary reimbursements were disqualified. It was found that the jury’s instructions regarding the cultivation marijuana were flawed, as they were not based off the MMPA instructions, which allow medical marijuana patient members of nonprofit collectives to reimburse each other for cultivating marijuana. However, the court found no evidentiary basis proving that London was not obtaining an illegal profit for cultivating and providing marijuana plants to a collective or that the collective was operating lawfully.

A DISPENSARY’S PATIENTS CAN TRANSPORT MARIJUANA; MEMBER PARTICIPATION REQUIRES NOTHING MORE THAN BEING CUSTOMERS PEOPLE v. COLVIN (2012) [203 Cal. App. 4th 1029]: The court held that per H&S Code §11362.775, transportation of over a pound of marijuana between dispensaries is legal if done by a manager. In addition, members of collectives need to do nothing more than shop at their dispensaries and are not required to participate otherwise. Collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. The possession of extracted or concentrated cannabis is also protected. In this case, Marijuana was grown in Humboldt and Los Angeles; the growers dropped off the marijuana in dispensaries and collectives for other members to buy it and the members paid for the marijuana.

A PATIENT IN NEED OF RELIEF THROUGH MEDICAL MARIJUANA CAN PARTICIPATE IN A COLLECTIVE BY MERELY CONTRIBUTING MONEY; HE/SHE DOES NOT HAVE TO WAIT TO ACQUIRE MEDICAL MARIJUANA PEOPLE v. BANIANI (2014) [229 Cal. App. 4th 45]: Mr. Baniani was the founder of a medical marijuana cooperative and was charged for the sale and possession for sale of marijuana. The court found that the defendant was entitled to a defense under the MMPA since the collective was set up as a non-profit cooperative, the defendant owned a state seller’s license, no profit was made from selling the marijuana to any patients, and because growers were reimbursed for cultivation costs. The prosecutor argued that it was unlawful for members of the cooperative who were unable to physically take part of tending to the plants to participate through monetary contributions. The court disagreed with this statement by saying that it would be cruel to force those in need of relief to contribute physical strength to cultivate marijuana only to wait months to finally utilize it.

Appellate Court “Landmark Cases”

Medical Marijuana (continued)

CONCENTRATED CANNABIS IS CONSIDERED TO BE MARIJUANA AND IS PROTECTED UNDER THE CUA PEOPLE v. MULCREVY (2014) [233 Cal. App. 4th 127]: Mulcrevy’s probation was extended for two more years because the court found that he violated his terms of probation by possessing concentrated cannabis. When the appeal was reversed, the court ruled that Mulcrevy’s due process right was violated; concentrated cannabis is in fact covered by the CUA so there was not enough evidence to conclude that the defendant violated his probation. **Note from Bruce:** Prop 64 allows adults to legally possess up to 8grams of Hash or concentrated cannabis.

CULTIVATING MEDICAL MARIJUANA FOR A COOPERATIVE OR COLLECTIVE IS LEGAL IF THE INDIVIDUAL IS A PATIENT AND A MEMBER PEOPLE v. ANDERSON (2014) [Cal. App. 5th]: Anderson was arrested and charged for the cultivation of marijuana, possession of marijuana for sale and possession of concentrated cannabis. The defendant was a medical marijuana patient who grew for his own personal use and cosigned the excess to the medical marijuana cooperative that he was a member of. The defendant argued that the jury was not given proper instructions regarding a medical marijuana patient’s defense because cultivation by patients for cooperative and collectives is legal; in addition, he argued that any evidence of marijuana should be excluded because officers destroyed almost all of the seized plants. The court agreed with the defendant’s first claim; proper instruction would have reached a more favorable verdict to the defendant.

SENATE BILL 420 DOES NOT HAVE SIZE OR FORMALITY REQUIREMENTS REGARDING COLLECTIVES AND COOPERATIVES PEOPLE v. ORLOSKY (2015) [Cal. Rptr. 3d]: Officers executed a search warrant and found numerous plants on the defendant’s property; Orlosky and his partner were charged with possession of marijuana for sale and cultivation. The defendant asserted a medical marijuana defense under the CUA, stating he was growing the marijuana for his and his partner’s medical needs. There was no formality within the partnership, thus the prosecutor argued that the absence of business or formality results in the absence of jury instruction on the collective cultivation defense. The appellate court disagreed, stating that the CUA does not have a degree of formality when discussing qualified patients who work collectively and cooperatively together to grow; thus the defendant’s requested jury instruction should have been granted.

THE COURT HAS THE DISCRETION TO EVEN PROHIBIT USAGE OF MEDICAL 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.

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.

Patient Collectives and Cooperatives

Health and Safety Code §11362.775 under Senate Bill 420

On November 8th 2016, Prop 64 authorized sale of marijuana to patient and adults over 21, by adults over 21 for profit coupled with taxation. Licensing laws will replace Senate Bill 420 on January 9th 2019, and will be regulated under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), subject to local regulations by cities and counties authorizing their right to ban licensing and cultivation. See pages 29-34.

The legislature had intended to "enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects."

Note From Bruce:

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. However, see U.S. v. McIntosh 833 F.3d 1163, 1168 (9th Cir. 2016), which provides for the opportunity for a hearing to determine if the defendants actions are in compliance with the State Medical Marijuana Laws. In addition, the latest 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) 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.

SB 420 did **NOT DEFINE** collectives and cooperatives. Collectives and cooperatives that abide by local laws and guidelines exist throughout the state and can legally grow and provide marijuana/cannabis to its members, until licensing is provided by the state of California beginning in 2018. When that happens Senate Bill 420 will sunset, however Prop 215 The Compassionate Use Act will remain in effect. Any individual responsible for assisting others in administering marijuana/cannabis to patients and educating them about cultivation is also protected. Refer to Health and Safety Code §11362.765 (b)(3). See Page 17 regarding caregivers.

In August 2008, the California Attorney General's office published the "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use." These Guidelines are to provide a comprehensive understanding of collectives and cooperatives. They are NOT binding in court; instead, they are intended to guide cooperatives and collectives and to indicate various important factors necessary to take into account when operating a collective/cooperative. Courts are to refer to these guidelines before determining if the collective/co-op is operating legally. See Attorney General Kamala Harris' letter to the legislature on my website for more information regarding the uncertainty of the meaning of H&S §11362.775 and information on dispensaries, the term "non profit" and edibles.

Collectives and cooperatives are two distinct groups of qualified patients that may cultivate marijuana and provide it to their members. Cooperatives must follow the California Cooperative Laws requirement that includes guidelines for setting up their group, maintaining records etc. Meanwhile, the law does not define collectives; however, they are usually more informal patients groups who organize themselves to cultivate medical marijuana and to provide assistance to patients with medical needs.

The Attorney General's guidelines have concluded that both collectives and cooperatives are legal under the law.

Pursuant to the California Attorney General's Guidelines Opinion, collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with **all state and local laws**: (1) collectives and cooperatives must be democratically operated by their members; (2) marijuana must not be diverted for non-medical purposes or diverted to individuals outside the operation; and, (3) none of the activities may be carried out for profit.

Note from Bruce: The law does not define the term "profit."

