Ballot Proposal #1 of 2008

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MEDICAL MARIJUANA

Ballot Proposal 08-01
November 2008 General Election
Placed on the ballot by Initiative Petition

Complete to 10-15-08

THE CONTENT OF THE BALLOT PROPOSAL:

The following is the official language as it will appear on the ballot.

PROPOSAL 08-1

A LEGISLATIVE INITIATIVE TO PERMIT THE USE AND CULTIVATION OF MARIJUANA FOR SPECIFIED MEDICAL CONDITIONS

The proposed law would:

- Permit physician approved use of marijuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health.
- Permit registered individuals to grow limited amounts of marijuana for qualifying patients in an enclosed, locked facility.
- Require Department of Community Health to establish an identification card system for patients qualified to use marijuana and individuals qualified to grow marijuana.
- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marijuana as a defense to any prosecution involving marijuana.

Should this proposal be adopted?

Yes □□
No □□

[Note: The description on the ballot uses the most commonly-used spelling of marijuana, as does this HFA analysis. The proposed law and the existing Michigan Public Health Code use the spelling "marihuana."]

FISCAL IMPACT:

Ballot Proposal 08-1 has cost and revenue implications for the Michigan Department of Community Health to operate a registration identification card system for certain patients and caregivers, as discussed below.

It is also anticipated that state and local police agencies may realize some costs from investigating potential complaints and for apprehending individuals and collecting evidence due to violations of their allowable use of marijuana for medical purposes.

Because the proposal specifies that growing and possessing marijuana is restricted to medical uses when recommended by a physician, and does not change other legal prohibitions on marijuana, this measure would probably have no significant fiscal impact on state and local Judiciary costs.

Costs to DCH. Under the proposal, the Department of Community Health (DCH) is required to issue a registration identification card to an applicant for use of marijuana for medical reasons, and to a named primary caregiver for a one-year period. Costs and revenue from fees will be dependent upon the number of persons who seek registration. Costs will include the promulgation of rules process, application processing and verification of application information, issuance of a secure identification card, verification system with law enforcement, and annual reporting to the Legislature. This may require one or more additional Department of Community Health staff at an estimated cost of $60,000-$200,000 or more depending on the volume of applications.

The proposal states that DCH shall establish fees sufficient to offset state costs for the identification card program, and the fees may be income-based. Fees in other states range from $25 to $192, with reduced fees for persons on Medicaid or Supplemental Security Income (SSI). In early reporting by the State of Rhode Island, costs for the first nine months of the program in 2006 averaged $111 per registered patient; however, collected fees of $75 ($10 for low-income) only covered 40% of costs.

The experience of other states to date indicates a participation of 0.02 - 0.55% of the state population. For Michigan this would be a participation of between 2,000 and 55,000 patients.

The proposal clearly states that medical assistance programs and health insurers are not required to reimburse a person for costs associated with the medical use of marijuana.

Impact on Corrections. The proposal's fiscal impact on state and local correctional systems would depend on how it affected numbers of convictions and severity of sentences for marijuana-related crimes. Of 3,858 felony sentences for various marijuana offenses in 2007, almost 60 percent were probation or a combination of jail and probation, while almost 20 percent were jail or a combination of jail and fine, and nearly 10 percent were prison sentences. Fifteen percent of the sentences were some other sanction, such as a delayed or suspended sentence or a sentence under the Holmes Youthful Trainee Act (Table 1). There are no data on the number of sentences for misdemeanor marijuana offenses, which include simple possession, nor are there any data to indicate how many offenders might be sentenced for violations of the ballot proposal, or to what extent convictions under existing law might decrease.

Table 1

2007 Dispositions for Marijuana Offenses (Includes Convictions for Attempts)

MCL	Description	Prison	Pro-bation	Jail	Other	Total
333.7401 (2)(d)(i)	Delivery/manufacture >45 Kg or >200 plants	14	95	22	3	134
333.7401 (2)(d)(ii)	Delivery/manufacture 5-45 Kg or 20-199 plants	8	1	1	0	10
333.7401 (2)(d)(iii)	Delivery/manufacture <5 Kg or <20 plants	308	2,110	690	562	3,670
333.7410 (1)(d)	Delivery of marijuana to a minor 3 yrs. younger	4	5	1	4	14
333.7410 (4)(d)	Possession on school property	2	13	8	7	30
	TOTAL SENTENCES	**336**	**2,224**	**722**	**576**	**3,858**
	PERCENT	**9%**	**58%**	**19%**	**15%**	**100%**

