

May 26-27, 2021

▶ **Marijuana Interim
Study Committee**
LRC Staff Presentation

What is marijuana under South Dakota law?

- Marijuana is defined under SDCL 22-42-1 as "all parts of any plant of the genus cannabis, whether growing or not, **in its natural and unaltered state, except for drying or curing and crushing or crumbling.** The term includes an altered state of marijuana absorbed into the human body. The term does not include fiber produced from the mature stalks of such plant, or oil or cake made from the seeds of such plant. **The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof 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 three-tenths of one percent on a dry weight basis."**

▶ Criminal penalties for possession of marijuana (SDCL 22-42-6)

Class	Maximum Punishment*	Amount
Class 1 misdemeanor	One year imprisonment in a county jail or two thousand dollars fine, or both.	2 oz. or less
Class 6 felony	Two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.	More than 2 oz. but less than ½ lb.
Class 5 felony	Five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed.	½ lb. but less than 1 lb.
Class 4 felony	Ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed.	1 to 10 lbs.
Class 3 felony	Fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed.	More than 10 lbs.

* A civil penalty may also be imposed.

▶ Criminal penalties for distribution or possession with intent to distribute (SDCL 22-42-7)

Class	Maximum Punishment*	Amount
Class 1 misdemeanor	One year imprisonment in a county jail or two thousand dollars fine, or both.	Less than ½ oz. without consideration
Class 6 felony	Two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.	1 oz. or less
Class 5 felony	Five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed.	More than 1 oz. but less than ½ lb.
Class 4 felony	Ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed.	½ lb. but less than 1 lb.
Class 3 felony	Fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed.	1 lb. or more

*A civil penalty may also be imposed for a felony violation.

Criminal penalties for distribution or possession with intent to distribute to a minor (SDCL 22-42-7)

Class	Maximum Punishment*	Amount
Class 6 felony	Two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.	Less than ½ oz. without consideration
Class 5 felony	Five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed.	1 oz. or less
Class 4 felony	Ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed.	More than 1 oz. but less than ½ lb.
Class 3 felony	Fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed.	½ lb. but less than 1 lb.
Class 2 felony	Twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.	1 lb. or more

*A civil penalty may also be imposed for any felony violation.

Additional considerations for distribution or possession with intent to distribute marijuana (SDCL 22-42-7)

- Certain mandatory sentences apply.
- A violation of SDCL 22-42-7 that occurs within 1,000 feet of a school or 500 feet of a youth center, swimming pool, or video arcade is an additional Class 4 felony (ten years/\$20,000 fine) under SDCL 22-42-19.
 - SDCL 22-42-19 also requires certain mandatory sentences.

Concentrated forms of marijuana under South Dakota law

- Under SDCL 34-20B-14, tetrahydrocannabinol is a Schedule I substance, other than which occurs in industrial hemp or marijuana in its natural and unaltered state.
- Under SDCL 34-20B-1, hash is "the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis." Hash and hash oil are Schedule I substances under SDCL 34-20B-14.

Criminal penalties related to marijuana concentrates

- SDCL 22-42-5: Possession is a Class 5 felony (five years/\$10,000)
- SDCL 22-42-2: Manufacture, distribution, possessing with the intent to distribute, or counterfeiting is a Class 4 felony (ten years/\$20,000).
 - An additional civil penalty may be imposed.
 - Depending on the circumstances of the crime, penalties are elevated.
 - Certain mandatory sentences apply.
 - A violation of SDCL 22-42-2 that occurs within 1,000 feet of a school or 500 feet of a youth center, swimming pool, or video arcade is an additional Class 4 felony (ten years/\$20,000) under SDCL 22-42-19.

Additional criminal considerations

Marijuana and marijuana concentrates may be the subject of crimes other than possession or distribution. Prominent examples of other criminal penalties that may implicate marijuana or marijuana concentrates include:

- SDCL 22-42-5.1 Ingestion of a controlled substance – Class 5 felony (five years/\$10,000)
- SDCL 22-42-15 Ingestion of any intoxicating substance – Class 1 misdemeanor (one year jail/\$2,000)
- SDCL 22-42A-3 Drug paraphernalia possession – Class 2 misdemeanor (thirty days jail/\$500)
- SDCL 22-42A-4 Drug paraphernalia delivery – Class 6 felony (two years/\$4,000)
- SDCL 22-42-10 Keeping a place for use or sale of controlled substances – Class 5 felony (five years/\$10,000)
- SDCL 22-42-11 Inhabiting a room where controlled substances illegally stored or used – Class 1 misdemeanor (one year jail/\$2,000)
- SDCL 32-23-1 Driving under the influence – begins at a Class 1 misdemeanor (one year jail/\$2,000)
- SDCL 42-8-45 Driving a boat under the influence – Class 1 misdemeanor (one year jail/\$2,000)
- HB 1061 takes effect July 1, 2021

Violations of drug crimes referenced in other areas of the Code

- Code contains references to marijuana, controlled substances, or the previously cited statutes. An inexhaustive list includes:
 - 13-32-4. School board to assist in discipline--Suspension and expulsion of pupils--Report to local authorities--Hearings--Alternative settings.
 - 13-32-9. Suspension from extracurricular activities for controlled substances violation--Unified Judicial System to give certain notices.
 - 13-53-42. Loss of eligibility for intercollegiate extracurricular competition upon controlled substance violation.
 - 13-55-29. Loss of eligibility for state funded scholarships upon controlled substance violation.
 - 22-14-15. Possession of firearm by one with prior violent crime conviction or certain drug-related conviction--Felony--Fifteen-year period.
 - 23A-27-53. Probation for violation of § 22-42-5 or 22-42-5.1--Treatment--Revocation.
 - 26-8A-2. Abused or neglected child.
 - 32-12-52.3. Revocation for drug-related offenses. [Related to driver's licenses]
 - 38-35-5. Criminal background check--Denial of license for conviction--Licensure exemption. [Related to industrial hemp]

Amendment A update

- Circuit Court decision issued February 8, 2021
- Issues on appeal before the SD Supreme Court:
 - Standing
 - Timing of legal challenge
 - Single subject rule
 - Amendment or revision
 - Severability
 - Election contest
- Oral argument was held April 28, 2021
 - Primary focus of the oral argument was the single subject rule.
 - Argument and questions also briefly focused on laches, constitutional revision, standing, and the proper subject matter of an election contest.

Failed ballot initiatives related to marijuana

- On the ballot
 - 2010: South Dakota Medical Marijuana Initiative, aka Initiative 13
 - 2006: South Dakota Medical Marijuana Initiative, aka Initiative 4
- Did not make it to the ballot:
 - Recreational Marijuana and Paraphernalia Legalization Initiative (2020)
 - Marijuana Legalization Initiative (2018)
 - Marijuana Legalization and Changes to Laws Initiative (2018)
 - Medical Marijuana Initiative (2018)
 - Medical Marijuana Initiative (2016)