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# Governance Brief

## The Impact of Marijuana Legalization on K-12

*Current Status and Future Expectations*

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### Introduction

When the Adult Use of Marijuana Act (AUMA) was passed under Proposition 64 in November 2016, the K-12 community was unsure what to expect. After AUMA took full effect in January 2018, CSBA checked in with its Delegates at the May Delegate Assembly to assess the impact of the new law. Questions included: Were there any surprises or unanticipated impacts their districts were dealing with? Were more students using marijuana? What about teachers? Were current district policies sufficient? What support could CSBA provide?

In response, Delegates reported on a range of changes in their local educational agencies (LEAs):

- » **Increased access:** Many Delegates reported that students have greater access to marijuana because of the opening of dispensaries in many cities across the state.
- » **Increased use:** About half of the respondents felt this easier access has resulted in increased use by parents and students in their communities. Others felt the rate of usage had not increased.
- » **Difficult detection:** Many Delegates reported challenges identifying marijuana baked into everyday lunchbox items or used in vaping devices that look like pens. The challenge has especially impacted high schools.
- » **Dangerous dosage:** Several Delegates have seen increased calls to 911 due to students ingesting edible marijuana at school and not understanding the potency. In some cases, students were initially unaware they had ingested marijuana.

### In this brief you will find:

- » Issues CSBA Delegates are facing in their LEAs due to the legalization of marijuana
  - » CSBA's forthcoming resources
  - » Timing and content of federal and state marijuana policy
  - » Local and employers' rights and restrictions
  - » Additional resources
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- » **Normalization:** Many respondents reported that the legalization of marijuana was affecting school culture and student response to disciplinary policies. The attitude has become: "It's legal. What's the big deal?"
  - » **Staff use:** Concerns were shared regarding staff use of marijuana on campus (which remains illegal) or questionable drug-test results. Several respondents mentioned that drug testing for new teachers was becoming a problem because many were not passing the test.
  - » **Parental use:** Cases of young children coming to school smelling of marijuana because of parental use have posed a challenge to districts.
  - » **Medical marijuana:** Most Delegates reported that they need legal guidance on how to handle student medical use of marijuana.

## CSBA Forthcoming Resources

In response to these emerging trends, CSBA will be releasing a series of Governance Briefs addressing the impact of new marijuana legislation, of which this is the first. Briefs aim to answer some of the pressing questions raised by members and show how school boards from both inside and outside of California are tackling these new and complex challenges. The next brief in the series will discuss the Compassionate Use Act (Proposition 215) and the use of medical marijuana by staff and students. The third brief will share the latest scientific research on how marijuana can negatively affect brain development in children and youth, and what scientists know about the effects of second-hand exposure to marijuana smoke and vapor. CSBA will also provide a video presentation based on a session at its Annual Education Conference with key legal information and guidance regarding marijuana and K-12 schools. In addition to advocacy efforts supporting legislation and budget proposals to help assist LEAs with these issues, CSBA will use this information as a guide for staff and its Legislative Committee to support positions on legislative issues that arise related to marijuana in K-12 schools.

## Background

In 1970, the federal government passed the Controlled Substances Act, classifying marijuana as a “Schedule I” illegal substance. Schedule I drugs are deemed to have a high potential for abuse and no proven medical benefits. In the decades following the ruling, adults and young people continued to use marijuana recreationally, fueling a vast, unregulated, and international market for those growing and selling marijuana. Those caught buying, selling, or possessing marijuana have been (and still are in most states) charged with criminal violations, fines, and jail time.<sup>1</sup>

Since 1970, however, marijuana has been documented within the medical community as an alternative treatment to relieve symptoms of chronic pain, anxiety, and some types of seizures. In 1996, California voters passed Proposition 215, called the Compassionate Use Act, which decriminalized the use of marijuana for medicinal purposes for anyone deemed qualified by a licensed physician. This law did not change Education Code (48900 and 48915) and therefore did not, and does not, enable students or staff of any age to use marijuana on school campuses, even for medicinal purposes.

Year	Federal	State of California
1970	The <b>Controlled Substances Act</b> classifies marijuana as a “Schedule I” illegal substance.	
1996		Proposition 215, called the <b>Compassionate Use Act</b> , decriminalizes the use of marijuana for medicinal purposes for qualified <sup>2</sup> adults 18 or older. Qualified minors are legal users with parental consent.
2013	Under President Barack Obama, the <b>Cole Memo</b> states that the federal government will not prosecute drug cases for medical marijuana in states where it is legal, thereby respecting states’ rights.	
2016		<b>Adult Use of Marijuana Act</b> (Proposition 64), passes and California joins seven others states and D.C. in legalizing recreational marijuana, along with strict regulatory restrictions as well as taxation.
2018	Attorney General Jeff Sessions rescinds the <b>Cole Memo</b> .	