In appellate cases, issues of profit have not been directly defined by the law or in the Attorney General's guidelines. However, the direct expenses of cultivating and distributing medical marijuana can be reimbursed. Court rulings do not exclude possible compensation for an individual's work and effort; court rulings have held that the meaning of profit is a question subject to the jury. Profit is defined by Merriam-Webster as "the excess of returns over expenditures in a transaction or series of transactions." Any money in excess of the expenses should be returned to members, used to reduce the cost of medicine, or used to provide other medically related services to the members.

Note from Bruce: I founded and I am the director of the **National Institute of Court Qualified Cannabis Experts**. Faculty members of the institute and myself provide education to students who want to become a court certified expert. Expert testimony has often been the turning point in obtaining a dismissal or not guilty verdict. Faculty members have included court-qualified experts Chris Conrad and Bill Britt. Those interested in becoming an expert, or needing one, may contact Bruce.

Dispensaries

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 taxation. This will replace the marijuana/cannabis laws of Senate Bill 420 when licensing takes effect in 2018 and beyond. See pages 29-34.

Dispensaries, are now subject to new regulations by cities and counties, since the State of California started issuing licenses in 2018. At this time previous statutes pertaining to "medical marijuana dispensaries" have been replaced and will now be regulated under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), subject to local regulations by cities and counties regarding licensing and banning cultivation.

Dispensaries are permissible only if the local city or county allow them through their legislation or initiatives. However, non-compliance with local ordinances is not a bar for a collective cannabis defense under state law. (See *People v. Ahmed* First Appellate District, Division Three Case Number: A149066) (June 20th, 2018) (Also See 11362.775 H&S). 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.

In August 2008, Jerry Brown reiterated the Attorney General's office's opinion stating that properly organized collectives or cooperatives dispensing medical marijuana through storefront locations may be lawful. However, this is subject to local legislation. Refer to my website, 420laws.com for the Attorney General's Guidelines for Security and Non Diversion of Marijuana Grown for Medical Use.

The 2005 Attorney General's Guidelines had limited that patient's collectives and co-ops may provide marijuana under the following: (1) it is free to its members; (2) it is provided in exchange for services provided by members; and (3) it is provided for fees based on costs for overhead and operating expenses.

SB 420 "contemplates the formation and operation of medical marijuana cooperatives and collectives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Patient cooperatives or collectives may cultivate and dispense marijuana to their member patients. Refer to *People v. Urziceanu* 132 Cal App. 4th 747.

There are hundred of organizations currently dispensing medical marijuana in California. Many are conforming to required local regulations, while others are not. Many are being tolerated because they meet the needs of patients and are careful to exclusively provide marijuana to them.

Note from Bruce: Currently, the Los Angeles City Department of Cannabis Regulation allows for the licensing of retail marijuana businesses for patient and adult use.

Note from Bruce: My office continues to defend collectives and dispensaries and participants, including bud-tenders and landlords. For more information regarding local legislation (including LA's current Prop M), and dispensary licensing, please contact my office.

A medical marijuana cooperative, collective, dispensary, or provider who possesses, cultivates, or distributes medical marijuana and has a storefront or mobile retail outlet that ordinarily requires a local business license, pursuant to this article, cannot be located within a 600 foot radius of a religious institution, public park, school, etc. (Local regulation may differ and require more distance.)

How Many Plants Can a Patient Grow?

Permissible Amount of Plants For Use By Non-Patients Over 21

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 be grow 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 cultivation, as well as impose civil fines and up to 6-months in jail. However, non-compliance with local ordinances is a not a bar for a collective cannabis defense under state law. (See People V. Ahmed* First Appellate District, Division Three Case Number: A149066) (June 20th, 2018) (Also See 11362.775 H&S) . 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.

Permissible Amount of Plants For and By Patients

Under the protections afforded by SB 420, a patient could have six mature (flowering buds) or twelve immature plants. When prosecuted in court proceedings, as there is no limit specified in CUA Prop215 to the number of plants a patient (or their caregiver) may have; however, the amounts must be reasonably necessary for the patient's current medical needs. (See People v. Kelly (2010)). Additionally, 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 Note 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.

Pursuant to Proposition 215 (Compassionate Use Act of 1996) there still are no limits indicated to how many plants or how much marijuana a patient may possess or cultivate. In court proceedings (where a patient is prosecuted), the quantitative limitations (8 ounces, 6-12 plants) of SB 420 limits are not applicable as it has been ruled a violation of protections of Prop. 215. 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.

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.

Regarding 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.

See more information about my course at National Institute of Court Qualified Cannabis Experts in the "Patient Collectives and Cooperatives" section in my guide.

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

*For further information regarding People V. Ahmed First Appellate District, Division Three Case Number: A149066 (June 20th, 2018) contact my fellow CalNORML board member; the appellate lawyer Bill Panzer (510) 834-1892

Medical Marijuana While On Probation, Parole, or In Jail

QUALIFIED PATIENTS MAY DEFEAT A PROBATION VIOLATION.

PEOPLE v. TILEHKOOR (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.

Persons who are incarcerated may not be punished or prevented from obtaining a patient I.D. card [H&S Code 11362.785(b)].

A prisoner or person under arrest who has an I.D. card cannot be prohibited from using marijuana for medical purposes under the circumstances that the use will not endanger the health or safety of other prisoners or the security of the facility [SB 420; H&S Code §11362.785(c)].

Probationers and parolees may be allowed to use medical marijuana with the approval court or parole board [SB 420; H&S Code §11362.795].

Note from Bruce: Medical marijuana patients are eligible for Proposition 36 treatment. See *People v. Beatty* (2010) [181 Cal. App. 4th at 644].

Medical, and Adult Use, 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 by Prop. 215. However under Prop 64, 8 grams of hash is legal for adults 21 and over, but remains a misdemeanor for those under 18 (see Page 2). However, 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 current policy of Los Angeles District Attorney Office, in the event of an explosion, is to refuse to plea bargain for less than five years.

Note that under Prop 64 , there are licensing provisions for legally manufacturing concentrated cannabis. (See Next Page) However, I have been fortunate enough to convince the judge to give probation where the defendant was badly burned on his hands and face in an explosion, as well as another where a Veteran was suffering from PTSD. (See page 12 regarding Mental Illness Diversion Program)

CONTACT MY OFFICE TO OBTAIN A CANNABIS BUSINESS LICENSE, WHICH INCLUDE MANUFACTURING WITH VOLATILE CHEMICALS.

City of Los Angeles Proposition M

In March 2017, the citizens of the city of Los Angeles resoundingly 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

Note from Bruce:

If your business has not been in compliance since 2007, it does not qualify for immunity from the ban as a Pre-ICO. Licenses for Pre-ICOs have already been issued and are no longer available. However, the City of L.A. will provide applications for new dispensaries (medical and adult use) and numerous other marijuana business licenses in the near future. **Feel free to call Bruce Margolin ESQ for a consultation NOW regarding what the qualifications are and how to be ready to obtain licensing as soon as the applications are released.**

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 would 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). 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)

BE AWARE!! Landlords, Employees & Volunteers (Including Bud Tenders) !

Proposition M includes 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 a portion of land.

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 \$20,00** for each and every offense.

Note from Bruce:

Even though I've successfully defended numerous persons 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.

Call my office for a consultation if you have any questions or concerns.

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, 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.

California State Licensing and Taxation Requirements Regarding Dispensaries

Below is a list of some applicable taxes and licensing requirements for dispensaries in California.



