

# HOUSE BILL REPORT

## HB 1563

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**As Passed House:**

March 3, 2023

**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, Cheney, Peterson, Ramel, Ormsby, Reeves, Reed, Macri, Fitzgibbon, Gregerson, Rude and Wylie.

**Brief History:**

**Committee Activity:**

Regulated Substances & Gaming: 1/31/23, 2/2/23 [DP].

**Floor Activity:**

Passed House: 3/3/23, 63-32.

**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 cannabis.
- Specifies the cannabis possession limit for a person who is both a qualifying patient and a designated provider for another qualifying patient.

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### HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

**Majority Report:** Do pass. Signed by 7 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Cheney, Morgan, Orwall and Reeves.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Chambers, Ranking Minority Member; Walsh and Waters.

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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.*

**Staff:** Matt Sterling (786-7289).

**Background:**

Medical Use of Cannabis.

State law allows persons over 21 years of age to possess and purchase limited quantities of cannabis products and plants from a licensed retailer for recreational use. Specific types of healthcare professionals may authorize a qualifying patient's medical use of cannabis, which increases the patient's possession limit, permits home cultivation of cannabis plants, and provides certain legal protections not afforded to recreational users. An authorization is a form developed by the Department of Health that is completed and signed by the health care professional and printed on tamper-resistant paper.

A qualifying patient is a person who:

- is a patient of a health care professional who has been diagnosed by the health care professional as having a terminal or debilitating medical condition;
- is a Washington resident at the time of diagnosis;
- has been advised by the health care professional about the risks and benefits of the medical use of cannabis and that the person may benefit from the medical use of cannabis; and
- has an authorization from the health care professional.

A designated provider is a person who:

- is at least 21 years old;
- is designated in writing by a qualifying patient to serve as the designated provider for the patient or, if the qualifying patient is under age 18, is the qualifying patient's parent or guardian; and
- has an authorization from the qualifying patient's health care professional.

Medical Cannabis Authorization Database.

A qualifying patient or designated provider who has a valid authorization may choose whether to enter into the Medical Cannabis Authorization Database (Database) and receive a recognition card. The recognition card includes the qualifying patient or designated provider's photograph, the amount of cannabis products and plants the qualifying patient or designated provider may possess, the name of the health care professional who authorized the qualifying patient or designated provider, and other relevant information.

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 the use and possession of cannabis.

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

- possess no more than the authorized amount of cannabis 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 cannabis products and plants.

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 is not granted the same criminal and civil protections. However, under certain circumstances, such a qualifying patient may raise an affirmative defense at trial for certain violations of state law relating to use and possession of cannabis. 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 cannabis by a qualifying patient or designated provider.

#### Qualifying Patient or Designated Provider Possession Limits.

The authorized amount of cannabis for a qualifying patient or designated provider to possess is a combination of:

- 48 ounces of cannabis-infused product in solid form;
- 3 ounces of useable cannabis;
- 216 ounces of cannabis-infused product in liquid form; or
- 21 grams of cannabis concentrates.

The qualifying patient or designated provider may also grow up to six plants for the personal medical use of the qualifying patient and possess up to 8 ounces of useable cannabis produced from such plants. If a health care professional determines that the medical needs of a qualifying patient exceed these amounts, the health care professional must specify on the authorization that it is recommended that the patient may grow up to 15 plants and possess up to 16 ounces of useable cannabis for the personal medical use of the patient. The number of plants must be entered into the Database by the cannabis retailer with a medical cannabis endorsement and specified on the recognition card that is issued to the qualifying patient or designated provider.

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 cannabis product for the qualifying patient and 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 the use and possession of cannabis.

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

- possess no more than the authorized amount of cannabis 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 cannabis 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 cannabis plants that are 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:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Washington was on the leading edge of legalization and while we were very cautious, we have learned things over time. Patient protections and the unequal treatment of patients needs to be fixed. These patients are following all the rules, but then are subjected to arrest and cruel treatment just for not being in the database. This might have made sense before we had a legal recreational system and the fear that people would game the system, but it doesn't make any sense now. Cannabis helps with pain more than other products. Typical patients can go to a pharmacist and get medication. It is more difficult to get that recognition card for cannabis to enjoy the same protections. The dispensary consultants are difficult to find and work infrequently. Many patients do not have access to the Department of Health and should have the option to grow cannabis in their own homes. These are not criminals and we should not start with the assumption that they are. They deserve respect and a presumption of innocence. Normalizing the use of medical cannabis is an important part of the work that advocates are doing. Washington begins with the assumption that a qualified patient is a criminal unless they can establish an affirmative defense and that leaves patients criminally vulnerable. Patients are given an affirmative defense that is something to present at trial. It does not stop gardens from being destroyed, equipment being seized, and legal costs that destroy lives. This bill has passed off the House floor with bipartisan support and will provide legal clarity for patients' rights.

(Opposed) Before recreational use, arrest protections were provided for qualifying patients. A person is protected from arrest if they have their card and have been entered into the

Database. This bill allows a person to have these arrest protections even if they do not have a card or are not in the database and that could allow for forgeries of an authorization.

**Persons Testifying:** (In support) Representative Shelley Kloba, prime sponsor; John Kingsbury and Burl Bryson, Cannabis Alliance; Mary Brown, SMJ Consulting; Lisa Buchanan; Steven Fields; and Micah Sherman, Raven.

(Opposed) Taylor Gardner, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.