



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Ronald B. Gordon, Jr.
State Court Administrator

Neira Siaperas
Deputy Court Administrator

MEMORANDUM

To: Medical Cannabis Policy Advisory Board
From: Michael C. Drechsel, Assistant State Court Administrator
Date: Friday, November 01, 2024
Re: Proposal to amend Utah Code section 78A-2-231 for problem-solving courts

The judiciary is seeking feedback from the Medical Cannabis Policy Advisory Board on a legislative proposal that the judiciary is exploring. You may be familiar with problem-solving / treatment courts (e.g., drug court, mental health court, veterans treatment court, family dependency court, etc.). These courts are special calendars for cases where an individual's involvement in the criminal justice or child welfare system is, at least in part, due to substance abuse. We focus on providing this court-based intervention to individuals who are determined by a validated assessment tool to be "high risk" (the individual is likely to experience poor outcomes in standard treatment or community supervision programs due to extensive criminal history, antisocial tendencies, delinquent peer affiliations, etc.) and "high need" (the individual suffers from a severe substance abuse or mental health disorder and has other pressing social service needs. Each problem-solving court is comprised of a multi-disciplinary team of a judge, court staff, treatment provider(s), prosecution, defense, community supervision, as well as mentors and other stakeholders depending on the needs of a specific court. Individuals participating in a problem-solving court enter into the program through a plea in abeyance or as a condition of probation. Participants appear before the court on a regular basis (i.e., every two to four weeks, depending on program progress and compliance), test for unauthorized substance use on a regular basis (at least twice per week randomly throughout the program), engage in intensive treatment with program progress updates regularly communicated to the court and the team, and have a more immediate delivery of incentives and sanctions based upon program compliance or noncompliance. Program completion typically takes from 12 to 24 months.

Problem-solving court programs around the state have been grappling with a challenge presented by current Utah statute. **Utah Code § 78A-2-231** contains two substantive subsections related to medical cannabis and court proceedings:

Subsection (2) prohibits a court from treating the lawful possession or use of medical cannabis any differently than the lawful possession or use of any prescribed controlled substance.

Subsection (3) prohibits a court from requiring an individual to abstain from the lawful use or possession of medical cannabis as part of probation, a plea in abeyance, diversion, etc.

**The mission of the Utah judiciary is to provide an open, fair, efficient,
and independent system for the advancement of justice under the law.**

In a problem-solving court context, treatment professionals involved in the program who provide the treatment to participants will often make treatment decisions that require an individual to abstain from the use of certain controlled substances. For instance, where there are multiple substances that can provide a necessary treatment benefit, the treatment provider may determine that the appropriate course of action is for the individual to use the substance with less potential for abuse to facilitate the individual's progress in the program to achieve and maintain long-term sobriety. Where there is disagreement about necessary treatment, the court must hear from the parties and determine whether to order an individual to comply.

Currently, state code requires a judge to treat medical cannabis the same as any other lawfully prescribed controlled substance per Subsection (2). Treating medical cannabis the same as other prescribed controlled substances may mean enforcing a treatment provider's determination that there is a better substance to use than medical cannabis, and therefore requiring the participant to abstain from using medical cannabis while in the program. But that would run afoul of the Subsection (3) prohibition against requiring an individual to abstain from using medical cannabis. In essence, in the problem-solving court context, the two subsections say, "treat these various substances the same, but you can't treat medical cannabis the same as these other substances."

