

Three Reforms Mark Shift in Views of Marijuana in Delaware

Peter S. Murphy, Delaware Law Weekly

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In the last 30 days, Delawareans witnessed three major events that further loosen restrictions on marijuana use and possession in the state. The first two reforms relate to medical marijuana accessibility: the passing of SB 90, which permits minors' access to medical marijuana oils for the treatment of various conditions, including intractable epilepsy; and, the opening of Delaware's first medical marijuana dispensary in New Castle County. Lastly, on June 18, Gov. Jack Markell signed HB 39, which downgrades the punishment for possession of small quantities of marijuana from a crime to a civil offense punishable by a \$100 fine. These recent collective measures demonstrate the growing support among legislators and Markell toward greater medical marijuana access, and perhaps, a changing view toward recreational use as well.

On June 23, Markell signed "Rylie's Law"—a bill that gives minors access to medical marijuana-based oils used to treat intractable epilepsy and other conditions. The oils do not contain enough THC—the psychoactive ingredient in marijuana—to get the patient high. Although Delaware legalized medical marijuana in 2011, that law restricted use to those 18 years old and over. In recent years, marijuana-based oils have proven an effective treatment for children with severe seizure disorders. Some children have as many as 100 seizures per day. Using an oil derived from marijuana with low amounts of THC—the ingredient that creates a high—and high levels of CBD—a non-psychoactive ingredient shown to have a beneficial effect—parents have been able to manage and sometimes eliminate their child's seizures all together. The bill was sponsored by Delaware Sen. Ernie Lopez, R-Lewes, and was motivated by a call he received from a concerned Delaware mother who vouched for the benefits of low-THC oil treatment for her child's seizure disorder. The bill moved quickly through the General Assembly with bipartisan support and passed unanimously.

This past Friday also saw the opening of Delaware's first and only licensed medical marijuana dispensary—First State Compassion Center Inc. (FSCC). The dispensary, known as a "compassion center" in Delaware, is the state's only access point for Delaware patients to obtain medical marijuana. The Delaware Medical Marijuana Act, passed in 2011, called for a minimum of three medical marijuana dispensaries—one for each of Delaware's three counties—with licenses to be issued by Jan. 1, 2013. The program was put on hold for the next two years due to a perceived threat of federal prosecution. In 2013, Markell announced

his intention to move forward, but limited the rollout to one pilot facility to be located in New Castle County. The government awarded the lone dispensary contract to FSCC, which is operated by CEO Mark Lally. After further delays due to litigation, the compassion center finally opened its doors to Delaware's 340 registered medical marijuana patients.

FSCC may not be able to handle the demand. By law, FSCC is restricted to 150 total plants and no more than 1,500 ounces of medical marijuana on the premises. The law also requires enhanced security measures, including around-the-clock video surveillance. Security, however, should not be an issue. Lally is a former Delaware State Police officer and former aide to U.S. Sen. Tom Carper, D-Del.

Finally, last week Markell signed HB 39, which decriminalizes the possession of small amounts of marijuana in Delaware. Under the new law, possession of up to one ounce of marijuana is treated as a civil offense punishable by a \$100 fine. Public use will remain a misdemeanor and can result in a \$200 fine or up to five days in jail. The bill's sponsor, Rep. Helene Keeley, D-Wilmington South, said in a written statement that the bill was about rebalancing resources and priorities:

"What we sought to do with HB 39 was help break the cycle that begins when otherwise upstanding, law-abiding Delawareans are thrust into the criminal justice system for an activity that poses little threat to public safety. A criminal charge for simple marijuana possession, not even a conviction, can jeopardize a person's opportunities for employment, higher education, housing, volunteer work and other necessary or worthwhile life goals.

"By treating possession more like a traffic ticket than a drug charge, we can rebalance the use of limited law enforcement and criminal justice resources across the state. This law is not legalization, and it places no limits on the right of employers to require their workers to be drug-free. It's simply an acknowledgment of the fact that criminal penalties aren't a practical punishment for the personal, recreational use of marijuana."

Keeley is not alone in her view. Delaware joins 19 other states and the District of Columbia as jurisdictions that no longer criminally punish possession of recreational amounts of marijuana. In Illinois, a similar bill passed the state House and Senate in May, but as of this writing it sits unsigned on the desk of Gov. Bruce Rauner. The Delaware law is set to take effect in six months.

These three events mark a significant shift in the legal and social views toward marijuana in the state. In the past six months, Delaware lawmakers have been able to ride the momentum of the marijuana reform movement and enact legislation aimed at improving the lives of Delaware patients and citizens.

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