

Medical Marijuana in Tennessee

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under UT MPPA Faculty Guidance

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Medical Marijuana in Tennessee

Issue at a Glance

- Twenty-nine states have comprehensive statutes that legalize marijuana in some form.¹
- Seventeen states have decriminalized possession of small amounts of marijuana and / or have narrow statutes that allow residents to use low THC, high cannabidiol (CBD) products for medical reasons in limited situations
- Tennessee law allows possession of small amounts of CBD oils with no more than 0.9% THC if they have a legal order or recommendation for the oil and they or an immediate family member have been diagnosed with epilepsy by a Tennessee doctor.
- It is a federal crime to cultivate, possess, or use marijuana for any purpose.

The Policy Challenges

Does medical marijuana provide health benefits and if so, to what extent, if at all, should state law be changed to enable more people with medical conditions to be treated by low THC, high cannabidiol products? What, if any, unintended consequences may arise if there is wider access to medical marijuana? If medical uses of marijuana extracts are permitted, will these pills become “gateways” to the abuse of more dangerous drugs as Ecstasy, LSD, and Heroin or opioids? Do individuals and businesses risk prosecution under federal law if they fully comply with state law on medical marijuana?

The Federal Controlled Substances Act of 1970 (CSA) classifies marijuana as a Schedule 1 drug, a category reserved for those drugs that have “a high potential for abuse, lack any medical value and can’t be safely prescribed.”² Under federal law, the use, sale or distribution of marijuana is a crime and anyone growing, marketing or distributing marijuana is likely violating multiple federal laws.³ The CSA also makes it unlawful to “knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances.”⁴ In addition, landlords that have tenants involved in a state-permitted marijuana industry may risk federal asset forfeiture or other criminal fines. Workers can be terminated for off-the-clock use of marijuana.⁵ Penalties for violating the CSA don’t just target growers and distributors. Simple possession with no intent to distribute is punishable by up to one year in prison and a minimum fine of \$1,000; individuals involved in marijuana businesses can receive even steeper fines and longer prison terms.⁶

¹ National Conference of State Legislatures, “Tennessee’s Low-THC Laws,” MPP, n.d., <https://www.mpp.org/states/tennessee/tennessee-cbd-law/>.

² “The Controlled Substances Act (CSA): Overview,” n.d., <http://criminal.findlaw.com/criminal-charges/controlled-substances-act-csa-overview.html>.

³ “Federal Marijuana Laws,” Findlaw, n.d., <http://criminal.findlaw.com/criminal-charges/federal-marijuana-laws.html>.

⁴ “The Controlled Substances Act (CSA): Overview.”

⁵ “Federal Marijuana Laws.”

⁶ “Federal Marijuana Laws.”

Even though the 2005 US Supreme Court (SCOTUS) ruling in *Gonzales v. Raich* upheld Congress' constitutional authority under the Commerce Clause to ban local marijuana production and consumption, Congress has approved a budget amendment known as the Rohrabacher-Farr amendment every year since 2014.⁷ This amendment prohibits the Department of Justice from using federal funds to prevent states from implementing their medical marijuana laws. It is uncertain whether the US Justice Department will continue the policy articulated in the 2013 Cole Memo that advised prosecutorial discretion in enforcing federal marijuana laws as they applied to those using or administering the drug for medical purposes.⁸

The U.S. Food and Drug Administration (FDA) requires carefully conducted clinical trials to determine the benefits and risks of a potential medication, but so far, not enough large-scale clinical trials have been conducted to demonstrate any benefits of the marijuana plant apart from some of its cannabinoid ingredients.⁹ The FDA has approved two medications that contain cannabinoid chemicals in pill form: Dronabinol and Nabilone are prescribed to treat nausea in patients undergoing cancer chemotherapy and to stimulate appetite in patients with wasting syndrome due to AIDS.¹⁰

