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Old Marijuana Laws go up in Smoke as State Legalizes Adult Recreational Possession and Use of Cannabis

# OLD MARIJUANA LAWS GO UP IN SMOKE AS STATE LEGALIZES ADULT RECREATIONAL POSSESSION AND USE OF CANNABIS

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## INTRODUCTION:

On March 31, 2021, the State of New York passed groundbreaking legislation (Marijuana Regulation and Taxation Act) that: legalizes the possession and use of up to three ounces of marijuana (possession of over two ounces used to be a class A misdemeanor), by persons age 21 or older, established an Office of Cannabis Management (OCM) to oversee the licensing of authorized growers, distributors and sellers, and regulate retail sales that are expected to generate an estimated $350 million in annual tax revenue (9% to the State and 4% to localities), and has provided for expungement of criminal records of an estimated 150,000 people convicted of Class E felony possession (CPM 3d degree) and misdemeanor level possession (CPM 4th degree) and sale of marijuana (4th and 5th degrees). (see Buffalo News front page article 4/3/21).

This legislation (resulting in the repeal of PL Art. 221 and introduction of PL Art. 222) comes less than two years after the Legislature converted PL 221.10 (a class B misdemeanor), to a violation (for unlawful possession of one to two ounces of marijuana) punishable by a fine of up to $250.00, capped the penalty for violating PL 221.05 (possessing up to an ounce of marijuana) to $50.00 and provided for expungement per CPL 160.50 (3)(k) and (5) of records associated with those convictions.

Since possession of personal-use amounts of marijuana is now legal, police will no longer be able to rely upon the odor of marijuana alone as a basis for searching the inside of a motor vehicle . The case of People v Chestnut 43 AD2d 260 [3d dep't 1974] which held that the smell of marijuana in a lawfully stopped vehicle can provide probable cause to search the vehicle and its occupants is now, for all intents and purposes "roasting on an open fire." Also, the odor of marijuana alone can no longer provide evidence of criminal activity afoot sufficient to justify a common law inquiry, let alone a forcible detention and/or stop and frisk. (People v DeBour 40 NY2d 210 [1976]). (PL 222.05[2]).

## LEVELING THE FIELD:

New York is the 16th state to legalize marijuana, and according to state legislators (including State Senator Elizabeth Krueger [Dist. 28/Manhattan and Assembly Member Crystal Peoples-Stokes Dist. 41/Buffalo), the change in the law represents the State's several-year effort to level the playing field for minority communities who have historically been most adversely affected by the enforcement of marijuana laws. (According to a 4/10/21 article by Matthew Stein of the Intelligencer, in 2015-2016, over 90 percent of the marijuana arrests in New York City were made against minorities).

Toward that end, 40% of the tax revenue generated from the legalized sale of marijuana will be channeled into minority communities, and minorities, women and service disabled veterans will be given priority in the granting of licenses to grow and distribute marijuana. Another 40% will be directed toward education and development of safety measures to combat Driving Under the Influence of Drugs (Marijuana in particular), including roadside technology to detect cannabis and funding for the training of more Drug Recognition experts (DRE'S).

In particular, the NYS Department of Health has been directed to conduct a controlled research study to evaluate methodologies for the detection of cannabis impaired driving. It may then implement rules and regulations to approve and certify a test for detection of cannabis in drivers.

Currently, urine testing is used to detect the presence of marijuana (in particular, tetrahydrocannabinol [THC]) in the body but it reportedly remains in the system for up to 30 days, and unlike VTL 1192-2 (DWI per se) which is based on a particular blood alcohol level (e.g. .08=intoxication), there is no threshold level of THC that must be reached before a motorist can be charged with Driving While Impaired by Drugs (DWAID) in violation of VTL 1192-4 or Under the Influence  Drugs in combination with alcohol in violation of VTL 1192-4-a.

Under the new legislation, cannabis and concentrated cannabis have been added to the definition of "drug" in VTL 114(A) for purposes of VTL 1192-4 and 1192-4-a, and consumption of cannabis has been added to the open container law (VTL 1227[a]).

While the smell of marijuana can no longer be used to provide probable cause to search a vehicle (for marijuana or other contraband), in can still be relied upon as a factor in determining whether there is probable cause to believe that the operator is driving under the influence of marijuana (assuming the method of operation or other V&T violation justified the stop in the first place. (PL 222.10).  (see 3/31/21 article by Kari Sanchez appearing in the Verge).