Any increase or reduction in the use of prison incarceration or felony probation supervision could have fiscal impact on the state. The average annual appropriated cost of prison incarceration is about $32,000 per prisoner, a figure that includes a portion of various fixed administrative and operational costs. The average annual cost of felony parole and probation supervision is about $2,000 per supervised offender. Changes in the number of sentences to jail or misdemeanor probation supervision would affect local units of government; those costs vary with jurisdiction. Changes in the amount of penal fine revenue collected would affect local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

Initiative Process. The proposed law has been placed on the ballot as the result of a petition drive sponsored by the Michigan Coalition for Compassionate Care. Under Section 9, Article II of the State Constitution, "the people reserve to themselves the power to propose laws [called the initiative]." This power "extends only to laws which the legislature may enact under the constitution." The State Constitution requires that petitions for initiating laws contain at least eight percent of the total vote cast for all candidates for governor at the most recent gubernatorial election.

A law proposed by initiative is sent to the Legislature, which must enact or reject the law without change within 40 session days. In the case of the proposed medical marijuana law, the initiative was submitted to both houses of the Legislature on March 3, 2008, and it was not enacted within the required time. As a result, the law is before the voters. Initiated legislation takes effect 10 days after the date of the official declaration of the vote; it is not subject to veto. It subsequently can be amended or repealed only by the voters or by a three-fourths vote of each house of the legislature.

Definition of Marijuana and Related Information. Marijuana is commonly defined as "a mixture of the dried, shredded leaves, stems, seeds, and flowers of *Cannabis sativa*, the hemp plant." The active ingredient in marijuana is delta-9-tetrahydrocannabinol (THC), which affects nerve cells in the brain. It affects parts of the brain responsible for body movement and coordination, learning and memory, higher cognitive functions, the reward system, and movement. A 50 percent concentration of THC can remain in the body—notably the testes, liver, and brain—up to eight days after marijuana use.

(Definition and other information from Marijuana: An Opposing Viewpoints Guide, Greenhaven Press, 2007.)

The proposed law references the definition of marijuana currently found in the Public Health Code at 333.7106.

Classification as Schedule 1 Drug under Current Law. The cultivation, sale, possession, and use of marijuana are illegal under Michigan law and federal law. Marijuana is classified as a Schedule 1 drug under the Michigan Public Health Code (see MCL 333.7212). Under the Code, a substance is classified in Schedule 1 if the Michigan Board of Pharmacy "finds that the substance has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." The federal Controlled Substances Act also classifies marijuana as a Schedule 1 drug, under the category of "hallucinogenic substances."

Under Part 74 of the state's Public Health Code, use of marijuana is a misdemeanor punishable by up to 90 days in prison and/or a fine of not more than $100. Possession is a misdemeanor punishable by up to one year in prison and/or a fine of not more than $2,000. It is a felony to manufacture, deliver, or possess with intent to manufacture or deliver, punishable by from 4 to 15 years in prison and/or a fine of up to $10 million. The penalty depends on the amount of marijuana or number of marijuana plants involved. There are additional penalties for repeat offenders.

Laws in Other States. Medical marijuana laws have been enacted in Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. The earliest state law was enacted in 1996 in California; the most recent in New Mexico in 2007.

State Law versus Federal Law. State medical marijuana laws do not preempt or override federal prohibitions on the possession and use of marijuana. Indeed, in some instances federal law enforcement agents have conducted raids on medical marijuana cooperatives in states with medical marijuana laws. In a case that grew out of such federal intervention, Gonzales v. Raich (2005), the United States Supreme Court said that under its Commerce Clause authority, Congress could prohibit the cultivation and use of marijuana notwithstanding state laws permitting its cultivation and use for medical purposes.

Further Reading. The proponents of the initiated medical marijuana law, Citizens for Compassionate Care, have a website at: http://stoparrestingpatients.org/. The parent organization is the Marijuana Policy Project, which has a website at: www.mpp.org/.

An opposition group, Citizens Protecting Michigan's Kids, has a website at: www.nopotshops.com. For another website that provides a negative view of medical marijuana laws, consult the Office of National Drug Policy Control at: www.whitehousedrugpolicy.gov

ProCon.org is a website with arguments both for and against medical marijuana, as well as other controversial issues (www.procon.org).

