



# Police Departments and Medical Marijuana Usage

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Gov. Tom Wolf signed into law Act 16 of 2018, the Medical Marijuana Act, which allows medical providers to prescribe marijuana as a pain treatment under limited circumstances.<sup>i</sup> In its research of the issue, the General Assembly found that scientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and enhances their quality of life.

On Feb. 15, 2018, medical marijuana became available for patients at dispensaries across the Commonwealth – providing they meet certain medical conditions including epilepsy, seizures, autism, glaucoma, Parkinson's, and post-traumatic stress disorder, among others.

The term medical marijuana refers to using the whole unprocessed marijuana plant or its basic extracts to treat a disease or symptom. The marijuana plant contains chemicals that may help treat a range of illnesses or symptoms.

Under the Medical Marijuana Program, implemented through the PA Department of Health, patients must have a serious medical condition as certified by an approved physician. Patients must also register for an identification (ID) card and use that card to obtain medical marijuana at PA dispensaries.

Caregivers must also be PA residents and are designated by patients to deliver medical marijuana to them. Caregivers must also register for an ID card and complete a background check.

The Act further provides that “the Commonwealth is committed to patient safety” by “carefully regulating the program which allows access to medical marijuana” to “enhance patient safety while research into its effectiveness continues” as a “temporary measure, pending federal approval of and access to medical marijuana through traditional medical and pharmaceutical avenues.”<sup>iii</sup>

## Federal Usage Laws

However, marijuana – in all forms – is illegal at the federal level and remains a controlled substance whose use, sale, and possession constitute federal crimes.<sup>iii</sup>

Marijuana is defined as a Schedule 1 controlled substance under the Controlled Substances Act,<sup>iv</sup> the most restricted schedule with other drugs such as heroin, LSD, and ecstasy. Contrary to the findings of the General Assembly, the U.S. Food and Drug Administration (FDA) has determined that marijuana has a high potential for abuse, has no currently accepted medical use in treatment in the nation, and lacks an accepted level of safety for use under medical supervision.<sup>v</sup>

According to the FDA, “there are no FDA-approved marijuana products. Marijuana does not have a currently accepted medical use in treatment in the U.S. or a currently accepted medical use

with severe restrictions... [T]he known risks of marijuana use are not outweighed by any potential benefits. In addition, the agency cannot conclude that marijuana has an acceptable level of safety without assurance of a consistent and predictable potency and without proof that the substance is free of contamination. If marijuana is to be investigated more widely for medical use, information and data regarding the chemistry, manufacturing and specifications of marijuana must be developed. Therefore, FDA concludes that, even under medical supervision, marijuana has not been shown to have an acceptable level of safety.”

## Gun Control Act

The federal Gun Control Act also prohibits marijuana users from possessing firearms or ammunition, which, of course, are essential to a police officer’s ability to protect the public and themselves.

This law prohibits people from possessing a firearm and ammunition if they are an “unlawful user of or addicted to any controlled substance,” which includes marijuana, depressants, stimulants, and narcotic drugs.<sup>vi</sup>

Moreover, on Sept. 21, 2011, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) issued an open letter to all federal firearms licensees that stated the following.



[A]ny person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance and is prohibited by Federal law from possessing firearms or ammunition. Such persons should answer “yes” to question 11.e. on ATF Form 4473 ... and you may not transfer firearms or ammunition to them. Further, if you are aware that the potential transferee is in possession of a card authorizing the possession and use of marijuana under State law, then you have “reasonable cause to believe” that the person is an unlawful user of a controlled substance. As such, you may not transfer firearms or ammunition to the person, even if the person answered “no” to question 11.e. on ATF Form 4473.<sup>vii</sup>

## Inconsistent Laws

The incongruity between federal and state laws on the use of marijuana for medical purposes has been addressed by the U.S. District Court for the Eastern District of Pennsylvania in *U.S. v. Bey*.<sup>viii</sup>

In that case, the U.S. attorney’s office sought to modify the terms of a citizen’s supervised release following a long period of imprisonment. The terms of the supervised release included the requirement that the citizen not “unlawfully possess a controlled substance, except as prescribed by a physician.”

After it was discovered that the citizen was using medical marijuana, the U.S. attorney petitioned the court to require the citizen to submit to a 30-day home detention. The citizen opposed the petition claiming that he acted on the advice of his doctor and his attorney who

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had counseled him that the PA Medical Marijuana Program allowed him to use of the drug as prescribed.

In its analysis of the law, the Court noted that the Controlled Substances Act “contains no exception – express or implied – for medically-prescribed marijuana, a mandate the Supreme Court [has] made clear.”

The court further explained its reasoning by stating: “The Supreme Court’s interpretation of the Controlled Substances Act compels that we conclude Mr. Bey may not use medical marijuana under federal law. A Pennsylvania statute or policy to the contrary cannot override a conflicting federal statute, as “[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.”

Following a hearing, the court found that the citizen credibly testified that he was confused about the law “particularly after the advice of two professionals who should have known better under federal law” and “could have reasonably and in good faith read the terms of his supervised release – which prohibits him from using any controlled substance ‘except as prescribed by a physician’ – as allowing his prescribed marijuana use in these limited circumstances.”

The court ultimately concluded that “using, possessing, and distributing marijuana – even medical marijuana permitted by PA law – violates federal law... [w]hile he may claim confusion before today, Mr. Bey – and others released from their prison terms but subject to our terms of supervised release – cannot do so from now on.”

### Usage by Police Officers


In view of the foregoing, the question of whether a PA police officer may lawfully use medical marijuana was unclear – until now.

The Municipal Police Officers’ Education & Training Commission (MPOETC) was established in 1974 to create certification and training standards for municipal police officers in PA.

On March 7, MPOETC issued a policy directing its staff to deny or revoke a police officer’s certification “of an individual who uses medical marijuana or possesses a medical marijuana certification card...”<sup>ix</sup>

The policy cites *U.S. v. Bey* and 18 U.S.C. Sec. 922 as bases for the conclusion that even medical marijuana prescribed by a medical provider under PA law is illegal under federal law – which shall be a basis for denial of a municipal police officer’s certification and revocation. While this policy gives MPOETC direction regarding an individual’s Act 120 certification with regards to medical marijuana, it is strongly recommended that Departments create and institute their own internal policies regarding the use of both legal and illegal medications and drugs.

It is encouraged that all municipal police departments adopt a policy that is consistent with the MPOETC directive.

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<sup>i</sup> 35 P.S. § 10231.101, et seq.

<sup>ii</sup> 35 P.S. § 10231.102 (emphasis added).

<sup>iii</sup> 21 U.S.C. §§ 841(a)(1), 844(a).

<sup>iv</sup> 21 U.S.C. Sec. 812(b)(1).

<sup>v</sup> 66 Fed. Reg. 20052 (2001).

<sup>vi</sup> 18 U.S.C. Sec. 922.

<sup>vii</sup> Open Letter to all Federal Firearms Licensees dated Sept. 21, 2011.

<sup>viii</sup> 2018 WL 5303323 (Oct. 25, 2018).

<sup>ix</sup> *Commission Adopts Medical Marijuana Policy* by Major Troy S. Lokhaizer, MPOETC executive director, MPOETC Newsletter, Vol. 42, Issue 1, March 2019.