


Fort Collins Police Services

Policy Manual

 FORT COLLINS POLICE	POLICY	452
	TITLE	Medical and Personal Marijuana

452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this Agency with guidelines for investigating the acquisition, possession, transportation, delivery, production, or use of marijuana under Colorado's medical marijuana laws.

452.2 POLICY

It is the policy of the Agency to prioritize resources and issue summonses or make arrests related to marijuana use that the arresting officer reasonably believes would be prosecuted by local, state, or federal authorities. Fort Collins officers cannot issue summonses or make arrests for violations of federal law.

Colorado marijuana laws identify legal amounts of marijuana for acquisition, cultivation, possession, sale, distribution, use, or transport. However, Colorado marijuana laws do not affect federal laws and there is no exception under federal law for the possession or distribution of marijuana. The Agency will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Colorado law and the resources of the Agency. Nothing in this policy shall be deemed to create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution, or use of marijuana.

452.3 INVESTIGATION

Investigations involving the acquisition, cultivation, possession, sale, distribution, use, or transportation of marijuana generally fall into one of the following categories:

- (a) The amount of marijuana in the person's possession
- (b) The age of the person in possession of marijuana
- (c) The manner of consumption

Officers should be alert that an accused may raise a medical marijuana defense at any time. Consequently, officers should document any statements and observations that may be relevant as to whether the marijuana was possessed, used, or produced for medicinal purposes.

452.3.1 THE AMOUNT OF MARIJUANA

In any investigation involving the acquisition, cultivation, possession, sale, distribution, use, or transportation of marijuana or drug paraphernalia, the officer should proceed with a criminal investigation if:

- (a) The amount is greater than one ounce of marijuana, unless it:

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1. Occurs on the premises where marijuana plants are grown; or
 2. Is medical marijuana, which means that no more than two ounces of marijuana can be possessed.
- (b) The growing of marijuana plants:
1. Exceeds the six-plant limit, no more than three mature and flowering, unless the cultivator can show status as a primary caregiver; and
 2. Must be in an enclosed, locked space (Colorado Const. Art. 18 § 16(3)).

452.3.2 THE AGE OF THE PERSON IN POSSESSION

- (a) A person in possession of marijuana must:
1. Be 21 years of age or older if the claim is that the marijuana is for personal use.
 2. Be 18 years of age or older if the claim is that the marijuana is for medical use unless:
 - (a) The juvenile is in lawful possession of a RIC.
 - (b) The juvenile and the primary caregiver, who must be a parent residing in Colorado, collectively possess no more than a lawful amount of marijuana.
 - (c) The parental primary caregiver controls the acquisition, dosage, and frequency of the use of medical marijuana (Colorado Const. Art 18 § 14(6)).
- (b) In addition, unless the person is a primary caregiver, the person must:
1. Be purchasing marijuana and marijuana products for personal use only and not for resale to others (Colorado Const. Art. 18 § 16(2)(b)); and
 2. Not transfer marijuana or marijuana products to persons under the age of 21.

452.3.3 THE MANNER OF CONSUMPTION

Marijuana may not be consumed:

- (a) Openly and publicly;
- (b) In a manner that endangers others (Colorado Const. Art. 18 § 16(3)); or
- (c) While driving under the influence of marijuana or its constituent-controlled substances. (Note that identifying potential violations is best left to officers with proper training and officers are encouraged to call for assistance from those specially trained officers) (Colorado Const. Art. 18 § 16(6)).

452.4 FEDERAL LAW ENFORCEMENT

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

452.5 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana acquisition, cultivation, possession, sale, distribution, use, or transportation:

- (a) Because the enforcement of marijuana laws can be complex, time consuming, and require resources unavailable at the time of initial investigation, officers may consider submitting a report to a supervisor or the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:

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1. The suspect has been identified and can be easily located at another time.
 2. The case would benefit from review by a person with expertise in marijuana investigations.
 3. Sufficient evidence, such as photographs or samples, have been lawfully obtained.
 4. Any other relevant factors, such as limited available Agency resources and time constraints.
- (b) Officers may take enforcement action against a patient or primary caregiver who (Colorado Const. Art. 18 § 14(5); CRS § 25-1.5-106):
1. Engages in the medical use of marijuana in a way that endangers the health or well-being of any person.
 2. Engages in the medical use of marijuana in plain view of, or in a place open to, the general public.
 3. Undertakes any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice.
 4. Possesses medical marijuana or otherwise engages in using medical marijuana on school grounds or in a school bus.
 5. Engages in the use of medical marijuana in a correctional facility, community corrections facility, or in a vehicle, aircraft, or motorboat.
 6. Engages in the use of medical marijuana while sentenced to jail/prison.
 7. Operates, navigates, or is in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana.
- (c) Where a police officer and his supervisor intend to serve a defendant with a criminal summons and complaint or prepare a case against the defendant in anticipation of screening the case with the District Attorney, it is the practice of this Agency to seize only a representative sample of the marijuana. The representative sample will be made by clipping samples from the plants and product. In addition to the sampling, police officers will take numerous photographs, video, and other non-invasive evidence to assist in the prosecution of the criminal case. Only in the most extreme situations, and only after a Command Staff officer has approved it, will an officer seize entire plants and product.
- (d) Before proceeding with enforcement related to a locally approved business that cultivates, manufactures, or sells marijuana or marijuana-infused products, officers should consider conferring with appropriate legal counsel.