

# A Comprehensive Look at Drug Policies: The Case of Medical Marijuana

Rosalie Liccardo Pacula, Ph.D., RAND Corporation

and

Jamie F. Chriqui, Ph.D., M.H.S., The MayaTech Corporation

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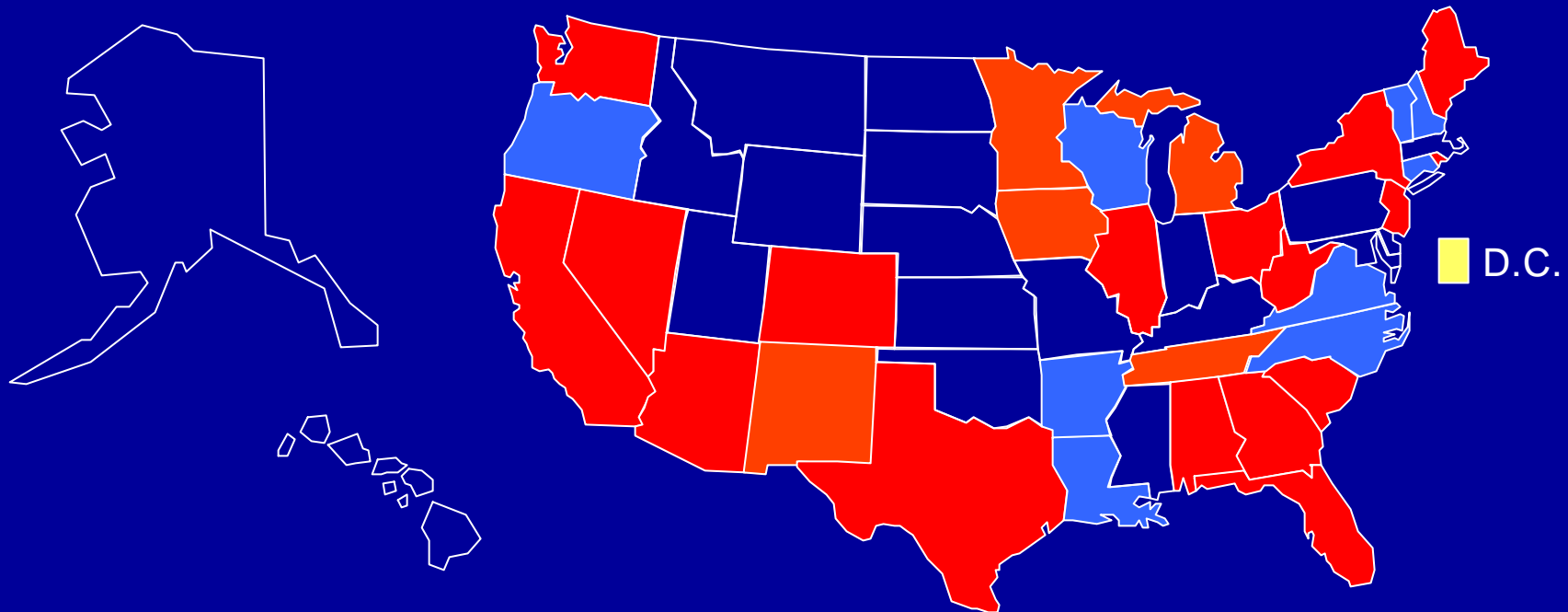


*A Policy Research Partnership  
to Reduce Youth Substance Use*

# Why is medical marijuana a criminal justice issue?

- The Controlled Substance Act of 1970 scheduled marijuana in Schedule I, making it illegal for physicians and pharmacies to prescribe and dispense marijuana for medicinal purposes.
- 1975 IND Compassionate Use program allowed registered patients/physicians to use marijuana for medicinal purposes, under federal supervision, with MJ being solely provided by the government (NIDA).
- The softening of the federal position motivated several states to change their own laws.