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

In California, all dispensaries are regulated by the **Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)**, and consolidated under Senate Bill SB 94. AB 266 allows for businesses to obtain operational medical marijuana licenses from the state of California. It also legalizes all commercial cannabis activities by licensed California dispensaries. It gives local jurisdictions the power to tax and assess fees against California dispensaries. AB 243 regulates cannabis growers and SB 642 sets licensing standards for physicians who recommend medical marijuana to patients.

Tax Treatment

The state of California disallows the deduction of all business expenses for medical marijuana dispensaries that are not being taxed as a corporation under the State Revenue and Taxation Code. However, if the dispensary is structured in order to be taxed as a corporation, the deduction of all necessary and ordinary businesses expenses is permitted, as long as the dispensary maintains the proper records to support such deductions.

Seller's Permit

The state of California requires all dispensaries, including mobile dispensaries, to apply for a seller's permit with the Board of Equalization (BOE). There is no fee to apply for a seller's permit and it can be done via the BOE's Online Registration.

Sales Tax

All retail sales of medical cannabis products and accessories are subject to California sales tax. California dispensaries are required to pay sales tax on a quarterly prepay, quarterly, monthly, fiscal yearly, or yearly basis based on the dispensary's reported sales or anticipated taxable sales at the time of registration for a Seller's Permit with the BOE. The statewide sales tax on Cannabis is 15%.

However, California dispensaries should also pay close attention to the laws regarding the taxation of medical marijuana as changes can occur.

Resale Certificates

To mitigate having to pay taxes on purchases of medical marijuana and marijuana-related products, dispensaries must obtain a resale certificate to present to the supplier at the time of purchase. These resale certificates are available at California office supply and stationery stores and should include the necessary information to ensure that the form is a Board-approved retail certificate. One resale certificate should be kept on-file per vendor and the same resale certificate can be used each time a purchase is made from that specific vendor.

Payroll Tax

If your dispensary has employees, you will also be required to report wages and pay Income tax, Social security and Medicare taxes to the Employment Development Department (EDD) on a quarterly basis. The full requirements for reporting and depositing payroll taxes in California can be found at taxes.ca.gov

Record Keeping

California dispensaries are required by law to maintain specific records so that the Board of Equalization can verify the accuracy of filed sales and use tax returns. These records must be maintained for at least 4 years. These records include sales and purchase records, bank statements, resale certificates, shipping documents, and tax returns. A comprehensive list of the books and records that are required to be maintained can be found [here](#).

Depending on the other products and services that your business provides, there may also be other state taxes that apply to your business, including property tax and special taxes. Contact the appropriate offices to learn more.

General MAUCRSA Licensing Provisions

There 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, applicants must provide information and documents in support of their eligibility to the licensing authority.

Below are some 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

AUMA (Prop 64)*

AUMA (2016) Adult Use of Marijuana Act (Prepared by California NORML (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 medical marijuana use on a workplace drug test.

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. Othwerwise, 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 current 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).

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 lighting

- **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: Transporter

See Page 26 regarding licensing provisions for patients and adults under AUMA Prop 64

SB 420 COLLECTIVE DEFENSE SUNSET: The provision in SB 420 affording legal protection to patient collectives and cooperatives, HSC 11362.775, shall sunset one year after the Bureau posts a notice on its website that licenses have commenced being issued. After that date, all cannabis collectives will have to be licensed, except for individual patient and caregiver gardens serving no more than five patients.

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)

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 distributor, 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 tract 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 11357-11360) 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 petitioner 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
(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.

Call 1-800-420-LAWS (5297) or 310-276-2231.

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

California's laws regulating cannabis were substantially revised as of 2018 by comprehensive new legislation known as the Medicinal and Adult Use Cannabis Regulation and Safety Act.

MAUCRSA establishes a uniform licensing regime for both medical and adult-use cannabis effective Jan 1, 2018. 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 are currently authorized by state law SB 420, will cease to be lawful starting one year after the Bureau posts a notice that it has begun licensing (HSC 11362.775(d-e)). After that, the only gardens that will be legal without a state license will be individual personal-use gardens or collective gardens for up to five patients, subject to state law and local control. By Prop 215, medical patients and caregivers will still be entitled to grow however much is required for their personal medical needs. Non-medical growers are limited to six plants per residence by AUMA.

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. Attorneys are uncertain as to whether such local bans are still legal. 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.

Under Prop 215, patients are still entitled to grow and possess whatever amount of marijuana is consistent with their medical need, though this is subject to local limits and land-use restrictions, including bans.

As previously mandated by MCRSA, California's current SB 420 law authorizing collective medical cultivation is scheduled to sunset one year after the Bureau gives notice that it is issuing licenses (December 2018). From that point forward, unlicensed commercial medical cannabis collectives will have no explicit legal protection under California law.

- 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)
- Authorizes 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 vs. Cannabis Licensing Businesses

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.

The locations below have licensing as of this time, however there is licensing in many locations, may be limited to medical patients and often do not include the numerous other categories of licensing provisions under AB266 and Prop 64:

Check county or city websites for updates.

Call my office for a consultation regarding the latest opportunities of licensing

Partial List Per Current Regulations (Additional Locations Occur Often)

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

**Unfortunately only one in seven cities in the California allow recreational cannabis stores.
And only one in three allow for any kind of cannabis business at all.**

See my website **420Yoga.com** for information regarding the historical and spiritual use of marijuana and for locations for classes and events (other venues will be listed).

California Department Of Consumer Affairs, Bureau Of Cannabis Control Trailer Bill Legislation

On April 4th 2017, the State of California Department of Consumer Affairs, Bureau of Cannabis Control released a proposed trailer bill legislation that may be found Online that is the State's laws regarding the enactment of AUMA.

This will implement a new regulatory system that will govern the cannabis industry to protect public and consumer safety. Although California has chosen to legalize Cannabis, under current Federal law it remains illegal as a Schedule 1 drug. Protecting against illegal diversion of cannabis inside and outside of the state is an important public safety issue, which is why the state is implementing a robust track and trace program that will track cannabis from seed to sale. Furthermore to protect public health and safety the state has assumed some food and drug responsibilities that would normally fall to the federal government. These duties range from creating pesticide use guidelines for cannabis to standardizing tetrahydrocannabinol (THC) levels in a product.

Please refer to my website 420Laws.com for a link to the full 64-page Proposed Regulation Document

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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.

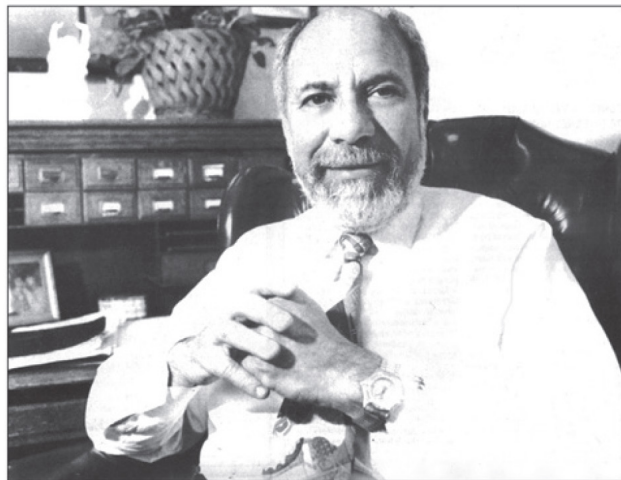
Many cases are won on the basis of Penal Code Section 844, which requires demand of entry, identity and explanation before forcible entry. Mr. Margolin states, "enforcement of the law should not result from violation of the law." The following are some of Mr. Margolin's observations from his recent experiences:

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**.