Several marijuana-based medications such as Nabiximols also are in clinical trials. This drug combines THC with CBD to treat the spasticity and neuropathic pain that may accompany multiple sclerosis.¹¹ While CBD does not have the beneficial properties of THC, anecdotal reports suggest that it may have promise for the treatment of seizure disorders among other conditions.¹² Another drug being tested is a CBD-based liquid medication called Epidiolex; trial results indicate that it is effective in helping to reduce the frequency of seizures in children with epilepsy.¹³ Generally, researchers consider medications such as these to be more promising therapeutically than the use of the whole marijuana plant or its crude extracts.¹⁴

Some preliminary studies suggested that legalizing medical marijuana might be associated with decreased prescription opioid use. A survey of marijuana users in a Michigan clinic, for example, found that the use of medical marijuana may reduce the use of more traditional prescription pain opioid medications.¹⁵ However, other research indicates that

⁷ Janet Burns, "Trump Extends Cannabis Protections 'Til December As Plans For Study, States Remain Hazy," *Forbes*, September 25, 2017, <https://www.forbes.com/sites/janetwburns/2017/09/25/trump-budget-extends-cannabis-protections-til-december-as-plans-for-study-states-remain-hazy/#12743b647ffe>.

⁸ James M. Cole, "Guidance Regarding Marijuana Enforcement," U.S. Department of Justice - Office of the Deputy Attorney General, August 29, 2013, <http://www.dfi.wa.gov/documents/banks/cole-memo-08-29-13.pdf>.

⁹ National Institute on Drug Abuse, "Marijuana as Medicine," NIH, April 2017, <https://www.drugabuse.gov/publications/drugfacts/marijuana-medicine>.

¹⁰ Drug Enforcement Administration, "Marinol & Cesamet," Drug Enforcement Administration, n.d., https://www.dea.gov/divisions/sea/in_focus/marinol-cessmet.pdf.

¹¹ National Institute on Drug Abuse, "Marijuana as Medicine."

¹² National Institute on Drug Abuse, "Letter From the Director," NIH, n.d., <https://www.drugabuse.gov/publications/research-reports/marijuana/letter-director>.

¹³ Orrin Devinsky et al., "Working Toward a World without Epilepsy," American Epilepsy Society, 2014, https://www.aesnet.org/meetings_events/annual_meeting_abstracts/view/1868751;

Orrin Devinsky et al., "Trial of Cannabidiol for Drug-Resistant Seizures in the Dravet Syndrome," *New England Journal of Medicine* 376, no. 21 (May 25, 2017): 2011–20, <https://doi.org/10.1056/NEJMoa1611618>. Devinsky et al., "Working Toward a World without Epilepsy."

¹⁴ National Institute on Drug Abuse, "Is Marijuana Safe and Effective as Medicine?," NIH, n.d., <https://www.drugabuse.gov/publications/marijuana/marijuana-safe-effective-medicine>.

¹⁵ National Institute on Drug Abuse, "Marijuana as Medicine";

marijuana users may be *more* likely than nonusers to misuse prescription opioids and develop prescription opioid use disorder.¹⁶ Researchers at the National Institute on Drug Abuse (NIDA) and Columbia University, for example, found that marijuana users had 2.2 times higher odds than nonusers of meeting diagnostic criteria for prescription opioid use disorder.¹⁷

If low THC, high cannabidiol pills are approved for treating particular medical conditions, will legalization of medical marijuana lead to wider marijuana use or abuse of other more dangerous drugs? Adolescent use of marijuana, for example, is associated with many adverse later-life consequences so identifying the factors related to adolescent use is of substantial public health importance. Extant research suggests that state passage of medical marijuana legislation (MML) does not result in increased adolescent marijuana use.¹⁸ However, adolescents living in states with legal medical marijuana are more likely to have tried different types of cannabis at a younger age than their counterparts in states with fewer dispensaries.¹⁹ Among adults, the research suggests that in states with MML, there is an increased use of cannabis and a higher incidence of cannabis-use disorders than in those states that have not legalized the drug.²⁰

