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OF MICHIGAN

Statewide Ballot Proposal 2018-1 — Marijuana Legalization

In a Nutshell

Early arguments for the criminalization of marijuana invoked anti-immigrant sentiments and exaggerated potential harms from the drug, linking it to violent crime, insanity, and widespread social chaos. Under current laws, the number of annual arrests for marijuana possession has exceeded arrests for all violent crimes combined, and arrest data reveal stark racial and socioeconomic disparities. Several states have adopted laws in conflict with federal marijuana policy: 31 states (including Michigan) have comprehensive medical marijuana programs, and nine states also have authorized adult recreational use. Marijuana use is on the rise and perceptions of the danger posed by frequent marijuana use seem to be declining.

If Proposal 2018-1 passes, Michigan would establish a regulatory system for growing, processing, transporting, and selling marijuana and products containing marijuana, to which Michigan's 6 percent sales tax and a new 10 percent excise tax would be applied. Adult use and possession of marijuana and marijuana products would be legal under state law, but still be illegal under federal law.

If Proposal 2018-1 is rejected, use and possession of marijuana for non-medical purposes would remain illegal under state law; however, Michigan would maintain its current tax and regulatory system for medical marijuana.

Major Issues to Consider: Proposal 1 eliminates state-level criminality of marijuana possession and use, and might be viewed as an important step for individual liberty and/or social justice. A new marijuana regulatory system would provide consumers accurate labeling and protection from adulterants, but this system would not preclude the entry of big business into the marijuana industry nor the potential for regulatory capture, and would not necessarily guarantee the elimination of a black market. Some new tax dollars would be generated from marijuana businesses; however this revenue will not be sufficient to solve the education or transportation funding issues to which it is primarily directed. The proposal does not generate additional resources that will be needed to deal with marijuana abuse/dependence or other public health issues related to marijuana; however, legalization may free up some resources currently dedicated to law enforcement, criminal justice, and corrections.

Introduction

Proposal 1 on the November 6 statewide ballot is a proposed state statute introduced by the Coalition to Regulate Marijuana like Alcohol. If approved by the voters, it would allow for the sale, use, consumption, and cultivation of recreational marijuana under state law, and would create a system of licensure, regulation, and taxation for commercial marijuana facilities.

Proposal 1 would enact the "Michigan Regulation and Taxation of Marihuana Act" to do the following:

Allow Possession

Proposal 1 would allow Michigan residents 21 years of age and older to use, transport, or process up to 2.5 ounces of marijuana, of which not more than 15 grams may be in the form of marijuana concentrate (excess marijuana of up to 10 ounces may be stored in a locked container within a person's place of residence). Michigan residents would be able to grow up to 12 marijuana plants, as long as they are not in public view. Individual residents would be able to transfer or share (i.e., gift) 2.5 ounces of marijuana to people 21 and older without payment. Possession of marijuana accessories also would be allowed.

Marijuana Defined

There is a dizzying array of terminology related to marijuana; beyond weed, pot, dope, or grass, there are in fact more than 1,000 slang terms.[a] This section covers only the need-to-know terminology.

Cannabis

Cannabis is the most generally accepted term for the plant that is commonly called marijuana. *Cannabis* refers to the genus (Family *Cannabaceae*) of flowering plants native to Asia that includes up to three principal *Cannabis* (sub)species: *C. sativa*, *C. indica*, and *C. ruderalis*.[b] *Sativa* and *Indica* are the two most commonly used for the production of marijuana, and various strains are cross-pollinated and/or cross-bred to produce new hybrid strains.[c] Hemp, a common English name for northern varieties of the *C. sativa* plant, is used to reference the plant most typically when it is bred and grown for industrial uses (such as rope, paper, fabric, or oil)—rather than to maximize its psychoactive properties.[d] Marijuana, then, is a term most often used for strains of the *Cannabis* plant that are grown to be used for intoxication.[e]

Chemical Components

The cannabis plant has hundreds of chemical components and many dozens of these are cannabinoid compounds.[f] Among these cannabinoids, delta-9-tetrahydrocannabinol (Δ^9-THC) is the principal psychoactive component that interacts with the brain in ways that make the user feel "high" or "stoned."[g] Cannabidiol (CBD) is a cannabinoid of particular interest and the other major component of marijuana. CBD is an important component of medical marijuana, and, by itself, does not cause one to get high.[h] According to the World Health Organization: "In humans, CBD exhibits no effects indicative of any abuse or dependence potential…To date, there is no evidence of public health related problems associated with the use of pure CBD."[i]

A simple rule-of-thumb might seem to be "CBD good, THC bad" but that would be an oversimplification (especially given that THC also has medical applications). Much is still unknown about these compounds and how they interact together with the dozens of other cannabinoids in marijuana, or how the human body reacts to these various cannabinoids in consort. It appears that the various cannabinoids may work together in ways that affect potency and/or therapeutic potential through complementary pharmacological activities—this is sometimes called an "entourage effect."[j]

Methods of consumption

Smoking is still the most common method of marijuana consumption.[k] Edible delivery systems—such as the infamous pot brownie—are increasing in popularity. To create an edible, the marijuana flower is typically simmered in a fat (like oil or butter, since the chemical components of interest are fat soluble), and then this marijuana infused fat is used in a recipe for everything ranging from sweet baked goods to savory sauces and other food products.[l] Other delivery methods include "vaping" (a mechanized device that combines the marijuana with water vapor) or "dabbing" (highly concentrated marijuana extracts, or dabs, offer a potent dose of inhaled marijuana). Various oils, tinctures, capsules, patches and strips exist to offer discreet methods of marijuana use.[m]

Marijuana vs Marihuana

The federal Marihuana Tax Act of 1937 anglicized the word's spelling by using an "h" to facilitate pronunciation of the Mexican Spanish *marijuana*. Michigan followed suit for its definition of marihuana in the Public Health Code. Thus, subsequent federal and state laws and documents continue to use the now uncommon "h" spelling.

Footnotes may be found in Appendix A.

Local Control and Private Property Rights

Municipalities would be allowed to prohibit or limit the number of marijuana establishments within their jurisdiction. Local governments may also create local ordinances (including civil fines of up to $500 for infractions) that do not conflict with state law to restrict public signage and the time, manner, and place of operation of marijuana establishments. Ordinances may not restrict transportation of marijuana through the municipality or from operating at a shared location, such as with a medical marijuana facility.

