

Michigan's Medical Marihuana Act

Presented by:
Kenneth Stecker
PAAM


2/24/09 Michigan's Medical Marihuana Act



What is Marihuana?

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


Michigan Medical Marihuana Act



Physical Effects

- THC enters the body through the lungs;
- Smoke is inhaled and held in the lungs;
- Smoking inhalation, intoxication effect within minutes;
- Smoked THC effect is for 3–4 hours, longer if ingested orally.

Michigan Medical Marihuana Act



Legal History of Marihuana

- 1800s-Legal in most states, used as hemp to make items such as rope, and used for medicinal purposes;
- 1910-After the Mexican revolution, a wave of Hispanics immigrated to the U.S. and introduced the American public to recreational use;
- 1930-The Federal Bureau of Narcotics was formed to scrutinize the use of Marihuana and other drugs.



Michigan Medical Marihuana Act

Legal History of Marihuana

- Mid-1930s-Marihuana was regulated in every state through the Uniform State Narcotics Act;
- 1937-Marihuana Tax Act made possession or transfer of the drug illegal throughout the U.S. under federal law, excluding medical and industrial uses, in which an expensive excise tax was required;
- 1950s-Strict mandatory sentencing laws, substantial federal penalties for possession, but was removed in the 1970's.



Michigan Medical Marihuana Act

Legal History of Marihuana


- 1970-Federal Controlled Substances Act was enacted and it classified Marihuana as a Schedule 1 drug;
- 1973-The Drug Enforcement Agency was created;
- 1986-The Anti-Drug Abuse Act reinstated mandatory prison terms;
- 1996-California voters legalized medical Marihuana.



Michigan Medical Marihuana Act

Epidemiology


- By 2006, more than 12 million Americans (about 5% of the population) were using Marihuana on a monthly basis (average of 18.7 joints).
- Over 110,000 visits to an emergency room listed Marihuana as a contributing factor.
- 39% of adult male arrestees and 26% of adult female arrestees tested positive for Marihuana, as did 53% of the juvenile male and 38% of the juvenile female arrestees.



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 Medical Marihuana Act

Marihuana and Driving

- Marihuana appears in urine and blood 3-5 times more frequently in fatal driving crashes than in the general population.
- 60% failed field sobriety test 2 1/2 hours after moderate smoking.
- 2 joints smoked (10 minutes apart with 1.8-3.6% THC) failed sobriety tests 20 minutes later.



Michigan Medical Marihuana Act

Michigan's Medical Marihuana Act-Overview

Effective-December 4, 2008



- Michigan Department of Community Health (MDCH) will have 120 days after December 4, 2008, to adopt rules to implement the Act.
- If MDCH fails to adopt rules within 120 days, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel MDCH to perform the actions pursuant to the Act.

Michigan Medical Marihuana Act

Qualifying Patient

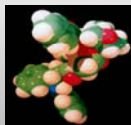
A person who has been diagnosed by a physician as having a debilitating medical condition.



Michigan Medical Marihuana Act

Debilitating Medical Condition

- Cancer
- Glaucoma
- HIV
- AIDS
- Severe nausea
- Etc.



Michigan Medical Marihuana Act



Written Certification

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 Marihuana.



Michigan Medical Marihuana Act



Medical Use

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.



Michigan Medical Marihuana Act



Enclosed, locked facility

- 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.



Michigan Medical Marihuana Act



Primary Caregiver

An individual at least 21 years of age who has agreed to assist with a patient's medical use of Marihuana and who has never been convicted of a felony involving illegal drugs.

Michigan Medical Marihuana Act



Usable Marihuana

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.



Michigan Medical Marihuana Act



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.



Michigan Medical Marihuana Act



Possession, Cultivation, and Plant Limits

- Qualifying Patient- Up to 2.5 ounces of Marihuana and 12 Marihuana plants in an enclosed, locked facility.
- Primary Caregiver-Up to 2.5 ounces, and if primary caregiver is specified by qualifying patient, then allowed to cultivate up to 12 Marihuana plants, kept in an enclosed, locked facility.



Michigan Medical Marihuana Act



Not Subject to Arrest

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 Marihuana.



Michigan Medical Marihuana Act



Designation




- The patient could designate a caregiver, and would have to indicate whether the patient or the caregiver would be allowed to possess Marihuana for the patient's medical use.
- Each patient could only have one caregiver and each caregiver could assist no more than five patients.



Michigan Medical Marihuana Act

Visiting Qualifying Patients

- A card issued elsewhere in the United States would have the same force and effect as a card issued by the MDCH.
- A “visiting qualifying patient” refers to a patient who is not a Michigan resident or who had been a Michigan resident for less than 30 days.



