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Missouri Meets Mary Jane: What Districts Should Know About Recreational Marijuana

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DIFFERENT
BY DESIGN

AGENDA

- **THE SCIENCE**
- **THE LAW**
- **THE IMPACT ON SCHOOLS**

MISSOURI MEETS MARY JANE:
THE SCIENCE

THE SCIENCE

- **IS ALL WEED CREATED EQUAL?**
 - Not really!
 - What's the difference?

Cannabinoids!

- A cannabinoid is a class of molecules in the Cannabis plant. To date, there are **over 100 known cannabinoids**.

Source: uclahealth.org

HEMP v. MARIJUANA

HEMP:
Contains less
than 0.3% THC



CANNABIS



SATIVA



INDICA



RUDERALIS



MARIJUANA:
Contains more
than 0.3% THC

THE SCIENCE



CBD
Products



Medical
Marijuana



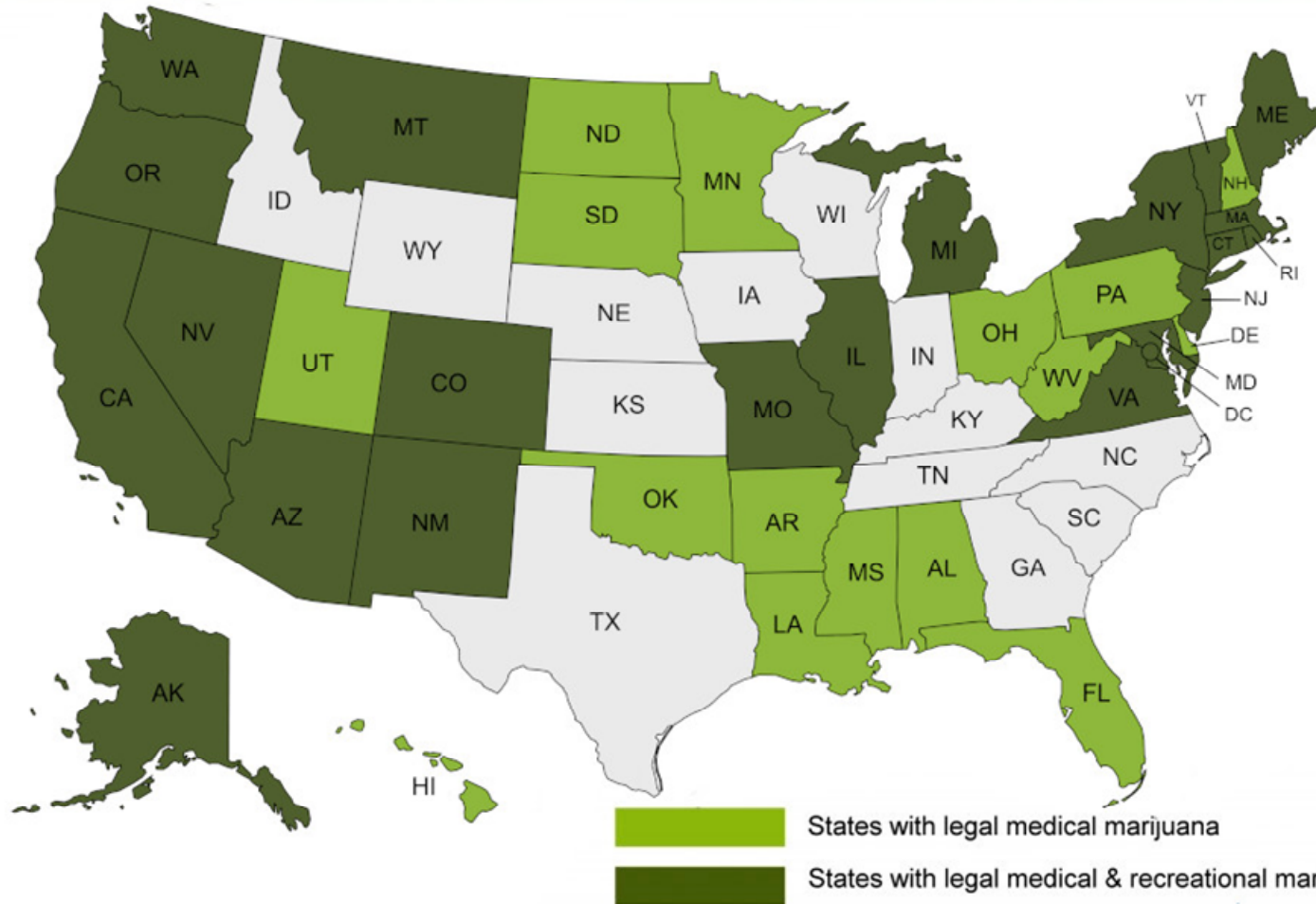
Recreational
Marijuana



MISSOURI MEETS MARY JANE:

