

MARIJUANA LAW, POLICY, AND AUTHORITY (Aspen 2017)

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A Note About the Sample Syllabi

The syllabi copied below can be used to teach a course on marijuana law using my new textbook, *MARIJUANA LAW, POLICY, AND AUTHORITY* (Aspen 2017). The textbook is comprehensive in its coverage and thereby enables instructors to teach about a broad range of topics implicated by marijuana law and policy. Indeed, the first syllabus is designed for use in a broad survey (or capstone) course, similar to one that I have taught at Vanderbilt for the past few years. But the book can also be used to teach a variety of courses that focus on particular issues or themes of interest surrounding marijuana law. The second through fourth syllabi show how this can be done, using the book to teach courses that focus on the criminal justice issues surrounding the regulation of marijuana, the sundry legal issues confronting marijuana businesses, and the health law and policy issues sparked by medical marijuana reforms.

Each syllabus provides a course description and a detailed list of reading assignments (typically 10-15 pages apiece). As suggested by the American Bar Association's latest accreditation guidelines, the first syllabus also includes a description of learning objectives.

Of course, the sample syllabi are just a template. You can easily customize each of them to suit your own needs and whims. The book's Website (<https://my.vanderbilt.edu/marijuanalaw/>) offers some additional materials, including some jurisdiction specific materials and updates that will help you further customize your course and keep abreast of important developments in the field. The Teacher's Manual also provides additional background material to help you teach from the book, including lecture notes, explanations of Problems, and so on. Finally, I am happy to chat with you if you have questions about teaching a marijuana law course or about any of the topics covered in the book. robert<dot>mikos<at>Vanderbilt<dot>edu.

Marijuana Law, Policy, and Authority

[survey / capstone course]

Syllabus

Course description

Following nearly two decades of regulatory reform in the states, marijuana law and policy has emerged as a robust and fascinating field of study. Abandoning the strict prohibitions that dominated the previous seven decades, and that are still in effect at the federal level, more than forty states have legalized marijuana in at least some circumstances. The reforms have sparked lively debates about the content of marijuana regulations, the wisdom of competing regulatory approaches, and the authority of different government actors to choose among them. Who may use and supply marijuana under state law? Does legalization increase use of the drug? Could the President legalize marijuana without the passage of new congressional legislation? May the states legalize the drug while Congress forbids it? Even so, are state licensing requirements and similar regulations preempted by federal law? May lawyers provide legal services to state-licensed marijuana shops? These are a just a few of the intriguing questions that are now being confronted in this field and that will be addressed in the course.

Learning objectives

This survey course is designed with two broad objectives in mind. First, it is intended to guide students through some key legal and policy issues now confronting lawyers, lawmakers, and judges working in this emerging field. Second, the course is also designed to provide lessons that can be applied more broadly. In this regard, the course uses developments in marijuana law and policy as a vehicle for reinforcing and refining student comprehension of a variety of essential legal concepts and doctrines, from contract law to constitutional law.

In more concrete terms, students should acquire an understanding of and ability to critically evaluate:

- the different approaches jurisdictions have taken to control the use and supply of marijuana (and other substances)
- the disagreements over whether marijuana use and similar behaviors should be controlled and how best to do so
- the complex battles between (and within) federal, state, and local governments for control over marijuana policy and the limits to the authority of each to shape marijuana policy
- the interrelationship among law, policy, and authority
- the ethical obligations of attorneys who work in this field

Course materials

The required text for the course is Robert A. Mikos, MARIJUANA LAW, POLICY, AND AUTHORITY (Aspen 2017). Students may choose either the print edition or the e-book edition. Additional materials, including updates and jurisdiction specific sources, can be found on the book Website.

