

TESTIMONY OF PATRICK K. NIGHTINGALE, ESQ.
BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES
COMMITTEE ON HEALTH AND HUMAN SERVICES
ON HB 1393 COMPASSIONATE USE ACT OF 2009

Good morning, Chairmen Oliver and Baker, and Members of the Committee. My name is Patrick Nightingale. I reside in Pittsburgh, Allegheny County, Pennsylvania.

I am submitting this testimony to urge passage of the Compassionate Use Act of 2009 (HB 1393) by this Committee and the General Assembly.

I am the Executive Director of Pittsburgh NORML and I am on the Board of Directors for Pennsylvanians for Medical Marijuana. Professionally, I am a criminal defense attorney practicing in both state and federal court. Prior to practicing criminal defense I spent six years as a prosecutor with the Allegheny County District Attorney's Office. I am offering this testimony to share some stories of clients I represent or have consulted with relative to the issue of possession of cannabis for medicinal purposes.

Since becoming actively involved with NORML's Legal Committee and Pennsylvanians for Medical Marijuana I have had the opportunity to meet with and offer advice to a number of individuals who have been arrested for Possession With Intent to Deliver. Please allow me to share a few of their stories.

David P: David suffers from temporomandibular joint disorder (TMJ.) He suffers from severe, chronic pain on a daily basis and is prescribed morphine, oxycodone, valium and lidocaine patches for migraines. Yet, despite this medication he continues to suffer severe spasms and tremors in his face, rendering him unable to eat. Some months ago he noticed that someone was growing marijuana on is property in rural Beaver County. He'd heard that ingesting marijuana with food could alleviate the spasms and tremors so he decided to grow the plants he'd found in his house. He harvested a small crop of approximately six ounces. He baked three cakes each with an ounce of marijuana baked into the cake. In a relatively short time he found that the spasms and tremors receded. Unfortunately, a couple of weeks ago he suffered a medical emergency necessitating a call to 911. Responding officers found a small amount of marijuana and returned with a search warrant. They discovered a total of 24 plants in varying stages of maturity. Pursuant to the mandatory minimum sentenced of Title 18, section 7508, possession with the intent to deliver 21 plants or more is a three year mandatory minimum sentence. David has never been arrested before. While I am optimistic that the prosecutor will ultimately waive the mandatory minimum sentence, David may likely be forced to plead guilty to a felony and be placed on a period of probation.

Jim and Allison H: Allison has suffered from depression, PTSD and anxiety for years. Her psychiatrist at one point had her on multiple prescription medications that rendered her practically unable to function – sleeping hours and hours during the day and having no energy or motivation to leave the house. Jim heard that certain strains of marijuana may be effective in alleviating certain of Allison's conditions so he decided to purchase some seeds online and try his hand at growing. He was successful and, in turn, was able to provide Allison with some real relief. She weaned herself off of her prescription medications and told me that she felt like "she had come to life again." Their trouble came when a cooperating witness, a "snitch," told law enforcement he knew of a grow operation. A search warrant put an end to the grow operation and to the first effective treatment for Allison (they refuse to purchase marijuana from a drug dealer.) Because they had approximately 30 plants both are facing a three-year mandatory minimum sentence.

John L.: John was one of many individuals who called me for a "second opinion." John was growing marijuana to address his seizure disorder. He, too, was arrested and charged with Possession With Intent to Deliver and was facing a mandatory minimum sentence. His lawyer worked out a plea bargain with the prosecution whereby he would plead guilty to a felony Possession With Intent to Deliver charge and the prosecutor would waive the mandatory minimum sentence and agree to a period of probation. John

wanted to explore a medical use defense and was disappointed when I told him that no such defense exists in Pennsylvania. Even if we tried a medical necessity defense the judge could rule that we're not entitled to use it and a jury would literally have to disregard the law in order to acquit. We may have been successful arguing that the marijuana was not possessed with the intent to deliver, but when John, a father, is faced with a potential three year sentence if he loses the decision was easy.

These are a few of the people and stories I have come across since becoming involved with NORML and Pennsylvanians for Medical Marijuana. I am certainly not suggesting that all growers are benevolent medicinal users, as I represent many legitimate "drug dealers" who's grow operations were discovered by law enforcement. However, I have met numerous law abiding, hard working people who have unwittingly subjected themselves to mandatory minimum sentences and felony convictions because they believed it better to try and grow marijuana at home instead of entering the world of drug dealers and drug trafficking. A felony narcotics conviction in Pennsylvania will deprive one of the right to vote, serve on a jury and possess firearms. Inasmuch as hunting is woven into the fabric of life in Western Pennsylvania losing the right to own a firearm can be devastating. Any drug conviction, misdemeanor or felony, also brings with it a loss of one's operating privileges. For people who must be able to drive in order to work this collateral consequence can be especially devastating.

It is on behalf of people like David, Jim & Allison, and John that I am before you today. In each case they assumed that simply growing some plants was far preferable to trying to find a drug dealer and necessarily engaging in the world of drug trafficking. My purpose today is to share with you some of the harsh criminal consequences facing individuals who attempt to find effective treatment for their various medical conditions. From a law enforcement perspective it would be far better for these people to find a drug dealer and buy an ounce of marijuana than to attempt to grow an ounce themselves. Accordingly, I urge you to fully support HB 1393.

Thank you for this opportunity to be heard.

Sincerely,

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