



## Children, Families, Health, and Human Services Interim Committee

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### 61st Montana Legislature

#### SENATE MEMBERS

RICK LAIBLE--Vice Chair  
ROY BROWN  
CHRISTINE KAUFMANN  
TRUDI SCHMIDT

#### HOUSE MEMBERS

DIANE SANDS--Chair  
MARY CAFERRO  
GARY MACLAREN  
PENNY MORGAN

#### COMMITTEE STAFF

SUE O'CONNELL, Research Analyst  
LISA JACKSON, Staff Attorney  
FONG HOM, Secretary

# MINUTES

## MEDICAL MARIJUANA SUBCOMMITTEE

July 12, 2010

Room 137, Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about subcommittee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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### **SUBCOMMITTEE MEMBERS PRESENT**

REP. DIANE SANDS, Chair

SEN. TRUDI SCHMIDT  
REP. GARY MACLAREN  
REP. PENNY MORGAN

### **OTHER MEMBERS PRESENT**

SEN. RICK LAIBLE

### **STAFF PRESENT**

SUE O'CONNELL, Research Analyst  
LISA JACKSON, Staff Attorney  
FONG HOM, Secretary

### **Visitors**

Visitors' list, Attachment #1.

## **COMMITTEE ACTION**

- The subcommittee passed several motions that would: prohibit a person convicted of a felony to be a caregiver, expand background checks for registering caregivers, require caregivers to register location of their business, require that the marijuana be grown in Montana, you cannot legally transport marijuana unless you are authorized to grow marijuana, if a cardholder is convicted of DUI, they can lose their card.
- The subcommittee adopted Ms. O'Connell's draft language to 50-46-205, MCA.
- The subcommittee adopted draft language into 50-40-103(8), MCA.
- The subcommittee adopted the terms "registered cardholder" and "qualifying patient" as appropriate throughout the Act.

## **CALL TO ORDER AND ROLL CALL**

- 00:00:01 Rep. Sands called the meeting to order at 10:02 a.m. The secretary noted roll visually. Ms. O'Connell gave an overview of the meeting agenda.
- 00:02:49 The minutes of the June 29, 2010, meeting were approved as written.

## **AGENDA**

### **• LAW ENFORCEMENT ISSUES**

- 00:04:49 Ms. O'Connell gave an overview of law enforcement issues that were taken from public comments and written comments from the work groups (**Exhibit 1**).

- 00:06:16 **Jim Smith, Montana County Attorneys Association**, distributed written comments from the Montana County Attorneys Association, along with recommendations from Jim Smith; Lewis Smith, Powell County Attorney; and Attorney General Steve Bullock (**Exhibit 2**).

### **Affirmative Defense - Mark Murphy, Chief Deputy, Yellowstone County Attorney's Office (retired)**

- 00:17:22 Mr. Murphy discussed the issue of the affirmative defense provided by the Medical Marijuana Act.

### **Questions**

- 00:19:53 REP. SANDS asked about ways to tighten up the affirmative defense language. **Mr. Murphy** said some clarifications could be made.

- 00:21:59 REP. MORGAN asked if Mr. Murphy had proposed draft legislation as to how to revise the affirmative defense. **Mr. Murphy** said language will be drafted later and circulated among the county attorneys.

### **Discussion on Affirmative Defense**

- 00:26:56 The subcommittee members discussed issues related to 50-46-206, MCA, the affirmative defense.

### **Motion by Rep. MacLaren to strike the Affirmative Defense provision**

00:28:23 Rep. MacLaren **moved** to strike the Affirmative Defense provision. The motion **passed**.

#### **Limits on caregiver registrations**

00:30:31 Ms. O'Connell said that the law currently prohibits anybody from being a caregiver if they have a felony drug conviction.

#### **Discussion**

The members of the subcommittee discussed other types of crimes that should also be added to the list; i.e., whether registered sexual offenders and registered violent offenders should be allowed to be caregivers, and people convicted of felony theft or embezzlement.

#### **Motion by Rep. Morgan to prohibit a person convicted of a felony from being a caregiver**

00:33:05 REP. MORGAN **moved** to prohibit anyone from being a caregiver who has been convicted of a felony. The motion **passed**.

#### **Discussion on misdemeanor offenses**

00:34:10 The committee members discussed whether or not misdemeanor offenses are legitimate offenses to be included in the list of disqualifying offenses.

#### **Motion by Rep. Morgan to add misdemeanor drug charges**

00:38:39 REP. MORGAN **moved** to add misdemeanor drug charges. The motion **passed**.

#### **Discussion on minors in possession up to age 21**

00:39:10 REP. MORGAN said that this marijuana issue should fall under the minor in possession laws up to 21. Ms. O'Connell said that staff could research the issue.

