



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW

### **Uncompensated transfers of marihuana between registered qualifying patients constitutes medical use of marihuana under the Michigan Medical Marihuana Act**

In [People v. Green](#), the defendant was a qualifying patient who was issued and possessed a registry identification card. Without receiving compensation, the defendant transferred less than 2.5 ounces of marihuana to another qualifying patient who was also issued and possessed a registry identification card.

The [Michigan Medical Marihuana Act](#) (MMMA), specifically [MCL 333.26424\(a\)](#), protects a qualifying patient from arrest, prosecution or penalty for the medical use of marihuana in accordance with the MMMA, provided the qualifying patient has been issued and possesses a registry identification card and possesses less than 2.5 usable ounces of marihuana.

The issue before the Michigan Court of Appeals was whether the MMMA's protections for medical use of marihuana extend to uncompensated patient-to-patient transfers of marihuana. The Michigan Court of Appeals concluded the delivery or transfer of marihuana, absent the exchange of compensation, is specifically included in the MMMA's definition of "medical use." The Court held the defendant was immune from prosecution for the uncompensated transfer of marihuana to another qualifying patient.

As discussed in [MSP Legal Update No. 89](#), the Michigan Court of Appeals previously concluded that the MMMA does not authorize patient-to-patient sales of marihuana. Sale consists of delivery or transfer *plus* the receipt of compensation, which is not allowed under the definition of "medical use" or any other provision of the MMMA.

**A person cannot be prosecuted under MCL 750.237 for constructive possession of a firearm while intoxicated in his or her own home.**

[MCL 750.237](#) prohibits an individual from possession or use of a firearm while under the influence of alcoholic liquor. Possession of a firearm can be actual

or constructive. A person has constructive possession of a firearm when the person has knowledge of the firearm's location and the firearm is reasonably accessible to the person.

In [People v. DeRoche](#), officers responded to a disturbance call at the defendant's home. The officers were informed the defendant had been drinking and was upstairs in the residence. The officers were also informed that a gun was taken from the defendant and hidden in the laundry room. The defendant was arrested and prosecuted for violating [MCL 750.237](#) based on the theory he was in constructive possession of a firearm while intoxicated.

The district court concluded there was no evidence the defendant was in actual physical possession of the gun and dismissed the charges based on the [Second Amendment to the United States Constitution](#). The Michigan Court of Appeals upheld the district court's dismissal.

The Court noted the right to possess a handgun in a person's home as a means of self-defense, while not unlimited, is protected by the Second Amendment. The Court further noted that, aside from [MCL 750.237](#), the defendant was not engaged in any unlawful behavior nor were there any facts to suggest he possessed the gun for any unlawful purpose. The Court also pointed out that at the time the officers were able to establish the defendant's level of intoxication, the defendant's possession of the firearm was constructive rather than actual.

The Court concluded the government cannot justify infringing on the defendant's Second Amendment right to possess a handgun in his home simply because the defendant was intoxicated in the general vicinity of the firearm.

As a result of this ruling, officers should not arrest a person for violating [MCL 750.237](#) solely based on the person being in constructive possession of a firearm while intoxicated in his or her home.

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