

The Buying and Selling of Legal Marijuana

By David Harrison, Staff Writer

Last week, Michigan authorities raided three Oakland County marijuana dispensaries, confiscated files and plants and arrested 15 people, charging them with dealing marijuana, among other offenses.

The move stunned patients, who are allowed by state law to use the drug legally as long as they have a required state-issued card declaring medical need. But the statute, put on the books by a successful 2008 ballot initiative, says nothing about dispensaries. Instead, it only allows patients to grow their own pot, or to get it from a caregiver who can provide marijuana to no more than five people.

The Oakland County incident highlights a legal conundrum at the heart of many states' marijuana laws. In seven of the 14 states that allow marijuana use for medical purposes, registered patients are allowed to grow their own supply or designate somebody as their grower. Michigan is one of those states. But the Michigan law is silent on how patients or their providers are supposed to begin growing an otherwise tightly controlled drug.

"The federal law says no [to dispensaries]. The state law says no," says Oakland County Prosecutor Jessica Cooper.

But how are patients and caregivers supposed to get seeds and cuttings or learn how to grow marijuana without a dispensary to guide them?

"Beats the heck out of me," Cooper says. "These statutes aren't well written."



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Statutes such as the one in Michigan can present a chicken-and-egg problem: It's legal for some people to smoke pot, but how they're supposed to get it is less clear. "It's a very gray area," says Michelle Komorn, a Michigan attorney who represents medical marijuana patients. "How do I get started? How do I get seeds?"

In several of these states, entrepreneurs have opened dispensaries even though they are not explicitly permitted under state law. As the Michigan raids show, those dispensaries can find themselves in a tricky legal position. In Colorado, which has similar laws, Governor Bill Ritter this summer signed a bill requiring dispensaries to grow 70 percent of the pot they sell. The law was an effort to rein in the unregulated storefronts that have popped up around the state.

"None of these states have provided clarity in their laws," says Allen St. Pierre, director of the National Organization for the Reform of Marijuana Laws. "Almost all parties, including prosecutors and law enforcement, seem to accept the magical quality of how the cannabis seems to arrive at the patient's home."

Murky legalities are nothing new when it comes to medical marijuana. Using marijuana with or without a prescription remains illegal under federal law. But a recent [memo](#) from the U.S. Justice Department suggests that the Obama administration won't prosecute marijuana users who are abiding by state laws.

Legal tangles

Fourteen years after California became the first state to allow medical marijuana, states are increasingly confronted with unexpected problems in the rules governing the use and the distribution of the drug.

At first, states looking to allow medical marijuana viewed California as a model to avoid. That was because prescriptions were easy to get, and storefront dispensaries proliferated.

Oregon and Maine seemed to offer more prudent models, because they envisioned that patients would grow their own cannabis or get it from a trusted source, rather than allow storefronts to open. In many of the states that followed this model, people can legally use marijuana but they can't legally buy it. Instead, they compensate growers for their services, or their labor - a legal distinction that keeps them from running afoul of the law.

Lately, however, the legal tangles surrounding home cultivation have states considering a return to the dispensary model, but with stringent safeguards to prevent retail sites from blossoming out of control.

In New Jersey last year, former Governor Jon Corzine signed one of the nation's toughest medical marijuana laws. It prohibits home cultivation and allows only six nonprofit distribution centers, all of them tightly regulated by the state.

Medical marijuana also became legal this year in the District of Columbia, where patients will have to obtain it at a city-licensed dispensary. In Maryland, a bill with similar provisions sailed through the state Senate before getting bogged down in the House.

"Politicians now are very hesitant to allow home cultivation," says St. Pierre. "Whereas that was pretty much what they were attracted to."

States with existing medical marijuana laws have gone back to tweak them. Rhode Island last year allowed the operation of "compassion centers" to dispense the drug to patients. In April, Maine enacted legislation that allows up to eight nonprofit dispensaries to operate. But Arkansas, Hawaii, Michigan, Nevada, Oregon, Vermont and Washington still give little or no guidance to patients looking to acquire seeds or cuttings.

In Oregon, a ballot initiative this November will attempt to clarify how plants get into patients' hands. If approved, Measure 74 will allow dispensaries to open under the watch of the Oregon Health Authority. Jim Klahr, an Oregon medical marijuana advocate, says the measure will allow patients instant access to their medicine, rather than having to wait for their plants to mature. *(For Stateline's guide to this year's ballot measures, click [here](#) .)*

Right now, patients gather in informal swap meets to learn how to start cultivating marijuana and to exchange seeds or advice, all the while avoiding direct financial transactions. Oregon's informal distribution system came under pressure in 2005 when a U.S. Supreme Court decision found that a patient using medical marijuana under California's law was in violation of federal law. But an opinion from the Oregon Attorney General's office said that the state's program could continue despite the court's ruling.

In Michigan, where a legislative fix seems unlikely, the 15 people arrested in Oakland County are awaiting trial. It takes a supermajority of 75 percent of the Legislature to amend a voter-initiated statute, which means that the confusion there is not likely to go away anytime soon.

"It's really through the court system that this needs to be clarified," Komorn says.