	<b>PARADISE VALLEY POLICE GENERAL ORDER</b>  <b>Medical and Recreational Marijuana</b>	Order Number
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#### 43.4 Medical & Recreational Marijuana

- A. The [Arizona Medical Marijuana Act \(AMMA\)](#) provides that the use, possession and transportation of marijuana by certain designated persons are not illegal under State law.
- B. Definitions that apply only to the AMMA include:

**Allowable amount of marijuana:** Generally for a registered qualifying patient, 2.5 ounces of usable marijuana or the extracts that can be obtained from 2.5 ounces. If the patient's registry card permits them to also cultivate (grow) marijuana, the limit is twelve (12) plants. The plants must be contained in an enclosed, locked facility, unless the plants are being transported because the qualifying patient is moving. For designated caregivers, the allowable amount of marijuana is 2.5 ounces, or if the caregiver is authorized to cultivate, twelve (12) plants, times the number of the caregiver's registered qualifying patients. The plants must be in an enclosed, locked facility, unless the plants are being transported because the caregiver is moving. Caregivers may also be qualifying patients, adding another 2.5 ounces or if they are authorized to cultivate, twelve (12) plants.

**Cardholder:** A qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card.


**Designated Caregiver:** A person with a valid *registry identification card* licensed by ADHS to assist no more than (5) *qualifying patients* with the medical use of marijuana.

**Enclosed, locked facility:** A closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.

**Physician:** Arizona licensed M.D., D.O., naturopathic physician, or homeopathic physician.

**Qualifying patient:** A person who has been diagnosed by a *physician* as having a debilitating medical condition.

**Registry Identification card:** A card issued by the Arizona Department of Health Services that identifies the person as a qualifying patient, registered designated caregiver or registered agent of a dispensary. The card will include the following information: name, address, DOB, photo, issuance date, expiration date, twenty-digit

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alphanumeric number, whether the cardholder is a qualified user, designated caregiver, or registered agent of a dispensary and whether the person is authorized to cultivate.

**Usable marijuana:** The dried flowers of the plant, not including the seeds, stalks, and roots of the plant and not including the weight of any non-marijuana ingredients combined with the marijuana and prepared for consumption as food or drink.

**Visiting qualifying patient:** A non-resident or a person who has been an Arizona resident for less than 30 days who has been diagnosed as having a debilitating medical condition. A visiting qualifying patient who has a card issued under the laws of the patient's own/former state, or an equivalent to a card (which may include just a physician's recommendation for states such as California, where cards are issued by some counties but not others) may possess the allowable amount of marijuana but may not obtain marijuana from an Arizona dispensary.

**Written certification:** Written document, dated and signed by a physician stating the patient's qualifying medical condition.

#### **43.4.1 Lawful Possession, Use, Transportation**

##### **A. Impact on the application of the 4<sup>th</sup> Amendment.**

While the AMMA does not limit an officer's use of the odor of marijuana as probable cause, the subsequent passage of Proposition 207 (Recreational Marijuana) has limited the evidentiary value of marijuana odor. The odor of burnt or fresh marijuana, by itself, does not provide reasonable suspicion or probable cause that criminal activity is afoot, with the exception of [ARS 28-1381](#). The odor of marijuana may be used as a factor in conjunction with other factors in developing reasonable suspicion or probable cause. The standard for establishing probable cause remains in cases involving marijuana possession whether the information known to the officer would lead a reasonable person to believe that contraband or evidence of a crime is present.

Facts indicating that the activity is not criminal must of course be considered by the officer. If the officer has reason to believe the person is a registered cardholder, for example, those facts must be in the determination of probable cause.



