



The New Cannabis Fight:

What you need
to know about
Marijuana and
Hemp

Whole new world of marijuana cases!!!

- Attitudes about weed completely changed
- Nation and State polls favor legalization
- 40 states have some form of legalization
- Many counties not prosecuting small amounts
- 2018 Farm Bill & HB 1325 Hemp Bill



Whole new world of marijuana cases!!!

- Attitudes about weed completely changed
- Nation and State polls favor legalization
- 40 states have some form of legalization
- Many counties not prosecuting small amounts
- 2018 Farm Bill & HB 1325 Hemp Bill



Whole new world of marijuana cases!!!

- Attitudes about weed completely changed



Attitudes
about weed
completely
changed



**Attitudes
about weed
completely
changed**





Attitudes about weed completely changed

Whole new world of marijuana cases!!!

- Attitudes about weed completely changed
- **Nation and State polls favor legalization**
- 40 states have some form of legalization
- Many counties not prosecuting small amounts
- 2018 Farm Bill & HB 1325 Hemp Bill



Whole new world of marijuana cases!!!

- Nation and State polls favor legalization





Nation and State polls favor legalization

- 67% Americans for legalization
- 32% Americans against legalization



Support for marijuana legalization hits new high, CBS News poll finds

BY JENNIFER DE PINTO

UPDATED ON: APRIL 19, 2019 / 10:25 AM / CBS NEWS



©CBS NEWS POLL

APRIL 9-14, 2019, MOE: 4 PTS.

SUPPORT FOR LEGAL MARIJUANA USE (AMONG AMERICANS)

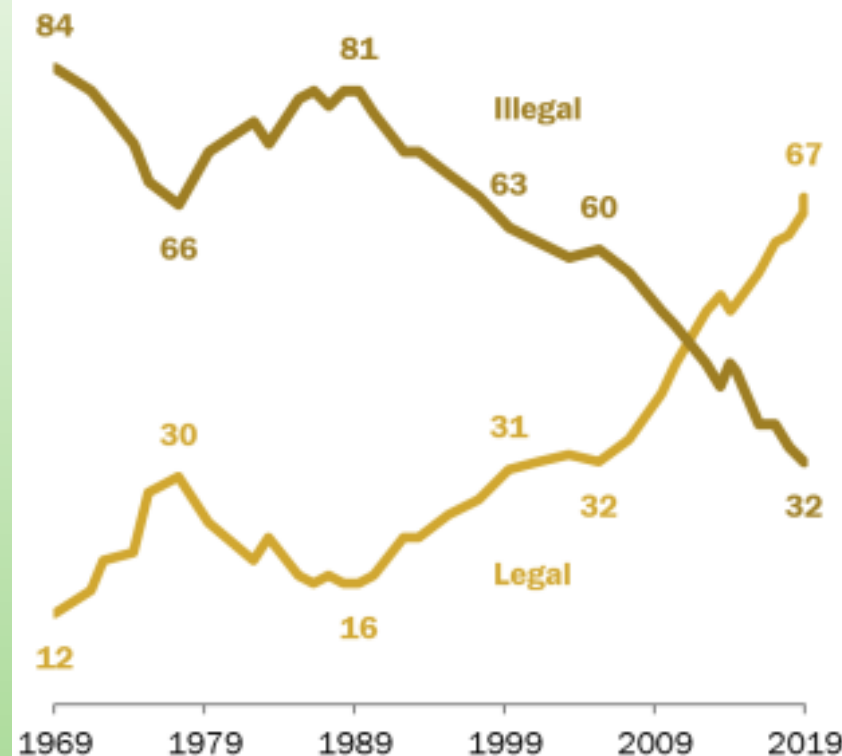




Pew Research Center

U.S. public opinion on legalizing marijuana, 1969-2019

Do you think the use of marijuana should be made legal, or not? (%)



Note: No answer responses not shown. 2019 data from Pew Research Center's online American Trends Panel; prior data from telephone surveys. Data from 1969-1972 from Gallup; data from 1973-2008 from General Social Surveys.

Source: Survey of U.S. adults conducted Sept. 3-15, 2019.

PEW RESEARCH CENTER

Support for Making Marijuana Legal, by Political Party and Ideology

Favor

%

Party Identification

Democrat	76
Independent	68
Republican	51

Political Ideology

Liberal	82
Moderate	72
Conservative	48

Combined data from three 2018-2019 polls

GALLUP

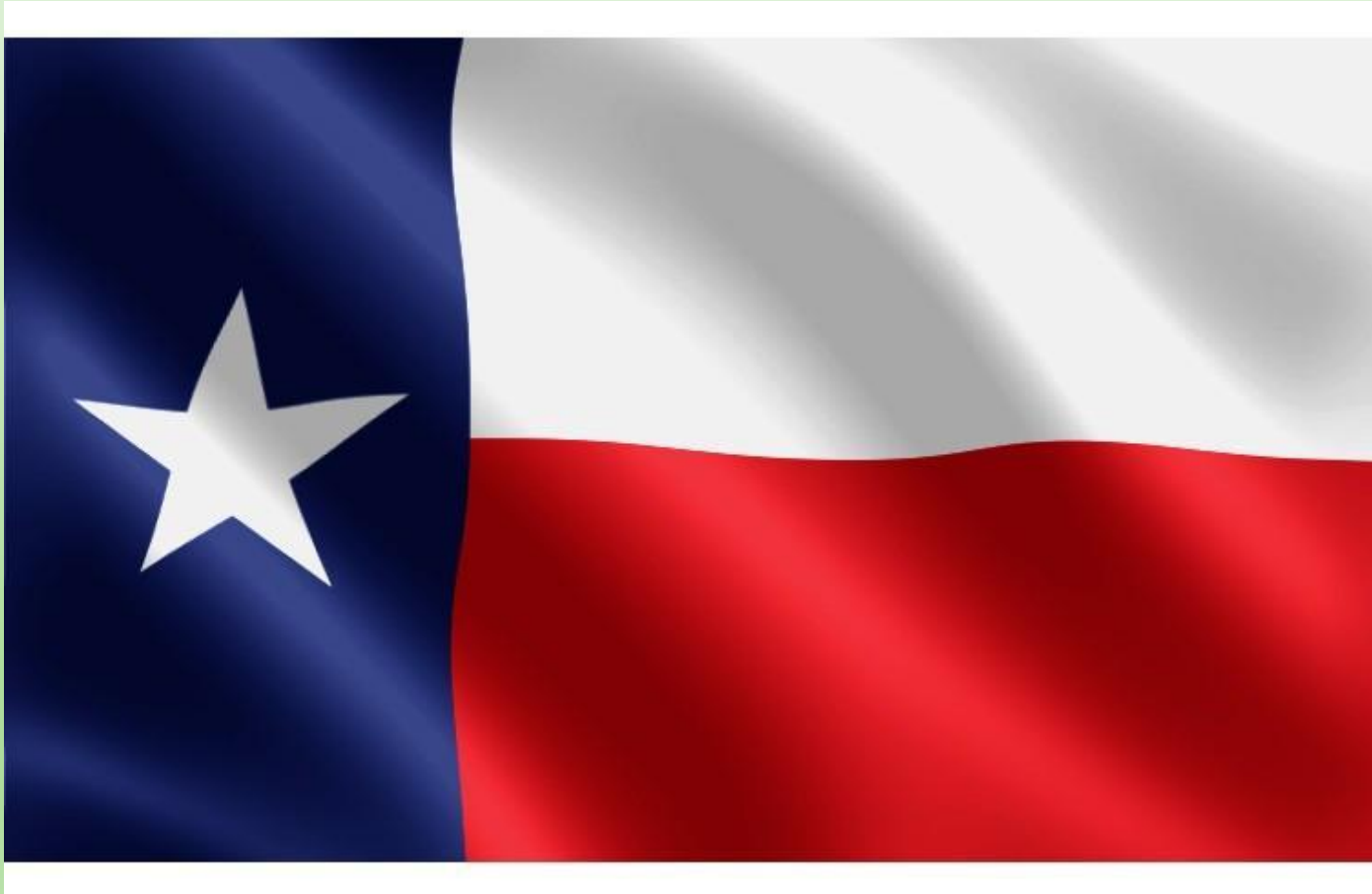
Support for Making Marijuana Legal, by Age and Generation

	Favor	Oppose
	%	%
Age		
18-29 years	81	18
30-49 years	71	29
50-64 years	62	36
65+ years	49	49
Generation		
Millennials (born 1980-2000)	80	20
Generation X (born 1965-1979)	63	36
Baby boomers (born 1946-1964)	61	38
Traditionalists (born in 1945 or earlier)	40	56

Combined data from three 2018-2019 polls; Generation Z not shown due to small sample size

GALLUP

Where do Texans stand?