Daily Journal, 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."



Daily Journal, September 2, 2003 (Excerpt from Bruce's Campaign For Governor)

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."

More About Bruce 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 Bellenoff



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 Dass, with whom Margolin traveled in India in the 1970's. Like Ram Dass, Margolin gave up his successful professional practice to

from India re-incarnate as a man with a mission. Margolin's political agenda, meditation and yoga class at the end of his day.

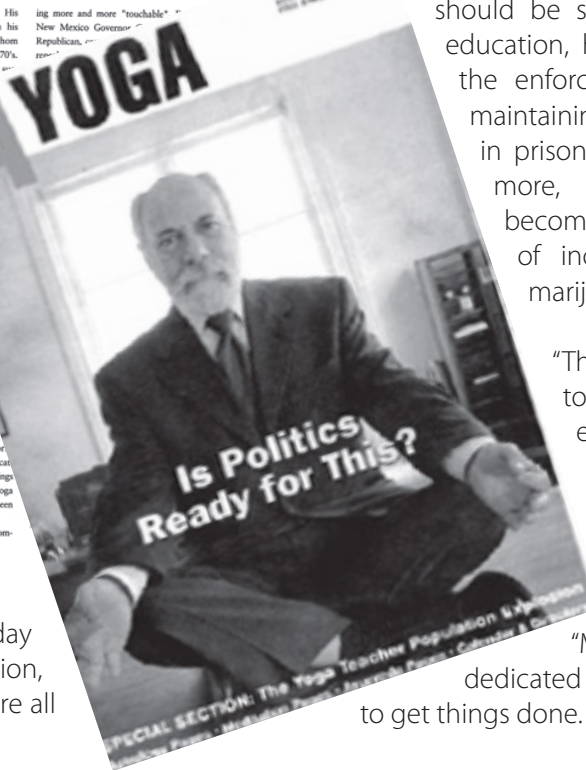
ing more and more 'touchable' New Mexico Governor Republican, re-

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

of marijuana. 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. Drug laws and the enforcement of them, including maintaining non-violent offenders in prison costs billions. As more, Margolin believes, could become State income, instead of income for drug dealers, if marijuana was taxed.

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."

Interestingly enough the subject is becoming



Margolin is the criminal defense attorney who handled the Timothy Leary case. His relationship to Leary stemmed from his friendship with Ram Dass, 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

The candidate's yoga practice today still mainly focuses on meditation, which he does nightly and before all meals.

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MORE ABOUT BRUCE

LA WEEKLY

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.

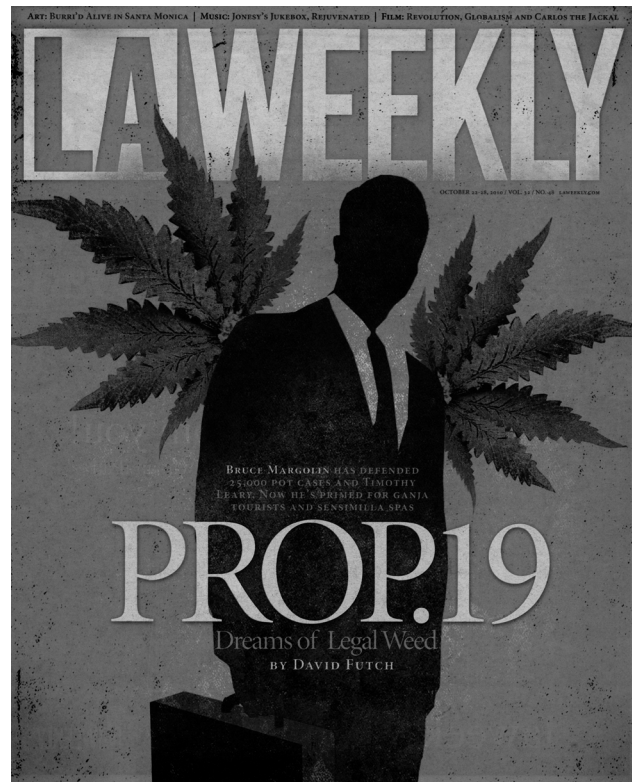
The Kid was scared. His parents were terrified. So they asked around, which is how they came to write a check to hire Southern California's undisputed champ of marijuana defense.

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



Bruce Margolin Dean Of Weed Defense Attorney

of his most notable clients was Timothy Leary, the late Harvard professor-turned psychedelic guru, who was 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

MORE ABOUT BRUCE

LA Weekly – October 22-28, 2010 (cont'd)

oft-quoted L.A. director of NORML, the National Organization for the Reform of Marijuana Laws.

"Unfortunately, this kid is not holding good cards. He sold pot to a cop, I just want to get him in and out of here and get his life going." - Margolin

In California, circa 2009, 1,639 state prison inmates were behind bars primarily for pot possession with intent for sale, possessing hashish, selling pot or other marijuana related offenses, according to the California Department of Corrections and Rehabilitation. The yearly cost to taxpayers: 85 million, mostly for room and board.

The cost to those inmates, of course, is much higher. Eighty-five million dollars isn't a ton of money in Governmentland, which is not what bothers Margolin. The life stories get to him. Why should this kid have a felony conviction for selling 10 pot seedlings? Let The Kid go back to college and grow up.

Out in the real world, beyond this crowded San Fernando Courthouse, most Southern Californians consider pot on par with alcohol: Fine to take a few hits, just don't overdo, and for heaven sake don't drive when you partake. But, Margolin says justice is holding the line even as social attitudes about pot become more permissive.

"Pursuing these cases is a burden on the system, people's lives are ruined. In some cases, California's 3rd Strike rule has sent people to jail for life for felony possession of marijuana," says the lawyer whose shingle is topped with a rendering of a marijuana leaf.

Margolin adds: "Let people come out of the closet and deal with their drug problems in a sensible way; treatment, for example. There seems to be no money for treatment but plenty for incarceration."

While The Kid waits his turn in the courtroom, Margolin pays a visit to Assistant D.A., Jeff Boxer, who's prosecuting a case 2 floors up. He strides into the courtroom, past the rail, and sits on the edge of a chair at the prosecutor's table. Margolin does most of the whispering, Boxer, most of the nodding.

A couple minutes, tops, and Margolin in huddling with The Kid, his parents, and girlfriend, advising them he can dodge jail time and a felony conviction. He can have his record expunged. When judge Nash's clerk calls The Kid's name, everything goes pretty much the way Margolin had outlined. And then Margolin makes his move.

"One final thing your honor," Margolin says. He asks for a judicial allowance to let The Kid continue to smoke marijuana, due to a medical condition. "What kind of condition?" Nash asks, sitting straight up, leaning forward and looking flushed.

"Agoraphobic Anxiety."