# States with medical marijuana laws in 1982



 Therapeutic Research Program

 Rescheduling

 Physician May Prescribe/Medical Defense

 Th. Res. & Reschedule

Source: Markoff, Steven C (1997) "State-by-State Medicinal Marijuana Laws" published by the Marijuana Policy Project Foundation

# But there was a problem...

- During the early 1990's, the federal government changed its position regarding the utility of exploring the medicinal value of marijuana.
  - 1991 Public Health Services decides to suspend federal IND program (Grinspoon, 1995)
  - In 1992, Bush closed the IND to new applicants (NORML, 1997).
  - Decision re-affirmed by Clinton Administration in 1994 (NORML, 1997).
- Implication: the federal government was no longer willing to supply marijuana

# Why is medical marijuana a criminal justice issue?

State laws that enable physicians to prescribe and patients to use marijuana have no way of making marijuana available to those patients without violating federal and other state laws.

The source of the conflict is twofold: (1) ability to prescribe, possess, or use and (2) supply.

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**Conflict #1:  
Ability to prescribe,  
possess and use medical  
marijuana**

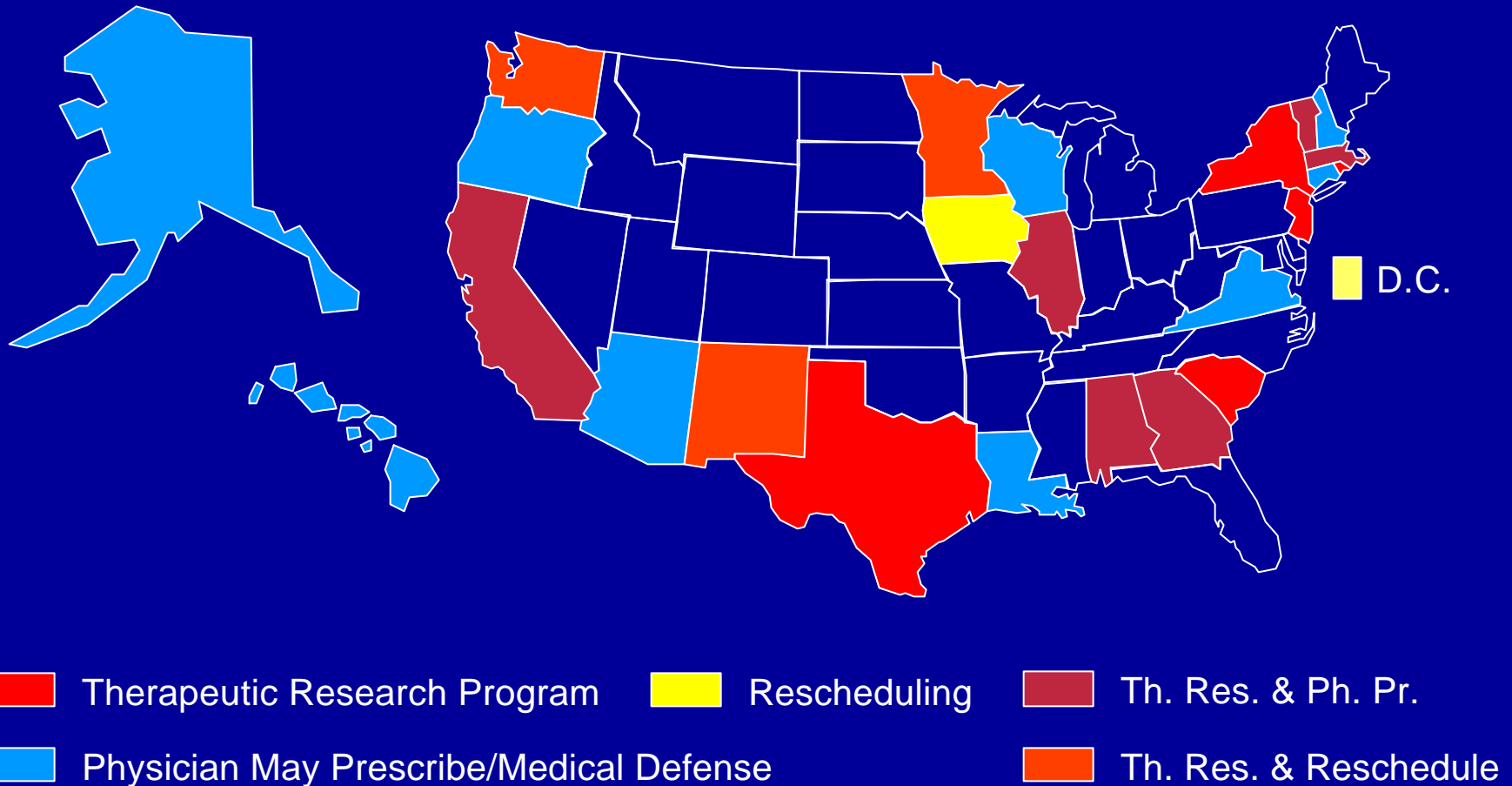
# Ability to prescribe ...

