

Rights of Prop 215 Medical Users

California's medical cannabis laws under Proposition 215 remain in effect under AUMA. Prop 215 gives patients and their designated primary caregivers the right to possess and cultivate as much cannabis as they need for their personal medical use with the recommendation or approval of a California-licensed physician.

There is no age limit on medical use. Minors under age 18 need permission from their parents/guardians to use medical cannabis. The parental rights of qualified Prop 215 patients are protected by AUMA in family and juvenile court proceedings [HSC 11362.84].

Patients who have state medical cannabis ID cards are exempt from the sales tax on medical cannabis and cannabis products [BPC 34011(g)]. ID cards are voluntary and are issued by county health departments: www.cdph.ca.gov/Programs/CHSI/Pages/MMICP.aspx

A 2022 Cal NORML-sponsored law (AB 1954; BPC 2228.5) protects the right of patients to medical treatment (e.g. pain medicine prescriptions) if they use medical cannabis. "Ryan's Law," [H&SC 1649] protects the right of terminally ill patients to use non-inhaled cannabis in hospital and hospice settings; a pending bill would extend those protections to seniors in chronic pain.

The California Supreme Court ruled in *People v. Kelly (2010)* 47 Cal.4th 1008 that there can be no set limit in state law on the amount of cannabis patients may cultivate, however local ordinances tend to restrict all cultivation to six plants per parcel.

It is no longer legal for multiple patients to grow "collective gardens." AUMA added Section 26033 to the Business and Professions Code, protecting patients and primary caregivers who cultivate for themselves or no more than five patients, if they receive compensation only under Subdivision (c) of Section 11362.765 of the Health and Safety Code. Doctors' notes stating that patients can grow 99 (or any other number) of plants are not legally valid, unless it can be proved in court that a patient required that amount.

An appellate court decision, *Kirby v. County of Fresno* found that while a local government can regulate land use, the cultivation of medical marijuana cannot be criminalized by local ordinance.

How Can I Obtain Cannabis Legally?

Adults 21 and over and medical users or caregivers can buy cannabis at licensed retail dispensaries or delivery services. A list of licensed retailers can be found at: <https://www.canorml.org/cannabis-resource-directory/dispensaries-and-delivery/> or <https://search.cannabis.ca.gov/retailers>.

It is legal for any adult to buy or receive an ounce of cannabis from another, and to give away up to one ounce without compensation to other adults. Adults can also grow up to six plants at their residence and legally possess the results of their gardens at their homes.

Taxes

All retail sales of cannabis are subject to an additional 15% state excise tax. Retail sales of cannabis are also subject to the standard state sales and use tax of 7.5% – 9.25%. *Exception: Medical users with a state medical cannabis ID card are exempt from the sales and use tax.*

Many local governments assess additional taxes on cannabis businesses, ranging as high as 10-20% of total revenues. All of these high taxes have made it difficult for the legal cannabis industry to gain a foothold in California. Cal NORML supports cannabis tax reform.

Expungement of Past Marijuana Convictions

AUMA has a mechanism by which those convicted of past marijuana crimes can apply to have their records cleared or resentenced. CA has also taken steps to automatically expunge past marijuana offenses. For more info, see www.CaNORML.org.

How Can I Get Involved in Advocating for My Rights?

You can join Cal NORML, a membership-supported organization that advocates in Sacramento and across the state for the rights of cannabis consumers. You can also join or start a local chapter of NORML. Visit our website www.CaNORML.org and join to receive our newsletter and other member benefits, like discounts on products and events. Or use this QR code to sign up for our email alerts.



California Consumers Guide to State Marijuana Laws



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To find a Cal NORML cannabis attorney, see www.canorml.org/cannabis-resource-directory/attorneys/

Adult use of cannabis is legal in California under Prop. 64, the Adult Use of Marijuana Act (AUMA), approved by the voters on November 8, 2016. In general, AUMA allows adults 21 and over to possess, privately use, and give away up to one ounce of cannabis, and to cultivate no more than six plants for personal use at their residence. It also legalizes the commercial sale, distribution and production of cannabis for adult use at state-licensed facilities. Local city and county governments can restrict or ban cannabis businesses in their jurisdiction.

The Department of Cannabis Control is in charge of licensing and regulating retail sales, distribution, and testing, as well as cultivation and manufacturing. Prior approval by local city or county governments is required for all state-licensed facilities. Further info on state regulations may be found at the California Cannabis Portal at: <https://cannabis.ca.gov/>.

