



Are consumers or cannabis business owners at risk of going to jail under federal law?

Yes. Any person who possesses marijuana and is not otherwise authorized (such as a researcher or member of law enforcement) could face consequences under federal law. Officially, marijuana is still classified as a Schedule I Drug¹ and so treated very seriously. And it's worth noting that regardless of its place on the federal government's Schedule of Controlled Substances, marijuana is separately made illegal under federal law in many ways. Although marijuana is legalized both medically and recreationally in 2 out of 3 states, federal authorities continue to arrest thousands of people each year for violation of marijuana laws.

There are some exceptions. In each fiscal year since 2015, Congress has included provisions in appropriations acts that prohibit the U.S. Department of Justice from using funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." In effect, Congress prevents the DOJ from enforcing federal law in medical marijuana states. Courts have held up the provisions, and federal prosecutions of state-licensed businesses effectively stopped when it went into effect. However, those same protections haven't been extended to adult-use (recreational) program participants, who remain at risk.

For many years, the Department of Justice followed guidelines described in a memo that it sent to the U.S. Attorneys around the country, now referred to as the Cole Memo. In effect, it stated that although state-legalized marijuana sales remained illegal under federal law, federal prosecutors should not prioritize marijuana enforcement unless states failed to provide "robust" regulation. The memo stated that federal law enforcement would narrowly focus on marijuana revenue that appears to fund gangs, distribution to minors, and transporting across state lines, among other priorities. [Click here for more on the Cole Memo.](#) It served as a reference point for those trying to operate with both state and often conflicting federal laws at the same time. Unfortunately, it was rescinded by a memo from U.S. Attorney General Jeff Session in 2018, although many operating in government still seem to adhere to its basic policies.

States that have legalized cannabis can only legalize their own state laws, so state residents are still susceptible to federal law under the doctrine of preemption within the Supremacy Clause of Article VI of the Constitution.

To be sure, federal law enforcement does not appear to take marijuana offenses quite as seriously as it did at one time, but it would certainly be incorrect to believe they would not prosecute individuals or companies for marijuana-related offenses if they wanted to and had the opportunity.

¹ Schedule of Controlled Substances, 21 U.S. Code § 812 (1970), <https://www.law.cornell.edu/uscode/text/21/812>

² "Exactly how many people are locked up for weed?," Last Prisoner Project, accessed July 12, 2022, <https://www.lastprisonerproject.org/cannabis-prisoner-scale>

³ Congressional Research Service, Funding Limits on Federal Prosecutions of State-Legal Medical

Marijuana, LSB10694, (2022), <https://crsreports.congress.gov/product/pdf/LSB/LSB10694>

⁴ U.S. Department of Justice Office of the Deputy Attorney General, Guidance Regarding Marijuana Enforcement, August 23, 2013,

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

⁵ Office of the Attorney General, Marijuana Enforcement, January 4, 2018,

<https://www.justice.gov/opa/press-release/file/1022196/download>

⁶ In cases of conflicting legislation, federal trumps state legislation. U.S. Const. art. VI, cl. 2