Marijuana facts and myths.[1]

Patrick Carroll, retired judge
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It is important to note that non-medical marijuana is conditionally permitted, not legalized.[2] Despite recent Ohio legislation, by federal law marijuana continues to be a schedule I controlled substance for medical non-medical marijuana and a schedule III controlled substance for medical marijuana.[3] Moreover, failure to possess or use marijuana within the conditions permitted in Ohio is a felony or misdemeanor criminal offense, including illegal drug trafficking,[4] illegal cultivation of marijuana,[5] and illegal possession of a controlled substance.[6]

I. General

Marijuana may only be purchased at an Ohio licensed dispensary or obtained by home grown in Ohio.

Marijuana may not be:

- taken across state lines.
- used by or given to anyone under 21 years old (including by parents).

When transported, must be inaccessible to driver and stored in vehicle trunk or behind furthest seat from the driver if:

- Home grown , or
- Marijuana, medical or non-medical, from a dispensary with open package.[7]

Inaccessibility to driver does not apply to unopened marijuana package.[8]

The time lag and impact of marijuana depend on:

- Dosage/amount
- Potency of the marijuana,[9] and

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[1] Based on recent amendments to Ohio's marijuana laws. Senate Bill 56, effective March 20, 2026. Senate Bill 56 repealed R.C. Chap. 3780, regarding adult use and home grown marijuana, and transferred most of the provisions in that chapter to R.C. Chap 3796.

[2] R.C. 928.01, R.C. 3719.01(M) redefined intoxicating hemp as cannabis, effective March 20, 2026. See also, R.C.928.01(C).

[3] The "Rohrabacher-Farr Amendment" was enacted in 2022 legislatively continued as a rider to the federal budget bill and prohibits the Department of Justice ("DOJ") from using its appropriated funds to take legal action against states that produce, distribute, or possess marijuana in compliance with their state's marijuana laws.

[4] R.C. 2925.03.

[5] R.C. 2925.04.

[6] R.C. 2925.11.

[7] R.C. 3796.062(B) & (C). Includes marijuana paraphernalia, R.C. 3796.062(D)(2).

[8] R.C. 3796.062(B)(1). Includes marijuana paraphernalia, R.C. 3796.062(D)(1).

[9] R. 3796.06(D)(1).
Caps 35% THC for plant materials. (no change in S.B. 56), but
lowers THC level in extracts from 90% to 70 %. R.C. 3796.20(C)(3) requires adult use package label to show the quantity, strength, kind, or form of the marijuana in the package.

- Method consumed.
    - Smoking
    - Edibles, including gummies.
    - Tincure (Under the tongue).

Lawful use of marijuana includes possession or use of marijuana paraphernalia.[10]

II. <u>Non-medical marijuana</u> - <u>Adult use (recreational) and home grown.</u>

May only be smoked or grown on privately owned property used primarily for residential or agricultural purposes.

Marijuana may not be smoked or grown at a:

- family childcare home,
- halfway house,
- community transitional housing facility,
- community residential center,
- other facility licensed by the division of parole,
- public place,
- place of employment, or
- residential rental premises if prohibited by rental agreement.[11]

III. <u>Adult use marijuana</u>.

May only be purchased at a licensed dispensary.

Must be kept in original packaging.[12]

A person may only purchase and possess:

- 2.5 oz. (roughly the amount of four cigarette packs).
- 15 grams of extract.[13]

Unlike medical marijuana, no purchaser records are required or kept, but purchaser must show valid government issued identification card with proof of age of 21 or older.[14]

May only be purchased in Ohio for Ohio use.

IV. <u>Homegrown marijuana</u>

Limited to:

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[10] R.C. 3796.04 (A)(5) & (D) (home grown), R.C. 3796.22(A)(3) & (C)(2) (Medical), R.C. 3796.221(A)(3) (adult use), and R.C. 3796.23(A)(3) & (C)(3) (registered care giver).
[11] R.C. 3796.04(A); R.C. 3796.06(C)(3).
[12] R.C. 3796.06(H).
[13] R.C. 3796.221(B); R.C. 3796.20(C)(2).
[14] R.C. 3796.20(C)(1).

- six plants per adult
- maximum of 12 plants per household regardless of the number of adults.[15]

May only be grown at person's primary residence.[16]
May not be grown on behalf of someone else.[17]

May only cultivate or grow marijuana within a secured

- Closet,
- Room,
- Greenhouse, or
- Other enclosed area in or on residence

AND

- No access to persons under 21 years old, and
- Not visible by normal unaided vision from a public space.[18]

May not be sold or bartered.[19]
Local government may not prohibit or limit homegrown marijuana.[20]

V. Medical marijuana.

Not a medical prescription.[21]

Authorized medical card required.[22]

May possess up to 90 day supply.[23]

May be purchased in two day increments.[24]

Must be stored in original, unaltered package.[25]

May be vaped, but not smoked.[26]

May only be purchased in Ohio for Ohio use.