The Citizens Research Council of Michigan has issued a report on the 2008 ballot proposals. It is available at: www.crcmich.org/.

A DETAILED DESCRIPTION OF THE INITIATED LAW:

The proposed law would create a new act, the Michigan Medical Marihuana Act, to allow persons with debilitating medical conditions who have obtained a written certification from their physician and a registry identity card from the state to use marijuana to alleviate the symptoms or effects of their conditions. The registry identity cards would have to be renewed annually.

The proposed law works by protecting **qualifying patients** with specified **debilitating medical conditions**, and certain **primary caregivers**, from arrest, prosecution, and penalty for the medical use of a limited amount of marijuana in accordance with the act. This also applies to civil penalties and disciplinary action by a business or occupational or professional licensing board or bureau. Further, a person acting in accordance with the new law could not be denied custody or visitation of a minor, unless the individual's behavior created an unreasonable danger to the minor that was clearly articulated and substantiated.

The protection only applies to possession of 2.5 ounces or less of usable marijuana and no more than 12 marijuana plants kept in an enclosed, locked facility. A qualifying patient would only be allowed possession of the marijuana plants if the patient had not specified that a primary caregiver will be allowed to cultivate marijuana for the patient. Otherwise, the caregiver would be allowed the 12 marijuana plants, along with up to 2.5 ounces of usable marijuana. (Incidental amounts of seeds, stalks, and unusable roots would not be included in the possession limits.)

A **qualifying patient** is a person who has been diagnosed by a physician as having a "debilitating medical condition."

A **debilitating medical condition** includes

(1) cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of those conditions;

(2) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the Department of Community Health.

DCH would have 120 days after the effective date of the proposed new act to promulgate rules governing the addition of medical conditions or treatments to the list of debilitating medical conditions. The rules would have to allow petitions by the public and would require public hearings (with proper notice) on such petitions. Department decisions on petitions could be appealed to the Ingham County Circuit Court. If DCH fails to adopt rules within 120 days, a qualifying patient could begin an action in Ingham County Circuit Court to compel the department to perform mandated actions.

A **primary caregiver** is defined as an individual at least 21 years of age who has agreed to assist with a patient's medical use of marijuana and who has never been convicted of a felony involving illegal drugs.

Physician Certification. Patients would be required to obtain written certification from a physician specifying the debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the condition or symptoms associated with the condition. (The term "physician" refers here to a medical doctor or doctor of osteopathy.)

A physician would not be subject to arrest, prosecution, or penalty, or be denied any right or privilege (including civil penalties and disciplinary actions from a business or occupational or professional licensing board) solely for providing written certifications in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the patient's medical history, or for stating that a patient would benefit from the medical use of marijuana. (However, nothing would prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating standards of care.)

Registry Identification Cards for Patients. The Department of Community Health would issue registry identification cards to qualifying patients, following the department's promulgated rules. Patients would have to submit a written certification from a physician and an application (or renewal) fee, along with other identifying information. The patient could also designate a primary caregiver and, in that case, would have to indicate whether the patient or the caregiver would be allowed to possess marijuana for the patient's medical use.

The DCH could not issue an identification card to a patient under the age of 18 unless: (1) the patient's physician has explained the potential risks and benefits of the medical use of marijuana to the patient and a parent or guardian; (2) the patient's parent or legal guardian submits a written certification from two physicians; and (3) the parent or guardian consents in writing to allow the use, to serve as the primary caregiver, and to control the acquisition, dosage, and frequency of use of the marijuana.

The department would verify the information submitted and approve or deny an application or renewal within 15 days after receiving it. The department could only deny an application or renewal if the applicant did not provide the required information or if the department determined the information provided was falsified. Rejection would be the final department action; the decision would be subject to judicial review in the Ingham County Circuit Court.

If a patient's certifying physician notifies the department in writing that the patient no longer suffers from a debilitating medical condition, the ID card would be come null and void when the department so notified the patient.

Registry Identification Cards for Caregivers. The DCH would issue a registry identification card to a primary caregiver named in a qualifying patient's application. A patient could have no more than one caregiver, and an individual could not serve as a primary caregiver to more than five qualifying patients. A registered primary caregiver could be compensated for costs in assisting patients, and such compensation would not be considered the sale of controlled substances.

