

MARIJUANA PROGRAM IMPLEMENTATION

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Economic Affairs Interim Committee

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MONTANA STATE LEGISLATURE

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ADULT-USE MARIJUANA PASSES IN MONTANA

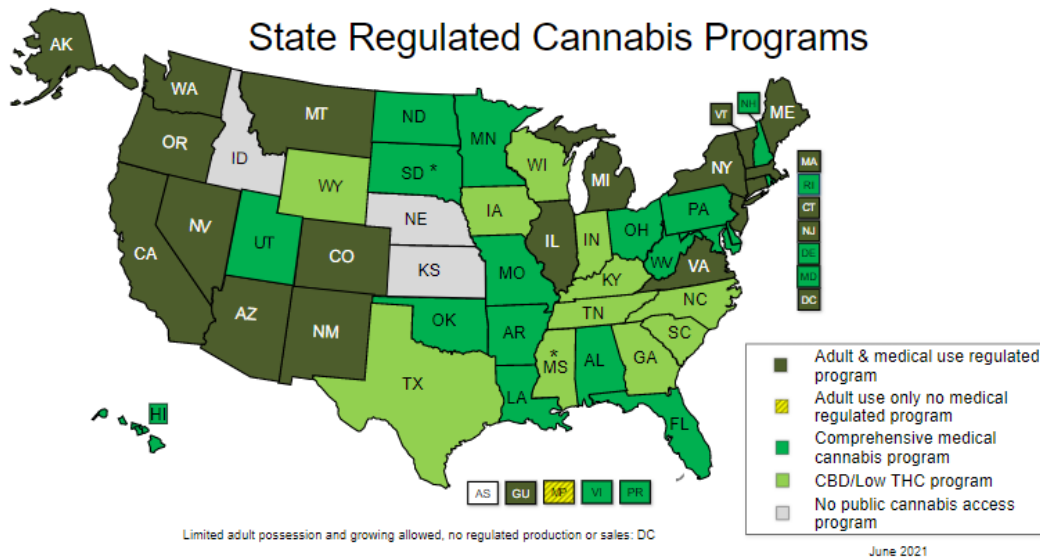
In November 2020, voters passed Initiative 190 (I-190) to allow adult-use, or recreational, marijuana in Montana. The implementation of I-190 was a highly debated topic during the 2021 Legislature, with 17 bills regarding marijuana introduced during the session. Four bills were ultimately enacted, with HB 701 acting as the primary implementation bill for the adult-use program. The other enacted bills revised laws related to marijuana advertising (HB 249), revised penalties related to underage marijuana possession and use (HB 517), and revised labor laws relating to marijuana (HB 655).

While I-190 did not affect medical marijuana laws, HB 701 provides for several revisions to the medical marijuana program, including licensing, advertising, and moving administration of the program from the Department of Public Health and Human Services to the Department of Revenue. HB 701 also includes provisions for expungement and decriminalization, local-option marijuana excise tax, local government approval for operation in a jurisdiction, and directions for disbursement of revenue.

The 2021 Legislature also passed SJ 31, a study to collect input from stakeholders and the public in order to effectively monitor and evaluate the implementation of the program and review the impact of the program on local and state governments, addiction, crime, and revenue. As part of the study, the EAIC will collect data on the implementation of the program, monitor changes in federal policy that could impact state policy, and review the benefits and drawbacks of the medical marijuana program.

LEGALIZATION THROUGHOUT THE UNITED STATES

Marijuana was first legalized for medical purposes in California in 1996. Since then, 47 of the 50 states have some form of cannabis legalized, with the only states having no public cannabis access program being Idaho, Kansas, and Nebraska. The first states to legalize marijuana for recreational use were Colorado and Washington, both in 2012.