THE LAW

Legal Medical & Recreational Marijuana States



BRITANNICA
PROCON.ORG | RELIABLE.
NONPARTISAN.
EMPOWERING.



THE LAW

- **FEDERAL LEVEL**

- **Controlled Substances Act (CSA)**

- Signed into law by President Richard Nixon in 1970.
 - Regulates the manufacture and distribution of controlled substances.
 - Classifies drugs into schedules based on medical use and potential for abuse.
 - Enforced by DEA and FDA.

THE LAW

- **FEDERAL LEVEL**

- Under the CSA, marijuana is an illegal controlled substance.
- Marijuana is still considered a **Schedule 1** drug, meaning:
 - Has no medical benefits
 - Has high potential for abuse
- Other Schedule 1 drugs:
 - LSD
 - Heroin
 - Ecstasy

THE LAW

- **FEDERAL LEVEL**

- **Federal Drug-Free Workplace Act**

- Employers with safety-sensitive positions or having federal contracts or grants must comply with the federal Drug-Free Workplace Act
 - The Department of Transportation (DOT) does not allow medical or recreational use of marijuana use under state law to serve as a valid medical explanation to negate a positive drug test required to perform transportation safety-sensitive positions

THE LAW

- **FEDERAL LEVEL**

- **Americans with Disabilities Act**

- The ADA does not protect individuals using illegal drugs under the Controlled Substances Act.
 - However, drugs taken under a licensed health professional's supervision are excluded from the definition of illegal drugs.
 - Does this impact use of medical marijuana for purposes of ADA and accommodations?

THE LAW

- **FEDERAL LEVEL**

- **Americans with Disabilities Act**

- Ninth Circuit said no!
 - Held that ADA does not because:
 - ADA expressly excludes from its definition of “qualified individual with a disability” those individuals currently using illegal drugs
 - **Marijuana remains an illegal drug under the federal CSA**

THE LAW

- **FEDERAL LEVEL RECAP**

- **Controlled Substances Act**

- Lists marijuana as Schedule I drug; illegal
 - Excludes hemp from definition of marijuana
 - (Farm Bill 2018)
 - Excludes Epidiolex (CBD prescription drug for epilepsy)
 - FDA states approved CBD drugs are Schedule V drugs, not Schedule I drugs (currently only Epidiolex)

- **Americans with Disabilities Act** doesn't cover marijuana use

THE LAW

- **STATE LEVEL**

- **Section 195.207, RSMo. - Hemp Extract**

- Effective July 14, 2014.
 - Defines “hemp extract” as a cannabis extract that contains **no more than .3% THC, at least 5% CBD, and contains no other psychoactive substance.**
 - Used only to treat intractable epilepsy as defined in Section 192.945, RSMo.
 - Hemp extract registration cards are issued to qualified individuals or parents/guardians of qualified minors
 - A minor may only be administered hemp extract by parent/guardian.

THE LAW

- **STATE LEVEL**

- **Industrial Hemp Pilot Program**

- Effective August 28, 2018.
 - Exempts industrial hemp from the definition of marijuana and the list of controlled substances.
 - Creates an industrial hemp pilot program to be implemented by Missouri Dept. of Agriculture.
 - Rules and regulations went into effect on July 30, 2019.

THE LAW

- **STATE LEVEL – Medical Marijuana**

- **Missouri Constitutional Amendment XIV, Section 1**

- Effective December 6, 2018
 - Allows physicians to recommend medical marijuana use to patients with “serious illnesses and medical conditions.”
 - Gives patients with qualifying medical conditions “the right to use medical marijuana for treatment under the supervision of a physician.”
 - Allows “limited legal production, distribution, sale and purchase of marijuana for medical use.”

