

## CHAPTER 402

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**CRIMINAL LAW AND PROCEDURE**

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**HOUSE BILL 17-1220**

BY REPRESENTATIVE(S) Becker K. and Wist, Carver, Esgar, Landgraf, Lawrence, Pabon, Thurlow, Van Winkle, Young, Arndt, Beckman, Covarrubias, Garnett, Ginal, Liston, Lundeen, McKean, Navarro, Nordberg, Pettersen, Ransom, Sias, Willett, Wilson, Gray, Hamner, Hooton, Kennedy, Kraft-Tharp, Neville P., Valdez, Williams D., Duran; also SENATOR(S) Gardner and Fields, Priola, Cooke, Court, Crowder, Hill, Holbert, Lambert, Martinez Humenik, Neville T., Smallwood, Tate, Todd, Williams A., Grantham.

**AN ACT****CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO THE ILLEGAL MARKET.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Legislative declaration.** (1) The general assembly finds and declares that:

(a) Through citizen-initiated measures, Colorado provided its citizens protections for the cultivation and use of medical marijuana in 2000 and recreational marijuana in 2012;

(b) One of the reasons behind these citizen-initiated measures was to erode the black market for marijuana in Colorado;

(c) The constitutional provisions for both medical marijuana and recreational marijuana provide protections for personal marijuana cultivation, but these provisions are silent on the question of where marijuana plants may be grown or processed for medical or recreational use;

(d) Although the authority for marijuana cultivation for both medical and recreational marijuana is generally limited to six plants per person, some provisions allow individuals to grow more plants. In the medical marijuana code, a patient can grow an "extended plant count" if his or her physician, who makes the medical marijuana recommendation, also determines the patient has a medical necessity for more than six plants. As well, a primary caregiver can grow medical marijuana for each of the patients that he or she serves.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(e) The extended plant count and primary caregiver provisions have created a situation in which individuals are cultivating large quantities of marijuana in residential homes;

(f) These large-scale cultivation sites in residential properties create a public safety issue and are a public nuisance. A site in a residential property can overburden the home's electrical system, resulting in excessive power use and creating a fire hazard that puts first responders at risk. A site can also cause water damage and mold in the residential property. A site in a residential property can produce a noxious smell that limits the ability of others who live in the area to enjoy the quiet of their homes. Often the site is a rental home, and the renters cause significant damage to the home by retrofitting the home to be used as a large-scale cultivation site. When residential property is used for a large-scale cultivation site, it often lowers the value of the property and thus the property value of the rest of the neighborhood. Finally, a site in a residential property can serve as a target for criminal activity, creating an untenable public safety hazard.

(g) Large-scale, multi-national crime organizations have exploited Colorado laws, rented multiple residential properties for large-scale cultivation sites, and caused an influx of human trafficking and large amounts of weapons as well as the potential for violent crimes in residential neighborhoods;

(h) Large-scale cultivation sites in residential properties have been used to divert marijuana out of state and to children.

(2) Therefore, the general assembly determines that it is necessary to impose reasonable limits on residential marijuana cultivation that do not encroach on the protections afforded Colorado citizens in the Colorado constitution.

**SECTION 2.** In Colorado Revised Statutes, 18-18-406, **amend** (3)(a); and **add** (3)(c) as follows:

**18-18-406. Offenses relating to marijuana and marijuana concentrate - definition.** (3) (a) (I) It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls.

(II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY CULTIVATE, GROW, OR PRODUCE MORE THAN TWELVE MARIJUANA PLANTS ON OR IN A RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE THAN TWELVE MARIJUANA PLANTS TO BE CULTIVATED, GROWN, OR PRODUCED ON OR IN A RESIDENTIAL PROPERTY.