#### **Issue of penalty for allowing someone else to use card**

00:41:30 Ms. O'Connell said that it has been suggested that the law should contain some penalties for various violations. While several things are prohibited, there are few penalties in the Medical Marijuana Act. REP. SANDS discussed the requirement of showing both the card and a photo ID when requested by law enforcement.

#### **Background checks**

00:44:04 Ms. O'Connell said that one of the law enforcement recommendations is to conduct a 50-state background check before somebody could be registered as a caregiver.

#### **Motion by Sen. Schmidt for background check**

00:45:45 SEN. SCHMIDT **moved** to expand background checks for those registering as caregivers. The motion **passed**.

#### **Location of growing operations**

00:46:41 The committee discussed whether or not caregivers should register the location of the grow operations with the Department of Public Health and Human Services and to make the list available to law enforcement and other regulatory entities.

**Motion by Sen. Schmidt to require caregivers to register the location of their operation**

00:48:21 Sen. Schmidt **moved** to require caregivers to register the location of their businesses and grow operations with DPHHS, make the list available to law enforcement entities, and to notify law enforcement within so many days that they have moved their business. The motion **passed**.

**Require medical marijuana be grown in Montana**

**Motion by Rep. Morgan to require that medical marijuana be grown in Montana**

00:49:34 Rep. Morgan **moved** to require medical marijuana be grown in Montana. The motion **passed**.

**Recordkeeping**

00:50:32 REP. MORGAN asked about New Mexico's language for recordkeeping. It was decided to defer discussion on this topic until more information is provided.

**Chain of Custody**

**Motion by Sen. Schmidt for a chain of custody**

00:53:43 SEN. SCHMIDT **moved** for creation of a chain of custody to account for growing marijuana to distributing it to ensure that the chain of ownership is actually detailed and available for law enforcement entities. The motion **passed**.

**Allowable amounts of medical marijuana**

00:54:37 REP. MORGAN asked about allowable amounts of medical marijuana in state law. Ms. O'Connell said that the statute allows one ounce of usable marijuana: whether it is one ounce of dried marijuana, a one-ounce brownie, or one ounce of hashish. REP. SANDS said she would prefer more research and suggestions that are more specific before coming to any decisions on that topic.

**Caregiver-to-caregiver sales**

00:56:52 REP. SANDS asked about the distribution system. She said that she isn't ready to decide whether we would prohibit caregiver-to-caregiver sales because she doesn't know what is in the system.

**Transportation of medical marijuana**

00:58:59 The members of the committee discussed the legal issues of employees of caregivers handling or transporting marijuana and whether or not there should be another category for a person who is not a registered caregiver but has the authority to work in a facility or to transport the marijuana if necessary to a patient. REP. SANDS asked if it would be helpful to law enforcement to say that only a person who is specifically designated, unless provided for in law, they may not legally transport medical marijuana.

**Motion by Rep. Morgan**

01:00:41 REP. MORGAN **moved** that for the purposes of law enforcement, unless a

person is legally authorized to have medical marijuana, you may not legally transport marijuana. The motion **passed**.

**Licensure**

01:01:08 REP. SANDS said that topic will be discussed at a later time, along with topics of distribution and tracking.

**Possession of registry card**

01:01:15 That topic has been already discussed.

**Allowable number of plants**

01:01:50 REP. MORGAN said that would also be included in the topic of distribution and tracking.

**Definition of plant**

01:01:57 Ms. O'Connell said that topic was requested by law enforcement.

**Revocation of cards**

**Motion by Rep. Morgan for revocation of a registry card**

01:02:08 REP. MORGAN **moved** for permanent revocation of registry cards if a caregiver or patient is convicted of a drug offense or for allowing the use of the card by someone else other than the cardholder. The motion **passed**.

**Penalty issues**

01:03:10 REP. SANDS said that the law should address the issue of penalties for violations of various provisions. She suggest staff look into that.

**Issue of driving while under the influence**

**Motion by Rep. MacLaren for revocation of a medical marijuana card if convicted of driving under the influence**

01:06:44 REP. MACLAREN **moved** that medical marijuana cardholders convicted of driving under the influence, lose their card. The motion **passed**.

**Issue of people in custody or under supervision of law enforcement**

**Motion by Rep. Morgan to prohibit people in custody or under supervision of the state to carry card**

01:11:03 REP. MORGAN **moved** that people who are in the custody or under the supervision of the Department of Corrections be prohibited from being a cardholder. The motion **passed**.

• **PUBLIC COMMENT**

01:11:38 **Tom Daubert, Patients and Families United**, commented on the

recommendations made by the committee which he disagrees with: affirmative defense, caregiver-to-caregiver sales, and transportation of medical marijuana.