- **More than 80%** Texans for legalization (31% medical, 53% recreational)
- **16%** Texans against legalization

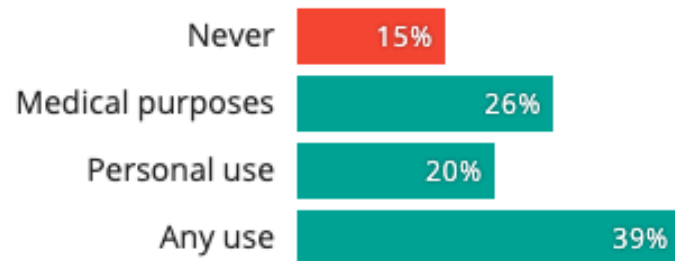
Stronger Support in Texas

Where do Texans stand?

UT/TT POLL

Should marijuana be legal in Texas?

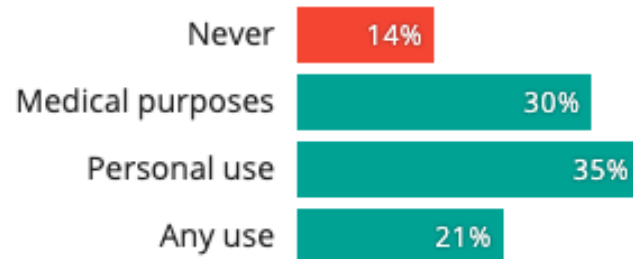
18-29



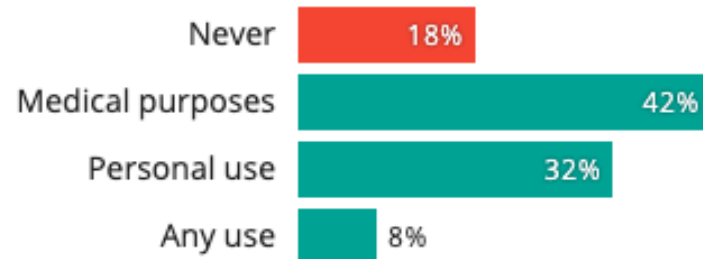
30-44



45-64



65+



Whole new world of marijuana cases!!!

- Attitudes about weed completely changed
- Nation and State polls favor legalization
- **40 states have some form of legalization**
- Many counties not prosecuting small amounts
- 2018 Farm Bill & HB 1325 Hemp Bill



Whole new world of marijuana cases!!!

- 40 states have some form of legalization



Which states legalized recreational use?



2012: Colorado & Washington



2014: Alaska, Oregon & Washington
D.C.



2016: California, Massachusetts,
Maine & Nevada



2018: Vermont & Michigan



2019: Illinois



11 States + D.C. = LEGAL FOR ADULTS

**40 states
have some
form of
legalization**

- 80% of states have some form of legalization
- 11 states and DC - fully legal
- 33 states – medical marijuana legal
- Only 11 fully illegal (Alabama, Idaho, Kansas, Mississippi, Nebraska, North Carolina, South Carolina, South Dakota, Tennessee, Wisconsin & Wyoming)

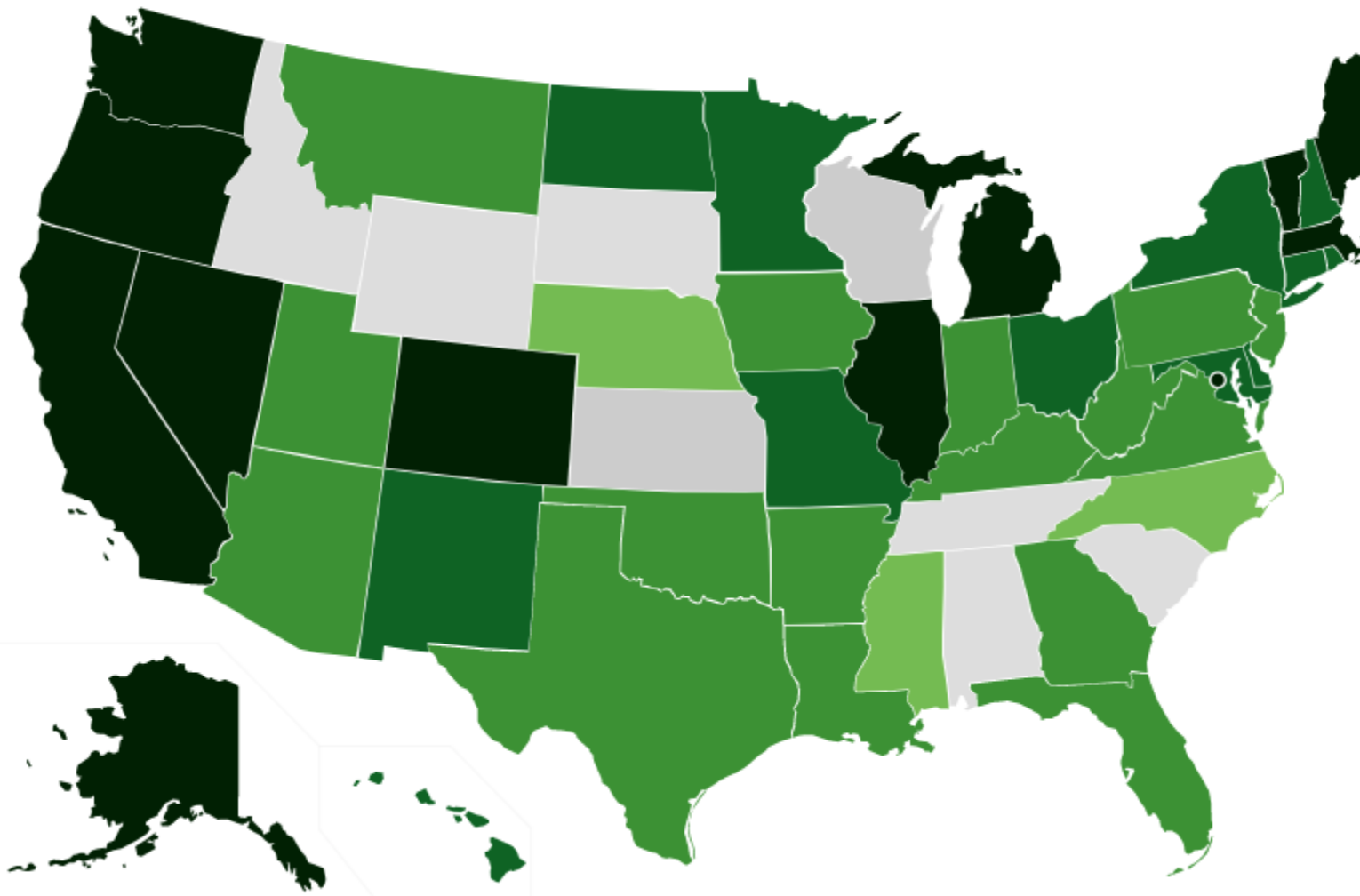


Table 2: Marijuana Revenues by State

	Projected Revenue	Total Revenue Collected by Year			
		Year 1	Year 2	Year 3	Year 4
Colorado ^{xxiii} (Calendar year)	\$70 Million	\$67.6 Million (2014)	\$130.4 Million (2015)	\$193.6 Million (2016)	\$205.1 Million (Jan – Oct '17)
Washington ^{xxiv} (Fiscal year: Jul 1 – Jun 30)	\$162 Million	\$64.9 Million (2014–15)	\$185.7 Million (2015–16)	\$314.8 Million (2016–17)	\$91.2 Million (Jul – Sept '17)
Oregon ^{xxv} (Fiscal year: Jul 1 – Jun 30)	\$31 Million ^{xxvi}	\$20.7 Million (2015–16)	\$70.3 Million (2016–17)	\$18.4 Million (Jul – Sept '17)	–
Alaska ^{xxvii} (Fiscal year: Jul 1 – Jun 30)	\$12 Million ^{xxviii}	\$1.7 Million (Oct '16 – Jun '17)	\$1.3 Million (Jul – Aug '17)	–	–
Nevada ^{xxix} (Fiscal year: Jul 1 – Jun 30)	\$60 Million ^{xxx}	\$ 13.2Million (Jul – Sept. '17)	–	–	–

A wide-angle photograph of Aspen's High School, a modern multi-story building with large glass windows and brick accents. The school is set against a backdrop of green, forested hills under a bright blue sky with scattered white clouds. In the foreground, there is a well-maintained green lawn, a paved walkway with stairs, and a curved concrete wall. A red-roofed structure, possibly a sports field or outdoor area, is visible in the lower right.

So where does that \$\$ go?

- 2015 -2017: Colorado distributed \$230 MILLION in MJ revenue to the Col. Dept. of Education
 - Funded school construction; early literacy, bullying prevention & behavioral health
 - Pictured is Aspen's HIGH SCHOOL



So where does all that \$\$\$
go?

- Oregon allocates
 - 40% of MJ tax revenue to its state school fund (already over \$34 million)
 - 20% to alcohol and drug treatment



So where does all that \$\$\$ go???

- Nevada's 15% wholesale tax is projected to bring in \$56 million over the next two years to fund state schools



Pending Legislation



- As of March: nearly 1,500 cannabis-related bills moving through state legislatures & Congress for 2020 sessions
- Congress:
 - the Strengthening the Tenth Amendment Through Entrusting States Act (STATES ACT, H.R.2093 of 2019);
 - the Marijuana Opportunity Reinvestment and Expungement Act (MORE Act of 2019 – H.R. 3884); and
 - the Secure and Fair Enforcement Act (SAFE ACT of 2019 – H.R. 1468)

Whole new world of marijuana cases!!!

