The 420 on Pot: What You Need To Know Post Legalization

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I. MARIJUANA LAWS BEFORE AND AFTER PROPOSITION 64

The legalization of recreational marijuana in Proposition 64 will likely have farther reaching societal effects than the far reaching effects it has already had on state law. This outline sets forth the statutory provisions of federal and state laws prior to Proposition 64, as well as after passage of the proposition with a focus on the laws impacting schools, minors, and school employees.

A. Marijuana Laws Before Prop 64

1) Federal Law
   a) Criminal Laws
      i) Marijuana is a Schedule I listed controlled substance per 21 USC § 812. Possession is punishable by a criminal fine and jail time under 21 USC § 844 (not more than 1 year in jail and/or a $1,000.00 fine for a first time offense), as well as a civil penalty under 21 USC § 844a (not more than $10,000) for personal use amounts.
   b) Family & Medical Leave Act (FMLA)
      i) Use of a controlled substance does not qualify for FMLA leave (29 CFR §825.119(a)).
      ii) If the employer has an established policy applied in a non-discriminatory manner that has been communicated to all employees that provides under certain circumstances an employee may be terminated for substance abuse pursuant to that policy, the employee may be terminated whether or not the employee is presently taking FMLA leave (29 CFR § 825.119(b)).
   c) Americans with Disabilities Act (ADA)
      i) ". . . a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs . . ." (42 USC §12114).
2) California Law
   a) Health & Safety Code
      i) Possession Violations
         (1) Possession of any amount of concentrated cannabis by anyone was punishable by up to a $500.00 fine and/or up to one year in state prison (HSC § 11357(a)).
         (2) Possession of <u>less</u> than 28.5 g of marijuana by anyone was punishable by a fine up to $100.00 for a first offense (HSC § 11357(b)).

(3) Possession of more than 28.5 g of marijuana by anyone was punishable by up to six months in state prison and/or by a fine up to $500.00 (HSC § 11357(c)).
(4) Possession of up to 28.5 g of marijuana by anyone over 18 years on a K - 12th grade school campus when the school is open for classes or school-related programs was punishable by up to a $500.00 fine and/or up to 10 days in county jail (HSC § 11357(d)).
(5) Possession of up to 28.5 g of marijuana by anyone under 18 years on a K – 12th grade school campus when the school is open for classes or school-related activities was subject to a fine up to $250.00 for a first offense, and up to a $500.00 fine or commitment to a juvenile hall, ranch, camp, forestry camp or secure juvenile home for up to 10 days for a second or subsequent offense (HSC §11357(e)).

ii) Arrest and/or Conviction Records
(1) Records of any court or state agency pertaining to the arrest or conviction of any person for a violation of 2 through 5 above regarding "Possession," above, for offering, attempting or actually transporting or for giving away or offering to give away up to 28.5 g of marijuana shall not be kept beyond two years from the date of conviction, or date of arrest if there was no conviction (HSC § 11361.5(a)).
(a) Records of persons under 18 possessing up to 28.5 g on a school campus in violation of 5, above, were destroyed when the person reached 18 (HSC § 11361.5(a)).
(2) Any person arrested or convicted of any of the violations immediately above may, two years following such conviction or arrest, indicate in response to any question pertaining to his prior criminal record that he was not arrested or convicted (HSC § 11361.7(c)).

iii) Growing or Processing Violations
(1) Any marijuana was punishable by jail in a state prison (HSC § 11358)).

iv) Possession for Sale Violations
(1) Any marijuana was punishable by jail in a state prison (HSC §11359)).

v) Transporting, Selling or Giving Away Violations
(1) Any marijuana was punishable by two, three or four years in state prison, unless the amount is not more than 28.5 g in which case it was punishable by up to a $100.00 fine. (HSC § 11360).

vi) Furnishing to, or using minors violations
(1) Anyone 18 or over who employs or uses a minor to transport, sell or give away any marijuana to a minor, or who offers to give or gives a minor under 14 any marijuana is punishable by three, five or seven years in state prison (HSC § 11361(a)).
(2) Anyone 18 or over who offers to give or gives a minor 14 or older any marijuana in punishable by three, four or five years in state prison (HSC § 11361(b)).

b) Compassionate Use Act (i.e. Health & Safety Code §§ 11362.5 and 11362.7, et seq.)
i) Proposition 215 passed in 1996 provided a woefully inadequate Health & Safety Code statute to ensure that patients who obtain and use, and their primary caregivers who obtain, marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

ii) SB420 – In 2003, the California Legislature fleshed out the workings of a Medical Marijuana Program for marijuana users and cultivators after much confusion over how to interpret Proposition 215.
(1) Patients and primary caregivers could annually apply for Medical Marijuana Identification cards (HSC § 11362.745) to use marijuana to treat serious medical conditions, or any other chronic or persistent medical symptoms that substantially limit at least one major life activity or if not alleviated may harm the patient's safety or physical or mental health. (HSC § 11362.7(h).) The card allowed for the possession of up to 8 ounces of dried marijuana, or more with a doctor's recommendation. (HSC § 11362.77.) The Act also regulated the cultivation and distribution of medical marijuana without profit. (HSC § 11362.765).
(2) SB420 did not authorize the smoking of medical marijuana in or within 1,000 feet of a school (unless within a residence), nor on a school bus. (HSC § 11362.79.)
(3) Does not require accommodation of the use of medical marijuana on the property or premises of any place of employment or during the hours of employment. (HSC § 11362.785.)
(4) A 2010 amendment to the Compassionate Use Act limited the location of businesses engaged in possessing, cultivating or distributing medical marijuana to at least 600 feet away from a school. (HSC § 11362.768.)
iii) The CUA does not generally address the smoking or ingesting of medical marijuana in public.

c) Fair Employment & Housing Act (i.e., Gov't Code § 12900, et seq.).
i) Mental disability – does not include disorders resulting from the current unlawful use of controlled substances or other drug. (Gov't Code § 12926(j)(5).)
ii) Physical disability – does not include disorders resulting from the current unlawful use of controlled substances or other drug. (Gov't Code § 12926(m)(6).)

d) *Ross v. Ragingwire Telecommunications, Inc.* (2008) 42 Cal.4th 920 - Nothing in the text or history of the Compassionate Use Act suggested the voters intended the measure to address the respective rights and duties of employers and employees (as opposed to protecting patients and caregivers from criminal prosecution). Under California law, an employer may require pre-employment drug tests and take illegal drug use (i.e., illegal marijuana use under Federal law) into consideration in making employment decisions.

B. Marijuana Laws After Prop 64

1) Federal Law
a) Criminal laws – no change
b) Family and Medical Leave Act - no change
c) Americans with Disabilities Act – no change

2) California Law
a) Health & Safety Code
i) "California Cannabis Constitution" – additions
(1) Anyone 21 years or older may possess and use up to 28.5 g of marijuana and/or 8 g of concentrated cannabis and grow up to six plants. (HSC §§ 11362.1.)

ii) Clarifications - additions
   (1) It does not permit using marijuana products in public. (HSC § 11362.2(a)(1).)
   (2) It does not permit smoking of marijuana products within 1,000 feet of a school while children are present, unless in or on the grounds of a private residence and the smoke cannot be detected on school grounds. (HSC §11362.3(a)(3).)
   (3) It does not permit using or possessing an open container of marijuana products while operating a vehicle (HSC § 11362.3(a)(7) & (4), respectively.
      (a) It does not repeal Section 21352 of the Vehicle Code making unlawful the operation of a vehicle while using or under the influence of marijuana products. (HSC § 11362.45(a).)
   (4) It does not permit possessing or using marijuana products upon school grounds while children are present. (HSC § 11362.3(a)(5)).
   (5) It does not permit using marijuana products in the passenger compartment of a vehicle unless the vehicle is under hire and no one under 21 is present. (HSC § 11362.3(a)(8).)
   (6) It does not repeal the rights and obligations of public and private employers to maintain a drug free workplace (pursuant to Gov't Code § 8350, et seq., and 41 USC § 701, et seq.), or require an employer to accommodate use, possession, sale or growth of marijuana in the workplace, or affect employers' policies prohibiting the use of marijuana by employees or applicants (HSC § 11362.45(f)), or the ability of local government agency to restrict conduct within their own buildings. (HSC § 11362.45(g).)

iii) Possession violations - changes
   (1) Possession of <u>not more than 28.5 g</u> of marijuana and/or 4 g concentrated cannabis, or both
      (a) by anyone <u>under 18</u> is punishable by 4 hours of drug education counseling and up to 10 hours community service for a first offense and 6 hours drug education and up to 20 hours community service for subsequent violations. (HSC § 11357(a)(1).).
      (b) by anyone <u>18 to under 21</u> is punishable by a $100 fine. (HSC § 11357(a)(2).)
   (2) Possession of <u>more than 28.5 g</u> of marijuana or more than 4 g concentrated cannabis, or both
      (a) by anyone <u>under 18</u> is punishable by 8 hours of drug education counseling and up to 40 hours community service for a first offense and 10 hours of drug education counseling and up to 60 hours of community service for subsequent violations. (HSC §11357(b)(1).)
      (b) by anyone <u>18 or over</u> is punishable by up to six months in county jail and/or $500 fine. (HSC §11357(b)(2).)
   (3) Possession of up to 28.5 g of marijuana or up to 4 g concentrated cannabis on a K - 12th grade school campus when the school is open for classes or school-related programs
      (a) by anyone <u>18 of over</u> is punishable by up to a $250.00 fine for a first offense, and $500 and/or up to 10 days in county jail for subsequent offenses. (HSC § 11357(c)).

(b) by anyone under 18 is punishable by enrollment in 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations. (HSC § 11357(d).).

iv) Arrest and/or conviction records - changes

(1) Records of any court or state agency pertaining to the arrest or conviction of any person for "Possession", immediately above, or for offering, attempting or actually transporting or for giving away or offering to give away up to 28.5 g of marijuana, or of a person under 18 regarding the use, possession, sale or furnishing of synthetic cannabinoid compounds will not be kept beyond two years from the date of conviction, or date of arrest if there was no conviction. (HSC § 11361.5(a).)

(a) Records of persons under 18 possessing up to 28.5 g on a school campus in violation of 5, above, will be destroyed when the person reaches 18. (HSC § 11361.5(a).)

(2) Any person arrested or convicted of any of the violations immediately above may, two years following such conviction or arrest, indicate in response to any question pertaining to his prior criminal record that he was not arrested or convicted. (HSC § 11361.7(c).)

v) Growing or processing violations - changes

(1) Of any marijuana plants by anyone under 18 is punishable by enrollment in 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations. (HSC § 11358)(a)).

(2) Up to six marijuana plants by anyone 18 to under 21 is punishable by a $100 fine. (HSC § 11358)(b).)

(3) More than six marijuana plants by anyone 18 or over is punishable by up to six months in county jail and/or a $500 fine, or pursuant to Penal Code §1170(h) if applicable. (HSC §11358)(c & d).)

vi) Possession for sale violations - changes

(1) By anyone under 18 is punishable by enrollment in 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations. (HSC §11359)(a).)

(2) By anyone 18 or over is punishable by up to six months in county jail and/or a $500 fine, or pursuant to Penal Code § 1170(h) if applicable. (HSC § 11359)(b & c).)

