

Marijuana's Changing Legal Status in Michigan— Or, Michigan as a Legal Pioneer

By Nancy L. Ballast

Michigan—whether through its legislature or its voters—can be a pioneer in changing areas of law. Such was the case when Michigan created its laws on criminal sexual conduct.¹ While other states were still dealing with rape statutes, Michigan forged ahead—years in advance of other states—with laws that took away the term “rape” and the need to prove force.

Michigan has also been a pioneer in the area of marijuana. In 2008, voters approved the medical use of marijuana for qualifying patients in the Michigan Medical Marihuana Act. In fact, 100 percent of Michigan counties—even those typically conservative—approved the act.

The question is, will Michigan continue to be a pioneer in this area of law? The next few months may hold exciting proposed changes to the act as it currently stands, and there are at least two ballot proposals for November's general election to legalize recreational use.

The scope of this article is limited somewhat by the fact that this area is changing rapidly, so only a few areas of the law are covered. Included are a brief summary of the Michigan Medical Marihuana Act, current ballot proposals for legalization, and proposed changes to Michigan law currently being considered by the legislature; criminal law updates are not discussed. When appropriate, this article also offers advice on finding the law as it currently stands, whether through online searches or more traditional research methods.

Nutshell of the act

Generally, marijuana is still treated as a Schedule 1 controlled substance under the

Controlled Substances Act of 1970.² Schedule 1 means that the controlled substance:

- has a high potential for abuse;
- has no currently accepted medical use in treatment in the United States; and
- there is a lack of accepted safety for use of the drug or other substance under medical supervision.³

Marijuana's inclusion on Schedule 1 is overly strict; both morphine and cocaine are classified as Schedule 2 drugs, meaning they are recognized to have medical use.⁴ Although there's discussion on a national level about the continuance of marijuana on Schedule 1, it seems unlikely this will change any time soon. Federal law changed slightly in its attitude toward medical marijuana in recent years with a shift away from enforcing federal laws against those who have qualified under their state's law.

Contrary to the Schedule 1 definition, however, Michigan voters approved the act and created an exception in criminal and other law for people who qualify under the act to be able to use and not be prosecuted for medical use.⁵ As one criminal practitioner put it so eloquently, the act creates a “boat” for qualified patients who otherwise would be treated as the rest of those charged with crime—those in the “ocean” of criminal defendants.⁶

Section 4 of the act outlines the legal presumptions that people who fall under the act must not be subject to arrest. For instance, as long as qualified patients possess a valid medical marijuana card and do not exceed the limit of marijuana allowed under the statute,⁷ they must not be subject to arrest. Additionally, qualified patients should not experience other negative consequences as a result of the card such as civil penalty, disciplinary action by a business or occupational board⁸ (however, this does not mean that the patient is immune from being fired for medical use),⁹ or repercussions regarding the patient's custody or visitation of a minor.¹⁰ Other portions of the law apply to caregivers (who provide the medicine to patients),¹¹ physicians,¹² and others who, in the course of their business, provide patients or caregivers with paraphernalia.¹³

Other sections of the act contain definitions;¹⁴ limitations of the act such as not smoking in public, operating under the influence, or using medical marijuana without a qualifying medical condition, among others;¹⁵ defenses under the act;¹⁶ and administration of rules.

Ballot proposals

If Michigan voters approve a ballot measure, Michigan will join Colorado, Washington, Alaska, and Oregon as states legalizing

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casual use. At the time of publication, there are at least two ballot proposals in Michigan that would legalize casual use—essentially decriminalizing possession and use in Michigan (it's currently a misdemeanor).¹⁷

MILegalize, also known as the Michigan Comprehensive Cannabis Law Reform Committee (find their petition at www.milegalize.com), is circulating a petition seeking to legalize all forms of marijuana for adults ages 21 and up. The petition would:

