

## Act 86

### Eliminating Penalties for Possession of Limited Amounts of Marijuana by Adults 21 or Older

For adults 21 and older, the statute legalizes possession of:

- One ounce of marijuana
- Five grams of hashish

And cultivation of:

- Two mature marijuana plants
- Four immature (not yet flowering/no buds) marijuana plants

Harvested marijuana does not count toward the possession limit if:

- it is stored in an indoor facility on the property where it was cultivated, and
- “reasonable precautions” are taken to prevent unauthorized access. (18 V.S.A. §4230e(a)(3))

The law takes effect on July 1, 2018.

#### What Towns Need to Know

It is illegal to consume marijuana in a public place, including any:

- street, alley, park, or sidewalk
- public building (other than individual dwellings)
- place of “public accommodation” as defined in 9 V.S.A. §4501 – this includes:
  - schools, restaurants, and stores
  - any establishment or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public
- place where use or possession of a lighted tobacco product, tobacco product, or tobacco substitute as defined in 7 V.S.A. §1001 is prohibited by law

(18 V.S.A. §4230a(a)(2)(A))

Municipalities may adopt a civil ordinance to provide additional penalties for consuming marijuana in public places. (18 V.S.A. §4230a(b)(2)(D))

#### What Landlords Need to Know

Landlords may ban possession or use of marijuana in lease agreements. (18 V.S.A. §4230a(b)(2)(E)).

Cultivation is permitted only with written consent of the property owner or the person lawfully in possession of the property (e.g., the leaseholder). Therefore, tenants may grow marijuana on rental property unless the lease agreement states that it is not allowed. (18 V.S.A. §4230e(b)(1)(A))

**Clarification from Paul Finnelly, State’s Attorney in Lamoille.**

“So, in Act 86, 18 V.S.A. 4230(a) is amended to include what appears to be section (b)(2) (E) (page 7 and 8 of the Act), which states that “This section does not ‘prohibit a landlord from banning possession of use of marijuana in a lease agreement.’” Just thinking about that now, I can see an issue with tenants who have a medical marijuana card claiming that they are being discriminated against due to a valid medical diagnosis, but that is not my area of expertise, so I will leave that question for someone who has that expertise. In amending 18 V.S.A. 4230(e), the legislature included the following language: “Personal cultivation of marijuana only shall occur (A) on property lawfully in possession of the cultivator or with the written consent of the person lawfully in possession of the property.”(this is on page 12 of the Act). In a recent Vermont Supreme Court case involving the protest against Green Mountain Power’s Lowell Mountain wind project, the court distinguished the concept of lawful possession from that of ownership. “Although their traits may overlap, ownership and possession are distinct legal concepts. Ownership is the set of rights and duties allowing one to use, manage, alter, or convey property. These rights and duties can be separated by the owner and given to other parties, as when a landlord leases property to a tenant. Possession, meanwhile, is a more limited right: it is the physical or constructive control of property. The right to possess property-or ‘lawful possession’-may flow from one’s ownership of property, but it may also flow from other sources, such as a lease, a court order, or even the circumstances surrounding the property’s use.” State v. Gillard, [2013 VT 108](#), 195 Vt. 259 (2013). The particular choice of words by the legislature “person in lawful possession” rather than “owner” or “landlord” in my opinion, does not give a landlord, absent an express ban in a lease agreement, the ability to prevent a tenant from cultivating marijuana in or on a rented property. “

If a landlord decides not to ban marijuana cultivation on their property, renters may grow marijuana in their rental units under the following conditions:

- each dwelling unit is limited to two mature plants and four immature plants, regardless of how many adults 21+ live in the unit
- plants may only be grown in a secured enclosure screened from public view – access must be limited to the cultivator and adults 21+ who have permission from the cultivator
- residents must take “reasonable precautions” to prevent unauthorized access to harvested marijuana and it must be stored in an indoor facility on the property where it was cultivated

(18 V.S.A. §4230e(a)(2), (3), (b)(1)(A),(B))

**What Parents Need to Know**

How to protect young children

If you have a child enrolled in a childcare or afterschool program, the statute establishes requirements specific to the type of facility.