The law would keep licensed marijuana establishments from locating in areas specifically designated for residential use or from being within at least 1,000 feet of public or private schools. However, local governments may vote not to allow establishments within their jurisdictions and may issue ordinances to reduce the distance required.

Private businesses could set their own drug policies. Current and prospective employees may be required to pass drug tests and businesses may forbid the possession and use of marijuana on their premises.

Property owners or managers may also prohibit marijuana use on their premises.

Prohibit Impaired Driving and Public Intoxication

Proposal 1 would prohibit marijuana users from operating motor vehicles such as cars, boats, planes, snowmobiles, etc. while using or under the influence of marijuana.

It also would prohibit residents from smoking, consuming, or vaping cannabis in public places such as parks, schools, hospitals, bars/restaurants, and concert venues, as well as on federal land.

Create a Regulatory Structure

Regulation of marijuana would be handled by the Michigan Department of Licensing and Regulatory Affairs (LARA), the department responsible for oversight of Michigan's medical marijuana program. LARA would be responsible for implementing the law and controlling the commercial production and distribution of marijuana. Department responsibilities and duties would include granting applications for licenses, collecting fees, issuing fines, determining the amount for licensing fees, setting standards for cultivation and packaging, creating advertising restrictions, submitting reports to the governor, and holding public meetings to gather input.

LARA could not limit the number of licenses granted, require customers to provide unnecessary personal information, prevent recreational marijuana dispensaries from operating in shared locations with medical marijuana facilities, or create rules that may be considered unreasonable or highly impractical.

Legalize Industrial Hemp

Proposal 1 would legalize the cultivation, processing, distribution, and sale of industrial hemp and hemp products.

In Michigan, industrial hemp (typically defined as a cannabis plant with a THC concentration of 0.3 percent or lower) has been separated by definition from marijuana since 2015, allowing Michigan colleges and universities to grow industrial hemp for research purposes.[1] Research on the crop has failed to get off the ground, however, largely due to legal concerns.[2] While industrial hemp has very low concentrations of THC compared to plants used for recreational purposes, hemp does contain CBD, leaving it subject to federal regulations.

Impose Taxes and Distribute Revenues

Proposal 1 provides for the taxation of marijuana, marijuana products, and businesses. The tax is structured, on a practical level, to pay for the cost of establishing and running the state regulatory system for recreational marijuana and to generate revenue to fund general government services.

In addition to Michigan's existing six percent sales tax, Proposal 1 creates a new 10 percent excise tax which would be levied on marijuana sales at licensed retailers with revenue placed in a Marijuana Regulation Fund to finance the law's implementation, administration, and enforcement.

Until 2022 (or for at least two years if revenue does not become available until 2021), it would also pro-

vide $20 million each year to one or more U.S. Food and Drug Administration (FDA) authorized clinical trials to research the effectiveness of marijuana to treat medical conditions of veterans and to prevent veteran suicide.

The balance of the fund would be distributed as follows:

> 15 percent to municipalities with marijuana retail stores and microbusinesses, allocated in proportion to the number of facilities within each municipality

> 15 percent to counties with marijuana retail stores, allocated in proportion to the number of facilities within each county

> 35 percent to the School Aid Fund

> 35 percent to the Michigan Transportation Fund

Sales tax revenue from marijuana sales would follow the usual disposition for the state sales tax (with around 73 percent directed to the School Aid Fund). Marijuana businesses and employees of marijuana businesses would also be subject to usual local, state, and federal taxes (property, individual income, unemployment insurance, etc.).

Marijuana businesses would be considered illegal under federal law and could not access federal tax write-offs. Marijuana businesses also lack access to banking services, making them "cash only" businesses and complicating financial record keeping (as well as adding complexity to the collection of taxes).

Define Penalties

Proposal 1 removes criminal penalties associated with marijuana. Non-authorized individuals caught illegally possessing, delivering, or cultivating marijuana could be penalized through civil infractions. Youth caught with marijuana would face a small fine and a few hours of drug education. Repeat offenders would face a misdemeanor for some offenses.

Federalism in Action

States began enacting laws in conflict with federal marijuana policy beginning in 1973 when Oregon became the first state to decriminalize possession of small amounts of marijuana, changing the penalty for getting caught with marijuana from arrest to a ticket and fine (akin to a traffic violation). A handful of other states followed suit, however energy for state decriminalization died down in the 1980s during the Reagan administration's renewed push for a war on drugs.[3] Marijuana has also been decriminalized in some local governments over time.

In 1996, California's Proposition 215— the "Compassionate Use Act of 1996"— legalized the use of medical marijuana. Today, 31 states (including Michigan) plus Washington, D.C., (as well as the territories of Guam and Puerto Rico) have comprehensive medical marijuana programs. In June of this year, Oklahoma passed a ballot initiative to legalize medical marijuana. (See **Map 1**.)

Nine states and Washington, D.C., have also legalized marijuana. With the exception of Vermont, each state did so through a ballot initiative. There are many commonalities between state marijuana

Map 1
State Marijuana Programs
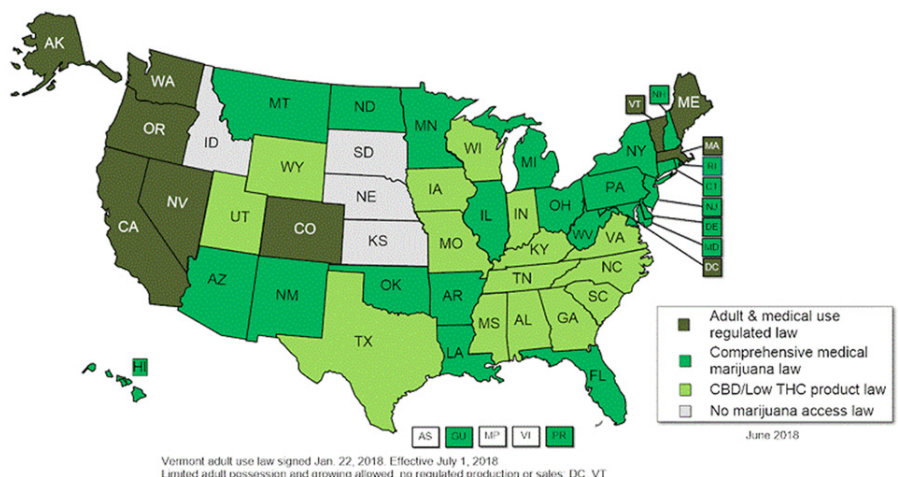
Source: National Conference of State Legislatures