- Allow adults to cultivate up to 12 plants
- Allow the cultivation, possession, and processing of hemp and hemp products
- Grant medical marijuana patients and consumers additional legal protections
- Provide licensing to marijuana establishments and cultivation facilities
- Allow a 10 percent excise tax on recreational marijuana sales that will contribute to state funds for education, transportation, and a portion for local government; the tax will not apply to medical marijuana patients
- Remove all criminal penalties for distribution, cultivation, and possession of marijuana with the exception of sale to an unauthorized minor
- Allow civil infractions to be issued if a person violates the act
- Protect consumers from search, seizure, and investigation by law enforcement for marijuana-related offenses
- Authorize local units of government to adopt limited regulation of marijuana facilities and stores

The Michigan Cannabis Coalition (view their petition at www.micannabis.vote) also has a ballot proposal to legalize casual use for adults ages 21 and up. The proposal would:

- Regulate and tax the growth, sale, and use of marijuana
- Allocate tax revenue from the regulation and taxation of marijuana to public safety, public health, and education

- Create an independent board that is compensated based on attendance and staffed by experts in the field of agriculture and the public at large
- Permit limited home growth of marijuana for personal consumption, subject to local ordinance
- Hold the Michigan Medical Marijuana Act harmless

The third group potentially circulating a petition, the Michigan Responsibility Council (see <http://michrc.org>), has yet to publicize its ballot proposal. However, the group is considering a petition drive that may propose a three-tier regulatory system like the state currently has for alcohol production, distribution, and sales.¹⁸

Legislative updates

Back to pioneering: some issues regarding medical marijuana may change in the near future if legislation approved in the House passes through the Senate.

HB 4210, by amending the Michigan Medical Marijuana Act as it stands, proposes that patients and caregivers would be immune from prosecution for possessing marijuana-infused products. Currently, the act has not been interpreted to cover marijuana-infused products, which include edibles, beverages, tinctures, and oils. The Michigan legislative website, www.legislature.mi.gov, contains all legislative updates, including law that has been codified or in sessions and versions of bills as proposed or passed. It does not have caselaw interpretation of the statutes, however.

HB 4209 and **HB 4827** propose—through new acts—ways to track marijuana from seed to plant, legalizing large grow operations of 500 or more plants and allowing creation of medical dispensaries throughout the state. The act is now interpreted so that local municipalities have the final say on the existence of dispensaries and grow operations. HB 4209 would create the Medical Marijuana Facilities Licensing Act, while HB 4827 would create the Marijuana Tracking Act.

It remains to be seen whether these bills will pass the Senate; however, they passed the House with wide approval.

Conclusion

Michigan may continue to be a pioneer in this area of law. Voters will have the chance to approve casual use in the upcoming November election. The fact that it is a presidential election year means even more voters will attend the polls. Whether or not voters approve it, the act will continue to change to meet the needs of the state and its citizens. ■



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ENDNOTES

1. The Criminal Sexual Conduct statute is found at MCL 750. 520 *et seq.* It was enacted in 1975.
2. 21 USC 801 *et seq.*
3. 21 USC 812(1).
4. *Id.*
5. The act is found at MCL 333.26421 *et seq.*
6. With thanks to Bruce Block.
7. See MCL 333.26424(a) (allowing 2.5 ounces of usable marijuana or no more than 12 plants kept in an enclosed, locked facility; any incidental amount of seeds, stalks, and unusable roots are also allowed, and not included in the 2.5 ounces, per the statute).
8. *Id.*
9. See *Casias v Wal-Mart Stores, Inc*, 695 F3d 428 (CA 6, 2012).
10. MCL 333.26424(c).
11. MCL 333.26424(b).
12. MCL 333.26424(f).
13. MCL 333.26424(g).
14. MCL 333.26423.
15. MCL 333.26427(a) through (e).
16. MCL 333.26428.
17. MCL 333.7403(2)(d) and 333.7404(d) respectively.
18. Oosting, *Competing Michigan marijuana legalization petitions approved for circulation this summer*, MLive (June 11, 2015) <http://www.mlive.com/lansing-news/index.ssf/2015/06/competing_michigan_marijuana_1.html> (accessed July 16, 2016).