VI. Landlord/tenant issues.

Landlord may prohibit a tenant as part of the lease agreement from:

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[15] R.C. 3796.04(A)(1)(b).
[16] R.C. 3796.04(A)(4).
[17] R.C. 3796.04(B)(5).
[18] R.C. 3796.04(A)(1)(c).
[19] R.C. 3796.04(B)
[20] R.C. 3796.29.
[21] *State v. Ryan*, 2021-Ohio-4059 (11th. Dist.). See also, *State v. Bourne,* 2023-Ohio-2832 (11th. Dist.).
[22] R.C. 3796.20(B)1).
[23] R.C. 3796.22(B)
[24] Admin. Code 3796:7-2-4(F); Admin. Code 3796:8-2-4.
[25] R.C. 3796.06(H); Admin. Code. 3796:7-2-05(G).
[26] R.C. 3796.06(C)(1).

- consuming of marijuana by smoking, combustion, or vaping.[27]
- growing marijuana at the rental premises.[28]

Prohibition limited to smoking and vaping and does not include other forms of marijuana consumption.

Use of medical marijuana may not be used as the sole or primary reason to reject a tenant unless prohibited under federal law.[29]

All marijuana, including medical marijuana, is strictly prohibited in HUD assisted (Section 8) housing properties.[30]

VII. Specific marijuana offenses.

Marijuana possession or use is not illegal in Ohio. A person is not subject to arrest or criminal prosecution for lawfully using marijuana.[31] Issuance of a medical marijuana card is not a sufficient basis to conduct field sobriety tests or suspend a driver's license. If marijuana is suspected for impaired driving, an independent, factual basis of a reasonable suspicion of impairment or prohibited concentration level is required.[32]

Smoking or vaping any marijuana in a vehicle is illegal.

- Driver – Same penalty as OVI, including driver's license suspension.
  Proof of impairment not required.[33]
- Passenger – 3rd degree misdemeanor (up to $500 fine and 60 days in jail).[34]

Smoking in non-permitted area. (minor misdemeanor).[35]

Knowingly give, sell, or distribute to someone under 21.[36]

- First offense. First degree misdemeanor. [37]
- Second offense, Fifth degree felony.[38]

Possession or use under 21 years old.

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[27] R.C. 3796.24(F).
[28] R.C. 3796.04(A).
[29] R.C. 3796.24(F).
[30] 21 U.S.C. § 801 et. seq., Controlled Substance Act of 1970.
[31] R.C. 3796.04(D) (home grown); R.C. 3796.221(D) (adult use); R.C. 3796.22(D) (medical marijuana); and R.C. 3796.23(C) (registered care giver).
[32] R.C. 3796.24(E).
[33] R.C 3796.06(C)(2) & R.C. 3796.99(A)(1). (Using marijuana while operating a vehicle is subject to R.C. 4511.19). Also, operation of a boat (R.C. 1547.11), an aircraft (R.C. 4561.15), or being in physical control of a vehicle (R.C. 4511.194).
[34] R.C. 3796.06(C)(2) & R.C. 3796.99(A)(2).
[35] R.C. 3796.99(B).
[36] R.C. 3796.06(F).
[37] R.C. 3796.99(C)(1)(a).
[38] R.C. 3796.06(G); R.C. 3796.99(C)(1)(b).

- First degree misdemeanor if knowingly obtained from dispensary by knowingly showing or giving false information about name, age, or other information to facilitate purchase.[39]

- Knowingly presenting a false, fictitious, or altered state issued ID card or driver's license.[40]
    - First offense, first degree misdemeanor with min. fine of $250 up to $1,000.
    - Second offense, first degree misdemeanor with min. fine of $500 up to $1,000.
    - with discretion to impose:
        - Class 7 driver's license suspension (up to one year), and
        - Community service.[41]

Knowingly soliciting someone to purchase marijuana for person under 21 years old.

- Fist offense, Fourth degree misdemeanor.[42]
- Second offense, Second degree misdemeanor.[43]

Sale of more than legally permitted amount by an Ohio licensed dispensary.[44]

Sale of marijuana other than from an Ohio licensed dispensary.[45]

Sale of non-medical or homegrown marijuana or transfer in excess of permitted possession amount.[46]

Home grown marijuana violations.