Federal and International Marijuana Policies

Marijuana has been an ongoing subject of contention in the U.S. for nearly 100 years. Early arguments for prohibition (and criminalization) invoked anti-immigrant sentiments and exaggerated potential harms from marijuana, linking it to violence, insanity, sex crimes, and widespread social chaos.[a]

Marijuana was effectively prohibited with enactment of the Marijuana Tax Act of 1937 that arrived on the heels of the repeal of alcohol prohibition. Stigmatizing marijuana use was a means for "exacerbating anti-Mexican sentiment during the Great Depression, when many Anglos felt they were competing with brown-skinned migrants for scarce jobs."[b] Even though academic and scientific research did not always back up policy decisions criminalizing marijuana, federal efforts to reign in marijuana use ebbed and flowed throughout the second half of the 20th century.[c][d] Federal actions have included thte Boggs Act (mandatory sentencing) of 1952, Nixon's "War on Drugs" as embodied in the Controlled Substances Act of 1970 that established marijuana's Schedule 1 classification, and Reagan's "War on Drugs" as embodied in the Anti-Drug Abuse Act of 1986. Marijuana remains illegal at the federal level.

International Examples

In stark contrast to the U.S., Canada has legalized recreational marijuana use at the national level. Canada's legalization goes into effect on October 17, 2018, and allows Canadians who are at least 18 years old (set to 19 in most provinces) to purchase and use marijuana for recreational purposes.[e]

Uruguay became the first country to fully legalize marijuana in December of 2013. The Netherlands allows limited personal possession and cultivation of marijuana, as well as selling marijuana in some coffee shops. Spain allows personal cultivation and use in smokers' association clubs. North Korea allegedly also tolerates possession and consumption of marijuana.[f]

In 2001, Portugal decriminalized (but did not legalize), the acquisition, possession, and consumption of all drugs—including cocaine and heroin. By framing the drug problem in terms of public health rather than criminal justice, drug related pathologies (like overdoses or sexually transmitted diseases) decreased dramatically while overall drug use has remained roughly the same.[g] Nightmare scenarios—from rampant increases in crime and debauchery to widespread "drug tourism"—have not occurred. Portugal's approach did not represent support for an individual's liberty to consume drugs, nor did it create a regulated market for drug production and distribution; rather, it shifted state focus to drug treatment rather than criminal sanctions and prosecution.[h]

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a Hudak, J. (2016) Marijuana: A Short History. The Brookings Institution. Washington, D.C.

b Lee, M. A. (2012) Smoke Signals: A Social History of Marijuana—Medical, Recreational, and Scientific. New York, NY: Scribner.

c Sturm College of Law. University of Denver. Findings of the 1944 La Guardia Report www.law.du.edu/documents/marijuana-summit/La-Guardia-Report.pdf

d Nahas, G. G., & Greenwood, A. (1974). The first report of the National Commission on marihuana (1972): signal of misunderstanding or exercise in ambiguity. Bulletin of the New York Academy of Medicine, 50(1), 55–75.

e Department of Justice. "Cannabis Legalization and Regulation." Government of Canada, Department of Justice, Electronic Communications. August 09, 2018. Accessed September 10, 2018. www.justice.gc.ca/eng/cj-jp/cannabis/.

f Huffington Post. (2013) When It Comes To Marijuana, North Korea Appears to Have Liberal Policy of Tolerance. https://www.huffingtonpost.com/2013/10/08/marijuana-in-north-korea_n_4067341.html

g Greenwald, G. (2009) Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Cato Institute. https://www.cato.org/publications/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies

h Laqueur, H. (2015). Uses and Abuses of Drug Decriminalization in Portugal. Law & Social Inquiry 40(3). www.researchgate.net/publication/269468659_Uses_and_Abuses_of_Drug_Decriminalization_in_Portugal

laws. For example, every state has established a legal age limit of 21 (as with alcohol consumption). All states place limitations on how much marijuana a person may possess – ranging from 1 ounce in California and Alaska to 2.5 ounces in Maine (the amount proposed in Michigan under Proposal 1) – and how many plants they may grow – ranging from four in Oregon to 12 in Maine. Each state prohibits marijuana use on federal land and while operating a motor vehicle.

Like Michigan, North Dakota voters will consider a ballot initiative to legalize marijuana this fall. North Dakota would also create an expungement process for those who have been penalized for previous marijuana convictions. A Colorado ballot question would alter the definition of industrial hemp to mirror the federal law, thus allowing for greater flexibility in regulating industrial hemp. Utah and Missouri are voting on medical marijuana in November. Missouri has three medical marijuana questions on the 2018 ballot (one initiated statute, and two constitutional amendments). If both constitutional amendments in Missouri pass, then the one with the most yes votes will prevail. However, if one (or both) of the constitutional amendments and the statute pass, then the courts may need to work things out.

These state-level changes do not negate the fact that marijuana remains illegal at the federal level.

Analysis of the Proposal

Balancing Regulation and Individual Liberties

In designing a regulation and tax system for the legalization of marijuana, states must balance what may be conflicting goals. Until now, marijuana transactions (except for the recent development of state sanctioned medical marijuana operations) have taken place in the black market. Transactions are subject to the will of the parties involved when the police or courts cannot be called upon to enforce agreed-upon terms. Consumers cannot know with certainty the strength or purity of the marijuana being purchased.

A new licensure system would aim to bring transactions out of the black market and into a regulated commercial market. This regulatory system for the production, distribution, and sale of marijuana should create more transparency for those who choose to consume marijuana products, assuring accurate labeling and protection from adulterants. Transactions would necessarily become more enforceable with legalization.

The system would also seek to treat marijuana as a taxable commodity. Imposing "sin" taxes is one way governments seek to modify behavior (in this case, by creating a financial disincentive associated with marijuana use) and simultaneously garner new revenues. Typically, "sin" tax revenues are necessary both to fund regulatory enforcement and recoup so-cial costs associated with the behavior that is being taxed (e.g., related health care or legal expenses).

A balance must be maintained however. If tax rates are set too high (or possession limits too low), it will create incentives for people to continue operating in the black market. Tax rates set too low could also leave the state and local governments without sufficient revenues to administer the legalization of marijuana or garner revenues for other purposes. Low tax rates are also less likely to discourage behaviors deemed socially undesirable.

