

AG Dana Nessel eyes tweaks to recreational marijuana law

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Marijuana plants seen in Michigan.

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Attorney General Dana Nessel and a workgroup she convened are exploring clarifying changes to the recreational marijuana law approved by voters last year.

The law, which appeared as Proposal 1 on the 2018 ballot, legalizes marijuana for those over 21 and creates a regulatory structure to license marijuana businesses, 56 to 41 percent.

[Michigan legalizes recreational marijuana](#)
[Michigan has become the 10th state to legalize recreational marijuana.](#)

Nessel supported the proposal but is left with some legal questions about how to implement it. There are some things “they just didn’t address” in the law, she said, including penalties for some marijuana-related infractions.

“So now there are certain portions of the bill that, you know something’s illegal, right, but then it doesn’t tell you what the penalty is,” Nessel said.

Livonia City Attorney Paul Bernier points to public consumption as an example.

“We tell people that they can’t consume it in public. So if they’re sitting in Hart Plaza smoking weed, is it a possession of marijuana, a one-year (misdemeanor), or is it a use of marijuana, a 90-day (misdemeanor)?” Bernier said.

It’s not spelled out in the law, and the difference could be big: more than likely, Bernier said, the one-year would show up on your criminal record and the 90-day wouldn’t. It could affect your ability to get a job in the future.

Another part of the law doesn’t allow people to grow plants “visible from a public place.”

If somebody does, Bernier asks, should they be charged with a 1-year possession misdemeanor or a 4-year felony for manufacturing?

He thinks the legislature needs to clarify the law, which he sees as even less clear than the notoriously-fraught citizen-initiated law that ushered in medical marijuana for Michigan in 2008.

“We don’t want people guessing what is illegal or legal and what the penalties are... my concern is it’s not clear,” Bernier said.

He’s part of a marijuana legal work group Nessel convened in April to puzzle through some of the ambiguities, with the goal of avoiding the years of confusion and legal battles that followed the 2008 medical marijuana law.

The work group includes people from many sides of the marijuana issue, including police, defense attorneys, prosecutors and regulators.

Muskegon County Prosecutor DJ Hilson, president of the Prosecuting Attorneys Association of Michigan, is a member of the workgroup. He, too, points to open questions.

For instance, somebody caught with twice the legal possession limit is subject to a misdemeanor, according to the law. But it’s silent on whether under some circumstances somebody who breaks that part of the law should be charged with possession with intent to deliver, a felony.

“It creates that ambiguity where, ok, if it’s not enumerated, you revert back to what the old law was,” Hilson said.

The goal of the workgroup, Hilson said, is to come to a consensus and come up with recommendations that will lead to legislation.

Nessel said her office is working to draft some bills.

Josh Hovey, spokesperson for the Michigan Cannabis Industry Association, a marijuana business group, said the organization was aware of the workgroup.

“From our standpoint, in general, we believe the law should be implemented as-is,” Hovey said.

“However, if there are changes needed for clarification or minor wording changes, we wouldn’t necessarily be opposed to those. But we would need to take each proposed change and look at it on its own merits.”

Any changes the workgroup comes up with are going to face a hurdle. To change a citizen-initiated law requires a three-fourths vote of the legislature, instead of the normal majority vote. On some pieces, Nessel said, that three-fourths vote is going to be unavoidable, and it’s hard to do.

“Getting three-quarters of the legislature to agree on anything is virtually impossible,” she said.

But the workgroup is pressing forward.

“There are things that we all agree on, but we just don’t know how we’re going to be able to necessarily move forward on it. It’s going to be interesting. I mean, we’re going to try, right?” Nessel said.