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Two forms of medical marijuana laws allow physicians to legally prescribe marijuana for medicinal purposes without risk of state sanction:

- (1) Physician prescription laws
- (2) Rescheduling of marijuana

# States with medical marijuana laws by type of law (as of July 2000)



Source: Legislative research conducted by MayaTech for ImpacTeen State Illicit Drug Surveillance Project.



# Ability to possess and use ...

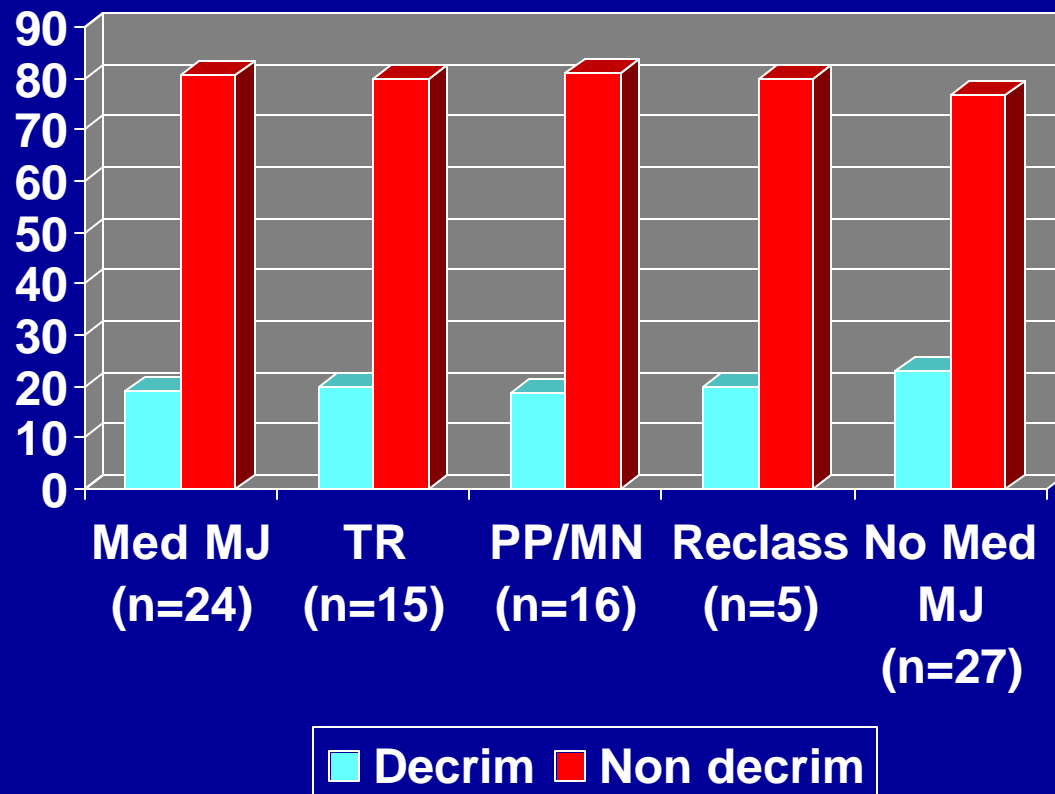
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States can pass a number of different kinds of laws that enable patients (and in some cases others) to possess and use marijuana.

