

# An Update on Michigan's Medical Marihuana Act

*Presented by:*  
Kenneth Stecker  
Prosecuting Attorneys Association of Michigan





# Federal Law

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- The Federal Controlled Substance Act (CSA) established a federal regulatory system to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance.
- The CSA reflects the federal government's view that marihuana is a controlled substance with "no currently accepted medical use."
- The manufacture, distribution, or possession of marihuana is a criminal offense.



# Drug Enforcement Administration's Position-June 21, 2011

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- Marijuana has a high potential for abuse.
- Marijuana has no currently accepted medical use in treatment in the United States.
- Marijuana lacks accepted safety for use under medical supervision.

# Legal Medical Marihuana States



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Alaska

Arizona

California

Colorado

Delaware

Hawaii

Maine

Michigan

Montana

Nevada

New Jersey

New Mexico

Oregon

Rhode Island

Vermont

Washington

*Michigan Medical Marihuana Act*

# Street Price



- \$6 a gram in 1981;
- \$18 a gram in 1991;
- \$10 a gram present;
- An ounce ranges from \$100-\$400 in the U.S.;
- \$700-\$2,000 in the Midwest;
- "Cocoa puff"-cocaine and marihuana; "Frios"-marihuana laced with PCP; "Fuel"-marihuana laced with insecticides; ""Geek"-crack and marihuana.



# Michigan Law-Schedule 1 Drug

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- Marijuana is classified as a Schedule 1 drug under the Michigan Public Health Code, MCL 333.7212.
- It is a Schedule 1 drug if the Michigan Board of Pharmacy:

*“finds that the substance has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.”*



# MCL 333.7106-Marihuana

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- “Marihuana” means all parts of the plant *Canabis sativa* L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound...

# Ballot Proposal

## #1 of 2008

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- Permit physician approved use of marihuana by registered patients with debilitating medical conditions cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health (MDCH).
- Permit registered individuals to **grow limited amounts** of marihuana for qualifying patients in an enclosed, locked facility.
- Require the Michigan Department of Community Health ("MDCH") to establish an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana.
- Permit **registered and unregistered** patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.



# Michigan's Medical Marihuana Act

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November 4, 2008:

Michigan voters approved Ballot Initiative that legalized Medical Marihuana (MCL 333.26421-333.26430).

On December 4, 2008:

Michigan's Medical Marihuana law takes effect. The law required the MDCH to implement rules within 120 days.

On April 4, 2009:

MDCH adopts rules to implement the Act.



# Sections of MCL 333.26421, et. seq.

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- 1- Title
- 2 - Findings
- 3 - Definitions
- 4 – Protections for the Medical Use of marihuana
- 5 – MDCH to Promulgate Administrative Rules
- 6 – Administration and Enforcement of Rules
- 7 – Scope of the Act; Limitations
- 8 – Affirmative Defenses; Dismissal for Medical MJ
- 9 – Enforcement of the Act
- 10 – Severability



# Application Process for the Registry ID Card

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- An applicant submits a MDCH approved application, fee, copy of current photo ID and a physician certification to MDCH
  - Fee is \$100 for patient or \$25 if receiving SSI, receiving full Medicaid benefits, or SSD
- MDCH reviews and approves/denies application with 15 days of receipt.
- MDCH issues registration card with 5 days of approval.
- The statute allows for a copy of the application submitted to serve as a valid registry identification card if the card is not issued within 20 days of its submission to MDCH.

