

Possession, Cultivation, Sale, and Use of Cannabis Under S.F. No. 73 Compared to Current Law

Possession of Cannabis (Other Than Plants)

| S.F. No. 73 (as amended by author's amendment) | Amount | Current Law |
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| <p><u>Legal</u> (for persons aged 21 years or older).</p> | <p>Up to two ounces of flower in public.</p> <p>Up to five pounds of flower in the person's private residence.</p> <p>Up to eight grams of concentrate.</p> <p>Edible products infused with a combined total of up to 800 milligrams of THC.</p> | <p>Up to 42.5 grams (1.499 ounces) of nonresinous marijuana is a petty misdemeanor. No distinction as to location.</p> <p>Any amount more than 42.5 grams of nonresinous is a fifth-degree controlled substance crime (CSC) (five-year felony).</p> <p>More than 1.4 grams (0.049 ounces) (any type) in an automobile is a misdemeanor.</p> <p>Any amount of resinous is a fifth-degree CSC (five-year felony; gross misdemeanor for less than 0.25 grams (0.0088 ounces) by a first time offender).</p> |
| <p>New offense of fourth-degree possession of cannabis—<u>petty misdemeanor</u>.</p> | <p>More than two ounces up to four ounces of flower outside of the person's residence.</p> <p>More than eight grams up to 16 grams of concentrate.</p> <p>Edibles infused with more than 800 milligrams up to 1,600 milligrams of THC.</p> | <p>All are fifth-degree CSC (five-year felony).</p> |
| <p>New offense of third-degree possession of cannabis—<u>misdemeanor</u>.</p> | <p>More than four ounces up to one pound of flower outside of the person's residence.</p> | <p>All are fifth-degree CSC (five-year felony).</p> |

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| | <p>More than 16 grams up to 80 grams of concentrate.</p> <p>Edibles infused with more than 1,600 milligrams up to eight grams of THC.</p> | |
| New offense of second-degree possession of cannabis— <u>gross misdemeanor</u> . | <p>More than one pound up to two pounds of flower outside of the person’s residence.</p> <p>More than 80 grams up to 160 grams of concentrate.</p> <p>Edibles infused with more than eight grams up to 16 grams of THC.</p> | All are fifth-degree CSC (five-year felony). |
| New offense of first-degree possession of cannabis— <u>five-year felony</u> (of note, this statutory maximum is the same as the current fifth-degree CSC). | <p>More than two pounds up to ten kilograms of flower outside of the person’s residence.</p> <p>More than five pounds up to ten kilograms of flower in the person’s residence.</p> <p>More than 160 grams up to two kilograms of concentrate.</p> <p>Edibles infused with more than 16 grams up to 200 grams of THC.</p> | All are fifth-degree CSC (five-year felony). |
| Amended offense of third-degree CSC (20-year felony). | <p>More than ten kilograms of flower (regardless of whether it is in or outside of the person’s residence).</p> <p>More than two kilograms of concentrate.</p> <p>Edibles infused with more than 200 grams of THC.</p> | <p>Third-degree CSC (20-year felony).</p> <p>Fifth-degree CSC (five-year felony).</p> <p>Fifth-degree CSC (five-year felony).</p> |
| Second-degree CSC (25-year felony). | More than 25 kilograms of marijuana or THC in any form. | Second-degree CSC (25-year felony). No change to current law. |
| First-degree CSC (30-year felony). | More than 50 kilograms of marijuana or THC in any form. | First-degree CSC (30-year felony). No change to current law. |

Cultivation of Cannabis Plants

| S.F. No. 73¹ | Amount | Current Law |
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| <u>Legal</u> | Cultivation of up to eight plants with no more than four being mature within the primary residence of a person aged 21 years or older. | Does not distinguish (at this level) by number of plants except for first- and second-degree CSC (see below). So the penalty would depend on the weight of marijuana possessed (generally speaking, the weight of certain parts, such as the stalk, would not be considered) and presumably range from a petty misdemeanor to a third-degree CSC (20-year felony). Possession (as opposed to cultivation) of 100 or more (but fewer than 500) plants is a second-degree CSC (25-year felony). Possession of 500 or more is a first-degree CSC (30-year felony). |
| No criminal penalty. | Cultivation of more than eight up to 16 plants. | See above. |
| New offense of second-degree cannabis cultivation— <u>gross misdemeanor</u> . | Cultivation of more than 16 up to 23 plants. | See above. |
| New offense of first-degree cannabis cultivation— <u>five-year felony</u> . | Cultivation of more than 23 plants (no upper limit specified). | See above. |

Sale of Cannabis

| S.F. No. 73² | Amount | Current Law |
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| <u>Giving for no remuneration to someone 21 years or older is legal.</u> | Up to two ounces of flower. Up to eight grams of concentrate. | Giving for no remuneration of up to 42.5 grams of nonresinous marijuana is a petty misdemeanor (repeat offense is a misdemeanor). |

¹ The bill (see article 1, section 9) authorizes the Office of Cannabis Management to assess civil penalties of up to \$500 per plant grown in excess of the legal limit. These penalties would be in addition to potential criminal charges, if applicable.

