

# The **NORML** Leaflet

A publication of the NORML Foundation

## Nevada Defelonizes Pot Possession

### New Law Also Legalizes Medical Use

**T**wo years ago, Las Vegas Assemblywoman Christina Giunchigliani (D) approached NORML with an ambitious legislative proposal: decriminalizing Nevada’s draconian marijuana laws. This fall, her vision becomes reality.

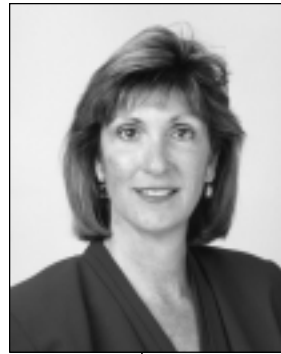
The Nevada legislature overwhelmingly passed legislation in June defelonizing the Silver State’s toughest-in-the-nation pot laws and authorizing the drug’s medical use. The legislature is the first in 24 years in the U.S. to eliminate jail time and criminal records for minor marijuana offenders, and the ninth state since 1996 to legalize the use of medical marijuana under a doctor’s supervision.

“The drought is over,” proclaims NORML’s Keith Stroup, who worked with Giunchigliani behind the scenes in support of the new law. “The political climate is once again appropriate to address the issue of abolishing criminal penalties for the recreational use of marijuana.”

Assembly bill 453, spearheaded by Giunchigliani (known locally as Chris G.), reduces penalties for the possession of up to one ounce of marijuana from a felony – punishable by up to four years in jail – to a fine-only misdemeanor for first and second time offenders. Under the new law, which takes effect on October 1, prosecutors cannot charge marijuana offenders with a felony until their fourth offense.

Eleven states and numerous local municipalities currently have similar state laws decriminalizing marijuana possession. (See [www.norml.org/legal/state\\_laws](http://www.norml.org/legal/state_laws) for a newly updated listing of marijuana laws in the U.S.)

“I got tired of cops doing sweeps with my constituents,” said Giunchigliani. “I think it’s time



Las Vegas Assemblywoman  
Christina Giunchigliani

that Nevada closed the door on antiquated drug policies ... and focused its efforts on prevention and treatment.”

Nevada’s new law also legalizes the use of medicinal marijuana by patients under their physician’s supervision. State voters approved a constitutional amendment in 1998 and 2000 mandating the legislature to legalize medical pot. Giunchigliani’s bill allows qualified patients to grow up to seven marijuana plants for medical purposes and establishes a confidential registry.

“The State of Nevada, as a sovereign state, has the duty to carry out the will of the people of this state and regulate the health, medical

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## Rocky Start, Happy Ending for Colorado Medi-Pot Program

**N**early four years after reformers initiated their efforts, medical marijuana is finally legal in Colorado. Despite objections from the governor and attorney general, the state Health Department began licensing qualified patients on June 1 to grow and possess medicinal marijuana. More than 800 seriously ill Coloradans are expected to receive exemptions before the year’s end.

Perhaps in no state has the road to victory been rockier than in Colorado. Although re-

formers originally placed the initiative on the 1998 electoral ballot (where exit polls indicated it passed handily), improprieties by then-Secretary of State Victoria Buckley – including her office’s refusal to properly count and certify signatures collected by petitioners Coloradans for Medical Rights (CMR) – forced a judge to disqualify the initiative pending a full investigation. Following the 1998 election, a Denver district judge found that petitioners had in fact

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The NORML Foundation is a 501(c)(3) tax-exempt foundation. Contributions to the Foundation are tax-deductible as a charitable contribution.

Leaflet is published by The NORML Foundation.  
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# INTERNATIONAL

## Reefer Rebellion Spreads Worldwide

It may not be televised, but a global ganja revolution is taking place before our eyes. From Canada to New Zealand, marijuana-law reform is *the* hot item of debate.