- Attitudes about weed completely changed
- Nation and State polls favor legalization
- 40 states have some form of legalization
- **Many counties not prosecuting small amounts**
- 2018 Farm Bill & HB 1325 Hemp Bill



Whole new world of marijuana cases!!!

- Many counties not prosecuting small amounts





Before Hemp Laws

- Harris, Dallas, Bexar & Nueces stopped arresting small pot possession cases
- May 2019: Bexar County DA Joe Gonzales announced “cite and release” policy for < 1 oz marijuana & </.25 other substances like cocaine

San Antonio cite-and-release program learns from mistakes of other cities, DA says

by Joe Galli | Wednesday, May 22nd 2019

AA



After Hemp Laws

- More counties started policies for MJ decriminalization
- July 2019:
 - DA's in Bexar, Fort Bend, Harris & Nueces announced their offices would no longer accept misdemeanor marijuana cases (4 oz. or less)
 - DPS officers instructed not to arrest for less than 4 oz. MJ



DAs In Four Texas Counties Say They'll No Longer Prosecute Misdemeanor Marijuana Cases

By JUAN A. LOZANO, THE ASSOCIATED PRESS • JUL 3, 2019



Share



Tweet



Email





Cite and release program begins in Bexar County

The program allows some accused law-breakers to receive a citation instead of going to jail.

Author: Sue Calberg

Published: 6:36 PM CDT June 28, 2019

Updated: 8:02 PM CDT July 1, 2019

SAN ANTONIO — A new cite and release initiative began Monday in Bexar County. The partners involved in the effort call it a winning solution for everyone because it will keep people out of jail.

"The cite and release program is all about trying to give individuals that are stopped on the street an opportunity to avoid arrest, when they are faced with being arrested for a low-level minor offense that doesn't involve a crime of violence," District Attorney Joe Gonzales said days before the program went into effect.

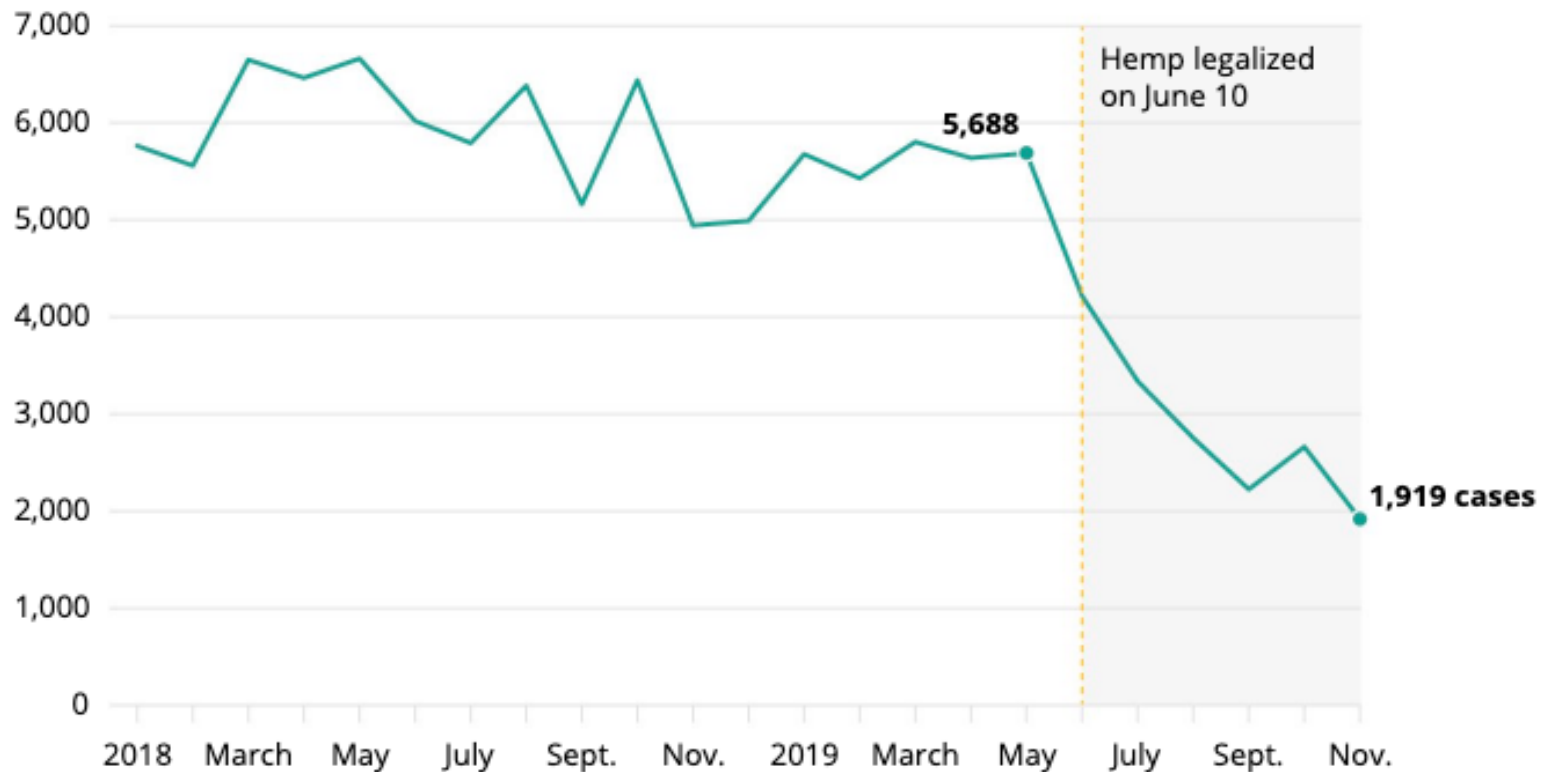
New Hemp Laws = Decline in MJ cases



- In January 2020, the number of misdemeanor marijuana possession cases filed in Texas had dropped nearly two-thirds since the beginning of June 2019, when hemp was legalized

Texas misdemeanor marijuana cases drop after hemp is legalized

The number of misdemeanor marijuana possession cases filed in Texas has dropped nearly two-thirds since the beginning of June, when hemp was legalized. Without proper testing, police and prosecutors are unable to chemically differentiate between marijuana and hemp.



Source: Texas Office of Court Administration

Credit: Mandi Cai

Whole new world of marijuana case!!!

- Attitudes about weed completely changed
- Nation and State polls favor legalization
- 40 states have some form of legalization
- Many counties not prosecuting small amounts
- **2018 Farm Bill & HB 1325 Hemp Bill**



Whole new world of marijuana case!!!

- 2018 Farm Bill & HB 1325 Hemp Bill



2018 Farm Bill

- Goal was to create **legal hemp market**
- Directed USDA to establish a national **regulatory framework** for **hemp production** in the U.S.
- Passed last December

U.S. Domestic Hemp Production Program

- USDA established the U.S. Domestic Hemp Production Program through an interim final rule.
- Outlines provisions for the USDA to approve plans submitted by States for the domestic production of hemp

2018 Farm Bill

CHANGED THE
DEFINITION OF
MARIJUANA!



FLANARY
LAW FIRM, PLLC

(16)(A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term “marihuana” does not include--

(i) hemp, as defined in [section 1639o of Title 7](#); or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Marijuana – Federal law

- Illegal under Controlled Substances Act (CSA)
- Defined in 21 U.S.C. 802 (effective Dec 2018)

House Bill 1325



WHAT'S UP WITH
HB 1325?



WHY DID THIS
HAPPEN?

HB 1325

- Passed in attempt to bring state law in line with Farm Bill 2018
- Signed into law by Gov. Abbott June 2019
- Legalized production, manufacture, retail, sale, and inspection of industrial hemp crops/products in Texas
- Changed the definition of MJ in Texas



Marijuana - Texas

- Illegal under Texas CSA
- Defined in Tex. Health & Safety Code Ann. § 481.002

(26) “Marihuana” means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

- (A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;
- (B) the mature stalks of the plant or fiber produced from the stalks;
- (C) oil or cake made from the seeds of the plant;
- (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;
- (E) the sterilized seeds of the plant that are incapable of beginning germination; or
- (F) hemp, as that term is defined by [Section 121.001, Agriculture Code](#).

So what is
hemp?



