

APPENDIX B

The Maine Medical Marijuana Task Force requests that the Criminal Law Advisory Commission review and provide comments on the following sections of the statute as written.

§ 2423. Protections for the medical use of marijuana

1. Qualifying patient. A qualifying patient who has been issued and possesses a registry identification card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this chapter as long as the qualifying patient possesses an amount of marijuana that:

A. Is not more than 2 1/2 ounces of usable marijuana; and

B. If the qualifying patient has not specified that a primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient, does not exceed 6 marijuana plants, which must be kept in an enclosed, locked facility unless they are being transported because the qualifying patient is moving or they are being transported to the qualifying patient's property.

2. Primary caregiver. A primary caregiver, other than a nonprofit dispensary, who has been issued and possesses a registry identification card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom the primary caregiver is connected through the department's registration process with the medical use of marijuana in accordance with this chapter as long as the primary caregiver possesses an amount of marijuana that:

A. Is not more than 2 1/2 ounces of usable marijuana for each qualifying patient to whom the primary caregiver is connected through the department's registration process; and

B. For each qualifying patient who has specified that the primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient, does not exceed 6 marijuana plants, which must be kept in an enclosed, locked facility unless they are being transported because the primary caregiver is moving.

4. Presumption. There is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana in accordance with this chapter if the qualifying patient or primary caregiver:

A. Is in possession of a registry identification card; and

B. Is in possession of an amount of marijuana that does not exceed the amount

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allowed under this chapter.

The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in accordance with this chapter.

5. Cardholder not subject to arrest. A cardholder may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for giving an amount of marijuana the person is allowed to possess under subsection 1 or 2 to a cardholder for the registered qualifying patient's medical use when nothing of value is transferred in return or for offering to do the same.

10. Person not subject to penalty for providing registered qualifying patient or registered primary caregiver marijuana paraphernalia. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana.

11. Property not subject to forfeiture. Any marijuana, marijuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the medical use of marijuana, as allowed under this chapter, or property incidental to such use, may not be seized or forfeited.

12. Person not subject to penalty for being in presence of medical use of marijuana. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter or for assisting a registered qualifying patient with using or administering marijuana.

§ 2425. Registry identification cards

7. Possession of or application for card not probable cause for search. Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person or property of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card does not prevent the issuance of a warrant if probable cause exists on other grounds.

§ 2426. Scope

3. Penalty for fraudulent representation. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution is a civil violation punishable by a fine of \$500, which must be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

§ 2427. Affirmative defense and dismissal for medical marijuana

1. Affirmative defense. Except as provided in section 2426, a qualifying patient and a qualifying patient's primary caregiver, other than a nonprofit dispensary, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and this defense must be presumed valid where the evidence shows that:

A. A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition;

B. The qualifying patient and the qualifying patient's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition; and

C. The qualifying patient and the qualifying patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana solely to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

2. Motion to dismiss. A person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges must be dismissed following an evidentiary hearing where the person proves the elements listed in subsection 1.

3. No sanction for medical use of marijuana. If a qualifying patient or a qualifying patient's primary caregiver demonstrates the qualifying patient's medical purpose for using marijuana pursuant to this section, the qualifying patient and the qualifying patient's primary caregiver may not be subject, for the qualifying patient's medical use of marijuana, to any state sanction, including:

A. Disciplinary action by a business or occupational or professional licensing board or bureau; and

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B. Forfeiture of any interest in or right to property.

§ 2428. Nonprofit dispensaries

8. Immunity. This subsection governs immunity for a nonprofit dispensary.

A. A nonprofit dispensary may not be subject to prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for acting in accordance with this section to provide usable marijuana to or to otherwise assist registered qualifying patients to whom it is connected through the department's registration process with the medical use of marijuana.

B. Principal officers, board members, agents and employees of a registered nonprofit dispensary may not be subject to arrest, prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for working for or with a nonprofit dispensary to provide usable marijuana to or to otherwise assist registered qualifying patients to whom the nonprofit dispensary is connected through the department's registration process with the medical use of marijuana in accordance with this chapter.