



# Florida Police Chiefs Association

Serving Florida's Law Enforcement Since 1952



## CONSTITUTIONAL AMENDMENT No. 2

### Article X, Section 29

**The FPCA's recommendations regarding Amendment 2  
and its impact on law enforcement are in red.**

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**BALLOT TITLE:** Use of Marijuana for Debilitating Medical Conditions

**BALLOT SUMMARY:** Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Article X, Section 29

**FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:**

**ARTICLE X, SECTION 29.– Medical marijuana production, possession and use.**

(a) PUBLIC POLICY.

(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.

(2) A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.

**The FPCA's Recommendation: The "reasonable care" language here provides ample leeway for either the Legislature or the Department of Health to establish very specific regulations for doctors who issue a "physician certification" to a medical marijuana user. Because this has been an area of very substantial abuse by some physicians in Colorado in particular, any finding by a physician that a patient meets the Amendment 2 criteria for medical marijuana should be based on thorough examination, a record of substantive treatment by the physician over an extended period of time, and ample documentation of the illness and the justification for marijuana as a viable treatment option. The Department of Health should fund and staff a robust inspection program to ensure compliance, with robust civil penalties for physicians who fail to comply.**

(3) Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "Debilitating Medical Condition" means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's

disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a qualifying patient or a caregiver.

**The FPCA's Recommendation: Any person who is a qualifying patient or caregiver, or involved in the ownership or operation of a Medical Marijuana Treatment Center (MMTC), including as an owner, investor, employee, distributor or transporter of medical marijuana, should be issued a state photo ID card similar to current ID cards and drivers licenses. Law enforcement must have unlimited 24-hour access to an accurate, up-to-date state registry to confirm that a person is a registered patient or caregiver, or an MMTC owner, investor, employee, distributor or transporter of medical marijuana. No such state photo ID card should be issued unless the applicant has undergone and passed a background check by an authorized agency. No person convicted of a state or federal felony and no person convicted of a misdemeanor drug offense within the past 10 years should be issued such a state photo ID card or permitted to be in possession of medical marijuana. If a person is in legal possession of medical marijuana but not carrying his/her medical marijuana state photo ID card, he/she should be subject to a non-criminal violation resulting in a \$250.00 fine, payable to the clerk of the court, and revocation of the state photo ID card and the authority to possess medical marijuana if the fine is not paid.**

**(Note: This background investigation should be conducted by either a state or local law enforcement agency. The cost of the background investigation should be borne by the applicant and paid up front, before the investigation is begun and without regard to the findings of the investigation.)**

**The FPCA's Recommendation: In the interest of full disclosure and to ensure that organized crime does not infiltrate the medical marijuana industry, all owners and investors in MMTCs in Florida should undergo a thorough financial background investigation. The designated**

**state department or agency should be staffed and funded to perform these background investigations properly and efficiently.**

**The FPCA's Recommendation: The state photo ID card for patients, caregivers and MMTC owners, investors, employees, distributors and transporters of medical marijuana should be applied for and reissued every year.**

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, "Low-THC cannabis" as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term "marijuana."

(5) "Medical Marijuana Treatment Center" (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

**The FPCA's Recommendation: The State should allow for maximum local municipal control over (do not "preempt") the operation of "Medical Marijuana Treatment Centers (MMTCs). The State should allow local municipalities to set their own standards for critical issues such as zoning, location, hours, licensing, fees, security requirements, signage, and requirements of owner/operators, etc. In the alternative, the State should set minimum requirements but also leave as much reasonable discretion to local municipalities to decide on these critical issues for their residents.**

**The FPCA's Recommendation: The State should consider allowing individual municipalities to "opt out" of allowing MMTCs within their jurisdiction by democratic process – either a vote of the electorate or a vote of the governing body of the local municipality. See below sample language from the "opt out" provision in the state's implementing statute when medical marijuana dispensaries were first opening in Colorado:**

**"The operation of this article shall be statewide unless a municipality, county, city, or city and county, by either a majority of the registered electors of the municipality, county, city, or city and county voting at a regular election or special election called in accordance with applicable Florida law or a majority of the members of the governing**

**board for the municipality, county, city, or city and county, vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."**

**The FPCA's Recommendation: The State should prohibit all edible products with THC because of the potential for abuse, as has occurred in other states. In the alternative, if edibles are going to be allowed, the State should create strict regulations, including:**

- i. Restriction of edibles to single serving/dosage packaging.**
- ii. Prohibiting the addition of food coloring or artificial flavor to edibles.**
- iii. Requiring plain packaging of product that is child-proof and includes large warning labels with the accurate dosage amount.**

