Medical Marijuana

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Summary

- **Tens of thousands of seriously ill Americans endure severe pain and suffering that could be eased by the medicinal use of marijuana.**
- **Marijuana is widely recognized as a medicine that is as effective and safe as other prescription medications.**
- **Medical associations support patients' legal access to medical marijuana.**
- **States can help the users of medical marijuana despite federal law.**
- **Ten states have enacted effective medical marijuana laws.**
- **The public overwhelmingly supports the legalization of medical marijuana.**
- **Medical marijuana laws do not increase use of the drug among youth.**

Tens of thousands of seriously ill Americans endure severe pain and suffering that could be eased by the medicinal use of marijuana.

For cancer and HIV / AIDS patients, marijuana can very effectively treat nausea, vomiting and lost appetite caused by chemotherapy and HIV / AIDS medications. For glaucoma patients, it reduces buildup of pressure in the eye, alleviating pain and slowing vision loss. For multiple sclerosis patients, it lessens muscle pain and spasticity and relieves tremors and unsteadiness. For some epileptics, it prevents seizures. And for many other medical conditions, marijuana alleviates chronic, debilitating pain. It is simply inhumane to stand between suffering people and a medication that can help them.

Marijuana is widely recognized as a medicine that is as effective and safe as other prescription medications.

After a nearly two-year review of the medical literature, commissioned by the White House Office of National Drug Control Policy, investigators at the National Academy of Sciences, Institute of Medicine concluded that marijuana clearly has therapeutic uses for relief from pain, control of nausea and vomiting, and appetite stimulation.[1] In fact, government-sponsored reports have found marijuana to be an effective and acceptably safe medicine for many years. Those reports include the conclusions of the 1997 National Institutes of Health Workshop on the Medical Utility of Marijuana, and the 1988 findings of Administrative Law Judge Francis Young for the U.S. Department of Justice's Drug Enforcement Administration.[2] It is irrational to forbid doctors to prescribe marijuana while permitting them to prescribe morphine.

Medical professionals support patients' legal access to medical marijuana.

Medical professionals and public health officials support the legalization of medical marijuana for patients suffering from particular illnesses. Organizations favoring medical marijuana include: the American Academy of Family Physicians, American Nurses Association, American Public Health Association, Federation of American Scientists, Lymphoma Foundation of America, and the New England Journal of Medicine. Individual doctors have recommended marijuana therapy to their patients for years. A 1991 Harvard study found that 44 percent of oncologists had previously advised marijuana therapy to their patients.[3]

States can help the users of medical marijuana despite federal law.

Federal law continues to prohibit the possession of marijuana, even for medical use. But 99 percent of marijuana arrests are made by state authorities enforcing state law.[4] Furthermore, the U.S. Supreme Court in October 2003 blocked federal authorities from punishing doctors for recommending marijuana to their sick patients. This order let stand a

Court of Appeals ruling that doctors have a First Amendment right to discuss the possible benefits of marijuana for relief of pain, nausea and other symptoms.[5] So a well-crafted state medical marijuana law can protect both doctors and patients.

Ten states have enacted effective medical marijuana laws.

Ten very diverse states have now adopted medical marijuana statutes. Eight states adopted the policy by referendum: AK, AZ, CA, CO, ME, NV, OR and WA. The Hawaii legislature enacted a law in 2000 that dropped all criminal penalties for medical marijuana. And the Maryland legislature acted in 2003 to provide a "medical necessity" defense to patients who are arrested for marijuana possession, with a $100 fine as the maximum penalty.

The public overwhelmingly supports the legalization of medical marijuana.

A November 2002 CNN / Time poll found that 80 percent of Americans "think adults should be allowed to legally use marijuana for medical purposes if their doctor prescribes it." Only 17 percent "think marijuana should remain illegal even for medical purposes."

Medical marijuana laws do not increase use of the drug among youth.

Contrary to critics' fears, the availability of medical marijuana has not increased use of the drug among young people. In fact, after the passage of California's medical marijuana law in 1996, marijuana use among both junior high and high school students declined significantly.[6]

Endnotes

[1] National Academy of Sciences, Institute of Medicine, "Marijuana and Medicine: Assessing the Science Base," 1999.

[2] Conclusions of the National Institutes of Health, "Workshop on the Medical Utility of Marijuana: Report to the Director," 1997; Administrative Law Judge Francis L. Young, final ruling *In the Matter of Marijuana Rescheduling Petition*, Drug Enforcement Administration, U.S. Department of Justice, Docket No. 86-22, September 6, 1988.