(3) By anyone 21 or over who employs or uses anyone under 21 to transport, sell or give away marijuana is punishable by imprisonment pursuant to Penal Code § 1170(h). (HSC §11359)(d).)

vii) Transporting, selling or giving away violations - changes

(1) By anyone under 18 is punishable by enrollment in 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations. (HSC § 11360(a)(1).)

(2) By anyone 18 or over is punishable by up to six months in county jail and/or a $500 fine or pursuant to Penal Code § 1170(h), if applicable. (HSC § 11360(a)(2 & 3).)
(3) Up to 28.5 g of marijuana by any person is punishable by up to a $100.00 fine. (HSC §11360(b).)

viii) Furnishing to, or using minors violations – no change

ix) Marijuana product usage and cultivation violations – additions
(1) Use of marijuana products in public
(a) by anyone 18 or over is punishable by a $100 fine. (HSC § 11362.4(a).)
(b) by anyone under 18 is punishable by 4 hours of drug education counseling and up to 10 hours community service. (HSC § 11362.4(a).)
(2) Smoking marijuana where tobacco is prohibited, smoking marijuana within 1,000 feet of a school when children are present, or possessing an open container while operating a motor vehicle
(a) by anyone 18 or over is punishable by a $250 fine. (HSC § 11362.4(b)).
(b) by anyone under 18 is punishable by 4 hours of drug education counseling and up to 20 hours of community service. (HSC § 11362.4(b)).
(3) Possessing or using marijuana products on school grounds when children are present
(a) by anyone 18 or over is punishable by up to a $250.00 fine for a first offense, and $500 and/or up to 10 days in county jail for subsequent offenses. (HSC § 11362.4(c)).
(b) by anyone under 18 is punishable by enrollment in 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations. (HSC § 11362.4(c).)
(4) Cultivation of more than 6 marijuana plants, or cultivation in violation of local ordinances, or keeping more than 28.5 g of marijuana and the marijuana produced from 6 plants on the grounds of a single private residence
(a) by anyone 18 or over is punishable by a $250.00 fine.
(b) by anyone under 18 is punishable by an 8 hours drug education counseling and up to 40 hours community service for a first offense, and 10 hours of drug education counseling and up to 60 hours community service for subsequent violations.

b) Compassionate Use Act – no change pertinent to schools or children
i) Medical marijuana users will need a new physician's recommendation that complies with new requirements under the Business and Professions Code § 2525, et seq., among a few other small changes.

c) Fair Employment & Housing Act – no change pertinent to schools or children

d) *Ross v. Ragingwire Telecommunications, Inc.* – still good law, so no change

Statutory oddity – HSC § 11362.9 regarding California Marijuana Research Program at the University of California is the section number that ends Article 2 on Marijuana. However, Article 2.5 on the Medical Marijuana Program picks up at HSC § 11362.7 and goes through HSC § 11362.85.

II. MEDICAL MARIJUANA CARDS AND STUDENTS

A. Development of California's Medical Marijuana Law

In 1996, California's voters passed Proposition 215 (Compassionate Use Act), which added Section 11362.5 to the Health and Safety Code. That statute authorizes the medical use of marijuana to treat a wide array of illnesses by creating an express exception to the state's criminal laws which otherwise prohibit the possession, use, cultivation and transportation of marijuana. More precisely, the criminal prohibitions against marijuana under California law no longer apply to a qualified patient or his/her primary caregiver who possess it for medical purposes upon the recommendation and approval of a physician.

Nevertheless, the possession, use, transportation and distribution of marijuana remains illegal under Title 21, section 801, *et seq.*, of the United States Code (federal Controlled Substances Act). Federal law contains no exemption for medical necessity. (See 88 Ops. Cal. Atty. Gen. 113 (2005).)

In 2003, the state legislature enacted Sections 11362.7-11362.83 of the Health and Safety Code which are designed to facilitate the implementation of Proposition 215. Those provisions are intended to provide a uniform system of identifying qualified patients and caregivers and to avoid unnecessary arrest through the issuance of identification cards by the California Department of Public Health. A medical marijuana identification card is readily available evidence that the qualified patient or caregiver may, within certain parameters, possess, grow, transport and/or use medical marijuana in California

Rule: Schools may prohibit and discipline students for the use/influence/possession of marijuana at school even if, in a particular instance, the student's possession or use may be compliant with California's medical marijuana program.

Rationale: (1) neither the medical marijuana statutes nor any related case law expressly or impliedly preclude schools from prohibiting/imposing student discipline for the use/influence/possession of medically prescribed marijuana; (2) the California Supreme Court, in *Ross v. Ragingwire Telecommunications, Inc*. 42 Cal.4th 920 (2008) has ruled that medical marijuana law is designed only to exempt qualified patients and caregivers from criminal arrest and prosecution by state and local law enforcement; (3) there are sound pedagogical reasons for continuing the prohibition against the of use/influence/possession of marijuana at school even if, in a particular instance, it has been duly prescribed by a physician and valid medical marijuana identification card issued; and (4) Section 11362.79 of the Health and Safety Code expressly precludes smoking of medical marijuana at or within 1000 feet of the grounds of a school.

B. The Adult Use of Marijuana Act and Students

The California voters passed Proposition 64 - The Adult Use of Marijuana Act - on November 8, 2016. The Act legalized the purchase, possession and use of recreational

marijuana and legalized growing marijuana plants for personal use by adults 21 years old or older.

But, it remains illegal to smoke or ingest marijuana in public, to smoke marijuana anywhere smoking tobacco is banned or on the grounds of a school, youth center or daycare. Medical marijuana cannot be used within 1,000 feet of a school, youth center, daycare or school bus unless in a private residence and the use is undetectable by others outside the residence.

C. Medical Marijuana: School Personnel Orally Administering Marijuana Prescribed in Oil Form to Students During the School Day in Accordance With a Physician's Instructions

A 2015 New Jersey State Educational Agency decision involving an IDEA student with multiple disabilities held that the school district was not obligated to administer medicinal marijuana even though a physician prescribed it four times a day. The agency explained that (i) under state law, only patients, primary caregivers, and qualifying physicians were permitted to administer medical marijuana; (ii) there existed a conflict between state and federal law, so it is still illegal to possess marijuana under federal law; and (iii) state law still declared school property and 1000 feet around school property to be a drug free zone.

Note: Subsequently, New Jersey (and also Colorado) enacted legislation to permit parents to administer medicinal marijuana to their children at school.

D. Conduct Prohibited by Education Code sections 48900 (C) and (D)

Possession, use, sale, furnishing or being under the influence of a controlled substance, alcohol or intoxicant of any kind is prohibited.

Offering, arranging or negotiating the sale of a controlled substance, alcohol or intoxicant of any kind is prohibited.

Selling, delivering or furnishing any substance representing it to be a controlled substance, alcohol or other intoxicant is prohibited.

Controlled substances are listed in the Health and Safety Code. Marijuana is listed on Schedule 1 along with opiates, opium derivatives and hallucinogenic substances. (Health & Safety Code § 11053.)

E. Marijuana: Suspension, Expulsion Recommendations And Expulsion Orders

1. Suspension from School

Section 48900.5 provides that a student may be suspended from school, up to five school days, for possession, use, sale, furnishing or being under the influence of a

controlled substance, alcohol or intoxicant, of any kind, including possession of any quantity of marijuana.

2. Law Enforcement Reporting Requirement

Section 48902 requires a school principal to notify law enforcement in cases of student misconduct involving, among other types of conduct, (i) use, possession, or sale of drugs or alcohol, including marijuana; and also (ii) arranging for the sale of a substance represented to be drugs or alcohol, including marijuana.

3. Teacher Notification Requirement

Section 49079 requires that a student's teacher(s) be notified by the school district whenever the student has engaged in or is reasonably suspected to have engaged in misconduct, at any time or any place.

4. Expulsion Recommendations for Use or Possession

By Section 48915(a)(3), the Legislature requires that school principals recommend expulsion in every case involving the unlawful possession of a controlled substance, including more than one ounce of marijuana, unless there is a circumstance particular to an individual case that makes an expulsion recommendation inappropriate or unless alternative means would correct the misconduct.

Exception: This legislative mandate does not apply to a possession case where: (i) the controlled substance is marijuana; (ii) the amount is one ounce or less; (iii) the charge is possession of marijuana; and (iv) it is a first offense.

That means if a case meets criteria (i) - (iv) the Legislature does not require the school principal to recommend expulsion, although he or she may nevertheless do so. The decision to do so is up to his/her professional judgment as an educator. But, he/she must consider whether a particular circumstance makes an expulsion recommendation inappropriate or whether an alternative means would correct the misconduct.

Note that the rule requiring an expulsion referral for unlawful possession of a controlled substance does not apply to "medication prescribed by a physician for the pupil."

5. Expulsion Orders for Use or Possession

Section 48915(b) legislatively mandates that a student cannot be expelled for possession, use or being under the influence of any controlled substance, alcohol or other intoxicant (including marijuana) unless either (i) "other means of correction are not feasible or have repeatedly failed to bring about proper conduct" or (ii) "due to the nature of the act, the presence of the student causes a continuing danger to the physical

safety of the pupil or others." This legislative prohibition is an express limitation on the authority of the governing board to issue expulsion orders.

6. Sale of Marijuana

Zero tolerance offenses in the Education Code include the sale of a controlled substance. For the sale of marijuana, Section 48915(c) requires that the school principal immediately suspend and recommend expulsion. Upon a finding by the governing board that the student perpetrator has sold marijuana, the governing board must expel the student for one year and refer the student to an educational program:

- Prepared to accommodate pupils who exhibit discipline problems.

- Not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

- Not housed at the school site attended by the pupil at the time of suspension.

7. IDEA Special Education Students - Manifestation Determination Review

Federal law governs the authority of school districts to expel disabled children. (20 USC § 14156(k)(1)(E).) A disabled child may not be suspended for more than 10 school days or expelled from school when the misconduct is a manifestation of his/her disability. If the misconduct is not a manifestation of the child's disability, the child may be suspended and expelled from school to the same extent and using the same process as would apply in the case of a general education child.

8. IDEA Special Education Students - Special Circumstances Removal

School personnel may remove a student with IDEA disability status to an interim alternative educational setting for a maximum of 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student knowingly possesses, uses, sells or solicits the sale of a controlled substance (including marijuana) while at school, on school premises or at a school function. (20 USC § 1415(k)(1)(G); 34 CFR § 300.530(g)(i).)

Marijuana is a Schedule 1 controlled substance pursuant to the federal Controlled Substances Act at 21 USC § 812(c).

The Special Circumstances Removal rule does not apply when the controlled substance is legally possessed or is being used under the supervision of a licensed healthcare professional or that is legally possessed or used under any provision of federal law. (34 CFR § 300.530 (i)(2).)

Discipline of students with disabilities and students without disabilities must be equal. The Office for Civil Rights ("OCR") has made it clear that a district may not impose a disciplinary sanction upon a student with a disability if the district would not have imposed the same sanction on a non-disabled student under the same circumstances. (See, e.g., OCR Staff Memorandum, 16 IDELR 491 (OCR 1989) and OCR Memorandum, 307 IDELR 07 (OCR 1989).)