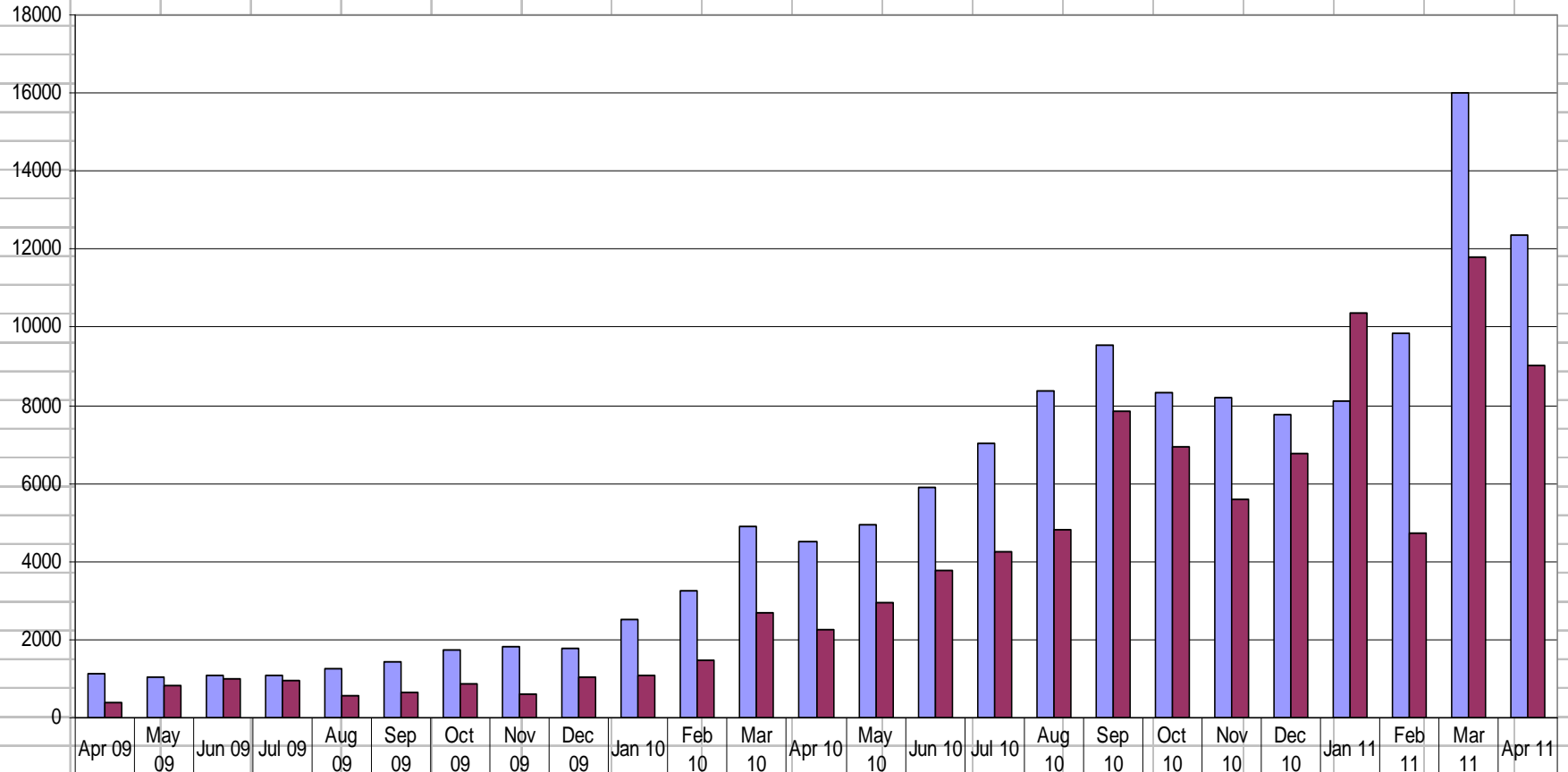


# Registry Statistics

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- Applications received as of **6/10/2011**
- **149,811** original and renewal applications received since April 6, 2009
  - **80,829** patients registered
  - The number of caregivers will be posted as soon as an accurate number can be obtained.
- **16,266** applications denied
  - Reason for denial typically is that application is incomplete – missing photo; missing physician certification; application form incomplete; insufficient fee
  - Some denied because medical condition is not covered such as depression
  - Currently, MDCH is working on processing valid applications received **mid February 2011**.

## MMMP Applications



■ Apps Recd	1141	1043	1079	1065	1249	1421	1717	1818	1771	2530	3234	4882	4514	4947	5909	7017	8378	9549	8346	8188	7756	8115	9833	16021	12370
■ Apps Processed	386	835	1005	959	568	645	886	589	1047	1084	1462	2689	2243	2964	3767	4251	4824	7860	6956	5591	6759	10369	4723	11790	9017

■ Apps Recd ■ Apps Processed



# What Happens After 20 days?

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- MDCH is advising applicants that if a card is not issued within 20 days of the application being submitted, then it is deemed granted.
- Originally, MDCH advised these individuals should keep a copy of their application, the Physician Certification Form, and a copy of the cancelled check or money order – FRONT AND BACK – with themselves to prove that they submitted an application and that MDCH did receive the application.



# What Does This Mean?

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- An application is denied or approved within 15 days of MDCH's receipt.
- If denied, the patient is notified within 15 days.
- If not denied, then it is deemed approved and valid.
  - When the card is issued, the date will reflect the 14<sup>th</sup> day after MDCH's receipt. That is when it is approved.
  - An application received on November 3 (business day) will show an issue date of November 17 (14 days after MDCH receives it, however, the day of receipt is counted as day 1 for the 15-day approval count).
  - The card will show an expiration date of December 1 of the following year.



# Confidentiality

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- MDCH keeps a confidential list of the individuals to whom it has issued a card.
- Law enforcement can check if a registration number is valid through LEIN. If the number is valid, then the name on the card for that registrant will be confirmed, only if the patient has given approval.
- Verifications can **ONLY** be given to law enforcement personnel.



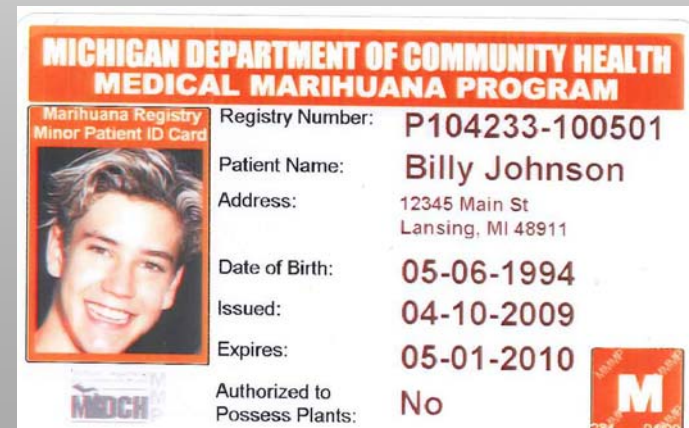
# MCL 333.26426(h)(4)

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- A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months.
- Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

# Identification Card System

MDCH has established an identification card system for patients qualified to use Marihuana and individuals qualified to be primary caregivers.



*Michigan Medical Marihuana Act*

# Old Registry Identification Cards

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**

**Marihuana Registry  
Minor Patient  
ID Card**

No  
Photo  
Available

Registry Number: **P345678-110101**  
Name: **Sample Card**  
Address: 12345 Street  
City, MI Zip  
DOB: **02/03/1995**  
Issued: **12/10/2009**  
Expires: **01/01/2011**

**NOT AUTHORIZED TO  
POSSESS PLANTS**

**M**  
04/09



**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**

**Marihuana Registry  
Patient ID Card**

No  
Photo  
Available

Registry Number: **P654987-110401**  
Name: **Sample Card**  
Address: 12345 Street  
City, MI Zip  
DOB: **08/01/1965**  
Issued: **03/10/2010**  
Expires: **04/01/2011**

Authorized to Possess Plants: **YES**

**P**  
04/09



**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**


**Marihuana Registry  
Caregiver ID Card**

No  
Photo  
Available

Registry Number: **C654987-789456**  
Name: **Sample Card**  
Address: 12345 Street  
City, MI Zip  
DOB: **04/12/1960**  
Issued: **03/10/2010**  
Expires: **04/10/2011**

Authorized to Possess Plants: **YES**

**C**  
04/09



# New Registry Identifications Cards

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**

**Marihuana Registry Caregiver ID Card**

Registry Number: **C777888-333444**  
Name: **Sample Card**  
Address: **12345 Street**  
**City MI ZIP**  
DOB: **04/05/1980**  
Issued: **05/25/2010**  
Expires: **06/01/2011**

Authorized to Possess Plants: **YES**

**No Photo Available**

**C**  
04/09

Michigan Department of Community Health  
**MDCH**

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**

**Marihuana Registry Patient ID Card**

Registry Number: **P444555-110601**  
Name: **Sample Card**  
Address: **12345 Street**  
**City, MI ZIP**  
DOB: **01/02/1950**  
Issued: **05/25/2010**  
Expires: **06/01/2011**

Authorized to Possess Plants: **NO**

**No Photo Available**

**P**  
04/09

Michigan Department of Community Health  
**MDCH**

**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH  
MEDICAL MARIHUANA PROGRAM**

**Marihuana Registry Minor Patient ID Card**

Registry Number: **P888999-110601**  
Name: **Sample Card**  
Address: **12345 Street**  
**City MI ZIP**  
DOB: **05/06/1995**  
Issued: **05/25/2010**  
Expires: **06/01/2011**

**NOT AUTHORIZED TO POSSESS PLANTS**

**No Photo Available**

**M**  
04/09

Michigan Department of Community Health  
**MDCH**



# Qualifying Patient

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A person who has been diagnosed by a physician as having a debilitating medical condition.



