



MICHIGAN STATE POLICE LEGAL UPDATE

No. 91

November 30, 2011

This update is published by the Michigan State Police, Office of the Director, Legal Resource and Education Unit. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at www.michigan.gov/msp-legal.

ATTORNEY GENERAL OPINIONS

Law enforcement officers are not required to return marihuana to a registered patient or primary caregiver upon his or her release from custody

In [Attorney General Opinion No. 7262](#), the Michigan Attorney General (AG) states section 4(h) of the [Michigan Medical Marihuana Act](#) (MMMA), directly conflicts with, and is thus preempted by, the federal [Controlled Substances Act](#) (CSA).

[MCL 333.26424\(h\)](#) prohibits the forfeiture of marihuana possessed, owned, or used in connection with the medical use of marihuana. The CSA prohibits the possession or distribution of marihuana under any circumstances. If a law enforcement officer returns marihuana to a registered patient or caregiver as required by [MCL 333.26424\(h\)](#), the officer is distributing or aiding and abetting the distribution or possession of marihuana in violation of the CSA.

The AG notes that while [21 USC 885\(d\)](#) of the CSA confers immunity on state law enforcement officers who violate provisions of the CSA while “‘lawfully engaged in the enforcement of any law...relating to controlled substances,’ returning marihuana to a registered patient or caregiver under the MMMA could not be considered lawful ‘enforcement’ of a law related to controlled substances.”

The AG states, “...it is ‘impossible’ for state law enforcement officers to comply with their state-law duty not to forfeit medical marihuana and their federal-law duty not to distribute or aid in the distribution of marihuana.” “As a result, law enforcement officers are not required to return marihuana to a patient or caregiver.”

VEHICLE CODE

Authorized emergency vehicles

[Public Act 231 of 2011](#) amended the definition of “authorized emergency vehicle” within the Michigan Vehicle Code, [MCL 257.2](#), to include volunteer emergency rescue unit members’ vehicles if the vehicles are authorized by the chief of an organized fire department, a county sheriff, or director of the Department of State Police.

“Emergency rescue unit” is defined as an entity with training in a specialized discipline exceeding the level of training for medical first responders. Examples include, but are not limited to, ice water rescue teams and underwater search and rescue crews.

Officers are reminded that [MCL 257.603](#) permits the driver of an authorized emergency vehicle to exercise certain privileges, such as exceeding speed limits and not stopping for a red light, **when responding to an emergency call, not when returning from a call**, and only when the driver of the vehicle while in motion sounds an audible signal as may be reasonably necessary **and** when the vehicle is equipped with at least one lighted lamp displaying a flashing, oscillating, or rotating red light.

Other Michigan Vehicle Code sections that address “authorized emergency vehicles” include [MCL 257.616a](#), [257.653](#), [257.653a](#), [257.698](#), and [257.706](#).

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