Eliminating a black market while also limiting access to marijuana therefore presents a unique challenge for states. Weak limits on cultivation, possession, and consumption have little impact on use, whereas strong controls appear to promote more black market activity.[4]

A regulatory system does not guarantee the elimination of a black market in Michigan. Individual consumers or retailers wishing to exceed possession/sales limits or to avoid state taxes may continue to operate outside the regulated market (with reduced penalties), hiding in plain sight amid lawful activity.[5] Black market sales may also persist in rural areas of the state, if the distance to a legal marijuana operation is too great. Marijuana produced in Michigan may also become destined for out-of-state sale, as has occurred in western states that first legalized

marijuana.[6] Without a limit on licenses (Proposal 1 forbids such a limit), marijuana production in Michigan could outpace legal consumption substantially, as happened in Oregon where unchecked producers proliferated to a density of one grow site for every 19 users, and production may exceed consumption demand by over 10 to 1.[7] Falling prices due to an oversaturated market would threaten the viability of lawfully operating marijuana businesses, and would also incentivize illegal sale and distribution (and facilitate greater consumption).

As can be seen in **Table 1** (see page 9), the states that have legalized marijuana before Michigan have levied taxes at varying rates and specified the use of revenues from those taxes for various purposes. For instance, Colorado levies a 15 percent retail marijuana sales tax in addition to a 15 percent excise tax; Washington levies a 37 percent excise tax on sales. With a 10 percent excise tax in addition to the six percent sales tax, marijuana would be taxed in Michigan at a fairly low rate (16 percent) compared to other states.

State Control vs. Free Market

Proposal 1 eliminates state-level criminality of marijuana possession and use, and might be viewed as an important step for individual liberty and/or social justice. Notwithstanding the import of drugs from other nations and other states, or the nascent medical marijuana industry, the cultivation and distribution of marijuana has been undertaken by individuals and small businesses. One of the state's challenges is to get ahead of the commercialization of those cultivation and distribution industries.

Some fear the creation of a multi-national "Big Marijuana" akin to "Big Tobacco" that would exert control over regulatory agencies, influence research findings, and encourage more frequent, heavier use among customers (as well as marketing products to children).[8] One could certainly consider an evolving variety of marijuana products to suit varying consumer demands and desires as a benefit of a commercial marketplace. The same could be said of rising THC concentration and extremely potent marijuana products. Marijuana is not an exclusively harmless product, however, and the U.S. and Michigan have already faced substantial costs due to high rates of alcohol and tobacco consumption attributable in part to the corporatization of substance abuse and dependence.

Even without a major commercial force providing the marijuana supply, a retail market's profit margin is still dependent upon high-volume use. In Colorado, data show that fewer than one in three users have accounted for more than 87 percent of the commercial demand for marijuana. While more than half of consumers used marijuana five or fewer days per month (29.2 percent used one or fewer days), another 30 percent of users used marijuana daily or almost daily.[9]

One potential policy solution to counter takeover by multinational marijuana corporations might be a state-managed retail supply. Evidence suggests that states with government-run monopolies over the sale and distribution of alcohol had higher prices, but also reduced use and access by minors.[10] States are currently limited in their ability to pursue such an approach to marijuana due to federal law.

Regulating Marijuana vs. Regulating Alcohol

It seems reasonable to assess whether or not the Coalition to Regulate Marijuana Like Alcohol is living up to its moniker. With marijuana (as with alcohol), the legal minimum age to possess, transport, or consume would be 21. Purchasing alcohol or marijuana would require a valid photo identification to verify the age of the customer. For both alcohol and marijuana, it would be illegal to transfer possession to minors.

Whereas alcohol can be consumed in bars and restaurants, recreational marijuana would be primarily restricted to personal use inside private residences. While there are some limits on bringing alcohol into Michigan from out of state, transporting marijuana across state borders would be strictly prohibited.[11]

Perhaps in tandem with the push for "high gravity" beers and higher proof spirits that have a greater alcohol by volume (ABV), potency of marijuana (i.e., THC concentration) has increased over time, and continues to increase.[12] Certain products (like dabs—concentrated doses of cannabinoids) contain exceedingly high THC levels. Proposal 1 directs

Table 1
Comparison of State Marijuana Taxes and Revenues

State	Excise Tax	State Sales Tax	Special Sales Tax	Local Taxes	Allocation	Tax Revenues
Alaska	$50/oz. bud/flower $15/oz. rest of plant				100% General Fund (50% Recidivism Reduction Fund created within the General Fund).	$1.7M (FY2017)
California	15% on retail price, $9.25/oz. - flowers, $2.75/oz. - leaves	7.25%		Yes	Regulatory costs, with carve outs for research, DWI mitigation, social and medical programs, and restorative justice. Balance: 60% - youth drug prevention and education; 20% - environmental restoration and protection; 20% - state and local law enforcement.	$34M (First quarter 2018) $175M (original FY18 projection)
Colorado	15%		15%	Yes Statutory cities and counties can also apply a special sales tax.	Retail Marijuana Excise Tax: First $40M to Public School Capital Construction Assistance Fund; excess to Public School Fund. Special Sales Tax: Administration and enforcement, substance abuse screening, prevention, and treatment, mental health services, public health, marijuana research, local government, and judicial/law enforcement/public safety. Additionally, school district program funding, including dropout prevention and school health professionals grants, as well as $30 million to rural schools.	$247.4M (CY2017)
Maine	$335/lb. - flower or mature plants $94/lb. - trim $1.50 per immature plant or seedling $0.30 per seed		10%		12% to the Adult Use Marijuana Public Health and Safety Fund; from this fund, up to 50% for public health and safety programs and up to 50% for law enforcement training related to adult use marijuana. Balance to the General Fund.	$2.8 (FY2018 estimate) $10.7M (subsequent years)
Massachusetts	10.75%	6.25%		Local excise tax up to 3%.	Implementation, administration, and enforcement, with additional funds for public and behavioral health, public safety, law enforcement, wellness and prevention, and restorative justice.	Tax collection starts July 1, 2018 $215.8M (2-year projection)
Nevada	15%		10%		Wholesale tax allocated first for costs of the program. $5 million per fiscal year goes to local governments and remaining funds are allocated to the State Distributive School Account. Retail tax revenue goes to the state Rainy Day Fund.	$69.8M (July 2017 - April 2018)
Oregon			17%	Up to an additional 3%	40% for education; 20% for mental health treatment or alcohol and drug abuse prevention and treatment; 15% for state law enforcement; 10% each for cities and counties; additional 5% to Oregon Health Authority for substance abuse prevention, early intervention, and treatment..	$70.3M (FY2017)
Washington	37%				More than 60% of revenue is dedicated to public health (including research, health education, and community health centers), substance abuse prevention, mental health services, and health care services/ Medicaid, as well as school dropout prevention. Remaining balance is allocated to the general fund and to local governments (for enforcement purposes).	$319.1M (FY2017)

* Vermont will not allow retail sales of recreational adult-use marijuana.