[3] Richard Doblin and Mark Kleiman, "Marijuana as Antiemetic Medicine: A Survey of Oncologists' Experiences and Attitudes," *Journal of Clinical Oncology*, Vol. 9, No. 7, 1991.

[4] Marijuana Policy Project, *Marijuana Policy Report*, Vol. 7 Num. 3, Fall 2001, based on a comparison of Federal Bureau of Investigation, "Crime in the United States: 2000 Uniform Crime Reports," 2001, and U.S. Department of Justice, "Compendium of Federal Justice Statistics, 1999," April 2001.

[5] *Walters v. Conant*, Case #03-40, October 14, 2003.

[6] Rodney Skager and Gregory Austin, "Report to Attorney General Bill Lockyer: Eighth Biennial California Student Survey 1999-2000," sponsored by the California Department of Justice, Office of the Attorney General, and California Department of Education, August 2002.

This policy summary relies in large part on information from the Marijuana Policy Project.

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For more information...

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Medical Marijuana Decriminalization Act

SECTION 1. SHORT TITLE

This Act shall be called the "Medical Marijuana Decriminalization Act."

SECTION 2. FINDINGS AND PURPOSE

(A) FINDINGS – The legislature finds that:

1. Modern medical research has established beneficial uses for marijuana in treating or alleviating pain or other symptoms associated with certain debilitating illnesses. There is sufficient medical and anecdotal evidence to support the proposition that these diseases and conditions may respond favorably to a medically controlled use of marijuana.

2. Although federal law expressly prohibits the use of marijuana, at least ten states have legalized or decriminalized its use for medical purposes.

3. While the intent of this legislation is to make medical marijuana available for the health and welfare of residents with serious illnesses, it does not, and is not intended to, legalize marijuana for other purposes. This legislation does not in any way diminish the state's strong public policy and laws against illegal drug use.

(B) PURPOSE—This law is enacted to improve the health and welfare of seriously ill residents by ensuring that they are not penalized by the state for the use of marijuana for strictly medical purposes when the patient's treating physician provides a professional opinion that the benefits of medical use of marijuana would likely outweigh the health risks for the qualifying patient.

SECTION 3. MEDICAL MARIJUANA DECRIMINALIZATION

After section XXX, the following new section XXX shall be inserted:

(A) DEFINITIONS – In this section:

1. "Adequate supply" means an amount of marijuana collectively possessed between the qualifying patient and the qualifying patient's primary caregivers that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition [provided that an "adequate supply" shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant].

2. "Debilitating medical condition" means:

a. cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
b. a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome, severe pain, severe nausea, seizures including those characteristic of epilepsy, or severe and persistent muscle spasms including those characteristic of multiple sclerosis or Crohn's disease; or
c. any other medical condition or its treatment approved by the Secretary.

3. "Marijuana" shall have the same meaning as provided in section [cite current criminal code].

4. "Medical use" means the acquisition, possession, cultivation, use, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use," the term "transfer" is limited to the transfer of marijuana and paraphernalia between primary caregivers and qualifying patients.

5. "Physician" means a person who is licensed under section [insert citation] and is authorized to prescribe drugs under section [insert citation].

6. "Primary caregiver" means a person who is at least 18 years old and who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana.

7. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

8. "Secretary" means the Secretary of the Department of [Health], or the Secretary's designee(s).

9. "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana, and does not include the seeds, stalks and roots of the plant.

10. "Written certification" means the qualifying patient's medical records or a written document signed by a physician, stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition, and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

(B) DECRIMINALIZATION OF MEDICAL MARIJUANA

1. A qualifying patient who has in his or her possession written certification shall not be subject to arrest, prosecution or penalty in any manner for the medical use of marijuana, provided the quantity of marijuana does not exceed an adequate supply.

2. Paragraph 1 shall not apply to a qualifying patient under the age of 18 years, unless:

a. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; and
b. A parent, guardian or person having legal custody consents in writing to allow the qualifying patient's medical use of marijuana, serves as the qualifying patient's primary caregiver, and controls the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

3. When the acquisition, possession, cultivation, transportation or administration of marijuana by a qualifying patient is not practicable, the legal protections established by this section for a qualifying patient shall extend to the qualifying patient's primary caregivers, provided that the primary caregivers' actions are necessary for the qualifying patient's medical use of marijuana.