# Certain Specific Debilitating Medical Conditions



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- Cancer
- Glaucoma
- Positive HIV
- AIDS
- Hepatitis C
- Amyotrophic lateral sclerosis (Lou Gehrig's Disease)
- Crohn's Disease
- Agitation of Alzheimer's disease
- Nail patella
- Treatment of these conditions

# Covered Debilitating Medical Conditions



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- Cachexia or wasting syndrome
- Severe and chronic pain
- Severe nausea
- Seizures, including but not limited to those characteristics of epilepsy; or
- Severe and persistent muscle spasms



# Debilitating Medical Condition is not Enough

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The mere presence of such debilitating medical condition does not entitle a patient to certification. To certify the patient, the physician must specifically give an opinion that the patient will “likely” receive a “palliative or therapeutic benefit.”



# Physician's Role

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- Only a physician (MD or DO) fully licensed in Michigan can make a valid written certification
- The certifying physician is not prescribing marijuana, a physician cannot do so.
- The physician is not recommending marijuana; the law does not require them to do so.
- The physician is only stating an “opinion” as to the likelihood of a medical benefit, and can do so under the law without any legal or professional liability, except that a physician is always subject to professional malpractice.



# Written Certification

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- A document signed by a physician, stating the patient's debilitating medical condition and that in his/her professional opinion, the patient is likely to therapeutically benefit from the medical use of Marijuana.



# Benefit of Participation in the Registry Identification Program

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- A registered “Qualifying Patient” is allowed to possess an amount of marihuana that does not exceed 2.5 ounces of usable marihuana and allowed to cultivate 12 marihuana plants kept in an enclosed, locked facility.
- Either the Qualifying Patient or the Primary Caregiver can be allowed to possess the marihuana plants.
- A qualifying registered patient is protected from “arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau” for medicinal use or possession of marihuana.



# Medical Use

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- The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation or paraphernalia relating to the administration of Marihuana to treat or alleviate a registered qualifying patient's debilitating condition or symptoms. MCL 333.26423(e).



# Usable Marihuana

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- The dried leaves and flowers of the Marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalk, and roots of the plant. MCL 333.26423(j).





# People v. Chason-Pointer, Genesee County Circuit Court, 1/13/11

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- Judge directed a verdict because the seeds and stems of 38 ounces of “marihuana” were not separated in order to show an amount that exceeded 2.5 ounces of “usable marihuana.”

# Qualifications for Registered Primary Caregiver



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- The patient designates an individual as the primary caregiver on the patient's registration application form.

The primary caregiver shall:

- be 21 years old;
- have no felony convictions involving illegal drugs;
- agree to assist patient with medical use of marihuana.



# Possession, Cultivation, and Plant Limits for a Registered Primary Caregiver

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- Not to exceed 2.5 ounces of usable marijuana for each qualifying patient to whom he or she is **connected through the department's registration process**. MCL 333.26424(b)(1).
- For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marijuana for the qualifying patient, 12 marijuana plants kept in an enclosed, locked facility. MCL 333.26424(b)(2).



# Designation

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- The patient designates a caregiver, and has to indicate whether the patient or the caregiver is allowed to cultivate the marihuana plants for the patient's medical use.
- Each patient can only have one caregiver, however, each caregiver can assist no more than five patients.



# What About the Plants?

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- Michigan does not limit the size or distinguish between seedlings and mature, producing plants.
- 12 plants can produce quite a bit of marihuana. The annual yield of a 12 plant indoor marihuana grow site would generate between 44 and 72 ounces.
- Is a dead plant a plant? Is a cutting a plant? Is a clone a plant? Is a seedling considered a plant if it has a root system?
- It can be assumed that the primary caregiver is not legally allowed to keep part of the “harvest” as payment.



# MCL 333.7401(5)

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- “Plant” means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.
- Webster’s definition of cotyledon: A leaf of the embryo of a seed plant, which upon germination either remains in the seed or emerges, enlarges, and becomes green. Also known as a seed leaf.



# Obtaining Medical Marihuana

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- The Act is silent on this issue.
- The State of Michigan is not authorized to regulate growing sites or quality of product under this Act.

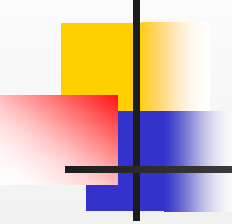


# Enclosed, Locked Facility

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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. MCL 333.26423(c).





# *People v. King*, Shiawassee Circuit Court, September 30, 2009

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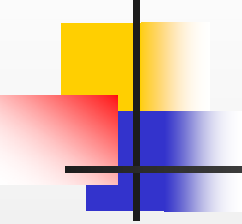
- Chain-link dog kennel behind the house, 6 feet tall, but had an open top and was not anchored to the ground.
- Marijuana plants growing inside defendant's unlocked living room closet.
- Defendant charged with two counts of manufacturing marijuana.
- Defendant asserted affirmative defense under Section 8 of the Act.
- Prosecutor argued that the Defendant failed to comply with the Act because marijuana plants not in an enclosed, locked facility.
- The Circuit Court agreed with the Defendant and dismissed the case.



## *People v. King*, 9/30/09

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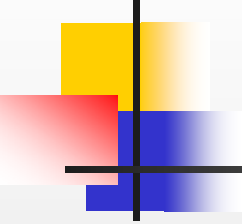
- The Shiawassee County Circuit Court ruled that “The Defendant was present at the time of the arrival of the police and he was there at the time the police searched the property. Therefore, the Defendant was acting as the security device by limiting access to the marihuana.”



*People v King*, No. 294682 (Mich. App.,  
February 3, 2011)

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- “The kennel had a lock on the chain-link door, but had no fencing or other material over the top and it could be lifted off the ground.”
- “Enclosed area” follows the word “closet” and “room,” both of which have specific limited meanings and which have the common characteristic of being stationery and closed on all sides.



*People v King*, No. 294682 (Mich. App.,  
February 3, 2011)

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- Trial court's conclusion that defendant acted as a "security device" for the marijuana growing inside his home is pure sophistry and belied by defense counsel's unsurprising admission at oral argument that, at times, defendant left the property, thus leaving the marijuana without a "security device" and accessible to someone other than defendant as the registered patient."

