



The Limits of Legalization: Part II

Legal and Private Limitations on Cannabis Use in Maryland

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Overview

- Family Law & Custody
- Private Entity Concerns
 - Employment
 - Housing
- Federal Prohibition
 - Housing
 - Higher Education
- Advancing Cannabis Policy

References with hyperlinks are included at the end of the presentation; specific citations may be found in the slideshow notes, which will be made available after the training.



Cannabis and the Family - Pregnancy

- If a healthcare practitioner detects that a newborn has been exposed to cannabis, they are required to report the parent to the local department of human services.
- Reporting is required even if the parent is a medical cannabis patient.



Cannabis and the Family - Pregnancy

- Upon receiving the report, the Department of Human Services (DHS) must meet with the parent to perform an evaluation, which may result in creation of a **safe care plan**.
 - The safe care plan is a formal plan developed between the parents and the DHS to address the health and developmental needs of the child.
 - Neither the report nor a safe care plan by themselves create a presumption that the child has been or will be abused or neglected.
 - However, the process does expose the parents to increased state supervision and intervention, which could lead to loss of custody for substance misuse or other reasons.



Cannabis and the Family – Custody and Fostering

- Custody:
 - Cannabis use by itself does not constitute child neglect unless it harms or risks harm to the child.
 - Cannabis abuse could play into a custody determination if it is severe enough to impact the “best interest of the child”; i.e., substance misuse prevents a parent from meeting the needs of the child.
- Fostering:
 - Foster parent regulations require a home that does not expose children to secondhand smoke and where drugs are stored safely.





Private Entity Limitations



Employment

- Maryland is an “at will” employment state.
- Employers have the right to require drug testing and can set their own workplace policies for legal and illegal drug use.
- Some states have specific public policies prohibiting the firing of employees for legal cannabis use outside work hours.
- Maryland has **not** adopted this policy; employees may be fired for legal cannabis use outside of work hours.



Housing

- Leases and condominium agreements may have a no-smoking clause.
 - Violation can result in lease termination and eviction.
- Smoking that interferes with a neighbor may create liability for a “private nuisance” claim.
 - Can expose the smoking individual to civil legal liability.





Federal Law Limitations



Housing and Federal Benefits

- Because cannabis is illegal under U.S. federal law, Housing Choice Vouchers (HCVs) and other federally subsidized housing are denied to individuals who use cannabis, whether medically or recreationally.
- HCV/Section 8 programs are administered by state offices but are federally funded.
- *Bloch v. Department of Housing and Urban Development* – a Federal court dismissed request to force the Department of Housing and Urban Development to fund housing for medical cannabis users despite a state court order that the housing agency grant a voucher.



Higher Education

- Colleges and universities can enforce cannabis prohibitions against students.
- Federal law requires institutions that receive federal funds to prohibit illicit drug use by students (including cannabis).
 - Drug Free Schools and Communities Act of 1989



Firearm Possession

- The Federal Gun Control Act, 18 U.S.C. § 922(g)(3), prohibits anyone who is an "unlawful user of or addicted to any controlled substance" from shipping, transporting, receiving, or possessing firearms or ammunition.
- As this is a federal law, any cannabis use (medical or recreational) qualifies as unlawful.



Addressing Legalization Limits

Possible Avenues for Policy Change



Addressing Legalization Limits – Federal Prohibition

- Proposed federal rescheduling from Schedule I to Schedule III.
 - Schedule I drugs are considered to have no currently accepted medical use and a high potential for abuse.
 - Schedule III drugs are considered to have a medical use and moderate to low potential for dependence.
- Rescheduling to Schedule III would create a significantly easier process for THC and CBD medications to receive Food and Drug Administration (FDA) approval.
- Individuals taking FDA-approved cannabis-based medications would be able to access federal programs; however, cannabis acquired outside of the DEA-regulated system would still be illegal and block access.



Addressing Legalization Limits - State Protections

- State law can limit the scope of institutional drug policies (to a certain extent).
- For example, employment protections for outside-of-work cannabis use.
- Requires balancing the right of individuals to use cannabis against the right of individuals to not be exposed to cannabis.
 - For example, housing policies that prohibit secondhand smoke promote public health, but overbroad prohibitions of cannabis use restrict housing access for cannabis users who consume cannabis responsibly.



Questions?

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Citations – Court Cases

- Kramer v. Mayor & City Council of Baltimore, 124 Md. App. 616 (Md. App. Ct. 1999).
- Schuman v. Greenbelt Homes, Inc., 212 Md. App. 451 (Md. App. Ct. 2013).
- Bloch v. Department of Housing & Urban Development, 2024 WL 3029135 (W.D. Penn. 2024).



Citations – Statutes and Regulations

- Md. Fam. Law § 5-704.2.
- Md. Code Regs. 07.02.25.04, - 08.
- 18 U.S.C. § 922(g)(3).
- 20 U.S.C. § 1011i.
- 24 C.F.R. § 5.854.

