

Overview and Explanation of MPP's Model State Medical Marijuana Bill

The relationship of the model bill and state law to federal law

Although the Supreme Court ruled (*U.S. v. Oakland Cannabis Buyers' Cooperative*) on May 14, 2001, that the medical necessity defense cannot be used to avoid a federal conviction for distributing marijuana, the Court did not question a state's ability to allow patients to grow, possess, and use medical marijuana under state law.

Indeed, the medical marijuana laws that have been passed by voter initiatives in nine states and by the Hawaii, Rhode Island, New Mexico, and Vermont legislatures continue to provide effective legal protection for patients and their primary caregivers because they are carefully worded. MPP's model bill is based on those laws, primarily the Rhode Island law — because it is the most recently enacted medical marijuana law to receive majority support among state legislators, rather than at the ballot box.

Of course, the model bill only provides protection against arrest and prosecution by state or local authorities. State laws cannot offer protection against the possibility of arrest and prosecution by federal authorities. Even so, because 99 percent of all marijuana arrests are made by state and local — not federal — officials, properly worded state laws can effectively protect 99 out of every 100 medical marijuana users who would otherwise face prosecution at the state level.

In truth, changing state law is the key to protecting medical marijuana patients from arrest, as there has not been one documented case where a patient has been prosecuted by federal authorities for a small quantity of marijuana in the 13 states that have effective medical marijuana laws.

Six key principles for effective state medical marijuana laws

In order for a state law to provide effective protection for seriously ill people who engage in the medical use of marijuana, a state law must:

1. define what is a legitimate medical use of marijuana by requiring a person who seeks legal protection to (1) have a medical condition that is sufficiently serious or debilitating, and (2) have the approval of his or her physician (Sec. 3(c) and 3(r));
2. provide legal protection for the primary caregivers of patients who are too ill to provide for their own medical use of marijuana (Sec. 4(b));
3. avoid provisions that would require physicians or government employees to violate federal law in order for patients to legally use medical marijuana;
4. provide a means of obtaining marijuana, which can only be done in the following four ways: permit patients to cultivate their own marijuana; permit primary caregivers to cultivate marijuana on behalf of patients; permit patients or primary caregivers to purchase marijuana from the criminal market (which patients already do illegally); and/or authorize non-governmental organizations to cultivate and distribute marijuana to patients and their primary caregivers (Sec. 4(a) and (b), Sec. 5);
5. allow patients who are arrested to discuss the medical use of marijuana in court (Sec. 8); and
6. implement a series of sensible restrictions, such as prohibiting patients and primary caregivers from possessing large quantities of marijuana, prohibiting driving while under the influence of marijuana, and so forth (Sec. 9).

The importance of precisely worded state laws

Because the medical use of marijuana is prohibited by federal law, state medical marijuana legislation must be worded precisely in order to provide patients and primary caregivers with legal protection under state law. Even changing just one or two words in the model bill can make it symbolic, rather than truly effective.

For example, it is essential to avoid use of the word “**prescribe**,” since federal law prohibits doctors from prescribing marijuana. Doctors risk losing their federally-controlled license to prescribe all medications if they “prescribe” marijuana — which would be useless anyway because pharmacies are governed by the same regulations and cannot fill marijuana prescriptions.

Physicians are, however, permitted under federal law to “**recommend**” marijuana. Thus, to establish a patient’s legitimate medical marijuana use, the state law must contain language accepting a physician’s statement that the patient is “likely to receive therapeutic or palliative benefit from the medical use of marijuana,” or similar language.

The importance of this seemingly trivial distinction is made clear by the case of Arizona, which passed a ballot initiative (Proposition 200) by 65% of the vote in November 1996. Arizona’s law is dependent upon patients possessing marijuana “prescriptions.” As a result, no patients in Arizona have legal protection for using medical marijuana.

There are numerous other important technical nuances which are impossible to anticipate without having spent several years working on medical marijuana bills and initiatives nationwide. Consequently, it is crucial to discuss ideas and concerns with MPP before changing even one word of the model bill. MPP can also provide a more complete written technical analysis of the model bill.

Two versions of the model bill

MPP has two versions of its model bill. The version included in this report allows for the state-sanctioned non-profit delivery of marijuana. Another version is available, which allows for patients and caregivers to cultivate a supply, but does not allow for regulated distribution. That version of the bill is available at mpp.org/modelbill2.