Not surprisingly, this ongoing insurrection has gained its strongest foothold in Europe, the long-time global breeding ground for cannabis reform. Earlier this year, the Belgian government lifted its ban on marijuana cultivation and use, heeding the advice of its Health Ministry which found “no objective reason why cannabis should be treated differently than alcohol and tobacco.” The government of Luxembourg quickly followed suit. Similarly, in Switzerland, government officials announced plans in March to implement a 1999 federal commission’s recommendation to “make it possible for cannabis to be purchased lawfully” by encouraging the creation of Dutch-style marijuana coffee-shops. Not to be outdone, the Portuguese government enacted regulations this summer decriminalizing the consumption and possession of small quantities of *all* drugs. Presently only four European Union nations – Finland, France, Greece and Sweden – criminally prosecute marijuana smokers.

In Britain, marijuana legalization remains a prominent topic of debate within Parliament. Government officials recently instructed law enforcement and customs officials to stop targeting marijuana violators – including smugglers and dealers – in a move hailed as the most radical shift in British drug policy in a generation. In addition, a powerful House of Commons committee will begin a formal inquiry in October into whether Parliament should decriminalize marijuana outright. Nonetheless, it remains the judicial arena where activists are most hopeful of achieving a cannabis upheaval. Presently, several activists are pursuing legal challenges to declare marijuana prohibition illegal. They argue that that Article 8 of European Convention of Human Rights – adopted by Britain last fall – forbids pot prosecutions because it bars the government from interfering in private conduct except “in the interests of national security, public safety or the economic well-being of the country.” Legal scholars note that a similar chal-

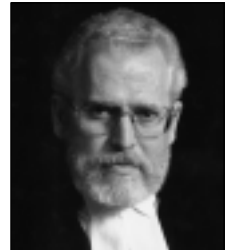
lenge was victorious in Germany and persuaded police to virtually abandon marijuana prosecutions there.

But the ongoing reefer revolution is hardly limited to just the European continent. Elsewhere, a New Zealand parliamentary

committee began hearing testimony in May on whether to decriminalize the drug. And in Jamaica, the National Commission on Ganja recently issued their report, calling for marijuana decriminalization for personal and religious use.

However, perhaps most significant is the emerging debate taking place immediately to our north, where strong public and political support now favors removing criminal penalties on the recreational use of cannabis in Canada. (Growing and smoking marijuana for medical use is already legal.) Political heavyweights, former Canadian Prime Minister Joe Clark, Justice Minister Anne McLellan and Health Minister Allan Rock, recently voiced their support for lifting the ban on pot, and the House of Commons voted in May to commence an 18-month inquiry to study the issue. Later this fall, attorney John Conroy, President of Canada NORML, will be arguing before Canada’s Supreme Court that marijuana prohibition is unconstitutional. It’s a viewpoint shared by a growing number of Canadians. Recent national surveys report that nearly 50 percent of the public now favors legalizing cannabis, up from a mere 24 percent in 1990.

Could these global upheavals be a sign of things to come? “Clearly, the wind of change is upon us,” says NORML Foundation’s Allen St. Pierre, who believes that today’s political climate is similar to that in the 1970s when 11 states decriminalized marijuana. “And although the ramifications have yet to reverberate within Congress’ close-minded corridors, it’s only a matter of time before the seeds of revolution sprout in Washington.”



John Conroy, President of Canada NORML

## Rocky Start, Happy Ending for Colorado Medi-Pot Program

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collected sufficient signatures, and ordered the proposal to appear on the November 2000 ballot.

Meanwhile, Colorado legislators and law enforcement officials campaigned vocally against the measure—flying in Washington anti-drug advocates to rail against the proposal and overwhelmingly endorsing a resolution opposing “any effort to mandate ... that marijuana be described as medicine [or] that any information [be] provided ... that marijuana has medicinal uses.” Nevertheless, despite the efforts of politicians and various law enforcement groups, voters approved Amendment 20 on November 7, 2000. Its passage amended the state’s constitution to recognize the medical use of marijuana, and mandated the legislature to establish a confidential patient registry.