(B) EXCEPT AS PROVIDED IN SECTION 25-1.5-106 (8.5)(a.5)(I) OR SECTION 25-1.5-106 (8.6)(a)(I.5) FOR A MEDICAL MARIJUANA PATIENT OR A PRIMARY CAREGIVER WITH A TWENTY-FOUR-MARIJUANA-PLANT-COUNT EXCEPTION TO SUBSECTION (3)(a)(II)(A) OF THIS SECTION, IT IS NOT A VIOLATION OF SUBSECTION (3)(a)(II)(A) OF THIS SECTION IF A COUNTY, MUNICIPALITY, OR CITY AND COUNTY LAW EXPRESSLY PERMITS THE CULTIVATION, GROWTH, OR PRODUCTION OF MORE

THAN TWELVE MARIJUANA PLANTS ON OR IN A RESIDENTIAL PROPERTY AND THE PERSON IS CULTIVATING, GROWING, OR PRODUCING THE PLANTS IN AN ENCLOSED AND LOCKED SPACE AND WITHIN THE LIMIT SET BY THE COUNTY, MUNICIPALITY, OR CITY AND COUNTY WHERE THE PLANTS ARE LOCATED.

(III) A person who violates the provisions of ~~this subsection (3)~~ SUBSECTION (3)(a)(I) OF THIS SECTION commits:

(A) A level 3 drug felony if the offense involves more than thirty plants;

(B) A level 4 drug felony if the offense involves more than six but not more than thirty plants; or

(C) A level 1 drug misdemeanor if the offense involves not more than six plants.

(IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION (3)(a)(II)(A) OF THIS SECTION COMMITS:

(A) A LEVEL 1 DRUG PETTY OFFENSE FOR A FIRST OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE PLANTS, AND, UPON CONVICTION, SHALL BE PUNISHED BY A FINE OF UP TO ONE THOUSAND DOLLARS;

(B) A LEVEL 1 DRUG MISDEMEANOR FOR A SECOND OR SUBSEQUENT OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE BUT NOT MORE THAN TWENTY-FOUR PLANTS; OR

(C) A LEVEL 3 DRUG FELONY FOR A SECOND OR SUBSEQUENT OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWENTY-FOUR PLANTS.

(V) PROSECUTION UNDER SUBSECTION (3)(a)(II)(A) OF THIS SECTION DOES NOT PROHIBIT PROSECUTION UNDER ANY OTHER SECTION OF LAW.

(c) FOR PURPOSES OF THIS SUBSECTION (3):

(I) "FLOWERING" MEANS THE REPRODUCTIVE STATE OF THE CANNABIS PLANT IN WHICH THERE ARE PHYSICAL SIGNS OF FLOWER BUDDING OUT OF THE NODES IN THE STEM.

(II) "PLANT" MEANS ANY CANNABIS PLANT IN A CULTIVATING MEDIUM WHICH PLANT IS MORE THAN FOUR INCHES WIDE OR FOUR INCHES HIGH OR A FLOWERING CANNABIS PLANT REGARDLESS OF THE PLANT'S SIZE.

(III) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION. "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

**SECTION 3.** In Colorado Revised Statutes, 25-1.5-106, **amend** (7)(e)(I)(A); and

add (2)(e.3), (8.5)(a.5), (8.5)(b.5), (8.6)(a)(I.5), and (8.6)(a)(I.6) as follows:

**25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - created - repeal. (2) Definitions.** In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION. "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

(7) **Primary caregivers.** (e) (I) (A) In order to be a primary caregiver who cultivates medical marijuana for his or her patients or transports medical marijuana for his or her patients, he or she shall also register with the state licensing authority AND COMPLY WITH ALL LOCAL LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS. A person may not register as a primary caregiver if he or she is licensed as a medical marijuana business as described in part 4 of article 43.3 of title 12 ~~C.R.S.~~, or a retail marijuana business as described in part 4 of article 43.4 of title 12. ~~C.R.S.~~ An employee, contractor, or other support staff employed by a licensed entity pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~, or working in or having access to a restricted area of a licensed premises pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~, may be a primary caregiver.

