

## Marijuana Consequences in Massachusetts

*Don't believe the hype. Legalization and medical marijuana are not invitations for youth use or adult misconduct. Know the facts . . .*

| Behavior  | Law          | Potential Penalty  |
|---|--------------|--|
| <p><b>Sell, or intend to sell, any amount of marijuana anywhere</b><br/>Only a business in possession of a CCC issued license may sell.</p>   | 94C, § 32C   | Immediate <u>arrest</u> & up to 2 years in jail, and/or fine up to \$5,000. <sup>1</sup>   |
| <p><b>Sell, or intend to sell, any marijuana within 300' of a school or within 100' of a public park</b></p>  | 94C, § 32J   | Immediate <u>arrest</u> & <i>mandatory minimum</i> 2 years in jail, and fine up to \$10,000.   |
| <p><b>Illegal gift is criminal distribution</b><br/>Legal gift=(1) age 21-to-21 transfer; (2) 1 oz (5 grams concentrate) or less; (3) for no value — e.g., barter, delayed, sham transaction; and (4) no advertising or promotion. 94G, § 7(a)(4).</p>  | 94C, § 32C   | Immediate <u>arrest</u> & up to 2 years in jail, and/or fine up to \$5,000.<br><br>[Chapter 55 of Acts of 2017, § 52 warns that any gift of marijuana or products in conjunction with sale of another item is criminal.]   |
| <p><b>Sell, or intend to sell, paraphernalia to youth under 21</b><br/>[This includes pipes, bong, grow lamps or other devices.]</p>  | 94C, § 32I   | Immediate <u>arrest</u> & up to 2 years in jail, and/or fine up to \$5,000. [Actual sale to minor under 18 is a felony of up to 5 years in prison.]  |
| <p><b>Social host law</b><br/>Any person of any age may not intentionally supply, provide or <i>allow</i> (i.e., consciously aware of activity on property) marijuana, marijuana products or accessories (i.e., paraphernalia) to anyone under 21 for their or another's use. Only exceptions are child or grandchild on premises owned or controlled by suspect; or sale or delivery of medical marijuana pursuant to G.L. Chapter 94I.</p>        | 94G, § 13(i) | <u>Arrest</u> for breach in presence; otherwise complaint application. Up to 1 year in jail, and/or fine up to \$2,000.<br><br>[Note: <i>Comm. v. Kneram</i> , 63 Mass. App. Ct. 371 (2005) (offender may be a minor for social host violation). Also, 94G, § 2(b) prohibits any "knowing transfer" of marijuana, products or accessories to anyone under 21 with no qualifications or exemptions.]  |
| <p><b>Homemade marijuana concentrate</b><br/>No one may process marijuana with a flammable liquid or gas to create "dabs" or any other concentrate or product. Only exceptions are products made with alcohol <u>or</u> CCC manufacturing license. 94G, § 2(c).</p>   | 94C, § 32C   | Immediate <u>arrest</u> & up to 2 years in jail, and/or fine up to \$5,000.<br><br>[Note: 94C, § 1 does not allow criminal prosecution of an individual who prepares a controlled substance for his own use only.]   |
| <p><b>Criminal cultivation of marijuana at any age</b></p> <ul style="list-style-type: none"> <li>• Even 1 plant is a crime if not at primary residence; or</li> <li>• If growing 13 or more plants at residence. 94G, § 7.</li> </ul> <p>[Note: Medical marijuana cultivation registration is arguably no defense to 13 or more plants because medical exemption allows only enough plants to grow 10 ounces or a 60 day supply continuously.]</p> | 94C, § 32C   | Immediate <u>arrest</u> & up to 2 years in jail, and/or fine up to \$5,000.<br><br><i>Other civil cultivation offenses:</i> <ul style="list-style-type: none"> <li>• Visible homegrow to naked eye from public place <u>\$300 civil ticket</u> and forfeit visible plants. 94G, § 13(a);</li> <li>• 1-6 plants at residence legal if adult [if 7-12, then <u>\$100 civil ticket</u> and forfeit excess plants. 94G, § 13(e)];</li> <li>• 7-12 plants legal if at least 2 adults; may never have more than 12.</li> <li>• 1-12 plants at residence — if under 21, <u>\$100 civil ticket + education class</u>; if not complete class &amp; under 17, then delinquency. 94G, § 13(h).</li> </ul> |