Legal Adult-Use Activities

Under AUMA it is LEGAL for any adult 21 or over to:

- (1) Possess, process, transport, purchase, obtain, or give away to persons 21 or older, not more than one ounce of cannabis or 8 grams of concentrated cannabis [HSC 11362.1(a)(1) and (2)];
- (2) Cultivate, possess, plant, harvest, dry or process not more than six live plants and possess the produce of the plants [HSC 11362.1(a)(3)].

PROVIDED:

- (a) Any living plants or cannabis in excess of one ounce must be stored in the person's private residential property, in a locked space, and not visible from a public place [HSC 11362.2].
- (b) No more than six plants are planted at any one residence at one time. Exceptions may be allowed for medical users in some cities and counties. (See Medical Rights section.)
- (c) Local governments may impose reasonable restrictions on cultivation, but may not forbid cultivation indoors in a residence or accessory structure that is fully enclosed and secure. Locals are free to prohibit outdoor cultivation altogether until such time as adult use is made legal under federal law. [HSC 11362.2(b)]. Violation of restrictions on personal use cultivation is a \$250 infraction for six plants or less [HSC 11362.4(e)].

Employment Rights [GC 12954]

Prop. 64 protected the rights of employers to have policies forbidding use of cannabis by employees. Cal NORML successfully sponsored a bill in 2022 that will disallow employment discrimination based on urine or hair testing for inactive THC metabolites. That law will take effect on January 1, 2024.

Employees may not possess or be impaired by cannabis on the job, and may be subject to an oral swab test. Federal employees and those in the construction trades are not protected by the law.

Prohibited Activities

Under AUMA, Cannabis users may NOT [HSC 11362.3 – 11362.4]:

- Smoke, vaporize or ingest cannabis or cannabis products in any public place (\$100 infraction).
Exception: local governments may permit on-site consumption at state-licensed premises in their jurisdiction [BPC 26200(g)]. Events can also obtain licenses for cannabis consumption.

- Smoke or vaporize cannabis in any non-smoking area, or within 1,000 feet of a school, day care or youth center while children are present, except privately at a residence (\$250 infraction).

- Possess or use cannabis on the grounds of a school, day care or youth center while children are present (\$100 fine).

- Manufacture concentrated cannabis with a volatile solvent (except for state-licensed manufacturers).

- Consume cannabis or possess an “open container” of cannabis while driving or riding as a passenger in any motor vehicle, boat, or airplane (\$250 fine).
Exceptions: Consumption by passengers may be permitted in commercial vehicles specifically licensed for such purposes without children present. Qualified Prop 215 patients carrying an ID card or recommendation may possess cannabis in a container that is closed or resealed [VC 23222].

It is also unlawful to use cannabis while in a car under Vehicle Code 23220 and 23221 even if you are a passenger. This is also true for cannabis edibles.

Other Restrictions [HSC 11362.45]

AUMA does not affect the ability of landlords and government agencies from prohibiting or restricting use of cannabis on their privately owned property or a building they own or occupy.

Criminal Penalties for Cannabis [HSC 11357-11362.9]

In general, AUMA exempts juveniles under 18 from criminal fines and imprisonment for cannabis offenses. Instead, they are sentenced to community service, drug education or counseling. Underage possession of one ounce or less by persons 18-21 is a \$100 infraction.

Most offenses for adults 18 and over are punished either as non-arrestable infractions subject to a fine, or as criminal misdemeanors. Illegal possession of more than one ounce (or 8 grams of concentrates) is a misdemeanor.

Underage cultivation of six plants or less by persons 18-21 is a \$100 infraction. For adults, illegal cultivation, harvesting, drying, or processing of more than six plants is a misdemeanor, unless felony enhancements for prior convictions or environmental crimes apply. Possession with intent to sell and other crimes are also misdemeanors, with possible enhancements applicable.

Employing a minor in cannabis sales or distribution, and selling or furnishing cannabis to a minor are felonies punishable by prison sentences of three years or more.

Driving Under the Influence

It is unlawful to drive while under the influence of marijuana or alcohol or any other drug by Vehicle Code 23152. “Under the influence” is not explicitly defined in the statute, but is interpreted to imply some degree of impairment. For evidence of impairment, officers may administer a field sobriety test. Arrestees may also be required to submit to a blood or urine test under Vehicle Code 23612 or else forfeit their licenses.

A positive urine test constitutes much weaker proof of recent use and impairment than a positive blood test. Under current law, police cannot compel you to take a swab test like they can a blood or urine test. Oral swab tests can detect marijuana for a couple of hours after occasional use or up to 36 hours in chronic users.

To find a Cal NORML cannabis attorney, see www.canorml.org/cannabis-resource-directory/attorneys/