—Part One—

Medical Marijuana Law: The Impact on Law Enforcement

By William L. Cataldo, Esq.

Last November, voters in Michigan approved Proposal One, the Medical Marijuana Law. Like most legislation, it made headlines with interested organizations speaking only about potential dramatic issues. In the short period of time voters had to consider the law, the long-term ramifications, especially on economic impact and law enforcement, were largely ignored. With a doctor's recommendation, patients need only get a registry card from the Michigan Department of Community Health to be allowed to grow (the fancy term is cultivate) marijuana. A registered caregiver can cultivate a limited amount to serve up to five patients.

Well, it is time for that reality check. With Michigan mired in a major recession (and I completely disagree with the billboard near Metro Airport claiming this is a test, not a final exam), we now need to look to other states' experiences with the law to determine what impact it will have on Michigan's economy and the resources law enforcement will apply to enforce existing marijuana drug statutes.

First, let's look at the economic impact. After reading an article in a local paper on medical marijuana's impact in Macomb County, I perused the Internet and was floored to learn about the impact marijuana has on the California economy. In a recent *Time* magazine article, pot is California's largest cash crop, worth approximately $14 billion per year. The second largest products are milk and cream, at $7.3 billion. There is a major push by several state legislators in California to pass laws making marijuana legal, to cash in on the potential $1 billion in tax revenue. The rationale is the cash-strapped state would recognize the inevitable early, and benefit from it.

Legalization of medical marijuana has created a huge market to support the product. The Internet boasts of head shops, personalized use equipment like pipe manufacturers and vaporizers, whole lines of food and beverage products that contain marijuana, medical marijuana clinics and dispensaries (both creating employment and rental dollars), delivery services, websites, marketing consultants, clothing lines, buyers clubs and co-ops, manufacturing and sales of growing equipment, even schools and organizations that teach how to use marijuana.

The Obama administration has made its position clear. Attorney General Eric Holder recently told the press that individual states should be allowed to set their own marijuana laws. He indicated federal authorities will become involved only when an act violates both federal and state law. Current drug czar Gil Kerlikowske, the former chief of police in Seattle, indicated once the law was passed in Washington state, he ordered his police department to stop going after marijuana possessions.

What is in store for Michigan? It appears that slowly, it will have the same impact on the state in economic terms that it had in western states, i.e., an industry will pop up to support the use of medical marijuana. Just recently, according to a *Detroit Free Press* article, "Dozens of Companies Participated in the First Michigan Medical Marijuana Expo in Detroit." The expo "provided everything from legal advice to supplies and job tips." According to reporter Chasitity Dawson's article, the marijuana industry could offset the state's 15.2 percent unemployment rate. She quotes Andre Mason, a spokesman for the Nile Valley Group, who spoke at the expo, as claiming "This is a recession-free industry. We are providing a service, a legal, compassionate service." His company is one of many that formed as a result of a market opportunity. Nile Valley provides patients and caregivers with referrals and product information and offers professionals tips on how to get or create jobs within the industry.

How, then, will the law impact law enforcement in Michigan? Many of us in law enforcement wanted to know. Ken Stecker, staff attorney for the Prosecuting Attorneys Association of Michigan, in May of this year, was kind enough to come to our office (the Macomb County Prosecutors Office) and give us an update on the law. The remainder of this article is information gleaned from his presentation. First, he reviewed some basic background information and a little history.

History and Effects of Marijuana

Marijuana is a psychoactive drug extracted from the plant *cannabis sativa*. The herbal form of the drug consists of dried mature flowers and leaves of female plants. The resin is known as hashish. The biological active ingredient is THC.

Marijuana has definite physical effects. THC enters the body through the lungs when the smoke is inhaled and held in the lungs. Through smoking (inhalation) comes an intoxicating effect within minutes. When smoked, the THC or intoxication effect lasts approximately three to four hours. If marijuana is ingested orally, the effect could be longer.