**The FPCA's Recommendation: Any person who is a qualifying patient or caregiver, or involved in the ownership or operation of a Medical Marijuana Treatment Center (MMTC), including as an owner, investor, employee, distributor or transporter of medical marijuana, should be issued a state photo ID card similar to current ID cards and drivers licenses. Law enforcement must have unlimited 24-hour access to an accurate, up-to-date state registry to confirm that a person is a registered patient or caregiver, or an MMTC owner, investor, employee, distributor or transporter of medical marijuana. No such state photo ID card should be issued unless the applicant has undergone and passed a background check by an authorized agency. No person convicted of a state or federal felony and no person convicted of a misdemeanor drug offense within the past 10 years should be issued such a state photo ID card or permitted to be in possession of medical marijuana. If a person is in legal possession of medical marijuana but not carrying his/her medical marijuana state photo ID card, he/she should be subject to a non-criminal violation resulting in a \$250.00 fine, payable to the clerk of the court, and revocation of the state photo ID card and the authority to possess medical marijuana if the fine is not paid.**

**(Note: This background investigation should be conducted by either a state or local law enforcement agency. The cost of the background investigation should be borne by the applicant and paid up front, before the investigation is begun and without regard to the findings of the investigation.)**

**The FPCA's Recommendation: The state photo ID card for patients, caregivers and MMTC owners, investors, employees, distributors and transporters of medical marijuana should be applied for and reissued every year.**

(6) “Medical use” means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver’s designated qualifying patient for the treatment of a debilitating medical condition.

**The FPCA’s Recommendation: A person with a legal medical marijuana referral and a valid medical marijuana identification card, or a licensed medical marijuana caregiver may possess and transport medical marijuana in a motor vehicle upon the highways/roadways of the State of Florida. It should remain illegal to operate a motor vehicle in all circumstances in Florida under the influence marijuana.**

(7) “Caregiver” means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient’s medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Department. The Department may limit the number of qualifying patients a caregiver may assist at one time and the number of caregivers that a qualifying patient may have at one time. Caregivers are prohibited from consuming marijuana obtained for medical use by the qualifying patient.

(8) “Physician” means a person who is licensed to practice medicine in Florida.

(9) “Physician certification” means a written document signed by a physician, stating that in the physician’s professional opinion, the patient suffers from a debilitating medical condition, that the medical use of marijuana would likely outweigh the potential health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination and a full assessment of the medical history of the patient. In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.

**The FPCA’s Recommendation: The “reasonable care” language here provides ample leeway for either the Legislature or the Department of Health to establish very specific regulations for doctors who issue a “physician certification” to a medical marijuana user. Because this has**

**been an area of very substantial abuse by some physicians in Colorado in particular, any finding by a physician that a patient meets the Amendment 2 criteria for medical marijuana should be based on thorough examination, a record of substantive treatment by the physician over an extended period of time, and ample documentation of the illness and the justification for marijuana as a viable treatment option. The Department of Health should fund and staff a robust inspection program to ensure compliance, with robust civil penalties for physicians who fail to comply.**

**The FPCA's Recommendation: The state photo ID card for patients, caregivers and MMTC owners, investors, employees, distributors and transporters of medical marijuana should be applied for and reissued every year.**

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

**The FPCA's Recommendation: The State should enact a specific statute or regulation that explicitly affirms law enforcement's ongoing right to disclosure of whether a specific person is a valid and currently licensed user or caregiver upon request. Law enforcement does not need to know the nature of any illness but must be able to confirm whether any marijuana is lawfully possessed.**

**The FPCA's Recommendation: Only individuals residing in the state of Florida for at least one year should be eligible to possess medical marijuana and to be issued a state photo ID card.**

**The FPCA's Recommendation: The state photo ID card for patients, caregivers and MMTC owners, investors, employees, distributors and transporters of medical marijuana should be applied for and reissued every year.**

**The FPCA's Recommendation:** Any person who is a qualifying patient or caregiver, or involved in the ownership or operation of a Medical Marijuana Treatment Center (MMTC), including as an owner, investor, employee, distributor or transporter of medical marijuana, should be issued a state photo ID card similar to current ID cards and drivers licenses. Law enforcement must have unlimited 24-hour access to an accurate, up-to-date state registry to confirm that a person is a registered patient or caregiver, or an MMTC owner, investor, employee, distributor or transporter of medical marijuana. No such state photo ID card should be issued unless the applicant has undergone and passed a background check by an authorized agency. No person convicted of a state or federal felony and no person convicted of a misdemeanor drug offense within the past 10 years should be issued such a state photo ID card or permitted to be in possession of medical marijuana. If a person is in legal possession of medical marijuana but not carrying his/her medical marijuana state photo ID card, he/she should be subject to a non-criminal violation resulting in a \$250.00 fine, payable to the clerk of the court, and revocation of the state photo ID card and the authority to possess medical marijuana if the fine is not paid.

(Note: This background investigation should be conducted by either a state or local law enforcement agency. The cost of the background investigation should be borne by the applicant and paid up front, before the investigation is begun and without regard to the findings of the investigation.)

**The FPCA's Recommendation:** Information received and records kept shall be disclosed to police officers for the purpose of verifying that an individual in possession of a state photo ID card is registered, and determining that an individual in possession of medical marijuana is registered pursuant to the law.