Not surprisingly, many state politicians continued to voice their disapproval for the program even after the election, and several went so far as to falsely state that May’s Supreme Court decision rejecting the rights of cannabis buyers’ clubs to raise the medical necessity defense under federal law somehow nullified Colorado’s law. Nevertheless, the Colorado legislature ultimately approved regulations implementing the medical marijuana program on April 23.

Under the law, patients suffering from a “debilitating medical condition” may apply with the state Health Department for identification cards exempting them from state criminal prosecution. Patients must pay \$140 annually to apply for the card, and must attain written permission from their physician stating, “Marijuana may mitigate the symptoms or effects of the patient’s condition.” Patients or their caregivers may legally possess up to two ounces of medical marijuana or grow up to six plants under the law. Those patients who possess greater quantities or who fail to register with the state may argue the “affirmative defense of medical necessity” if they are arrested on marijuana charges.

So far, more than 175 applications have been mailed to prospective applicants, and approximately 30 patients have been accepted into the program. Even so, its launch has been

anything but smooth, thanks in large part to resistance by the Governor Bill Owens (D) and Attorney General Ken Salazar (R).

Just one day before the program was scheduled to begin, the state’s two top elected officials publicly contacted Acting U.S. Attorney Richard Spriggs to encourage him to federally prosecute patients who complied with the state law. The duo also wrote the Colorado Medical Society to ominously, but fortunately incorrectly, warn state physicians that they could face federal sanctions if they participate in the program. So far, however, there is little indication that their attempt to derail Colorado’s medical marijuana law is working.

Almost immediately, Spriggs rebuffed Owens and Salazar’s request. “Neither the governor nor the attorney general should engage in unfounded speculation about who might be prosecuted in federal court,” Spriggs replied, adding that the medical use of marijuana by Coloradans was a state, not a federal matter. In addition, state officials affirmed that, under the law, the names of patients and doctors in the state’s medical marijuana registry must be kept confidential—even from federal prosecutors.

“It is unfortunate that Colorado politicians have consistently worked toward thwarting the will of the voters and denying medicine to the sick and dying,” says the NORML Foundation’s Allen St. Pierre. “Nonetheless, we are confident that thousands of seriously ill Coloradans will eventually benefit from this hard-fought legislation, and will be able to use medicinal marijuana with relative impunity.”

Application information for the Colorado Medical Marijuana registry is available online from the Colorado State Health Department at: <http://www.cdphe.state.co.us/hs/medicalmarijuana/marijuanafactsheet.asp> or by writing:

**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
 HSVR-ADM2-A1  
 4300 Cherry Creek Drive South  
 Denver, CO 80246-1530

## Nevada Defelonizes Pot Possession

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practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana,” legislators affirmed in a preamble to the new law.

An additional provision in the law requires the Nevada School of Medicine to “aggressively” seek federal approval to implement a medical marijuana research distribution program that will allocate marijuana and seeds to patients.

“Assembly Bill 453 was crafted to do three things,” said a victorious Giunchigliani. “Implement the will of the people; provide compassionate medical aid to the chronically ill, and establish a rational drug policy focused on treatment – not jail.” Thanks to one woman’s perseverance and vision, Nevada’s law does all that and more.

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 this fall for more information

[www.NORML.org](http://www.NORML.org)

## UPDATE OF STATE MEDICAL MARIJUANA PROGRAMS

### ALASKA

**SUMMARY:** Fifty-eight percent of voters approved Ballot Measure #8 on November 3, 1998. The law took effect on March 4, 1999. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess written documentation from their physician advising that they “might benefit from the medical use of marijuana.” Patients diagnosed with the following illnesses are afforded legal protection under this act: cachexia; cancer; chronic pain; epilepsy and other disorders characterized by seizures; glaucoma; HIV or AIDS; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea. Other conditions are subject to approval by the Alaska Department of Health and Social Services. Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, and may cultivate no more than six marijuana plants, of which no more than three may be mature. The law establishes a confidential state-run patient registry that issues identification cards to qualifying patients. To date, approximately 200 cards have been issued.