- **“Hemp”** means the plant **Cannabis sativa L.** and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, **with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent** on a dry weight basis

Hemp (U.S. Agriculture Code)

Feds + Texas =

- Federal Farm Bill enabled Texas Hemp Bill
- Texas uses the same definition of Hemp (Tx. Agriculture Code Sec. 121.001)



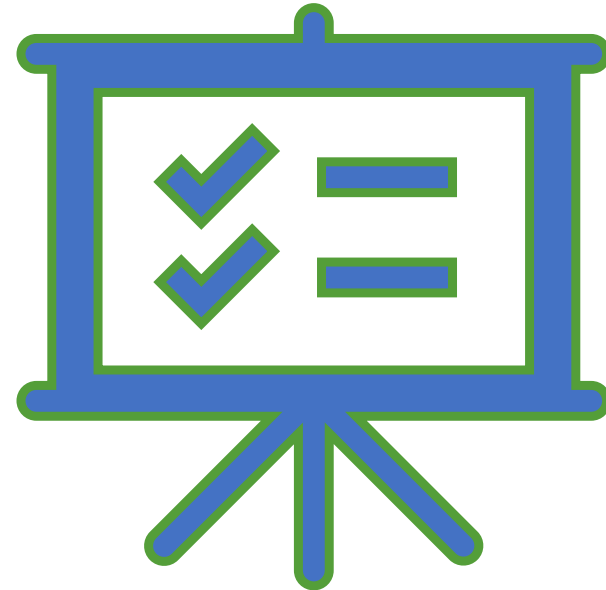
HB 1325 - “Hemp Bill”

- Includes **consumable hemp products** which contain **cannabidiol (CBD)**, as well as other edible parts of the hemp plant.



What does HB 1325 do?

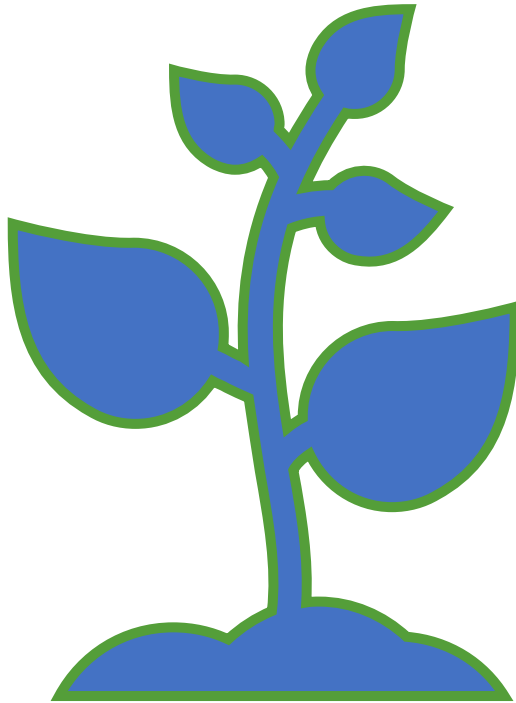
- Texas Department of Agriculture (**TDA**) submitted the state hemp plan to USDA on Dec. 2, 2019
- USDA approved the plan on Jan. 27, 2020
- Administrative rules were published and became effective Mar. 11, 2020



New Hemp Law

- Now that the TDA plan is approved, industrial hemp can now be grown & cultivated in Texas
- TDA regulates industrial production of hemp
- Per the plan, regulation of CBD is handled in accordance w/FDA guidelines by the Dept. of State Health Services (NOT TDA)

New Hemp Law



- **Texas Department of Agriculture -
Regulates Industrial
Production Hemp**
- **Department of State
Health Services -
Regulates Consumable
CBD**



TEXAS DEPARTMENT OF AGRICULTURE COMMISSIONER SID MILLER

Search

(800)-Tell-TDA
835-5832

eServices



HOME

NEWS &
EVENTS

GRANTS &
SERVICES

REGULATORY
PROGRAMS

LICENSES &
REGISTRATIONS

FOOD &
NUTRITION

EDUCATION &
TRAINING

REPORTS &
PUBLICATIONS

ABOUT
AGENCY

FORMS

Helpful Information

USDA Domestic Hemp Program

The 2018 Farm Bill (pdf) directed USDA to establish a national regulatory framework for hemp production in the United States. USDA established the U.S. Domestic Hemp Production Program through an interim final rule. This rule outlines provisions for the USDA to approve plans submitted by States and Indian Tribes for the domestic production of hemp. It also establishes a Federal plan for producers in States or territories of Indian tribes that do not have their own USDA-approved plan.

[Interim Final Rule \(PDF\)](#)

[TDA Hemp Plan](#) **NEW**

[The Texas Department of Agriculture Proposed Hemp Plan for Texas \(PDF\)](#)
approved by USDA January 27, 2020

[Texas Department of Agriculture](#) **NEW**
[Hemp Sampling and Collection Procedure](#)

[TDA Hemp Rules](#) **NEW**

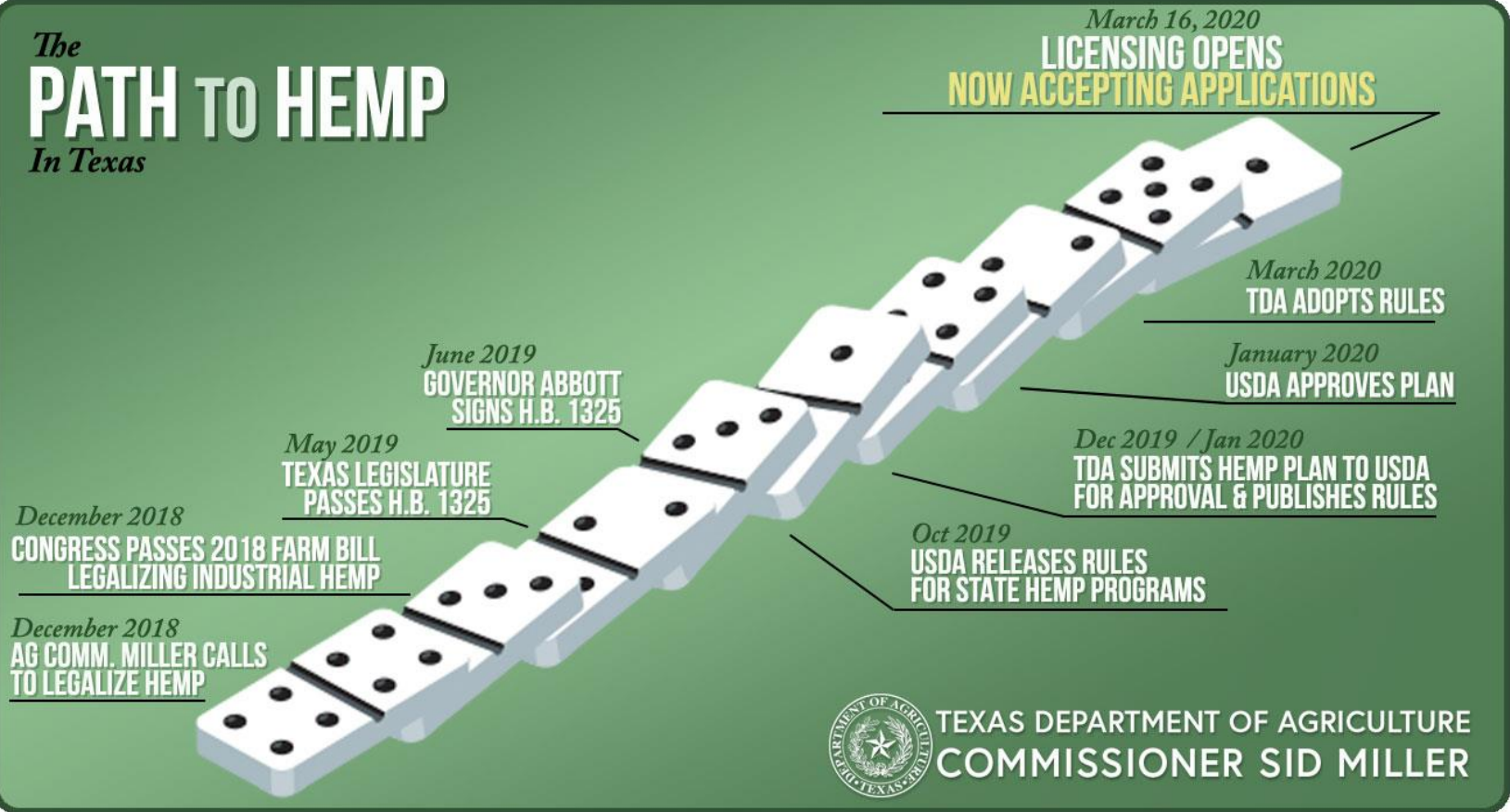
[Adopted Rules](#)
(Texas Administrative Code)



[CLICK TO ENLARGE](#)



The
PATH TO HEMP
In Texas



TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

updated March 2020

Birth, Death, Marriage, and Divorce Records

Consumer Protection

Data and Surveillance

Emergency Preparedness and Response

Health and Wellness

Infectious Disease Control

Laboratory

Your Local Public Health

Contact Us

Consumer Protection

Hemp Program

DSHSHempProgram@dshs.texas.gov

Home > Consumer Protection > Hemp Program

Hemp Program

Hemp-related Information

DSHS held a public hearing on October 3, 2019 in Austin to accept public comments on the implementation of HB 1325, specifically Health & Safety Code Chapter 443, relating to consumable hemp products.

[Read the full public hearing notice.](#) | [Download the hearing presentation](#) (PDF)

Key Messages

On June 10, 2019, Governor Greg Abbott signed [House Bill 1325](#) into law, to allow for the production, manufacture, retail sale, and inspection of industrial hemp crops and products in Texas. This includes products for human consumption that may contain cannabidiol, also known as CBD, as well as certain other parts of the hemp plant.