*People v King*, No. 142850 (Mich. Sup.  
Ct., June 22, 2011)

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- The Michigan Supreme Court granted the Defendant's application for leave to appeal.
- The Attorney General, the Criminal Defense Attorneys of Michigan, and the Prosecuting Attorneys Association of Michigan are invited to file brief *amicus curiae*.





# Primary Caregiver Compensation

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- A primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana.
- Any such compensation shall not constitute the sale of a controlled substance. MCL 333.26424(e).



## *People v. Redden, Concurrence*

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- “Because a primary caregiver may assist only the five or fewer qualifying patients to whom the caregiver is connected through the registration process, there is no circumstances under the MMMA in which the primary caregiver can provide assistance to any other qualifying patient, and receive compensation in exchange, without being subject to arrest and prosecution under the Public Health Code.” Pages 13-14.



## *People v. Redden, Concurrence*

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- “The statute does not authorize compensation for the labor in cultivating marihuana or for otherwise assisting the qualifying patient in its use, nor does it indicate that the primary caregiver may profit financially from this role.” Page 14.
- “A primary caregiver may receive compensation for only the costs associated with assisting a registered qualifying patient in the medical use of marihuana.” Page 14.



# Not Subject to Arrest

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These primary caregivers 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 Marihuana. MCL 333.26424(b).



# In the Presence or Vicinity

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“A person shall not be subject to arrest or prosecution, solely for being in the presence or vicinity of the medical use of marihuana, or for assisting a registered qualifying patient with using or administering marihuana.” MCL 333.26424(i).



## *People v. Redden, Concurrence*

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- “Such assistance is in the nature of holding or rolling a marihuana cigarette, filling a pipe, or preparing marihuana-laced brownies for the qualifying patient suffering from a terminal illness or debilitating condition.” Page 15.
- “Section 4(i) does not protect persons from arrest for acquiring, possessing, cultivating, manufacturing, delivery, transferring, or transporting marihuana on behalf of the qualifying patient.” Page 15.



# Seizure and Forfeiture

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“Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.” MCL 333.26424(h).



# No Probable Cause

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The possession or application for a registry identification card does not constitute probable cause or reasonable suspicion and could not be used to support the search of the person or property of an individual who possesses or applies for a card, or otherwise subject the person to inspection by local, county, or state governmental agencies. MCL 333.26426(g).



# Custody or Visitation

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- A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an **unreasonable danger** to the minor that can be clearly articulated and substantiated. MCL 333.26424(c)



# Unreasonable Danger

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- Unreasonable: Exceeding the bounds of reason or moderation
- Danger: Exposure or liability to injury, pain, harm, or loss





# Law Enforcement

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- “Any registered qualifying patient or registered primary caregiver who **sells** marihuana to someone who is not allowed to use medical marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony for not more than 2 years.” MCL 333.26424(k).



# What is Prohibited Under MCL 333.2647?

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- Smoking marijuana “in any public place”
- Smoking marijuana on any form of public transportation
- Any use by a person who has no serious or debilitating medical condition
- Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana
- Any use or possession in a school bus
- Any use or possession on the grounds of any preschool, primary, or secondary school
- Any use or possession in any correctional facility



# Other Michigan Laws

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MCL 333.26427(e) reads that:

“All other acts and parts of acts inconsistent with this act do not apply to the **medical use** of marihuana as provided by this act.”

# Operation of a Motor Vehicle

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- Although the Act prohibits the operation of any motor vehicle while under the influence of Marihuana; it does not make reference to Michigan's current OUID Per Se Law.





# *People v. Koon*, November 16, 2010

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- The Circuit Court ruled that:  
“The MMMA, which supersedes MCL 257.625, states that qualified patients are proscribed from operating a motor vehicle while under the influence of marihuana. Therefore, evidence of impairment is a necessary requirement.”



# *People v. Chase*, September 23, 2010

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- The District Court ruled that:  
“MCL 257.625(8) was not amended after the adoption of the Medical Marihuana Act to carve out an exception for the medical marihuana qualified patients to drive with THC in their system.”



*People v Feezel*, No. 138031 (Mich. Sup. Ct., June 8, 2010)

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- The Court ruled that 11-Carboxy-THC (“TCOOH”) is not a derivative of marihuana.
- In doing so, the *Feezel* Court removed 11-Carboxy-THC (“TCOOH”) from the list of Schedule 1 “controlled substances” that can be considered under MCL 257.625(8).



# OUID LAW in Michigan

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- If any amount of a schedule one controlled substance (e.g. marihuana) or cocaine in body, the Prosecutor does not need to prove that suspect was under the influence or impaired. MCL 257.625(8). If it is not a schedule one or cocaine, the Prosecutor must prove operating under the influence or impaired. MCL 257.625(1).
- 11-Carboxy THC (“TCOOH”) is not a schedule 1 controlled substance -- the prosecution can not charge a defendant for OUID Per Se if the defendant only has 11-Carboxy THC (“TCOOH”) in his/her system. *People v. Feezel*, No. 138031 (Mich. Sup. Ct., June 8, 2010).



# Schedule 1 or Cocaine

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- Requires evidence of specified substance in the blood
- This will require a blood draw
- Does not require evidence of “bad driving”
- Marihuana is a Schedule 1
- Cocaine is added by reference
- **Does not include ALL** scheduled Drugs  
(Examples which are not included : Hydrocodone, Diazepam)



# Drugged Driving a Growing Problem

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- According to the Fatality Analysis Reporting System (FARS), one in three (33 percent) of all drivers with known drug-test results who were killed in motor vehicle crashes in 2009 tested positive for drugs (illegal substance as well as medications).
- “Drugged driving is a much bigger public health threat than most people realize.” Gil Kerilowske, Director of National Control Policy.



# Surveys on Drug Use

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- More than 16% of weekend, nighttime drivers tested positive for illegal drugs, prescription drugs, or over-the-counter medication
- 10 million people reported driving under the influence of illicit drugs during the year prior to being surveyed.



# Marihuana and Driving

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- Marihuana appears in urine and blood 3-5 times more frequently in fatal driving crashes
- 60% failed field sobriety test 2 ½ hours after moderate smoking.
- 2 joints smoked (10 minutes apart with 1.8-3.6% THC) failed sobriety tests 20 minutes later.