The Special Circumstances Removal rule does not apply to special education students who are only eligible under Section 504. There are no equivalent procedures under Section 504.

The Special Circumstance Removal rule apparently does not apply to the use of marijuana prior to coming to school, off of school grounds during lunch, or after leaving school grounds for home. There does not appear to be any reliable guidance from case decisions nor any regulatory direction one way or the other.

9. Section 504 Special Education Students - Manifestation Determination Review

OCR interprets Section 504 as barring removal of a student with a disability for more than 10 consecutive school days or a pattern of shorter removals that total more than 10 school days, if the misconduct is related to the student's disability. (34 CFR § 104.36 and OCR Memorandum, 307 IDELR 07 (OCR 1989).)

Discipline that will result in a significant change of placement generally requires a determination by a team of knowledgeable people that the misconduct was not a manifestation of the student's disability. (34 CFR § 104.36.)

A significant change of placement means suspension or expulsion of a student with a disability for more than 10 consecutive school days or a pattern of shorter removals that total more than 10 school days.

10. Section 504 Special Education Students Who Are *Currently Engaged* in the *Illegal Use* of Drugs - Manifestation Determination Review is Not Needed in Order to Discipline for Possession or Use

Section 504 excludes from eligibility students who are ***currently engaged*** in the ***illegal use*** of alcohol or drugs (as opposed to past use) when the school district ***acts on the basis of such use***. (29 USC § 705 (20)(C)(i).) Section 504 allows a school district to discipline Section 504 students who are current drug users for use or possession of drugs in violation of a school district's disciplinary code. (29 USC § 705(20)(C)(iv).)

Because a Section 504 student who is ***currently engaged*** in the ***illegal use*** of drugs is not considered a student with a disability under Section 504 when a school district ***acts on the basis of such use***, the student can be disciplined for that conduct under the district's regular code of student conduct and without a manifestation

determination hearing. OCR has stated that the "clear implication" from the legislative history of the statute is that an individual who is engaging in the illegal use of drugs loses his/her right to educational services under Section 504, even if he is otherwise disabled." (OCR Staff Memorandum, 17 IDELR 609 (OCR 1991).)

Under Section 504, possession/use of illegal drugs does not result in a loss of the Section 504 procedural protections (such as a manifestation determination review) unless the disabled student is also currently engaged in the use of illegal drugs. (29 USC § 705(20)(C)(iv).) That a student is "currently engaged" in the illegal use of drugs may be established through student confessions or by his/her juvenile record, if available. "Current usage" may also be inferred when a student possesses or distributes illegal drugs at school. Both addiction or recreational use may suffice. Look at when the student last used and consider when the student may likely use again to decide whether the use is current in the temporal sense. (OCR Senior Staff Memorandum, 19 IDELR 859 (OCR 1992).)

Note that a Section 504 student who is ***currently engaged*** in the ***illegal use*** of drugs, but is being disciplined for misconduct other than use or possession, retains his/her manifestation determination review rights.

Note that a Section 504 student who is ***currently engaged*** in the ***illegal use*** of drugs, but is being disciplined for selling drugs (as opposed to use of possession), probably retains his/her manifestation determination review rights. The term "use" seems to mean personal use. Students who are caught selling drugs often deny that they are selling, but readily admit to possession for personal use.

11. Section 504 Special Education Students Who are *Currently Engaged* in the *Legal Use* of Drugs - Manifestation Determination Review is Needed if Discipline May Result in a Significant Change of Placement.

A 504 disabled student who possesses or distributes marijuana or other controlled substance at school, but has a prescription which allows the student to legally use the substance, is entitled to a manifestation determination review.

HEALTH AND SAFETY CODE - HSC

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651]
(Division 10 repealed and added by Stats. 1972, Ch. 1407.)

CHAPTER 6. Offenses and Penalties [11350 - 11392]
(Chapter 6 added by Stats. 1972, Ch. 1407.)

ARTICLE 2. Marijuana [11357 - 11362.9]
(Article 2 added by Stats. 1972, Ch. 1407.)

11357.

Possession.

(a) Except as authorized by law, possession of not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, or both, shall be punished or adjudicated as follows:

(1) Persons under the age of 18 shall be guilty of an infraction and shall be required to:

(A) 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.

(B) 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.

(2) 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).

(b) Except as authorized by law, possession of more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, shall be punished as follows:

(1) Persons under the age of 18 who possess more than 28.5 grams of marijuana or more than four grams of concentrated cannabis, or both, shall be guilty of an infraction and shall be required to:

(A) 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.

(B) 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.

(2) Persons 18 years of age or over who possess more than 28.5 grams of marijuana, or more than four grams of concentrated cannabis, or both, shall 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.

(c) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished as follows:

(1) A fine of not more than two hundred fifty dollars ($250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars ($500), or by imprisonment in a county jail for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

(d) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, or not more than four grams of concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of an infraction and shall be punished in the same manner provided in paragraph (1) of subdivision (b).

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.1. Note: This section was amended on Nov. 4, 2014, by initiative Prop. 47.)

11357.5.

(a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of a public offense, punishable as follows:

(1) A first offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(2) A second offense is an infraction punishable by a fine not exceeding two hundred fifty dollars ($250) or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding five hundred dollars ($500), or by both that fine and imprisonment.

(3) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(c) As used in this section, the term “synthetic cannabinoid compound” refers to any of the following substances or an analog of any of the following substances:

(1) Adamantoylindoles or adamantoylindazoles, which includes adamantyl carboxamide indoles and adamantyl carboxamide indazoles, or any compound structurally derived from 3-(1-adamantoyl)indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole, N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including, but not limited to, 2NE1, 5F-AKB-48, AB-001, AKB-48, AM-1248, JWH-018 adamantyl carboxamide, STS-135.

(2) Benzoylindoles, which includes any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-

pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, AM-630, AM-661, AM-679, AM-694, AM-1241, AM-2233, RCS-4, WIN 48,098 (Pravadoline).

(3) Cyclohexylphenols, which includes any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent, including, but not limited to, CP 47,497, CP 55,490, CP 55,940, CP 56,667, cannabicyclohexanol.

(4) Cyclopropanoylindoles, which includes any compound structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole, 3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent.

(5) Naphthoylindoles, which includes any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl group, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the naphthyl ring to any extent, including, but not limited to, AM-678, AM-1220, AM-1221, AM-1235, AM-2201, AM-2232, EAM-2201, JWH-004, JWH-007, JWH-009, JWH-011, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-022, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-164, JWH-166, JWH-180, JWH-181, JWH-182, JWH-189, JWH-193, JWH-198, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-258, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414, JWH-415, JWH-424, MAM-2201, WIN 55,212.

(6) Naphthoylnaphthalenes, which includes any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including, but not limited to, CB-13.

(7) Naphthoylpyrroles, which includes any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-030, JWH-031, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373, JWH-392.

(8) Naphthylmethylindenes, which includes any compound containing a naphthylideneindene structure or which is structurally derived from 1-(1-naphthylmethyl)indene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or

(tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-171, JWH-176, JWH-220.

(9) Naphthylmethylindoles, which includes any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including, but not limited to, JWH-175, JWH-184, JWH-185, JWH-192, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199.

(10) Phenylacetylindoles, which includes any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including, but not limited to, cannabipiperidiethanone, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8.

(11) Quinolinylindolecarboxylates, which includes any compound structurally derived from quinolin-8-yl-1H-indole-3-carboxylate by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent, including, but not limited to, BB-22, 5-Fluoro-PB-22, PB-22.

(12) Tetramethylcyclopropanoylindoles, which includes any compound structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent, including, but not limited to, 5-bromo-UR-144, 5-chloro-UR-144, 5-fluoro-UR-144, A-796,260, A-834,735, AB-034, UR-144, XLR11.

(13) Tetramethylcyclopropane-thiazole carboxamides, which includes any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including, but not limited to, A-836,339.

(14) Unclassified synthetic cannabinoids, which includes all of the following:

(A) AM-087, (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-t rimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(B) AM-356, methanandamide, including (5Z,8Z,11Z,14Z)-–[(1R)-2-hydroxy-1-methylethyl]icosa-5,8,11,14-tetraenamide and arachidonyl-1'-hydroxy-2'-propylamide.

(C) AM-411, (6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6 a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

(D) AM-855, (4aR,12bR)-8-hexyl-2,5,5-trimethyl-1 ,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol.

(E) AM-905, (6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(F) AM-906, (6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol.

(G) AM-2389, (6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6 a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1 ,9 diol.

(H) BAY 38-7271, (-)-(R)-3-(2-Hydroxymethylindanyl-4-o xy)phenyl-4,4,4-trifluorobutyl-1-sulfonate.

(I) CP 50,556-1, Levonantradol, including 9-hydroxy-6-methyl-3 -[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenant hridin-1-yl]acetate; [(6S,6aR,9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; and [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate.

(J) HU-210, including (6aR,10aR)-9-(hydroxymethyl)-6,6-d imethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol; [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyl octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-o l and 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol.

(K) HU-211, Dexanabinol, including (6aS, 10aS)-9-(hydroxy methyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-t etrahydrobenzo[c]chromen-1-ol and (6aS, 10aS)-9-(hydroxy methyl)-6,6-dimethyl- 3-(2-methyloctan-2-yl)-6a,7,10,10a-t etrahydrobenzo[c]chromen-1-ol.

(L) HU-243, 3-dimethylheptyl-11-hydroxyhexahydrocannabinol.

(M) HU-308, [(91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2 -yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol.

(N) HU-331, 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-m ethylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1 ,4-dione.

(O) HU-336, (6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,10,10a-t etrahydro-1H-benzo[c]chromene-1,4(6H)-dione.

(P) JTE-907, N-(benzol[1,3]dioxol-5-ylmethyl)-7-methoxy-2-o xo-8-pentyloxy-1,2-dihydroquinoline-3-carboxamide.

(Q) JWH-051, ((6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-y l)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol.

(R) JWH-057 (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-t etrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran.

(S) JWH-133 (6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-t etrahydro -6,6,9-trimethyl-6H-dibenzo[b,d]pyran.

(T) JWH-359, (6aR,10aR)- 1-methoxy- 6,6,9-trimethyl- 3-[(2R)-1 ,1,2-trimethylbutyl]- 6a,7,10,10a-tetrahydrobenzo[c]chromene.

(U) URB-597 [3-(3-carbamoylphenyl)phenyl]-N-cyclohexylcarb amate.

(V) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; OR cyclohexyl [1,1'-biphenyl]-3-ylcarbamate.

(W) URB-754 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-b enzoxazin-4-one.

(X) URB-937 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyc lohexylcarbamate.

(Y) WIN 55,212-2, including (R)-(+)-[2,3-dihydro-5-methyl-3 -(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1 -napthalenylmethanone and [2,3-Dihydro-5-methyl-3-(4-morp holinylmethyl)pyrrolo[(1,2,3-de)-1,4-benzoxazin-6-yl]-1-n apthalenylmethanone.

(d) The substances or analogs of substances identified in subdivision (c) may be lawfully obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law.