HB 1325 requires the Texas Department of Agriculture (TDA) to first file a state plan to monitor and regulate the production of hemp in Texas, and have that plan approved by the United States Department of Agriculture (USDA) before an agency can create the rules necessary to implement the rest of HB 1325.

For more information on the USDA process, visit the USDA [Hemp Production](#) and

ON THIS PAGE

What is a consumable hemp product?

What is DSHS required to do under HB 1325?

What is DSHS' role?

Can I manufacture consumable hemp products?

Can I sell consumable hemp products at



Regulation of CBD

- Regulation of CBD consumables (including CBD oil) will be handled in accordance with Food and Drug Administration (FDA) guidelines



Regulation of CBD



The FDA has approved only one CBD product, a prescription drug product to treat two rare, severe forms of epilepsy.



It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement.

Regulation of CBD

- The state agency with oversight of CBD consumables is the Texas Department of State Health Services (DSHS) and not TDA.



**So what other products or
forms of cannabis are out
there?**

The Stash



Flower



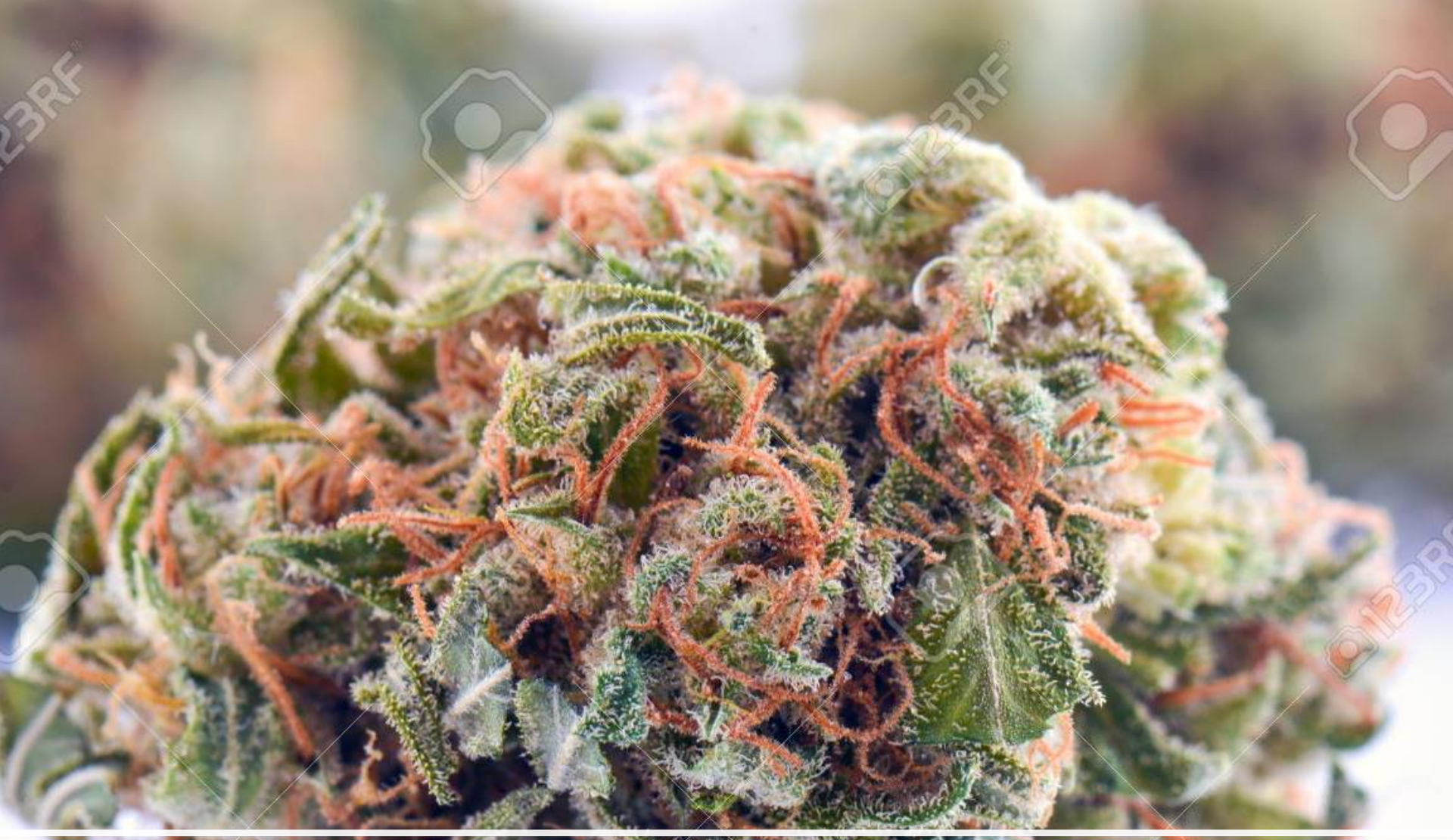
THC Concentrates



CBD



HEMP



Flower

THC

CANNABIS CONCENTRATES



CRUMBLE

Dried oil with a honey-comb like consistency



BADDER/BUDDER

Concentrates whipped under heat to create a cake-batter like texture



SHATTER

A translucent, brittle, & often golden to amber colored concentrate made with a solvent



DISTILLATE

Refined cannabinoid oil that is typically free of taste, smell & flavor. It is the base of most edibles and vape cartridges



CRYSTALLINE

Isolated cannabinoids in their pure crystal structure



DRY SIFT

Ground cannabis filtered with screens leaving behind complete trichome glands. The end-product is also referred to as kief



ROSIN

End product of cannabis flower being squeezed under heat and pressure



BUBBLE HASH

Uses water, ice, and mesh screens to pull out whole trichomes into a paste-like consistency



Cannabis Concentrate

- Kief or sift
- Hash
- Rosin
- Live Resin
- Shatter Wax
- Crumble Wax
- Honeycomb Wax
- Budder or Badder
- Pull and Snap
- Tinctures
- THC Oil
- BHO & CO2 Extract Oil
- Rick Simpson Oil
- Distillates, Isolates & Crystallines



Dab

- Shatter
- Wax
- Resin
- Types of hash oil.



Solvent Concentrates

- Shatter
- Crumble & honeycomb
- Budder & badder
- Wax products
- Live Resin
- CO2 oil
- THC oil
- Butane-Honey Oil (BHO)
- Rick Simpson Oil (RSO)





Kief



Hash

Resin





Wax



Shatter



Tinctures



Oil

CBD



Hemp



Old Flower

- HSC 481.002, (Definitions)
- (26) "Marihuana" means the plant **Cannabis sativa L.**, whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds.

- The term does **not include**:
- (A) the **resin** extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;
- (B) the **mature stalks** of the plant or **fiber** produced from the stalks;
- (C) **oil or cake** made from the **seeds** of the plant;
- (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;
- (E) the **sterilized seeds** of the plant that are **incapable of beginning germination**

New Flower

- The term does **not include**:
- (F) **hemp**, as that term is defined by Section 121.001, Agriculture Code.

Old THC

- HSC 481.002, (Definitions)
- (5) "**Controlled substance**" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or **Penalty Group** 1, 1-A, **2**, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

Old THC

- HSC 481.103 (Penalty Group 2)
- **Tetrahydrocannabinols, other than marihuana**, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity

New THC

- The **term does not include hemp**, as defined by Section 121.001, Agriculture Code, or **the tetrahydrocannabinols in hemp.**
- **NOTE: THERE IS ALWAYS SOME THC IN HEMP!**

Cannabidiol (CBD)

- HSC 443.201
- (1) "**Consumable hemp product**" means food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that **contains hemp** or one or more **hemp-derived cannabinoids, including cannabidiol.**

Hemp

- AC 121.001. (Definition)
- "**hemp**" means the plant **Cannabis sativa L.** and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, **with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent** on a dry weight basis.

The Stash



Flower



THC Concentrates



CBD



HEMP

What does this mean?

In some ways...

Marijuana is **MORE** serious now.

NOW most cases will be felonies

THC or large MJ amounts

THC is more popular than ever!!!

What does this mean?

BIG CHANGES!!!

What does that mean?



Changes Probable Cause



Changes what the state is required to prove



Changes what bounds of what science can validate



Changes what you can set up in Voir dire



Changes Jury Instructions



Changes your negotiations strength

We always had the Jury



It was always a type of
Nullification



But now we have real
weapons!

**No more
PC for
flower**



**Warrantless
Vehicle Searches**



Warrants





**“Distinct odor of MJ
emanating from the
vehicle”**

- MJ and Hemp smell the same





- K9 not trained to distinguish
- False positives
- The sniff is no longer reliable PC
- *People v. McKnight*
Colorado Supreme Court

“K9 alerted to presence
of Narcotics”



People v.
McKnight
446 P.3d 397
(May 2019)

- Dog alerted on a pipe that later had meth
- But dog is cross trained and can render a false positive
- “A sniff from a dog trained to alert to marijuana is a search in Colorado that must be supported by probable cause and justified under an exception to the warrant requirement.”