- (1) medical necessity defenses
- (2) decriminalization statutes
- (3) reductions in penalties for possession

# Medical marijuana provisions and decriminalization

Percent of states that have particular provision



Source: Legislative research conducted by MayaTech for ImpacTeen State Illicit Drug Surveillance Project.

# Ability to possess and use ...

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# Medical marijuana and fines for possession offenses

<i>Penalty for first offense: Possession of one ounce</i>	<i>Min fine (\$)</i>	<i>Max fine (\$)</i>
Medical MJ (n=24)	12.50	9387.50
Therapeutic Research (n=15)	21.43	1182.14
Physician Prescribe/ Medical Necessity (n=16)	0.00	14,290.00
MJ Rescheduled (n=5)	20.00	690.00
Non medical MJ states (n=26)	34.62	1630.77

Source: Legislative research conducted by MayaTech for ImpacTeen State Illicit Drug Surveillance Project.

# Medical marijuana and jail time for possession offenses

<i>Penalty for first offense: Possession</i>	<i>Min jail (yrs)</i>	<i>Max jail (yrs)</i>
Medical MJ (n=22)	.078	1.632
Therapeutic Research (n=12)	.143	1.729
Physician Prescribe/ Medical Necessity (n=14)	.143	1.94
MJ Rescheduled (n=4)	0.0	.498
Non medical MJ states (n=23)	.103	1.096

Source: Legislative research conducted by MayaTech for ImpacTeen State Illicit Drug Surveillance Project.

# Summary of conflict #1

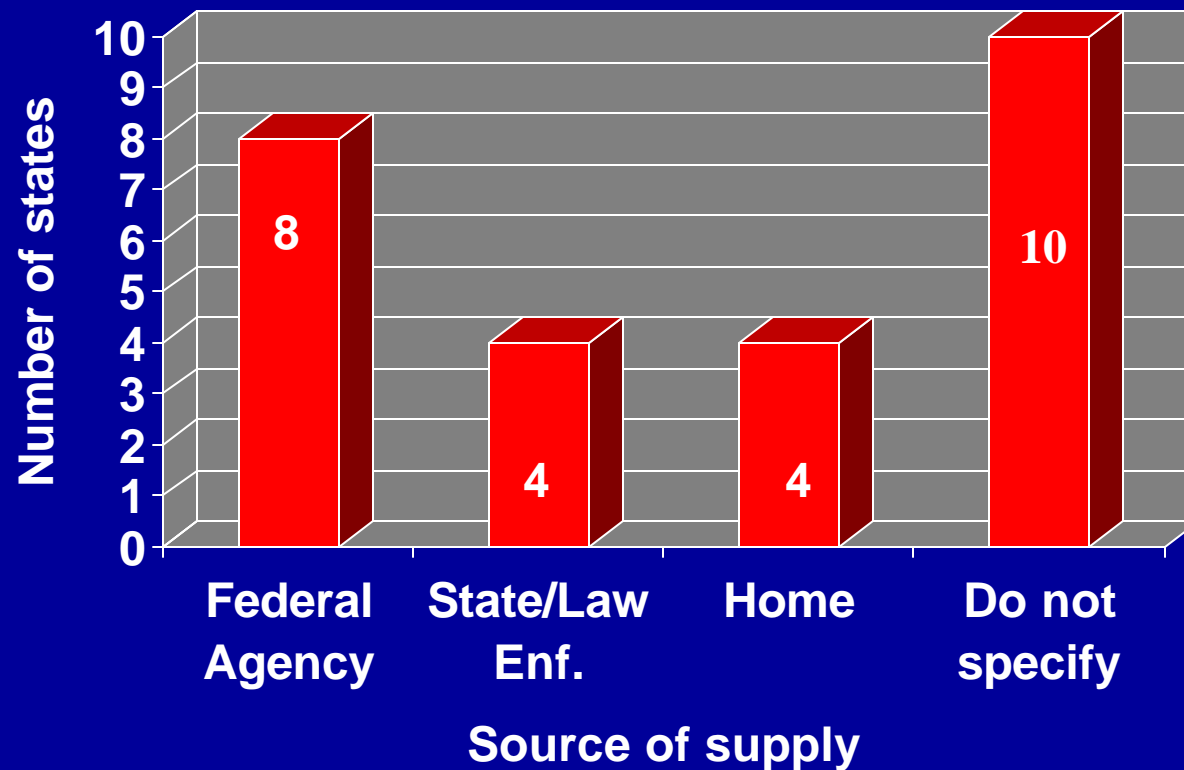
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- States that have passed medicinal marijuana laws in general address prescription, possession and use issues within the context of medical provisions, not through general laws addressing decriminalization and penalties.
- These medical provisions are still in direct conflict with federal law regarding medical allowances.