(e) As used in this section, “synthetic cannabinoid compound” does not include either of the following:

(1) Any substance for which there is an approved new drug application, as defined in Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally recognized as safe and effective for use pursuant to Section 501, 502, and 503 of the federal Food, Drug, and Cosmetic Act and Title 21 of the Code of Federal Regulations.

(2) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person pursuant to Section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355), to the extent that the conduct with respect to that substance is pursuant to the exemption.

(Amended by Stats. 2016, Ch. 624, Sec. 2. Effective September 25, 2016.)

11358.

Planting, Harvesting, or Processing.

Every person who plants, cultivates, harvests, dries, or processes marijuana plants, or any part thereof, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who plants, cultivates, harvests, dries, or processes any marijuana plants shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living marijuana plants shall be guilty of an infraction and a fine of not more than one hundred dollars ($100).

(c) Every person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants shall 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.

(d) Notwithstanding subdivision (c), a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living marijuana plants, or any part thereof, except as otherwise provided by law, may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (c); or

(3) The offense resulted in any of the following:

(A) Violation of Section 1052 of the Water Code relating to illegal diversion of water;

(B) Violation of Section 13260, 13264, 13272, or 13387 of the Water Code relating to discharge of waste;

(C) Violation of Fish and Game Code Section 5650 or Section 5652 of the Fish and Game Code relating to waters of the state;

(D) Violation of Section 1602 of the Fish and Game Code relating to rivers, streams and lakes;

(E) Violation of Section 374.8 of the Penal Code relating to hazardous substances or Section 25189.5, 25189.6, or 25189.7 of the Health and Safety Code relating to hazardous waste;

(F) Violation of Section 2080 of the Fish and Game Code relating to endangered and threatened species or Section 3513 of the Fish and Game Code relating to the Migratory Bird Treaty Act; or

(G) Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.2.)

11359.

Possession for Sale.

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished as follows:

(a) Every person under the age of 18 who possesses marijuana for sale shall be punished in the same manner provided in paragraph (1) of subdivision (b) of Section 11357.

(b) Every person 18 years of age or over who possesses marijuana for sale shall 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.

(c) Notwithstanding subdivision (b), a person 18 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if:

(1) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(2) The person has two or more prior convictions under subdivision (b); or

(3) The offense occurred in connection with the knowing sale or attempted sale of marijuana to a person under the age of 18 years.

(d) Notwithstanding subdivision (b), a person 21 years of age or over who possesses marijuana for sale may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code if the offense involves knowingly hiring, employing, or using a person 20 years of age or younger in unlawfully cultivating, transporting, carrying, selling, offering to sell, giving away, preparing for sale, or peddling any marijuana.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.3.)

11360.

Unlawful Transportation, Importation, Sale, or Gift.

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished as follows:

(1) Persons under the age of 18 years shall be punished in the same manner as provided in paragraph (1) of subdivision (b) of Section 11357.

(2) Persons 18 years of age or over shall 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.

(3) Notwithstanding paragraph (2), a person 18 years of age or over may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three or four years if:

(A) The person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code;

(B) The person has two or more prior convictions under paragraph (2);

(C) The offense involved the knowing sale, attempted sale, or the knowing offer to sell, furnish, administer or give away marijuana to a person under the age of 18 years; or

(D) The offense involved the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of marijuana or more than four grams of concentrated cannabis.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction and shall be punished by a fine of not more than one hundred dollars ($100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) For purposes of this section, “transport” means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.4.)

11361.

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

(Amended by Stats. 1986, Ch. 1035, Sec. 2.)

11361.1.

(a) The drug education and counseling requirements under Sections 11357, 11358, 11359, and 11360 shall be:

(1) Mandatory, unless the court finds that such drug education or counseling is unnecessary for the person, or that a drug education or counseling program is unavailable;

(2) Free to participants, and the drug education provides at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(b) For good cause, the court may grant an extension of time not to exceed 30 days for a person to complete the drug education and counseling required under Sections 11357, 11358, 11359, and 11360.

(Added November 8, 2016, by initiative Proposition 64, Sec. 8.5.)

11361.5.

Destruction of Arrest and Conviction Records; Procedure; Exceptions.

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of Section 11357 or subdivision (b) of Section 11360, or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this article except Section 11357.5, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (d) of Section 11357, or any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs, the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records, including the statewide criminal databases, shall provide for the timely destruction of the records in accordance with subdivision (c), and such records must also be purged from the

statewide criminal databases. As used in this subdivision, "records pertaining to the arrest or conviction" shall include records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody. The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date, or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars ($10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau

of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 8.6.)

11361.7.

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

(Added by Stats. 1976, Ch. 952.)

11361.8.

(a) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense, or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing or dismissal in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(b) Upon receiving a petition under subdivision (a), the court shall presume the petitioner satisfies the criteria in subdivision (a) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (a), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.

(1) In exercising its discretion, the court may consider, but shall not be limited to evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.

(2) As used in this section, "unreasonable risk of danger to public safety" has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and is resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody or shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Section 3000.08 of the Penal Code or post-release community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.

(i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the Control, Regulate and Tax Adult Use of Marijuana Act.

(l) A resentencing hearing ordered under the Control, Regulate and Tax Adult Use of Marijuana Act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act.

(n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 8.7.)

11362.

As used in this article "felony offense," and offense "punishable as a felony" refer to an offense prior to July 1, 2011, for which the law prescribes imprisonment in the state prison, or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

(Amended by Stats. 2011, Ch. 15, Sec. 163. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11362.1.

(a) Subject to Sections 11362.2, 11362.3, 11362.4, and 11362.45, but notwithstanding any other provision of law, it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:

(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;

(2) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than eight grams of marijuana in the form of concentrated cannabis, including as contained in marijuana products;

(3) Possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants;

(4) Smoke or ingest marijuana or marijuana products; and

(5) Possess, transport, purchase, obtain, use, manufacture, or give away marijuana accessories to persons 21 years of age or older without any compensation whatsoever.

(b) Paragraph (5) of subdivision (a) is intended to meet the requirements of subsection (f) of Section 863 of Title 21 of the United States Code (21 U.S.C. Sec. 863(f)) by authorizing, under state law, any person in compliance with this section to manufacture, possess, or distribute marijuana accessories.

(c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.4.)

11362.2.

(a) Personal cultivation of marijuana under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with subdivision (b).

(2) The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(b) (1) A city, county, or city and county may enact and enforce reasonable regulations to reasonably regulate the actions and conduct in paragraph (3) of subdivision (a) of Section 11362.1.

(2) Notwithstanding paragraph (1), no city, county, or city and county may completely prohibit persons engaging in the actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

(3) Notwithstanding paragraph (3) of subdivision (a) of Section 11362.1, a city, county, or city and county may completely prohibit persons from engaging in actions and conduct under paragraph (3) of subdivision (a) of Section 11362.1 outdoors upon the grounds of a private residence.

(4) Paragraph (3) shall become inoperative upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law, and an act taken by a city, county, or city and county under paragraph (3) shall be deemed repealed upon the date of such determination by the Attorney General.

(5) For purposes of this section, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.5.)

11362.3.

(a) Nothing in Section 11362.1 shall be construed to permit any person to:

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

(2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(8) 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.

(b) For purposes of this section, “day care center” has the same meaning as in Section 1596.76.

(c) 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, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Trichloro-ethylene.

(e) For purposes of this section, “youth center” has the same meaning as in Section 11353.1.

(f) 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.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.6.)

11362.4.

(a) A person who engages in the conduct described in paragraph (1) of subdivision (a) of Section 11362.3 is guilty of an infraction punishable by no more than a one hundred dollar ($100) fine; provided, however, that persons under the age of 18 shall instead be required to complete four hours of a drug education program or counseling, and up to 10 hours of community service, over a period not to exceed 60 days once the drug education program or counseling and community service opportunity are made available to the person.

(b) A person who engages in the conduct described in paragraphs (2) through (4) of subdivision (a) of Section 11362.3 shall be guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine, unless such activity is otherwise permitted by state and local law; provided, however, that persons under the age of 18 shall instead be required to complete four hours of drug education or counseling, and up to 20 hours of community service, over a period not to exceed 90 days once the drug education program or counseling and community service opportunity are made available to the person.

(c) A person who engages in the conduct described in paragraph (5) of subdivision (a) of Section 11362.3 shall be subject to the same punishment as provided under subdivision (c) or (d) of Section 11357.

(d) A person who engages in the conduct described in paragraph (6) of subdivision (a) of Section 11362.3 shall be subject to punishment under Section 11379.6.

(e) A person who violates the restrictions in subdivision (a) of Section 11362.2 is guilty of an infraction punishable by no more than a two-hundred-fifty-dollar ($250) fine.

(f) Notwithstanding subdivision (e), a person under the age of 18 who violates the restrictions in subdivision (a) of Section 11362.2 shall be punished under subdivision (a) of Section 11358.

(g) (1) The drug education program or counseling hours required by this section shall be mandatory unless the court makes a finding that such a program or counseling is unnecessary for the person or that a drug education program or counseling is unavailable.

(2) The drug education program required by this section for persons under the age of 18 must be free to participants and provide at least four hours of group discussion or instruction based on science and evidence-based principles and practices specific to the use and abuse of marijuana and other controlled substances.

(h) Upon a finding of good cause, the court may extend the time for a person to complete the drug education or counseling, and community service required under this section.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.7.)

11362.45.

Nothing in Section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:

(a) Laws making it unlawful to drive or operate a vehicle, boat, vessel, or aircraft, while smoking, ingesting, or impaired by, marijuana or marijuana products, including, but not limited to, subdivision (e) of Section 23152 of the Vehicle Code, or the penalties prescribed for violating those laws.

(b) Laws prohibiting the sale, administering, furnishing, or giving away of marijuana, marijuana products, or marijuana accessories, or the offering to sell, administer, furnish, or give away marijuana, marijuana products, or marijuana accessories to a person younger than 21 years of age.

(c) Laws prohibiting a person younger than 21 years of age from engaging in any of the actions or conduct otherwise permitted under Section 11362.1.

(d) Laws pertaining to smoking or ingesting marijuana or marijuana products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation or the Division of Juvenile Justice, or on the grounds of, or within, any other facility or institution referenced in Section 4573 of the Penal Code.

(e) Laws providing that it would constitute negligence or professional malpractice to undertake any task while impaired from smoking or ingesting marijuana or marijuana products.

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

(g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.

(h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.

(i) Laws pertaining to the Compassionate Use Act of 1996.

(Added November 8, 2016, by initiative Proposition 64, Sec. 4.8.)

11362.5.

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

(Added November 5, 1996, by initiative Proposition 215, Sec. 1.)

11362.9.

(a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana. The studies may include studies to ascertain the effect of marijuana on motor skills.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(l) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

(Amended by Stats. 2016, Ch. 828, Sec. 3. Effective January 1, 2017. Note: Sections 11362.7 to 11362.83 (added by Stats. 2003, Ch. 875) are in Article 2.5, which follows this section.)

HEALTH AND SAFETY CODE - HSC

DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT [11000 - 11651]

(Division 10 repealed and added by Stats. 1972, Ch. 1407.)

CHAPTER 6. Offenses and Penalties [11350 - 11392]

(Chapter 6 added by Stats. 1972, Ch. 1407.)