In the 1800s, marijuana was legal in most states. Marijuana was used for medicinal purposes, and the hemp resulting from plant growth was used to make items such as rope. In 1910, after the Mexican Revolution, a wave of Hispanics immigrated to the United States and introduced the American public to its recreational use. In 1930, the Federal Bureau of Narcotics was formed to scrutinize the use of marijuana and other drugs.

The result was that by the mid-1930s, marijuana was regulated in every state through the Uniform State Narcotics Act. In 1937, the Marijuana Tax Act made possession or transfer of the drug illegal throughout the United States, under federal law, excluding medical and industrial uses, in which an expensive excise tax was required. In the 1950s, strict mandatory sentencing laws and substantial federal penalties for use, possession, or sale were imposed (are any of you old enough to remember John Sinclair's ordeal?) By the 1970s, the draconian sentences and penalties for marijuana were removed.

In 1970, the Federal Controlled Substances Act was enacted and marijuana was classified as a Schedule 1 drug. It remains classified the same way today. Schedule 1 drugs are the lesser of the narcotics classified under the act. California was the first state to enact medical marijuana laws in 1996.

Michigan's Medical Marijuana Law

A qualifying patient is a person who has been diagnosed by a physician having a debilitating medical condition. A debilitating medical condition includes but is not limited to cancer, glaucoma, HIV, AIDS, severe nausea, debilitating back disease, MS (and others specifically spelled out in the act).

Ken Stecker made one thing clear: a patient does not simply receive a prescription for a dose of marijuana. The act does not work that way. The patient must have written certification, which is a document signed by a physician (MD or DO), stating the patient's debilitating medical condition and that in his or her professional opinion, the patient is likely to therapeutically benefit from the medical use of marijuana.

The act was clear in the definition of "medical use." Medical use is the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating condition or symptoms. This means more than just use.

The act also carefully defined an enclosed, locked facility where the marijuana may be used. It is defined as a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient. It is apparently not very difficult to become a primary caregiver in Michigan. Stecker indicates only two criteria are required: a person must be 21 years of age who has agreed to assist with a patient's medical use of marijuana and who has never been convicted of a felony involving illegal drugs.

Under the act, quality of marijuana is not an issue. Usable marijuana is defined as the dried leaves and flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalk, and roots of the plant.

The act protects the certifying physician. The act permits a physician to issue a written certification to the patient. A physician would not be subject to arrest, prosecution, or penalty, including civil penalties and disciplinary actions, for providing a written certification to the patient.

According to Stecker, the crux of the act is the amount of marijuana a qualifying patient is allowed to possess. A qualifying patient is allowed up to 2.5 ounces of marijuana *and* 12 marijuana plants in an enclosed, locked facility. A primary caregiver is allowed up to 2.5 ounces, and if a primary caregiver is specified by qualifying patient, then he or she is allowed to cultivate up to 12 marijuana plants, kept in an enclosed, locked facility. These registered individuals shall not be subject to arrest, prosecution, or civil penalty or disciplinary action by a business or professional licensing board or bureau for the medical use of marijuana.

Stecker indicated a scary part of the law was the caretaker designation. A patient can designate a caregiver, and would have to indicate whether the patient or the caregiver (not both) would be allowed to possess marijuana for the patient's medical use. Each patient could have only one caregiver, and each caregiver could assist no more than five patients. So a caregiver, at any time, could be growing up to 60 plants without being subject to criminal penalty. The law does not give any definition about the plant itself. There are no size restrictions whatsoever, meaning the plant could be 10 inches or 10 feet tall.

Currently, 13 states allow, or have, medical marijuana laws. Michigan is the only state that allows visiting patients to use medical marijuana in our state, as well as their home state. "A card issued elsewhere in the United States would have the same force and effect as a card issued by MDCH." Under the act, MDCH issues identification cards to those who qualify as patients and caregivers. Potential patients and caregivers must submit the necessary paperwork to MDCH, which then has 15 days to approve or deny the request. If a response is not given within 20 days, the request is deemed approved. ■

To be concluded in the next issue.