

# Medical Marijuana — State Laws, Federal Laws, and New York



## Federalism

Under our federalist system of government, there are independent state and federal laws regarding marijuana. A state may choose to make the use of medical marijuana legal under state law and to not arrest or prosecute patients who use medical marijuana in compliance with state law. While the federal government has the authority to arrest and prosecute medical marijuana patients under federal law (even if they are complying with state law), 99 out of 100 marijuana arrests in the United States are made under state law according to U.S. Sentencing Commission and the Federal Bureau of Investigation. Therefore, changing state law to allow patients to use medical marijuana has the practical effect of protecting the vast majority of medical marijuana patients from arrest. Since states are not required to prosecute people for engaging in activities prohibited by federal law, passing legislation removing state law criminal penalties for medical marijuana patients and providers does not put a state in violation of federal law.

Since 1996, twenty-one states and the District of Columbia have passed such laws. *None of these medical marijuana laws have been directly challenged in court by the federal government.* However, the federal government remains free to enforce federal marijuana laws, even in states that have enacted medical marijuana laws. To date, the federal government has not targeted individual patients for possession or use of personal amounts of medical marijuana in states that allow access to marijuana for medical use.

## United States Supreme Court Decision: *Gonzales v. Raich*

In June of 2005, the United States Supreme Court issued a ruling holding that the federal government has the power to prosecute medical marijuana patients in states that have laws allowing the use of medical marijuana under federal law. This decision did not find that the medical marijuana laws already passed in states are invalid or that additional states may not pass medical marijuana laws. It only means that federal officials retain the power to enforce federal marijuana laws as they see fit. States can still pass laws to remove state law criminal penalties for the use of medical marijuana and to confer state legal protections to patients, physicians, and caregivers.

## The Obama Administration's Position

Until recently, there had been some question as to whether or not the U.S. Department of Justice (DOJ) would interfere with state marijuana laws, including medical marijuana programs. On August 29, 2013 Deputy Attorney General James Cole issued the federal government's clearest statement to date on the issue. In a memo to all U.S. States Attorneys, Cole addressed all federal enforcement activity, including civil and criminal prosecutions, for marijuana laws in all states. The guidance applies to states with medical marijuana laws as well as the two states (CO and WA) that have passed ballot initiatives to legally regulate the production, distribution and sale of marijuana for non-medical use by adults. This memo is important for New York because it clearly lays out what kinds of provisions need to be in place for a medical marijuana program to avoid federal interference.

**The memo makes clear that the federal government will not interfere with a medical marijuana program unless the program violates certain federal enforcement priorities.**

The Compassionate Care Act (A.6357-A (Gottfried) /S.4406-A (Savino), the bill currently pending

before the NY State Legislature, would create a carefully regulated medical marijuana program and clearly addresses the concerns of the federal government; therefore, New York would not be subject to federal interference. States such as New Mexico and New Jersey that have implemented similar state-regulated programs have not been subject to federal interference.

#### **NIDA and DEA Obstruction of FDA Drug Development Research**

While there is a plethora of scientific research establishing marijuana's safety and efficacy – as the Institute of Medicine has documented – the National Institute on Drug Abuse (NIDA) and Drug Enforcement Administration (DEA) have effectively blocked the standard Food and Drug Administration (FDA) development process that would allow for the marijuana plant to be brought to market as a prescription medicine. The DEA prohibits marijuana from being produced by private laboratories for scientific research. Although DEA has licensed multiple privately-funded manufacturers of all other Schedule I drugs, it permits just one facility – operated by NIDA – to supply marijuana to scientists. NIDA has refused to provide marijuana for three FDA-approved studies, including a study approved by the FDA last year that would have examined medical marijuana for veterans suffering from post-traumatic stress disorder (PTSD). The DEA and NIDA have successfully created a catch-22 for patients, doctors, and scientists by denying that marijuana is a medicine because it is not approved by the FDA, while simultaneously obstructing the very research that would be required for FDA to approve marijuana as a medicine.

Although it continues to classify marijuana as a Schedule I substance, which means that under federal law it cannot be used for medical purposes, the federal government is currently supplying four patients with medical marijuana through the Investigational New Drug (IND) compassionate access program. The program was founded in 1978 and allowed some patients to receive medical marijuana directly from the federal government. Unfortunately, the IND was closed in 1992 after it was flooded by applications from AIDS patients. No more applications are being accepted, which is why state medical marijuana laws are so important.

It is precisely because marijuana has been classified as a schedule I substance, that twenty-one states and the District of Columbia have passed laws creating access to medical marijuana for patients. These state laws provide legal and regulated access to medical marijuana because, under federal law, healthcare providers cannot prescribe medical marijuana as they would any other medication.