THE LAW

- **STATE LEVEL – Medical Marijuana**

- **Missouri Constitutional Amendment XIV**

- Defines “marijuana” to exclude industrial hemp containing less than .3% THC or products manufactured from industrial hemp.
- Defines “qualifying medical condition” to include:
 - Cancer
 - Epilepsy
 - Glaucoma
 - Debilitating psychiatric disorders (PTSD)
 - HIV/AIDS
 - Terminal Illness
 - Chronic medical conditions treated with addictive drugs

THE LAW

- Medical marijuana is legal under MO law if person is a “qualified patient”
 - Must have medical marijuana ID card certified by MD or DO
 - For qualifying condition, including “any chronic, debilitating, or other medical condition”

THE LAW

Employee **cannot** “bring a claim against any employer, former employer, or prospective employer for wrongful discharge, discrimination, or any similar cause of action or remedy, based on the employer, former employer, or prospective employer prohibiting the employee, former employee, or prospective employee from being under the influence of marijuana while at work or disciplining the employee or former employee, up to and including termination from employment, for working or attempting to work while under the influence of marijuana.”

THE LAW

- **STATE LEVEL**

- **Missouri Constitutional Amendment XIV, Section 1**

- **Other Provisions for Schools:**

- Marijuana facilities and dispensaries cannot be within 1,000 feet of an existing elementary or secondary school
 - Physicians cannot issue certifications to minors without written parental permission

THE LAW

- **STATE LEVEL**

- **Missouri Constitutional Amendment XIV, Section 1**

- **Other Provisions for Schools:**

- Identification cards for non-emancipated patients under the age of 18 will be issued to the parent or guardian of the patient (not the patient)
 - Parent or guardian shall supervise the administration of medical marijuana to non-emancipated patient under the age of 18

THE LAW

- **STATE LEVEL – Recreational Marijuana**
 - **Missouri Constitutional Amendment XIV (Amendment 3)**
 - Voters passed Amendment 3 on November 8, 2022
 - Effective December 8, 2022
 - Legalizes recreational possession/use of 3 ounces for persons over 21 years of age
 - Legalizes growth of 6 plants if registered with DHSS

Amendment 3

- What does Amendment 3 add?
 - Modifies medical marijuana law related to employment discrimination
 - Removes residency requirement
 - Adds nurse practitioner for issuance of ID card
 - Modifies prohibition on use in public places

Amendment 3 Changes

Old Law

- “Missouri resident”
- Certain records not subject to Sunshine Law
- Public place defined as “any public or private property...that is open to the general public”

New Law

- “An individual”
- “All records produced or retained pursuant to this Section” subject to Sunshine Law
- No definition of “public place”

Amendment 3 Changes

Old Law

- No qualifying patient shall consume marijuana for medical use in a public place, unless provided by law. Violation...shall subject the violator to sanctions as provided by general law.

New Law

- A person who smokes medical marijuana in a public place, other than in an area licensed for such activity...is subject to a civil penalty not exceeding one hundred dollars.

Amendment 3

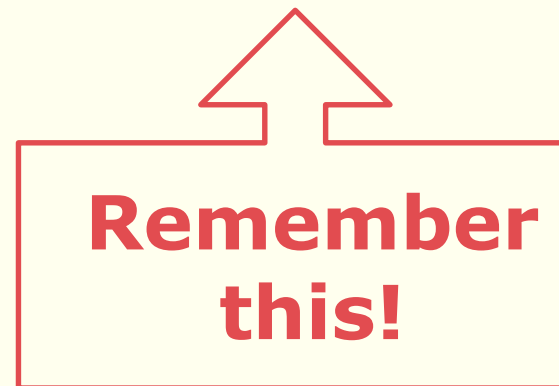
- Still prohibits:
 - Use of marijuana while operating a vehicle or while riding in a vehicle
 - “Possession or consumption of marijuana or possession of marijuana accessories **on the grounds of a public or private preschool, elementary or secondary school**, institution of higher education, **in a school bus**, or on the grounds of any correctional facility.”