Michigan Medical Marihuana Act

Identification Card System


- The Act requires MDCH to establish an identification card system for patients qualified to use Marihuana and individuals qualified to be primary caregivers.



Michigan Medical Marihuana Act

Administration

- The qualifying patients would have to submit a written certification from a physician and an application or renewal fee, along with other specific information to the MDCH.
- MDCH shall verify the information submitted and either approve or deny an application within 15 days after receiving it.
- If MDCH should approve the application, MDCH would issue a “registry identification card.”
- A “registry identification card” means a document issued by MDCH that identifies a person as a registered qualifying patients or registered primary caregiver.



Michigan Medical Marihuana Act



Under the Age of 18

MDCH could not issue a registry card to a patient under the age of 18 years of age unless three criteria are met:

1. Explained the potential risks and benefits to the patient and a parent or guardian
2. Written certification from two physicians;
3. Parent or guardian consents in writing.



Michigan Medical Marihuana Act



Confidentiality of the Card

- MDCH would keep a confidential list of the individuals to whom it has issued a card.
- The names and other identifying information on the list would be confidential and exempt from disclosure under the Freedom of Information Act.



Michigan Medical Marihuana Act




In the Presence or Vicinity

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.

Michigan Medical Marihuana Act

No Probable Cause


The possession or application for a registry identification card would 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.



Michigan Medical Marihuana Act

What is Prohibited Under the Act?


- Possessing Marihuana, or otherwise engaging in the medical use of Marihuana: in a school bus, on the grounds of any preschool or primary secondary school; or in any correctional facility.
- Smoking Marihuana on any form of public transportation, or in any public place.
- Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of Marihuana.



Michigan Medical Marihuana Act

Operation of a Motor Vehicle

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.



Michigan Medical Marihuana Act

Public Place

Although the act prohibits smoking Marijuana in public places, it does not define what would constitute a public place.



Michigan Medical Marijuana Act

Affirmative Defenses

- It allows for the assertion of an affirmative defense, even for unregistered patients and caregivers.
- The defense would be presumed valid where the evidence showed that the 3 elements were established.
- Pursuant to a motion to dismiss, the charges shall be dismissed if the 3 elements were established.




Michigan Medical Marijuana Act

How Patients Acquire Marijuana?


Although the Act allows for the assertion of an affirmative defense (even for unregistered patients and caregivers) for the acquisition, possession, cultivation, use, delivery, transfer, or transportation of Marijuana or paraphernalia for medical use, it does not specify how patients and caregivers would acquire Marijuana for medical purposes.

Michigan Medical Marijuana Act




Law Enforcement

- A qualifying patient and caregiver could face felony penalties of imprisonment for up to two years and/or fine of not more than \$2,000.00 and revocation of his/her ID card for selling Marihuana to someone who is not allowed to use Marihuana.
- The Act would impose a \$500.00 fine for fraudulent representation of any fact or circumstance relating to the medical use of Marihuana to avoid prosecution.




Michigan Medical Marihuana Act




MDCH's Proposed Rules

- Public Hearing was held on January 5, 2009 in Lansing, and the proposed rules were just released on February 23, 2009;
- Certain members of the public questioned the proposed rules, such as; requiring patients and caregivers to keep an inventory of their Marihuana, and prohibiting Marihuana to be smoked in public view, while on private property.
- MSP questioned a proposed rule that would require leftover Marihuana to be taken control by law enforcement agencies.




Michigan Medical Marihuana Act



Concerns About the Act

- Potential conflict with MCLA 257.625(8);
- Does not specify how patients and caregivers would acquire Marihuana for medical purposes;
- The affirmative defense section applies to "patients" rather than just to "qualifying patients."




Michigan Medical Marihuana Act

Controlled Substances

SCHEDULE ONE:


- If any amount of a schedule one controlled substance (e.g. Marihuana) or cocaine in body, need not prove that suspect was under the influence or impaired. MCL 257.625(8). If not schedule one or cocaine, must prove operating under the influence or impaired. MCL 257.625(1).



Michigan Medical Marihuana Act

Nevada Supreme Court Decision

- *State v. George Lynard*- The Nevada Supreme Court ruled a doctor's letter recommending medical Marihuana is no defense in a DUI case.
- The Supreme Court held there is no language in Nevada law which allows drivers who have a valid identification card to drive under the influence.