**AMENDMENTS:** Yes. Senate Bill 94, which took effect on June 2, 1999, mandates all patients seeking legal protection under this act to enroll in the state patient registry and possess a valid identification card. Patients not enrolled in the registry will no longer be able to argue the “affirmative defense of medical necessity” if they are arrested on marijuana charges.

**CONTACT INFORMATION:** For more information on Alaska’s medical marijuana law, please contact:

#### ALASKANS FOR MEDICAL RIGHTS

P.O. Box 102320  
Anchorage, AK 99510  
(907) 277-AKMR (2567)  
<http://www.alaskalife.net/AKMR>

Application information for the Alaska medical marijuana registry is available by writing or calling:

#### ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES

P.O. Box 110699  
Juneau, AK 99811-0699  
(907) 465-5423 (Attention: Terry Ahrens)  
[terry\\_ahrens@health.state.ak.us](mailto:terry_ahrens@health.state.ak.us)

### ARIZONA

**SUMMARY:** Sixty-five percent of voters approved Proposition 200 on November 5, 1996, which included several provisions regarding prison reform and one specific to the use of medical marijuana. The law took effect on December 6, 1996. It mandates alternative sentencing for non-violent drug offenders, and seeks to establish legal protections for seriously ill patients by allowing doctors to “prescribe” Schedule I controlled substances such as marijuana. However, because federal law ultimately forbids physicians from prescribing such drugs, this statute does not adequately protect patients from state-level criminal penalties, as do similar state laws that only require patients to possess a physician’s “recommendation” that medical marijuana therapy may be beneficial. Not surprisingly, the attorney general’s office reports that state physicians are not advocating medical marijuana therapy to their patients under the law.

Separate provisions that preclude prison for low-level drug offenders do arguably apply to medical marijuana patients, regardless of whether they have written authorization from their physician to use marijuana.

**AMENDMENTS:** No. House Bill 2518, which was signed by the governor on April 21, 1997, sought to repeal Proposition 200’s medical marijuana provision by requiring the Food and Drug Administration (FDA) to first approve marijuana before allowing state physicians to prescribe it. The bill was eventually placed on the November 3, 1998 ballot as a referendum, where voters rejected it by a vote of 57 percent to 43 percent.

**CONTACT INFORMATION:** None

### CALIFORNIA

**SUMMARY:** Fifty-six percent of voters approved Proposition 215 on November 5, 1996. The law took effect the following day. It removes state-

level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a “written or oral recommendation” from their physician that he or she “would benefit from medical marijuana.” Patients diagnosed with any debilitating illness where the medical use of marijuana has been “deemed appropriate and has been recommended by a physician” are afforded legal protection under this act. Conditions typically covered by the law include but are not limited to: arthritis; cachexia; cancer; chronic pain; HIV or AIDS; epilepsy; migraine; and multiple sclerosis. No set limits regarding the amount of marijuana patients may possess and/or cultivate are provided by this act, nor have any been enacted legislatively. The law does not establish a confidential state-run patient registry, but pending legislation in this year’s Assembly seeks to create a voluntary patient registry.

**AMENDMENTS:** No.

**CONTACT INFORMATION:** For more information on California’s medical marijuana law, please contact:

#### AMERICANS FOR MEDICAL RIGHTS

1250 Sixth St. #202  
Santa Monica, CA 90401  
(310) 394-2952

### COLORADO

**SUMMARY:** See page 1.

### HAWAII

**SUMMARY:** Governor Ben Cayetano (D) signed Senate Bill 862 into law on June 14, 2000. The law took effect on December 28, 2000. The law removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed statement from their physician affirming that he or she suffers from a debilitating condition and that the “potential benefits of medical use of marijuana would likely outweigh the health risks.” Patients diagnosed with the following illnesses are afforded legal protection under this act: cachexia; cancer; chronic pain; Crohn’s disease; epilepsy and other disorders characterized by seizures; glaucoma; HIV or AIDS; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea. Other conditions are sub-

ject to approval by the Hawaii Department of Health. Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, and may cultivate no more than seven marijuana plants, of which no more than three may be mature. The law establishes a mandatory, confidential state-run patient registry that issues identification cards to qualifying patients. To date, about 200 cards have been issued.