LARA to establish a maximum THC concentration for marijuana-infused products.

Proposal 1 would impose a 10 percent excise tax on marijuana sales, in addition to the 6 percent sales tax, with revenue distributed to local government, schools, and roads. In addition to the markup by the state Liquor Control Commission, the state currently imposes a 12 percent (more accurately: three 4 percent taxes) on liquor, with the revenue distributed in equal portions to the General Fund, School Aid Fund, and the Convention Facilities Development Fund. Beer, wine, and mixed spirits are taxed by the volume with revenues deposited into the General Fund.

Regulation should never be "one size fits all"—the style of regulation should match both market needs as well as potential harms from the thing being regulated. Alcohol and marijuana (and tobacco) create unique risks and costs to society—rules should reflect the specific needs of a substance or activity. The admonition to regulate marijuana like alcohol is a gimmick; it takes something familiar (alcohol), and then suggests that something less familiar (marijuana) is the same. It does not question the successes or failures of regulating alcohol, or consider the prevalence of drunk driving, alcohol-related liver disease, and alcohol use disorders. The regulate marijuana like alcohol mantra also fails to admonish that taxes levied on a substance or activity should at the very least pay for resulting costs/problems.

Revenue Issues

The opportunity to capture new tax revenue is one justification that is typically presented in support of marijuana legalization.

It is difficult to predict exactly how much revenue Michigan would generate from marijuana legalization. The Coalition to Regulate Marijuana Like Alcohol—the group behind the ballot question—commissioned a study that has estimated adult-use marijuana taxes will generate $53.7 million during the first year of operation and reach a peak of around $134 million per year in 2023 when the market reaches maturity.[13] Judged by experience in other states, Michigan's medical marijuana patient base may decline when adult recreational use is legalized; in 2024 and beyond, combined revenues from adult-use and medical marijuana may exceed $160 million per year. It is predicted that revenues will then develop slowly, affected by factors like anticipated price decline in a commercial market, population growth, and cultural changes that will likely increase usage/demand slowly over time.

Purpose of Excise Tax Revenue

On a theoretical level, an excise tax on marijuana should account for implementation and enforcement costs, as well as societal costs associated with the sale and use of marijuana. These costs have not yet been quantified. Problematically, while the proposal does cover implementation and administration of the recreational marijuana program, no funds from this proposal are set aside for data collection, program evaluation, or needs assessments; without dedicated funding, these important activities are not likely to happen.

For every $1 in alcohol and tobacco tax revenue, more than $10 are lost in health, social, legal, and regulatory costs; the costs of alcohol and tobacco outstrip any tax revenue by hundreds of billions of dollars each year.[14] [15] [16] [17] This fact should lead to a consideration of the societal treatment of alcohol and tobacco, to be sure, but it should also serve as a cautionary tale regarding any new approach to a free and legal market for marijuana. If marijuana legalization creates social needs and costs (it will), revenue should first be directed to these areas.

Disposition of Tax Revenue

Revenue from the taxation of marijuana would be used for implementation and enforcement costs. These costs remain indeterminate, but are certain to be substantial. It could take years for Michigan to see any notable surplus revenue. The proposal does not require the marijuana program to be exclusively self-funded, creating a risk that early implementation could draw upon other scarce state resources.

Local Governments

While 30 percent of the surplus (if any) marijuana revenue will go to local governments—half to counties and half to municipalities—this revenue is specifically designated only for local governments in which a marijuana business is located. Data from the University of Michigan's Center for Local, State,

and Urban Policy indicates that only one in five local government leaders support legalizing marijuana (and a majority of municipal governments have prohibited medical marijuana facilities from operating within their boundaries).[18]

Given that the proposal allows local governments to disallow marijuana business within their jurisdiction, local governments may risk losing out on any financial gains from recreational marijuana if they do so. Prohibiting marijuana sales in one jurisdiction does not prevent residents from crossing municipal boundaries for the purchase of marijuana to be consumed in their home jurisdiction, however. Necessarily, marijuana sold legally in one community will impose costs in other communities that might also be shut out of any revenue to offset these costs.

Given the opposition by many rural communities, individuals living in rural parts of the state might be forced to drive great distances to obtain marijuana legally (or grow their own, which could impose some of the same social costs without providing tax revenues to the state nor to the local governments left to deal with those costs).

On the one hand, this localism may allow laws to better reflect divergent values and conditions between communities. On the other hand, marijuana use is not likely to observe municipal boundaries, thus undermining local decisions and policy objectives.[19]

Roads and Schools

Proposal 1 directs 70 percent of remaining revenue to be split between the state School Aid Fund and the Michigan Transportation Fund. This is an allocation borne of political expediency. Schools and roads are in need of funding, but any perception that these new taxes on marijuana will make a major impact on the state's education or transportation funding needs is unfounded (this is analogous to the widespread belief that lottery revenues would fund education, when in reality the lottery generates a small fraction of the revenue needed for schools).[20]

Mental Health and Public Health

Perhaps what is most important in the disposition of revenues is what is not included. Unlike Michigan's taxes on tobacco or gambling that provide portions of their revenues to deal with their ill effects, no funding under this proposal would be designated for mental health, problem marijuana use, underage use, marijuana dependence, or for other public health issues related to marijuana. The proposal also would not generate any general fund revenue to be used for these purposes. Most other states have earmarked marijuana tax revenues (or directed new general fund revenues) for drug and alcohol prevention and education, substance abuse and dependence, mental health, and other social and medical programs, including California, Colorado, Oregon, and Washington.

This leaves Michigan's underfunded public health sector and mental health systems with a potentially growing problem but no new financial means to address it. Other states that have legalized marijuana are recognizing this need and setting funding aside for both data collection and public health needs. Making later alterations to the allocation of the marijuana excise tax would be difficult, as it would require a supermajority vote in both legislative chambers and would be politically characterized as taking money from schools, roads, and local governments.