(c) LIMITATIONS.

(1) Nothing in this section allows for a violation of any law other than for conduct in compliance with the provisions of this section.

(2) Nothing in this section shall affect or repeal laws relating to non-medical use, possession, production, or sale of marijuana.

(3) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.

**The FPCA's Recommendation: Given this explicit language in voter-approved Amendment 2, no level of THC should be permitted in a person operating a vehicle, aircraft, train or boat. It should be illegal to operate these conveyances while under the influence of any amount of THC. In the alternative, a reasonable standard for THC levels should be set by the state. If so, the FPCA recommends that the limit to operate a vehicle, aircraft, train or boat while under the influence marijuana should be less than 3 nanograms of THC / per ml of blood. Persons operating a vehicle, aircraft, train or boat at a level of 3 nanograms of THC / per ml of blood or higher should be subject to a presumption in any criminal prosecution that they were operating under the influence of THC in violation of Florida Statutes 316.193 (driving under the influence).**

(5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

(6) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.

**The FPCA's Recommendation: The use of medical marijuana should not be allowed in or near public spaces, parks, schools, school buses, public transit facilities, or child care facilities, and use of medical marijuana shall comply with the provisions of the Florida Clean Indoor Air Act pursuant to chapter 386 part II, FS and the Florida health initiative in s. 20, Art. X of the State Constitution. The State should enact legislation making explicitly clear that use of marijuana in violation of these provisions remains a criminal offense under existing law and that Amendment 2 provides no protection from prosecution for these activities.**

**The FPCA's Recommendation: Nothing shall require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of**

**marijuana in any form, or to affect the ability of an employer to have a zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work.**

(7) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications and standards for renewal of such identification cards. Before issuing an identification card to a minor, the Department must receive written consent from the minor's parent or legal guardian, in addition to the physician certification.

b. Procedures establishing qualifications and standards for caregivers, including conducting appropriate background checks, and procedures for the issuance and annual renewal of caregiver identification cards.

c. Procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration, and standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

**The FPCA's Recommendation: The State should require specific and defined amounts of allowable possession to ensure proper enforcement. For example, "Any medical marijuana patient with a referral from a physician can possess up to two ounces of medical marijuana and cannot purchase more than two ounces of medical marijuana from a licensed medical marijuana facility in any 14-day period."**

(2) Identification cards and registrations. The Department shall begin issuing qualifying patient and caregiver identification cards, and registering MMTCs no later than nine (9) months after the effective date of this section.

**The FPCA's Recommendation: Any person who is a qualifying patient or caregiver, or involved in the ownership or operation of a Medical Marijuana Treatment Center (MMTC), including as an owner, investor, employee, distributor or transporter of medical marijuana, should be issued a state photo ID card similar to current ID cards and drivers licenses. Law enforcement must have unlimited 24-hour access to an accurate, up-to-date state registry to confirm that a person is a registered patient or caregiver, or an MMTC owner, investor, employee, distributor or transporter of medical marijuana. No such state photo ID card should be issued unless the applicant has undergone and passed a background check by an authorized agency. No person convicted of a state or federal felony and no person convicted of a misdemeanor drug offense within the past 10 years should be issued such a state photo ID card or permitted to be in possession of medical marijuana. If a person is in legal possession of medical marijuana but not carrying his/her medical marijuana state photo ID card, he/she should be subject to a non-criminal violation resulting in a \$250.00 fine, payable to the clerk of the court, and revocation of the state photo ID card and the authority to possess medical marijuana if the fine is not paid.**

**(Note: This background investigation should be conducted by either a state or local law enforcement agency. The cost of the background investigation should be borne by the applicant and paid up front, before the investigation is begun and without regard to the findings of the investigation.)**

**The FPCA's Recommendation: The state photo ID card for patients, caregivers and MMTC owners, investors, employees, distributors and transporters of medical marijuana should be applied for and reissued every year.**

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering MMTCs within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

**The FPCA's Recommendation: Create, staff, and fund a statewide Marijuana Enforcement Division. Include provisions to address the need for local law enforcement training.**

**The FPCA's Recommendation: The state should permit a reasonable tax on the sale of Medical Marijuana that is sufficient to raise revenue needed to support a new Medical Marijuana Enforcement Division at the state level and to support the additional staff and any other state or local agencies that are given new responsibilities to ensure the lawful and proper regulation of Medical Marijuana.**

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this section.

**The FPCA's Recommendation: The State should fund appropriate statewide training of local law enforcement officers on medical marijuana, including Amendment 2 and its accompanying infrastructure, regulations and mechanisms for enforcement and accountability of all parties.**

**The FPCA's Recommendation: No "homegrown" medical marijuana should be allowed. The State should enact legislation making explicitly clear that growing of marijuana in any location not authorized and sanctioned by the Department of Health remains a criminal offense under existing law and that Amendment 2 provides no protection from prosecution for this activity.**

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.