

Michigan's murky marijuana law sows arrests, confusion

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Michigan's medical marijuana law has patients fearing arrest while police say they're unsure of who can legally possess or supply the drug.

In several instances, police have arrested patients, confiscated their marijuana, conducted searches that turned out to be improper and seized trailer-loads of cultivation gear because of gray areas in the state law that allows medical marijuana, Southfield attorney Michael Komorn said.

The legal problems spawned by the law are so great that defense attorneys have begun specializing in medical marijuana cases, with one top 10 Michigan law firm devoting an area of practice to it.

"Police across the state are either confused or resisting compliance with the medical marijuana law," staff attorney Dan Korobkin of the American Civil Liberties Union said.

Some medical users lack proper paperwork or have more plants than allowed, Roseville Deputy Chief James Berlin said. But mistakes are made, Berlin said.

"We may spend three weeks investigating, and then bust in and traumatize people, only to find out they're legal."

When narcotics investigators burst in last month on Richard Brace in Hazel Park, he didn't have the state card approving him to use medical marijuana that he'd applied for Jan. 9.

Brace, 66, said he was baby-sitting his 7-year-old granddaughter when he heard yelling outside.

"I was getting ready to put her to bed, and all at once, there's a bam-bam-bam, 'Police!' Just as I open the door, they shove that ram through and totally shattered my storm

door, all over the living room floor -- even got some glass on my granddaughter," he said.

After being handcuffed and questioned, Brace said he finally talked police out of arresting him by bringing out the paperwork showing he'd applied for his official medical marijuana identification card. As of Wednesday, he still hadn't received it.

Across Michigan, medical marijuana patients like Brace, as well as caregivers -- those allowed to provide marijuana to patients -- are waiting months for the state to issue the registry identification cards that prove they can legally possess the drug.

The backlog in Lansing is so bad, in part because of staff cutbacks, that cards went out last week to people who applied in early December, the Michigan Department of Community Health said.

Without the cards, patients and caregivers risk arrest and confiscation of marijuana by police, who for decades declared all marijuana users to be enemies in the war on drugs.

As of last week, nearly 21,000 Michiganders had applied to be approved medical marijuana patients or caregivers, the Department of Community Health said.

As a temporary card, a copy of the application can "serve as a valid registry identification" if the actual card isn't available after 20 days, the state's Web site says. But dozens of approved patients and caregivers have had their medicine seized by police, attorney Michael Komorn said. Many police departments -- including Roseville's - - don't accept the application paperwork as proof, Komorn said.

"If they don't have a card and they're in possession of marijuana, they're coming to jail," Roseville Deputy Chief James Berlin said. "And if they applied for the card, we'll let the judge decide" if a law was broken.

According to state law, "Any registered patient who possesses a permissible quantity of marijuana -- up to 2.5 ounces -- can't be arrested and can't have their marijuana taken away," with some exceptions, such as smoking while in a public place or on school grounds, said Dan Korobkin, a lawyer with the American Civil Liberties Union.

Still, "I advise my clients, 'Don't tell anybody you're a patient or caregiver. Don't tell anybody you're growing this,' " Korobkin said. "Because the police treat this as if it's all illegal."

In the raid on Brace's house in Hazel Park, "They said they were looking for a dealer. I said you've got to be joking," the retired optical-supply salesman said. He has spinal stenosis, a painful back ailment that he said is eased by marijuana.

Police let him keep the half-ounce of marijuana he revealed in a drawer, but without explanation, they took a small amount from his basement, Brace said. He was left to repair his door and a shattered sense of security.

That raid was "a waste of police time and taxpayers' money," Hazel Park Lt. Michael Kolp said. Afterward, the police involved -- from the Hazel Park force and an Oakland County narcotics team -- "realized it was a medical marijuana case," Kolp said.

"The problem is, we have no way to know that in advance," so police must treat every raid "like it's a drug house" with armed dealers inside, he said.

A glitch in Michigan's medical marijuana statute is that legal experts generally say that it forbids dispensaries -- storefronts that sell marijuana to patients, Wayne State University law professor Robert Sedler said.

Sedler, an expert on constitutional law, returned last week from suburban Los Angeles, where "all we saw were dispensaries, practically on every corner," he said.

In Michigan, "People have to grow it themselves, so there always will be an issue: Are they growing this for medical use" or to sell on the street? he said.