**AMENDMENTS:** No, although Hawaii has a separate statute allowing patients arrested on marijuana charges to present a “choice of evils” defense arguing that their use of marijuana is medically necessary.

**CONTACT INFORMATION:** Administrative rules for Hawaii’s medical marijuana program are available online from the Drug Policy Forum of Hawaii website at: <http://www.drugsense.org/dpphi>. Application information for the Hawaii medical marijuana registry is available by writing or calling:

#### HAWAII DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard  
Honolulu, HI 96814  
(808) 594-0150

## MAINE

**SUMMARY:** Sixty-one percent of voters approved Question 2 on November 2, 1999. The law took effect on December 22, 1999. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess an oral or written “professional opinion” from their physician that he or she “might benefit from the medical use of marijuana.” Patients diagnosed with the following illnesses are afforded legal protection under this act: epilepsy and other disorders characterized by seizures; glaucoma; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea or vomiting as a result of AIDS or cancer chemotherapy. Patients (or their primary caregivers) may legally possess no more than one and one-quarter ounces of usable marijuana, and may cultivate no more than six marijuana plants, of which no more than three may be mature. Those patients who possess greater amounts of marijuana than allowed by law are afforded a “simple defense” to a charge of marijuana possession. The law does not establish a state-run patient registry.

**AMENDMENTS:** No.

**CONTACT INFORMATION:** Brochures outlining Maine’s medical marijuana law are available from:

#### MAINERS FOR MEDICAL RIGHTS

P.O. Box 746  
Gorham, ME 04084  
(800) 846-1039  
<http://www.mainers.org>

## NEVADA

**SUMMARY:** Sixty-five percent of voters approved Question 9 on November 7, 2000, which amends the states’ constitution to recognize the medical use of marijuana. The legislature approved regulations implementing the measure on June 4, 2001. The law removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who have “written documentation” from their physician that marijuana may alleviate his or her condition. Patients diagnosed with the following illnesses are afforded legal protection under this act: AIDS; cachexia; cancer; epilepsy and other disorders characterized by seizures; glaucoma; and multiple sclerosis and other disorders characterized by muscle spasticity. Other conditions are subject to approval by the health division of the state Department of Human Resources. Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, and may cultivate no more than seven marijuana plants, of which no more than three may be mature. The law establishes a confidential state-run patient registry that issues identification cards to qualifying patients. Patients who do not join the registry or possess greater amounts of marijuana than allowed by law may argue the “affirmative defense of medical necessity” if they are arrested on marijuana charges. The law takes effect on October 1, 2001.

**CONTACT INFORMATION:** Application information for the Nevada medical marijuana registry is available by writing or calling:

#### NEVADA DEPARTMENT OF AGRICULTURE

P.O. Box 948  
Carson City, NV 89707-0948  
(775) 684-5333 (Attention: Cecile Crofoot)

## OREGON

**SUMMARY:** Fifty-five percent of voters approved Measure 67 on November 3, 1998. The law took effect on December 3, 1998. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed recommendation from their physician stating that marijuana “may mitigate” his or her debilitating symptoms. Patients diagnosed with the following illnesses are afforded legal protection under this act: cachexia; cancer; chronic pain; epilepsy and other disorders characterized by seizures; glaucoma; HIV or AIDS; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea. Other conditions are subject to approval by the Health Division of the Oregon Department of Human Resources. Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana, and may cultivate no more than six marijuana plants, of which no more than three may be mature. The law establishes a confidential state-run patient registry that issues identification cards to qualifying patients. Patients who do not join the registry or possess greater amounts of marijuana than allowed by law may argue the “affirmative defense of medical necessity” if they are arrested on marijuana charges. To date, more than 2,300 cards have been issued.