- Cultivating or growing marijuana
    - more than permitted number of marijuana plants,
    - accessibility to person under 21,
    - on nonpermitted property, or
    - on non-enclosed area.
- Storing homegrown marijuana off consumer's primary residence.[47]

Improper transporting marijuana paraphernalia.[48]

VIII. Expungment of limited marijuana and hashish convictions.[49]

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[39] R.C. 3796.99(G)(1).
[40] R.C. 3796.99 (G)(2).
[41] R.C. 3796.99(G)(3).
[42] R.C. 3796.99(H)(1).
[43] R.C. 3796.99(H)(2).
[44] R.C. 3796.20(C)(1). Trafficking marijuana, R.C. 3796.99(F) and R.C. 2925.03. The level of offense is based on the amount sold or transferred based on the amount.
[45] R.C. 2925.03.
[46] R.C. 3696.221(C). Trafficking marijuana, R.C. 3796.99(F) and R.C. 2925.03. The level of offense is based on the amount sold or transferred based on the amount.
[47] R.C. 3796.99(E). Illegal cultivation of marijuana, R.C. 2925.04. The level of offense is based on the amount involved in the offense.
[48] R.C. 3796.062(D), R.C. 3796.99(J), incorporating R.C. 2925.141. (minor misdemeanor).
[49] R.C. 2953.321.

New law, effective March 20, 2026.
Provides for expungment only, not seal.

Applies to a:

- Dismissed complaint, indictment, or information, or
- Conviction.
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Limited application to:

- Marijuana - R.C. 2925.11(C)(3)(a), Minor misdemeanor for less than 100 grams under R.C. 2925.11(C)(3)(a).
- Hashish – R.C. 2925.11(C)(7)(a), Minor misdemeanor with any amount.
  R.C. 2925.11(C)(7)(b), Fourth degree misdemeanor with any amount.
  R.C. 2925.11(C)(7)(c), Fifth degree felony with amount less than 15 grams.
  R.C. 2925.11(C)(7)(d), Third degree felony with amount less than 15 grams.

Application must contain:

- Name of applicant,
- Nature of offense,
- Date of conviction or dismissal, and
- Evidence the offense was a violation of applicable Revised Code Section. (Judgment entry).

$50 filing fee.[50]

- $30.00 to state treasury.
- $20.00 to county general fund.
- No provision for additional local court filing fee.
- May be waived with proof of indigency.

Hearing requirements.[51]

between 45 and 90 days from filing.

- Prosecutor may filed objections
  - Prior to the date of the hearing
  - Specific objections required.
- Court probation dept. to make inquiries or written report as court requires.

Determination of motion to expunge.[52]

- Applicable statutory violation.
- Reasons for not granting based on prosecutor's objections.
- Weighing interests of applicant and government's interest in maintaining records.
- Determining applicant's interest to expunge record is not substantially outweighed by legitimate government need to maintain record.

[50] R.C. 2953.321(G).
[51] R.C. 2953.321D).
[52] R.C. 2953.321(E).

Specific application of marijuana/hashish expungment procedure:

- By the statutory language it appears this expungment procedure is limited to Revised Code violations and does not contain language that would include comparable municipal ordinances. This is consistent with the distribution of the filing fee to the state and county, but not a municipality.
- There is no statutory language to restrict expungment if otherwise qualified when marijuana or hashish was part of other charges or convictions.
- No time limit for filing after dismissal or conviction.[53]

IX. Community control supervision/probation.

In *State v. Jones*, 49 Ohio St.3d 51 (1990), the Supreme Court held valid probation conditions must:

1) be reasonably related to rehabilitating the offender,

2) have some relationship to the crime of which the offender was convicted, and

3) relate to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.

In *State v. Ballash*, 2026-Ohio-503, the Supreme Court modified the test set out in *State v. Jones* when the probation condition is authorized by statute. Statutory probation conditions are set out in R.C. 2929.17 (felony), R.C. 2729.27 (misdemeanor), and R.C. 2951.08.

Under *Ballish,* a statutory probation condition does not have to be related to the convicted offense, but must still relate to the underlying purpose and principles of sentencing. The Court in *Ballish* reaffirmed that any probation condition is subject to review as an abuse of discretion. Marijuana, medical or otherwise, may be prohibited as a probation condition, for example, when a defendant has a substance abuse issue. (Theft for drug money when the theft offense was not directly related to alcohol or drugs.) It could not be imposed as a general court policy without some nexus to the case or the defendant's situation.

The immunity from arrest or criminal prosecution for lawful use of marijuana does not apply to probation violation/revocation.[54]

[53] R.C. 2953.321(C), provides "The person may file the application at any time on or after the effective date of this section."

[54] *State v. Williams*, 2025-Ohio-461 (8th. Dist.). Community control supervision revocation for medical marijuana use was affirmed.