- 01:18:15 **Tayln Lang, Director, Missoula Chapter of Montana Medical Growers Association, and General Manager, Zoo Mountain Natural Care**, commented on the issue of allowing the parent to contract with a caregiver if a minor needs to use medical marijuana.
- 01:21:20 **Rose Habib, Analytical Chemist**, addressed the idea of limiting possession of marijuana.
- 01:23:51 **Mike Batista, Department of Justice**, commented on the caregiver-to-caregiver issue of adequate supply.
- 01:26:56 **Katrina Farnum, board member, Montanans for Responsible Legislation**, commented on caregiver-to-caregiver exchanges.
- 01:30:17 **Quois Farnum-clark** said his mom is a caregiver/herbalist in Missoula who teaches people how to use medicine responsibly. He said that he has been around herbs most of his life and that medical cannabis is helping people and doesn't subjugate children to irresponsible and illegal use.
- 01:33:29 **Trenton Hancock** addressed the economic point of view and suggested taxing marijuana.
- 01:35:33 **Heidi Handford, Montana Connect Magazine**, commented on parents with sick children who needs medical marijuana.
- 01:37:22 **Jim Gingery, Executive Director, Montana Medical Growers Association**, commented on the methodology for the distribution and tracking of medical marijuana, and how a board might be structured if the subcommittee decided to move forward on a regulatory board.
- 01:39:08 **Chris Arneson, Montana Caregivers Network**, spoke on the affirmative defense provision of the law.
- 01:40:09 **David Max** commented on the caregiver-to-caregiver sales issue, the limit of possession, indoor versus outdoor growing, and suggested focusing on plant number and current harvesting amounts.
- 01:42:14 **Rick Rosio, President, Montana Pain Management**, talked about dried versus cured plants.

## **LUNCH**

- 02:20:05 REP. SANDS reconvened the meeting at 12:22 p.m.

- **COMMITTEE COMMENTS**

02:21:33 SEN. SCHMIDT discussed the information from Ms. O'Connell regarding medical marijuana patients by age (**Exhibit 3**).

02:24:01 REP. MORGAN said that she is also concerned by the statistics that the committee received.

02:25:17 REP. MACLAREN said that he hears people asking what the Legislature is going to do about medical marijuana and that marijuana is out of control. What the voters approved back in 2004 is and what is going on today.

02:26:24 REP. SANDS said that legislators need to move slowly through the issues and take the time as a subcommittee to put together something for the full committee. She is also concerned and distressed to see the statistics of the 20- to 30-year-olds who are cardholders. She addressed the fact that providers are advertising for medical conditions that are not authorized in the law.

- **DISTRIBUTION AND TRACKING OF MEDICAL MARIJUANA**

02:32:05 Ms. O'Connell discussed Colorado's Medical Marijuana Laws (**Exhibit 4**).

**Discussion**

02:34:29 The members of the subcommittee discussed what kind of a model they would be interested in seeing: an industrial tiered system or a highly regulated cottage model.

- **PUBLIC COMMENT**

02:56:00 **Heidi Handford** commented on the statement that the goal of the committee was to reduce the number of patients and caregivers. This does not give the industry an opportunity to resolve itself.

02:57:13 **Trent Hancock** said he has not heard anything positive about medical marijuana from the committee and doesn't believe that there is anyone on the committee who is educated about marijuana.

02:58:55 **Tayln Lang** addressed the issue of limiting the number of patients per caregiver.

03:00:09 **Jim Roth** commented on the necessity of medical marijuana for his wife, who suffers from a chronic disease.

03:01:49 **Mary Boustead, Bozeman**, talked about limiting the number of patients per caregiver.

03:07:00 **Katrina Farnum** said that limiting the number of patients per caregiver will increase number of caregivers.

03:12:59 **Cheryl Harvey** understands the dilemma and the gray area, which is what model do we want. She believes that the committee should speak with the leaders in

this industry who are growers.

- 03:15:12 **Roxanne Settera, Great Falls**, talked about the difficulties of growing marijuana.
- 03:20:49 **Ken Lindeman** is concerned about new laws that will impact the industry.
- 03:24:11 **Jim Smith** suggested that if the subcommittee wanted to pursue a cottage industry model, a licensure board should be looked at similar to those boards that control liquor licenses or gambling control.
- 03:27:33 **Jim Gingery, Montana Growers Association**, commented on the distribution and tracking of caregivers.
- 03:33:37 **Jack Kane, Department of Labor and Industry**, commented on establishing or creating a board within the Professional and Occupational Licensing Division and doesn't feel that licensing caregivers falls within the purview of the professional and occupational licensing guidelines.
- 03:38:31 **Chris Lindsey** suggested talking with the Department of Agriculture over the issue of crops grown by caregivers.

- **FOLLOWUP FROM JUNE MEETING**

- Board of Medical Examiners information**

- 03:48:51 Ms. O'Connell talked about issues raised by the subcommittee in June that could be taken up at the next Board of Medical Examiners' meeting: continuing medical education in pain management, DEA licensure, whether a physician who has been charged with a drug offense or ordered into an impaired physician program be allowed to certify patients, whether medical marijuana should be the treatment of last resort, and whether caregiver regulation or inspection should be put under the Board of Medicine.