Content of Identification Cards. The DCH would have to issue cards within five days of approval of an application. A card would be effective for one year and would contain the expiration date. It would contain, in addition to other identifying information, a random identification number and a photograph (if department rules require a photograph). The card would also have to indicate whether the patient or a primary caregiver was to be allowed to possess the marijuana plants for the patient's medical use (which is the patient's decision).

ID Card Enforcement Actions. If the department failed to issue a valid ID card within 20 days of receiving a valid application, then the ID card would be presumed granted and a copy of the application would be deemed a valid ID card. Further, a notarized statement containing the information required to be in an application, along with a written certification from a physician, would be deemed a valid ID card, if at any time after 140 days following the proposed law's effective date, DCH was not accepting applications. This would include cases where applications were not being accepted because the department had not created rules allowing patients to submit applications.

ID Card Holder Protections. Possessing or applying for an ID card could not constitute probable cause or reasonable suspicion and could not be used to support the search of the person or property of an individual who possesses or applies for an ID card, or otherwise subject the individual to inspection by local, county, or state governmental agencies.

Confidentiality Requirements. Applications for ID cards and supporting information submitted by patients would be confidential, including information about primary caregivers and physicians. The DCH would keep a confidential list of the individuals to whom it has issued ID cards and the names and other identifying information on the list would be confidential and exempt from disclosure under the Freedom of Information Act.

The department would verify to law enforcement whether an ID card was valid, but without disclosing more information than reasonably necessary to verify authenticity.

Disclosing confidential information would be a misdemeanor, punishable by imprisonment for up to six months and/or a fine of not more than $1,000. However, DCH employees could notify law enforcement about falsified or fraudulent information submitted to the department.

Department Rules on ID Cards. The DCH would be required to promulgate rules governing the manner in which it will consider applications for ID cards, including the

setting of application and renewal fees sufficient to offset all expenses of implementing and administering the new act. The fees could be on a sliding scale based on a patient's family income. (The term "family income" is not defined in the proposed law.) DCH could accept gifts, grants, and other donations from private sources to reduce application and renewal fees. The rules would have to be promulgated within 120 days after the proposed law's effective date. If DCH fails to adopt rules within 120 days, a qualifying patient could begin an action in Ingham County Circuit Court to compel the department to perform mandated actions.

Annual Report to Legislature. The Department of Community Health would be required to submit an annual report to the Legislature on the number of applications filed for ID cards, the number of patients and caregivers approved in each county, the nature of the debilitating medical conditions, and the number of physicians providing certifications. The report could not disclose identifying information about patients, caregivers, or physicians.

Prohibited Actions under Proposed Law. A person without a debilitating medical disease would not be allowed to use marijuana under the proposed law. Moreover, the proposed law would not permit an individual to undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice. It also would not permit the possession or use of marijuana in a school bus or on the grounds of a preschool, primary school, or secondary school, nor in a correctional facility. The law would not permit the smoking of marijuana on any form of public transportation or in any public place. (The term "public place" is not defined.) The proposed law also would not allow an individual to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana.

Penalties for Sales by Patients and Caregivers. A qualifying patient or caregiver who sells marijuana to someone who is not allowed to use marijuana for medical purposes would have his or her registry ID card revoked and would be subject to felony penalties of imprisonment for up to two years and/or a fine of not more than $2,000, in addition to other penalties for the distribution of marijuana.

Use of Marijuana at Work. The bill would not require an employer to accommodate the ingestion of marijuana in any workplace or to accommodate any employee working under the influence of marijuana.

Insurance Reimbursement. The act could not be construed to require a governmental medical assistance program to reimburse an individual for costs associated with the medical use of marijuana.

Fraudulent Representation. The proposed law would impose a $500 fine for fraudulent representation to law enforcement of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution. This fine would be in addition to any other penalties for making false statements or for using marijuana outside the purview of the proposed law.

Affirmative Defense to Prosecution/Dismissal. Under the act, a patient and a caregiver could assert the medical purpose for using marijuana as a defense to any prosecution

involving marijuana. (The proposed law uses the term "patient" rather than "qualifying patient" for the affirmative defense language.) The defense would be presumed valid where the evidence showed all of the following:

(1) A physician had stated that the patient was likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's condition or symptoms. The statement would have to be made after a full assessment had been completed of the patient's medical history and current medical condition in the course of a bona fide physician-patient relationship.