<sup>1</sup> For any potential jail sentence, if the youth is under 18, the sentence is served at a Department of Youth Services (DYS) facility, alternative placement, or through some probation arrangement. Minors under 18 are not sentenced to adult jails. Those individuals 18 and over are considered adults and may be incarcerated.

| Behavior  | Law          | Potential Penalty   |
|---|--------------|---|
| <p><b>Operate under the influence of marijuana</b><br/>           Medical marijuana and/or legal possession are no defense; no driver may be “high” to any degree that diminishes their ability to operate safely.</p>  | 90, § 24     | Immediate <u>arrest</u> & 2 years probation + education program + license suspension of <i>at least</i> 90 days and probably 1 year + fines and fees of <i>at least</i> \$500. <i>Comm. v. Gerhardt</i> , SJC September 2017 (“roadside assessments” may show driver’s lack of balance, reflex, and mental clarity as a result of marijuana). |
| <p><b>Open container of marijuana in vehicle</b><br/>           Open container: Any package with marijuana or marijuana products with seal broken <u>or</u> some contents removed or consumed found within passenger compartment (not trunk or <i>locked</i> glove box).</p>  | 94G, § 13(d) | <p><u>\$500 civil ticket</u> may be issued to the driver and/or passengers of any age.<sup>2</sup></p> <p>[Odor, smoke or visible signs of use sufficient to stop vehicle. This law overrules <i>Comm. v. Rodriguez</i>, 472 Mass. 767 (2015).]</p>   |
| <p><b>Possession of 2 ounces or less in private or public by youth under 21<sup>3</sup></b><br/>           Physical <i>and</i> internal possession are covered – i.e., “being high” is enough.</p>  | 94C, § 32L   | <p>If 18, 19 or 20: <u>\$100 civil ticket</u>.</p> <p>If under 18: <u>\$100 civil ticket + 4 hour drug class + 10 hours of community service</u>.<sup>4</sup> <i>If fail to complete</i>, then fine increases to \$1,000 and is assessed against parents too, plus case may be filed in juvenile court. See 94C, § 32N.</p>                   |
| <p><b>Criminal public possession of over 2 ounces at any age</b></p>  | 94C, § 34    | Immediate <u>arrest</u> & up to 6 months in jail, and/or \$500 fine.  |
| <p><b>Criminal private possession</b></p> <ul style="list-style-type: none"> <li>• Under 21 criminal possession also if over 2 ounces in private;</li> <li>• 21 and over may possess up to 10 ounces in their residence;</li> <li>• 21 and over criminal possession if over 10 ounces in residence that was not derived from a legal homegrow. See 94G, § 7(a)(2).</li> </ul> | 94C, § 34    | <p>Immediate <u>arrest</u> &amp; up to 6 months in jail, and/or \$500 fine.</p> <p><i>Other civil offense:</i></p> <ul style="list-style-type: none"> <li>• Over 1 ounce (from any source) not properly secured in locked container. <u>\$100 civil ticket</u> and forfeit unsecured excess. 94G, § 13(b).</li> </ul>                         |
| <p><b>Possession of any amount on elementary or secondary school property or at a school-related event</b></p>  | 71, § 37H    | <u>Suspension from school</u> and other conditions imposed by administration. This may be in addition to any other civil or criminal penalty allowed by law.  |
| <p><b>Public consumption or smoking marijuana where tobacco smoking prohibited</b> 270, § 22 prohibits tobacco smoking in many public private areas — e.g., workplace, public buildings, restaurants, hotels, etc. May smoke in licensed marijuana bar.</p>   | 94G, § 13(c) | <p><u>\$100 civil ticket</u></p> <p>[Note: City ordinance enacted under 94C, § 32L may authorize arrest in presence for public consumption and \$300 fine. Town bylaw may not authorize arrest per Atty General, but may impose \$300 fine.]</p>  |
| <p><b>Consumption on private property after being warned by owner or person in control</b></p>  | 266, § 120   | <u>Arrest</u> if still on the premises when officer arrives; otherwise complaint application. This is trespassing, penalized by up to 30 days in jail, and/or fine up to \$100.   |

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<sup>2</sup> All civil tickets must be written on a city ordinance or town bylaw ticket. The law does not allow the use of a motor vehicle citation. 94G, § 13(g).

<sup>3</sup> The possession of a valid medical marijuana card changes the rules related to possession significantly. See G.L. Chapter 94I and 105 CMR 725.000 et. seq.

<sup>4</sup> We strongly suggest that communities offer the class and monitor the service requirement through their local diversion program or another drug prevention organization.