



MICHIGAN STATE POLICE

LEGAL UPDATE

No. 69

DECEMBER 15, 2008

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

CRIMINAL LAW

MCL 333.26421 – MCL 333.26430

Michigan Medical Marihuana Act (Formerly Proposal 1)

Effective: December 4, 2008

In November, Michigan voters passed the [Michigan Medical Marihuana Act](#), listed on the ballot as Proposal 1. The Act allows certain persons to use marihuana for medical purposes and allows those persons and their caregivers to possess up to 2.5 ounces or 12 plants of marihuana (plants must be maintained in a closed, locked facility). Caregivers may assist up to five patients, and may possess enough marihuana for those patients (e.g., 24 plants for 2 patients).

In order to lawfully use or possess marihuana, patients and their caregivers must be registered with the Michigan Department of Community Health (MDCH) and possess identification cards issued by the MDCH.

The MDCH is currently in the process of promulgating rules for registration; they have until April 4, 2009 under the Act. For more information about the status of rules and registry identification cards, visit the MDCH's [Medical Marihuana Program](#) Web site.

Limitations Under the Act

The Act prohibits the following:

1. Smoking marihuana in public
2. Possession of marihuana at schools or correctional facilities
3. Operating a vehicle while under the influence of marihuana
4. Making a fraudulent claim of medical use or possession to law enforcement to avoid prosecution
5. Selling marijuana to someone other than a qualified patient

Affirmative Defense

The Act contains an affirmative defense that may be asserted by a person in any prosecution involving marihuana. The defense is not limited to registered patients and caregivers, so it may be asserted by anyone. While the defense does not bar arrest, it requires dismissal of charges if a person proves the following:

1. A physician has stated that the patient is likely to receive a medical benefit from marihuana use,
2. The person did not possess more than reasonably necessary to ensure uninterrupted availability for treating a patient, and
3. The possession, manufacture, or delivery was done for the purpose of treating the patient.

Effect on Law Enforcement

The bottom line for law enforcement is this: if a person is found in possession of marihuana, they must possess an identification card or they may be arrested. If a person not having an identification card asserts possession for medical purposes, police may still arrest, but should notify their prosecutor that the person has claimed possession for medical purposes.

The following should also be noted:

1. Possession of a registry identification card cannot be used as probable cause for a search.
2. Registered patients are permitted to use and possess paraphernalia. Statutes and ordinances to the contrary cannot be enforced.
3. Marihuana is still illegal under federal law.
4. The Act does not provide a legal mechanism to obtain marihuana, it only allows registered caregivers or patients to possess, grow, or use it.