

# Medical Cannabis

## 450.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this office with guidelines for handling and distinguishing between claims of medical cannabis use under Washington's Medical Use of Cannabis Act and criminal controlled substance violations (RCW 69.51A.005 et seq.).

### 450.1.1 DEFINITIONS

Definitions related to this policy include (RCW 69.51A.010):

**Authorization** - Documentation that is signed and dated by a qualifying patient's health care professional, authorizing use of medical cannabis.

**Designated provider** - A person who:

- Is 21 years of age or older and is the parent or guardian of a qualifying patient who is 17 years of age or younger and holds a recognition card.
- Has been designated in writing by a qualifying patient to serve as the designated provider for that patient.
- Has an authorization from the qualifying patient's health care professional.
- Has been entered into the medical cannabis authorization database as being the designated provider to a qualifying patient and has been provided a recognition card.

An individual may act as a designated provider to no more than one patient at a time, is prohibited from consuming cannabis obtained for the use of the qualifying patient, and may only provide cannabis to the patient designated to the provider.

**Medical use of cannabis** - The manufacture, production, possession, transportation, delivery, ingestion, application, or administration of cannabis for the exclusive benefit of a qualifying patient in the treatment of the patient's terminal or debilitating medical condition.

**Qualifying patient** - Any person who meets all of the following criteria:

- Has been diagnosed by the person's health care professional as having a terminal or a debilitating medical condition
- Is a resident of the state of Washington at the time of such diagnosis
- Has been advised by the person's health care professional about the risks and benefits of the medical use of cannabis
- Has been advised by the health care professional that the person may benefit from the medical use of cannabis
- Has an authorization from the person's health care professional or has been entered into the medical cannabis authorization database and has been provided a recognition card
- Is not under supervision for a crime that does not allow for the use of medical cannabis

**Recognition card** - A card issued to qualifying patients and designated providers by a cannabis retailer with a medical cannabis endorsement that has entered them into the medical cannabis authorization database.

### **450.2 POLICY**

It is the policy of the Kitsap County Sheriff's Office to prioritize resources to avoid making arrests related to cannabis that the arresting deputy reasonably believes would not be prosecuted by state or federal authorities.

Washington medical cannabis laws are intended to provide protection from prosecution for those who use, possess, deliver, or produce cannabis to mitigate the symptoms of certain debilitating or terminal medical conditions. However, Washington medical cannabis laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of cannabis.

Deputies should exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both the individuals protected under Washington law and the resources of the Office.

### **450.3 INVESTIGATION**

Investigations involving the possession, delivery, or production of cannabis generally fall into one of several categories:

- (a) No medicinal claim is made.
- (b) A medicinal claim is made by a qualifying patient or designated provider who is in possession of amounts within the limits designated by RCW 69.51A.040.
- (c) A medicinal claim is made by a qualifying patient or designated provider who is in possession of amounts exceeding the limits designated by RCW 69.51A.040 or who presented no authorization when initially contacted.

#### **450.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM**

In any investigation involving the possession, delivery, or production of cannabis where there is no claim that the cannabis is for medicinal purposes, the deputy should proceed with reasonable enforcement action. A medicinal defense may be raised at any time, so deputies should document any statements and observations that may be relevant to whether the cannabis is possessed or produced for medicinal purposes.

#### **450.3.2 EXCESS AMOUNTS OR NO AUTHORIZATION**

A qualifying patient or designated provider may raise an affirmative defense to charges that the amount of cannabis in the patient's or provider's possession exceeds the amount legally allowed by RCW 69.51A.040 based upon medical need (RCW 69.51A.045).

Deputies should conduct a thorough investigation in such cases, but in general, should not arrest a subject for possession, delivery, or production of cannabis if an excess amount appears reasonable based upon the above policy consideration. Similarly, if a deputy can verify that

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authorization exists, even though a recognition card was not presented or obtained by a qualified patient or designated provider, an arrest generally should not be made (RCW 69.51A.040).

All facts should be thoroughly documented and if evidence is not seized, it shall be photographed and detailed in the report.

### **450.3.3 ADDITIONAL CONSIDERATIONS**

Prior to making a physical arrest or confiscating cannabis plants, usable cannabis, or product, deputies should consider the following:

- (a) Whenever the initial investigation reveals an amount greater than specified by law, deputies should, in anticipation of an affirmative defense, consider and document:
  - 1. The medical condition itself.
  - 2. The quality of the cannabis (chemical content).
  - 3. The method of ingestion (e.g., smoking, eating, nebulizer).
  - 4. The timing of the possession in relation to a harvest (patient may be storing cannabis).
  - 5. Whether the cannabis is being cultivated indoors or outdoors, and the climate.
- (b) Before proceeding with enforcement related to collective gardens, cooperatives, or commercial producers, deputies should consider conferring with appropriate legal counsel and the Washington State Liquor and Cannabis Board for license-related issues (WAC 314-55-410).
- (c) Medical use and possession of cannabis authorized under the Washington medical cannabis statute does not support the forfeiture of property as set forth in the Asset Forfeiture Policy (RCW 69.51A.050).
- (d) Laws and regulations do provide for the cultivation of industrial hemp. The Washington State Department of Agriculture should be contacted should questions arise regarding possible industrial hemp activity (RCW 15.140.030).
- (e) A medical endorsement can be added to a cannabis retail license to allow a retailer to sell cannabis for medical use to qualifying patients and designated providers. Transaction limits apply (WAC 314-55-080; WAC 314-55-095).
- (f) The Washington State Department of Health maintains a Medical Cannabis Authorization Database and regulates cannabis retail outlets with medical cannabis endorsements. This database may be accessed by authorized law enforcement officials for specific criminal investigations (WAC 246-71-080).

### **450.4 EXCEPTIONS**

This policy does not apply to the following offenses; deputies may take enforcement action if the person (RCW 69.51A.060):

- (a) Engages in the medical use of cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or

highway, including violations of RCW 46.61.502 or RCW 46.61.504, or equivalent local ordinances.

- (b) Uses or displays medical cannabis in a manner or place open to the view of the public.

### **450.5 FEDERAL LAW ENFORCEMENT**

Deputies may exchange information regarding a cannabis investigation with federal law enforcement authorities when information is requested by federal law enforcement authorities or whenever the deputy reasonably believes federal law enforcement authorities would request the information if the authorities were aware of the information.

### **450.6 PROPERTY AND EVIDENCE UNIT SUPERVISOR RESPONSIBILITIES**

The Property and Evidence Unit Supervisor shall ensure that cannabis, drug paraphernalia, or other related property seized from a person engaged or assisting in the use of medical cannabis is not destroyed.

Upon a determination by the prosecuting attorney that the person from whom cannabis, drug paraphernalia, or related property was seized is entitled to possession under the law, the Property and Evidence Unit Supervisor should return to that person any usable cannabis, plants, drug paraphernalia, or other seized property. That determination is the result of a decision not to prosecute, by the dismissal of charges or an acquittal.

The Property and Evidence Unit Supervisor may destroy cannabis that was alleged to be for medical purposes upon receipt of a court order.

The Property and Evidence Unit Supervisor may release cannabis to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Division Supervisor.