Amendment 3

- Still prohibits:
 - “Undertaking any tasks while under the influence of marijuana, if doing so would constitute negligence, recklessness, or professional malpractice”
 - Smoking marijuana where smoking tobacco is prohibited
 - Conduct that endangers others

Amendment 3

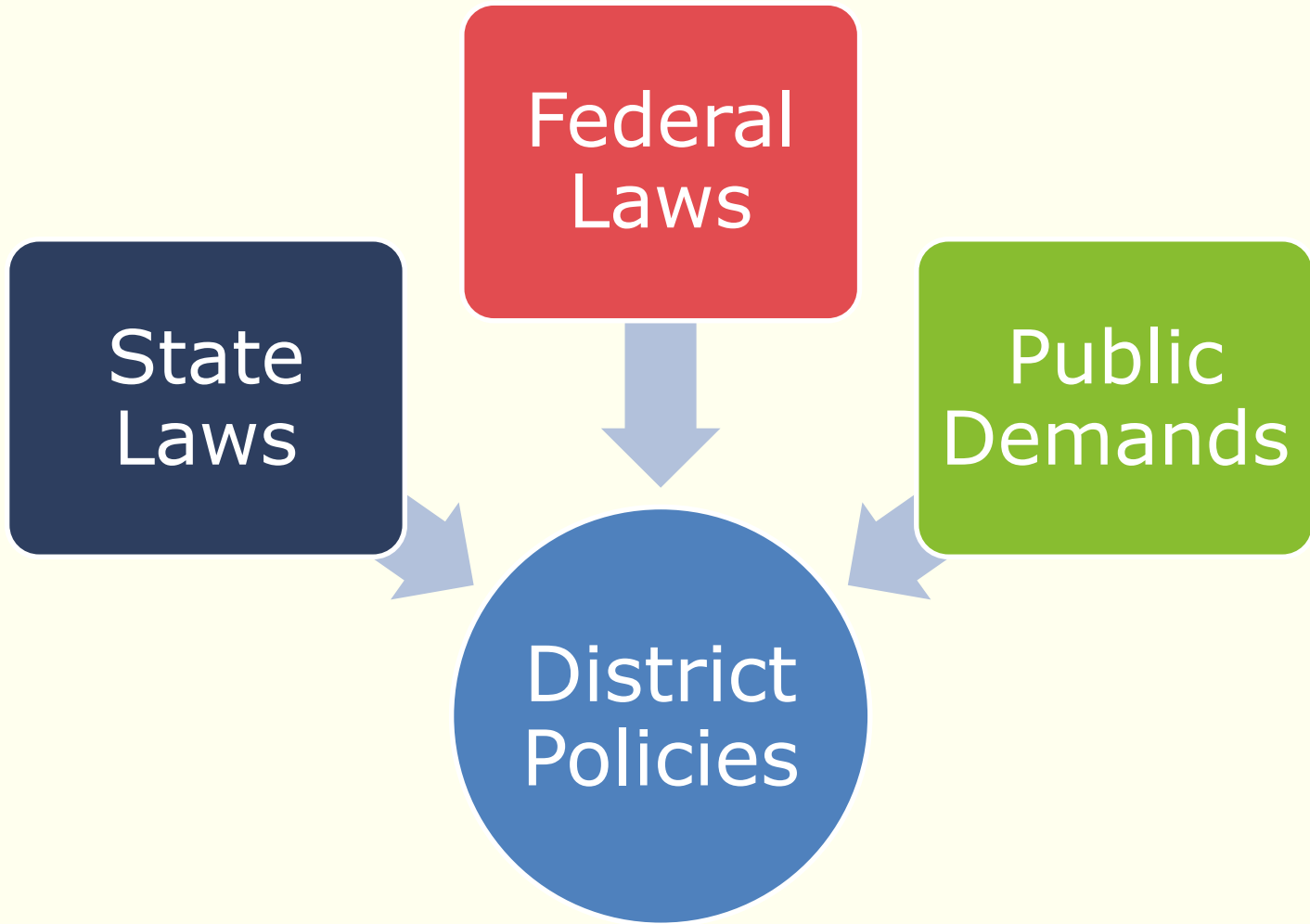
- Does **not** “require an employer to permit or accommodate conduct otherwise allowed by this section in any workplace or on the employer’s property.”
- Does **not** prohibit an employer from disciplining an employee for working “while under the influence of marijuana.”



Amendment 3

- “Does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because that person was **working while under the influence of marijuana.**”





MISSOURI MEETS MARY JANE:

THE IMPACT ON SCHOOLS

Impact on Schools

- **Marijuana and Employees**

- School districts must adopt and enforce a drug-free workplace policy as a condition to receive some federal funding.
 - No exception in federal laws for medical marijuana!
- May be easier to have a blanket prohibition than to assess which employees are authorized to use while on campus or not.
- **Remember:** There is no cause of action available against employers who prohibit being under the influence at work!