Michigan Medical Marihuana Act

Michigan vs. Federal Law


- Marihuana is illegal under Michigan and federal laws (Schedule 1 drug);
- Medical Marihuana under Michigan law is legal, but it will have no effect on federal law related to the use, possession, and delivery of Marihuana;
- Federal law preempts Michigan law meaning that federal agents can arrest and prosecute medical Marihuana patients and caregivers.




Michigan Medical Marihuana Act

Federal Court Decisions


- In *United States v. Oakland Buyers' Cooperative*, 532 U.S. 483 (2001), the U.S. Supreme Court held that the medical necessity defense was not a valid defense against a federal charge.
- In *Conant v. Walters*, 309 F.3d 629 (2002), the 9th Circuit provided physicians with limited protection from federal prosecution.
- In *Gonzalez v. Raich*, 545 U.S. 1 (2005), the U.S. Supreme Court ruled that the Commerce Clause gives Congress the power to regulate local activities, such as cultivating and possessing medical Marihuana, that can have an effect on interstate commerce.



Michigan Medical Marihuana Act

Future Concerns


- Profiteering of Marihuana;
- Regulating/prohibiting medical Marihuana dispensaries through ordinances;
- Exposure to federal prosecution;
- Medical Marihuana in the jail;
- Defendant on probation/parole
- School zones;
- Work-place.




Michigan Medical Marihuana Act

Other Medical Marihuana States

- Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Washington
- The earliest state law was enacted in 1996 in California, the most recent in Michigan in 2008.




Michigan Medical Marihuana Act




Profiteering in Marihuana

Michigan Medical Marihuana Act



What Can You Do Now?

- Familiarize yourself with MDCH's rules once the rules take effect.
- Meet with your other law enforcement officers to educate them on the law.
- Educate your community.



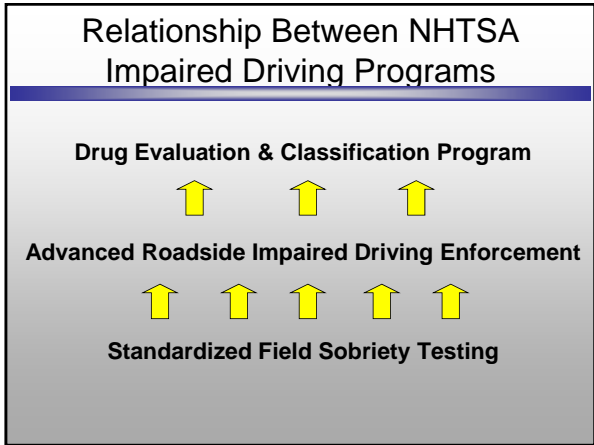
Michigan Medical Marihuana Act

ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT (ARIDE)

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

Difference Between DECP and ARIDE

DREs:	ARIDE:
<ul style="list-style-type: none">• 72 Hrs classroom• Field certifications• Comprehensive final knowledge examination• Maintain certification through continuing education	<ul style="list-style-type: none">▪ 16 Hrs classroom▪ Focus on SFST proficiency▪ Broad knowledge of drug impairment indicators▪ Introduction to drug identification matrix



How Long is the Course?

- ARIDE is a 16-hour training course and is usually taught by a Drug Recognition Expert (DRE).
- The course is divided into 8 sessions, and occupies 2 consecutive training days.
- Formal presentations and lectures occupy the majority of the course. Most of the remainder of the course is devoted to demonstrations and hands on practice.
- A final exam requires students to participate in scenario interpretation exercises and identify the category of drugs responsible for the "evidence" described.

Course Objectives

- Properly administer & articulate the SFSTs;
- Describe the relationship of drugs to impaired driving incidents;
- Observe, identify and articulate the observable signs of drug impairment;
- Recognize medical conditions which may mimic signs of impairment.

Drugs in Human Body

- Basic purpose and functions of selected major systems in the human body
- Methods of ingestion and general effects of drugs
- Medical conditions which may mimic alcohol and/or drug impairment
- 7 major drug categories

Legal Issues

- Reasonable Suspicion
 - To Stop
 - To Administer Field Sobriety Tests
- Proper Administration of the SFSTs
 - Substantial Compliance
- Probable Cause for Arrest
- Roadside Questioning/Miranda
- Sufficiency of Evidence to Prove Elements of the Offense

GOALS OF ARIDE

- Able to determine if an individual is under the influence of a drug or drugs other than alcohol, or the combined influence and other drugs, or suffering from some injury or illness that produces similar signs to alcohol/drug impairment.
- Identify the broad category or categories of drugs inducing the observable signs and symptoms of impairment.

Why ARIDE?

- Better identification of drugged drivers
- Better arrests
- Better prosecutions
- Saved lives





