

EXTRACT



Illinois medical marijuana ban on drug felons raises discrimination concerns

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(Photo credit: Win McNamee/Getty Images)

In Illinois, a criminal record can be a disqualifying condition.

Nearly 15 years ago, Ted Park was walking down Valencia Drive in Northbrook, Illinois, when a vehicle plowed into him and sped off, leaving him seriously injured.

The hit-and-run collision would permanently change the trajectory of his young life.

"I was in a wheelchair for a whole year, reconstructive surgeries in both knees, orbital fracture of my right eye and a titanium plate in my right eye as well," Park said in an interview with Extract.

Now 33, Park continues to struggle with the effects of a spinal cord injury, complex regional pain syndrome, post-operative pain syndrome and traumatic brain injury stemming from that accident.

Although he could easily obtain a prescription for opiate painkillers, which he used in the direct aftermath of the accident, the new father refuses to go back on those drugs.

“I know that if I do that, I won’t be able to carry my daughter at night, and rock her to sleep, and do the things that I love to do,” he said. The side effects are too debilitating.

The lifelong Chicago resident is a strong candidate for the medical cannabis program in Illinois, where at least four of his conditions qualify for marijuana treatment.

There’s just one problem.

Park is banned from accessing medical cannabis in Illinois because of a prior drug conviction.

Illinois has one of the strictest medical cannabis programs.

Much like the 24 other states that have legalized comprehensive medical cannabis programs to date, Illinois’ program stipulates patients with certain qualifying conditions may receive a recommendation for medical cannabis from a doctor with whom they have a bona fide physician-patient relationship. Then the patient may apply to become a registered medical cannabis patient with the Illinois health department.

But unlike most states, Illinois requires all patients be fingerprinted and undergo a background check.

The state’s medical marijuana law, which lawmakers narrowly passed in 2014, prevents anyone convicted of a felony drug offense from obtaining a medical marijuana card regardless of qualifying conditions or doctor recommendations.

Illinois and Nevada are the only two states that prohibit drug felons from accessing medical cannabis, says Marijuana Policy Project’s senior legislative analyst Chris Lindsey.

Critics describe the provision as discrimination encoded into law.

“Excluding drug felons is discriminatory,” medical cannabis advocate and Illinois Women in Cannabis volunteer Kirsten Velasco told Extract. “They’ve already served their debt to society. They shouldn’t be denied medication because of their conviction.”

Illinois deputy house majority leader Lou Lang (D-Skokie), who championed medical marijuana in the state, largely agrees with that sentiment.

“There’s a whole swath of people that are treated unfairly under this provision,” Lang said to Extract. “We don’t keep other lifesaving medications from people, so why should medical cannabis be different?”

Despite his personal opposition to the exclusion, Lang says the pilot program wouldn’t have passed through Illinois’ legislature without including such “tough on crime” measures.

“The provision is a little over the top, not what I chose,” he said. “But to get the pilot program to pass — and it only passed with a bare majority — we had to include such provisions.”

The medical cannabis law does contain a provision that says if patients can prove their marijuana conviction is directly related to their medical use of the drug, the state may waive their exclusion and allow them to be in the program.

“In practicality, this hasn’t been the case,” Velasco says. “There is a lot of bureaucratic red tape.”

The process of appealing convictions is time consuming, emotionally taxing, expensive and often unsuccessful for hopeful patients, she explains.

Why ban drug felons?

Illinois’ medical cannabis program prohibits patients from growing cannabis at home and only allows patients to obtain a small amount of cannabis each month for personal consumption from a state-licensed dispensary. These purchases are tightly tracked and monitored by state officials, making it unlikely that anyone could or would obtain a medical marijuana card for criminal resale purposes.

So why include this nonmedical provision in a medical cannabis act?

Prior to his recent resignation, former Illinois medical marijuana program chief Joseph Wright said he couldn’t comment on reasons for this provision because the pilot program is currently under review.

No contact information has been made available for new program director Jack Campbell on the medical cannabis program’s website. A call to the governor’s office revealed that Campbell is not yet listed in the state system, and his contact information was not otherwise available.

Dan Linn, executive director of the Illinois chapter of the National Organization for the Reform of Marijuana Laws (NORML), who was heavily involved in efforts to pass Illinois’ medical marijuana program, asserts that law enforcement was behind the push to ban drug felons from the program.