More often than not, however, the police will summon a DRE who will proceed with a multi-step evaluation that includes: an interview with the arresting officer, administration of an alco-sensor, taking the motorist's pulse, examination of his/her pupils, conducting divided attention tests, re-taking of the pulse, conducting a dark room examination, performing a muscle tone exam, checking for possible drug injection sites, evaluating the defendant's statements, demeanor, physical appearance and mental acuity.

As would be expected, representatives of law enforcement and parent-teacher associations view the changes as being harmful to children (marijuana in the home is supposed to be kept in safe and secure locations, but who can be sure when mom and dad are toking up on the couch), and there is a fear in the law enforcement community that the incidence and hazards of cannabis-impaired driving will increase dramatically. (See 4/10/21 Intelligencer article by Matt Stein).

Municipalities will have nine months (until December 31st 2021), to opt out of certain changes in the law  including those  permitting retail cannabis dispensaries or on-site consumption licenses but they CANNOT ignore or opt out of adult use legalization which permits people to possess (up to three ounces or 24 grams if in concentrated form), hand off (but not for compensation), and smoke marijuana in locations where people are otherwise allowed to smoke tobacco. Conversely, marijuana cannot be legally smoked (or vaped) in places where cigarette smoking is prohibited, including schools. (PL 222.10[1][2]).

The new law also expands the use of medical marijuana to encompass more physical conditions for which it may be consumed. It also increases the number of care givers per patient, and homeowners are allowed to have up to six mature plants and six immature plants in their households. (Individuals may possess up to three mature plants and three immature plants).

THE SMELL OF MARIJUANA AND VEHICLE SEARCHES...UNTIL NOW.

For several years, (see People v Chestnut supra), police have successfully relied on the smell of marijuana (burnt or not), as providing an "open door" to legally justified searches of the occupants and the interior compartment of the vehicle for more marijuana and other contraband, leading to the discovery (e.g. under the seats, on the console, in the glove compartment) of controlled substances, drug paraphernalia and weapons.

In People v Cuffie 109 AD3d 1200 (4th dep't 2013), the Fourth Department affirmed the lower court's denial of the defendant's motion to suppress a handgun found in the vehicle in which he was a passenger after the police pulled the vehicle over for turning without signaling, (VTL 1163[b]), and the officers smelled marijuana through the open windows on either side.

The court held that the stop was justified by the V&T violation (citing People v Binion 100 AD3d 1514 [4th dep't 2012]), and noted that "'it is well established that the odor of marijuana emanating from a vehicle, when detected by an officer qualified by training and experience to recognize it (the officer testified to his experience in this regard), is SUFFICIENT TO CONSTITUTE PROBABLE CAUSE TO SEARCH THE VEHICLE AND ITS OCCUPANTS." (citing, inter alia, People v Gaines 57 AD3d 1120 [3d dep't 2008], People v Chestnut supra, People v Cosme 70 AD3d 1364 [4th dep't 2010], People v Lightner 56 AD3d 1274 [4th dep't 2008]).

The court also noted that the defendant admitted that someone "may have smoked weed" in the car prior to the stop (People v George 78 AD3d 728 [2d dep't 2010], and that the odor of marijuana, according to the officers, persisted after the occupants were removed from the vehicle. (People v Smith 98 AD3d 590 [2d dep't 2012]).

In contrast, see People v Anderson 2019 NY Slip Op. 51468(U) (Sup Ct Queens County 9/16/19), where the court found the V&T stop (for darkly tinted windows), was justified, and the smell of marijuana supported the search of the interior compartment, but there was no credible evidence to support the existence of any CONFIRMING FACT that would permit a search of the trunk and its contents including plastic bags (containing drug paraphernalia) and a backpack containing a loaded weapon and crack cocaine.

The officer testified that he pulled the defendant over for dark tints at 1:35am. When the officer leaned in the driver's window to speak to the defendant (the lone occupant), he smelled a strong odor of marijuana whereupon he ordered the defendant to get out of the vehicle. He patted the defendant down and found nothing on his person. The officer then proceeded to search the vehicle's interior (after reportedly observing several flecks of marijuana "shake" at the defendant's feet [before he exited] which the court chose not to believe since none of it was collected as evidence and the officer did not mention seeing it in his police report).