Criminal Justice and the Human Toll of Criminalization

Despite evidence that criminalization has not worked, continuation on that path has created costs for the governments enforcing drug laws and for the people arrested and saddled by criminal records. An extensive study by Human Rights Watch in collaboration with the American Civil Liberties Union found that, in 2015, there were over 570,640 arrests for marijuana, compared with 505,681 arrests for violent crimes nationally.[21] This indicates 14 percent more arrests for simple marijuana possession than for murder, non-negligent manslaughter, rape, robbery, and aggravated assault combined. Michigan shows an even starker divide, with 23,893 marijuana arrests in 2015, compared to 11,916 arrests for violent crimes.[22]

Despite using drugs in roughly equal proportions, black adults are more than three times as likely as white adults to be arrested for drug possession.[23] Nearly 75 percent of drug offenders in federal prison are black or Hispanic.[24] Around 59 percent of federal marijuana offenders were Hispanic or Latino, and nearly 94 percent were male.[25] Even after legaliza-

tion, states like Colorado have seen racial disparities in marijuana arrests persist, although there are far fewer arrests overall.[26]

To say that minor marijuana offenders are clogging up state and federal prisons would be inaccurate, however. Just over one percent of federal incarceration sentences are for drug possession alone (marijuana is a fraction of a percent).[27] Marijuana offenders make up just 12.4 percent of federally sentenced drug offenders.[28] In 2013, only 3.6 percent of state inmates had drug possession as their most serious offense.[29] It is estimated that 0.3 percent of state inmates are serving time as first-time, possession-only marijuana offenders.[30] Of all drug types, marijuana offenders have the shortest average term of imprisonment in federal prisons.[31]

Data from the Pew Charitable Trusts suggest that more imprisonment and stiffer prison sentences do not deter distribution of drugs, drug abuse, or other drug law violations.[32] Criminalization of marijuana is not only ineffective—it's also expensive. In 2010, Harvard economist Jeffrey Miron estimated that the national cost of enforcing the prohibition of marijuana was $13.7 billion (out of a total of $48.7 billion for all drug enforcement), which includes $347.1 million in state and local resources in Michigan (2008 dollars) for marijuana prohibition.[33] These are primarily policing resources for arrests, prosecutorial and judicial resources for drug-related prosecution, and corrections resources for incarceration.

Treatment and prevention are perhaps less fiscally onerous ways to discourage drug use while also supporting individuals in need of help. Moreover, treatment does not carry the same human cost of criminalized marijuana use. Criminal records acquired due to drug use can prevent individuals from securing housing or employment, leading to lifelong hardship (and perhaps encouraging further criminal behavior absent other options for survival). Data from the Pew Research Center suggest that a majority of Americans favor treatment rather than criminal penalties for drug use.[34]

Decriminalization may lead to savings for state and local government police, prosecutors, courts, and corrections systems, but some new costs could also be created by drugged driving, underage use, and factors related to mental health and substance use disorders.

Amnesty

Many advocates have suggested that legalization should be paired with forgiveness of individuals with past marijuana offenses. Had Proposal 1 sought to facilitate expungement of past marijuana offenses, it would have risked invalidation for modifying multiple subjects and sections of law.

Legalization and Changes in Marijuana Use

Legalization can be expected to increase marijuana use.[35] In economic terms: as a competitive market lowers prices, one can expect consumption to increase. Without criminal penalties for possession and use, people will perceive fewer potential costs to using marijuana. As perceived harms decrease and favorability increases, consumption may also increase. Michigan can therefore expect an increase in both new users, as well as greater volume of use among current users. Demand elasticity—or, how much demand for marijuana might increase in response to changes in price and costs/barriers to consumption—is more difficult to predict.

Marijuana businesses also have a vested interest in increasing consumption. As with tobacco products or gambling, the small minority of users who do so with greater frequency and in higher volume will account for the majority of profit for marijuana businesses. Some might view this as a profit motive to cultivate substance abuse and dependence.

Use in Washington appears to have increased accross all age groups.[36] The increase in Washington may be smaller than first thought, however, due to underreporting of marijuana use pre-legalization.[37] Data suggest that use in Oregon has also increased.[38] Marijuana use among college students in Oregon increased among those students who also reported heavy alcohol use.[39]

In contrast, data suggest that use in Colorado among those younger than 18 has remained fairly constant, although use among young adults has continued to increase.[40] Use among youth in Colorado was already quite common before legalization. These use trends began before and appear unaffected by legalization.[41] Healthcare encounters and poison

center calls involving marijuana have increased among teens in Colorado, however, possibly owing to more potent marijuana and marijuana products. In spite of investment in marijuana education and prevention programs, perceived harm from marijuana use has declined significantly among adolescents in Colorado and continued monitoring is needed.[42]

One possible reason that use and attitudes held more steadily in Colorado when compared to Washington is that marijuana was already more commercialized in Colorado and use was more common prior to legalization. Colorado had a very developed medical dispensary system prior to legalization.[43] Some evidence suggests that some aspects of medical marijuana laws—such as the presence of state sanctioned dispensaries—are associated with greater marijuana use among adults, as well as increased dependence and abuse among both adults and youth.[44] Another comprehensive study found that medical marijuana laws were associated not only with increased marijuana use, but also binge drinking.[45]

The nature and magnitude of use trends post-legalization—as well as the potential association with alcohol consumption—warrants further study. Proposal 1 does not provide the funding or statutory requirement for this kind of study.

Public Health and Safety

The 1936 cult classic film "Reefer Madness" fictionalized and exaggerated the risks of marijuana to an absurd level, depicting insanity, violence, and degeneration. Occasional use of marijuana by healthy adults will not be cause for serious health concerns. However, for younger users and those with various predisposing factors, the risks of marijuana use should not be entirely discounted.

In one estimation, around one out of every ten people who try marijuana develop dependence issues, but because of the wide use of marijuana (and the large number of people who try the substance, if only once), marijuana dependence is twice as prevalent as dependence on other illicit drugs.[46] From 2002-2013, the prevalence of marijuana use among U.S. adults doubled, and the increase in the number of people with a marijuana use disorder was just as large (around three in ten users meet the criteria for marijuana use disorder).[47 48] While the experience of marijuana de-

pendence may be less severe than is observed with cocaine, opiates, or even alcohol, marijuana dependence is more similar than different to other forms of substance dependence (even vis-à-vis withdrawal).[49]

Marijuana appears to be associated with development of schizophrenia, other psychoses, social anxiety disorder, and, to a lesser extent, depression.[50] The relative risk for schizophrenia is six times greater among frequent marijuana users (a point that would be of particular concern for those with greater absolute risk of developing the condition, such as those with a family history).[51] Heavy marijuana users are also more likely to report thoughts of suicide.