**ALL K9
cases are
F***ED
now!!!**



Meth, coke,
heroin, MJ, will all
get false positives



All dogs must be
retired





Happy Retirement!!!



No more PC for Pens and Cartridges

- Can you tell the difference between a THC pen and a CBD pen?

IF no Probable Cause



HUGE DEAL!!!

If no pre-arrest admissions a
pen is THC, its virtually
impossible to prosecute!



What's left to Prosecute?

1. “License and registration”,
“here’s my weed officer”
2. “Is that a THC pin I see in
your hand?” “Why yes, it
is!”
3. Colorado weed Co. Sticker
on the Pen
4. THC-concentration labeled
on pen/packaging
5. “No Officer, its certainly
not CBD”

**What
about a
field test?**

But can a field
test give PC to
arrest?

NO, because
.3% of THC is
legal

What if no suppression issues?



Ok fine, we'll try it.



Its always been about their
Burden or Nullification

TEXASTRIBUNE.ORG

MARIJUANA IN TEXAS

**He spent a month in Texas jail accused of hauling 3,350 pounds of marijuana.
But lab results say it was legal hemp.**



US. v. Aneudy Gonzalez

- Northern District of Texas
- 3350 lbs

We always have the Jury

You can't prove its not Hemp or CBD

Burden to Prove What???



- State must prove **THC Concentration**, not just that it is marijuana or THC
- **MUST BE OVER .3%**



Burden to Prove What???

- “[t]he immediate effect of the hemp law is that it requires the **state** to prove a THC concentration on marijuana cases **that cannot be accomplished without lab testing.**”
- -DA Joe Gonzales



Proving Concentrates

- Prove its not CBD
- But also
 - Defendant's INTENT
- “Oh Gosh Officers, I thought it was CBD”



Remember THC “in” Hemp

- The **term does not include hemp**, as defined by Section 121.001, Agriculture Code, or the **tetrahydrocannabinols in hemp.**
- How do they know this THC didn't come from Hemp?



Compassionate Use Act

Low THC marijuana has been legal since 2015



HSC 487.001–.201 authorizes the cultivation, processing, and dispensing of low-THC cannabis to prescribed patients with intractable epilepsy

Still going to Trial

- If after all that...
- Good luck getting an expert!!

Texas DPS Lab

- Said in February that “new THC testing” for PLANT material expected to be finalized near the end of March
- Once finalized, DPS still needs 60 days to conduct validation studies and develop training
- Already have 845 felony plant material cases submitted after June 10, 2019



REMEMBER



Even if DPS gets testing up and running, it's only for PLANT MATERIAL



Still no timeline on vape pens or edibles



AND DPS already said they won't test misdemeanors

NO TESTING in Texas

- Theoretically possible...
- But to get within the margin of errors and comply with Rule 702 probably never possible

NO TESTING in Texas

- Private labs claim accuracy for testing THC-concentration, but testing is still **NEW & DEVELOPING**
- No validations
- No scientific protocols

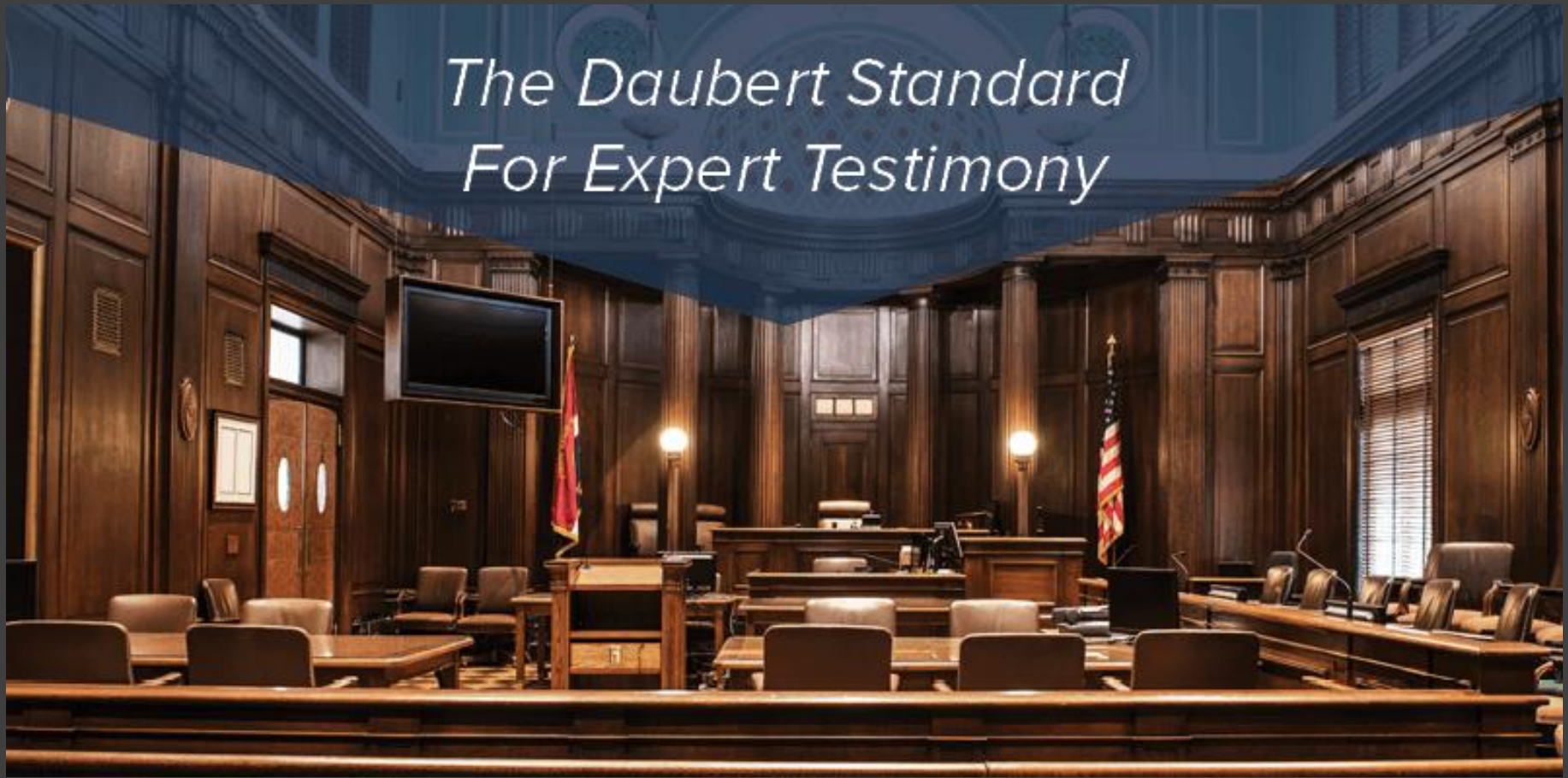
NO TESTING in Texas

- Testing only in a few places
- Some counties are turning to private labs at a high cost \$\$\$
- Tarrant County using Armstrong Labs
- Dallas County using NMS
- DPS hasn't validated any tests
- DPS not testing under 4 oz

NO TESTING in Texas

- Lab contracts have HIGH testifying fees
- Subpoena the contracts for the labs!
- Your basis:
- Need to impeachment the expert on pecuniary interest to be biased

The Daubert Standard For Expert Testimony



**NO TESTING
ANYWHERE**

- No experts
- No scientifically validated testing protocols
- No certain data

Assuming
labs got
their shit
together

- **NO WAY TO DO CONCENTRATIONS**
- Gas chromatography
- Flame ionization
 - Heat Problem
 - THCA + heat = CO₂ and THC



THCA is not THC

- **Tetrahydrocannabinolic acid**
- **THCA** is a non-intoxicating cannabinoid found in raw and live cannabis. As the plant dries, **THCA** slowly converts to THC. Heat expedites this conversion in a process known as decarboxylation, a fancy word that describes what happens when you smoke or vaporize flower.

One Possible way

- High performance liquid chromatography (HPLC)
- Do you know what that is?
- Good neither does anyone else!