Opinion polls suggest growing public support for the use of marijuana for medical purposes. A poll conducted Nov. 16-Dec. 5, 2017 of 1013 registered voters in Tennessee indicated that 44% favored allowing marijuana for medical uses only, up two percentage points from a comparable poll a year earlier.²¹ However, only about a third of respondents in these polls supported legalizing marijuana for both medical and recreational uses.²²

Outlook

While federal law prohibits the cultivation, possession, or use of marijuana, individuals and businesses that operate under state laws governing marijuana do not appear to be high priority targets for federal law enforcement. Mounting research findings show health benefits of certain CBD oils in marijuana that are beneficial for treatment of chronic pain and nausea

Laurel Thomas, “Medical Marijuana Reduces Use of Opioid Pain Meds, Decreases Risk for Some with Chronic Pain,” University of Michigan News, March 22, 2016, <http://ns.umich.edu/new/releases/23622-medical-marijuana-reduces-use-of-opioid-pain-meds-decreases-risk-for-some-with-chronic-pain>.

¹⁶ National Institute on Drug Abuse, “Marijuana Use Is Associated with an Increased Risk of Prescription Opioid Misuse and Use Disorders,” NIH, September 26, 2017, <https://www.drugabuse.gov/news-events/news-releases/2017/09/marijuana-use-associated-increased-risk-prescription-opioid-misuse-use-disorders>.

¹⁷ National Institute on Drug Abuse.

¹⁸ Deborah S Hasin et al., “State Medical Marijuana Laws and Adolescent Marijuana Use in the United States: 1991 - 2014,” *The Lancet Psychiatry* 2, no. 7 (July 2015): 601–8, [https://doi.org/10.1016/S2215-0366\(15\)00217-5](https://doi.org/10.1016/S2215-0366(15)00217-5).

¹⁹ Jacob T. Borodovsky et al., “U.S. Cannabis Legalization and Use of Vaping and Edible Products Among Youth,” *Drug & Alcohol Dependence* 177 (August 2017): 299–306, <https://doi.org/10.1016/j.drugalcdep.2017.02.017>.

²⁰ Hasin, DS et al., “US Adult Illicit Cannabis Use, Cannabis Use Disorder, and Medical Marijuana Laws: 1991-1992 to 2012-2013,” *JAMA Psychiatry* 74, no. 6 (June 1, 2017): 579–88, <https://doi.org/10.1001/jamapsychiatry.2017.0724>. Illicit cannabis use and cannabis use disorders have increased among US adults, and 28 states have passed medical marijuana laws (MML).

²¹ “Vanderbilt Poll: Tennesseans Optimistic as Trump Era Begins,” Vanderbilt University, December 8, 2016, <https://news.vanderbilt.edu/2016/12/08/vanderbilt-poll-tennesseans-optimistic-as-trump-era-begins/>;

“Vanderbilt Poll: Tennesseans Are More Moderate Than People Think,” Vanderbilt University, December 14, 2017, <https://news.vanderbilt.edu/2017/12/14/vanderbilt-poll-tennesseans-are-more-moderate-than-people-think/>.

²² “Vanderbilt Poll,” December 8, 2016;

“Vanderbilt Poll,” December 14, 2017.

produced from chemotherapy and epileptic seizures. Existing research does not provide sufficient evidence to claim that MML, by itself, leads to the wider abuse of illicit drugs.

In 2017, leaders in the General Assembly established a Joint Ad Hoc Committee on Medical Cannabis to study whether medical marijuana should be legalized. This committee will issue a report to the 2018 session of the 110th General Assembly. It likely will recommend a bill to legalize medical cannabis for qualified patients with specified medical conditions and to create a “seed to sale” tracking regime.²³

²³ Zach Vance, “Faison Close to Finishing Bill That Would Legalize Medical Cannabis in Tennessee,” Johnson City Press, December 1, 2017, <http://www.johnsoncitypress.com/Health-Care/2017/12/01/Cosby-Rep-Faison-plans-to>.