The court (citing, inter alia, People v Romeo 15 AD3d 420 [2d dep't 2005] and People v Ramos 122 AD3d 462 [1st dep't 2001]), held that while the officer, having legally stopped the vehicle and smelled marijuana, was justified in searching the interior compartment for contraband, (People v Ricks 145 AD3d 1610 [4th dep't 2016]), there was nothing more to support the

inference that contraband would be stashed in the trunk (even though the officer claimed that the smell of marijuana was stronger in the backseat area). In the court's estimation, the officer's testimony, insofar as it sought to justify entry into the trunk, was tailored to overcome constitutional objections. (citing People v Dunbar 104 AD3d 198 [2d dep't 2013]).

In Romeo, the court held that after the search of the interior (after a valid V&T stop) tuned up nothing, there was no probable cause to search the trunk or the duffel bag contained therein, (even though marijuana was found on the defendant's person. Similarly, in Ramos, there was no basis to search the trunk upon ambiguous testimony regarding the smell of marijuana and a glassine envelope found on the front passenger side floor had nothing in it. In the court's view, since the police lacked a "confirming fact" such as an admission or the recovery of marijuana inside the vehicle, there was no probable cause to search the trunk. In this case (Anderson), as noted above, the court did not credit the testimony about marijuana shake inside the car, so as far as the court was concerned, there was no contraband or other fact supporting the search of the trunk.

In contrast, see People v Hughes 68 AD3d 894 (2d dep't 2008), where the trooper's detection of a strong odor of marijuana inside the vehicle and observation of marijuana on the defendant's shirt (coupled with his admission to having smoked marijuana earlier) constituted sufficient facts to justify the trunk search.

Likewise, in People v Morgan 10 AD3d 369 (3d dep't 2004), the strong odor of marijuana coming from the defendant's vehicle and the officer's observation of roaches (the smoked kind), in the ash tray, along with the defendant's statement, "we were smoking and drinking" provided a sufficient factual basis (i.e. probable cause) to perform a search of the trunk.

The court rejected the People's reliance on People v Edwards 14 NY3d 741(2010) since the defendant in that case had cocaine residue on his shirt and more in his pocket as well as a half-pound more cocaine in his vehicle.

THE SMELL OF WEED AS A BASIS TO SEARCH A VEHICLE IS "OUT THE WINDOW."

PL 222.05 states that a person MAY POSSESS, TRANSPORT, OR DISPLAY UP TO THREE OUNCES OF CANNABIS (24 grams if concentrated), and if 21 years old or more, may transfer or give it to another person (also age 21 or more), as long as it is not for compensation. The person may also smoke or ingest such cannabis (and if compliant with PL 222.15, may plant and cultivate it).

Consequently, conduct that is now deemed lawful cannot provide a basis for police to approach, detain, search or arrest a person (PL 222.05[2]), nor can it serve as grounds to search a vehicle or detain a person (other than to investigate a possible charge of DWAID based on his/her manner of operation, physical appearance and odor of marijuana on his person and/or in the vehicle).

In such case, the aroma of burnt cannabis CANNOT ESTABLISH PROBABLE CAUSE to search a vehicle BEYOND THE AREA THAT IS READILY ACCESSIBLE TO THE DRIVER AND REASONABLY LIKELY TO CONTAIN EVIDENCE RELEVANT TO THE DRIVER'S CONDITION. (PL 222.10).

According to an article appearing in the New York Daily News (by Thomas Tracy and John Amese on 4/2/21), the New York City Police Department (NYCPD), has instituted a policy noting that while smoking marijuana while driving is illegal, officers can no longer use the smell of marijuana (whether burnt or unburnt), as a basis to search a motor vehicle.

While the policy reminds officers that driving under the influence of marijuana is still a crime, and the smell of marijuana can provide probable cause of impaired driving, in such case (where the driver displays signs of impairment), they may search the interior (within the limits described above) but NOT the trunk unless there is probable cause to believe that there is evidence of a crime contained therein.

So, unless an officer observes the driver smoking a joint or sees evidence of erratic operation (e.g. weaving, failure to obey traffic control devices, crossing over the center line etc) coupled with evidence of marijuana consumption/impairment (e.g. odor of marijuana on his person, blood shot eyes, slow or slurred speech, impaired coordination, admission to smoking pot etc), sufficient to provide probable cause of DWAID (marijuana), there will be no good basis to search inside the car, and certainly not in the trunk without probable cause to believe it contains evidence of a crime.