# Michigan Drugged Driving Issues



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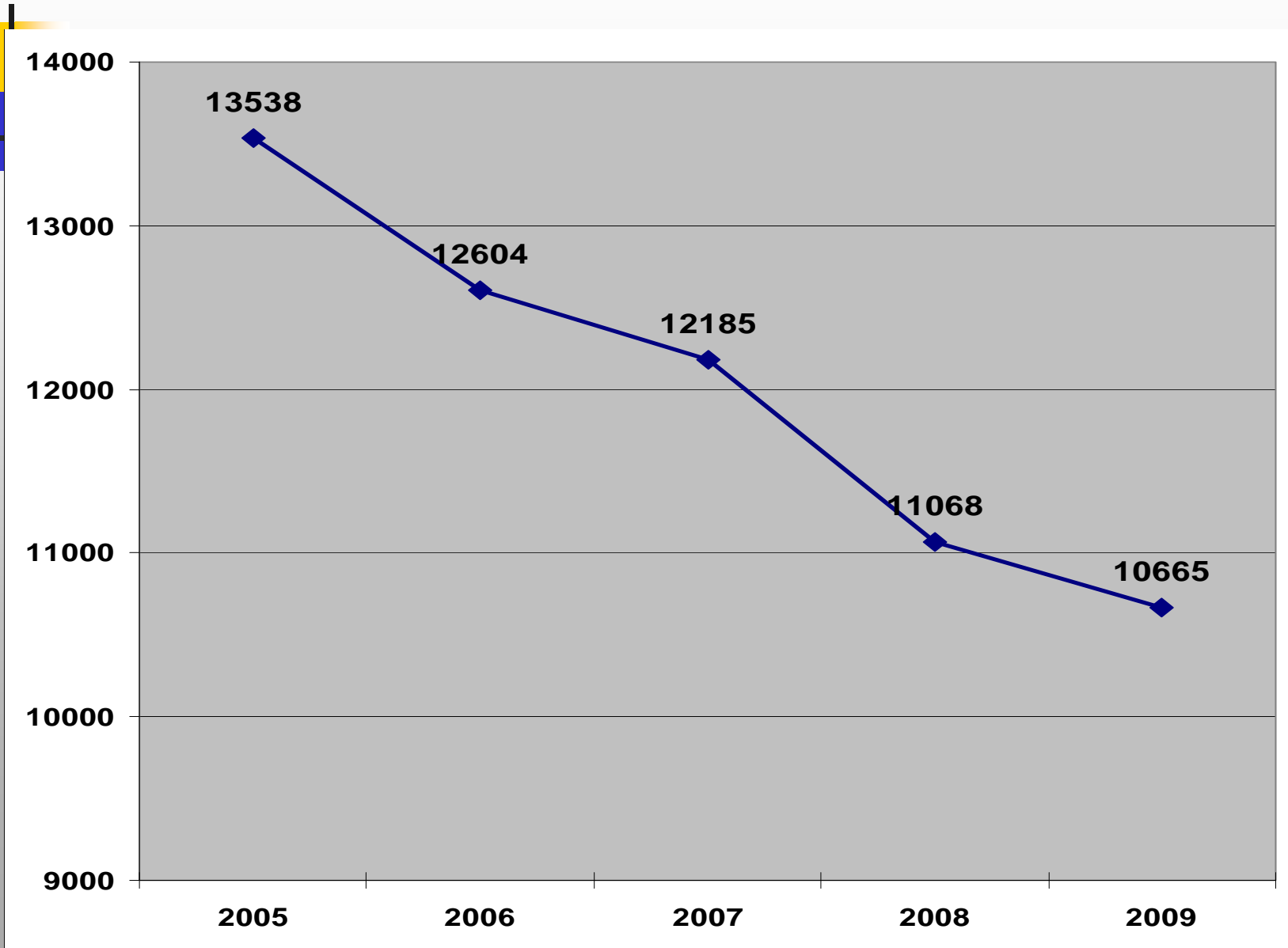


*Alcohol-  
related  
incidents*

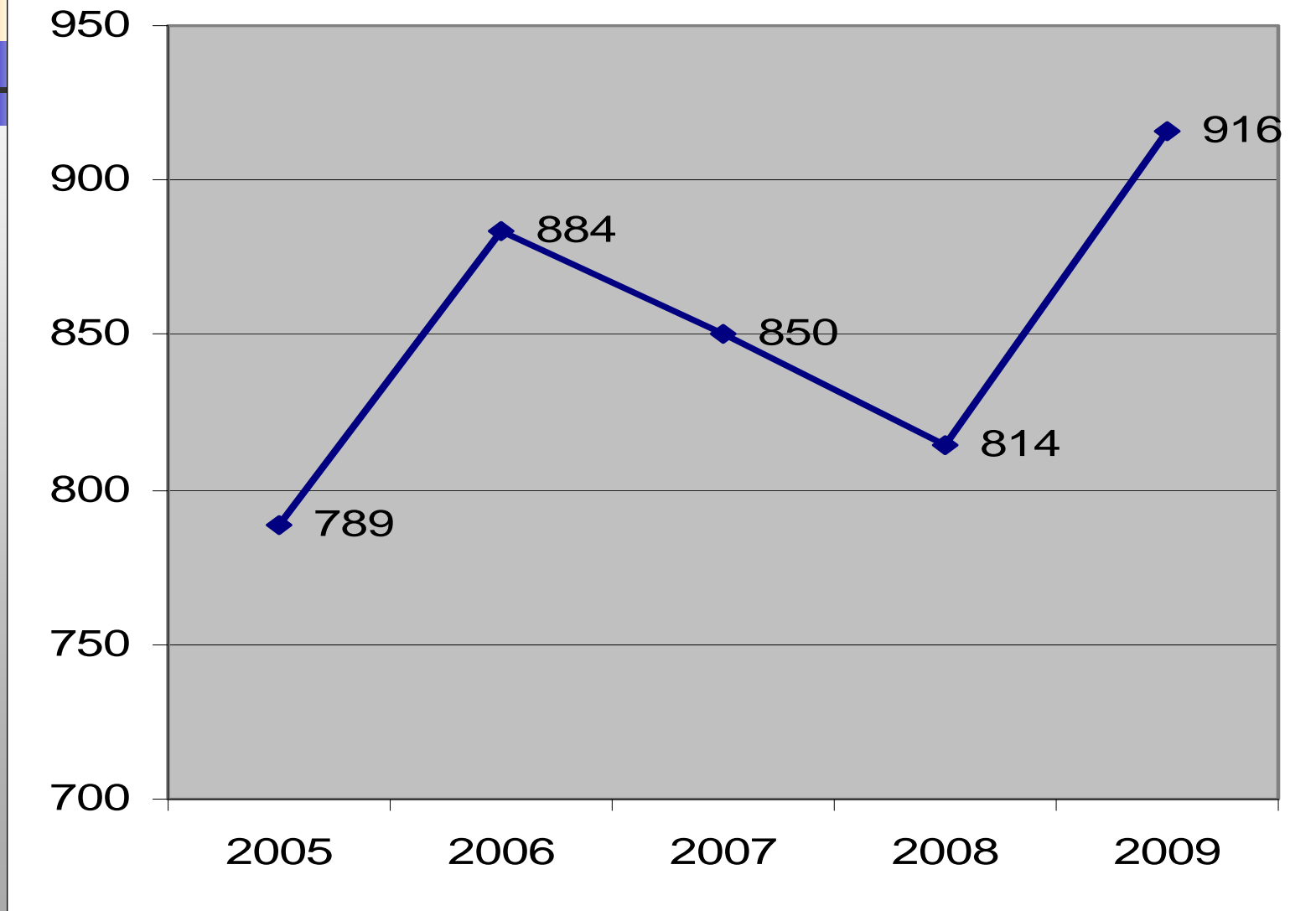
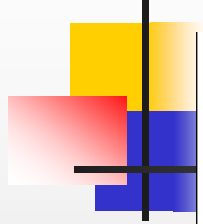