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- B. If an *officer* comes into contact with a person in possession of marijuana and the person claims to be a registered patient or caregiver, the *officer shall* request to see the person's registry card. The *officer shall* verify that the registry card is valid through ADHS. If a person is not in possession of their registry card but can provide the twenty digit alphanumeric number, *officers shall* use that number to verify the person's authorization.
- C. A person shall not be arrested in the following situations:
1. The person is possessing a lawful amount of recreational marijuana or a registered qualifying patient who does not possess more than the allowable amount of marijuana.
  2. The person is a registered designated caregiver who is assisting a qualifying patient with the patient's medical use of marijuana, if the caregiver does not possess more than the allowable amount. The allowable amount of marijuana will depend on the number of qualifying patients connected through ADHS's registration process, not to exceed five patients, and whether the caregiver is also a registered qualifying patient.
  3. The person is a registered qualifying patient or registered caregiver and is offering or providing marijuana to a patient, caregiver, or dispensary as long as nothing of value is transferred in return and as long as the person giving the marijuana does not knowingly cause the recipient to possess more than the allowable amount of marijuana.
  4. The person is providing a patient, caregiver, or dispensary with paraphernalia for the medical use of marijuana.
  5. A person who is in the presence or vicinity of the authorized use of medical marijuana.
  6. A person who is assisting a patient in the administering of medical marijuana.

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D. Officers may arrest a person who:

1. possesses or uses recreational marijuana in violation of Prop 207, or medical marijuana:
  - a. on a school bus
  - b. on the grounds of a preschool, primary school, common school, middle school, junior high school, high school or secondary school,
  - c. in a correctional facility.
  - d. in a child care facility
2. smokes marijuana on any public transportation or in in a public place, including a motor vehicle that is in a public place.
3. operates, navigates or is in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana.
4. is in possession of more than the allowable amount of marijuana permitted based on their registry information.
5. is in possession of more than the allowable recreational amount of marijuana and claims to be a registered user but does not possess their registry card and/or cannot provide their ADHS number. The officer should arrest the subject for unlawful possession of marijuana, since the AMMA provides for a presumption of lawful use only if the person is in possession of the person's ADHS card. Officers may arrest and book the person into jail or complete a long-form complaint.

E. Officers should be aware that possession of, or application for, a registry identification card does not constitute probable cause to arrest or reasonable suspicion to stop, nor may it be used to support the search of the person or property of the person involved.



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#### 43.4.2 Seizure of Marijuana

- A. *Officers shall not seize the marijuana if the person who is in possession of the marijuana is possessing the marijuana lawfully under Prop 207 or a qualifying patient, designated caregiver, and/or registered cultivator, unless:*
1. *the person possesses more than the allowable amount of marijuana, or*
  2. *the person is arrested for a separate offense, or*
  3. *the person is not in possession of the ADHS card and is unable to provide their ADHS number.*
- B. *If an officer arrests a person who is in possession of recreational marijuana or a qualifying patient, caregiver, and/or dispensary agent for an unrelated offense and the person is in possession of marijuana, officers shall seize and impound the marijuana, unless there is another person who can lawfully take possession of the marijuana or the arrest occurs within the person's own residence and the person requests that the marijuana be secured at the residence.*
- C. *Marijuana that is seized as evidence, shall be field-tested prior to impound. Marijuana that is not seized as evidence does not have to be field-tested prior to impound.*

#### 43.4.3 Marijuana Dispensaries

- A. *The Arizona Department of Health Services licenses dispensaries to sell marijuana to qualified, registered, patients and caregivers.*
- B. *Dispensaries are not subject to search or inspection (except by ADHS pursuant to A.R.S. § 36-2806.H), seizure or penalty under state law for acting pursuant to the Arizona Medical Marijuana Act.*
- C. *A registered agent of a dispensary is not subject to arrest, search, or seizure under state law for acting pursuant to the Arizona Medical Marijuana Act.*



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- D. Registered dispensaries are required to have a single secured entrance and to implement security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.
- E. Dispensaries are not allowed to permit any person to consume marijuana on their property and are subject to reasonable inspection by the ADHS.
- F. *Officers may make arrests for:*
  - 1. the crimes established by Prop 207 or the AMMA, and
  - 2. crimes committed at dispensaries or by dispensary agents based on conduct that is not protected by the AMMA.

Conduct by dispensaries that is not criminal but is not permitted by the AMMA (having an unsecured entrance or permitting the consumption of marijuana on the premises) *shall* not be handled by *arrest*. Such conduct is instead to be reported to the ADHS for their consideration in regard to revocation of the license of the dispensary.