## U.S. and California Marijuana Policy

In 2013, President Barack Obama issued the Cole Memo stating that the federal government would not prosecute drug cases for medical marijuana in states where this was legal, thereby respecting states’ rights.

Since 2013, 30 states have legalized marijuana in some form. Most of those have legalized medical marijuana to some degree, but eight states (including California) and the District of Columbia have passed the most expansive laws legalizing both medical and recreational use and implementing marijuana taxes.

On January 4, 2018, three days after California fully enacted the California Adult Use of Marijuana Act, Attorney General Jeff Sessions rescinded the Cole Memo. What this means for Californians and others in states where marijuana has been legalized is still unclear. Many see this move as a shot across the bow, signaling the Trump administration’s desire to be tougher on marijuana and slow the tide of other states seeking to legalize recreational use.

Where does that leave K-12 schools? What changed and what didn’t? California’s AUMA, in combination with current Education Code (48900 and 48915), makes it clear that marijuana (in any form, for medical use or otherwise) is still

prohibited on school campuses. Our next impact brief will cover in greater detail the nuances of medical marijuana use in schools. Several pending legal actions (noted below) will affect district and county office of education policy in the future. For now, here is a simple breakdown:

In all California K-12 public schools it is illegal to use or be under the influence of marijuana on a public school campus regardless of whether you have a medical marijuana card. The definition of “under the influence” is left ambiguous. CSBA’s sample policy (BP 4020 – Drug and Alcohol-Free Workplace) provides the following definition: “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.”

While the use of marijuana in schools is still illegal under federal law and State Education Code, criminalization has been replaced with a wider acceptance or “normalization” of marijuana use. This normalization is felt by schools when students and their parents test the limits of the law and challenge LEA policy. “What’s the big deal?” they might say. “It’s legal now.” Parent and student education programs can help mitigate these attitudes. See examples of education campaigns from other states in “Additional Resources” section of this brief.

### AUMA Proposition 64 Snapshot

Legal in California	Not Legal in California
Sale and purchase (not more than 1 oz./day) of marijuana for adults 21 and over through a licensed (Type “A”) marijuana dispensary. [HSC 11362.1(a)(1) and (2)].	Smoking, vaping, or consuming marijuana in any public space or on public property (\$100 infraction) or smoking marijuana on federal property (including federal parks and recreation sites) [HSC 11362.3 - 11362.4].
Smoking marijuana in your home or on private property for adults 21 and over.	Smoking, vaping, or consuming marijuana within 1,000 feet of a school, daycare center, or youth center while students are present (\$250 fine). [11362.3a(5)]
Growing marijuana in your home (no more than six live plants) for adults 21 and over. [HSC 11362.1(a)(3)]	Using medical marijuana on a K-12 school campus even with a medical marijuana card.
Sale and purchase of medical marijuana for people 18 and older through a licensed (Type “M”) dispensary with a medical marijuana card. Minors must have parental consent to obtain a medical marijuana card.	Selling medical marijuana without a Type M license to anyone without a doctor’s recommendation or medical marijuana card.
	Having school staff dispense medical marijuana to students.
	Driving under the influence [Vehicle Code 23152] and using marijuana while driving or in possession of open container. [Vehicle Code 23220 & 23221]

District and county boards may also need to educate/remind parents and community members of the aspects of California law that have not changed with the enactment of AUMA.

In California, it is still illegal to:

- » Smoke, vaporize, or consume marijuana in any public space or on public property (\$100 infraction).
- » Smoke, vaporize, or consume marijuana within 1,000 feet of a school, daycare center, or youth center while students are present (\$250 fine).
- » Use medical marijuana on campus even with a medical marijuana card (see CSBA Board Policy (BP) 3513.4 - Drug and Alcohol-Free Schools and updated BP 5113.6 - Alcohol and other Drugs).
- » Have school staff dispense medical marijuana to students.

