

**SENATE . . . . . No. 00818**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Thomas M. McGee*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the arrest and prosecution for the possession of marihuana for medical purposes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Steven A. Tolman</i>	<i>Second Suffolk and Middlesex</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>

# SENATE . . . . . No. 00818

By Mr. McGee, petition (accompanied by bill, Senate, No. 818) of Jehlen, Creem, Tolman and other members of the Senate for legislation relative to the arrest and prosecution for the possession of marijuana for medical purposes [Joint Committee on the Judiciary].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
SENATE  
, NO. 1739 OF 2009-2010.]

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the arrest and prosecution for the possession of marihuana for medical purposes.

□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 34 of Chapter 94C of the General Laws as appearing in the 1998  
2 Official Edition, is hereby amended by striking the fourth paragraph thereof and inserting the  
3 following:— It shall be a prima facie defense to a charge of possession, manufacturing or  
4 trafficking of marihuana under this section if the defendant is a patient, caregiver or physician  
5 under the definitions and pursuant to the conditions set out in chapter ninety-four D. Police  
6 officers shall have the right to exercise judgment in determining whether or not to arrest an  
7 individual if there is evidence that marihuana possession, manufacturing or trafficking falls  
8 under the exception set out in this section or in chapter ninety-four D.

9           SECTION 2. Section 1 of Chapter 94D of the General Laws as appearing in the 1998  
10 Official Edition, is hereby amended by including the following:— “Debilitating Medical  
11 Condition”, means a chronic or debilitating disease, medical condition or treatment that produces  
12 one or more of the following: cachexia or wasting syndrome, chronic or severe pain, severe  
13 nausea, seizures, severe and persistent muscle spasms, or any other condition or its treatment  
14 approved by a patient’s doctor in the exercise of his professional judgment.

15           “Medical use”, means the acquisition, possession, cultivation, manufacture, use, delivery,  
16 transfer, or transportation of marihuana or paraphernalia relating to the consumption of  
17 marihuana to alleviate the symptoms or effects of a qualifying patient’s debilitating medical  
18 condition.

19           “Personal medical use”, is an amount of marihuana that is not more than is reasonably  
20 necessary to ensure the uninterrupted availability of marihuana, for the purpose of alleviating the  
21 symptoms or effects of a patient’s medical condition for which he or she has been recommended  
22 to use marihuana, and shall be presumed to be not more than four ounces of dried, useable,  
23 marihuana, and no more than ten plants, four of which can be mature (flowering).

24           “Primary caregiver”, means a person who is at least eighteen (18) years old, who has  
25 never been convicted of a felony drug offense, and who has agreed not to provide marihuana to  
26 any person other than qualifying patients and who is given a written designation of their  
27 caregiver status. A qualifying patient may have only one primary caregiver at any one time.

28           “Qualifying patient”, means a person who has been diagnosed by a licensed physician as  
29 having a debilitating medical condition.

30 “Usable marihuana”, means the dried leaves and flowers of marihuana, and any mixture  
31 or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

32 “Written recommendation” means the qualifying patient’s medical records, or a statement  
33 signed by a physician, stating that in the physician’s professional opinion, after having  
34 completed a full assessment of the qualifying patient’s medical history and current medical  
35 condition made in the course of a bona fide physician-patient relationship, the qualifying patient  
36 has a debilitating medical condition and the potential benefits of the medical use of marihuana  
37 would likely outweigh the health risks for the qualifying patient.

38 SECTION 3. Said chapter 94D is amended by adding the following new section:—

39 Chapter 94D: Section 4 Private Recommendation of Marihuana

40 Section 4

41 A. Protections for the medical use of marihuana.

42 (i) A qualifying patient who has in his possession a written recommendation shall not  
43 be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege,  
44 including civil penalty or disciplinary action by a professional licensing board, for the medical  
45 use of marihuana; provided, that the qualifying patient possesses personal medical use amounts.

