



Judicial Impact Statement

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SB 261: Revision to Medical Marijuana Law

SB 261

Sen. S. Huffman

Title Information

To amend sections 109.572, 3796.01, 3796.02, 3796.03, 3796.032, 3796.05, 3796.06, 3796.061, 3796.08, 3796.10, 3796.11, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, 3796.17, 3796.18, 3796.19, 3796.20, 3796.21, 3796.22, 3796.23, 3796.27, 3796.30, 4731.30, and 4776.01; to enact sections 3796.35, 4731.303, and 4731.304; and to repeal sections 3796.031 and 3796.04 of the Revised Code to amend the law related to medical marijuana.

Background

Under the Federal Controlled Substances Act, the use of marijuana is a federal crime. The authorization of marijuana use for medical purposes in Ohio was codified by HB 523 and signed into law by former Governor John Kasich in 2016. In the six years since the enactment of HB 523, Ohio has maintained and operated the medical marijuana control program; licensing retail dispensaries and registering patients and their caregivers falls under the regulatory responsibility of the State Board of Pharmacy. SB 261 was introduced by Senator Stephen Huffman to revise medical marijuana law in Ohio. The bill expands Ohio's current medical marijuana law by granting more cultivation space, increasing the patient-to-dispensary ratio, and raising the maximum tetrahydrocannabinol content of marijuana extracts. Additionally, SB 261 provides additional qualifying conditions and grants broad discretion to recommending physicians when recommending the use of medical marijuana for the relief of symptoms.

Judicial Impact

Of concern to the judiciary are the provisions of SB 261 that add to the list of qualifying conditions, establish a division of marijuana control, and expand forms of medical marijuana that may be dispensed. These are policy decisions well within the purview of the legislature, but they do have an impact on the administration of justice by the courts.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Sec. 3796.01 of SB 261 expands the list of qualifying conditions by adding arthritis, migraines, autism spectrum disorder, spasticity or chronic muscle spasms, hospice care or terminal illness, opioid use disorder, and a catch-all for any condition the recommending physician reasonably expects marijuana to relieve symptoms or to otherwise benefit a patient.

Sec. 3796.06 of SB 261 expands the forms of medical marijuana that may be dispensed. The forms of medical marijuana added in SB 261 include pills, capsules and suppositories, oral pouches, oral strips, oral or topical sprays, salves or lotions or similar items, and inhalers. The law still prohibits the smoking and combustion of medical marijuana but allows for the inhalation of medical marijuana. The language also raises the maximum potency of tetrahydrocannabinol in medical marijuana extracts to 90%.

Sec. 3796.22 of SB 261 states that a registered patient shall not possess medical marijuana in excess of a ninety-day supply. This section also clarifies that registered patients shall not be subject to criminal prosecution or arrest for the possession or use of medical marijuana or paraphernalia and accessories (see R.C. 3796.03). This section does not authorize a registered patient to operate a vehicle under the influence of medical marijuana.

Conclusion and Recommendations

Although expanding the eligibility to use medical marijuana in Ohio not likely have an enormous impact on the caseload of Ohio's courts. It is, however, bound to result in increased use and therefore increased numbers of incidents of impaired working or driving. More important to court's workload is clarification of conflicting policy surrounding use of medical marijuana. For example, SB 203 (Sen. Manning) Marijuana Use OVI, removes the "per se" OVI for Marijuana. In other words, a positive drug test alone, without additional indication of impairment is insufficient to establish an OVI. SB 261 should work in coordination with bills like SB 203 and other bills that would clarify the law in situations where someone may have a medical marijuana card but should not be using marijuana.¹

¹ In *State v. Donoho*, the 11th District Court of Appeals determined that a trial court did not abuse its discretion when determining that the defendant, a medical marijuana cardholder, violated the terms of his probation by using marijuana (*State v. Donoho*, 2018-Ohio-4950). In *State v. Hobden*, the 9th District Court of Appeals found that a trial court's refusal of Mr. Hobden's request to serve his jail sentence on electronically monitored house arrest due to his continued use of medical marijuana was not unreasonable, arbitrary, or unconscionable (*State v. Hobden*, 2020-Ohio-2877). Likewise, the 9th District found in *State v. Ryan*, that the court did not abuse its discretion when it imposed community control provisions regarding the use of marijuana despite Mr. Ryan's status as a medical marijuana card holder. (*State v. Ryan*, 2021 Ohio 4059 (Ohio Ct. App. 2021))