

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 U.S. Supreme Court ruled on June 6, 2005 (*Gonzales v. Raich*) that the federal government can prosecute patients in states that removed their criminal penalties for the medical use of 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 eight states and by three 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 recent medical marijuana law that received majority support among state legislators.

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% 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 arrested by federal authorities for a small quantity of marijuana in the 11 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 medical practitioner (Sec. 3(a)xx and 3(j));
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 nongovernmental organizations to cultivate and distribute marijuana to patients and their primary caregivers (Sec. 4a) and 4 (b));
5. allow patients and primary caregivers who are arrested anyway 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. 7).

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 evaluate the relative risks and benefits of the medical use of marijuana. Thus, to establish a patient's legitimate medical marijuana use, the state law must contain language accepting a physician's statement that says, "The potential benefits of the medical use of marijuana would likely outweigh the health risks," 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 that 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.

Optional provision in the model bill

STATE-SANCTIONED NONPROFIT DISTRIBUTION OF MEDICAL MARIJUANA:

One criticism that has been levied against the existing state medical marijuana laws is that they do not provide a way for patients to obtain a supply of marijuana beyond growing their own, obtaining the help of a caregiver, or purchasing marijuana from the criminal market. This provision authorizes nonprofit organizations to distribute medical marijuana legally under state law without directly involving state and local officials in marijuana distribution.