REP. SANDS asked about the issue regarding the federal restriction of physicians who prescribe directly only one drug for patients and the federal law that prohibits pharmaceutical companies. **Jean Branscum, Executive Director, Board of Medical Examiners**, said that she would take that issue to the next meeting.

**BREAK**

- Draft language related to school prohibitions**

- 04:09:20 Ms. O'Connell discussed draft language in section 50-46-205, Limitations of Medical Marijuana Act (**Exhibit 5**).

- Motion by Rep. MacLaren's to adopt language**

- 04:15:47 REP. MACLAREN **moved** to adopt Ms. O'Connell's draft language to 50-46-205, MCA. The motion **passed**.



**Draft language in 50-40-103, MCA, definition section in the Clean Indoor Air Act Provisions**

04:17:48 Ms. O'Connell discussed definitions (**Exhibit 6**) in the Clean Indoor Air Act.

**Motion by Rep. Morgan to adopt draft language in 50-40-103, MCA**

04:19:31 REP. MORGAN **moved** to adopt draft language into 50-40-103(8), MCA. The motion **passed**.

**Smoking marijuana outside of public places**

04:21:16 There was a discussion to address options over smoking in public spaces that impact the public. REP. SANDS said that she would like to address this and other local government issues at the next meeting.

**Potential revisions to the Medical Marijuana Act definitions**

04:24:57 Ms. O'Connell discussed the potential revisions to Medical Marijuana Act definitions (**Exhibit 7**).

**Ambiguities in the "Qualifying Patient" definition**

04:30:59 Ms. O'Connell discussed qualifying patient definitions and the policy options for addressing the ambiguities created by the definition (**Exhibit 8**). Ms. O'Connell discussed how the changes would look in 50-46-201, MCA (**Exhibit 9**) and that sometimes making those changes might not make sense.

**Discussion**

04:31:21 The subcommittee discussed doing away with the words "qualifying patient" and using the words "registered cardholder" where it is appropriate.

**Motion by Rep. Morgan**

04:37:06 REP. MORGAN **moved** to use the terms "registered cardholder" and "qualifying patient" as appropriate throughout the Act. The motion **passed**.

04:37:21 The subcommittee members discussed other issues related to definitions used in the Act, as follows:

04:38:00 **Severe chronic pain**

04:39:20 **Employee definition**

04:43:17 **Physician requirements**

04:45:28 **"Plant"**

04:46:52 **"Qualifying patient" - residency requirements**

04:47:00 Ms. O'Connell distributed a document entitled "State Medical Marijuana Residency Requirements" (**Exhibit 10**).

04:50:42 **"Standard of care"**

04:51:15      **"Usable marijuana"**

- **PUBLIC COMMENT**

04:55:07      **Tayln Lang, Director, Missoula Chapter of the Montana Medical Growers Association, and General Manager, Zoo Mountain Natural Care,** commented on PTSD, definition of plants, and the issue of hashish.

04:58:30      **John Flink, Montana Hospital Association,** said the Association would prefer that medical marijuana be prohibited in hospitals and healthcare facilities. He commented on hospice and HIPAA issues.

05:02:11      **Jim Gingery, Montana Medical Growers Association,** talked about producing an outline of how the plant grows so that everybody can understand the growing process, the different elements of the plant, and the different by-products of the plant to help guide some of the terminology questions.

05:03:46      **Roxanne Settera** commented on growing the plants.

05:07:08      **Chris Lindsey** talked about the manufacturing aspect of marijuana and the definition of plants.

05:09:04      **Heidi Handford** commented on being a patient who is growing marijuana for the first time in her life.

05:12:14      **Brekke Peterson, Montana Botanical Analysis,** does chemical analysis, and if the committee needs any information, they can provide it.

05:17:22      **Cheryl Harvey** talked about growing plants and keeping records throughout the entire growing process.

- **FURTHER DIRECTION TO STAFF**

05:19:28      Ms. O'Connell talked about agenda items for the next meeting: discuss local government issues, hear more about regulation along the alcohol and gambling control lines, comments from the Board of Medical Examiners after its July meeting, provide more information on public smoking and options in that area, more information on residency requirements, and more information on issues involved and the usable marijuana definition and plant definition.

05:21:22      REP. SANDS said she wanted to add the Chamber of Commerce issues related to the business community, language around rental property and the right to grow marijuana in rental property, take a draft bill to the full committee at the August meeting, and review draft law enforcement language.

- **ADJOURNMENT**

05:24:19      REP. SANDS adjourned the meeting at 3:26 p.m. The subcommittee will meet

August 12, 2010.

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