Nash's voice rises by at least 10 decibels. "If you can produce a doctor who will testify to your client's condition, I will think about it. Gavel down. Outside the hallway, The Kid shakes Margolin's hand. "This is the best that could be expected. Thanks"

Margolin is punching numbers in his Blackberry while he rushes to get to his car and his next client. "He got very lucky," Margolin says of The Kid.

mg

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

MORE ABOUT BRUCE

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.”

Margolin has worked more than marijuana busts over the years, including a few murder cases here and there, and has had his share of celebrity clients, including Timothy Leary, Christian Brando and Linda Lovelace; he has even run for political office several times over the years, including for governor in the 2003 California recall election and for Congress in 2012, efforts that resulted in respectable showings for Margolin that proved the viability of running on a marijuana legalization platform. At the end of the day, however, it’s the nuts and bolts of cannabis law, as well as the troubling legal situation in Los Angeles and beyond, that consumes the man, as it would any civil libertarian.

“Anyone who’s involved in providing marijuana or edibles or any other products to a dispensary is currently in jeopardy of being prosecuted for a number of reasons,” he says when asked about the state of enforcement in California. “They will have to prove that they are a member of the collective—as collective members, they can provide products go the dispensary for purposes of aiding other collective members—but the Achilles’ heel for them is that it must be done for no profit, and profit is not defined by any of the court cases.”

Pausing to let that sink in, he continues, “There’s only one case that refers to it that I’m aware of, [People v Mentch](#)

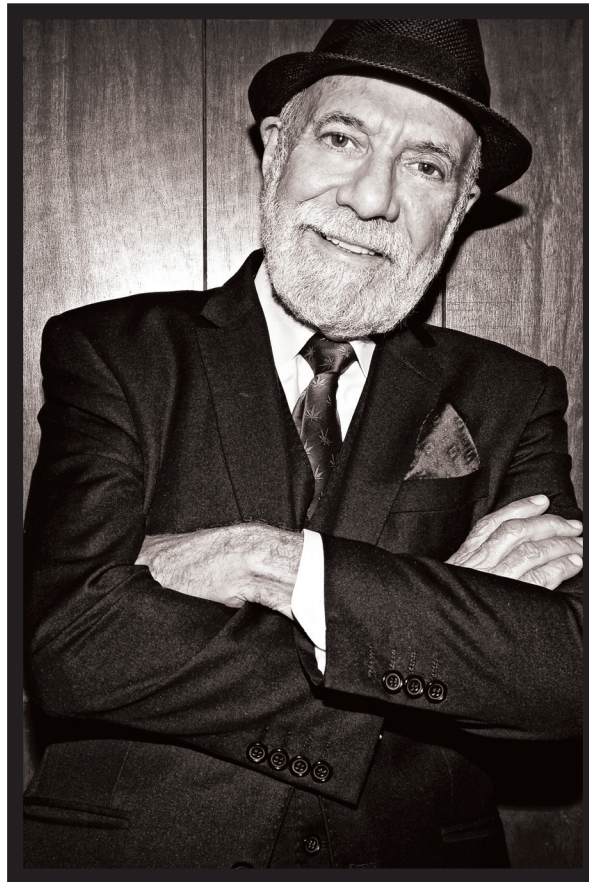
(2008), which says that profit is a matter for the jury to decide. Generally, you look up rules regarding profit in the dictionary, where it says that profit is monies left over after overhead costs and operating expenses have been accounted for. That means defendants have to prove overhead costs and operating expenses, and also why the amounts they charge for product is relevant to what they charge. Unfortunately, we find many dispensaries that

request arbitrary amounts for what they call ‘donations,’ which is the same as a sale. These amounts are also often based upon arbitrary numbers rather than an accurate accounting that justifies the money requested. Therefore, even the dispensaries and co-ops are in jeopardy of having to prove that what they charge is relevant to what their overhead costs are.”

It gets worse, adds Margolin “We don’t have any clear indication how to present these defenses to the courtroom. California Attorney General Kamala Harris had proposed to provide guidelines as required under Prop 215—which Jerry Brown had done after its passage in 1996—but in 2010 she sent a letter to the legislature explaining that she could not come out with guidelines because she is unsure what the law is because of its lack of clarity in areas pertaining to profit, the operation of dispensaries and concerns about edibles. So all

these things are left in a grey area that is very detrimental to people involved in the industry, as well as to patients and collectives that have to suffer the consequences of potentially being arrested and having to prove their defense in court, which can be very cumbersome and difficult, especially in this area of profit.”

Margolin adds that while many people assume that only illegal dispensaries are being targeted—and not the so-called “pre-ICO” dispensaries grandfathered in following passage of Proposition D in 2013—he cautions that the actual situation is far more nuanced. “When it first passed,”



MORE ABOUT BRUCE

MG Magazine – August 2015 (cont'd)

he explained, “the city put up on their website a list of names they considered to be compliant with Proposition D. That has been taken down, and when you ask the city attorney about whether they consider a specific dispensary to be legitimate, they say they don’t know, it’s up to the court. Well, how do you get the court to decide that unless you prosecute it? So they’re all in jeopardy of being in trouble; all in jeopardy of being taken down.

“It’s particularly bad for all of these people who provide dispensaries with products, including marijuana, because they don’t know if they are compliant or not, they can’t really determine that. And of course, there is also a lot of misinformation about the laws. Anyone who works at a dispensary, any landlord, any real estate agent providing the property, they are all subject to prosecution and do get prosecuted regularly. I am representing about 20 of these cases right now, including for landlords who didn’t have any idea that the businesses were not legitimate; they all appeared to be legitimate, but there is no way to determine if they are or not in advance of being prosecuted. It’s very unjust and a violation of due process, but there has not been any case so far that I know of that has resulted in a dismissal by the court under Proposition D, and there are no cases that I know of that have gone to trial and been successful in defeating the law, because the law doesn’t require any intent. Just doing the act is all that’s required; you don’t have to have intended to break the law.

“Typically,” he adds, “the fine in these cases is \$1000 plus penalty assessments of \$4000, in addition to terms and conditions that say you can’t participate in any collective or co-op, and also the place has to be closed down. That’s what’s happening, and in East L.A. they’re being prosecuted in one courthouse and the caseload is unbelievable. It’s very burdensome to the court and very burdensome to the people being brought before the court.”

The authorities appear to be on a warpath. He continues, ominously, “I went to a case last week involving Proposition D and spoke with the city attorney, and they said that once they clean up the numerous illegal dispensaries that still exist, which still amount to about 250, they’re going to go after the ones supposedly complying under Proposition D, to see if they’re obeying all the miscellaneous requirements, in particular what they call the live scans.” Live scan is a form of digital fingerprinting required of all dispensary managers under Prop D.

The situation is further compounded by the fact that California offers a patchwork of conflicting cannabis laws. “Each county and city has their own attitude about these cases,” says Margolin, “and California cities and counties can decide for themselves what sorts of laws they want to have regarding medical marijuana; they have complete autonomy to strike down any provisions they don’t want to comply with. For example, in Fresno County, they have a law that says you can’t grow marijuana there, period. There are other counties that have restricted dispensaries and co-ops, disallowing them entirely. In L.A. County, the city council put it to a vote that resulted in the passage of Proposition D, which limited dispensaries at that time to those that existed before 2007, and with other qualifications.”

We shift topic from enforcement to politics, in particular next year’s all-important cannabis initiatives, about which Margolin, who is not a fan of Proposition D, has concerns related to the previous vote. Concerns, he adds, that are shared by California’s popular Lieutenant Governor, Gavin Newsom.