CERTIFICATE OF ANALYSIS



Order #: 33472
Order Name: Wildseed Hemp
Lifter
Batch#: HF38463
Received: 07/18/2019
Completed: 07/22/2019

Wildseed Hemp LLC
11604 Vance Jackson rd #1084
San Antonio TX, 78230
(512) 348-9907
wildseedhemp@gmail.com



Sample



0.133%
D9-THC

15.545%
Total CBD

Cannabinoids Test

SHIMADZU INTEGRATED UPLC-PDA

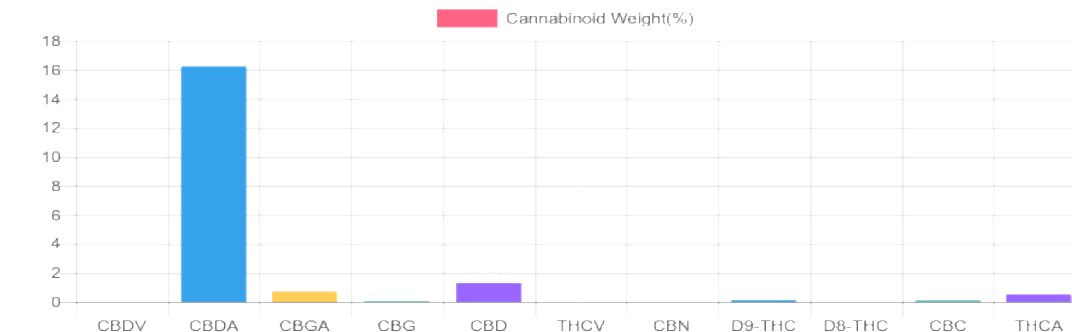
GSL SOP 400

PREPARED: 07/19/2019 22:05:44

UPLOADED: 07/22/2019 18:25:14

Cannabinoids	LOQ	weight(%)	mg/g
D9-THC	10 PPM	0.133%	1.327
THCA	10 PPM	0.521%	5.214
CBD	10 PPM	1.312%	13.118
CBDA	20 PPM	16.229%	162.289
CBDV	20 PPM	N/D	N/D
CBC	10 PPM	0.124%	1.244
CBN	10 PPM	N/D	N/D
CBG	10 PPM	0.064%	0.639
CBGA	20 PPM	0.719%	7.194
D8-THC	10 PPM	N/D	N/D
THCV	10 PPM	N/D	N/D

TOTAL D9-THC	0.133%	1.327
TOTAL CBD*	15.545%	155.445
TOTAL CANNABINOIDS	19.102%	191.025



Reporting Limit 10 ppm

*Total CBD = CBD + CBDA x 0.877

N/D - Not Detected, B/LOQ - Below Limit of Quantification



4001 SW 47th Avenue Suite 207
Davie, FL 33314
1-833-TEST-CBD
info@greenscientificlabs.com



Dylan Swart
Dylan Swart, Lab Director

Green Scientific Labs uses its best efforts to deliver high quality results and to verify that the data contained therein are based on sound scientific judgment and levels listed are guidelines only and all data was reported based on standard laboratory procedures and deviations. However Green Scientific Labs makes no warranties or claims to that effect and further shall not be liable for any damage or misrepresentation that may result from the use or misuse of the data contained herein in any way. Further, Green Scientific Labs makes no claims regarding representations of the analyzed sample to the larger batch from which it was taken. Data and information in this report are intended solely for the individual(s) for whom samples were submitted and as part of our strict confidentiality policy, Green Scientific Labs can only discuss results with the original client of record.

Get an expert

Where?

They don't have one

Better call Daniel, (not just for fire weed)

This dude is getting his masters!!!

I call Daniel Mehler

- Masters of Science in Medical Cannabis Science and Therapeutics
- University of Maryland School of Pharmacy
- 336-340-7232

**So if you're actually
gonna have a trial**

And everybody knows it was weed



FLANARY
LAW FIRM, PLLC

Try Good Ol'fashion Nullification

- Talk about all the **public opinion stats**
- Google **pop culture** references to weed in songs, movies, podcasts, family-friendly shows
- Be **honest, talk** about how have maybe you have smoked weed
- Tell them about the prosecutors that smoke weed!!!

Win your case in Voir Dire

- Get them talking about weed
- If you can't talk for 30 minutes to a jury about weed, what are you doing here?
- Just talk about **weed** and the **hypocrisy** of **criminalization**
- In today's day and age, isn't an arrest for MJ punishment enough?!?!?

DON'T forget that Jury Instruction

- Make sure you have it **ready before trial**
- Make sure **.3% concentration** is there
- Make sure it mentions **hemp or CBD**



**Its just a
weed
case,
bro!**

- What do you have to lose???
- If you can't convince a jury to find a guy not guilty on MJ, should you really be trying cases?
- And if you can't try cases then you don't deserve to plea them
- You have no RIGHT to be pleaing clients until you can win!!!



Guess what, fed guys??

- Same stuff generally applies!
- Same Hemp definition, just maybe less time to voir dire



Be a PAIN IN THE ASS

- Make the case as difficult and challenging as possible
- And there's more....

Constitutional Challenges



FEDERAL
MOTION TO DISMISS



STATE
PRE-TRIAL WRIT

Federal Motion to Dismiss

- DEA investigation and surveillance
- Search Warrant issued
- 1500 plant grow house in San Antonio
- Nothing imported from out of state

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA

VS.

MICHAEL MYERS

§
§
§
§
§

CRIMINAL NO. 5:16-CR-00320-FB

**MOTION TO DISMISS UNCONSTITUTIONAL ENFORCEMENT OF MARIJUANA
PROHIBITION PROVISIONS OF THE CONTROLLED SUBSTANCES ACT**

**TO THE HONORABLE SENIOR UNITED STATES DISTRICT COURT JUDGE FRED
BIERY FOR THE WESTERN DISTRICT OF TEXAS:**

NOW COMES MICHAEL MYERS, the Defendant in the above styled and numbered cause, who by and through undersigned Counsel, respectfully files this Motion to Dismiss Unconstitutional Enforcement of Marijuana Prohibition Provisions of the Controlled Substances Act in this case pursuant to the Due Process and Equal Protection Clauses of the Fourteenth and Fifth Amendments of the Constitution of the United States, the Faithful Execution Clause in Article II, § 3, cl. 5 of the Constitution of the United States, the Principle of Equal Sovereignty, the Separation of Powers Doctrine established in Articles I, II, and III of the Constitution of the United States, and the Commerce Clause in Article I, § 8, cl. 3 of the Constitution of the United States, and for good cause shows the following:

The Defendant is charged with Conspiracy to Manufacture Marijuana in violation of 21 U.S.C. §§ 846 and 841(a) and Using and Maintaining Drug Premises in violation of 21 U.S.C. § 856.

1. Selective Prosecution

The Defendant is being selectively prosecuted in violation of the Fifth Amendment. The Defendant's selective prosecution is deliberately based on an arbitrary classification, namely, his choice to exercise protected legal rights. These protected rights are his right to equal sovereignty based on State citizenship and his right to travel. This prosecution has a discriminatory purpose because the Government chooses to enforce the Controlled Substances Act against citizens living and operating in Texas but not in Colorado or Washington. The prosecution has a discriminatory effect because other similarly situated individuals in Colorado and Washington are not being prosecuted for the same offenses as the Defendant despite the same conduct. The Government's classification along State lines lacks any conceivable basis to a compelling or legitimate government interest, and therefore fails to justify the selective policy.

2. Faithful Execution Clause

- Under the guidance and authority of the President, the Justice Department has identified eight federal enforcement priorities to shape the investigation and prosecution of marijuana crimes under the Controlled Substances Act in response to changing State marijuana laws. This Policy is outlined in the “Cole Memo.” The eight priorities identified by the Department of Justice misstate the intent of Congress when enacting the Controlled Substances Act. While the Justice Department cites strained resources as the justification for a narrowed field of federal priorities, the policy described in the Cole Memo represents an unconstitutional failure of the Executive to **“take Care that the Laws be faithfully executed”** as required by **Article II, § 3, cl. 5 of the Constitution of the United States.**

3. Principle of Equal Sovereignty

The policy of selective enforcement, discriminating based on State citizenship and location, must undergo heightened scrutiny under the principle of equal sovereignty. The Executive Branch's policy of discrimination fails heightened scrutiny because the disparate geographic coverage of the policy is not sufficiently related to the problem it targets. If the Department of Justice desired to efficiently use their resources to achieve the intent of the Controlled Substances Act, more frequent prosecutions would take place in the jurisdictions in which no local law enforcement officers assist in crime fighting efforts versus in jurisdictions with laws nearly identical to the Controlled Substances Act and a supportive local law enforcement effort.

4. Separation of Powers Doctrine

- The President's selective enforcement of the Controlled Substances Act violates the Separation of Powers Doctrine. The Executive Branch allows citizens of Colorado and Washington to engage in marijuana related business activities by not enforcing the Controlled Substances Act. The policy pronounced in the Cole Memo is a de facto regulation of commerce. This action creates a de facto legal market for the cultivation and distribution of marijuana within those States. The Constitution does not grant the President the power to regulate this commerce or create these otherwise prohibited markets without Congressional authority. The President far exceeded his Constitutional authority under the guise of prosecutorial discretion and the resulting scheme is a violation of Articles I, II, and III of the Constitution of the United States.

5. The Controlled Substances Act lacks any Rational Basis

The federal prohibition of the possession, manufacture, and distribution of marijuana legislated in the Controlled Substances Act has lost its rational basis because the law is not enforced uniformly across the country. Arguments that marijuana prohibition is rationally related to a legitimate government interest are nullified when the Executive Branch and its subordinate agencies arbitrarily allow marijuana cultivation and distribution in some states and not in others. The Federal Government can name no reason consistent with Congress's findings when enacting the Controlled Substances Act that it enforces the marijuana prohibition of the Controlled Substances Act in a State with strict marijuana prohibition, like Texas, but fails to enforce marijuana prohibition of the Controlled Substances Act in States that allow recreational cultivation and distribution (Colorado and Washington).

**So how'd that
go, Don??**

Ahhh, probation, duh!



