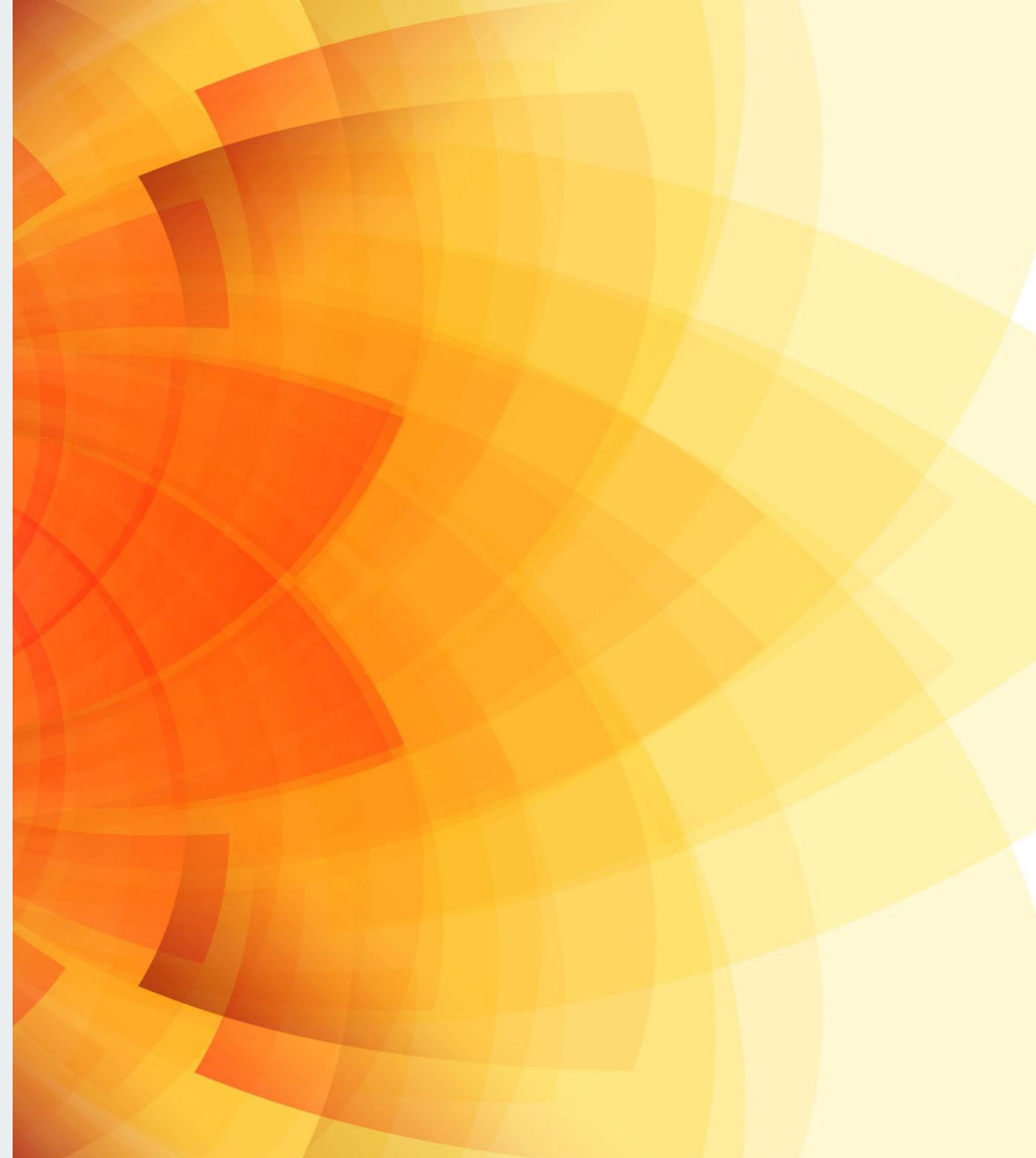


A Canadian Model for U.S. Military Cannabis Policy

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The opinions expressed here are my own and do not
represent the views of the U.S. Army JAG Corps,
Department of the Army, or Department of Defense



Why Cannabis Policy?



- Not interested in my personal use
- Michigander (Honorary Canadian)
- Judge Advocate
- Interest in military history and public policy
- Civil-military divide in a nation with a volunteer military force
- Accession challenges

U.S. Military Policy on Cannabis Use

- Article 112a, Uniform Code of Military Justice
 - Any person subject to this chapter who...**uses**...marijuana
 - Any other substance...listed in schedules I through V of section 202 of the Controlled Substances Act (CSA) (21 U.S.C. 812)
- Army Regulation 600-85, para 4-1 a
 - "Drug abuse is inconsistent with Army Values and readiness."
 - An objective of the Army's Drug Testing Program is to deter Soldiers from abusing drugs.