Reading assignments

- (1) Introduction: What is marijuana and why should we care about how governments regulate it? (pages 3-7, 17-31)
- (2) How do the federal government and other prohibition regimes regulate the possession and use of marijuana? (35-45, 54-57)
- (3) What are the sanctions for simple possession in prohibition regimes? (87-92, 97-98)
- (4) Who is allowed to possess and use marijuana in reform states? (100-20, 123-125)
- (5) What limits do reform states impose on lawful possession and use? The example of DUI marijuana offenses (143-156)
- (6) What are the benefits of marijuana use and how do different government actors decide that question? (195-213)
- (7) What are the harms of marijuana use? Which of those harms should inform government policy toward the drug? (213-226)
- (8) How (and how *much*) do governments actually deter or dissuade use? (227-245)
- (9) What are the comparative costs of prohibition and legalization? Does legalization reduce racial disparities in the criminal justice system? (241-51)
- (10) Does Congress have the constitutional authority to ban the simple possession and use of marijuana? (253-71)
- (11) Could the DEA legalize marijuana under federal law by rescheduling the drug? What are the limits on the agency's scheduling authority? (272-77)
- (12) Can states legalize the possession and use of marijuana if Congress forbids those activities? (277-83)
- (13) How do the federal government and other prohibition regimes regulate the supply of marijuana? (304-323, 327-31)
- (14) Do DOJ enforcement memoranda or Congressional spending restrictions provide legal defenses to federal prosecution? (343-58)
- (15) What are the criminal sanctions for supply offenses and how are those sanctions calculated? (362-379)
- (16) How does asset forfeiture work and what property is subject to forfeiture? (382-96)
- (17) What other sanctions can be imposed on marijuana suppliers? Taxes (Section 280E), civil RICO liability, and the denial of trademark registration (396-412)
- (18) Can users grow (and share) their own marijuana in reform states? (413-29)
- (19) Who is allowed to produce and sell marijuana commercially in reform states? (443-455)
- (20) What regulations do reform states impose on commercial licensees? Taxes, labeling requirements, and advertising restrictions (455-467)
- (21) How are marijuana licensees disciplined? (468-478)
- (22) What happens to the price and use of marijuana when governments legalize the supply of the drug? (483-88)
- (23) How well do state licensing regulations curb problematic marijuana use (however defined) and the harms associated with such use? (489-517)
- (24) Can states make a profit from legalizing and taxing marijuana sales? (517-20)
- (25) How can states boost minority participation in the licensed marijuana industry? (520-25)
- (26) Can the President refuse to enforce the federal marijuana ban? (527-533)

- (27) Are state licensing systems and related regulations preempted by federal law? (533-550)
- (28) Are local regulations of the state-licensed marijuana industry preempted by *state* law? Who *should* regulate the supply of marijuana? (550-569)
- (29) What third parties might be held criminally liable for aiding and abetting, conspiring to commit, or handling the proceeds of marijuana offenses in prohibition regimes? (573-601)
- (30) Can physicians be sanctioned for recommending marijuana to patients? Why do states require a “recommendation” as opposed to a “prescription”? (603-612)
- (31) Will courts enforce contracts with the marijuana industry? (649-659)
- (32) Can banks provide financial services to the marijuana industry? (685-99)
- (33) Could state officials be prosecuted by the federal government for implementing state reforms? Could they be held civilly liable for refusing to implement states reforms? (701-19)
- (34) Do any state reforms jeopardize federal grant funding? (515-17, 726-737)
- (35) What legal services may attorneys provide to clients they know are violating federal marijuana laws? (628-637)

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Marijuana Law and Criminal Justice

Syllabus

Course description

Marijuana is one of the most widely used and heavily regulated substances in the United States. Until recently, all 50 states and the federal government strictly prohibited the possession, production, and distribution of the drug, and enforcement of these prohibitions generated an enormous volume of cases in the criminal justice system (e.g., more than 700,000 arrests for marijuana offenses in 2014 alone). But many states have begun to peel back their prohibitions on the use and supply of marijuana. Both state reforms and the prohibitions they replace have raised important questions for the criminal justice system. What does it mean to “possess” a drug like marijuana? Is someone who shares a joint with a friend considered a marijuana trafficker in prohibition regimes? Who do reform states authorize to possess, use, produce, and distribute marijuana? How do reforms affect the probable cause inquiry for search and arrest? Can someone be convicted of a DUI marijuana offense if they are no longer under the influence of the drug? Do recent DOJ enforcement memoranda create a legal defense to federal criminal prosecutions? What impact do reforms have on marijuana use and related harms? Do reforms reduce criminal justice expenditures? Do they reduce racial disparities in the criminal justice system? The course will examine these and related questions concerning the regulation of marijuana and its impact on the criminal justice system.

Course materials

The required text for the course is Robert A. Mikos, *MARIJUANA LAW, POLICY, AND AUTHORITY* (Aspen 2017). Students may choose either the print edition or the e-book edition. Additional materials, including updates and jurisdiction specific sources, can be found on the book Website.

Reading assignments

- (1) Introduction: What is marijuana and why should we care about how governments regulate it? (pages 3-7, 17-31)
- (2) How do prohibition regimes regulate marijuana use? What are the elements of a simple possession offense? Knowledge (35-54)
- (3) What are the elements of a simple possession offense (cont'd)? Control (54-73)
- (4) Do prohibition regimes recognize any legal defenses to possession charges? (77-84)
- (5) What are the sanctions for simple possession in prohibition regimes? (87-92, 97-98)
- (6) Who is allowed to possess and use marijuana in legalization regimes? (100-125)
- (7) What limits are imposed on possession and use? Quantity and place offenses (125-128; 133-43)
- (8) What limits are imposed on possession and use? DUI offenses (143-156)
- (9) How do state reforms affect probable cause to conduct searches? (161-178)
- (10) What legal protections do users have against criminal prosecution in reform states? (178-194)
- (11) How (and how *much*) do governments actually deter or dissuade use? How should governments address the harms associated with marijuana use, like driving accidents? (227-245)