ARTICLE 2.5. Medical Marijuana Program [11362.7 - 11362.85]

(Article 2.5 added by Stats. 2003, Ch. 875, Sec. 2.)

11362.7.

For purposes of this article, the following definitions shall apply:
(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
(b) "Department" means the State Department of Health Services.
(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.
(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
(h) "Serious medical condition" means all of the following medical conditions:
(1) Acquired immune deficiency syndrome (AIDS).
(2) Anorexia.
(3) Arthritis.
(4) Cachexia.
(5) Cancer.

(6) Chronic pain.
(7) Glaucoma.
(8) Migraine.
(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
(10) Seizures, including, but not limited to, seizures associated with epilepsy.
(11) Severe nausea.
(12) Any other chronic or persistent medical symptom that either:
(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.71.

(a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.
(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.
(b) Every county health department, or the county's designee, shall do all of the following:
(1) Provide applications upon request to individuals seeking to join the identification card program.
(2) Receive and process completed applications in accordance with Section 11362.72.
(3) Maintain records of identification card programs.
(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.
(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.
(d) The department shall develop all of the following:
(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.
(2) Application forms that shall be issued to requesting applicants.
(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.
(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.
(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.712.

(a) Commencing on January 1, 2018, a qualified patient must possess a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code. Failure to comply with this requirement shall not, however, affect any of the protections provided to patients or their primary caregivers by Section 11362.5.
(b) A county health department or the county's designee shall develop protocols to ensure that, commencing upon January 1, 2018, all identification cards issued pursuant to Section 11362.71 are supported by a physician's recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the Business and Professions Code.
(Added November 8, 2016, by initiative Proposition 64, Sec. 5.1.)

11362.713.

(a) Information identifying the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, received and contained in the records of the State Department of Public Health and by any county public health department are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) and shall not be disclosed by the department or by any county public health department except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.
(b) Within 24 hours of receiving any request to disclose the name, address, or social security number of a patient, their medical condition, or the name of their primary caregiver, the State Department of Public Health or any county public health agency shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.
(c) Notwithstanding Section 56.10 of the Civil Code, neither the State Department of Public Health, nor any county public health agency, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.
(d) No identification card application system or database used or maintained by the State Department of Public Health or by any county department of public health or the county's designee as provided in Section 11362.71 shall contain any personal information of any qualified patient, including, but not limited to, the patient's name, address, social security number, medical conditions, or the names of their primary caregivers. Such an application system or database may only contain a unique user identification number, and when that number is entered, the only information that may be provided is whether the card is valid or invalid.
(Added November 8, 2016, by initiative Proposition 64, Sec. 5.2.)

11362.715.

(a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:
(1) The name of the person, and proof of his or her residency within the county.
(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.
(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
(4) The name and the duties of the primary caregiver.
(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.
(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:
(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.
(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.
(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.72.

(a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:
(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.
(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.
(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.
(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.
(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.
(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:
(1) A unique user identification number of the applicant.
(2) The date of expiration of the identification card.
(3) The name and telephone number of the county health department or the county's designee that has approved the application.
(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.
(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.735.

(a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:
(1) A unique user identification number of the cardholder.
(2) The date of expiration of the identification card.
(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.
(5) Photo identification of the cardholder.
(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.74.

(a) The county health department or the county's designee may deny an application only for any of the following reasons:
(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.
(2) The county health department or the county's designee determines that the information provided was false.
(3) The applicant does not meet the criteria set forth in this article.
(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.
(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.745.

(a) An identification card shall be valid for a period of one year.
(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.
(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.755.

(a) Each county health department or the county's designee may charge a fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.
(b) In no event shall the amount of the fee charged by a county health department exceed one hundred dollars ($100) per application or renewal.
(c) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.
(d) Upon satisfactory proof that a qualified patient, or the legal guardian of a qualified patient under the age of 18, is a medically indigent adult who is eligible for and participates in the County Medical Services Program, the fee established pursuant to this section shall be waived.
(e) In the event the fees charged and collected by a county health department are not sufficient to pay for the administrative costs incurred in discharging the county health department's duties with respect to the mandatory identification card system, the Legislature, upon request by the county health department, shall reimburse the county health department for those reasonable administrative costs in excess of the fees charged and collected by the county health department.
(Amended November 8, 2016, by initiative Proposition 64, Sec. 5.3.)

11362.76.

(a) A person who possesses an identification card shall:
(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.
(2) Annually submit to the county health department or the county's designee the following:
(A) Updated written documentation of the person's serious medical condition.
(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.
(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.
(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.
(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.765.

(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.
(b) Subdivision (a) shall apply to all of the following:
(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.
(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.
(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.
(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.768.

(a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.
(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.
(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.
(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.
(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
(Added by Stats. 2010, Ch. 603, Sec. 1. Effective January 1, 2011.)

11362.769.

Indoor and outdoor medical cannabis cultivation shall be conducted in accordance with state and local laws. State agencies, including, but not limited to, the Department of Food and Agriculture, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical cannabis cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.
(Amended by Stats. 2016, Ch. 32, Sec. 66. Effective June 27, 2016.)

11362.77.

(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.
(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.
(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).
(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.
(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.
(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.775.

(a) Subject to subdivision (d), qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate cannabis for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

(b) A collective or cooperative that operates pursuant to this section and manufactures medical cannabis products shall not, solely on the basis of that fact, be subject to state criminal sanctions under Section 11379.6 if the collective or cooperative abides by all of the following requirements:
(1) The collective or cooperative does either or both of the following:
(A) Utilizes only manufacturing processes that are either solventless or that employ only nonflammable, nontoxic solvents that are generally recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).
(B) Utilizes only manufacturing processes that use solvents exclusively within a closed-loop system that meets all of the following requirements:
(i) The system uses only solvents that are generally recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).
(ii) The system is designed to recapture and contain solvents during the manufacturing process, and otherwise prevent the off-gassing of solvents into the ambient atmosphere to mitigate the risks of ignition and explosion during the manufacturing process.
(iii) A licensed engineer certifies that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, including, but not limited to, the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM), or OSHA Nationally Recognized Testing Laboratories (NRTLs).
(iv) The system has a certification document that contains the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.
(2) The collective or cooperative receives and maintains approval from the local fire official for the closed-loop system, other equipment, the extraction operation, and the facility.
(3) The collective or cooperative meets required fire, safety, and building code requirements in one or more of the following:
(A) The California Fire Code.
(B) The National Fire Protection Association (NFPA) standards.
(C) International Building Code (IBC).
(D) The International Fire Code (IFC).
(E) Other applicable standards, including complying with all applicable fire, safety, and building codes in processing, handling, and storage of solvents or gasses.
(4) The collective or cooperative is in possession of a valid seller's permit issued by the State Board of Equalization.
(5) The collective or cooperative is in possession of a valid local license, permit, or other authorization specific to the manufacturing of medical cannabis products, and in compliance with any additional conditions imposed by the city or county issuing the local license, permit, or other authorization.
(c) For purposes of this section, "manufacturing" means compounding, converting, producing, deriving, processing, or preparing, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, medical cannabis products.
(d) This section shall remain in effect only until one year after the Bureau of Medical Cannabis Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Cannabis Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code).
(e) This section is repealed one year after the date upon which the notice is posted pursuant to subdivision (d).
(Amended by Stats. 2016, Ch. 828, Sec. 2. Effective January 1, 2017. Inoperative and repealed on date prescribed by its own provisions.)

11362.777.

(a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary and, except as specified in subdivision (c), shall administer this section as it pertains to the commercial cultivation of medical cannabis. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code, medical cannabis is an agricultural product.
(b) (1) A person or entity shall not cultivate medical cannabis without first obtaining both of the following:
(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.
(2) A person or entity shall not submit an application for a state license pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.
(3) A person or entity shall not submit an application for a state license pursuant to this section if the proposed cultivation of cannabis will violate the provisions of any local ordinance or regulation, or if medical cannabis is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.
(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical cannabis pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability before issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical cannabis cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical cannabis before obtaining both a permit from the city, county, or city and county and a state medical cannabis cultivation license from the department.
(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical cannabis pursuant to this section shall notify the department in a manner prescribed by the secretary.
(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.
(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.
(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.
(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical cannabis. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.
(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Cannabis Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical cannabis. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure compliance with Section 19332.2 of the Business and Professions Code.
(2) The department shall establish a program for the identification of permitted medical cannabis plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical cannabis plant.
(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.
(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.
(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical cannabis plant.
(D) The department may promulgate regulations to implement this section.
(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.
(f) (1) A city, county, or city and county that issues or denies licenses, permits, or other entitlements to cultivate medical cannabis pursuant to this section shall notify the department in a manner prescribed by the secretary.
(2) Unique identifiers and associated identifying information administered by a city, county, or city and county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.
(g) This section does not apply to a qualified patient cultivating cannabis pursuant to Section 11362.5 if the area he or she uses to cultivate cannabis does not exceed 100 square feet and he or she cultivates cannabis for his or her

personal medical use and does not sell, distribute, donate, or provide cannabis to any other person or entity. This section does not apply to a primary caregiver cultivating cannabis pursuant to Section 11362.5 if the area he or she uses to cultivate cannabis does not exceed 500 square feet and he or she cultivates cannabis exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate cannabis shall be measured by the aggregate area of vegetative growth of live cannabis plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from exercising its police authority under Section 7 of Article XI of the California Constitution.
(Amended by Stats. 2016, Ch. 32, Sec. 68. Effective June 27, 2016.)

11362.78.

A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.785.

(a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.
(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.
(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.
(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.79.

Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:
(a) In 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 schoolbus.
(d) While in a motor vehicle that is being operated.
(e) While operating a boat.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.795.

(a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.
(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.
(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.
(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.
(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.
(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.
(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.8.

No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.81.

(a) A person specified in subdivision (b) shall be subject to the following penalties:
(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.
(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.
(b) Subdivision (a) applies to any of the following:
(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.
(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.
(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.
(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.
(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.
(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.82.

If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.
(Added by Stats. 2003, Ch. 875, Sec. 2. Effective January 1, 2004.)

11362.83.

Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:
(a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.
(b) The civil and criminal enforcement of local ordinances described in subdivision (a).
(c) Enacting other laws consistent with this article.
(Amended by Stats. 2011, Ch. 196, Sec. 1. Effective January 1, 2012. Note: Section 11362.9 is in Article 2, following Section 11362.5.)

11362.84.

The status and conduct of a qualified patient who acts in accordance with the Compassionate Use Act shall not, by itself, be used to restrict or abridge custodial or parental rights to minor children in any action or proceeding under the jurisdiction of family or juvenile court.
(Added November 8, 2016, by initiative Proposition 64, Sec. 5.4.)

11362.85.

Upon a determination by the California Attorney General that the federal schedule of controlled substances has been amended to reclassify or declassify marijuana, the Legislature may amend or repeal the provisions of the Health and Safety Code, as necessary, to conform state law to such changes in federal law.
(Added November 8, 2016, by initiative Proposition 64, Sec. 5.5.)