Law enforcement groups were also the main drivers of the provision to ban home cultivation, according to a Chicago Reader report.

“I think this provision highlights how the justice system continues to punish those convicted of drug felonies even after they have served their time,” Linn told Extract.

The Illinois Sheriff’s Office did not return calls for comment on the extent of law enforcement’s involvement, if any, in efforts to ban drug felons from Illinois’ medical cannabis program.

“You wouldn’t believe how many people have a felony.”

The state’s drug felony exclusion doesn’t simply apply to a small segment of hardened criminals. It encompasses a large group of individuals who may or may not have ever committed another crime in their life.

“You wouldn’t believe how many people have a [drug] felony,” Velasco explains. “You think naturally, ‘Oh geez, what did they do to get a felony?’ ... ‘It must have been bad.’ ... No, not at all.”

Velasco continues:

“Here’s a basic scenario: An 18-year-old guy gets busted for selling oxycontin. The prosecutor offers a plea bargain of six years in jail or a felony [with no prison time]. Of course the 18-year-old takes the plea

felony [with no prison time], or because the 18-year-old takes the plea, not realizing that it's just as bad as jail because of how it prevents them from getting a job or renting a place, or voting ever again.

"This has happened to two members of my immediate family. One is 21 and one is 56 years old. And we're not an ethnic minority. You'd be surprised."

According to the data analysis project "Convicted in Cook," felony drug convictions made up roughly 20 percent of all criminal convictions in Cook County, Illinois, between 2005 and 2009. That amounts to 31,183 felony drug convictions in Cook County alone.

Chicago-based criminal defense attorney Steven Goldman points to Illinois' strict possession statutes as one major driver of felony drug convictions.

"I do a lot of drug cases, and these people aren't arrested with huge amounts," Goldman told Extract. "But any amount of a narcotic [aside from marijuana] is a felony in Illinois — even residue is a felony here. It's a problem."

More from "Convicted in Cook":

By far the largest category of convictions are drug convictions. When an individual is arrested on a drug charge, they can be booked for manufacturing and delivery, or for possession. Whether it is one or the other depends on many factors — the patrolling officer, whether a person has any priors, or even whether they're able to make a deal with the prosecutor.

According to the "Convicted in Cook", the majority of drug-related convictions in Cook County are for possession, and the majority of these possession charges are for class 4 felonies — the lowest level felony.

Community areas with the highest conviction rates also have fewer economic resources and high populations of African-Americans under the age of 24.

Pushing patients underground

Chicago-based film producer Richard Larson says this provision forces people like him to break the law.

"People are going to get their marijuana regardless," he told Extract.

Larson was convicted of felony cocaine possession in 1988 and served one year on probation, making him ineligible for Illinois' medical marijuana program.

"I'm 65 years old and I'm not looking to get stoned," Larson said. "I am forced to sneak around the streets like some outcast vagabond to find relief from my physical ailments. How much punishment do they feel I still need after all this time? I served no jail time for this felony. I did not harm any fellow human being in any way. I have had no problems of any kind with the law for 28 years. This is nonsensical and utterly unfair."

Crime, punishment and medical access

Ted Park, the new dad, was put on heavy-duty painkillers after his accident 15 years ago.

The medications eased his pain. But relief came at a steep price.

“I was not myself when I was medicated with opiates. My mind was foggy, I couldn’t go to the bathroom correctly, my appetite wasn’t there.”

He started shutting people out and lost a lot of friends in the process.

“The neurological pain I suffer from, the opiates never helped that. They never helped; they just kind of blocked all feeling,” he said.

“Anyone who’s ever taken opiates will kind of understand what I’m saying, but it’s hard to describe. The kind of lackadaisical – the not knowing what’s there. Especially in the hospital, when some people would come by, and obviously I was on morphine and everything else, it was really bad. Drooling, things like that. I just couldn’t control my body. You know, with opiates it’s like ‘pick your poison.’ Either you are in total pain, or you can’t control your body at all.”

On the suggestion and generosity of a close friend, Park eventually tried medicating himself with cannabis. After that, he stopped using opiates for good.

“It was night and day,” he says. “The fogginess was gone. I was laughing and cracking jokes. We were eating together ... It gave me my quality of life back.”

In 2013, just one year before Illinois passed its Medical Cannabis Pilot Program Act, Park says he was in the wrong place at the wrong time, and he was arrested and charged with multiple drug-related offenses.