One study found that marijuana poses a much lower comparative risk than tobacco, alcohol, and other drugs like cocaine, heroin, and methamphetamine.[52] This analysis was based on the ratio between toxicological threshold and estimated human intake however, and the authors acknowledge that the risk of marijuana may have been underestimated due to its low acute toxicity and because the study considered mortality but did not quantify other long-term effects. Substances cannot be evaluated on a single criteria (e.g., risk of overdose) if we are to understand their full health impact. Evaluating tobacco on the basis of short-term morbidity or mortality would certainly miss many of its deleterious effects.

While some might see the comparison to legal substances (alcohol and tobacco) as a reason to legalize marijuana, it might just as easily be considered an argument to make tobacco illegal or to more heavily regulate alcohol. Some studies indicate that marijuana use is associated with greater risk of developing an alcohol use disorder.[53] Marijuana use also appears to be associated with greater risk of dependence and use disorders with tobacco and other drugs.[54] These relationships are still unclear, however. If marijuana legalization affects dependence on and abuse of other substances, the negative health effects would spread beyond the impact of marijuana alone.

Given the existence of a thriving illicit market in Michigan—the estimated prevalence of past-year marijuana use is 15.8 percent—the effect of legalization on health would be relative to changes in the number of people consuming marijuana and/or changes in the volume

of marijuana being consumed by current users.

Underage Use

Adolescents are more prone than adults to addiction and substance abuse, as well as other impulsive behaviors. Early initiation of marijuana use is strongly associated with later substance abuse and dependence, as well as use of other illicit drugs.[55] The sale of marijuana and marijuana products (such as gummies) that might be most appealing to minors is therefore a serious concern. Moreover, attitudes among minors regarding marijuana appear to be changing. Substantially fewer teens believe frequent marijuana use is harmful or view experimenting with marijuana as a great risk.[56] The rapid decline in perceived risk during recent decades is a concerning trend.

Adolescents are more adversely affected by heavy use and appear to be more vulnerable to long-term consequences than adults.[57] Teens who begin to use marijuana are as much as seven times more likely to develop a marijuana use disorder.[58] Marijuana use among adolescents is associated with more severe social consequences, including lower educational attainment, lower income, higher unemployment, greater welfare dependence, and lower levels of relationship and life satisfaction.[59] [60] Persistent marijuana use among adolescents appears to contribute to neuropsychological decline, although more study is needed.[61]

Drugged Driving

A key concern associated with the legalization of marijuana is the issue of driving a motor vehicle while under the influence. Marijuana can slow down reaction time, impair perception of time and distance, and decrease body coordination. When drivers are under the influence of marijuana they are more likely to increase lane weaving or drifting, slow their reaction time, and decrease attention to the road.

Marijuana use is associated with greater odds of motor vehicle crashes, especially fatal collisions.[62] While alcohol remains a greater singular risk factor than marijuana, using marijuana together with alcohol can create a risk of vehicle crash that is much greater than either substance alone.[63] [64] It should be noted that one study found no statistical difference in total motor vehicle crash fatalities in Colorado and Washington after three years of recreational marijuana legalization, however the authors suggested that longer term study remains warranted.[65]

It is difficult to measure the full extent of marijuana's impact on vehicle crashes. Police do not usually test for drugs if drivers have an illegal blood alcohol level because there is already enough evidence to issue a DUI charge. Moreover, while many drivers who cause crashes have both drugs and alcohol in their system, there is not an adequate roadside test to assess drug levels of impaired drivers. It also is difficult to discern which intoxicant had the greatest effect in the crash. Some states (like Michigan) have enacted zero tolerance laws, which means drivers can face charges if there is any evidence of drugs in their blood or urine.[66] THC can remain in the system of frequent marijuana users for weeks after use, long after impairment has worn off.

The "Gateway" Drug Hypothesis

Marijuana is often characterized as a gateway drug, colloquially meaning that its use leads to using other "harder" drugs. Some evidence suggests that marijuana use is associated with changes in the rates and use patters of other drugs, as well as the development of substance dependance and substance abuse disorders for alcohol, tobacco, and other illicit drugs. Use of marijuana is also likely to precede the use of other illegal drugs, and the risk of this progression increases with the presence of mental disorders.[67]

It may be that marijuana leads to physiological changes that enhance the brain's experience of other drugs and an individual's desire to experiment with substances. It may be that social interaction with drug dealers and other drug users may facilitate both marijuana use and use of other substances; drug dealers might also actively push marijuana users to try other drugs. It might also be that marijuana is easier to access, less expensive, and thus the most likely first illegal drug for a person to try if they are already predisposed to trying a variety of illicit substances.

It is true that most users of heroin, cocaine, methamphetamine, and other drugs first used marijuana; however, this progression often begins with legal, easily-obtained drugs like alcohol and tobacco.[68]

Alcohol and nicotine might also prepare the brain to seek other drug experiences.[69] Marijuana use is, of course, often preceded by use of both alcohol and tobacco.

While the statistical association between marijuana use and the use of other drugs is very apparent, this association does not automatically validate the presumption that marijuana use is the factor that causes one to move on to drugs like heroin or cocaine. Despite long-term assertion, there is no definitively established causal path between marijuana use and the initiation of harder drugs.[70] Indeed, this idea oversimplifies the complex dynamics of drug use and might be better retired from everyday conversation.[71]

Potential Public Health Benefits of Legalization

A regulated market will create a health benefit for individuals by protecting marijuana and marijuana products from adulterants, and by mandating accurate labeling for consumers. Additionally, ending criminal penalties for marijuana possession may improve social and economic outcomes for individuals who would otherwise be saddled with a criminal record—these factors should be seen as a public health improvement for those affected Additionally, because of its observed effectiveness as a treatment for chronic pain, some see marijuana as a possible substitute for opiate pain medications. Availability of marijuana may lead to fewer overdose deaths and reduced risk of addiction, although research is still preliminary.[72] [73] [74]

Conclusion

It would be hard to look at current marijuana policy as a success. In spite of criminal penalties, marijuana use is increasing, and its favorability among the public seems to be increasing as well. The criminalization of marijuana has created an illicit market of untested, potentially unsafe products that are nonetheless consumed *en masse*. The existence of an illicit drug market is likely also responsible for many drug-related crimes. Additionally, criminal penalties for marijuana use and possession have done major social damage (disproportionately so to marginalized communities). Decades of evidence and numerous reports have suggested that policy should focus on treatment and prevention rather than criminal prosecution.