Drug And Alcohol-Free Workplace

> Note: Government Code 8355 mandates state grant recipients such as a school district to certify to the state contracting agency (e.g., the California Department of Education (CDE)) that it agrees to provide a drug-free workplace by taking the actions specified below. Federal grantees are also subject to the same requirements and must provide the same certifications under the federal Drug-Free Workplace Act (41 USC 8101-8106).
>
> Note: Federal law contains independent requirements for the drug and alcohol testing of school bus drivers; see BP/AR 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers. For language regarding a drug testing program for other employees, see BP/AR 4112.41/4212.41/4312.41 - Employee Drug Testing.

The Governing Board believes that the maintenance of a drug- and alcohol-free workplace is essential to staff and student safety and to help ensure a productive and safe work and learning environment.

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance in the workplace. (Government Code 8355; 41 USC 8103)

> Note: The following optional paragraph prohibits an employee from being under the influence of alcohol or a controlled substance while on duty and should be modified to reflect district practice.

Employees are prohibited from being under the influence of controlled substances or alcohol while on duty. For purposes of this policy, on duty means while an employee is on duty during both instructional and noninstructional time in the classroom or workplace, at extracurricular or cocurricular activities, or while transporting students or otherwise supervising them. Under the influence means that the employee's capabilities are adversely or negatively affected, impaired, or diminished to an extent that impacts the employee's ability to safely and effectively perform his/her job.

(cf. 4032 - Reasonable Accommodation)

> Note: Government Code 8355 and 41 USC 8103 require the district to certify to the CDE that it has published a statement that notifies employees of the (1) prohibition against drug use, (2) actions that will be taken by the district in the event of a violation, and (3) requirement that employees, as a condition of employment, abide by the district's policy and notify the district in the event of a conviction.

The Superintendent or designee shall notify employees of the district's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC 8103)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

An employee shall abide by the terms of this policy and shall notify the district, within five days, of his/her conviction for violation in the workplace of any criminal drug statute. (Government Code 8355; 41 USC 8103)

The Superintendent or designee shall notify the appropriate federal granting or contracting agency within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 8103)

> Note: 41 USC 8104 requires the district, within 30 days of receiving notification from an employee of his/her conviction of a controlled substance offense, to either discipline the employee or require him/her to complete a drug rehabilitation program as specified below. Pursuant to Education Code 44940 and 45304, the district must place an employee on a mandatory leave of absence if he/she is charged with any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of certain controlled substances listed in Health and Safety Code 11054, 11055, and 11056. In the case of a certificated employee, the district must report the mandatory leave of absence offense to the Commission on Teacher Credentialing (CTC) (see BP 4117.7/4317.7 - Employment Status Reports); if the employee is convicted, the CTC will revoke his/her credential. In addition, pursuant to Education Code 44940 and 45304, district may place a certificated or classified employee on a compulsory leave of absence when he/she is charged with a controlled substance offense as defined in Education Code 44011. If the employee is ultimately convicted of the offense, Education Code 44836 and 45123 require the employee to be dismissed. See AR 4118 - Suspension/Disciplinary Action, see AR 4117.4 - Dismissal, and see AR 4218 - Dismissal/Suspension/Disciplinary Action.

In accordance with law and the district's collective bargaining agreements, the Superintendent or designee shall take appropriate disciplinary action, up to and including termination, against an employee for violating the terms of this policy and/or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state, or local public health or law enforcement agency or other appropriate agency.

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4212 - Appointment and Conditions of Employment)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Drug-Free Awareness Program

The Superintendent or designee shall establish a drug-free awareness program to inform employees about: (Government Code 8355; 41 USC 8103)

1. The dangers of drug abuse in the workplace

2. The district's policy of maintaining a drug-free workplace

3. Available drug counseling, rehabilitation, and employee assistance programs

(cf. 4159/4259/4359 - Employee Assistance Programs)

4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

Legal Reference:

EDUCATION CODE

44011 Controlled substance offense

44425 Conviction of controlled substance offenses as grounds for revocation of credential

44836 Employment of certificated persons convicted of controlled substance offenses

44940 Compulsory leave of absence for certificated persons

44940.5 Procedures when employees are placed on compulsory leave of absence

45123 Employment after conviction of controlled substance offense

45304 Compulsory leave of absence for classified persons

GOVERNMENT CODE

8350-8357 Drug-free workplace

UNITED STATES CODE, TITLE 20

7111-7117 Safe and Drug Free Schools and Communities Act

UNITED STATES CODE, TITLE 21

812 Schedule of controlled substances

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 Schedule of controlled substances

COURT DECISIONS

Cahoon v. Governing Board of Ventura USD, (2009) 171 Cal.App.4th 381

Ross v. RagingWire Telecommunications, Inc., (2008) 42 Cal.4th 920

Management Resources:

WEB SITES

California Department of Alcohol and Drug Programs: http://www.adp.ca.gov

California Department of Education: http://www.cde.ca.gov

U.S. Department of Labor: http://www.dol.gov

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Employee Drug Testing

Note: The following optional policy is for use by districts that wish to institute an employee drug testing program. Federal law contains independent requirements for the drug and alcohol testing of school bus drivers. See BP/AR 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers.

The Governing Board maintains a drug- and alcohol-free workplace. In accordance with law, all employees shall render service without using, possessing, being impaired by, or being under the influence of alcohol or drugs.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 4020 - Drug and Alcohol-Free Workplace)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

(cf. 5131.61 - Drug Testing)

Pre-Employment Drug/Alcohol Testing for Safety-Sensitive Positions

Note: The following optional section is for use by districts that require testing of applicants as part of a pre-employment medical exam given to every job applicant. Pursuant to Education Code 44839, prior to employing a certificated employee who has not yet held a certificated position in California, a district must require the employee to undergo a physical examination. Classified employees may also be required to take a pre-employment physical examination as specified in Education Code 45122. See BP 4112.4/4212.4/4312.4 - Health Examinations. Because it is a condition of employment, drug testing of current employees would be subject to collective bargaining.

Note: In Lanier v. City of Woodburn, the 9th Circuit Court of Appeals held that a city policy requiring all applicants to undergo a pre-employment drug/alcohol test was unconstitutional unless the city could demonstrate that the special needs of the position which required screening, beyond the generalized societal problem of drug use. Although the California Supreme Court previously held in Loder v. City of Glendale that an across-the-board pre-employment drug testing program is valid when given as part of a pre-employment medical exam required of every job applicant, the more recent 9th Circuit opinion effectively overrules that part of the opinion relative to the types of positions that may be subject to testing.

Note: Thus, districts are authorized to institute a pre-employment testing program for those positions for which the district can demonstrate a special need for testing, such as safety-sensitive positions that involve work that may pose a danger to the public and/or require the operation of dangerous equipment. Examples of "safety-sensitive positions"

would likely include school police/security officers or maintenance workers and could also include shop teachers, the school nurse, or staff responsible for distributing student medication, depending on the specific duties of the position. Whether all teaching or principal positions might qualify as "safety-sensitive" has not been decided in the 9th Circuit, although courts in other circuits have found such testing constitutional since teachers and principals need to ensure the safety of children and teach children the dangers of substance abuse.

Note: In Lanier v. City of Woodburn, the 9th Circuit Court of Appeals held that the need for drug/alcohol testing must be specific and substantial and that the governing body must make a specific finding demonstrating the need for testing potential employees in those specific positions. Thus, in order to provide the necessary justification for the district's program, the district should identify the specific positions and the duties of those positions that necessitate the need for testing in the blanks provided below. It is strongly recommended that districts consult legal counsel as part of this process.

Because students and staff have the right to a safe and secure campus where they are free from physical and psychological harm, the Board authorizes the testing of prospective employees in safety-sensitive positions for drug and alcohol use. The following positions are safety-sensitive and are subject to the district's program:

Position Safety-Sensitive Duties

_____ _____

_____ _____

_____ _____

Once a conditional offer of employment has been made, prospective employees in these identified positions shall undergo a pre-employment drug and alcohol screening for any substance which could impair their ability to safely and effectively perform their job functions. This screening shall be part of the employee's pre-employment physical examination.

Final selection of a job applicant for a position shall not be made until the applicant has successfully completed the screening.

All testing and medical examinations shall be conducted in accordance with state and federal law, Board policy, and administrative regulation.

(cf. 4112. /4212.4/4312.4 - Health Examinations)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

Note: In Lanier v. City of Woodburn, the 9th Circuit Court of Appeals did not determine whether the employer could impose a suspicionless drug testing requirement upon every current employee who applies for or is offered a promotion. However, similar to the requirements imposed by the 9th Circuit for pre-employment testing, the U.S. Supreme Court has held that drug testing as a condition of promotion is permissible only when the testing is justified by the nature of the promotion sought, such as employees who carry firearms. (National Treasury Employees Union v. Von Raab) Therefore, districts wishing

to institute a promotional drug testing program must also analyze the functions of the job for which testing is being sought and the specific duties that necessitate testing. Districts should consult legal counsel before implementing such a program.

Legal Reference:

EDUCATION CODE

44011 Controlled substance offense

44455 Conviction for controlled substance offenses as grounds for revocation of credential

44836 Employment of certificated persons convicted of controlled substance offenses

44940 Compulsory leave of absence for certificated persons

44940.5 Procedures when employees are placed on compulsory leave of absence

45123 Employment after conviction for controlled substance offense

45304 Compulsory leave of absence for classified persons

44839 Medical certificate; periodic medical examination

45122 Physical examinations

GOVERNMENT CODE

8350-8357 Drug-free workplace

12940 Unlawful employment practices

CODE OF REGULATIONS, TITLE 5

5504 Medical certification procedures

CALIFORNIA CONSTITUTION

Article 1, Section 28(c) Right to Safe Schools

UNITED STATES CODE, TITLE 20

7101-7184 Safe and Drug-Free Schools and Communities Act

UNITED STATES CODE, TITLE 41

701-707 Drug-Free Workplace Act

COURT DECISIONS

Lanier v. City of Woodburn, (2008, 9th Circuit) 518 F.3d 1147

Knox County Education Association v. Knox County Board of Education, (1998, 6th Circuit) 158 F.3d 361

Loder v. City of Glendale, (1997) 14 Cal. 4th 846

Vernonia School District 47J v. Acton, (1995) 115 S.Ct. 2386

International Brotherhood of Teamsters v. Department of Transportation, (1991) 932 F.2d 1292

Skinner v. Railway Labor Executives' Assn, (1989) 489 U.S. 602

National Treasury Employees Union v. Von Raab, (1989) 489 U.S. 456

Employee Drug Testing

> Note: The following optional administrative regulation is for use by districts implementing a pre-employment drug/alcohol screening program for prospective employees in safety-sensitive positions as identified in Board policy and should be modified to reflect district practice.

Pre-Employment Drug/Alcohol Screening for Safety-Sensitive Positions

> Note: Job applicants may have an expectation of privacy related to the procedure used for drug and alcohol screening. Courts will therefore analyze whether the testing procedure unreasonably intrudes upon the applicant's privacy. Districts should make efforts to ensure that the laboratory procedure ensures individual privacy (e.g., taking samples in a private restroom).