He fought the charges in court and was found “not guilty” on all but one felony count of marijuana possession.

It was his first and only felony conviction. He received a one-year probationary sentence.

Despite his current ineligibility for medical cannabis treatment in Illinois, Park remains hopeful that state law will change and allow people like him to step out of the shadows and access cannabis legally.

“By no means am I an advocate for crime; by no means,” Park says. “But the crime doesn’t fit the punishment here. I believe the state is denying me the chance to self medicate and to have quality of life.”

Going forward

Illinois Gov. Bruce Rauner recently signed Senate Bill 10 into law, which expands the list of conditions that qualify for medical cannabis to include post-traumatic stress disorder and terminal illness. SB 10 also extends the state’s Compassionate Use of Medical Cannabis Pilot Program Act through July 1, 2020. The program was previously set to expire on January 1, 2018.

The bill did not remove the drug felon ban, and there doesn’t seem to be much momentum to cut the provision at the moment.

“I’d like to remove that and a few other technical provisions like the fingerprint requirement,” Rep. Lang said. “But the political will isn’t there right now, not outside or inside the governor’s office.”

Prior to signing SB 10 into law, the governor had not been supportive of any efforts to expand the medical cannabis program.

Although the drug felon exclusion poses significant difficulty for some hopeful patients, it doesn't appear to be a major setback for the marijuana industry's bottom line in Illinois.

"The industry seems satisfied with the gains achieved in SB 10, but it will be interesting to see what legislation gets introduced next spring," said Dan Linn, who manages Phoenix Botanicals, a cannabis dispensary located at 1704 S. Neil St. in Champaign, Illinois, in addition to his work with NORML.

"I anticipate legislation that changes the 1:1 caregiver rule, adds more conditions and possibly eliminating the felony disqualification although it would be met with resistance from the law enforcement community," he said. "They were the ones supporting that provision in the first place."

Paul Lee, principal officer and Agent-in-Charge at Dispensary 33, located at 5001 N. Clark St. in Chicago, told Extract the drug felon provision doesn't pose a business issue for him so much as an ethical one.

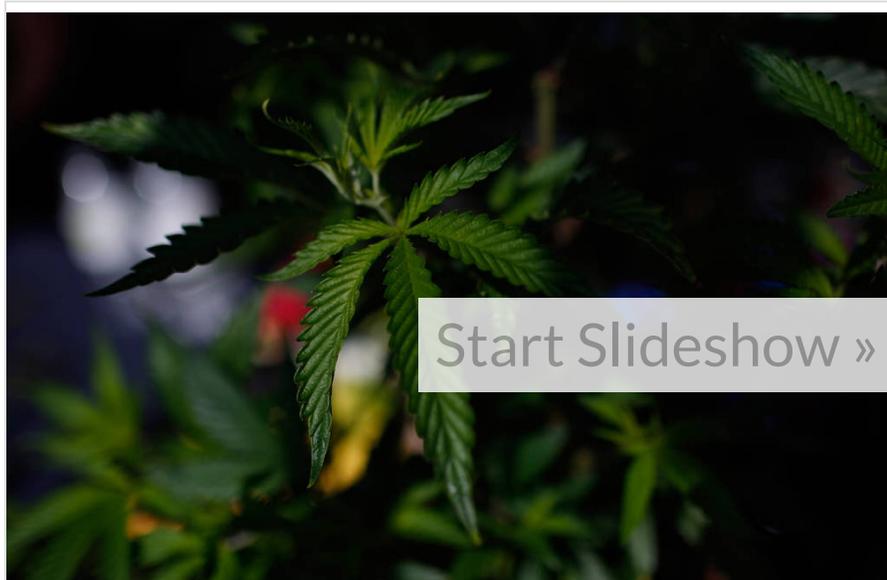
"We don't, as a society, find it acceptable to deny life-saving surgery, medical procedures or medicines based on someone's moral integrity or past misconduct," he said. "It seems completely without precedent to do so with this medicine."

Disclosure: This author interned with the Illinois chapter of NORML from June through August 2013.

Editor's note: The original version of this story has been edited to reflect that SB10 includes a minor tweak to the drug felon exclusion, however it does not remove or significantly alter the provision. The original version of this story incorrectly spelled Kirsten Velasco's name, and has been edited.

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