<https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>

MEDICAL MARIJUANA IN MONTANA

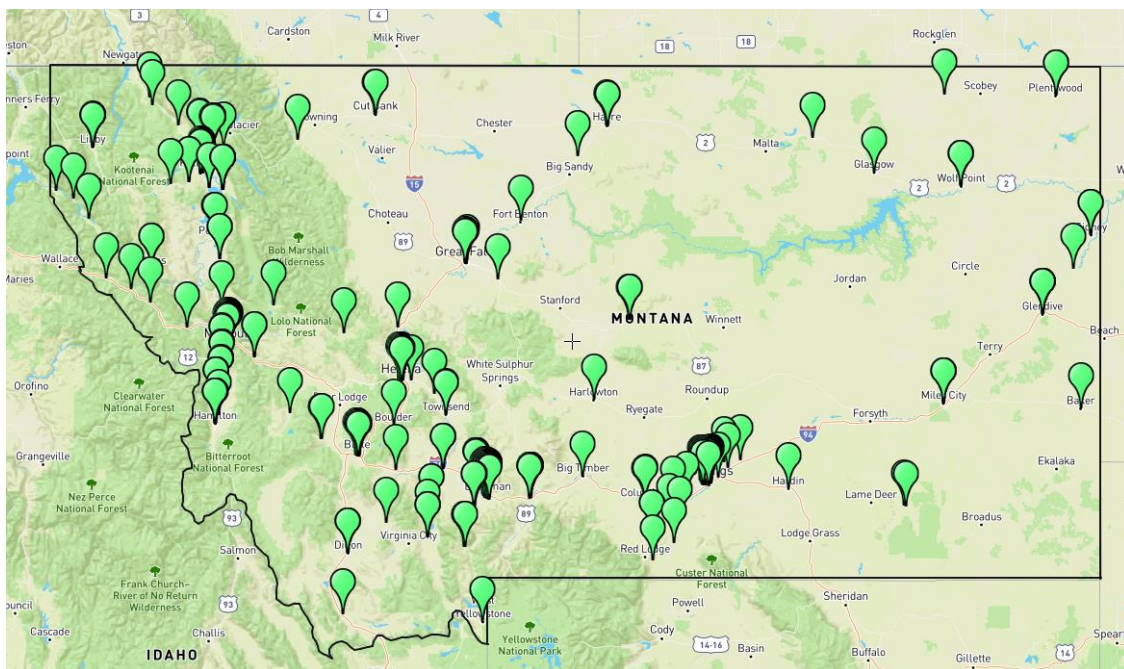
In 2004, Montana voters passed Initiative 184 (I-184) for medical marijuana. Based on the initiative, people could use marijuana only if a doctor provided written certification that the person had a debilitating medical condition. I-184 essentially created an exemption from state drug laws, since marijuana is a Schedule I controlled substance under federal law, making its cultivation, sale, and distribution illegal.

The program had relatively few participants in its early years. In 2005, a year after its approval, only 176 people were registered as patients and 66 as caregivers (growers). Three years later, at the end of 2008, there were about 1,500 registered patients and 465 caregivers.

In October 2009, the U.S. Attorney's Office, under President Obama's administration, issued a memo indicating the federal government wouldn't focus its resources on people who were following state medical marijuana laws. By the end of 2010, there were over 27,000 people registered with medical marijuana cards in Montana. The program's fast growth led to the introduction of 15 bills in the 2011 Legislature, generally trying to further restrict the program. The only bill that passed, SB 423, established a limit of three patients per caregiver, prohibited the acceptance of remuneration for marijuana, and placed other limits on the program. It was challenged immediately and tied up in court for five years before nearly all the elements were found constitutional and went into effect in August 2016.

In November 2016, voters passed Initiative 182 (I-182) that lifted the majority of the most stringent requirements of SB 423, required licensing for individuals or businesses that grew marijuana, allowed for the sale of marijuana through dispensaries, and added post-traumatic stress disorder (PTSD) as a debilitating condition. The 2017 Legislature subsequently enacted SB 333 to tax the gross sale of marijuana, require the use of a seed-to-sale tracking system, and establish different limits on the number of plants and usable marijuana. The 2019 Legislature further changed the law through SB 265 to allow cardholders to buy marijuana from any licensed provider, revise licensing fees and the way cultivation space is calculated, establish limits on cardholder purchases, and revise procedures for testing marijuana and infused products.

LICENSED MEDICAL MARIJUANA DISPENSARY LOCATIONS IN MONTANA



As of 8/2/2021

FEDERAL VIEWPOINTS

On a federal level, enforcement policy has shifted dramatically between administrations. Guidance published by the Obama administration in 2009 contained recommendations for the federal government to direct resources toward disruption of illegal drug manufacturing and trafficking networks, and stated that prosecutors "should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana." In 2013, the administration restated the federal priorities in marijuana enforcement to include preventing distribution to minors, illegal sales, trafficking, and drugged driving and other adverse public health consequences.

The Trump administration rescinded the Obama-era guidance in 2018 by referencing the Controlled Substances Act, which generally prohibits the cultivation, distribution, and possession of marijuana. Then-Attorney General Jeff Sessions issued a memo that referred to "well-established principles that govern all federal prosecutions" in "deciding which cases to prosecute under these laws" that take into account "federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community." The Sessions Memo also stated, "previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately."

President Biden's declared policy agenda includes decriminalization, expunging marijuana use convictions, and rescheduling marijuana from a Schedule I drug (effectively illegal for anything outside of research) to a Schedule II drug (can be used for limited medical purposes with the DEA's approval). Attorney General Merrick Garland stated during his confirmation hearings that he does not feel the Department of Justice should be using its limited resources to go after people using marijuana in compliance with state law. "Criminalizing the use of marijuana has contributed to mass incarceration and racial disparities in our criminal justice system," Garland said in written testimony, "and has made it difficult for millions of Americans to find employment due to criminal records for nonviolent offenses." While the Biden administration has not issued a formal guidance memo on the subject, the approach appears to mirror the guidance provided by the Obama administration.

Sources:

- ◆ <https://leg.mt.gov/content/Bills/Primers/Medical%20Marijuana/Medical%20Marijuana-General.pdf>
- ◆ <https://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>
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