Applicants shall sign a form consenting to the drug and alcohol testing. The consent form shall authorize release of the test results to the district. To ensure an individual's privacy, the district shall not use test results for any purpose other than those stated in Board policy and administrative regulation, shall maintain the confidentiality of screening records, and shall not disclose such records unless the applicant consents or the Superintendent or designee is presented with a court order requiring the disclosure.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

All initial screening tests shall be conducted at the district's expense. If an applicant's initial test is positive, a second test, at the district's expense, shall be administered as soon as possible to confirm the results. Upon obtaining a second positive result, the applicant may seek an independent drug and alcohol screening from a recognized medical laboratory at his/her own expense. Any applicant who fails to provide the district with a negative drug and alcohol screening report within five working days of a confirmed positive result shall be determined to have failed the screening and shall not be employed.

Failure to submit to the process or to complete the process shall preclude the applicant from being hired into the position. Disqualified applicants shall not be prohibited from applying for another job within the district.

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Drug And Alcohol Testing For School Bus Drivers

Note: State and federal law (Vehicle Code 34520; 49 CFR 382.101-382.605) require that any district employing school bus drivers establish a drug and alcohol testing program, with specified components, applicable to bus drivers and any other drivers of a commercial motor vehicle weighing over 26,000 pounds or designed to transport 16 or more passengers including the driver. All testing must be conducted in accordance with 49 CFR 40.1-40.413. For further information, see the web sites of the U.S. Department of Transportation (DOT) and the California Highway Patrol (CHP).

Note: In addition, Vehicle Code 34520.3 requires drivers of school transportation vehicles (i.e., vehicles that are not school buses, student activity buses, or youth buses and are used by the district for the primary purpose of transporting children), such as a van, to participate in the testing program to the same extent as required by law for school bus drivers. The Legislative Counsel has issued an opinion that Vehicle Code 34520.3 applies only to employees whose primary job is transportation. The district should consult legal counsel as necessary to determine applicability of this law to district employees.

Note: The district's drug and alcohol testing program is subject to compliance inspections conducted by the CHP. It is recommended that the district review the CHP's Controlled Substances and Alcohol Testing Compliance Checklist to assess whether its program fulfills legal requirements.

The Governing Board desires to ensure that district-provided transportation is safe for students, staff, and the public. To that end, the Superintendent or designee shall establish a drug and alcohol testing program designed to prevent the operation of buses or the performance of other safety-sensitive functions by a driver who is under the influence of drugs or alcohol, including a driver of a school bus, student activity bus, or other school transportation vehicle or any other employee who holds a commercial driver's license which is necessary to perform duties related to district employment.

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)

(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)

A driver shall not report for duty or remain on duty when he/she has used any drug listed in 21 CFR 1308.11. A driver is also prohibited from reporting for duty or remaining on duty when he/she has used any drug listed in 21 CFR 1308.12-1308.15, unless he/she is using the drug under the direction of a physician who has advised him/her that the substance will not adversely affect the driver's ability to safely operate a bus. In addition, a driver shall not consume alcohol while on duty or for four hours prior to on-duty time. (49 CFR 382.201-382.209, 382.213)

Note: 49 USC 31306 and 49 CFR 382.301-382.311 require that certain types of tests be part of the district's drug and alcohol testing program. See the accompanying administrative regulation for requirements applicable to each test.

Note: Pursuant to 49 CFR 382.301, the district may, but is not required to, conduct pre-employment alcohol testing. The following paragraph should be revised by districts that choose to conduct such testing.

The district's testing program for drivers shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306; 49 CFR 382.301-382.311)

Note: Pursuant to 49 CFR 40.11, districts are responsible for implementing the drug and alcohol testing program. They may do this using their own employees, contracting for services, or joining together in a consortium with other employers. The following optional paragraph provides that the district will contract for such services and may be revised by districts that use alternative methods.

The Board shall contract for testing services upon verifying that the personnel are appropriately qualified and/or certified and that testing procedures conform to federal regulations.

Except as otherwise provided by law, the Superintendent or designee shall not release individual test results or medical information about a driver to a third party without the driver's specific written consent. (49 CFR 40.321)

Consequences Based on Test Results

Any driver who refuses to take a required drug or alcohol test, tests positive for drugs, or is found to have a blood alcohol concentration level that exceeds the levels specified in law shall be removed from performing safety-sensitive functions in accordance with 49 CFR 40.23 and 382.211.

Note: Pursuant to 49 CFR 40.21 and 382.119, before temporarily removing a driver from safety-sensitive functions, the district must receive verification of the test results from a licensed physician certified as a medical review officer, unless a waiver of this requirement has been obtained from the Federal Motor Carrier Safety Administration.

No driver shall be temporarily removed from the performance of safety-sensitive functions based only on a laboratory report of a confirmed positive test before the certified medical review officer has completed verification of the test results, unless the district has obtained a waiver. (49 CFR 40.21, 382.107, 382.119)

Not later than five days after receiving notification of the test result or refusal to comply, the Superintendent or designee shall report any refusal, failure to comply, or positive test result to the California Department of Motor Vehicles (DMV) using a form approved by the DMV. (Vehicle Code 13376)

Note: Pursuant to Vehicle Code 13376, upon receiving a report of a driver's refusal, failure to comply, or positive test result, the California Department of Motor Vehicles will revoke the driver certificate or refuse to approve an initial application for a certificate. An exception exists for a driver who complies with a rehabilitation or return-to-duty program that meets the requirements of federal regulations. For purposes of

retaining his/her certificate, the driver may participate in such a program only once within a three-year period.

Note: The following paragraph is optional. Pursuant to 49 CFR 40.289, the district is not required to provide education and treatment services to any driver. However, if the district offers the driver an opportunity to return to work following a violation, then it must ensure that the driver receives an evaluation by a qualified substance abuse professional and successfully complies with the evaluation recommendations. Responsibility for payment for evaluation and services is to be determined by the district and driver and may be governed by a collective bargaining agreement and health care benefits.

Any driver who refuses, fails to comply, or has a positive test result may be referred to an education and treatment program that meets the requirements of 49 CFR 40.281-40.313. If the substance abuse professional recommends that ongoing services are needed to assist the driver to maintain sobriety or abstinence from drug use, the Superintendent or designee shall require the driver to participate in the recommended services as part of a return-to-duty agreement and shall monitor his/her compliance. Any drop from a rehabilitation or return-to-duty program or a subsequent positive test result shall be reported to the DMV. (Vehicle Code 13376; 49 CFR 40.285, 40.287, 40.303, 382.605)

(cf. 4159/4259/4359 - Employee Assistance Programs)

(cf. 4161/4261 - Leaves)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

(cf. 4261.1 - Personal Illness/Injury Leave)

A driver who has violated federal drug and alcohol regulations may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Voluntary Self-Identification

Note: The following section is for use by districts that choose to establish a voluntary self-identification policy or program, pursuant to 49 CFR 382.121, which relieves drivers who admit alcohol or drug misuse from the federal requirements for referral, evaluation, and treatment contained in 49 CFR 40.281-40.313. If the district chooses to establish such a program, it is mandated to adopt a written policy containing the provisions specified in items #1-3 below. Pursuant to 49 CFR 382.121, the district's program may also include employee monitoring and non-DOT follow-up testing. If the district chooses to incorporate these elements, it should add them to this list.

Whenever a driver admits to alcohol or drug misuse under the district's voluntary self-identification program, the Superintendent or designee shall ensure all of the following: (49 CFR 382.121)

1. No adverse action shall be taken against the driver by the district.

2. The driver shall be allowed sufficient opportunity to seek evaluation, education, or treatment to establish control over his/her drug or alcohol problem.

3. The driver shall be permitted to participate in safety-sensitive functions only after:

a. Successfully completing an education or treatment program, as determined by a drug and alcohol abuse evaluation expert, such as an employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor

b. Undergoing a return-to-duty test with a result indicating an alcohol concentration of less than 0.02 and/or a verified negative result for drug use

A driver who admits to alcohol or drug misuse shall not be subject to federal requirements related to referral, evaluation, and treatment, provided that he/she does not self-identify in order to avoid drug or alcohol testing, makes the admission prior to performing a safety-sensitive function, and does not perform a safety-sensitive function until he/she has been evaluated and has successfully completed education or treatment requirements in accordance with program guidelines. (49 CFR 382.121)

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

GOVERNMENT CODE

8355 Drug-free workplace; employee notification

VEHICLE CODE

13376 Driver certificates; revocation or suspension

34500-34520.5 Safety regulations

CODE OF REGULATIONS, TITLE 13

1200-1293 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

UNITED STATES CODE, TITLE 49

31306 Alcohol and drug testing

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.11-1308.15 Controlled substances

CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605 Drug and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

Management Resources:

CALIFORNIA HIGHWAY PATROL PUBLICATIONS

Controlled Substances and Alcohol Testing Compliance Checklist, 2007

What is CSAT? Controlled Substances and Alcohol Testing, 2005

WEB SITES

California Highway Patrol: http://www.chp.ca.gov

Federal Motor Carrier Safety Administration: http://www.fmcsa.dot.gov

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance: http://www.dot.gov/ost/dapc

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Drug And Alcohol Testing For School Bus Drivers

> Note: The following administrative regulation reflects state and federal requirements (Vehicle Code 34520; 49 CFR 40.1-40.413, 382.101-382.605) for drug and alcohol testing of school bus drivers, including pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. Pursuant to 49 CFR 40.27, the district must not require a driver to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process.

Definitions

For purposes of drug testing required by the U.S. Department of Transportation (DOT), drugs included in the tests are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates. (49 CFR 40.3, 40.85, 382.107)

Alcohol concentration or level means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath. For purposes of the DOT alcohol testing program, an alcohol level between 0.02 and 0.04 requires removal of the bus driver for a 24-hour period following the test. An alcohol level of 0.04 or higher requires immediate removal of the driver from performing safety-sensitive functions until the driver has successfully completed the return-to-duty process. (49 CFR 382.107, 382.201, 382.505)

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to, all time driving or otherwise in the bus; waiting at a district facility to be dispatched; inspecting, servicing, or conditioning the bus or bus equipment; loading or unloading the bus; supervising or assisting in the loading or unloading of the bus; and repairing, obtaining assistance, or remaining in attendance upon a disabled bus. (49 CFR 382.107)

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)

Designated Employer Representative

> Note: 49 CFR 40.35 and 40.215 require the district to identify a "designated employer representative" to perform the duties specified in 49 CFR 40.3. The following paragraph may be revised to reflect the title of the employee so designated.