*Drug-  
related  
incidents*

# Alcohol-Related Crashes 05-09



# Drug-Related Crashes 05-09



*Michigan Medical Marihuana Act*



# NHTSA Impaired Driving Programs

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**Drug Evaluation & Classification Program**



**Advanced Roadside Impaired Driving Enforcement**



**Standardized Field Sobriety Testing**



# ARIDE-Practical Solution

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- Developed by NHTSA with input from the IACP
- Created to address the gap in training between the Standardized Field Sobriety Testing (SFST) and the Drug Evaluation Classification (DEC) Program
- Allows officers to develop advanced skills and knowledge that will assist them in identifying alcohol and drug impaired drivers



# ARIDE in Michigan

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- First Michigan class June 2009
- 25 participants (prosecutors and officers)
- 10 more classes averaging 25 per class



# Michigan-Roadside Drug Testing

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- Michigan drivers could become the first in nation subject to roadside drug testing under a bill recently introduced in the legislature.
- The legislation would authorize police to administer a roadside saliva test for illegal drug use, just as they do breath tests for alcohol.
- According to NHTSA, there is currently no accurate and reliable way to measure the level or degree of driving impairment associated with the use of drugs.

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# Statutory Affirmative Defense

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MCL 333.26428(a) states that “Except as provided in Section 7, a patient and a patient’s primary caregiver, if any, may assert, the medical purpose for using marihuana as a defense to any prosecution involving marihuana.”



# Evidentiary Hearing

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- Pursuant to MCL 333.26428(a)(3), "A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a)."



# Element #1 Under Section 8: Physician's Statement

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A physician (Licensed M.D./D.O.) has stated that:

- In the physician's professional opinion
- After having completed a full assessment of the patient's medical history and patient's medical condition
- Which assessment was made in the course of a bona-fide physician-patient relationship
- That the patient is likely to receive therapeutic or palliative benefit
- From the medical use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.



# Element #2 Under Section 8: Reasonably Necessary Quantity

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The patient and the patient's primary caregiver, if any, were collectively:

- In possession of a quantity of marihuana that was:
- Not more than was reasonably necessary
- To ensure the uninterrupted availability of marihuana
- For the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.



# Element #3 Under Section 8: Medical Use

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The patient and the patient's primary caregiver

- Were engaged in the:
- Acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.



*People v. Redden*, No. 295809  
(Mich. App., September 14, 2010)

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- “The ballot proposal explicitly informed voters that the law would permit registered and unregistered patients to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.”
- “We hold that the district court did not err by permitting defendants to raise the affirmative defense even though neither satisfied the registry-identification-card requirement of section 4.” Page 11.



*People v. Redden*, No. 295809  
(Mich. App., September 14, 2010)

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- “The MMMA does not define the phrase bona fide physician-patient relationship.”
- “We find that there was evidence in this particular case that the doctor’s recommendations did not result from assessments made in the course of bona fide physician-patient relationships.”
- “Indeed, the facts at least raise an inference that defendants saw Dr. Eisenbud not for good-faith medical treatment but in order to obtain marihuana under false pretenses.”



# *People v. Redden, Concurrence*

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- Whether the physician signing the written certification form is the patient's primary caregiver;
- Whether the patient has an established history of receiving medical care from that physician;
- Whether the physician has diagnosed the patient with a particular debilitating medical condition;
- Whether the physician has been paid to sign the written certification;
- Whether the physician has a history of signing an unusually large number of such certifications.



# *People v. Redden, Concurrence*

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- Footnote 20, page 15:
- “It is beyond question that 100, 500, 1,000 terminally ill patients, with a 10 minute examination, has not been acting pursuant to bona fide physician-patient relationship.”
- “A revolving-door rubber-stamp, assembly line certification process does not constitute activity in the course of a bona fide physician-patient relationship.”



# Federal Agents Jail Michigan Doctor

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- On April 12, 2011, the federal complaint, filed in U.S. District Court in Bay City, alleges that Buck issued 1,870 medical marijuana certificates between the time the state law passed two years ago and March 17, 2011, for which Buck charged \$200 per certification and \$150 per renewal.



# *People v. Kolanek*, No. 295125 (Mich. App., January 11, 2011)

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- The case required the Michigan Court of Appeals to consider an issue of first impression as to when a physician must provide the statement under MCL 333.26428(a)(1).
- “We conclude that has stated requires that the physician’s opinion occur prior to arrest. First, because the term is past tense, the initiative must have intended that the physician’s opinion be stated prior in time to some event.”



*People v. Walburg*, No. 295497  
(Mich. App., February 10, 2011)

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- In an unpublished opinion, the defendant claimed that he used the marihuana to treat severe anxiety disorder and insomnia and obtained an affidavit from a physician after his arrest.
- Following the holding in *Kolanek*, the Court reversed the dismissal of the charges and remanded the case to the trial court.



# *People v. Rigo*, 69 Cal. App. 4th 409 (1999)

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- The Court ruled that compassionate use statute did not extend to physician's post-arrest ratification of defendant's self-medication.
- "Defendant's medical condition did not bring him to consult a doctor; rather the Twin Cities police officers did. There are no excuses, or 'exigent circumstances' to validate the approval or recommendation over three months after the defendant's arrest."

# *People v. Kolanek*, No. 142712 (Mich. Sup. Ct., June 22, 2011)

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- The Michigan Supreme Court granted the Defendant's application for leave to appeal.
- The Attorney General, the Criminal Defense Attorneys of Michigan, and the Prosecuting Attorneys Association of Michigan are invited to file brief *amicus curiae*.