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# **Conflict #2: Supply of Marijuana**

# State laws still identify federal agencies as the primary source of marijuana when a source is given.

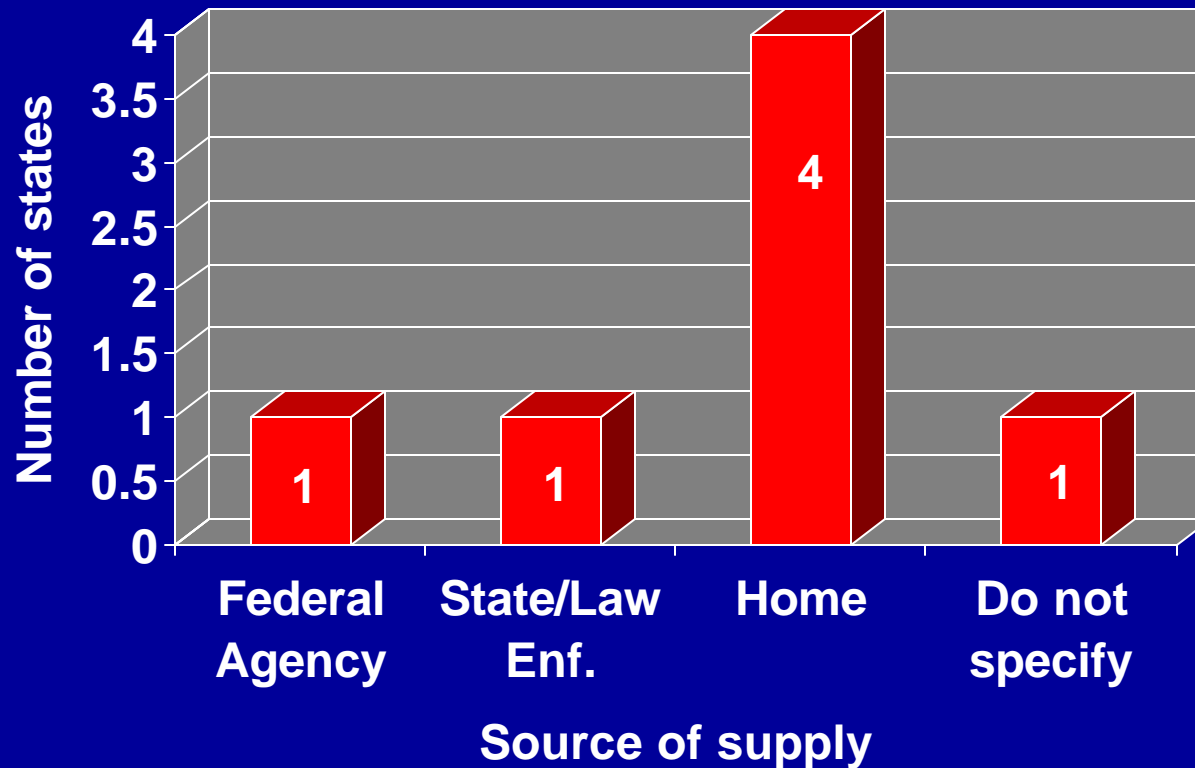


Note: Categories are not mutually exclusive.

Source: Legislative research conducted by Mayatech for ImpacTeen State Illicit Drug Surveillance Project.