We are exploring a proposal to add a **new Subsection (4)** to Utah Code § 78A-2-231:

(4) Subsection (3) does not apply in a problem solving court if:

- (a) a treatment provider who is a participating member of the problem solving court multi-disciplinary team determines that the possession or use of medical cannabis will present a barrier to an individual's ability to successfully complete the approved problem solving court treatment plan;*
- (b) the individual was informed prior to entering into the problem solving court program that the individual may be required to abstain from the use or possession of medical cannabis while participating in the problem solving court; and*
- (c) the determination is communicated to the individual and the court.*

Note that this proposal would still require compliance with Subsection 2 (i.e., the court would still be required to treat medical cannabis the same as any lawfully prescribed controlled substance). But this would also mean the determination of a treatment provider in a problem-solving court would override the recommendation of the qualified medical provider who decided the individual could benefit from the use of medical cannabis, at least so long as the individual is a participant in the problem-solving court program. Once the individual completes the program, the individual would be at liberty to resume the use of medical cannabis if such use is still recommended by a qualified medical provider.

As we explore this proposal, we value the feedback from the Medical Cannabis Policy Advisory Board. We understand the careful attention that has been given to crafting Utah's medical cannabis policy. We are not interested in proposing changes that would disrupt state policy. And we are not interested in expanding this proposal beyond problem-solving courts. But we are in a legitimately difficult situation as we try to assist court-involved individuals in overcoming addiction through these problem-solving court programs. Attached is a draft of the proposal.

1 **78A-2-231. Consideration of lawful use or possession of medical cannabis.**

2 (1) As used in this section:

- 3 (a) "Cannabis product" means the same as that term is defined in Section 26B-4-201.
- 4 (b) "Directions of use" means the same as that term is defined in Section 26B-4-201.
- 5 (c) "Dosing guidelines" means the same as that term is defined in Section 26B-4-201.
- 6 (d) "Medical cannabis" means the same as that term is defined in Section 26B-4-201.
- 7 (e) "Medical cannabis card" means the same as that term is defined in Section 26B-4-201.
- 8 (f) "Medical cannabis device" means the same as that term is defined in Section 26B-4-201.
- 9 (g) "Recommending medical provider" means the same as that term is defined in Section 26B-4-201.

10 (2) In any judicial proceeding in which a judge, panel, jury, or court commissioner makes a finding,
11 determination, or otherwise considers an individual's medical cannabis card, medical cannabis
12 recommendation from a recommending medical provider, or possession or use of medical cannabis, a
13 cannabis product, or a medical cannabis device, the judge, panel, jury, or court commissioner may not
14 consider or treat the individual's card, recommendation, possession, or use any differently than the
15 lawful possession or use of any prescribed controlled substance if:

- 16 (a) the individual's possession complies with Title 4, Chapter 41a, Cannabis Production
17 Establishments and Pharmacies;
- 18 (b) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or
- 19 (c)
 - 20 (i) the individual's possession or use complies with Title 26B, Chapter 4, Part 2, Cannabinoid
21 Research and Medical Cannabis; and
 - 22 (ii) the individual reasonably complies with the directions of use and dosing guidelines
23 determined by the individual's recommending medical provider or through a consultation
24 described in Subsection 26B-4-230(5).

25 (3) Notwithstanding Sections 77-18-105 and 77-2a-3, for probation, release, a plea in abeyance
26 agreement, a diversion agreement, or a tendered admission under Utah Rules of Juvenile Procedure,
27 Rule 25, a term or condition may not require that an individual abstain from the use or possession of
28 medical cannabis, a cannabis product, or a medical cannabis device, either directly or through a
29 general prohibition on violating federal law, without an exception related to medical cannabis use, if
30 the individual's use or possession complies with:

- 31 (a) Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
- 32 (b) Subsection 58-37-3.7(2) or (3).

33 (4) Subsection (3) does not apply in a problem solving court if:

- 34 (a) a treatment provider who is a participating member of the problem solving court multi-disciplinary
35 team determines that the possession or use of medical cannabis will present a barrier to an
36 individual's ability to successfully complete the approved problem solving court treatment plan;
- 37 (b) the individual was informed prior to entering into the problem solving court program that the
38 individual may be required to abstain from the use or possession of medical cannabis while
39 participating in the problem solving court; and
- 40 (c) the determination is communicated to the individual and the court.