## Local Rights and Restrictions

Trustees should be aware of any restrictions their local governments or municipalities have imposed related to the opening of dispensaries or of cultivation areas. Local governments may impose reasonable restrictions on cultivation. Local governments are also free to prohibit outdoor cultivation altogether until adult use is legal under federal law. (HSC 11362.2[b]). Finally, local governments can restrict or ban dispensaries within city limits. Delivery services can still operate in regions that don't allow dispensaries. Some localities have banned deliveries completely, although the legality of this could be challenged in the future. Some cities are working to create public spaces or lounges for adult smoking or vaping of marijuana.

Retail sales of marijuana are subject to the standard state sales and use tax of 7.5 percent to 9.25 percent, plus an additional 15 percent state retail excise tax. Localities also have the right to assess additional excise taxes.<sup>3</sup> Users with a state medical cannabis ID card are exempt from the sales tax on medical marijuana products.

## Employers' Rights and Restrictions

The California Supreme Court offers no protection for employees when it comes to the use of marijuana, even for medicinal purposes. In a landmark 2008 Supreme Court case (*Ross v. RagingWire Telecommunications*) the plaintiff was open about using medicinal marijuana for chronic back pain during his interview process at RagingWire, and was offered the job. The offer of employment was rescinded when Ross failed the pre-employment drug test. He sued the company under California's Fair Housing and Employment Act and lost.

The court ruled that the Compassionate Use Act (Proposition 215) does not specify rights for employers or employees.

School districts and county offices of education have the right to create policies that exclude people who fail their drug tests from being hired, even if they possess a medical marijuana card. LEAs can also require regular drug tests for employees in "safety sensitive" positions. This has not been directly challenged in the school context, but anyone working with students is arguably in a safety sensitive position. Blanket drug testing of existing employees without probable cause for wrongdoing has been deemed unconstitutional by the 9th Circuit Court. CSBA has sample board policies addressing drug testing (BP/AR 4112.41/4212.41/4312.41) and urges LEAs to provide justification for their drug screening programs by identifying the specific positions and the duties of those positions that necessitate the need for testing. CSBA also strongly recommends that districts consult legal counsel as part of this process.

## Frequently Asked Questions

**Question:** Parents are using marijuana in the privacy of their homes and cars. Students are being exposed to second-hand smoke and coming to school smelling of marijuana. What can schools do?

**Answer:** While it may be legal for parents to smoke or vape in their homes, it is not legal for them to do so in a car. Schools will need to educate parents on the dangers and risks of second-hand smoke, which can produce a "high" in those exposed in poorly ventilated spaces. This can lead to a failed drug test. This could also have Welfare and Institution Code implications—under child dependency laws, a parent can engage in legal activity that results in child neglect or endangerment that rises to the level of quasi-criminal or even criminal offense. This could also open the door to questions about mandatory reporting.

The smell of marijuana on clothing may trigger disciplinary consequences if LEAs articulate this as "reasonable cause" for a drug search. CSBA BP 5145.12 – Search and Seizure notes: "The Fourth Amendment of the U.S. Constitution which prohibits unreasonable search and seizure also applies to students in the school setting. In *New Jersey v. T.L.O.* [1985], the U.S. Supreme Court held that the legality of a search of a student and/or his/her belongings depends on whether the search is "reasonable." The "reasonableness" of a search depends on two factors: (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction.

**Question:** What can school board members do if they are concerned about the opening of too many dispensaries in their communities?

**Answer:** Cities and counties have the right to ban all marijuana businesses through a city or county ordinance. However, by doing so, the city or county will not receive any tax revenue from local sales of marijuana. You are encouraged to reach out to your local city council members and mayors' offices about new ordinances, or special permits or licenses they are requiring.

**Question:** How much tax revenue is expected, and how much will school districts receive?

**Answer:** California's Legislative Analyst's Office (LAO) reported in its May 2018 [Cannabis Tax Revenue Update](#) that the state had collected \$34 million in cannabis excise tax revenue in the first quarter. Original January estimates by the administration were for a total of \$175 million in 2017–18. Based on the low first quarter total, predictions are that the annual revenue will be less than the \$175 million predicted. In terms of how much schools will receive; the answer remains unclear. There is a long list of recipients that will receive specific funds first for research and enforcement, such as public universities and law enforcement. Of any remaining funds, 60 percent are to be allocated to the Department of Health Care Services to fund youth prevention and education programs. There are no funds dedicated specifically to the California Department of Education, but any remaining funds may go to schools for drug prevention programs. Local cities and counties can assess additional excise taxes and target them directly to specific educational programs.