- (12) What are the comparative costs of prohibition and legalization? Does legalization reduce racial disparities in the criminal justice system? (241-51)
- (13) Does Congress have the constitutional authority to ban the simple possession and use of marijuana? (253-71)
- (14) Can states legalize the possession and use of marijuana if Congress forbids those activities? (277-83; 295-300) Can localities pursue their own policies toward marijuana possession and use? (277-83; 295-300)
Optionals: TN AG opinion on Nashville / Memphis decriminalization measures (<website>)
- (15) How do prohibition regimes regulate the supply of marijuana? What does it mean to “manufacture” marijuana? (304-315)
- (16) What does it mean to “distribute” marijuana? (315-327)
- (17) What does it mean to “possess with the intent to distribute” marijuana? What does it mean to attempt to commit a marijuana supply offense? Does double jeopardy bar prosecution for multiple supply offenses? (327-331, 335-41)
- (18) Do DOJ enforcement memoranda create a defense to marijuana charges? (p. 341-52)
- (19) Do congressional spending limits create a defense to marijuana charges? May a defendant seek jury nullification? (352-362)
- (20) What are the criminal sanctions for marijuana supply offenses, and how are those sanctions calculated? (362-379)
- (21) What other sanctions can be imposed on marijuana suppliers? Forfeiture (379-96)
- (22) How do reform jurisdictions regulate the supply of marijuana? Can users grow (and share) their own marijuana? (413-29)
- (23) Who is allowed to produce and sell marijuana commercially? (443-455)
- (24) How are licensees disciplined? (468-478)
- (25) What happens to the price and use of marijuana when governments legalize the supply of the drug? (483-88)
- (26) How well do state licensing regulations curb problematic marijuana use (however defined) and the harms associated with such use? (489-517)
- (27) Can states make a profit from legalizing and taxing marijuana sales? Do racial disparities persist in the state licensed marijuana industry? (517-25)
- (28) Can the President refuse to enforce the federal marijuana ban? Can localities ban the production and sale of marijuana in reform states? (527-533; 550-61)
- (29) What third parties might be held criminally liable for aiding and abetting or conspiring to commit marijuana offenses? (573-87)
- (30) What are the elements of financial crimes involving marijuana proceeds? (587-601)
- (31) Can physicians be punished for recommending marijuana to their patients? (603-612)
- (32) Could state officials be prosecuted under the federal CSA for implementing state reforms? The Section 885(d) defense (701-14)
- (33) What services may attorneys ethically provide to clients who violate federal marijuana laws? (628-637)

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The Regulation of Marijuana Businesses

Syllabus

Course description

More than half of the states now authorize designated businesses to produce and sell marijuana commercially. However, these businesses remain subject to extensive state regulation. Colorado, for example, has passed more than 200 pages of regulations to govern nearly every facet of the marijuana industry from seed to sale. State regulations like those in Colorado raise a host of legal questions: How do states award commercial licenses to grow and sell marijuana? Are any state licensing regulations preempted by federal law? Do state advertising restrictions violate the First Amendment? How are marijuana licensees disciplined for regulatory violations? Marijuana businesses also face numerous regulatory hurdles erected by the federal government, adding to the questions surrounding the marijuana industry: Do marijuana businesses have any viable legal defense against federal criminal prosecution? Can marijuana businesses register their trademarks? Can they deduct their expenses when they pay their federal taxes? Will courts enforce contracts with the marijuana industry? Can the industry obtain banking or legal services? This class will address these and related questions surrounding the nascent marijuana industry.

Course materials

The required text for the course is Robert A. Mikos, *MARIJUANA LAW, POLICY, AND AUTHORITY* (Aspen 2017). Students may choose either the print edition or the e-book edition. Additional materials, including updates and jurisdiction specific sources, can be found on the book Website.

- (1) Introduction: What is marijuana and why should we care about how governments regulate it? (pages 3-7, 17-31)
- (2) How do the federal government and other prohibition regimes regulate the supply of marijuana? (304-323, 327-31)
- (3) Do DOJ enforcement memoranda or Congressional spending restrictions provide legal defenses to federal prosecution? (343-58)
- (4) What are the criminal sanctions for supply offenses and how are those sanctions calculated? (362-379)
- (5) How does asset forfeiture work and what property is subject to forfeiture? (382-96)
- (6) What supplier assets are subject to civil forfeiture? How does civil forfeiture compare to criminal prosecution? (382-96)
- (7) Do marijuana suppliers have to pay federal taxes? How does their tax rate compare to that of other (lawful) businesses? Section 280E (396-401)
- (8) Are marijuana suppliers liable for damages under the federal civil RICO statute? Who could bring a civil RICO suit against a marijuana business? (401-07)
- (9) Can marijuana suppliers seek protection for their intellectual property? Trademarks (407-12)
- (10) Who can produce and sell marijuana commercially in reform states? Licensing requirements (443-55)
- (11) Are residency requirements for commercial licenses constitutional? Why are so few licenses awarded to minorities? How can states boost minority participation in the licensed marijuana industry? (283-88; 520-25)

