

# SENATE BILL REPORT

## HB 1105

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As Reported by Senate Committee On:  
Law & Justice, February 17, 2022

**Title:** An act relating to arrest protections for the medical use of cannabis.

**Brief Description:** Concerning arrest protections for the medical use of cannabis.

**Sponsors:** Representatives Kloba, Simmons, Fitzgibbon, Dolan, Ortiz-Self, Goodman, Vick, Ormsby, Riccelli, Santos, Macri and Davis.

**Brief History:** Passed House: 1/26/22, 73-24.

**Committee Activity:** Law & Justice: 3/16/21, 3/18/21 [DP, DNP, w/oRec]; 2/08/22, 2/17/22 [DP, DNP, w/oRec].

### Brief Summary of Bill

- Provides criminal and civil protections, rather than an affirmative defense, to qualifying patients and designated providers who have a valid authorization for the medical use of marijuana.
- Removes the affirmative defense for qualifying patients and designated providers who are not entered into the medical marijuana database.
- Specifies the marijuana possession limit for a person who is both a qualifying patient and a designated provider for another qualifying patient.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen and Salomon.

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators McCune, Assistant Ranking Member; Honeyford.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Wagoner.

**Staff:** Joe McKittrick (786-7287)

**Background:** Medical Use of Marijuana. State law allows persons over 21 years of age to possess and purchase limited quantities of marijuana products and plants from a licensed retailer for recreational use. Specific types of healthcare professionals may authorize a qualifying patient's medical use of marijuana, which increases the patient's possession limit, permits home cultivation of marijuana plants, and provides certain legal protections not afforded to recreational users.

An authorization is a form developed by the Department of Health, completed and signed by a health care professional, and printed on tamper-resistant paper.

A qualifying patient is a person who:

- is a patient of a health care professional;
- has been diagnosed by the health care professional as having a terminal or debilitating medical condition;
- is a resident of Washington at the time of such diagnosis;
- has been advised by that health care professional about the risks and benefits of the medical use of marijuana;
- has been advised by that health care professional that the person may benefit from the medical use of marijuana; and
- has an authorization from the patient's health care provider, or, beginning July 1, 2016, has been entered into the medical marijuana authorization database and has been provided a recognition card.

A qualifying patient does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined the use of medical marijuana is inconsistent with and contrary to the person's supervision.

A designated provider means a person who is at least 21 years old and:

- is designated in writing by a qualifying patient to serve as the designated provider for the patient or, if the qualifying patient is under the age of 18, is the qualifying patient's parent or guardian; and
- has an authorization from the qualifying patient's health care professional.

Medical Marijuana Authorization Database. In 2015, the Department of Health developed and implemented the Medical Marijuana Authorization database (database). Information about a qualifying patient or their provider may be placed in the database at a marijuana retailer with a medical marijuana endorsement. If information is placed in the database, the

patient or provider must be provided a recognition card that contains certain identifiers, including a randomly generated and unique identifying number, a photograph, an effective date, and an expiration date.

A qualifying patient or designated provider who is entered into the database and has a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law relating to use and possession of marijuana. To receive these protections, the qualifying patient or designated provider must:

- possess no more than the authorized amount of marijuana products and plants;
- present the recognition card upon the request of any investigating law enforcement officer; and
- have a copy of the recognition card and the qualifying patient or designated provider's contact information posted prominently next to any marijuana products and plants.

A person who is both a qualifying patient and a designated provider for another qualifying patient may possess no more than twice the authorized amount of marijuana product for the qualifying patient and designated provider.

A qualifying patient or designated provider who has a valid authorization, who is not entered into the database and does not have a recognition card, is not granted the same criminal and civil protections, but may, under certain conditions, raise an affirmative defense at trial for certain violations of state law relating to use and possession of marijuana. A qualifying patient or designated provider asserting the affirmative defense must prove, by a preponderance of the evidence, compliance with all other provisions of state law governing medical use of marijuana by a qualifying patient or designated provider.

**Summary of Bill:** A qualifying patient or designated provider who has a valid authorization but is not entered into the database and does not have a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law relating to use and possession of marijuana.

To receive these protections, the qualifying patient or designated provider must:

- possess no more than the authorized amount of marijuana products and plants;
- present the authorization upon the request of any investigating law enforcement officer; and
- have a copy of the authorization and the qualifying patient or designated provider's contact information posted prominently next to any marijuana products and plants.

A person who is both a qualifying patient and a designated provider for another qualifying patient may possess no more than 15 marijuana plants located in any one housing unit other than an authorized cooperative.

The affirmative defense afforded to qualifying patients and designated providers who have a valid authorization but are not entered into the database and do not have a recognition card

is eliminated.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony (Regular Session 2022):** PRO: I have been living with secondary progressive MS—multiple sclerosis—for over 30 years. Throughout this time, I have utilized many different treatment options, and medical cannabis is the treatment that has helped me the most. Those who need medical cannabis already have enough to worry about without having to worry about being charged with a crime. Those who need this medicine just do not want to be treated as criminals for the simple act of growing a plant.

What all patients who use medical cannabis have in common is that they are in crisis. Cannabis offers supportive care, autonomy, and hope to these patients. They are not criminals. They are sick people.

Patients who use cannabis are not using it simply to get high. They are using it, as research has shown, for symptom management and to target specific conditions.

As a cannabis patient, I cannot begin to describe the medical struggles I have suffered over the past 20 years. Cannabis has improved my quality of life in a way pharmaceuticals could not. This bill speaks to common sense and basic human decency.

CON: It is in the spirit of initiative 502 that a strong regulatory scheme remains in place surrounding the use of marijuana. If this committee intends to move forward with such legislation as this, the committee should look to implement safeguards around the home-grow provisions such as a plant limit per person, restrictions on where plants may be cultivated, or restricting access to plants from those under 21 years old.

OTHER: Marijuana is still in the same schedule as heroin. Those who should be required to register in the database are only those who are creating marijuana derivative products.

**Persons Testifying:** PRO: John Kingsbury, medical cannabis patient, chair, patient committee-Cannabis Alliance; Mary Brown, SMJ Consulting @ AIMS Institute, MA Ed.; Lisa Buchanan, MMC, Medical Educator; RN, OCN Emeritus; Steven Fields, MS patient, Cannabis Alliance.

CON: Taylor Gardner, WASPC.

OTHER: John Worthington, AAMC.

**Persons Signed In To Testify But Not Testifying:** No one.