46 (ii) Subsection (i) of this section shall not apply to a qualifying patient under the age of  
47 eighteen (18) years, unless:

48 (a) The qualifying patient’s physician has explained the potential risks and benefits of  
49 the medical use of marihuana to the qualifying patient and to a parent, guardian, or person having  
50 legal custody of the qualifying patient; and

51 (b) A parent, guardian, or person having legal custody consents in writing to:

52 (1) allow the qualifying patient's medical use of marihuana;

53 (2) serve as the qualifying patient's primary caregiver; and

54 (3) control the acquisition of the marihuana, the dosage, and the frequency of the  
55 medical use of marihuana by the qualifying patient.

56 (iii) A primary caregiver who has in his or her possession a written recommendation  
57 and a designation of caregiver statement shall not be subject to arrest, prosecution, or penalty in  
58 any manner, or denied any right or privilege, including civil penalty or disciplinary action by a  
59 professional licensing board, for assisting the qualifying patient to whom he is connected;  
60 provided, that the primary caregiver possesses personal medical use amounts.

61 (iv) There shall exist a presumption that a qualifying patient or primary caregiver is  
62 engaged in the medical use of marihuana if the qualifying patient or primary caregiver:

63 (a) is in possession of a written recommendation; and

64 (b) is in possession of personal medical use amounts. Such presumption may be  
65 rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the  
66 symptoms or effects of a qualifying patient's debilitating medical condition.

67 (v) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or  
68 denied any right or privilege, including civil penalty or disciplinary action by the Massachusetts  
69 Board of Medical Licensure and Discipline, for providing written recommendation for the  
70 medical use of marihuana to qualifying patients.

71 (vi) Any interest in or right to property that is possessed, owned, or used in connection  
72 with the medical use of marihuana, or acts incidental to such use, shall not be forfeited.

73 (vii) No person shall be subject to arrest or prosecution for “constructive possession,”  
74 “conspiracy,” or any other offense for simply being in the presence or vicinity of the medical use  
75 of marihuana as permitted under this chapter.

76 (viii) A written recommendation, a registry identification card, or equivalent, issued by  
77 another state government to permit the medical use of marihuana by a qualifying patient, or to  
78 permit a person to assist with a qualifying patient’s medical use of marihuana, shall have the  
79 same force of effect as a registry identification card issued by the department.

80 B. This chapter shall not permit

81 (i) any person to operate, navigate, or be in actual physical control of any motor  
82 vehicle, aircraft, or motorboat while under the influence of marihuana; and

83 (ii) the smoking of marihuana:

84 (a) in a school bus or other form of public transportation;

85 (b) on any school grounds;

86 (c) in any correctional facility; or

87 (d) at any public park, public beach, public recreation center, or youth center.

88 C. Nothing in this chapter shall be construed to require:

89 (i) a government medical assistance program or private health insurer to reimburse a  
90 person for costs associated with the medical use of marihuana; or

91 (ii) an employer to accommodate the medical use of marihuana in any workplace.

92 D. Notwithstanding any law to the contrary, fraudulent representation to a law  
93 enforcement official of any fact or circumstance relating to the medical use of marihuana to  
94 avoid arrest or prosecution shall be punishable by a fine of five hundred dollars (\$500) which  
95 shall be in addition to any other penalties that may apply for the non-medical use of marihuana.

96 E. Affirmative defense.

97 (i) A person and a person's primary caregiver, if any, may assert the medical use of  
98 marihuana as a defense to any prosecution involving marihuana, and such defense shall be  
99 presumed valid where the evidence shows that:

100 (a) the person's medical records indicate, or a physician has stated that, in the  
101 physician's professional opinion, after having completed a full assessment of the person's  
102 medical history and current medical condition made in the course of a bona fide physician-  
103 patient relationship, the potential benefits of the medical use of marihuana would likely outweigh  
104 the health risks for the person; and

105 (b) the person and the person's primary caregiver, if any, were collectively in  
106 possession of a quantity of marihuana in excess of what is defined as personal medical use  
107 amounts in this section.

108 F. Repealer.

109 All laws and parts of laws in Massachusetts that are in conflict with this chapter are hereby  
110 repealed.

111 G. Severability.

112 Any part of this section of this chapter being held invalid as to any person or  
113 circumstances shall not affect the application of any other section of this chapter that can be  
114 given full effect without the invalid section or application.