Other states have experienced the unpredictability of revenues after legalization. For example, Colorado was successful in passing its recreational marijuana use law (Amendment 64) in 2014 in large part because of the tax revenues that were promised to the Colorado Department of Education (CDE) for capital construction improvements to schools, literacy grants, bullying prevention, and other education priorities. Revenue rates were high in the first year of legalization (\$86.3 million for CDE) but dipped to \$48.5 million to CDE in 2016–17. The most recent revenues (2017–18) have rebounded to \$90.3 million.<sup>4</sup> Oregon and Washington have also collected revenues more slowly than projected but are gaining significant ground. Oregon designates 40 percent to public schools, which provided \$34 million last year. Washington puts the majority of its revenue in the general fund, with public education receiving a small share.

## Questions for Board Members to Consider

- » Do board members and staff have a clear understanding of what is legal and what is not under the California Adult Use of Marijuana Act?
- » Does our board have a plan for sharing information with stakeholders (board, district staff, educators, family and community, students as appropriate) that can help clarify this issue?
- » Are board members and staff aware of local government or municipality restrictions on the opening of dispensaries and/or cultivation of marijuana and is there an LEA plan for ensuring that stakeholders are aware of these restrictions?
- » Do we have LEA policies on hiring applicants with medical marijuana cards who may fail drug tests? If not, do we have a plan for developing such a policy?
- » Does our LEA have a drug-use prevention plan in place?

## Additional Resources

### California Resource Links

California Department of Education has dedicated a page of data and resources to AUMA: [www.cde.ca.gov/ls/he/au/](http://www.cde.ca.gov/ls/he/au/)

California Department of Public Health provides a number of resources and communications tools on its "Let's Talk Cannabis" pages: [www.cdph.ca.gov/Programs/DO/letstalk-cannabis/Pages/legal.aspx](http://www.cdph.ca.gov/Programs/DO/letstalk-cannabis/Pages/legal.aspx)

California State Association of Counties provides a useful fact sheet for local governments: [www.counties.org/sites/main/files/file-attachments/local\\_government\\_reference\\_guide\\_to\\_prop\\_\\_64\\_final\\_11-22-16.pdf](http://www.counties.org/sites/main/files/file-attachments/local_government_reference_guide_to_prop__64_final_11-22-16.pdf)

### Education and Communications Examples from Other States

The Colorado Department of Health & Environment launched a media campaign in 2015 to educate Colorado residents and visitors about the safe, legal, and responsible use of retail marijuana: [responsibilitygrowshere.com/](http://responsibilitygrowshere.com/)

Colorado Department of Public Safety hosts a resource center focusing on marijuana use for communities, including this fact sheet for parents: [bit.ly/2OZ47Oo](http://bit.ly/2OZ47Oo)

Washington Healthcare Authority website for parents:  
[www.starttalkingnow.org](http://www.starttalkingnow.org)

Oregon Health Authority website to educate teens:  
[www.staytrueto.org](http://www.staytrueto.org)

## Policy Resources

CSBA recommended policy language is available to GAMUT subscribers.

The California Association of School Business Officials May 2017 webinar providing an overview of Proposition 64 and its policy implications for schools, presented by Lozano Smith Associates: [www.casbo.org/content/lozano-smith-impact-marijuana-legalization-schools-proposition-64](http://www.casbo.org/content/lozano-smith-impact-marijuana-legalization-schools-proposition-64)

Colorado Department of Public Health and Environment published this 2015 list of best practices for policies to limit youth access to marijuana: [Effective Policies & Programs to Restrict Youth Access & Exposure to Drugs/Alcohol Applications for Marijuana](#).

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## Endnotes

- 1 Possession of marijuana is punishable by up to one year in prison for first offense under Federal Law. See [www.USSC.gov](http://www.USSC.gov)
- 2 To be a qualified medical marijuana user, you must have a recommendation from a physician. Medical Marijuana cards are also issued (but not required under law) by most municipalities.
- 3 Proposition 64 Revenues (2017). Legislative Analyst's Office. Retrieved from [lao.ca.gov/handouts/crimjust/2017/Proposition-64-Revenues-021617.pdf](http://lao.ca.gov/handouts/crimjust/2017/Proposition-64-Revenues-021617.pdf)
- 4 See: [www.cde.state.co.us/communications/20180427mjfactsheet](http://www.cde.state.co.us/communications/20180427mjfactsheet)