Emerging Issue: Medical Marijuana
Review of Law Enforcement Issues
Prepared for the CFHHS Subcommittee on Medical Marijuana
UPDATED: July 15, 2010

Background

Law enforcement officials believe several provisions of the Medical Marijuana Act make it difficult for both officers and prosecutors to pursue potential violations of the Act or other drug laws. They also believe some provisions could be added to make it easier for law enforcement to forego investigating marijuana-related complaints because they would know whether the complaint involved a person who was a registered cardholder.

The table below summarizes law enforcement recommendations presented to the Children, Families, Health, and Human Services Interim Committee and to legislative staff since April, as well as any work group recommendation related to the topic. **This summary was presented to the subcommittee on medical marijuana on July 12. Its decisions are shown in bold-faced type below.**

Topic	Law Enforcement Recommendation	Work Group Recommendation
Limits on caregiver registrations	Prohibit a person with any felony conviction from being a caregiver ***Subcommittee Action*: Approved and added misdemeanor conviction to prohibition; requested more information on MIP offenses**	Majority support for reviewing the list of felony offenses and expanding disqualifying offenses
Background checks	Conduct a 50-state background check before registering a caregiver or any employee ***Subcommittee Action*: Approved**	Majority support of expanded background checks for caregivers; checks for employees not discussed
Location of growing operations	Require caregivers to register the location of their businesses and grow operations with a state agency, which would make the list available to law enforcement and other regulatory entities ***Subcommittee Action*: Approved, with details to be worked out as regulatory structure is decided**	Not specifically discussed, but general agreement that caregiver operations should be subject to inspection
	Require that medical marijuana be grown in Montana ***Subcommittee Action*: Approved**	Majority support
Recordkeeping	Require caregivers to maintain transaction records ***Subcommittee Action*: Requested that staff provide "chain of custody" options for future consideration**	General agreement that transactions should be trackable

Topic	Law Enforcement Recommendation	Work Group Recommendation
Affirmative defense	Clarify that patients and caregivers must be registered to use the affirmative defense and caregivers must comply with 50-46-103	General agreement to require patients to have proof that debilitating condition was diagnosed before arrest
	Strike 50-46-206(3), allowing more than 1 ounce	Split opinion on changes to this subsection
	Not specifically addressed	Split opinion on amending/striking 50-46-206(1)(b)
	Subcommittee Action: **Decided to strike the affirmative defense (50-46-206, MCA) in its entirety**	
Allowable amounts of medical marijuana	Make distinctions on the amounts allowed for various types of marijuana products *Subcommittee Action*: **Requested additional research and options for consideration**	Unanimious agreement; no specific recommendation. Discussion of the need to change the term "dried marijuana" to "cured marijuana."
Caregiver-to-caregiver sales	Prohibit such sales *Subcommittee Action*: **Will continue to discuss as part of regulatory structure**	Full support for such sales
Transportation of medical marijuana	Clarify that only a caregiver or patient may transport medical marijuana *Subcommittee Action*: **Will continue to discuss as part of regulatory structure**	Full support for creating a non-caregiver category for a person to handle and transport medical marijuana
Licensure	Require caregiver to be licensed, rather than just registered with state *Subcommittee Action*: **Approved, as part of condition for conducting background checks**	No specific discussion, but licensure would be required to allow for broader background checks; those checks had majority support
Possession of registry card	Require patients to carry registry card and caregivers to carry license and identification; penalty for failure to do so *Subcommittee Action*: **Approved, with addition that both patients and caregivers must provide photo identification**	Full support for carrying registry card at all times; identification requirement was not discussed.

Topic	Law Enforcement Recommendation	Work Group Recommendation
Allowable number of plants	Clarify allowable possession amounts for a patient and caregiver when the patient has a designated caregiver *Subcommittee Action*: **Not acted on but continued discussion expected**	Not specifically discussed
Definition of plant	Create a definition of a plant to provide additional guidance on allowable number of plants *Subcommittee Action*: **Discussed but no action to date**	Not specifically discussed
Revocation of cards	Provide for permanent revocation of registry cards if a caregiver or patient is convicted of a drug offense or of violating provisions of the Medical Marijuana Act *Subcommittee Action*: **Approved and also approved penalties for sale of a registry card and allowing another person to use a registry card**	Permanent revocation not discussed; full support for penalty for falsifying registry information

Issues Raised Without Recommended Solutions
- Driving under the influence of marijuana.
    - ✓ *Subcommittee Action*: **Agreed to clarify language in 50-46-205, MCA, about operating vehicles under the influence of marijuana and consider establishing a penalty involving revocation of a card for DUI convictions**
- Addicted probationers and parolees who are using medical marijuana are unable to obtain chemical dependency treatment, which is often required as part of the terms of their probation or parole
- Probation or parole officers must give offenders permission to engage in a business; they are sometimes presented with requests from chemically dependent offenders who want to be caregivers and grow medical marijuana
    - ✓ *Subcommittee Action:* **Prohibit people who are under the supervision or jurisdiction of the state from taking part in the medical marijuana program**