

**§1105-D. Aggravated cultivating of marijuana**

1. A person is guilty of aggravated cultivating of marijuana if the person violates section 1117 and:

A. At the time of the offense, the person has one or more prior convictions for any Class A, B or C offense under this chapter or for engaging in substantially similar conduct to that of the Class A, B or C offenses under this chapter in another jurisdiction and the person grows or cultivates:

- (1) Five hundred or more marijuana plants. Violation of this subparagraph is a Class A crime;
- (2) One hundred or more but fewer than 500 marijuana plants. Violation of this subparagraph is a Class B crime;
- (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
- (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime.

Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of each prior conviction may precede the commission of the offense being enhanced by more than 10 years; [PL 2007, c. 476, §42 (AMD).]

B. [PL 2001, c. 667, Pt. D, §29 (RP); PL 2001, c. 667, Pt. D, §36 (AFF).]

B-1. At the time of the offense, the person possesses a firearm in the furtherance of the offense, uses a firearm, carries a firearm or is armed with a firearm, and the person grows or cultivates:

- (1) Five hundred or more marijuana plants. Violation of this subparagraph is a Class A crime;
- (2) One hundred or more but fewer than 500 marijuana plants. Violation of this subparagraph is a Class B crime;
- (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
- (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime; [PL 2001, c. 667, Pt. D, §30 (NEW); PL 2001, c. 667, Pt. D, §36 (AFF).]

C. At the time of the offense, the person enlists or solicits the aid of or conspires with a child who is in fact less than 18 years of age to cultivate marijuana and the person grows or cultivates:

- (1) Five hundred or more marijuana plants. Violation of this subparagraph is a Class A crime;
- (2) One hundred or more but fewer than 500 marijuana plants. Violation of this subparagraph is a Class B crime;
- (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or
- (4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime; or [PL 2001, c. 383, §119 (NEW); PL 2001, c. 383, §156 (AFF).]

D. At the time of the offense, the person is within 1,000 feet of the real property comprising a private or public elementary or secondary school or a safe zone as defined in section 1101, subsection 23 and the person grows or cultivates:

- (1) Five hundred or more marijuana plants. Violation of this subparagraph is a Class A crime;
- (2) One hundred or more but fewer than 500 marijuana plants. Violation of this subparagraph is a Class B crime;
- (3) More than 5 but fewer than 100 marijuana plants. Violation of this subparagraph is a Class C crime; or

(4) Five or fewer marijuana plants. Violation of this subparagraph is a Class D crime. [PL 2005, c. 415, §4 (AMD).]  
[PL 2007, c. 476, §42 (AMD).]

2. If a person uses a motor vehicle to facilitate the aggravated cultivating of marijuana, the court may, in addition to other authorized penalties, suspend the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license for a period not to exceed 5 years. A suspension may not begin until after any period of incarceration is served. If the court suspends a person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license, the court shall notify the Secretary of State of the suspension and the court shall take physical custody of the person's license or permit. The Secretary of State may not reinstate the person's driver's license or permit, privilege to operate a motor vehicle or right to apply for or obtain a license unless the person demonstrates that, after having been released and discharged from any period of incarceration that may have been ordered, the person has served the period of suspension ordered by the court. [PL 2001, c. 383, §119 (NEW); PL 2001, c. 383, §156 (AFF).]

3. It is an affirmative defense to prosecution under this section that the substance cultivated or grown is hemp.  
[PL 2019, c. 12, Pt. B, §6 (AMD).]

#### SECTION HISTORY

PL 2001, c. 383, §119 (NEW). PL 2001, c. 383, §156 (AFF). PL 2001, c. 667, §§D29,30 (AMD). PL 2001, c. 667, §D36 (AFF). PL 2003, c. 61, §5 (AMD). PL 2005, c. 415, §4 (AMD). PL 2007, c. 476, §42 (AMD). PL 2019, c. 12, Pt. B, §6 (AMD).

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