# Four out of the six medical marijuana laws passed since 1995 allow for home cultivation



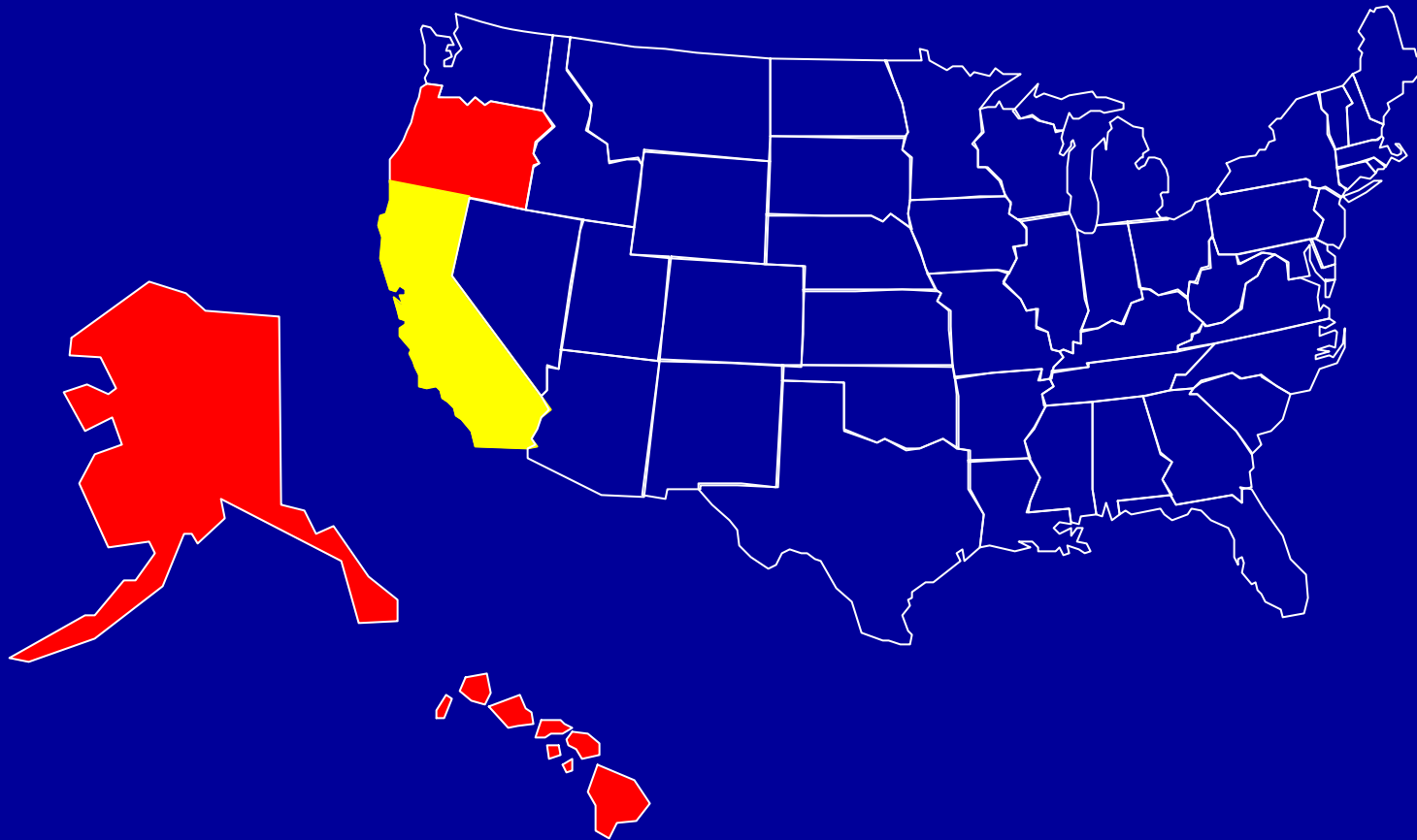
Note: Categories are not mutually exclusive.

Source: Legislative research conducted by Mayatech for ImpacTeen State Illicit Drug Surveillance Project.