**AMENDMENTS:** Yes. House Bill 3052, which took effect on July 21, 1999, mandates that patients (or their caregivers) may only cultivate marijuana in one location, and requires that patients must be diagnosed by their physicians at least 12 months prior to an arrest in order to present an “affirmative defense.” Last year the Oregon Board of Health approved “agitation due to Alzheimer’s disease” to the list of debilitating conditions qualifying for legal protection.

**CONTACT INFORMATION:** Application information for the Oregon medical marijuana registry is available online or by writing:

#### OREGON HEALTH DIVISION

800 NE Oregon St.  
Portland, OR 97232  
(503) 731-4000  
<http://www.ohd.hr.state.or.us/hclc/mm/welcome.htm>

# MEDICAL MARIJUANA

## Medi-Pot Pioneer Passes Away at 53

**R**obert Randall, a glaucoma patient who made history in the mid-1970s by becoming the first person to attain legal access to marijuana for medicinal purposes, passed away at his Florida home on June 2 of AIDS-related complications. He was 53 years old.

“Bob Randall was living proof that one person really can make a difference,” says Keith Stroup, who assisted Randall’s celebrated legal challenge. Stroup called Randall “the father of the medical marijuana movement.”

Randall developed glaucoma as a teenager and was told by doctors that he would lose his eyesight by his mid-twenties. He began smoking marijuana to combat his illness after learning of research showing that pot could temporarily lower intraocular pressure. (A handful of controlled studies performed by ophthalmologist Dr. Robert Hepler at UCLA in the early 1970s had already demonstrated this fact.) He was arrested in Washington, DC in 1975 for marijuana cultivation, but defeated the charges by successfully arguing the defense of medical necessity. In a landmark decision, the Court ruled, “Penalizing one who acted rationally to avoid greater harm will serve neither to rehabilitate the offender nor deter others from acting similarly when presented with similar circumstances.”

He simultaneously petitioned the U.S. Food and Drug Administration for access to a legal supply of medical marijuana. The FDA granted him access in November 1976, and later established the Compassionate Investigational New Drug (IND) program to supply him and others with uninterrupted access to promising yet unapproved drugs like marijuana. Randall had been receiving monthly



shipments of medical marijuana cigarettes from the federal government for 25 years.

Despite the severity of Randall’s open-angle glaucoma, he never lost his eyesight.

Long after procuring a legal supply of medical marijuana for himself, Randall remained an activist. In 1981, he founded the Alliance for Cannabis Therapeutics (ACT), a non-profit organization dedicated to legalizing medical pot. ACT’s efforts were instrumental in persuading legislatures in several states to implement medical marijuana research programs during the 1980s for qualifying cancer and glaucoma patients. In the early 1990s, Randall established the Marijuana AIDS Research Service (MARS), which helped AIDS patients apply for federal access to marijuana through the IND program. During his life, Randall also authored six books. His most recent, *Marijuana Rx: The Patients’ Fight for Medical Pot*, was co-authored with his life-long partner, Alice O’Leary.

“There are few people who better championed the cause of patient access for medical marijuana than Bob Randall,” says Allen St. Pierre. “It was an honor to know him both as a NORML board member and an articulate public advocate. Bob’s legacy will be memorialized in the coming years and can already be felt by the successful passage of statewide medical marijuana initiatives.”