State Pre-Trial Writ

- Attacking the Texas Controlled Substances Act



WRIT 2935

NO. CC516362

E-FILED
Bexar County, County Clerk
Lucy Adame-Clark
Accepted Date: 5/1/2019 10:16 AM
Accepted By: Graciela Mares
/s/ Graciela Mares
Deputy Clerk

EX PARTE

§
§
§
§
§

IN THE COUNTY COURT

AT LAW NO. 2

MARIO GUTIERREZ, IV.

BEXAR COUNTY, TEXAS

**APPLICATION FOR PRE-TRIAL WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM UNCONSTITUTIONAL STATUTE
& UNCONSTITUTIONAL PROSECUTION**

**TO THE HONORABLE GRACE M. UZOMBA, JUDGE OF THE COUNTY COURT AT
LAW NO. 2 OF BEXAR COUNTY, TEXAS:**

COMES NOW MARIO GUTIERREZ, IV., Applicant in the above-entitled and numbered cause, by and through Donald H. Flanary, III., and Amanda I. Hernandez, his attorneys, and presents this pre-trial Application for Writ of Habeas Corpus Seeking Relief from Facially Unconstitutional Statute pursuant to the Fifth, and Fourteenth Amendments to the United States Constitution; Article 1, § § 10, 12, and 19 of the Texas Constitution; and Article 11.09 of the Texas Code of Criminal Procedure.

Applicant is currently charged and held under conditions of bond in this Court with one misdemeanor count of Possession of Marijuana, 0 to 2 oz., in cause number 516362.

I. BASIS FOR WRIT

Applicant is illegally confined and restrained of his liberty by virtue of these unconstitutional charges. The charges are illegal because they are based on a facially invalid statute which criminalizes the possession of marijuana. This statute violates multiple rights protected by the both the United States Constitution and Texas Constitution. Section 481.121 of the Texas Healthy and Safety Code, titled "Offense: Possession of Marihuana," is unconstitutional on its face for the following reasons:

NO. 516362

STATE OF TEXAS	§	IN THE COUNTY COURT
	§	
vs.	§	AT LAW 2
	§	
MARIO GUTIERREZ, IV.	§	BEXAR COUNTY, TEXAS

MOTION TO DISMISS
[Seeking Relief From Facially Unconstitutionally Statute]

**TO THE HONORABLE GRACE M. UZOMBA, JUDGE OF THE COUNTY COURT AT
LAW NO. 2 OF BEXAR COUNTY, TEXAS:**

COMES NOW MARIO GUTIERREZ, IV., Defendant in the above-entitled and numbered cause, by and through Donald H. Flanary, III., and Amanda I. Hernandez, his attorneys, and files this Motion to Dismiss Seeking Relief From Facially Unconstitutional Statute pursuant to the Fifth, and Fourteenth Amendments to the United States Constitution; Article 1, § 10, 12, and 19 of the Texas Constitution; and Article 11.09 of the Texas Code of Criminal Procedure.

Defendant is currently charged and held under conditions of bond in this Court with one misdemeanor count of Possession of Marijuana in cause number 516362.

I. BASIS FOR MOTION TO DISMISS

Defendant is illegally confined and restrained of his liberty by virtue of these unconstitutional charges. The charges are illegal because they are based on a facially invalid statute which criminalizes the possession of marijuana. This statute violates multiple rights protected by the both the United States Constitution and Texas Constitution. Section 481.121 of the Texas Healthy and Safety Code, titled "Offense: Possession of Marihuana," is unconstitutional on its face for the following reasons:

Dormant Commerce Clause

- Unduly burdens interstate commerce by attempting to place an outright ban on the transportation of marijuana, including medical marijuana, which is legal in all of Texas's neighboring states; and
- It violates the Fundamental Right to Travel.

1. No Rational Basis – No Legitimate Purpose

Fifth Amendment Due Process – The Texas Controlled Substances Act (TCSA) is so irrational as matter of law that it cannot be rationally related to any legitimate government purpose. The scheduling of THC in Penalty Group 2 and its Federal corollary under Schedule I of the Controlled Substances Act (CSA) bares no relationship to the parameters designed to create such a harsh classification. THC is categorized alongside, mescaline, DMT, amphetamines, and MDMA (ecstasy). The factors to be considered in criminalizing a substance under the TCSA are found in § 481.034. These factors and their federal corollary are simply not met by THC and were never truly considered upon its criminalization. In fact, the criminalization of Cannabinoids like THC is not rooted in the need to control a dangerous drug but rather to suppress the rights and interests of minority groups and people associated with certain countercultures.



2. First Amendment – Speech and Association

In so far as the criminalization of THC was truly designed to marginalize these groups, the TCSA violates and continues to violate the First Amendment to the U.S. Constitution as applied to the States through the Fourteenth Amendment. A statute criminalizing a substance for purposes of taking the voice of minority groups and protestors (counterculture) chills and has chilled the freedom of speech and the freedom of association.



3. No Rational Basis – Punishment Disparity

While the criminalization of all Cannabinoids is an affront to the U.S. Constitution as stated above, the disparity in punishment between THC as a penalty group 2 substance and its plant form, Marijuana, has no rational basis. If the criminalization of Cannabinoids continues, THC punishment under penalty group 2 should be on balance with the marijuana equivalent required to produce it. This information is readily available and yet the State of Texas has made no effort correlate punishment to any risk associated with the substance. Since there is no rational basis to this punishment scheme it too violates the Due Process Clause of the United States Constitution.



4. Privileges and Immunities Clause, Right to Travel

Finally, the criminalization of Cannabinoids like THC under the TCSA violates the fundamental Right to Travel. Medical Cannabis patients from one of the majority of states that have legalized THC for medical purposes are subjected to a Hobson's Choice of: (i) using their medication but relinquishing their Right to Travel; (ii) exercising their Right to Travel but risking arrest; or (iii) exercising their Right to Travel but foregoing physician-recommended medical treatment that maintains their health and lives. Insofar as subjecting themselves to arrest or loss of medical treatment do not constitute viable options, those using Cannabis to treat their illnesses, diseases and conditions are required to relinquish their Right to Travel, resulting in a constitutional violation



5. Dormant Commerce Clause

The TCSA violates the Dormant Commerce Clause. The Dormant Commerce Clause is violated when a statute unduly burdens interstate commerce, and that burden is “clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). This violation goes hand in hand with the violation of U.S. citizen’s fundamental Right to Travel. Texas’s outright prohibition on THC, creates a Balkanized system where other states cannot access routes of transportation or gain access to the national market. *See American Trucking Ass’ns v. Scheiner*, 483 U.S. 266, 280 (1987) (“[W]e have steadfastly adhered to the central tenet that the Commerce Clause ‘by its own force created an area of trade free from interference by the States.’” (quoting *Boston Stock Exchange v. State Tax Comm’n*, 429 U.S. 318, 328 (1977))).



Whatever you do,
just don't plea!



Fine!

Yes, there are some situations
were Deferred and MAYBE straight
probation is a last resort



NEVER plea to jail or
prison

A pro-se defendant can do better than that

The NEW Hemp Industry



WILDSEED
—HEMP—



So You Want to Grow Hemp In Texas?



Must have a
**Hemp Grower's
License**

To CULTIVATE,
HANDLE, or
TRANSPORT OUT
OF STATE



DOA will be developing
rules and regulations



Rules must cover sampling,
inspection, and testing
(including lab standards)



Rules must provide due
process and an appeals



New Hemp Law



Hemp growing license & permit applications opened March 16, 2020



On the first day, TDA received 110 applications by early afternoon + 25 more requests for permits to transport/handle hemp in Texas

What's this going to cost?

What's this going to cost?



Requirements

Among other requirements, must pass background checks no felony drug convictions within the past 10 years

Texas hemp farmers must pay \$100 for a one-year license, followed by \$100 for “facilities registration” then \$100 for a permit to actually start planting

What's this going to cost?

- **Application** for license: not to exceed \$100
- **Renewal** of a license: not to exceed \$100
- Participation fee for **each location** under a license: not to exceed \$100

What's this going to cost?

- **Site modification** fee: not to exceed \$500
- **Testing fee** (pre and post harvest): not to exceed \$300
- Only other allowable fees will be to certify organic and certify seeds, which are To Be Determined

Hemp Grower's License

- Must have to **cultivate, handle, or transport** hemp
- **Not required** to manufacture a consumable product
- Department will produce the applications

Hemp Grower's License

- License must be issued within 60 days to qualified applicants
- Valid for 1 year, renewable annually
- Will be revoked for a felony controlled substance conviction

Transportation

- State will issue a **SHIPPING CERTIFICATE** and **MANIFEST** with a **UNIQUE IDENTIFIER** attached to the shipment
- Cannot transport anything else with a hemp shipment
- Must document origin specifically

Transportation

- Peace officers can inspect and sample the shipment. Unless they have probable cause, they **MAY NOT SEIZE** the plant material

Save the TCDLA Cannabis Committee!!!



**Call Grant!!
713-783-8998**

210-738-8383 office
210-789-3181 cell
donflanary@hotmail.com



**KEEP
CALM
AND
SMOKE
WEED**



210-738-8383 office

210-789-3181 cell

donflanary@hotmail.com

Amanda@flanarylawnfirm.com