Under the new law, even parolees and probationers can't be arrested for possession of otherwise legal amounts of marijuana unless their conditions of parole or probation, as the case may be, specifically proscribe it. (It's hard to imagine a parole officer not forbidding a parolee from smoking dope except, perhaps, upon evidence of medical necessity, and it does not seem very likely that too may probation officers will recommend that a sentencing judge permit defendants, many of whom have serious addiction issues, to toke at will).

PERTINENT SECTIONS OF NEW PL ARTICLE 222:

CPL 222.00 (1): CANNABIS: includes all parts of the plant of genus cannabis, whether growing or not, and seeds thereof, resin extracted from any part of the plant and every compound, manufacture, salt, derivative mixture or preparation of the plant, its seeds or resin.

2. CONCENTRATED CANNABIS: a. separated resin, crude or purified, obtained from the cannabis plant, or b. a material preparation, mixture, compound or other substance containing more than 3% by weight of delta-9 THC or its isomer, delta-8 dibenzopyram number system or delta-1 or its isomer, delta 1(6) monoterpil number system.

3. SELL: means to SELL, EXCHANGE OR DISPENSE FOR COMPENSATION. It does NOT include the transfer of cannabis/concentrated cannabis between persons 21 years of age or older WITHOUT COMPENSATION.

PL 222.10 PERSONAL USE: Unless otherwise authorized by law or regulation, no person shall:
1. smoke or vape cannabis in an location where smoking or vaping is prohibited by PHL 13-E; or on
2. school grounds.

a person who violates this statute is subject to a civil penalty of $25.00 or 25 hours of community service. (The records are subject to automatic sealing per CPL 160.50[3][k].

PL 220.15 PERSONAL CULTIVATION OF CANNABIS AT HOME:

Barring certain exceptions, whether in a private residence or on private grounds, it is unlawful for a person to plant, process or possess over three mature or three immature cannabis plants at the same time. (No person age 21 may possess, plant or process cannabis plants).

Municipalities must enact civil penalties for a violation of this statute but it may not exceed $200.00. (This section will take effect when OCM enacts regulations within six months of the law's enactment). (Sealing of records applies per CPL 160.50[3][k].

PL 222.25: UNLAWFUL POSSESSION OF CANNABIS:

Possession of OVER THREE OUNCES OF CANNABIS (or over 24 grams of concentrated cannabis), is a VIOLATION punishable by a FINE up to $125.00).

PL 222.30: CRIMINAL POSSESSION OF CANNABIS 3D DEGREE (CLASS A MISDEMEANOR):

A person violates this section by knowingly and unlawfully possessing OVER 16 OUNCES of cannabis (or in excess of FIVE OUNCES OF CONCENTRATED CANNABIS).

Sealing of records applies under CPL 160.50(3)(k).

PL 222.35: CRIMINAL POSSESSION OF CANNABIS 2D DEGREE (CLASS E FELONY):

A person violates this section by knowingly and unlawfully possessing OVER FIVE POUNDS OF CANNABIS (or more than two pounds of concentrated cannabis).

PL 222.40 CRIMINAL POSSESSION OF CANNABIS 1ST DEGREE (CLASS D FELONY):

A person violates this section when he/she knowingly and unlawfully possesses OVER TEN POUNDS OF CANNABIS (or more than four pounds of concentrated cannabis).

UNLAWFUL SALES OF CANNABIS:

PL 222.45: UNLAWFUL SALE OF CANNABIS: (VIOLATION):

A person violates this section when he/she sells UP TO THREE OUNCES OF CANNABIS TO ANOTHER PERSON. THE PENALTY IS A FINE UP TO $250.00. (Sealing of records applies per CPL 160.50[3][k]).

PL 222.50 CRIMINAL SALE OF CANNABIS 3D DEGREE (CLASS A MISDEMEANOR):

A person is guilty of this offense when he/she: 1. sells OVER THREE OUNCES OF CANNABIS (or in excess of 24 grams of concentrated cannabis); or

2. being 21 or older, he/she sells, gives or causes to be sold or given cannabis to a person UNDER age 21 EXCEPT that it is a DEFENSE that the defendant was less than three years older than the underage person to whom he sold or gave the cannabis.