There is still an apparent public knowledge gap regarding marijuana, with some opponents of marijuana legalization evoking a fictionalized "Reefer Madness" that will tear society asunder while many advocates suggest that marijuana is as harmless as a lunch of quinoa and kale salad; still others, absent definitive scientific evidence, hold marijuana up as a panacea for every 21st century ailment. Discerning truth is difficult when there is a dearth of conclusive, high-quality evidence but no shortage of anecdotes and assumptions. On a scale from harmless plant to extremely dangerous drug, the truth of marijuana lies somewhere in the middle. Since there are known harms attributable to marijuana, the broad belief in a

harmless herb of medical magic may obfuscate the risks of misuse.

Regardless of state-level changes made by the proposal, marijuana remains illegal at the federal level as a Schedule I controlled substance. Federal law might be seen as limiting scientific and medical research, and it also complicates any establishment of a state marijuana industry by preventing access to banking and business tax breaks. State-level changes might be seen as creating pressure for federal action.

Proposal 1 expands individual liberty and creates the ability of marijuana businesses to thrive within a new state regulatory structure. At the same time, casting marijuana policy as a two way battle between militant criminalization and the legalization of widespread sale and use misses the need for marijuana policy that is grounded in a scientific, fact-based approach to public health and safety. Decriminalization might be seen as an alternative path that ends a senseless war on drugs and focusing resources on research, prevention, and treatment. At the same time, decriminalization would not address health and safety issues associated with the black market.

State marijuana policy should reduce the harm done by criminal prosecution of marijuana users and seek to weaken the presence of illicit black market drugs. Policy should also discourage use and mitigate sub-

stance abuse and addiction, as well as other harms related to marijuana use. An inherent problem with ballot questions is that they often contain overly simplistic language trying to address complex issues; complex language, many fear, would drive away the voters. Simple language, however, often leads to bad policy. The proposal before Michigan voters falls short of policy ideals in a great many ways; voters will have to decide if they are willing to tolerate these shortcomings to reduce marijuana arrests and have freer access to marijuana products. By locking Michigan into the legalization model presented through initiative, however, future legislative fixes will be more difficult to achieve (requiring a legislative supermajority to amend the law).

Supporters of the proposal might believe that individual liberty and personal choice are paramount with regard to marijuana. They might see drug criminalization as a failed, destructive policy. They might believe legalization is a way to curtail a large black market, and to capture economic activity and poten-

tial tax revenue. They may also just personally enjoy marijuana and want easier, legal access to use it.

Opponents might support existing criminal penalties for drugs, but they might also support ending the war on drugs without moving to a fully legal marijuana market. They may fear the rise of large marijuana companies that will grow to wield undue policy influence and market products to vulnerable populations—an expansion of the past machinations of the tobacco and alcohol industries that will create new ways to profit from encouraging substance abuse and dependence. They might oppose the normalization of marijuana use and potential associated risks.

Opponents might also support marijuana legalization but oppose the nature and contents of Proposal 1. They might highlight the lack of focus on public health, data collection, research, treatment, and prevention, and the potential to create new costs without raising adequate revenue.

Appendix A
Footnotes for Marijuana Defined Box (page 2)

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Appendix B: Medical Marijuana

Marijuana was used in various tinctures and tonics during the 19th century into the early 20th century, sometimes governed under state "sale of poisons" laws. Various concoctions containing marijuana were prescribed for nausea, delirium tremens, epilepsy, asthma, rheumatism, painful spasms, and migraines, as well as various ailments for which there were no known cures.[a] It seems worth noting, however, that the pre-industrial practice of medicine in the U.S. was not grounded in science, and, until around 1870, medical training occurred mainly through individual apprenticeship rather than formalized medical education.[b]

Today, the United States arguably has the safest and most advanced pharmaceutical system in the world. The federal Center for Drug Evaluation and Research (CDER) in the U.S. Food and Drug Administration (FDA), the primary force to prevent quackery, misuse/misapplication of drugs, or other potential harms, has not approved marijuana as a safe and effective drug for any indication.[c] However, one drug containing purified CBD has been given FDA approval for treatment of seizures associated with two rare forms of epilepsy, and other drugs containing cannabinoids (including synthetic ones) are being used in medicine.

Evidence is still unclear about the application of marijuana and/or marijuana-derived chemicals for various medical or therapeutic purposes, but some treatments appear promising. For this reason, more study is needed. Federal barriers impede the advancement of quality research on marijuana's potential benefits or harms.[d]

Medical Marijuana in Michigan

Michigan voters previously approved an initiative to allow medical marijuana in 2008. The Bureau of Medical Marihuana Regulation (BMMR) within the Department of Licensing and Regulatory Affairs (LARA) is responsible for the oversight of medical marijuana in Michigan. Medical marijuana sold in dispensaries is subject to a three percent excise tax in addition to the six percent sales tax.

A person in Michigan qualifies to use medical marijuana if they have a "debilitating medical condition," including cancer, glaucoma, HIV/AIDS, hepatitis C, amyotrophic lateral sclerosis (ALS), and Crohn's disease, as well as other diseases that cause cachexia (wasting syndrome), severe/chronic pain, nausea, seizures, or severe and persistent muscle spasms.[e] Subsequent qualifying conditions have been approved by LARA.[f] Individuals require certification of a physician to register as a medical marijuana patient. A qualifying medical marijuana patient under the age of 18 requires certification from two different physicians, written consent from a parent or legal guardian (including consent to act as the patient's primary caregiver), as well as a statement attesting that the patient's physicians have explained the risks of medical marijuana.[g]

Michigan has a zero-tolerance policy when it comes to operating a motor vehicle with any Schedule I substance in a person's system, even if a driver shows no signs of impairment. There is an exception for those with a valid medical marijuana ID card; however, it is illegal to drive while impaired by medical marijuana.[h]

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