



LEGALIZATION OF RECREATIONAL
MARIJUANA IN ILLINOIS1



MARIJUANA IS A SCHEDULE I DRUG —
FEDERAL IMPLICATIONS2



RESOURCES2



EDUCATION LAW IS ALL WE DO.

k12
focus

Legalization of Recreational Marijuana in Illinois and the Impact on School Districts as Employers

On June 25, 2019, Illinois Governor JB Pritzker signed Public Act 101-0027 into law, known as the Cannabis Regulation and Tax Act (CRTA), which legalizes the possession, use and sale of marijuana for recreational purposes effective January 1, 2020. The CRTA is anticipated to generate significant revenue for the state of Illinois by treating marijuana in a manner similar to alcohol — legal for adults age 21+ and taxed and sold through legitimate businesses.

The CRTA specifically does not affect or govern the use of medical cannabis pursuant to the *Compassionate Use of Medical Cannabis Pilot Program Act* (“Compassionate Use Act”). Similarly, the CRTA does not affect the use of medical cannabis by students enrolled in public schools pursuant to *Ashley’s Law*. Click here to read our companion newsletter highlighting recent changes to *Ashley’s Law*.

It stands to reason that the legalization of recreational marijuana has left employers throughout Illinois, including school districts, with a litany of questions and concerns.

Can school district employees now smoke pot recreationally at work?

No. The CRTA specifically provides that schools are allowed to remain drug-free. Sections 10-35(a)(2) and (3) of the Act prohibit the possession and use of cannabis on school grounds, school property and school buses, except when allowed under the Compassion Use Act.

School districts can and should continue to enforce drug-free work policies that prohibit the possession and use of recreational marijuana by students and staff. Section 10-50 of the Act permits an employer to adopt reasonable zero tolerance or drug-free workplace policies, so long as those policies are applied in a nondiscriminatory manner.

Can school employees smoke pot at work as a reasonable accommodation for a disability?

No. Without even delving into the issue of what constitutes a reasonable accommodation, the CRTA strictly prohibits the use and/or possession of cannabis on school grounds, in school buildings, on school buses or in any other public place, including units of local government (410 ILCS 130/30).

Are school employees prohibited from using pot at any time?

This question was discussed during the legislative debates in the Illinois House and Senate. Unfortunately, a blanket prohibition for school employees is not contained in the CRTA, with two important exceptions.

Bus Drivers/CDL: No individual who holds a school bus driver’s permit or a Commercial Driver’s License is allowed to use cannabis at any time, whether at work or not, recreational or medicinal.

School Resource Officers: The use of cannabis (recreational or medical) is also strictly prohibited 24/7 for individuals who work in the following fields:

- Law Enforcement Personnel, which arguably includes School Resource Officers; these agreements should be reviewed and updated accordingly
- Fire Officials/Firefighters
- Emergency Medical Service EMS personnel (paramedics)
- Corrections Officers
- Probation Officers

410 ILCS 130/30(a)(9) and (19)

Marijuana Legalization – Federal Implications

The [U.S. Drug Enforcement Administration \(DEA\)](#) classifies drugs into five categories or schedules depending upon the drug's acceptable medical use and potential for abuse/dependency. Marijuana has always been categorized as a Schedule I drug, meaning that it has no currently accepted medical use in addition to a high potential for abuse.

On June 28, 2018 the [U.S. Food and Drug Administration \(FDA\)](#) approved Epidiolex, a prescription drug containing a purified cannabis extract. The DEA placed Epidiolex on Schedule V of the controlled substance schedule, marking the first time that a drug containing a cannabis extract was recognized as having a medicinal use. Epidiolex is an oral solution that contains cannabidiol (CBD), a non-psychoactive chemical compound extracted from the cannabis plant. Epidiolex is used for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older.

On June 20, 2019, the U.S. House of Representatives voted 267-165 in favor of prohibiting the DOJ from interfering with a state's decision to implement laws governing the use of cannabis, whether recreational or medicinal. Although not passed as law yet, the House's bi-partisan approval of this amendment marks the first time that either branch of the U.S. Congress has voted to protect state recreational cannabis laws from federal enforcement actions. Since 2014, the U.S. Congress has adopted similar protections governing only medicinal (not recreational) cannabis use.

There will likely be extensive litigation to follow on this issue as it touches upon almost all aspects of a school system, from student use to employment accommodations to labor disputes. We are witnessing first-hand the evolution of public opinion regarding the use of cannabis, both recreational and medicinal. Illinois is on the cutting edge of these changes, as one of several large states (including Michigan and California) that have legalized the recreational use of cannabis. This evolution of public opinion is putting pressure on federal lawmakers to adopt laws and regulations that protect their constituents from federal enforcement actions. Stay tuned!

Resources for School Personnel

- [Kriha Law companion newsletter on Ashley's Law amendments effective August 12, 2019](#)
- [Cannabis Regulation and Tax Act](#), 410 ILCS 705 - effective June 25, 2019 (PA 101-0027)
- [Compassionate Use of Medical Cannabis Pilot Program Act](#), 410 ILCS 130 - effective August 1, 2013 (PA 98-0122)
- [Ashley's Law](#), 105 ILCS 5/22-33 - effective August 1, 2018 (PA 101-370) amended effective January 1, 2020.
- [Medical Cannabis Patient Registry Program](#) - Illinois Department of Public Health (IDPH)
- [Minor Qualifying Patient Application](#) - Illinois Department of Public Health (IDPH)



Kriha Law LLC is an education law firm representing boards of education, public school districts, special education cooperatives, charter schools, and private schools. This is attorney advertising and should not be taken as legal advice. Please contact an attorney for advice on specific legal issues.

Contact us!



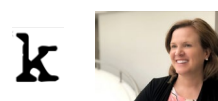
Kevin Gordon kevin@krihalaw.com
Direct: (630) 394-3784



Stephanie Jones stephanie@krihalaw.com
Direct: (630) 394-3786



Laura Knittle laura@krihalaw.com
Direct: (630) 394-3783



Darcy Kriha darcy@krihalaw.com
Direct: (630) 394-3782



Mohammed Lakhani mohammed@krihalaw.com
Direct: (630) 394-3785



Rob Swain rob@krihalaw.com
Direct: (630) 394-3788