- (12) How do states regulate the behavior of licensees? Packaging, labeling, and advertising restrictions (455-67)
- (13) Do packaging and labeling requirements work? Do advertising restrictions violate the First Amendment? (499-507)
- (14) What taxes do reform states impose on marijuana sales? Do taxes put the legal marijuana industry at a competitive disadvantage vis-à-vis the black market? Can states make money from legalizing and taxing marijuana? (489-98; 517-20)
- (15) How are licensees supervised and disciplined? (468-478)
- (16) Are state licensing requirements or licensing regulations preempted by federal law? (533-550)
- (17) Can local governments regulate marijuana suppliers too? Who should regulate marijuana suppliers? (550-569)
- (18) Are contracts with the marijuana industry enforceable? Are lease agreements enforceable? (649-66)
- (19) Can banks provide financial services to the licensed marijuana industry? (685-99)
- (20) How do states regulate the structure of the marijuana industry? (515-17, 701-14, 727-29)
- (21) What legal services can lawyers provide marijuana businesses? (628-37)

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Marijuana and Health Law and Policy

Course description

Since 1996, more than forty states have broken ranks with the federal government and legalized the use of marijuana for medical purposes. These state reforms raise a number of important questions of relevance to health law and policy. Pursuant to state reforms, who is allowed to use marijuana for medical purposes? Why do the federal and state governments disagree about marijuana's medical utility? Under existing statutes, to what extent could federal agencies like the DEA and FDA reform federal policy toward the marijuana? Should states privilege medical use of the drug? What happens to state medical marijuana laws if a state also legalizes recreational use of marijuana? Must employers accommodate lawful medical use of marijuana by their employees? Can physicians be sanctioned for recommending marijuana to their patients? This course addresses these and other health law and policy related questions surrounding state medical marijuana reforms and the federal response to them.

Course materials

The required text for the course is Robert A. Mikos, MARIJUANA LAW, POLICY, AND AUTHORITY (Aspen 2017). Students may choose either the print edition or the e-book edition. Additional materials, including updates and jurisdiction specific sources, can be found on the book Website.

- (1) Introduction: What is marijuana and why should we care about how governments regulate it? (pages 3-7, 17-31)
- (2) How do prohibition regimes like the federal government regulate the possession and use of marijuana for medical purposes? (35-45, 54-57)
- (3) Is there a medical necessity defense to criminal charges? Is there a constitutional right to use marijuana for medical purposes? (77-82, 266-71)
- (4) Who is allowed to possess and use marijuana for medical purposes in reform states? (100-20, 123)
- (5) What limits are imposed on the possession and use of marijuana by qualified patients? Quantity, purpose, and in-school use restrictions (125-130, 141-43, 727-31)
- (6) How do medical marijuana states define DUI offenses? (143-156)
- (7) Do medical marijuana states shield qualified patients from search and seizure? (161-62, 172-78)
- (8) “” . . . from housing discrimination? (659-666, 731-37)
- (9) “” . . . from employment discrimination? (666-85)
- (10) Why do the federal government and the states disagree about marijuana's medical utility? What are marijuana's medical benefits? Should governments privilege medical use of a drug like marijuana? (195-213)
- (11) What are marijuana's harms? Which of these harms should inform government policy? (213-226)
- (12) How (and how *much*) can governments influence marijuana use? (227-241)
- (13) What power does the DEA have to reschedule marijuana under the CSA? (272-77)
- (14) Can qualified patients grow marijuana for their own use in reform states? Are they considered “traffickers” in prohibition regimes? (308-13, 413-17)

- (15) To what extent may caregivers assist qualified patients with their medical use of marijuana? (429-442)
- (16) Who is allowed to produce and sell marijuana commercially in medical marijuana states? Should the same firms supply both medical and recreational users? (443-444, 412-415)
- (17) What regulations do reform states impose on commercial licensees? The examples of labeling requirements and marijuana taxes (456-462, 489-501)
- (18) Can physicians be sanctioned for recommending marijuana to patients? Why do states require physicians to issue “recommendations” as opposed to “prescriptions”? (603-612)
- (19) Is it too easy to get a physician’s recommendation in some states? Is it too difficult in others? (612-628)
- (20) What sort of legal services can lawyers provide users, suppliers, and physicians regarding their marijuana activities? (628-37)

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