



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW AND PROCEDURE MANUAL

The 2010 edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is available for purchase.

The manual is published by [Kendall Hunt Publishing Co.](#) Copies may be ordered by calling Kendall Hunt Customer Service at (800) 228-0810, or through their [online catalog](#) (search by title or ISBN: [978-0-7575-8710-8](#)).

## VEHICLE CODE AND MEDICAL MARIHUANA

**A person shall not operate a motor vehicle with any amount of a Schedule 1 controlled substance, including medical marihuana, in the person's body.**

In [People v. Koon](#), the defendant was stopped by a police officer for a traffic violation. During the stop, the defendant informed the officer he had a medical marihuana patient registry identification card and had smoked marihuana five to six hours prior to being stopped. A blood test showed that the defendant had active THC in his system. The defendant was charged with operating a motor vehicle with a schedule 1 controlled substance in his body in violation of the "zero tolerance" law detailed in [MCL 257.625\(8\)](#).

The Michigan Court of Appeals held the [Michigan Medical Marihuana Act](#) (MMMA) does not provide protection against prosecution for violating [MCL 257.625\(8\)](#).

[MCL 257.625\(8\)](#) prohibits a person from operating a vehicle upon a highway or certain other area open to the public with any amount of a controlled substance listed in schedule 1 under [MCL 333.7212](#) of the Public Health Code in his or her body. Marihuana remains listed as a Schedule 1

controlled substance in [MCL 333.7212\(1\)\(c\)](#) despite the passage of the MMMA.

[MCL 333.26427\(b\)\(4\)](#) states the protections of the MMMA do not apply to operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana. The phrase "under the influence of marihuana" is not defined in the MMMA.

The Michigan Court of Appeals stated the definition of "under the influence" for purposes of the MMMA is the same as the definition of "under the influence" for purposes of [MCL 257.625\(8\)](#): the presence of any amount of a Schedule 1 controlled substance, including marihuana.

Therefore, officers may lawfully arrest a medical marihuana patient who operates a motor vehicle with THC in his or her system.

Officers are reminded that a chemical test result must show the presence of THC in the person's system in order to prosecute for a violation of [MCL 257.625\(8\)](#). The Michigan Supreme Court, in the 2010 case [People v. Feezel](#), held 11-carboxy-THC (produced by the body as it metabolizes THC and commonly referred to as a marihuana metabolite) is not a Schedule 1 controlled substance under [MCL 333.7212](#).

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