(2) The patient and/or primary caregiver were collectively in possession of a quantity of marijuana not more than reasonably necessary to ensure the uninterrupted availability for treating or alleviating the patient's condition or symptoms.

(3) The patient and/or caregiver were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or associated paraphernalia relating to the medical use of marijuana.

An individual could assert the medical purpose for using marijuana in a motion to dismiss, and the charges would have to be dismissed following an evidentiary hearing where the three elements listed above were established.

A patient or caregiver that demonstrated medical purpose could not be subject to disciplinary action by a business or occupational or professional licensing board or bureau or forfeiture of any interest in or right to property.

Paraphernalia. An individual could not be subject to arrest, prosecution, or penalty, or denied any right or privilege, for providing a registered qualifying patient or registered primary caregiver with marijuana paraphernalia for the purpose of the medical use of marijuana.

Being in the Presence of and Assisting with Medical Marijuana Use. The proposed law would not allow an individual to be subject to arrest, prosecution, or penalty solely for being in the presence or vicinity of the medical use of marijuana or for assisting a registered qualifying patient with using or administering marijuana.

Visiting Qualifying Patients/Reciprocity. A registry ID card, or its equivalent, issued elsewhere in the U.S. that allows the use of medical marijuana by a visiting qualifying patient or allows a person to assist with a patient's medical use, would have the same force and effect as an ID card issued by Michigan. A "visiting qualifying patient" would refer to a patient who is not a Michigan resident or who has been a Michigan resident for less than 30 days.

Findings. The proposed law contains a set of "findings." In brief, they claim that (1) modern medical research has discovered beneficial uses for marijuana; (2) about 99 out of 100 marijuana arrests are made under state law rather than federal law, so the proposed law effectively protects seriously ill individuals in Michigan from arrest; and (3) states have no obligation to prosecute violations of federal law, and Michigan would be joining 12 other states in not penalizing the medical use and cultivation of marijuana.

Severability. The proposed law states that if any of its sections is held invalid, that would not affect other sections that could be given full effect without the invalid section.

ARGUMENTS MADE BY PROPONENTS OF THE BALLOT PROPOSAL:

- Michigan will join 12 other states if it adopts the proposed Michigan Medical Marihuana Act to protect patients with debilitating medical conditions from being penalized for cultivating, possessing, and using marijuana to treat those conditions or alleviate symptoms associated with the conditions. Supporters say the most recently enacted laws are functioning as intended with few reported abuses.

- The main aim of the legislation is to protect seriously ill individuals from arrest and imprisonment for the therapeutic use of marijuana, and to protect those physicians willing to recommend marijuana use. The core question proponents ask is, "Should seriously ill patients be arrested and sent to prison for using marijuana with their doctors' approval?"

- Advocates say there is overwhelming evidence that marijuana can relieve some kinds of chronic pain, side effects of cancer treatments, nausea, movement disorders, glaucoma, and other conditions and side effects, and can stimulate appetite, particularly for those suffering from HIV or dementia, and help patients tolerate food and water. Even if the use of marijuana carries some risks, these are far outweighed by the benefits. Moreover, many federally-approved drugs and disease treatments have serious side effects and yet are still considered to be beneficial overall.

- The proposed law allows the use of marijuana for medical purposes only, and only then for patients who obtain a certification from a physician stating that the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana. As a further step, the patient (and/or a designated caregiver) must obtain an ID card from the state's Department of Community Health, which will maintain a registry of eligible participants.

- The amount of marijuana available to qualifying patients and caregivers is strictly limited under the proposed law. It does not grant permission for large scale production or acquisition of marijuana. It will produce little or no interference with the ability of law enforcement to enforce current laws on marijuana. The state will maintain a registry of eligible patients and caregivers, which will make it possible to distinguish between the medical user and the recreational user. Those who cannot obtain a physician's approval will continue to face the same criminal penalties that exist today for the illegal cultivation, possession and use of marijuana.

- Under the proposed law, a person without a debilitating medical disease would not be allowed to use marijuana under the proposed law. Moreover, the proposal does not allow an individual to operate a motor vehicle, plane, or motorboat while under the influence of marijuana. It also would not allow an individual to engage in a task under the influence of marijuana if doing so would constitute negligence or professional malpractice. Possession or use of marijuana in a school bus or on the grounds of a preschool, primary school, or secondary school, and in a correctional facility, would not be allowed. And the

law would not permit the smoking of marijuana on any form of public transportation or in any public place.