Robert Randall

## UPDATE OF STATE MEDICAL MARIJUANA PROGRAMS

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### WASHINGTON

**SUMMARY:** Fifty-nine percent of voters approved Measure 692 on November 3, 1998. The law took effect on that day. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess “valid documentation” from their physician affirming that he or she suffers from a debilitating condition and that the “potential benefits of the medical use of marijuana would likely outweigh the health risks.” Patients diagnosed with the following illnesses are afforded legal protection under this act: cachexia; cancer; HIV or AIDS; epilepsy; glaucoma; intractable pain (defined as pain unrelieved by standard treatment or medications); multiple sclerosis. Other conditions are subject to approval by the Washington Board of Health. Patients (or their primary caregivers) may legally possess or cultivate no more than a 60-day supply of marijuana. The law does not establish a state-run patient registry.

**AMENDMENTS:** Yes. Last year, the Washington’s Medical Quality Assurance Commission approved Crohn’s disease, Hepatitis C, and “any disease, including anorexia, which results in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, and/or spasticity, when these symptoms are unrelieved by standard treatments.”

**CONTACT INFORMATION:** Fact sheets outlining Washington’s medical marijuana law are available from:

#### WASHINGTON STATE DEPARTMENT OF HEALTH

1112 SE Quince St.  
P.O. Box 47890  
Olympia, WA 98504-7890  
(800) 525-0127 or (360) 236-4052 (Attention: Glenda Moore)  
<http://www.doh.wa.gov>



## JUDICIAL WATCH

### Marijuana Use and Child Custody – Part II

By Donna Shea, NORML Foundation Legal Director

Last issue I discussed the alarming frequency with which parents – typically single, low-income mothers – are being threatened with the loss of their children because of allegations of marijuana use. I wish to expand upon this troubling situation here.

State child protection agencies typically investigate all allegations of child abuse or parental neglect. If they determine a child has been harmed or is at risk of harm, the state may pursue two distinct courses of action. They may opt to provide assistance to the family to ameliorate the situation, or the agency may petition the court to authorize the child's removal from the home. Although federal law mandates agencies make every effort to do the former, in cases where parents' test positive for illicit drugs – including marijuana – the latter response is more likely.

If a child protection agency seeks custody of a child without parental consent, it must bring the case to court. As in a criminal case, the court may appoint legal counsel for the parents, and in some cases, an advocate for the child. Unfortunately, not all child advocates are lawyers or trained in family law, and therefore may be ill-prepared to make proper decisions on behalf of the children they represent.

If the state gains custody, federal law requires it to monitor the child while in foster care and pursue "reasonable efforts" to return that child to his or her parents. Toward this end, child protection agencies must draft a case plan for each child and their parents. In some cases, caseworkers will order parents to submit to drug tests or receive psychological counseling. The court will oversee these efforts, and assess whether family reunification appears probable. If the court fails to see progress on behalf of the parents and their child, it may elect to sever the parent-child relationship and initiate adoption procedures. (Ironically, child welfare agencies may now qualify to receive up

to \$6,000 per child permanently adopted by foster parents under the Adoption and Safe Families Act of 1997. Congress passed the AFSA as a result of the difficulty arising from interpretations of the "reasonable efforts" requirement, and the perceived inability of other laws to achieve permanent placement for foster children.)

Before the state may terminate parental rights, it must demonstrate "clear and convincing evidence" of abuse or neglect (*Santosky v. Kramer*, 455 U.S. 745). This is a higher legal standard than is customary in civil cases (where only a "preponderance of the evidence" is required), but less than that required in criminal cases (evidence "beyond a reasonable doubt").

Child protection services generally try to paint parents who use any amount of an illegal substance, including marijuana, as abusive and/or neglectful. In the minds of many social workers and judges, drug users are *by definition* child abusers and unfit parents. Too often, this presumption is based solely on the drug's illegal status rather than by any threat its use actually poses to the child's well being.

Unfortunately, as states redefine child abuse laws to encompass activities like prenatal drug use and/or the use of medical marijuana, this presumption is becoming more widespread. Startlingly, no uniform standard exists against which parental behavior or drug use is balanced prior to government action. Most agencies act under the umbrella of "the best interest of the child."

