



# Ohio's Affirmative Defense

## **What is an affirmative defense?**

An affirmative defense is a way of responding to a criminal charge, such as a minor misdemeanor, which allows a defendant to argue that his or her actions should be excused. A common example is self-defense. It is illegal to hit another person, but there are exceptions, including for those protecting themselves from an attack. If a defendant hit someone, but could prove it was self-defense, the court would acquit.

Ohio lawmakers established this kind of legal defense for medical marijuana patients who are charged with marijuana possession. While it is illegal in Ohio to possess marijuana or paraphernalia, beginning September 8, medical marijuana patients will be able to assert the defense, arguing in court that they were acting in compliance with the medical marijuana law.

## **When is the affirmative defense available for patients?**

The legal defense it offers is available starting September 8, 2016, and expires no later than 60 days after the date the State Board of Pharmacy begins accepting applications for registration in the state patient database.

## **What does Ohio require for the affirmative defense?**

There are several requirements that must be established for a person to prove the affirmative defense. The key requirement is a written statement from a doctor who has received a certification to recommend medical marijuana from the medical board. The written statement must show that:

- The patient has a condition listed in the state's medical marijuana law,
- The patient and the doctor have a bona fide physician-patient relationship,
- The physician informed the patient of the risks and benefits of medical marijuana, and
- The physician indicated that the benefits of medical marijuana use outweigh the risks.

The doctor must also obtain a report from the state drug database showing any other drugs prescribed to the patient in the past 12 months, and patients may only use medical marijuana in an approved form.<sup>[1]</sup> Finally, patients may possess no more than a 90-day supply of cannabis, which is not defined under the law.<sup>[2]</sup>

## **Important limitations:**

- The protections contained in this form are limited to a patient's possession of no more than a 90-day supply of marijuana — the actual amount of which has not been defined.
- The affirmative defense does not provide access to medical marijuana, or protect those who grow or distribute it without state approval.
- The defense does not prevent a criminal charge; it is only used to avoid a conviction — although an officer may choose not to cite a person.

- If you are uncertain about how the law applies to you, consult with a licensed attorney.

[\[1\]](#) Ohio's law includes oils, tinctures, plant material, edibles, patches, or any other form approved by the state.

[\[2\]](#) Massachusetts has defined a 60-day supply as 10 ounces of marijuana or its equivalent forms, but it is unknown what Ohio might decide.