“I spoke to Lieutenant Governor Newsom about a month ago and his concerns are my concerns, that we will have too many cannabis initiatives on the ballot, which could water down the vote so that none of them gets over 50 percent,” he explains. “We could be in the same position we were with Proposition D; vote for all of them or we could wind up with none of them. But all of them might not be that good; we have to be careful about big Pharma or other big organization coming in with a lot of money to support a particular initiative that may not be in the best interest of the consumer. We want a free market here.”

He’s also concerned about protecting what he calls California’s “cottage industry for thousands and thousands of people for 30-40 years at least, so I am anxious to make sure that the initiative includes inexpensive licensing. For instance, with the CHHI initiative, I think it costs something like \$50 to get a license to be a provider.”

CHHI is the California Cannabis Hemp Initiative 2016 (cchi2016.org), originally started by the late Jack Herer, which “calls for 99 plants per patient and up to 12 pounds of flower, and also includes the destruction of cannabis-related arrest records and the release of prisoners.”

He wants to be able to support other cannabis initiatives as well, including the one by Reform California (reformca.com), a coalition of organizations spearheaded by Dale Sky Jones. The problem, he says, is that they have issued no language, basically telling the voters to trust them.

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He adds that Reform California doesn't seem to think that reforms such as releasing cannabis prisoners will be palatable to the voters. "But I think it will be," he insists. "We already have laws in place for misdemeanor possession of cannabis that call for the destruction of arrest records after two years following probation, so it's not outside the realm of possibility. I don't think releasing the prisoners is such a terrible thing. Why should people remain in jail for a crime that is no longer a crime?"

In the meantime, he notes, "California legislators are scrambling to put in place regulations that will satisfy the federal government, because the feds view on medical and other marijuana laws is that the state's must regulate them so there's some control over the use, possession and in particular the transportation from state to state, which they feel they have a vested interest to prevent. My impression is that they are trying to get these regulations in place at the behest of Lieutenant Governor Newsom, because he's probably putting in their ear the idea that we're going to pass legalization in 2016, and he wants to have things ready to rock 'n' roll so we can comfortably deal with it when it happens.

Margolin has a million other things he wants to talk about—from reasonable oversight of edibles to ensuring that drivers are not unfairly targeted for marijuana DUIs that have no basis in science, resulting in convictions for people who are not driving impaired, and he certainly maintains a laser-like focus on next year's elections, which he believes will be pivotal. There are others who fight on the front lines in Sacramento and Washington, D.C., whose expertise is in the schmoozing and negotiating that comes with high-level lobbying. But he sees his role as equally imperative, indeed, as the essential ingredient that could solely determine whether California truly lights the way for the rest of the country when it comes to legalized cannabis laws that make sense at every level of society and for all who want to participate.

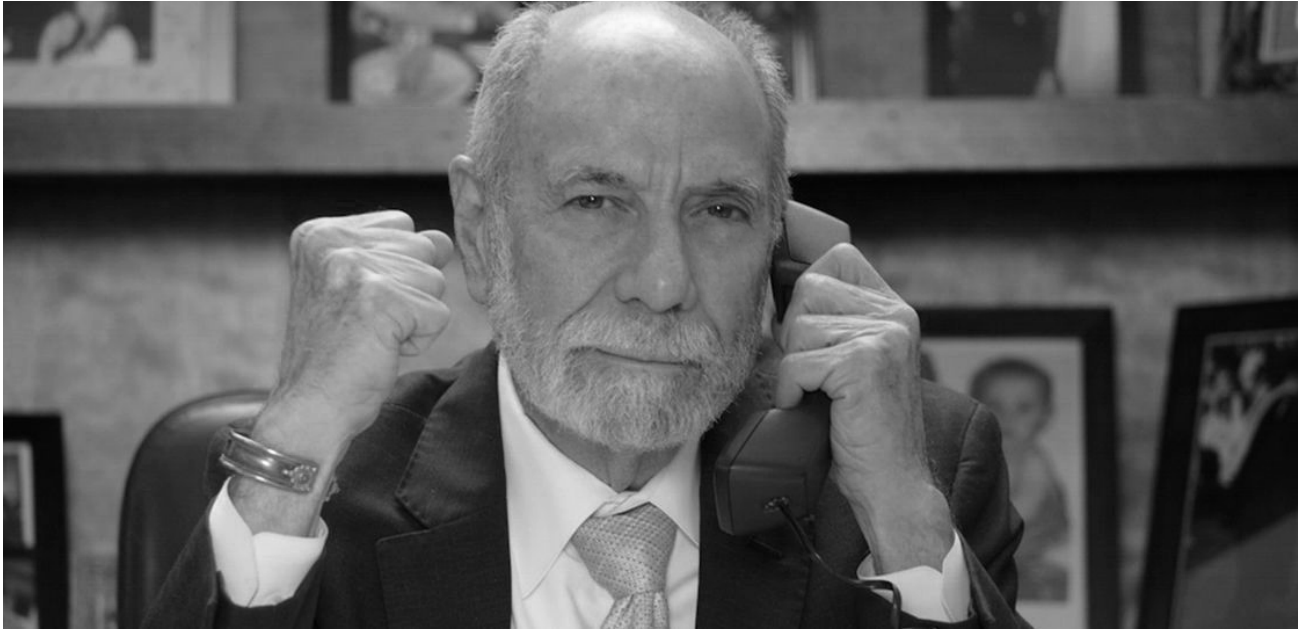
It's still all about educating the public about what's truly at stake if the laws governing the use and sale of cannabis are not either eviscerated or improved. "I have my finger on the heartbeat of all the cases that are coming down and our concerns we have about legalization—and I myself, along with the judges, the appellate courts and everybody else, am left in a confused state because the laws are so unclear and have not been defined in many areas."

His basic message to the populace remains consistent and compelling: "I think they have to first understand

that cannabis is not legal, and that we are still incurring incarcerations, and they have to get into it. Two, they need to understand the same party line I have been repeating for 46 years; the irrationality of the laws, the unfairness and injustice, the waste of resources. We need to keep hammering away at those things until the masses absorb it, begin to understand it and then accept it. I think the tide is certainly turning, with polls indicating that 55 percent for legalization, but that's not a safe enough margin for me."

And the band played on...

MERRY JANE



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 Gooley 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.