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**SPORTS**

# *People v. Anderson,*

## Kalamazoo County, 8/5/10

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- The Kalamazoo County Circuit Court ruled that “The amount of marihuana the Defendant possessed was more than reasonably necessary because it exceeded the presumptively reasonable 12 marihuana plants and 2.5 ounces of usable marihuana limits of section 4 and Defendant has not shown his condition was so unique he needed to grow and use more than that.”



# *People v. Anderson*, No. 300641 (Mich. App., June 7, 2011)

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- The Court ruled that "A trial court may bar a defendant from presenting evidence and arguing a sec 8 defense at trial where, given the undisputed evidence no reasonable jury could find that the elements of the sec 8 defense had been met."
- As there was no dispute about the amount of plants Defendant possessed, or that the plants were not kept in a closed locked facility, "no reasonable jury could, therefore, find that he had 12 or fewer plants or that the plants were in an enclosed locked facility."

# Department of Justice's Position-October 19, 2009

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- The Department of Justice put forth new legal guidelines.
- Prosecutors will be told "It is not a good use of their time to arrest people who use or provide medical marijuana in strict compliance with state law."





# New York Times Article-May 7, 2011

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- Letters from U.S. Attorneys have gone out to governors in Arizona, Colorado, Maine, Montana, Rhode Island, Vermont, and Washington
- US Attorneys claim they may prosecute vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity, even if allowed under state law.



# Department of Justice's Position-June 29, 2011

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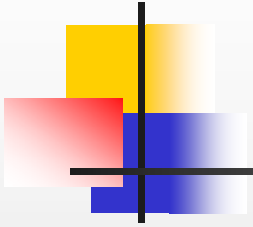
- The Department of Justice clarified its previous
- The Department's position in October 2009 "was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law."

# Michigan Attorney General's Position-June 28, 2011

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- The Attorney General opined that "The Michigan Medical Marihuana Act, prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver."





# Answers

*Michigan Medical Marihuana Act*



# Legal Issue #1

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- Whether one qualifying patient can transfer unused marihuana to another qualifying patient?





## *People v. Redden, Concurrence*

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- “The MMMA does not give any individual permission to sell marihuana in the state of Michigan for any purpose.”
- “The definition of ‘medical use’ is unexpectedly broad: although a qualifying patient may not sell marihuana, just about anything else an individual can do with marihuana would be considered medical use under the MMMA.”



# Isabella County Case

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- Facts: Two individuals in their business enterprise receive marihuana from caregivers with the authority of their designated patients to sell that marihuana to other medical marihuana patients. There is approximately 200 patients and caregivers.
- The argument is that that this business does not comply because the law indicates that the drug only can be obtained by a registered patient who is authorized to cultivate plants or the patient's register caregiver authorized to cultivate the plants.



# *State of Michigan v. McQueen,* December 16, 2010

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- “This court finds that the patient-to-patient transfers and deliveries of marihuana between registered qualifying patients falls soundly within the medical use of marihuana as defined by the MMMA.”
- “This court also finds that because the Legislature provided the presumption of medical use of marihuana in MCL 333.26424(d), it intended to permit such patient-to-patient transfers and deliveries of marihuana between registered qualifying patients...”



# *People v. Nater, January 12, 2011*

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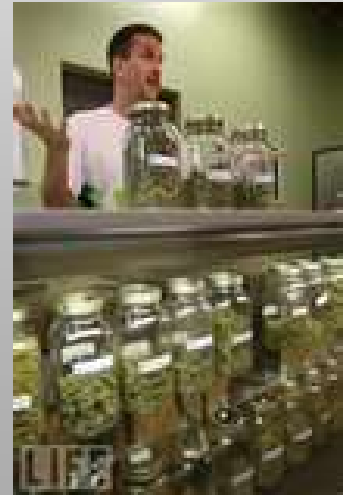
- Oakland County Circuit Court ruled as follows:
  - “A sale between two MMMA patients who are connected via the MDCH registration process is illegal and not protected conduct under the MMMA.”



## Legal Issue #2

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- Are marihuana dispensaries permitted under the Act?





# Other States

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- Many of the other medical marijuana states allow medical marijuana to be transferred from caregiver to patient by means of a third party collective or cooperative.
- A California or Colorado patient can obtain their medicine from a central collective or cooperative instead of receiving it directly from their caregiver.
- A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members.

**Robert McConkie**

**From:** Charles Fortino [cmf@fpmc-law.com]  
**Sent:** Thursday, January 14, 2010 2:46 PM  
**To:** Robert McConkie; phil moore  
**Subject:** Fw: Medical Marihuana

This is interesting. What should we do now?  
----- Original Message -----

**From:** Bakita, Stanley  
**To:** MAMA@LISTSERV.MML.ORG  
**Sent:** Thursday, January 14, 2010 10:43 AM  
**Subject:** Medical Marihuana

ListMates –

FYI. The following statement was found on a marihuana website by our Planning Director yesterday. She confirmed the authenticity of the statement by speaking with Mr. McCurtis by phone this morning. Sorry for the formatting of the statement, but I'm caught up in some of that Bill Gates/GM stuff when I try correcting it to look and read better.

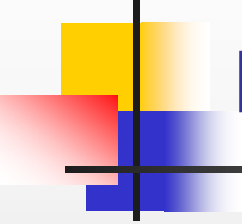
Stan Bakita  
Assistant City Attorney  
Grand Rapids

*"The Michigan Medical Marihuana Act does not specifically address marijuana dispensaries. Similar laws in other states, however, do address them and allow dispensaries. In states where the law addresses marijuana dispensaries, the law establishes a system to regulate those facilities. Since the law in Michigan does not address dispensaries or offer any regulating system for them, the Michigan Department of Community Health interprets the law as saying that it is illegal to operate a marijuana dispensary."*

James McCurtis, Jr.  
Public Information Officer  
Michigan Department of Community Health

Mr. McCurtis' statement is based on the opinion of the Michigan Department of Community Health legal counsel. In a phone conversation with Mr. McCurtis, the Department of Community Health is clear that marijuana dispensaries and grow facilities are not addressed under the Michigan Medical Marihuana Act and are therefore not permissible. (phone conversation 1/14/10)

**Suzanne M. Schulz, AICP**  
Planning Director



# Feds raid marihuana clinics, businesses, homes in Metro Detroit

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- On April 12, 2011, Caregivers of America medical marihuana facilities in Walled Lake and Novi, Bayside Sports Grille in Walled Lake and Coliseum Bar & Grill strip club on 8 Mile in Detroit were among the targets of the raids.