This section does NOT apply to DESIGNATED CAREGIVERS, PRACTITIONERS OR EMPLOYEES OF A REGISTERED ORGANIZATION OR EMPLOYEES OF A DESIGNATED CAREGIVER FACILITY ACTING IN COMPLIANCE WITH ARTICLE 3 OF THE CANNABIS LAW.

PL 222.55: CRIMINAL SALE OF CANNABIS 2D DEGREE (CLASS E FELONY):

1. A person violates this section by selling OVER 16 OUNCES OF CANNABIS (or more than five ounces of concentrated cannabis) to another person; or

2. being 21 or older, he sells, gives or causes to be sold or given OVER THREE OUNCES of cannabis (or more than 24 ounces of concentrated cannabis) to a person UNDER 18 YEARS OF AGE.

This section does NOT apply to caregivers, practitioners or employees of a registered organization or of a designated caregiver facility acting in compliance with Article 3 of the Cannabis Law.

PL 222.60: CRIMINAL SALE OF CANNABIS FIRST DEGREE (CLASS D FELONY):

A person violates this section by selling OVER FIVE POUNDS (or more than two pounds of concentrated cannabis), to another person.

PL 222.65: AGGRAVATED SALE OF CANNABIS (CLASS C FELONY):

A person violates this section by selling in excess of 100 POUNDS of cannabis (or concentrated cannabis).

PENAL LAW SECTIONS REPEALED BY THE NEW LAW INCLUDE:

PL 220.06(4): CPCS 5th degree (D felony): knowingly and unlawfully possessing an aggregate weight of one-fourth ounce or more of concentrated cannabis;

PL 220.09(10): CPCS 4th degree (C felony): knowingly and unlawfully possessing an aggregate weight of one ounce or more of concentrated cannabis;

PL 220.34(3): CSCS 4th degree (C felony): knowingly and unlawfully selling concentrated cannabis;

PL 220.06(6) defining marijuana per PHL 3302. (The new law refers to cannabis).

SEALING AND MOTIONS TO VACATE:

In addition to authorizing the SEALING OF RECORDS (per CPL 160.50[3][k]), for convictions for Criminal Possession of Marijuana 3d degree (PL 221.20/E felony) and 4th degree (PL 221.15/A misdemeanor) and Criminal Sale of Marijuana 4th degree (PL 221.40/ A misdemeanor), 5th degree (PL 221.35/ B misdemeanor), PL 220.03 and PL 220.06 (when the substance possessed is concentrated cannabis), the new law will require courts (per CPL 440.10[1][k] to PRESUME that a guilty plea to such offenses was NOT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY MADE if there are SEVERE OR ONGOING CONSEQUENCES, INCLUDING (but not limited to) potential or actual immigration consequences, and that a conviction by verdict for such offenses constitutes CRUEL AND UNUSUAL PUNISHMENT based on such consequences (which the People may rebut).

Motions to vacate per CPL 440.10(1)(k) include convictions for PL 221.05, 221.10. 221.15, 221.20, 221.35, 221.40 (and former PL 240.36).

CPL 440.46-a ( NEW):

1.Any defendant serving a sentence for an offense under PL Article 221 that is NO LONGER CRIMINAL, is entitled to have such sentence automatically VACATED AND DISMISSED. If the court does not take immediate action, the defendant may petition the court for such relief.

2. Defendants who have already served a sentence for an offense under PL Article 221 that is no longer criminal (or would constitute a lesser offense), may MOVE TO VACATE the conviction and have it dismissed (or reduced to the lesser offense for which the court may not impose any further punishment). This section also applies to defendants who are Adolescent Offenders and Youthful Offenders.

CPL 170.56 (MARIJUANA ACD'S):

When there are EXCEPTIONAL CIRCUMSTANCES (e.g. adverse immigration consequences), the court MAY GRANT an ACD to a defendant who would heretofore have been ineligible on account of a prior marijuana (or controlled substance) ACD or conviction.

CLOSING OBSERVATIONS:

The new law represents a legislative attempt to make amends to minority communities for years of arrests and prosecutions that have disproportionately and adversely affected them by giving them an opportunity to participate in and benefit financially from the expected millions of dollars in revenue generated by state sanctioned and regulated sale of cannabis. It will also allow many people to undo convictions and seal criminal records that may have otherwise presented obstacles to employment, licensing and housing opportunities.