| Type of Childcare Facility                    | Restrictions on Marijuana Use   | Restrictions on Marijuana Cultivation                       |
|---|---|---|
| Licensed childcare center                     | Not permitted, indoors or outdoors, on premises at any time   | Not permitted, indoors or outdoors, on premises at any time |
| Licensed afterschool program                  | Not permitted, indoors or outdoors, on premises at any time   | Not permitted, indoors or outdoors, on premises at any time |
| Licensed or registered home day care provider | Not permitted, indoors or in any outdoor area designated for child care, while children are present and in care | Not permitted   |

| Type of Childcare Facility                     | Restrictions on Marijuana Use   | Restrictions on Marijuana Cultivation |
|--|---|---------------------------------------|
|  | If marijuana use occurs on the premises at other times, the day care provider must notify families prior to enrolling |                                       |
| Unregistered/unlicensed home day care provider | No restrictions   | No restrictions                       |

If you are the parent of a teenager or young adult (under 21)

You can educate your child about what the law says. It is still illegal for persons under 21 to possess, use, or cultivate marijuana. If your child is under 21 and is caught with one ounce or less of marijuana or five grams or less of hashish, they are guilty of a civil violation and will be referred to the Court Diversion Program and must enroll in the Youth Substance Abuse Safety Program. Failure to complete the program successfully will result in fines and a driver’s license suspension.

*If your child gives, trades, or sells marijuana*

The chart below summarizes penalties for dispensing marijuana by persons under 21:

| If you are age(s): | And you knowingly dispense marijuana to someone age(s): | You will be subject to these penalties:  |
|--------------------|---|--|
| 18, 19, or 20      | Under 18 and at least 3 years younger than you          | Up to 5 years in prison  |
| 18, 19, or 20      | 18, 19, or 20   | Civil violation – referral to Court Diversion Program for enrollment in Youth Substance Abuse Safety Program |
| 19                 | 17  | Misdemeanor – fine of up to \$500  |
| 18                 | 16 or 17  | Misdemeanor – fine of up to \$500  |
| Under 18           | Under 18  | Delinquent act – see 33 V.S.A. ch. 52  |

18 V.S.A. §4230f(e)(2)

*Driving and marijuana*

It is illegal to use marijuana in a motor vehicle occupied by a child under 18 and it is illegal for the driver or passengers to use marijuana while the vehicle is in operation. The open container provisions of the law related to alcohol have been expanded to include marijuana, so it is also illegal for a driver or passenger to possess marijuana in an open container while the vehicle is in operation.

*What happens when youth use marijuana at your house*

The penalties for social hosting related to marijuana are similar to alcohol. If you host a party in your home that is attended by persons under age 21, and marijuana is consumed, you could face criminal and civil penalties.

It is illegal to give marijuana to persons under 21, or to create a “direct and immediate opportunity” for a person under 21 to consume marijuana. Violations carry penalties of up to 2 years in jail and fines of up to \$2,000. As an adult, if you provide marijuana or enable marijuana consumption by a person under 21, and that person has a motor vehicle accident that results in death or serious bodily injury, the penalty is up to 5 years in prison and fines of up to \$10,000. (18 V.S.A. §4230f(a)-(d))

In addition to the criminal penalties, the statute also establishes grounds for civil action for damages by the anyone (including spouses, children, employers, and others) who are injured in “person, property, or means of support” by a person under 21 who is impaired by marijuana. For example, if a teen goes to a friend’s house after school and consumes marijuana, then has an accident on the way home and runs into the side of a house, the owners of that house would have a right of action against any persons who dispensed or enabled marijuana consumption and caused impairment in whole or in part.

### **What Schools Need to Know**

Primary and secondary schools may impose administrative penalties for possession of marijuana on school property. (18 V.S.A. §4230a(b)(2)(C))

### **What Employers Need to Know**

Employers may prohibit or “otherwise regulat[e]” use, consumption, possession, transfer, display, sale, or growing of marijuana in the workplace.

(18 V.S.A. §4230a(e))