U.S. Military Cannabis Prohibition History

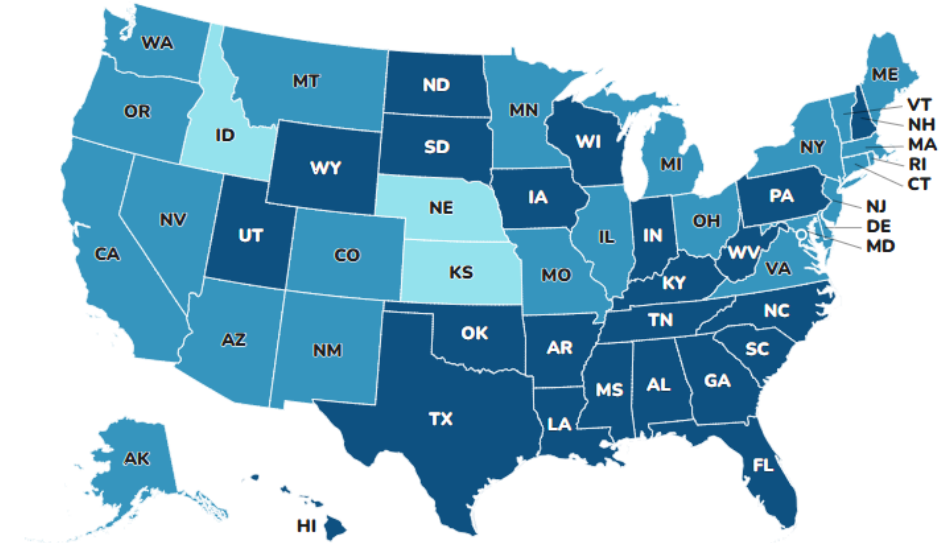
- Central and South America Experience
- Criminalization of Cannabis
 - State Policy Diffusion
 - World War 2
- Vietnam & Operation Golden Flow
- Secretary of Defense Frank Carlucci Memorandum (1981)
- Drug Testing Program, Criminalization, and Adverse Action

Civil-Military Divide - Cannabis

- All Volunteer Military
 - 71% of people do not qualify
- Rand Study
 - In 2018, Accessions were from:
 - 57% - Medical Cannabis States
 - 19% - Legal Cannabis States
- U.S. Civilians
 - Used Cannabis (49%)
 - Support Legalization (70%)
 - Oppose All Use (12%)

No Public Cannabis Access

As of February 2024, 3 states (ID, KS, NE) and 1 territory (American Samoa) do not have a legal cannabis program.



U.S. territories

AS GU MP PR VI

Legend

- Medical-only cannabis program
- Adult medical and nonmedical cannabis program
- No public cannabis access program

<https://www.cdc.gov/cannabis/about/state-medical-cannabis-laws.html>

CAF Authorized Cannabis Use Policy

- [Canadian Armed Forces] members are required to conduct themselves in a professional manner and are expected to make responsible choices in respect of their use of cannabis for recreational or medical purposes.
 - Defense Administrative Orders and Directives 9004-1, Use of Cannabis by CAF Members, para 4-4

CAF Authorized Cannabis Use Background

- Constitutional right to use cannabis as medicine (2000)
 - R v. Parker, (2000) 49 O.R. (3d) 481 (Can.).
 - CAF members receive medical employment limitations
- Liberal Party Platform (2015)
- Cannabis Legalization Proposal (2017)
- CAF Cannabis Policy Working Groups (2017)
- CAF Authorized Cannabis Use (2018)

CAF Authorized Cannabis Use Policy

- Responsibility
- Restrictions
 - Time Restrictions
 - 8 hours / 24 hours / 28 days
 - Duty Restrictions
 - Duty day, domestic operations, exercises, collective training, initial entry training, and service in a vessel, aircraft, or vehicle
 - Location Restrictions
 - International Exercises, International Operations, and Outside Canada

CAF - Disparate Legal Frameworks

- Authorized Cannabis Use Policy (2018)
 - Duty, Time, and Location limitations
 - Responsible use of cannabis
 - Training on substance abuse disorder or cannabis misuse
- Medical Cannabis Use (2000)
 - Canadian Charter of Rights and Freedoms
 - Medical Employment Limitations
 - Remains unreconciled with the Authorized Cannabis Use Policy

Cannabis Legalization in the U.S. Military

- Congressional Action Required
 - Statutory Language Article 112a, UCMJ
 - Controlled Substances Act
 - U.S. Congress Cannabis Proposals
 - The Secure and Fair Enforcement (SAFE) Banking Act
 - Marijuana Opportunity Reinvestment and Expungement (MORE) Act
- Legal Authority to Retain Cannabis Prohibition
 - ...Military is, by necessity, a specialized society separate from civilian society," - *Parker v. Levy*, 417 U.S. 733, 743 (1974).
 - Military Deference Doctrine
 - Supreme Court has provided deference to "essentially professional military judgments" concerning the composition, training, equipping, and control of a military force." *Gilligan v. Morgan*, 413 U.S. 1, 15 (1973).

Legal Recommendations

- Controlled Substances Act
 - Amendment to remove cannabis from statutory text
- Article 112a, UCMJ
 - Amendment to remove cannabis from statutory text
- Article 112, UCMJ
 - Broaden statute to include impairment by cannabis
 - Authorize regulatory rule-making by each service with a baseline authorized cannabis use policy

Legal Recommendations

- Army Regulation 600-85
 - Removal of cannabis prohibitions
 - Self-referral for cannabis abuse
 - Codify authorized cannabis use policy in line with Canadian Policy
 - Clarify treatment of medical and authorized cannabis use

Liberalized Accession Policy

- Prior to legalization of cannabis
 - Removal of misconduct waivers for cannabis use or admission
 - Reduce re-test period
 - Remove limitations on security clearance positions for positive tests
 - Increase the cap on Category IV Applicants
 - Remove the ban on Category IV Applicants who test positive or admit to cannabis use

CSA - Cannabis Rescheduling

- On 18 December 2025, President Donald Trump directed the Attorney General to reschedule Cannabis as Schedule III in accordance with the Controlled Substances Act
- Based upon no change to Article 112a, UCMJ. This rescheduling will have no effect on the U.S. Military Prohibition on Cannabis Use

Questions

Thank you for the opportunity to discuss my article

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