4. A physician shall not be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana to qualifying patients.

5. Any property interest that is possessed, owned or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of state or local law enforcement officials, provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of marijuana plants. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to a criminal offense. Marijuana, paraphernalia or other property seized from a qualifying patient or primary caregivers in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualifying patient or primary caregivers are entitled to the protections of this section, as may be evidenced by a decision not to prosecute, the dismissal of charges, or an acquittal.

6. No person shall be subject to arrest or prosecution for "constructive possession," "conspiracy," or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this section.

(C) PROHIBITIONS AND RESTRICTIONS ON MEDICAL MARIJUANA

1. The authorization for the medical use of marijuana in this section shall not apply to:

a. The medical use of marijuana that endangers the health or well-being of another person, such as driving or operating heavy machinery while under the influence of marijuana;
b. The smoking of marijuana in a school bus, public bus, or other public vehicle; on any school grounds; in any correctional facility; or at any public park, public beach, public recreation center, or youth center; and
c. The use of marijuana by a qualifying patient, primary caregiver, or any other person for purposes other than medical use permitted by this section.

2. Insurance companies shall not be required to cover the medical use of marijuana.

3. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be a petty misdemeanor and subject to a fine of $500. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana.

(D) ESTABLISHING A DEFENSE IN COURT--A person and a person's primary caregivers may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

1. The person's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the person; and

2. The person and the person's primary caregivers were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the person's medical condition.

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(E) ADMINISTRATION

1. The Secretary shall promulgate regulations to administer this section.

2. Not later than 90 days after the effective date of this act, the Secretary shall promulgate regulations governing the manner in which the Secretary will consider petitions from the public to add debilitating medical conditions to those included in this section. In considering such petitions, the Secretary shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Secretary shall, after public hearing, approve or deny such petitions within 180 days of submission. The approval or denial of such a petition shall be considered a final action, subject to judicial review.

(F) REGISTRY IDENTIFICATION CARDS
[This section is optional. It can be removed without affecting any other section of the bill.]

1. The Secretary shall create and administer a system of registry identification cards that identify qualifying patients and primary caregivers.

2. A qualifying patient or primary caregiver shall receive the legal protections of this section only if the qualifying patient or primary caregiver is in possession of a registry identification card.

3. Not later than 90 days after the effective date of this act, the Secretary shall promulgate regulations governing the manner in which it will consider applications for registry identification cards, and for renewing registry identification cards, for qualifying patients and primary caregivers.

4. The Secretary shall issue registry identification cards to qualifying patients, and to qualifying patients' primary caregivers, if any, who submit the following:

a. Written certification that the person is a qualifying patient;
b. Registration fee, not to exceed $25 per qualifying patient;
c. Name, address and date of birth of the qualifying patient;
d. Name, address and telephone number of the qualifying patient's physician; and
e. Name, address and date of birth of the qualifying patient's primary caregivers, if the qualifying patient has designated any primary caregivers at the time of application.

5. The Secretary shall verify the information contained in an application submitted pursuant to this section, and shall approve or deny an application within 30 days of receipt of the application. The Secretary may deny an application only if the applicant did not provide the information required pursuant to this section, or if the Secretary determines that the information provided was falsified. Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the Secretary or a court of competent jurisdiction.

6. The Secretary shall issue registry identification cards within five days of approving an application, which shall expire one year after the date of issuance. Registry identification cards shall contain:

a. The name, address and date of birth of the qualifying patient and primary caregivers, if any;
b. The date of issuance and expiration date of the registry identification card; and
c. Other information that the Secretary may specify by regulation.

7. A person who possesses a registry identification card shall notify the Secretary of any change in the person's name, address, qualifying patient's physician, or qualifying patient's primary caregiver within 30 days of such change or the registry identification card shall be deemed null and void.

8. Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or property of the person possessing or applying for the card, or otherwise subject the person or property of the person possessing the card to inspection by any governmental agency.

9. The Secretary shall maintain a confidential list of the persons to whom the Secretary has issued registry identification cards. Individual names on the list shall be confidential and not subject to disclosure, except to:

a. Authorized employees of the department as necessary to perform official duties of the Secretary; or
b. Authorized employees of state or local law enforcement agencies, only for the purpose of verifying that a person who is engaged in the suspected or alleged use of marijuana is lawfully in possession of a registry identification card.

SECTION 4. SEVERABILITY

The provisions of this Act shall be severable, and if any phrase, sentence or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this Act shall not be affected.

SECTION 5. EFFECTIVE DATE

This Act shall take effect on July 1, 2004.