² In addition to potential criminal penalties, the bill (see article 1, section 9) authorizes the Office of Cannabis Management to assess civil penalties of between \$1,000 and \$1,000,000 for unauthorized sales (based on weight).

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| | Edibles infused with a combined total of up to 800 milligrams of THC. | <p>Sale (including giving away) to a person under 18 years old is a third-degree CSC (20-year felony).</p> <p>Fifth-degree CSC (five-year felony) includes selling (for remuneration) nonresinous marijuana; giving or selling resinous marijuana; giving nonresinous marijuana above 42.5 grams; and giving or selling concentrate or infused edibles.</p> |
| New offense of fourth-degree sale of cannabis— <u>petty misdemeanor</u> if the sale is for remuneration or to a person under 21 years old (regardless of remuneration). | <p>Up to two ounces of flower.</p> <p>Up to eight grams of concentrate.</p> <p>Edibles infused with up to 800 milligrams of THC.</p> | <p>See above.</p> <p>Of note, selling any amount to a person under 18 years old or conspiring with or employing a person under 18 years old to sell any amount is a third-degree CSC (20-year felony).</p> |
| New offense of third-degree sale of cannabis— <u>misdemeanor</u> . ³ | <p>More than two ounces of flower.</p> <p>More than eight grams of concentrate.</p> <p>Edibles infused with more than 800 milligrams of THC.</p> | <p>See above.</p> <p>Of note, the current first-through fifth-degree CSC apply based on factors such as the amount of marijuana involved in the sale (including allowing for consolidating the amount sold in sales over the past 90 days) and the location of the sale (i.e., school zones, etc.). The maximum sale penalty below first-degree CSC is a 25-year felony under the second-degree CSC. Compare this to five years under the bill's first-degree sale of cannabis crime.</p> |

³ Under the bill, the criminal penalties for sales of any amount above what is legal to possess in public (potentially including large quantities) are specified in the new first- to third-degree sale of cannabis crimes. Thus, the cap is a five-year felony (and this applies only if there is an additional aggravating factor (sale to minor or repeat offense)) unless the amount sold is more than 25 kilograms (current first-degree CSC sale). Essentially, the bill removes all cannabis sales crimes that currently are within the second- to fifth-degree CSC (leaving only the current first-degree CSC and the bill's new offenses). It's possible that a *possession* of cannabis charge (involving a higher penalty) might be brought in these instances.

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| <p>New offense of second-degree sale of cannabis—<u>gross misdemeanor</u>³ if:</p> <ul style="list-style-type: none"> • the sale is to a minor (not just under 21 years old) and the seller is an adult but <i>not more</i> than 36 months older, • the sale occurs in a school, park, or public housing zone or a drug treatment facility, <u>or</u> • the sale is within ten years of a conviction for what would be a third-degree cannabis sale crime. | <p>Same limits for third-degree sale of cannabis (see above).</p> | <p>See above.</p> |
| <p>New offense of first-degree sale of cannabis—<u>five-year felony</u>³ if:</p> <ul style="list-style-type: none"> • the sale is to a minor (not just under 21 years old) and the seller is an adult and <i>more than</i> 36 months older, • the sale occurs within ten years of two or more convictions for what would be a third-degree cannabis sale crime, <u>or</u> • the sale occurs within ten years of a prior first-degree sale of cannabis crime. | <p>Same limits for third-degree (and second-degree) sale of cannabis (see above).</p> | <p>See above.</p> |
| <p>New offense of sale of cannabis by a minor—<u>petty misdemeanor</u> if no prior petty misdemeanor disposition or prior adjudication under the new sale of cannabis section.</p> | <p>Sale of <i>any</i> amount of flower, concentrate, or THC infused edibles by someone under 18 years old.</p> | <p>See above. No distinction in controlled substance crimes for acts committed by minors.</p> |

Use of Cannabis

| S.F. No. 73 | Amount | Current Law |
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| <p><u>Legal:</u></p> <ul style="list-style-type: none"> • in a private residence, including the curtilage or yard, • on private property not generally accessible by the public (unless explicitly prohibited by owner), • on the premises of an establishment or an event licensed to permit on-site consumption. <p><u>Not legal:</u></p> <ul style="list-style-type: none"> • if person is under 21 years old, • in a motor vehicle, • in a location where smoking is prohibited by law, • in public schools and related areas, • in a state correctional facility, • to operate a motor vehicle if impaired. | <p>Up to legal amount (i.e., up to two ounces of flower in public, up to five pounds of flower in the person’s private residence, up to eight grams of concentrate, and edibles infused with up to 800 milligrams of THC) <u>by a person aged 21 years or older.</u></p> | <p>Use not specifically addressed, see laws on possession.</p> |
| <p>New offense of use of cannabis in a motor vehicle (by driver)—<u>misdemeanor.</u></p> | <p>Any amount (no specific amount provided).</p> | <p>Use not specifically addressed, see laws on possession.</p> |
| <p>Authorizes local units of government to adopt petty misdemeanor ordinances for use of cannabis in public places (other than where the bill specifically allows—see above).</p> | <p>Any amount (no specific amount provided).</p> | <p>Use not specifically addressed, see laws on possession.</p> |