(8.5) **Encourage patient voluntary registration - plant limits.** (a.5) (I) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A RESIDENTIAL PROPERTY MORE THAN TWELVE MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY; EXCEPT THAT IT IS UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON OR IN A RESIDENTIAL PROPERTY MORE THAN TWENTY-FOUR MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY IF A PATIENT:

(A) LIVES IN A COUNTY, MUNICIPALITY, OR CITY AND COUNTY THAT DOES NOT LIMIT THE NUMBER OF MARIJUANA PLANTS THAT MAY BE GROWN ON OR IN A RESIDENTIAL PROPERTY;

(B) REGISTERS PURSUANT TO THIS SUBSECTION (8.5) WITH THE STATE LICENSING AUTHORITY'S REGISTRY; AND

(C) PROVIDES NOTICE TO THE APPLICABLE COUNTY, MUNICIPALITY, OR CITY AND COUNTY OF HIS OR HER RESIDENTIAL CULTIVATION OPERATION IF REQUIRED BY THE JURISDICTION. A LOCAL JURISDICTION SHALL NOT PROVIDE THE INFORMATION PROVIDED TO IT PURSUANT TO THIS SUBSECTION (8.5)(a.5)(I)(C) TO THE PUBLIC, AND THE INFORMATION IS CONFIDENTIAL.

(II) A PATIENT WHO CULTIVATES MORE MARIJUANA PLANTS THAN PERMITTED IN

SUBSECTION (8.5)(a.5)(I) OF THIS SECTION SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE ABOUT THE CULTIVATION OPERATION. CULTIVATION OPERATIONS CONDUCTED IN A LOCATION OTHER THAN A RESIDENTIAL PROPERTY ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

(b.5) A PATIENT WHO CULTIVATES HIS OR HER OWN MEDICAL MARIJUANA PLANTS SHALL COMPLY WITH ALL LOCAL LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS.

**(8.6) Primary caregivers plant limits - exceptional circumstances.**

(a) (I.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE ON A RESIDENTIAL PROPERTY MORE THAN TWELVE MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY; EXCEPT THAT IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE ON OR IN A RESIDENTIAL PROPERTY MORE THAN TWENTY-FOUR MARIJUANA PLANTS REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY IF A PRIMARY CAREGIVER:

(A) LIVES IN A COUNTY, MUNICIPALITY, OR CITY AND COUNTY THAT DOES NOT LIMIT THE NUMBER OF MARIJUANA PLANTS THAT MAY BE GROWN ON OR IN A RESIDENTIAL PROPERTY;

(B) IS REGISTERED PURSUANT TO THIS SUBSECTION (8.6) WITH THE STATE LICENSING AUTHORITY'S REGISTRY; AND

(C) PROVIDES NOTICE TO THE APPLICABLE COUNTY, MUNICIPALITY, OR CITY AND COUNTY OF HIS OR HER RESIDENTIAL CULTIVATION OPERATION IF REQUIRED BY THE JURISDICTION. A LOCAL JURISDICTION SHALL NOT PROVIDE THE INFORMATION PROVIDED TO IT PURSUANT TO THIS SUBSECTION (8.6)(a)(I.5) TO THE PUBLIC, AND THE INFORMATION IS CONFIDENTIAL.

(I.6) ANY PRIMARY CAREGIVER WHO CULTIVATES MORE MARIJUANA PLANTS THAN PERMITTED IN SUBSECTION (8.6)(a)(I.5) OF THIS SECTION SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE ABOUT THE CULTIVATION OPERATION. CULTIVATION OPERATIONS CONDUCTED IN A LOCATION OTHER THAN A RESIDENTIAL PROPERTY ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES SUBSECTION (8.6)(a)(I) OF THIS SECTION IS SUBJECT TO THE OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

**SECTION 4. Act subject to petition - effective date - applicability.** (1) This act takes effect January 1, 2018; except that, if a referendum petition is filed

pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Section 2 of this act applies to offenses committed on or after the applicable effective date of this act.

Approved: June 8, 2017