But how are we acting in the child's best interest when the "remedy" we enforce has an equal or worse effect on the child than the supposed drug exposure? Removing a child from his or her family is not without consequences.

When child protection agencies accuse parents of child abuse or neglect without demanding evidence of tangible harm, they reveal that their primary interest is continuing the criminalization of drug use rather than the health and welfare of the family.

Current policies that call for the removal of children from the home simply because a parent has tested positive for drugs are inappropriate and must be abandoned. This policy fails to take into account

mitigating factors (Was the drug use medical? Was the parent's drug use frequent or strictly recreational? Did the use occur at home or someplace else? Was the child present?) or the possibility of false positives. Most importantly, this policy fails to identify those parents who truly need help.

Rather, this practice serves to penalize families, and reinforces the distrust many low-income parents already hold toward state-operated medical and social services. Instead of being participants in the war on drugs, social services agencies must learn how to more appropriately provide needy families with the economic and medical services they need to help break the cycles of social isolation, depression and "ghetto-ization" they suffer – factors that cause a far greater harm to child development than an adult's responsible use of marijuana.

The Fourteenth Amendment to the Constitution provides, "No state shall deprive any person of life, liberty, or property, without due process of law." Consequently, at issue here is nothing less than the fundamental interests of parents to care and raise their children as they see fit, "perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court (*Troxel v. Granville*, 530 U.S. 57).

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"IN THE MINDS OF  
MANY SOCIAL WORKERS AND  
JUDGES, DRUG USERS ARE BY  
DEFINITION CHILD ABUSERS  
AND UNFIT PARENTS."

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## Drug War Ultra-Hawk Confirmed as DEA Chief

**B**y a vote of 98 to 1, the Senate overwhelmingly confirmed Arkansas Rep. Asa Hutchinson (R) to head the nation's \$1.5 billion dollar Drug Enforcement Administration (DEA). Minnesota Sen. Mark Dayton (D) cast the lone dissenting vote, stating that he disagreed with Hutchinson's "do drugs, do time" philosophy as well as his refusal to support the legalization of medical marijuana.

As a Congressman, Hutchinson called for tougher penalties for drug users, coerced abstinence for addicts, and increased use of the military in overseas drug interdiction efforts, including "Plan Colombia." He opposed any use of marijuana as a medicine, even for research purposes, and endorsed legislation in 1999 that forbade Washington, DC from implementing an approved ballot initiative legalizing the drug. He further recommended Congress rewrite federal law to prohibit citizens from approving similar ballot initiatives elsewhere.

"The scientific community does not support the medical uses of [marijuana,]" Hutchinson declared in 1997 in opposition to a (then forthcoming) National Academy Sciences (NAS) Institute of Medicine study on the herb. That study, released in 1999, found, "Scientific data indicate the potential therapeutic value of cannabinoid drugs... for pain relief, control of nausea and vomiting, and appetite stimulation. ... Except for the harms associated with smoking, the adverse effects of marijuana use are within the range tolerated for other medications."

"President Bush's selection of Asa Hutchinson to head the DEA shows that his administration is not about 'compassion;' it's about casualties," says NORML Foundation Publications Director Paul Armentano.

Since Hutchinson's confirmation in July, he has said that federal government will en-



New DEA Chief  
Asa Hutchinson

force the federal law against medical users, he has described the federal war on drugs as "a great crusade," and emphasized the need to continue vigorously enforcing criminal laws against drug users. "I am an advocate ... of a strong law enforcement presence ... in this great battle," he says. "It's the law enforcement side that ... creates this stigma of society on drug use. It sends the signal to our young people that this is not acceptable in our society."

"Hutchinson is a man addicted to the war on drugs," Armentano charges. "He advocates the continued incarceration of non-violent drug offenders, regardless of the cost in wasted lives and resources, and refuses to acknowledge the science supporting the therapeutic use of medical marijuana. In short, he's the wrong man for the job."

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