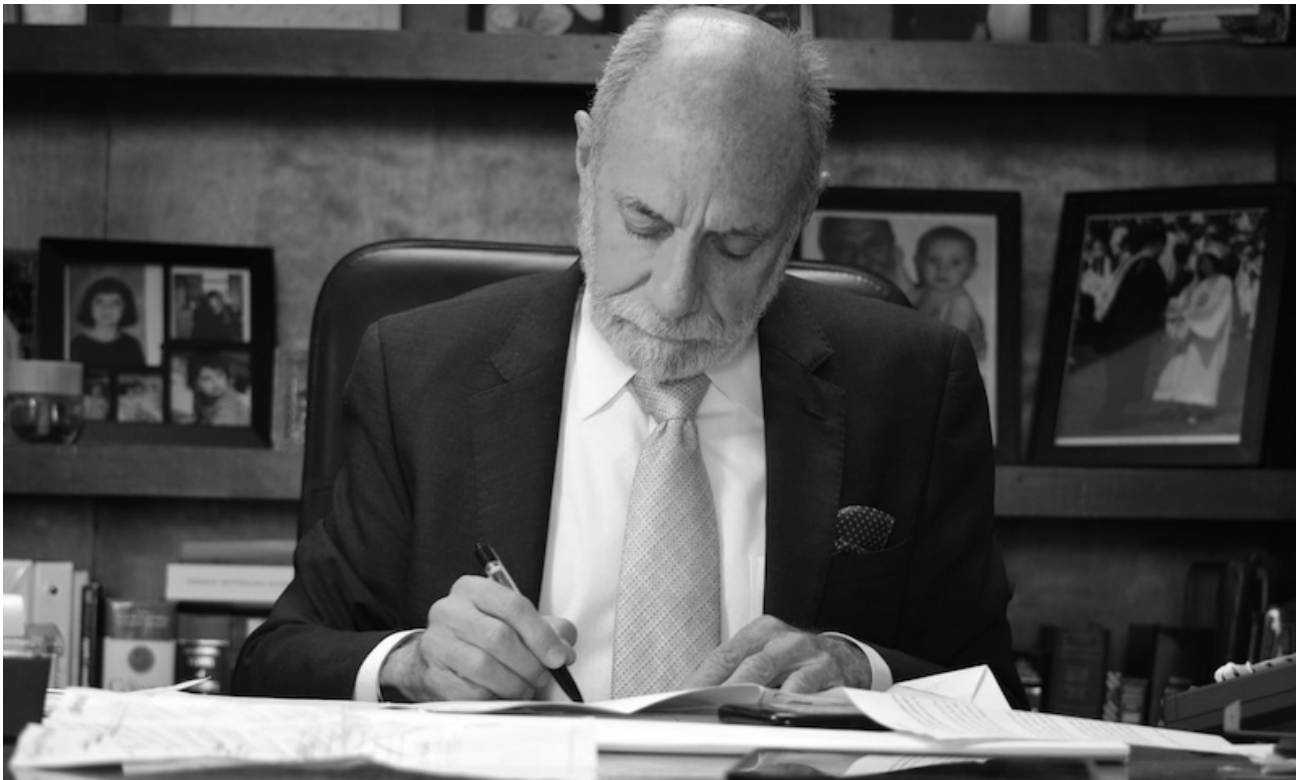
Margolin's life quest to help cannabis consumers began in 1971 when he retired from general practice and took a trip to India with spiritual leader Baba Ram

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.

MORE ABOUT BRUCE



MERRY JANE: Let's talk about the current state of cannabis legalization in California. So far, how is Prop 64 being manifested in terms of regulations and the government actually allowing cannabis businesses to legally open their doors?

Bruce Margolin: We currently have about 80 or 90 legitimate dispensaries in the Los Angeles area. But we have a bunch of rogue dispensaries in LA, too... about 500 of them. They're all over the place. A lot of people think that they will be grandfathered in. I don't know if that's going to happen. I doubt it.

Here's the history of what happened in California: In 1996, we passed the Compassionate Use Act, or Proposition 215. That provided for possession and cultivation of marijuana by patients, but it didn't allow any way of getting marijuana. Where can you get the seed to grow it? Where can you buy it? Where can you share it? How much can you have? None of that was addressed.

Thus, the California Assembly passed Senate Bill 420 [in 2003] to put in place an opportunity for patients to come together under collectives and co-ops. It also provided a gauge for law enforcement to know how much patients could legally possess. It was a guideline. Out of the collectives and co-ops grew the dispensaries. Senate Bill 420 also features a bunch of

vagueness. Many legal cases went before the Court of Appeals, something I reflect in my book *The Margolin Guide to Marijuana Laws*. It's my 20th anniversary of publishing this guide, which I give out to all of the dispensaries and anybody else who wants it. It tells you the nitty gritty of the laws.

How has the complexity of these laws affected patients and cannabis businesses?

Before Prop 64, the laws in California were a mess. Many lawyers were overwhelmed because the cannabis cases are so complicated. So they didn't want to take the cases and didn't know what to do with them when they did.

The courts were also confused. Even the Attorney General of California at the time, Kamala Harris, wrote a letter to the State Legislature saying that she couldn't develop guidelines — which were required — because she was confused. She wanted clarification about profit, edibles, and other areas of the law. Thus, she implored the legislature to develop new legislation.

As a result of her request, in 2015, the Legislature passed Assembly Bill 266. They did this for many reasons. First, they wanted to get a piece of the action. In other words, they wanted taxation and regulation. AB 266 provided for everything from seed to sale.

MORE ABOUT BRUCE

However, these licenses are not to be issued until 2018. In the interim, in order to get a license from the state, a cannabis business must obtain one from the local jurisdiction, the city or county. This is because the local jurisdictions have autonomy over land use rights.

Unfortunately, when AB 266 first emerged, most cities and counties in California — there are about 500 in the state — opted out of allowing any type of participation in the cannabis industry. In fact, most don't even allow cultivation. They have banned cultivation of cannabis in every aspect, even in one's own home. This has been very disappointing to us.

How did you, personally, respond to the legal mess created by the regulatory layers of Proposition 215 and Assembly Bill 266?

I wrote some articles for the Daily Journal, pointing out that the bans were unnecessary. Fortunately, about three weeks after I wrote that article, the legislature amended the regulations. But cities and counties maintained their bans. The courts upheld that, under land use rights — cities and counties could not only outlaw or ban dispensaries, they could ban all marijuana activities. Let's give an example of what's happened here. In the county of Los Angeles, there is a complete ban on cultivation and any type of dispensary or transportation service. However, Prop 215 has not been overturned by more recent legislation like AB 266 and Prop 64.

There's a lot of misperception regarding the effect of Prop 64 and AB 266 and Prop 215....

Prop 64 does not replace Prop 215. As a matter of fact, Prop 64 explicitly states that it does not affect the rights of patients or caregivers afforded in Prop 215. Under Prop 215, patients can grow marijuana for themselves or have caregivers grow for them. They can also transport amounts necessary for their medical needs. That still exists.

But Senate Bill 420, which provides for collectives and co-ops, will be replaced by the licensing regulations. Why? Senate Bill 420 was intended simply to provide for patients to obtain cannabis medicine on a non-profit basis. That meant that cities and counties were not collecting taxes because it was non-profit.

To make things worse, patients weren't doing a very good job of following the law. After states like Colorado, Oregon, and Washington legalized adult use consumption, the good news was that the federal

government stated that legal states with robust regulations — which prevent things like diversion to the black market — would not be touched. Thus, AB 266 went into effect on January 1, 2016.

What was the real effect of AB 266?

Well, even though it went into effect, it didn't mean that licenses were being issued. This is because licenses have to be granted by the local governments first. But most of the local jurisdictions have not done this. I'd estimate that 95 percent haven't done it! Maybe five percent of the cities and counties actually have legislation now that provides for licensing.

Now this licensing is different. First, it extends beyond medical consumption to "adult use" and profit is now allowed. But in consequence, we have taxation. And everything from seed to sale is being taxed. Taxes upon taxes.... AB 266 is allegedly "robust legislation" that is intended to satisfy the federal government and, secondly, provide for taxation.

Given that complex state of regulatory oversight, how does Proposition 64 affect patients, adult users, and cannabis businesses?

