

Legislative Analysis



LAWS INCONSISTENT WITH THE MICHIGAN MEDICAL MARIHUANA ACT

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House Bill 5512 as reported from committee

Sponsor: Rep. Julie Calley

1st Committee: Regulatory Reform

2nd Committee: Judiciary

Complete to 4-26-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5512 would amend the Michigan Medical Marihuana Act to provide that certain provisions of the Revised Judicature Act that deal with drug treatment courts, mental health courts, juvenile mental health courts, and veterans treatment courts apply if there is a conflict between those provisions and the Michigan Medical Marihuana Act.

FISCAL IMPACT: The bill would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Specialty treatment courts, such as sobriety courts, veteran treatment courts, and adult and juvenile mental health treatment courts, are intensive programs geared to reduce recidivism offered to eligible defendants and can be an alternative to incarceration. In addition to traditional probation restrictions, specialty treatment courts provide greater court oversight and often include additional conditions for participation. For instance, since treatment courts focus on factors that contributed to a person's run-in with the law, strict abstinence from illegal drugs, alcohol, and unnecessary medications is generally imposed.

The problem the bill seeks to address is how to reconcile laws pertaining to specialty treatment courts and the use of medical marijuana by registered qualifying patients. Currently, the Michigan Medical Marihuana Act (MMMA) states that if its provisions conflict with provisions in any other Michigan statute, the MMMA provisions supersede the other law. Despite this provision, roughly half of judges have denied eligibility to participate in a treatment court by a registered qualifying patient unless the person agrees not to use medical marijuana. Reportedly, the reason to deny these patients has been based on the belief that some with substance use disorders will seek ways, including falsely obtaining a medical marijuana card, to continue to feed their addictions while participating in a specialty treatment court.

In 2021, in a related case, the Michigan Court of Appeals held that even though the probation statutes allow conditions of probation to prohibit the use of drugs listed in the federal Controlled Substances Act, the provision of the MMMA described above overruled the probation statutes and so did not allow prohibiting the use of medical marijuana by a probationer who is a qualified registered patient as long as the probationer complied fully with the MMMA.¹ Similarly, denying probation to a qualified registered patient if he or she used medical marijuana was deemed a violation of the MMMA because the act provides that patients who are in compliance cannot be punished or penalized for their use of medical marijuana. Denying or withdrawing probation based on the use of medical marijuana by a qualifying

¹ *People v Thue*, 336 Mich App 35 (2021).

patient who was adhering to the provisions of the MMMA was deemed by the court to constitute a penalty in violation of the act.

The result of the Court of Appeals ruling is that enrollment or continued participation in a specialty treatment court cannot be based on use of medical marijuana by a defendant who is a qualified registered patient absent evidence of a violation of the MMMA, even if there may be a strong likelihood or evidence that the defendant is abusing medical marijuana to feed an addiction. Since failure to treat an underlying substance use disorder limits the effectiveness of a treatment court program and increases the risk for recidivism, treatment court judges would like discretion to prohibit the use of medical marijuana by a treatment court participant if the person is likely circumventing the general restriction on controlled substances in an effort to support dependency.

THE CONTENT OF THE BILL:

The Michigan Medical Marihuana Act provides that all other acts and parts of acts that are inconsistent with it do not apply to the medical use of marijuana as provided for by it. The bill would add an exception to provide that if the Michigan Medical Marihuana Act is inconsistent with any part of the following chapters of the Revised Judicature Act, that part applies:

- Chapter 10A (Drug Treatment Courts).
- Chapter 10B (Mental Health Court).
- Chapter 10C (Juvenile Mental Health Courts).
- Chapter 12 (Veterans Treatment Courts).

MCL 333.26427

ARGUMENTS:

For:

Specialty courts, such as drug treatment and veterans treatment courts, have proven to be beneficial and effective alternatives to conventional pathways when someone runs afoul of the law. Eligible participants undergo greater oversight from judges and must adhere to a stricter set of conditions during their probationary period. On the plus side, compliance generally means that participants avoid incarceration and have a significantly reduced rate of recidivism.

A focus of specialty courts is to help participants break the cycle of alcohol and drug dependency, especially since being under the influence of either or both often plays a role in the commission of crimes. Therefore, it is typical for a specialty court participant to be ordered to abstain from alcohol, illegal drugs, and, unless under a doctor's prescription and approved by the court, controlled substances. When it comes to the medical use of marijuana, some specialty court judges have allowed medical marijuana use by a participant who has a valid state registration card, while other judges have strictly prohibited it. Importantly, federal grants used to fund drug treatment courts require that participants abstain from using controlled substances—including marijuana. Therefore, some feel that the 2021 Court of Appeals decision puts access to the federal funds at risk.

Passage of the bill would give treatment court judges discretion to allow the use, under a doctor's supervision, of medical marijuana by a defendant who is a qualifying registered patient under the MMMA and who is in compliance with that act. This would allow those participants

who benefit from medical marijuana to remain eligible for enrollment in a specialty treatment court program. A judge could look at each case on its merits to see if it is an appropriate medical treatment or if there are other equivalent or appropriate treatments available.

If the bill were not enacted, medical marijuana would be the only drug that a judge could not discuss with the participant, could not put usage limitations on, and could not verify to be medically necessary even though use of the drug could significantly impact whether the participant succeeded or failed and faced incarceration. As defendants in treatment courts are troubled and many have substance use disorders, proponents argue that the bill is needed so that a judge can ban or restrict the use of medical marijuana, and provide oversight of that use, to ensure that a participant has the supports needed for successful completion of the program.

Against:

The decision in *People v Thue*, the Court of Appeals case discussed above, is clear that provisions in the MMMA control whenever there is a conflict with other state statutes. Some feel that enactment of HB 5512 would undermine the court's decision and jeopardize a probationer's ability to use a treatment recommended and supported by his or her physician, as well as strip a defendant of protections guaranteed under the MMMA. In addition, it is argued that passage of the bill would not necessarily resolve the issue regarding federal treatment court funding.

Response:

The bill would apply only to conflicts between the MMMA and the enabling statutes for drug treatment courts, veterans courts, and adult and juvenile mental health courts. In all other conflicts with Michigan laws, the MMMA would control. The bill should therefore not impact a probationer's ability to lawfully use medical marijuana as long as the person was not enrolled or enrolling in a specialty treatment court.

POSITIONS:

A representative of the Michigan Association of Treatment Court Professionals testified in support of the bill. (2-22-22)

The following entities indicated support for the bill:

- Michigan Association of Counties (2-22-22)
- Michigan District Judges Association (2-22-22)
- Prosecuting Attorneys Association of Michigan (2-22-22)
- State Bar of Michigan (4-8-22)

A representative of Michigan Weedsters testified in opposition to the bill. (2-22-22)

The following entities indicated opposition to the bill (2-22-22):

- More Than Hope
- The Botanical Company

Legislative Analyst: Susan Stutzky
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.