Anticipated Issues

- Definition of “under the influence”
 - There is no standardized test for determining marijuana impairment
 - Amendment 3 does not limit/prohibit laws that make illegal the operation of vehicles while under the influence of marijuana, BUT “any applicable offenses *shall require* evidence that the person was *in fact under the influence of marijuana at the time* the person was in physical control of the motorized form of transport *and not solely on the presence of [THC]...in the person’s system.*”
 - What does this mean??

Anticipated Issues

- Increase in positive drug tests
 - **Students** – still illegal = same consequences apply
 - **Employees** – this gets trickier!
 - Marijuana can stay in system for 30 days after use.
 - It's still illegal at the federal level.
 - Given shortages, will employers discharge everyone who tests positive?
 - Amendment 3 indicates mere presence is not enough for criminal laws!

Anticipated Issues

- Increase in positive drug tests
 - **Employees** – Courts are shifting...
 - Initially, in employment discrimination cases involving marijuana use, courts were finding in favor of employers who discharged employees.
 - Tide is shifting in favor of employees.
 - Where will Missouri courts stand?

Anticipated Issues

- Illinois statutes provide guidance to employers on signs to look for when an employee is “in fact” under the influence:
 - Altered speech, physical dexterity, agility, coordination, or demeanor
 - Irrational or unusual behavior
 - Negligence or carelessness in operating equipment or machinery
 - Disregard for the safety of employees or others
 - Involvement in any accident that results in serious damage to equipment or property
 - Carelessness that results in any injury to the employee or others

Anticipated Issues

- Illinois statutes also provide best practices when employers conduct reasonable suspicion testing based on those symptoms to minimize legal risk:
 - Requiring two supervisors to observe behavior raising suspicion of marijuana use
 - Involving HR to ensure consistency in how employees are treated
 - Maintaining confidentiality to the fullest extent possible
 - Paying the employee for the time the employee was suspended if it was without pay if the tests results are negative
 - Don't forget about the employee's due process rights – provide an opportunity to dispute the allegation he or she is under the influence

Impact on Schools

- **Medical Marijuana and Students**

- **Generally:** Districts are not required to administer medication to a student (e.g. Tylenol, Benadryl, etc.); May require administration at home.
 - Some students may be allowed to self-administer specific medications
 - Examples: diabetes, asthma
 - MSBA Policy JHCD
 - MCE Policy 2870

Impact on Schools

- **Medical Marijuana and Students**

- **Students with Disabilities:** For some, medication at school may be a necessary accommodation/modification.
 - But district maintains some control over where/how medication is administered.
 - Eighth Circuit has upheld school district policies that placed restriction on administration of medicine at school for safety and liability purposes; not discrimination.
 - Debord v. Bd. of Educ. of the Ferguson-Florissant Sch. Dist., 126 F.3d 1102 (8th Cir. 1997).
 - Davis v. Francis Howell Sch. Dist., 138 F.3d 754 (8th Cir. 1998).
 - Marijuana still illegal under federal law – UNLESS Epidiolex

Impact on Schools

- **Medical Marijuana and Students**

- **Students with Disabilities:**

- If parents request administration at school, request as many details as possible, including medical documentation
 - IEP/504 Teams will need to discuss alternative accommodations
 - Parent administration off-campus
 - Homebound with opportunity for social interaction
 - Other accommodations

Impact on Schools

- **CBD Products and Employees**

- Employees may choose to use supplements/products at home.
- If employee is drug tested and tests positive for THC, results will be treated as positive for marijuana and handled according to district policy – but consider impact of legalized recreational marijuana
- Employees should use common sense about whether it is worth it to use the CBD product, even if recommended by physician.

Impact on Schools

- **CBD Products and Students**

- Differentiate between hemp extract to treat epilepsy, Epidiolex, and CBD oils and supplements.
- Parents can choose whether to provide CBD supplements to their children.
- However, school districts can continue to enforce policies regarding students' possession and use of medication/supplements while on campus.

Impact on Schools

- **What about student athletes?**

- False positives? How to handle?
- MSHSAA is not issuing official guidance or policy statement
- Recommendation is for schools to follow local policies
- Student athletes should obtain written physician orders for school to have on file before any drug tests are administered

QUESTIONS?

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