

# THE MEDICAL MARIJUANA ACT

## INFORMATION SHEET

The ***Medical Marijuana Act*** (The Act) was signed into law on April 17, 2016 and will be effective on May 17, 2016. The following is a highlight of some of its provisions and a brief discussion of its application to traffic safety.

- The Act is intended to “...serve as a temporary measure until there is federal approval of and access to medical marijuana through traditional medical and pharmaceutical avenues.”
- An eligible patient is defined as someone who has a serious medical condition, is given certification by a physician permitted to do so that there is medical need for marijuana, and is a resident of the Commonwealth.
- Serious Medical Condition is defined as:
  - Cancer
  - HIV/AIDS
  - ALS
  - Parkinson’s Disease
  - MS
  - Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity
  - Epilepsy
  - IBS
  - Neuropathies
  - Huntington’s Disease
  - Crohn’s Disease
  - PTSD
  - Intractable Seizures
  - Glaucoma
  - Sickle Cell Anemia
  - Severe Chronic or intractable pain of neuropathic origin or severe chronic or intractable pain which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective
  - Autism.
- The Department of Health is tasked with implementing majority of the law and the promulgation regulations governing the Act. This includes issuing licenses to growers/producers, dispensaries, and healthcare providers. They must also develop and maintain a real time tracking system which will track medical marijuana from seed to patient. This database must also include information on all patients and their caregivers.

- The forms of the medical marijuana that may be prescribed as of now are:
  - Pill
  - Oil
  - Topical Forms, including Gel, Creams, or Ointments
  - A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until DOH regulations allow
  - Tincture
  - Liquid
  
- All prescriptions are required to be kept in their original packaging which must include the name of the grower, the name of the dispensary, the form and species of medical marijuana, and the percentage of THC and cannabinal contained in the product.
  
- It is unlawful to:
  - Smoke medical marijuana
  - Incorporate into an edible form except if done so by a patient or caregiver in order to aid in ingestion of the medical marijuana.
  - Grow medical marijuana without a permit
  - Dispense medical marijuana without a permit
  
- The prescribing physician is required to notify DOH if:
  - The patient no longer has the serious medical condition
  - Medical marijuana is no longer therapeutic
  - The patient dies.
  
- A patient may not have more than a 30 day supply at any given time except during the last 7 days of the prescription the patient may get the next 30 day supply. Anytime the patient is in possession of the medical marijuana they must have their DOH ID card. The DOH issued ID cards expire one year after issuance.
  
- The DOH ID cards will contain a photo of the person, expiration date, and DOH ID number. Patients/caregivers are also required to carry them at all times when they have MM with them.
  
- DOH will be developing regulations related to the lawful transportation of medical marijuana.
  - Hopefully the regulations will contain a provision for some sort of ID card system or something similar so that officers can quickly verify whether the person is legally transporting medical marijuana or bringing in otherwise illegal marijuana.
  
- Patients under 18 years of age must have a caregiver designated.
  
- The warning label included with the prescription includes the following statement, “This product might impair the ability to drive or operate heavy machinery.”

- There is a provision for “Law Enforcement Notification” which reads: “Notwithstanding any provision of this act or any other law to the contrary, the department may notify any appropriate law enforcement agency of information relating to any violation or suspected violation of this Act. In addition, the Department shall verify to law enforcement personnel in an appropriate case whether a certification, permit, registration or identification card is valid, including release of the name of the patient.”
  - Important here is the requirement that DOH **SHALL** provide information to law enforcement to confirm the validity of an individual’s ID card.
- Law enforcement will have some ongoing input into how medical marijuana regulations are promulgated as well as any changes in the law. The Act creates a Medical Marijuana Advisory Board that includes the Commissioner of the PSP or a designee, the President of the PA Chiefs of Police Association or a designee, and the President of the PDAA or a designee.
- There is a safe harbor provision for minors under 18 years of age. For the two years following the Act becoming effective parents or guardians of minors who have an out-of-state prescription may get medical marijuana lawfully from that state and administer it to the minor residing here.
- The Act contains a provision directing DOH to publish notice in the PA Bulletin when marijuana is rescheduled. I have been in contact with DOH and their intent is to remove marijuana from schedule I to coincide with the intent of the Act.

The Act does not change the way in which DUI will prosecuted, but when DOH reschedules marijuana from Schedule I there will be a change in how DUIs will be charged and prosecuted. As it is now under §3802(d)(1)(i) any amount of marijuana is a per se violation and there is no need to prove any level of impairment. This will change when it is rescheduled to Schedule II (or III). Now charges will be brought under §3802(d)(1)(ii) for individuals without a prescription (still per se). Individuals with a valid prescription whose ability to safely drive is impaired may be charged under §3802(d)(2) similar to any other Schedule II or III prescribed drug DUI.

I will continue to monitor the developments surrounding the implementation of the Act. When you start to get challenges focused on this Law as it relates to DUI prosecution please let me know. Also, I do have very reliable contacts within the DOH who I can call on with issues that may arise. If you encounter issues getting information required under the Law Enforcement Notification section or any other issues please contact me and I will see what I can do. If you have any questions about the information I have included here or otherwise about the Act let me know, my contact information is below.