The Superintendent or designee shall identify a designated employer representative and shall provide his/her name and telephone number to the testing contractor to contact about any problems or issues that may arise during the testing process. (49 CFR 40.35, 40.215)

The designated employer representative shall be responsible for receiving test results and other communications, taking immediate action(s) to remove drivers from safety-sensitive functions, and making other required decisions in the testing and evaluation processes. (49 CFR 40.3)

Pre-employment Testing

When hiring a new driver, the Superintendent or designee shall, with the driver's written consent, request the driver's past drug and alcohol testing record, as specified in 49 CFR 40.25, from any employer who has employed the driver at any time during the previous two years. In addition, the Superintendent or designee shall ask the driver if he/she tested positive, or refused to test, on any pre-employment drug or alcohol test that was administered during the past two years in the course of applying for another safety-sensitive transportation position that he/she did not obtain. The driver shall not be permitted to perform safety-sensitive functions if he/she refuses to provide consent to obtain the information from previous employers, the information from previous employers is not received within 30 days of the date on which the driver first performed safety-sensitive functions for the district, or the driver or a previous employer reports a violation of a drug or alcohol regulation without subsequent completion of the return-to-duty process. (49 CFR 40.25, 382.413)

Upon making a contingent offer of employment to a driver and prior to the first time the driver performs safety-sensitive functions for the district, the Superintendent or designee shall require the driver to undergo testing for drugs and to receive a verified negative test result. This testing requirement may be waived if all of the following conditions exist: (49 CFR 382.301)

1. The driver has participated in a qualified drug testing program within the previous 30 days.

2. While participating in the program, the driver either was tested within the past six months or participated in a random drug testing program for the previous 12 months.

3. The Superintendent or designee has contacted the testing program(s) in which the driver has participated and has obtained information about the program and the driver's participation as specified in 49 CFR 382.301.

4. No prior employer of the driver of whom the district has knowledge has records of the driver's violation of federal drug testing regulations within the previous six months.

> Note: The following optional paragraph is for use by districts that choose to conduct pre-employment alcohol testing; see the accompanying Board policy. Pursuant to 49 CFR 382.301, pre-employment alcohol testing is not required but, if the district chooses to conduct such testing, it must comply with the following requirements.

In addition, the Superintendent or designee shall require the driver to undergo pre-employment alcohol testing in accordance with the procedures in 49 CFR 40.1-40.605 and to receive a test result indicating an alcohol concentration level of less than 0.04. (49 CFR 382.301)

Post-Accident Testing

As soon as practicable following an accident involving a school bus or student activity bus, the Superintendent or designee shall ensure that the driver involved is tested for alcohol and/or drugs under either of the following conditions: (49 CFR 382.303)

1. The accident involved loss of human life.

2. The driver receives a citation for a moving violation and the accident involved bodily injury to a person who required immediate medical treatment away from the scene of the accident and/or disabling damage to one or more vehicles requiring towing.

The Superintendent or designee shall attempt to administer a required alcohol test up to eight hours following the accident and/or a drug test up to 32 hours following the accident. The results of an alcohol or drug test conducted by federal, state, or local officials having independent authority for the test shall be considered to meet this requirement. If the alcohol test is not administered within two hours following the accident, or the test for drugs is not administered within 32 hours following the accident, the Superintendent or designee shall make a record stating the reasons the test was not promptly administered. (49 CFR 382.303)

Random Testing

> Note: The district may revise the following paragraph to specify the method by which it will select drivers for random drug and alcohol testing. Pursuant to 49 CFR 382.305, the district must randomly select drivers for testing using a scientifically valid method such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Pursuant to 49 CFR 40.347, the district may contract with a third-party administrator or join a consortium of employers to operate the random selection process.

The Superintendent or designee shall ensure that random, unannounced drug and alcohol tests of bus drivers are conducted on testing dates reasonably spread throughout the year. Such tests shall be conducted during, immediately before, or immediately after the performance of safety-sensitive functions. (49 CFR 382.305)

> Note: The district must annually test at least 10 percent of district drivers for alcohol and at least 50 percent for drugs, in accordance with the calculations and procedures described in 49 CFR 382.305. The minimum required percentage is subject to change as determined necessary by the Federal Motor Carrier Safety Administration (FMCSA). Any such change will be published in the Federal Register and on the FMCSA's web site and will be effective starting January 1 following such publication.

The Superintendent or designee shall ensure that the percentage of district drivers randomly tested for drugs and alcohol meets or exceeds the minimum annual percentage rates specified in 49 CFR 382.305 or subsequently published in the Federal Register.

Each driver selected for random testing shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

Each driver who is selected for testing shall proceed to the test site immediately or, if performing a safety-sensitive function other than driving a bus, then as soon as possible after ceasing that function. (49 CFR 382.305)

Reasonable Suspicion Testing

Note: The following section may be revised to reflect the position (e.g., driver's supervisor or other district employee) authorized and trained to make observations for reasonable suspicion drug or alcohol testing.

A driver shall be required to submit to a drug or alcohol test whenever the Superintendent or designee has reasonable suspicion that the driver has violated the prohibitions against the use of drugs or alcohol. Such reasonable suspicion shall be based on specific, contemporaneous, articulable observations, conducted during, immediately before, or immediately after the performance of safety-sensitive functions, concerning the driver's appearance, behavior, speech, and/or body odors. Reasonable suspicion of drug use may also include indications of the chronic and withdrawal effects of drugs. (49 CFR 382.307)

The person who makes the required observations for reasonable suspicion testing for drugs or alcohol shall be trained in accordance with 49 CFR 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not be the same person who conducts the alcohol test. (49 CFR 382.307)

Within 24 hours of the observed behavior or before the results of the drug or alcohol test are released, whichever is earlier, the Superintendent or designee shall prepare and sign a written record of the observations leading to a reasonable suspicion test. (49 CFR 382.307)

An alcohol test required as a result of reasonable suspicion shall be administered within eight hours following the determination of reasonable suspicion. If the test is not administered within two hours, the Superintendent or designee shall prepare and maintain on file a record stating the reasons the test was not promptly administered. (49 CFR 382.307)

In the absence of a reasonable suspicion alcohol test, the district shall take no action against a driver based solely on the driver's behavior and appearance, except that the driver shall not be allowed to report for or remain on safety-sensitive functions until an alcohol test is administered and the results show a concentration less than 0.02 or 24 hours have elapsed following the determination of reasonable suspicion. (49 CFR 382.307)

Return-to-Duty Testing

Note: Pursuant to 49 CFR 40.305, the district may return a driver to safety-sensitive functions after he/she completes required education and treatment services as described in the accompanying Board policy and a return-to-duty drug or alcohol test. Such personnel decisions may be subject to collective bargaining or other legal requirements.

The Superintendent or designee may permit a driver who has violated federal drug or alcohol regulations to return to safety-sensitive functions after the driver has successfully complied with the education and treatment services prescribed by a substance abuse professional and has a taken a return-to-duty drug or alcohol test. The driver shall not resume performance of safety-sensitive functions unless the drug test shows a negative result and/or the alcohol test shows a concentration of less than 0.02. (49 CFR 40.305, 382.309)

Follow-Up Testing

Note: Pursuant to 49 CFR 40.307, after a driver successfully complies with education and treatment services, the substance abuse professional will prescribe a follow-up testing

plan and will present that plan to the designated employer representative. The plan must direct that the driver be subject to at least six unannounced follow-up tests in the first 12 months following the driver's return to safety-sensitive functions.

Upon receiving a written follow-up testing plan from a substance abuse professional, the Superintendent or designee shall determine the actual dates for follow-up testing consistent with those recommendations and shall ensure that such tests are unannounced and follow no discernable pattern as to their timing. No additional tests beyond those included in the plan shall be imposed by the district. (49 CFR 40.307-40.309, 382.111)

Notifications

Note: Pursuant to 49 CFR 382.601, the district is mandated to adopt policy and procedures pertaining to misuse of drugs and alcohol and to provide these materials to each driver. When conducting compliance inspections, the CHP reviews whether district policy or regulations contain all of items #1-11 below.

The Superintendent or designee shall provide each driver with materials explaining the federal regulations and the district's policy and procedure related to drug and alcohol testing and shall notify representatives of employee organizations of the availability of this information. This information shall include a detailed discussion of at least the following: (49 CFR 382.303, 382.113, 382.601)

1. The identity of the person designated by the district to answer driver questions about the materials

2. The categories of drivers who are subject to drug and alcohol testing

3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance

4. Specific information concerning prohibited driver conduct

5. The circumstances under which a driver will be tested for drugs and/or alcohol, including post-accident testing

6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver

7. The requirement that a driver submit to drug and alcohol tests

8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences

9. The consequences for drivers found to have violated the prohibitions against drug or alcohol use, including the circumstances under which drivers will be removed immediately from safety-sensitive functions and the requirements for education, treatment, and return-to-duty testing

10. The consequences for drivers found to have a blood alcohol concentration between 0.02 and 0.04

11. Information concerning the effects of drug and alcohol use on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a co-worker's); and

available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. The Superintendent or designee shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver. (49 CFR 382.601)

In addition, prior to administering each alcohol or drug test, the driver shall be notified that the test is required pursuant to Title 49, Part 382, of the Code of Federal Regulations. (49 CFR 382.113)

The driver shall be notified of the results of drug and alcohol tests in accordance with 49 CFR 382.411.

Records

> Note: 49 CFR 40. 333 and 382.401 specify the records that must be retained by the district and how long each record must be retained (i.e., one year, two years, three years, five years, or indefinitely). Upon receiving a request from the FMCSA to inspect any such record, the district must make the record(s) available for inspection at the district office within two business days.

The Superintendent or designee shall maintain records of the district's drug and alcohol testing program in accordance with 49 CFR 40.333 and 382.401. Such records shall be maintained in a secure location with controlled access and shall be disclosed only in accordance with 49 CFR 382.405.

(cf. 3580 - District Records)

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[DRAFT - TO BE PLACED ON DISTRICT LETTERHEAD]

[Date]

To: All District Employees
Re: Proposition 64 and the District's Drug and Alcohol Free Policy

In 2016, California voted to legalize the recreational use of marijuana under Proposition 64 also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). 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 and 8 grams of concentrated marijuana for recreational use.

Although the enactment of Proposition 64 legalizes recreational use of marijuana in California, marijuana still remains an illegal Schedule I substance under the Federal Controlled Substances Act. In light of that and specific language in Proposition 64, the legalization of recreational use marijuana under the AUMA will not impact drug-free workplace policies prohibiting marijuana in schools nor will it require employers to accommodate recreational or medical marijuana use. Therefore, even with the passage of Proposition 64, the school district is obligated, and will continue to prohibit use, possession, and impairment at work, as well as continue to test for marijuana use when appropriate.

Similarly, both federal and state laws require employers contracting with the government to maintain a workplace free from drugs and certify that the business is indeed drug-free. Both federal and state drug-free workplace acts prohibit use of "controlled substances," as defined under the Federal Controlled Substances Act.

Concerning district employees, Proposition 64 does not change:

- The District's ability to regulate workplace policies related to drugs/alcohol;
- Each school's ability to regulate and maintain a drug-free school zone;
- The obligations of mandated reporters;
- U.S. Department of Transportation regulations for bus drivers and safety sensitive positions.

Concerning district employees, Proposition 64 does not allow:

- Public smoking or ingestion of marijuana;
- The manufacture, distribution, possession, use, or being under the influence of alcohol or any controlled substance (including marijuana) on or near a school, daycare or youth center;
- Smoking or ingesting marijuana while driving, or driving "under the influence" of marijuana.

The Governing Board believes that the maintenance of a drug- and alcohol-free workplace is essential to staff and student safety and to help ensure a productive and safe working and learning environment. The District will continue to vigorously enforce its policies in this area. Should you have any questions concerning these polices, please refer to the District's drug and alcohol free policy and guidelines found at _____ or call the Human Resources or Personnel Department at _____.

Very truly yours,

District Superintendent

cc: [Associations]