## Legal Issue #3

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- Is a “visiting qualifying patient” with a card from another state limited to possessing the amount listed under the Act, or can they possess what is allowed under their own state law?



# MCL 333.26424(j) of the Act

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- It provides that another state's marijuana card "shall have the same force and effect as a registry identification card issued by the department."
- It should be noted that Michigan recognizes CCW permits from other states, however, it requires out of state CCW permit holders to comply with the restrictions stated in Michigan law.



## Legal Issue #4

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- Can an employer discipline/terminate an employee for using medical marijuana?





# MCL 333.26427(c)2 of the Act

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- “Nothing in this act shall be construed to require:
  - (2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.”
- Civil case in Calhoun County which Walmart fired an employee who tested positive for marihuana which he used while off-duty.
- It is suggested that employers should adopt employment policies addressing how the medical use of marihuana will be treated by the employer.



# Casias vs. Walmart, U.S. District Court, decided February 11, 2011

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- The Court ruled that the “state’s medical marihuana law protects users from arrest, but not employers’ policies that ban the use of the drug.”
- “All the law does is give some people limited protection from prosecution by the state, or from other adverse state action in carefully limited medical marihuana situations.”



## Legal Issue #5

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- Can an individual cultivate, distribute, or possess medical marihuana if he/she lives in a school zone?



# Drug Free School Zone

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- Neither a patient nor their caregiver can cultivate, distribute, or possess marijuana within the federal 1000-foot Drug Free School Zone.
- MCL 333.7410(4)-An individual 18 years of age or over who violates section 7403(2)(a)(v)(d) by possessing a marijuana on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7403(2)(a)(v)(d).



## Legal Issue #6

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- Does a qualifying patient or primary caregiver have to maintain the plants at their primary residence or can it be a secondary location?



# No Requirements

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- There is no requirement that a qualifying patient or primary caregiver maintain the plants at their residence. Where the individual maintains the plants may eventually be limited by zoning laws, the Michigan Medical Marihuana Act, and federal law.



# Legal Issue #7

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- What about an individual who is on probation or parole?



# Parole and Probation

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MCL 771.3 reads:

- “During the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.”
- Midland and Macomb County Circuit Courts recently ruled that probationers/defendants are not allowed the use of medical marihuana while on probation.
- For those individuals who are on supervised release, parole, or probation, a sentencing court can order that this individual not be allowed to use or possess medical marihuana.



## Legal Issue #8

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- What is the process to revoke a patient or caregiver's registry identification card if convicted for selling marihuana under 4(k) of the Act?



# MCL 333.26424(k) of the Act

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- It is unclear as to how long the revocation will last.
- It only revokes a patient's card for selling marihuana, and not for selling other drugs.
- MDCH will not revoke a patient or caregiver's card when that individual is placed on probation or parole when there is condition of probation that prohibits the possession/use of marihuana.

# The Act does not . . .



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**Treat marihuana as a medicine or even as a food.**

- **No guidelines for processing.**
- **No purity requirements or standardization of ingredients.**
- **No potency requirements.**
- **No labeling requirements.**
- **No hygienic requirements.**
- **No requirements for herbicide/pesticide use.**
- **No research on therapeutic properties.**
- **No information on drug-drug or drug-disease interactions.**
- **Limited information on delivery methods.**
- **Limited information on cumulative effects.**

# Future Concerns are now Concerns



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- Profiteering
- Regulating/prohibiting medical Marihuana dispensaries through ordinances
- Exposure to federal prosecution
- Medical marihuana in jails
- Defendant on probation/parole
- Children's day care centers
- Adult foster care homes and nursing homes
- Federal subsidized housing
- Colleges and universities
- School zones
- Work-place
- CCW Permits



# Grand Rapids Press-Fix it

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- In an editorial Tuesday, the Grand Rapids Press called on state lawmakers to fix holes and ambiguities in the state's medical marihuana law.
- “This legal patchwork serves no one well. The Legislature should do what it frequently must when voters approve new statutes — pass enabling laws that respect the will of voters and set in place reasonable safeguards against illegal activity. Newly inaugurated lawmakers, along with Gov. Rick Snyder, have the opportunity to clear away the confusing haze surrounding the law and provide the needed guidance. The absence of legislative action has left a morass that will ultimately be sorted out by courts — not a smart or democratic way to cement public policy.”



# Pending Legislation

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- SB 17: Prohibits marihuana clubs & bars (90 day misdemeanor)
- SB 321: Exempts medical use of marihuana from personal protection insurance benefits
- SB 377: Requires MDCH to forward info re: cards to MSP who will make it available to state & local police officers
- HB 4397: similar to SB 17, no marihuana bars or clubs
- HB 4463: prohibits one convicted of any felony from serving as a primary caregiver

# Michigan Legislature

- Requires  $\frac{3}{4}$  vote of both houses to amend the Act
- Different thoughts with the legislature:
  - Some legislators support MMMA
  - Others don't want to legalize a Schedule 1 drug
  - New Administration





# Contact Information

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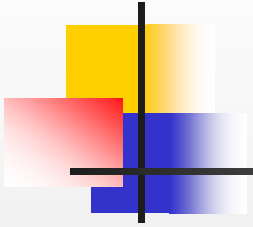
- Melanie Brim (517) 373-8068  
Director, Bureau of Health Professions  
[brimm@michigan.gov](mailto:brimm@michigan.gov)
- Celeste Clarkson (517) 373-4992  
Compliance Section Manager, Bureau of Health Professions  
[clarksonc@michigan.gov](mailto:clarksonc@michigan.gov)
- Melissa Peters (517) 241-4337  
Medical Marihuana Program Coordinator, Bureau of Health Professions  
[petersm@michigan.gov](mailto:petersm@michigan.gov)

# Marihuana Involved in Fatal Crash



*Michigan Medical Marihuana Act*





# QUESTIONS?

*Michigan Medical Marihuana Act*

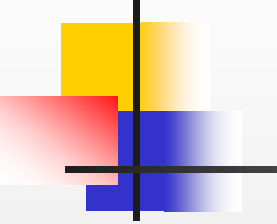
**Kenneth Stecker  
Traffic Safety Resource Prosecutor  
Prosecuting Attorneys Association of Michigan**

**116 West Ottawa  
Lansing MI 48913**

**(517) 334-6060 x 827**

**[SteckerK@Michigan.gov](mailto:SteckerK@Michigan.gov)**





*Michigan Medical Marihuana Act*