



Michigan Supreme Court

State Court Administrative Office
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Thomas P. Boyd
State Court Administrator

MEMORANDUM

DATE: July 8, 2026

TO: District, Municipal, and Circuit Judges
District, Municipal, and Circuit Court Administrators

FROM: Thomas P. Boyd, State Court Administrator

RE: People v Hess – MRTMA and Probation Conditions

The Michigan Supreme Court recently issued a unanimous [opinion](#) in *People v Hess*, ___ Mich ___ (July 6, 2026) (Docket No. 167895), holding that a trial court may not prohibit Michigan Regulation and Taxation of Marihuana Act (MRTMA)-compliant marijuana use as a probation condition solely because such use violates federal law. I draw your attention to the Supreme Court's holding and opinion as media coverage may cause confusion.

The defendant in *Hess* pleaded guilty to third-degree retail fraud and was sentenced to probation. The trial court placed the defendant on probation and prohibited the defendant from using or possessing marijuana, but did not provide a reason for imposing that condition. After testing positive for marijuana, the defendant argued that the MRTMA barred courts from prohibiting probationers from engaging in MRTMA-compliant marijuana use.

Court of Appeals

The Court of Appeals affirmed the lawfulness of the probation condition, explaining that the probation act provides that a “sentence of probation must” prohibit probationers from violating “any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.” *People v Hess*, ___ Mich App ___ (October 24, 2024) (Docket No. 366148) at ___; slip op at 5-6, quoting MCL 771.3(1)(a). Because the federal Controlled Substances Act (CSA), 21 USC 801 *et seq.*, criminalizes recreational marijuana use, the Court of Appeals held the district court must prohibit probationers from using marijuana.

Michigan Supreme Court

The Michigan Supreme Court granted leave to appeal to specifically consider the following issues:

- (1) whether MCL 771.3(1)(a), which makes it a mandatory condition of probation that “the probationer shall not violate any criminal law of . . . the United States,” requires trial courts to bar probationers from engaging in marijuana use that is otherwise permitted by the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq.*; and
- (2) if not, whether and under what circumstances a trial court may prohibit MRTMA-compliant marijuana use as a discretionary condition of probation under MCL 771.3(3).

As to the first issue, the Court held that there is no positive conflict between the federal CSA and § 5(1) MRTMA “such that the two ‘cannot consistently stand together[.]’” *People v Hess*, ___ Mich ___ (July 6, 2026) (Docket No. 167895); slip op at 14. The CSA therefore does not preempt § 5(1) MRTMA. The Court also held that MCL 771.3(1)(a) of the probation act is inconsistent with the MRTMA insofar as it automatically bars probationers from MRTMA-compliant marijuana use based on the CSA. *Id* at ___; slip op at 15-16. Taken together, the Court held that trial courts may not impose probation conditions barring MRTMA-compliant marijuana use solely because such use violates the CSA.

The court did not reach the second issue, since the Court of Appeals had not previously considered whether and under what circumstances a trial court may prohibit MRTMA-compliant marijuana use as a discretionary condition of probation under MCL 771.3(3).

Please review the Court’s opinion in *Hess* and adjust your probation sentencing practices if necessary to ensure compliance with this holding. If you have any questions, please contact your [regional administrator](#).