Perhaps the law also recognizes that to many people, possessing and smoking marijuana is far less egregious and harmful than consuming hard drugs (e.g. cocaine, heroin, opiates), and that government efforts to stop its citizens from smoking pot (not unlike efforts to proscribe alcohol consumption during Prohibition), is a fruitless exercise that only opens the door to an illegal industry that would better serve everyone (other than the criminals), if it were taxed and regulated by the state.

Whether legalized cannabis consumption leads to a mellow (or in the case of medical marijuana) therapeutic high, apathetic indifference or serves, as some still fear, as a gateway to harder drugs, it may become problematic if it encourages more users to get off the couch and get behind the wheel of a motor vehicle.

The fact that the State is allocating funds for the development of enhanced technology to detect marijuana impaired driving and to increase the number of DRE'S suggests that the risk of more DWAID cases is no small concern. Hopefully, the benefits of the expected revenue windfall to hard-hit communities and other participants in a state-regulated industry will outweigh the risks to public safety.

POST SCRIPT: BEWARE OF FEDERAL LAWS AGAINST POT POSSESSION AND SALE:

While marijuana enthusiasts may well be celebrating the changes in New York State law, they (and their lawyers), should be mindful that under FEDERAL LAW (21 USC 81), possession of personal use amounts of marijuana (since enactment of the Federal Drug Abuse and Prevention of Act of 1970), is a misdemeanor (punishable up to one year in jail) because it is classified as SCHEDULE ONE CONTROLLED SUBSTANCE (that is considered to have a high probability for abuse and cannot be safely prescribed).

Under the federal statute, it is also illegal to grow or sell marijuana, and felony level offenses can carry penalties of up to five years in prison and fines between $250,000.00 and one million dollars.

While federal authorities may well not bother with those who possess small amounts of marijuana (especially that which is now legal under state law), they can still go after growers and distributors whose businesses have a substantial impact on interstate commerce. (See Gonzalez v Raich 545 US 1 [2005] upholding Congress' authority to criminalize the production and use of cannabis even if state law allows it for medical purposes).

However, in 2014, the Congress passed an amendment to the Controlled Substance Act (CSA) that prohibits the Department of Justice (DOJ) from spending money to prevent states from implementing their medical marijuana laws.

SOME OTHER AREAS OF CONCERN:

While an employer cannot, under New York Law (LL 201-a) discipline an employee for using legal cannabis outside of work on his/her own time, (unless he/she comes to work in an obvious state of impairment which adversely affects his/her ability to perform his/her duties), if such conduct is illegal under federal law, an employer can take take adverse action against (i.e. fire) the employee.

In Coats v Dish Network LLC 350 P 3d 147 (Colo. Sup Ct 2015), for example, the plaintiff, a disabled customer service representative who tested positive in a random screening for marijuana (which he legally used for medical purposes under state law), was held not to have been wrongfully terminated (though he was a model employee), because his marijuana use was unlawful under federal law.

Those who provide services to businesses and other entities that produce or distribute marijuana under state law need to make sure that they are not violating federal laws that proscribe conduct that constitutes profiting from drug trafficking. Similarly, landlords who rent

apartments to those who knowingly possess or use marijuana may run afoul of Section 8 housing regulations and jeopardize their eligibility for federal funds that cover or supplement the tenant's rent.

It should also be noted that IRS code 28 E prohibits marijuana businesses from deducting ordinary business expenses for activities like marketing, training and transportation (but they can take deductions for the cost of goods sold).

Banks, lenders and other creditors need to be versed in US Department of Treasury guidelines for dealing with the participants in the now legalized marijuana industry lest they run afoul of federal lending laws and subject themselves to prosecution under the Federal Controlled Substances Act.

And those interested in obtaining licenses to possess FIREARMS should be mindful that federal law prohibits gun purchases by those who are unlawful users of marijuana (under Federal Law) or are otherwise addicted to controlled substances (which includes marijuana in the federal system).

Since the possession of marijuana that is legal under state law is NOT a defense to a prosecution for violating federal statutes, recreational users should keep in mind that while they're not likely to attract the FBI'S (or even local law enforcement's) attention for doing what state law allows, (e.g. smoking in permissible places), driving while under the influence is still illegal (as it should be), and officers who find contraband or weapons in vehicles based (at least in part) on the smell of marijuana may be inclined to have such cases prosecuted in Federal Court where the laws generally tend to be more hospitable to law enforcement.