Today, California has three layers of laws: Proposition 215, AB 266, and now Proposition 64. Prop 64 is the initiative we passed to legalize adult use cannabis. It mimics AB 266 regarding licensing. One important difference is that those with drug convictions are precluded from participation under AB 266. Under Prop 64, however, marijuana convictions do not interfere with one's right to obtain a license. This is important to the thousands of people who have been part of the culture and this cottage industry for more than 30 years in California. It would be very unfair for all of those people who suffered being busted to not have access to licensing.

Let's talk about the city of Los Angeles specifically.

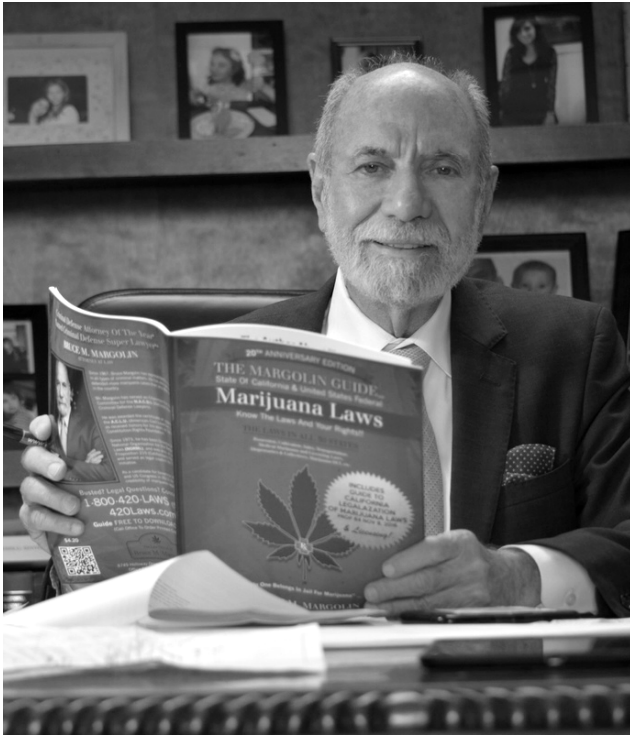
In Los Angeles, legislation called Proposition D was passed by the city, pursuant to an initiative. It limited the number of dispensaries to 134. The rest of the dispensaries are illegal. Recently, Los Angeles held an election and passed Proposition M. Unfortunately, it doesn't specify the number of licenses that will be granted. It simply gives autonomy to the city to administer licensing.

Does this mean the city can do whatever it

MORE ABOUT BRUCE

wants, even take negative actions, such as granting no licenses?

Yes. I've been in touch with many City Council members. We passed Proposition M by 80 percent! Proposition 215 passed with 56 percent of the vote. Let's get hip, guys! You're going to lose your City Council positions! But they haven't seemed too impressed by this argument. One would think that they would take action and pass regulations to keep their jobs.



Unfortunately, we're dealing with local legislators, and the ones who influence them are those with the money, honey. They're the ones who already own businesses and big properties and have made donations to political campaigns. But most of them are naysayers when it comes to recognizing the appropriateness of medical marijuana or any type of use. So they're not very hip to coming onboard and being proponents, let alone voting for new legislation. Plus, this is all very complex and confusing. How are they going to do it? How are they going to enforce the regulations?

What is your response to such legislators and opponents of legalization?

I try to argue that, if they don't put legislation up, we're going to have a continued black market and it's

going to impose on the city and county the cost of incarceration. Meanwhile, they won't be making any money on taxes. So they better wake up and smell the roses, folks.

But I think they're coming around. I'm confident that, in the next few years, we're going to experience a lot of licensing around the state. While we currently don't have licensing in the city of Los Angeles, we have it in Long Beach, Lynwood, Desert Hot Springs, Coachella... we have a lot of it going on. There's also plenty of licensing up in Monterey, San Francisco, and in the Santa Rosa area. So it's going to happen. But it's going to take time.

How do you see the future of legalization in the United States?

The numbers are going to continue to grow as society begins to see that legalization is the right way to go. Anything else is irrational. I'm very proud of the fact that we got this far and of my role in helping cannabis legalization since 1967.

MORE ABOUT BRUCE

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

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.



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)

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

MORE ABOUT BRUCE

They learned lessons from the 2014 passage of Proposition 47, which reduced several nonviolent felonies to misdemeanors.

Prosecutors in the county researched which convicts serving time or probation were eligible for sentence reductions and notified the public defender's office so they could quickly get into court. Many were freed immediately, Solov said.

"Whether we agree with the law or not, our job is to enforce it," Solov said. "It's the right thing to do. If someone's in custody and they shouldn't be in custody anymore, we have an obligation to address that."

San Diego County led the state with the most number of petitions reported in the first two months after the law passed. It has reduced sentences or convictions in nearly 400 cases, Solov said.

In Mendocino County, where pot farming is big business and violent crimes are often tied to the crop, District Attorney C. David Eyster said he fights any case not eligible for a reduction, such as applicants with a major felony in their past, a sex offense or two previous convictions for the same crime.

He said he would also fight a reduction if someone is caught cultivating weed while committing an environmental crime, such as stealing or polluting water. Otherwise — in a quirk that has some in law enforcement baffled — someone caught with two plants or 2,000 would both face a misdemeanor.

"This is one of those areas where size doesn't matter," Eyster said.

When it came time for Schlauch's hearing this winter, he showed up an hour early at the Van Nuys courthouse. He was anxious but optimistic as he paced the hallway clutching a folder with letters praising him for doing volunteer work with veterans, working with children with disabilities at a martial arts school and earning a nursing degree long after his run-in with the law.

It had been more than two decades since he was sentenced to nine months in jail. He only served about a month.

The case was so old that the court file was incomplete.

A prosecutor rifling through papers wondered whether he was eligible for relief. He had 8.5 pounds

of marijuana, she said. The file noted psychedelic mushrooms also were found, and she questioned whether the discovery of guns made him a threat.

Schlauch, 58, was never charged with a gun offense. He said the registered weapons were unloaded and locked in a safe. His only conviction was for possession with intent to sell marijuana, Margolin said.

The judge flipped through the fat penal code book to review the new law.

"I don't see any reasonable risk of danger. It seems like he's entitled," Judge Martin Herscovitz said. "The petition is granted."

It barely took five minutes to lift a weight he had carried so long. He never had to say a thing or show he had turned his life around. He bounded from the courtroom, elated.

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Los Angeles Times
Excerpts

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

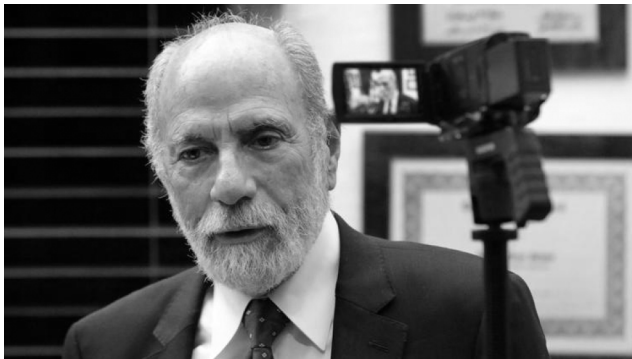
By Emily Alpert Reyes

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?"