- Medical marijuana advocates say that, while there may be other medicines that work for some people for some of the conditions marijuana can treat, "different people respond differently to different medicines." The mere fact that there are alternatives to medical marijuana that help some people does not invalidate the usefulness of marijuana for other patients. While smoking marijuana may have some harmful effects, it does not pose the same cancer risks as smoking tobacco. Moreover, there are alternatives to smoking medical marijuana, such as the use of vaporizers, which allow patients to inhale cannabinoid vapors and avoid the tars and other irritants found in smoke. Proponents say that for some patients, smoking marijuana is superior to using pills (particularly for those fighting nausea) and other forms of delivery. With smoked marijuana, patients can control their own dosages and see quick results (which is not true with some other delivery systems).

- Proponents say there is no evidence of increased teen marijuana use in states with medical marijuana laws. Young people are capable of understanding the difference between drugs used properly (as medicine) and drugs used illicitly (to get high). They also dispute the claim that marijuana is a "gateway" drug for young people, noting that the abuse of more powerful illegal drugs is not "caused" by marijuana use but is the result of underlying behavioral factors (as is the abuse of drugs that are currently legally used for medical purposes).

ARGUMENTS MADE BY OPPONENTS OF THE BALLOT PROPOSAL:

- Marijuana is illegal because it is a dangerous intoxicating drug with harmful and long-lasting effects. It has a high potential for abuse. One of the key elements in the nation's safe and effective medical delivery system is the process by which drugs are approved for use by the federal government. The aim of the rigorous federal process is to allow only those drugs that are safe and effective to be available to patients. The proposed law shortcircuits and undercuts that process. Drug availability ought to be based on scientific research and medical data, not petition drives and politics.

- Representatives of the U.S. Food and Drug Administration (FDA) say the FDA has not approved smoked marijuana for any condition or disease and claim that there are alternative FDA-approved medications already available to treat many of the conditions that medical marijuana is supposed to treat.

- Critics of the proposed law say that even if marijuana contains beneficial ingredients, "smoked marijuana is a crude delivery system that delivers harmful substances" and "is associated with increased risk of cancer, lung damage, and poor pregnancy outcomes." (From testimony before the Legislature by an official from the Office of National Drug Control Policy.) There are alternative delivery systems already available that allow doctors to provide patients with forms of medical marijuana without the dangers associated with smoke. It can be delivered in pill form (Marinol) and as a topical medicine absorbed through the skin. Oral sprays and inhalers are also said to be in development. At a time when there are efforts to restrict where people

can smoke, this proposal has the potential to allow smoking of marijuana where cigarette smoking is prohibited.

- While the proposed law offers protection for users of medical marijuana (and caregivers), it does not offer a safe, regulated supply for patients. How is marijuana to be obtained if patients do not want to grow their own -- from drug dealers? Will this lead to a wider availability of marijuana overall, to satisfy the demand for medical marijuana?

- Critics say marijuana is the most widely used illegal substance, and is commonly used by teenagers. Endorsing marijuana as effective medicine sends a bad message to young people and legitimizes the substance in the public's mind. To the extent marijuana is a "gateway" drug, the increase in its use by young people could lead to greater use of other illegal drugs. Some critics are suspicious that medical marijuana laws are simply a first step toward decriminalization or legalization of the use of marijuana.

- Use of marijuana will remain against federal law. So the proposed law may promise "false hope" to patients and caregivers, who could continue to face federal law enforcement efforts. It will create a conflict between federal law enforcement and Michigan law enforcement. It will hamper drug enforcement at the state and local levels by making a confusing distinction between medical (legal) uses of marijuana and recreational (illegal) uses.

- Some critics of the proposed law say that it will lead to workers using marijuana on the job, negatively affecting workplace safety and exposing businesses to liability lawsuits. They also assert that the law can be read as preventing employers from disciplining employees for marijuana use if they have medical permission.

- The provisions that offer individuals an "affirmative defense" against "any prosecution involving marijuana" could lead, for example, to an increase in people driving under the influence of marijuana without fear of prosecution or punishment. The affirmative defense, moreover, applies to "patients" rather than just to "qualifying patients," which means it extends to people who are not on the official state registry but who can find a physician who will assert that marijuana use is "likely" to be beneficial in alleviating symptoms of a "serious" medical condition.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.