



Retirees Unlikely to Face UCMJ Over Legal Pot

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By: Travis J. Tritten 7/14/14 WASHINGTON -- Retired from the military and want to light up a joint in a state that has legalized pot? Getting high will put you in a legal gray area, but no need to be paranoid. The chances of being charged with a crime are practically nil, legal experts say, even though retirees are technically still subject to military law that forbids pot smoking anywhere, including Washington state and Colorado where recreational marijuana use is now allowed. Cities and states around the country have adopted liberalized pot laws in recent years as American views on the drug have mellowed. But the Department of Defense has said unequivocally that servicemembers and civilian employees can never use marijuana because of prohibition by the Uniform Code of Military Justice and federal law, which still considers it an illegal street drug. The long arm of military law also extends to retired servicemembers who draw pension payments. In rare cases, the services have recalled retirees to charge them with crimes. "As a practical matter, they can," said Eugene Fidell, a Yale University law professor and former president of the National Institute of Military Justice. "But the chances that a retiree would get charged under the UCMJ for marijuana use are so close to zero, I don't think anyone should lose sleep over it." Greg Rinckey, a former military prosecutor and partner in the Tully Rinckey law firm in Washington, D.C., also said pot charges are extremely unlikely. "I just don't see them court-martialing any retirees for smoking pot," he said. There are a growing number of places where getting high is OK. Last week, Washington became the second state to open a regulated, recreational marijuana market, following suit with Colorado. The District of Columbia has made strong moves this summer toward decriminalizing use and possession, though Congress must approve. A total of 21 states have legalized marijuana use in

some form. Recent changes to pot laws caused the DoD to underscore its position -- pot remains a big no-no. In a memo to the services last year, the assistant secretary of defense for readiness and force management underscored the department's prohibition on marijuana use among military personnel "at all locations." The Joint Base Elmendorf-Richardson Air Force base in Alaska, a state where growing and using small quantities of pot has been legal since 2012, warned airmen earlier this year that "all servicemembers, including retirees, cadets and reserve members entitled to pay" can be charged for pot under the UCMJ. Under military law, possessing more than an ounce can be punished with a dishonorable discharge, forfeiture of all pay and five years in the brig. Those caught with less than an ounce face the same discharge and pay punishments but only two years confinement, according to the Air Force.

Courts-martial for retirees are few and far between, but they do happen. In 2012, retired Gen. David Petraeus was found to be having an affair while working as CIA director. The case blew up into a nationwide scandal and talk ensued about criminal charges for adultery, which is illegal under the UCMJ. Petraeus was never charged, but in 1999, Army Maj. Gen. David Hale faced a similar situation and was recalled from retirement, then found guilty by a court-martial for having affairs with the wives of four of his subordinates. The Army reduced his rank and cut back his pension payments as punishment. However, Fidell and Rinckey said the military is very selective in such prosecutions and typically only pursues the most severe crimes. In Hale's case, the offenses were committed while he was still serving and happened during a time when the military was being hammered publicly for misconduct among top officers and feeling pressured to send a message. Recreational pot use among retirees does not rise to that level, they said. Charging a 70-year-old veteran for smoking a joint "just wouldn't look good for the military," Rinckey said. Retirees also do not need to worry about being reported to the military by their VA doctor. Those who smoke legal marijuana and receive treatment through the Department of Veteran Affairs may be asked for blood or urine in the course of routine care -- that is for diagnosis purposes and not drug testing in any legal sense. The VA told Stars and Stripes it cannot prescribe medical marijuana to patients because of federal law, but it does not care whether veterans use pot in states where that is allowed. "VA is aware that

some veterans who reside in states with marijuana programs and who also receive care in VA, do indeed participate in marijuana programs," spokeswoman Gina Jackson wrote in a statement. "Given the differences between state and federal laws regarding marijuana, a veteran's decision to participate in a state marijuana program is a personal one and not one dictated administratively by VA." Overall, retirees are likely in the clear when it comes to legal pot, but there may be only one option for those who want complete peace of mind. Rinckey said those looking for zero legal risk should just not smoke it.