



Parole and Probation Revocation Post-Cannabis Legalization

Recent legalization laws reflect a greater commitment to preventing lives from being derailed over cannabis. Most state cannabis legalization laws that have passed since early 2021 have included protections from parole and probation revocation.^[1] Connecticut, Minnesota, Missouri, New Jersey, New Mexico, and New York's laws all include language to prevent parole, probation, and/or pre-trial release from being revoked for cannabis in most or all cases. Their statutory language is below.

Connecticut (2021)

§ 54-125k. Legal cannabis use or possession not grounds for revocation of parole, special parole or probation.

(a) Except as provided in subsection (b) of this section, use or possession of cannabis by a person that does not violate section 21a-279a or chapter 420f1 shall not be grounds for revocation of such person's parole, special parole or probation.

(b) If a person's conditions of parole, special parole or probation include a finding that use of cannabis would pose a danger to such person or to the public and a condition that such person not use cannabis and individualized reasons supporting such finding, use of cannabis may be grounds for revocation of parole, special parole or probation. Such finding shall not consider any prior arrests or convictions for use or possession of cannabis.

Minnesota (2023)

Minn. St. § 342.57 Subd. 8. Sanctions restricted for those on parole, supervised release, or conditional release. (a) This subdivision applies to an individual placed on parole, supervised release, or conditional release.

(b) The commissioner of corrections may not:

(1) prohibit an individual from participating in the registry program as a condition of release; or

(2) revoke an individual's parole, supervised release, or conditional release or otherwise sanction an individual solely:

(i) for participating in the registry program; or

(ii) for a positive drug test for cannabis components or metabolites.

Minn. St. § 244.05, Subd. 2. Rules. (a) The commissioner of corrections shall adopt by rule standards and procedures for the establishment of conditions of release and the revocation of supervised or conditional release, and shall specify the period of revocation for each violation of release. Procedures for the revocation of release shall provide due process of law for the inmate.

(b) The commissioner may prohibit an inmate placed on parole, supervised release, or conditional release from using adult-use cannabis flower as defined in section 342.01, subdivision 3, or adult-use cannabis products as defined in section 342.01, subdivision 3, hemp-derived consumer products as defined in section 342.01, subdivision 35, or lower-potency hemp edibles as defined in section 342.01, subdivision 48, if the inmate undergoes a chemical use assessment and abstinence is consistent with a recommended level of care for the defendant in accordance with the criteria under section 254B.04, subdivision 4.

(c) The commissioner of corrections shall not prohibit an inmate placed on parole, supervised release, or conditional release from participating in the registry program as defined in section 342.01, subdivision 61, as a condition of release or revoke a patient's parole, supervised release, or conditional release or otherwise sanction a patient on parole, supervised release, or conditional release solely for participating in the registry program or for a positive drug test for cannabis components or metabolites.

Missouri (2022)

The election has not been certified yet, so it is not codified yet.

Amendment 3, Section 2.

7. Additional Protections. (6) ... Lawful marijuana related activities cannot be the basis for a violation of parole, probation, or any type of supervised release. ...

New Jersey (2020)

N.J.S.A. 2C:45-1

2C:45-1. Conditions of suspension or probation

(2) The following shall not be prohibited or restricted based on any conditions imposed pursuant to this section: manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5; or possession of marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10.

N.J.S.A. 30:4-123.59 Legal custody and supervision; conditions; signature on agreement; relief; release to state aid residential facility; assistance; disposition of fines

b. (1)(a) Each parolee shall agree, as evidenced by his signature to abide by specific conditions of parole established by the appropriate board panel which shall be enumerated in writing in a certificate of parole and shall be given to the parolee upon release. Such conditions shall include, among other things, a requirement that the parolee conduct himself in society in compliance with all laws and refrain from committing any crime, a requirement that the parolee will not own or possess any firearm as defined in subsection f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r. of N.J.S.2C:39-1, a requirement that the parolee refrain from the unlawful use, or the possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.2C:35-2 and N.J.S.2C:35-11, **other than possession of marijuana or hashish** in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, **and distribution of marijuana** or hashish in violation of paragraph (12) of

subsection b. of N.J.S.2C:35-5, a requirement that the parolee obtain permission from his parole officer for any change in his residence, and a requirement that the parolee report at reasonable intervals to an assigned parole officer.

(emphasis added)

New Mexico (2020)

N. M. S. A. 1978, § 26-2C-24

D. A person currently under parole, probation or other state supervision or released awaiting trial or other hearing shall not be punished or otherwise penalized based solely on conduct that is lawful pursuant to the Cannabis Regulation Act unless prohibition on the use or possession of cannabis has been a specific condition of parole, probation or other state supervision or release awaiting trial or other hearing.

New York (2020)

McKinney's Cannabis Law § 127

6.A person currently under parole, probation or other state supervision, or released on recognizance, non-monetary conditions, or bail prior to being convicted, shall not be punished or otherwise penalized for conduct allowed under this chapter unless the terms and conditions of said parole, probation, or state supervision explicitly prohibit a person's cannabis use or any other conduct otherwise allowed under this chapter. A person's use of cannabis or conduct under this chapter shall not be prohibited unless it has been shown by clear and convincing evidence that the prohibition is reasonably related to the underlying crime. Nothing in this provision shall restrict the rights of a certified medical patient.

In addition, in April 2019, the New York City Council voted to stop testing probationers for marijuana use.

Note that this may not be a comprehensive list of legalization laws with parole and probation protections. If you know of any that are missing, please let us know at state@mpp.org.

^[1] The recent laws that appeared not to include probation and parole protections are Delaware, Maryland, Ohio, and Virginia's. Rhode Island's decriminalization law provided that simple *possession* is not a violation of parole and probation. Now that Rhode Island has legalized cannabis for adults 21 and older, that language still applies to adults possessing modestly over the possession limit and to those under 21. R.I. Gen.Laws 1956, § 21-28-4.01 (c)(2)(ix) " No violation of c2iv or c2v of this subsection shall be considered a violation of parole or probation."