# Issues on access

- Laws that do not specify a source for marijuana create problems for law enforcement.
  - Patients are implicitly encouraged to obtain marijuana through the black market.
  - Creates a legitimacy for the black market at the same time it increases the demand.
- Laws that enable home cultivation create problems for law enforcement.
  - Law enforcement has no way to determine who is allowed to grow marijuana and who is not.
  - Intentional & unintentional spillovers to the illicit market are much more likely.
  - No way to monitor medical production and/or use.
- Implication: (a) supply of MJ increases, (b) enforcement of other MJ laws becomes difficult.

**Only three out of the four states enabling home cultivation require patients to register.**



Source: Legislative research conducted by MayaTech for ImpacTeen State Illicit Drug Surveillance Project.

# Implication: Trouble for law enforcement

- Law enforcement has two basic options:
  - (1) Ignore all minor possession and cultivation offenses because of the difficulty of proving medical need.
  - (2) process all minor possession and cultivation offenses to discourage recreational users from taking advantage of the law.

What have states done??

# Medical marijuana and arrests (UCR, 1998)

Arrests per 10,000 residents	Possession Arrests	Poss Arr/ Total Drug Arrests	Sale Arrests
Medical Marijuana States (all)	19.985 [10.944]	0.428 [0.153]	2.897 [2.602]
Medical MJ allowing home cultivation	17.043 [6.778]	0.381 [0.170]	2.641 [1.885]
Medical MJ states with registries	17.875 [8.048]	0.448 [0.129]	2.142 [1.959]
Medical MJ states without registries	21.238 [10.722]	0.426 [0.160]	3.143 [2.678]
Non medical marijuana states	20.747 [9.363]	0.508 [0.131]	2.604 [1.717]

State arrest data are generated by authors' calculations from Uniform Crime Reports, 1998. Standard errors are in parentheses.

# Summary of conflict #2

- Supply of marijuana is a problem.  
Two options:
  - (1) Create legitimate source of supply, in which case the law is in direct violation of the federal law.
  - (2) Do not specify source, in which case the patient has no choice but to go to the black market.Both create problems for law enforcement.
- Most recent trend in laws enables home cultivation with registration.
- There does not appear to be a strong correlation between possession arrests and medical marijuana status.

# Summary of findings

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- Medical MJ is a criminal justice issue because state laws enabling medical use are in direct conflict with federal law and position.
- States appear to be getting around federal prohibition to prescribe, possess and/or use legislatively (Conflict #1).
- States are having harder time addressing issue of supply legislatively (Conflict #2), although recent laws show some promise for a resolution.

# Summary of findings

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- Additional research using longitudinal data on state laws and their implementation is required to understand the implication of these medical marijuana laws on:
  - (a) the enforcement of other marijuana policies.
  - (b) the availability of marijuana (overall).
  - (c) the use of marijuana in the general population.



# Extra slides

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# Medical marijuana and ranking of arrests

State arrest ranking	Possession Arrests	Sale Arrests
Medical Marijuana States (all)	2.962 [1.509]	3.115 [1.505]
Medical MJ allowing home cultivation	2.250 [1.258]	3.000 [1.826]
Medical MJ states with registries	2.333 [1.528]	2.667 [2.082]
Medical MJ states without registries	3.136 [1.490]	3.273 [1.420]
Non medical marijuana states	3.038 [1.428]	3.000 [1.386]

Rankings are constructed from author's calculations from Uniform Crime Reports, 1998. States are ranked from 1 (= lowest 20%) to 5 (= highest 20%) to reduce influence of outliers. Standard errors are in parentheses.

# Decriminalization status and arrests (UCR, 1998)

Arrests per 10,000 residents	Possession Arrests	Poss Arr/ Total Drug Arrests	Sale Arrests
Decriminalized States	25.677 [8.814]	0.456 [0.127]	3.821 [3.207]
Non-decriminalized states	18.915 [10.003]	0.473 [0.151]	2.452 [1.741]

State arrest data are generated by authors' calculations from Uniform Crime Reports, 1998. Standard errors are in parentheses.