

# Marijuana Policy

## 426.1 PURPOSE AND SCOPE

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

### 426.1.1 DEFINITIONS

Definitions related to this policy include:

**Cardholder** - A qualified patient or primary caregiver who has been issued a current identification card by the State Department of Public Health pursuant to Health and Safety Code § 11362.7.

**Compassionate Use Act (CUA)** (Health and Safety Code § 11362.5) - California law intended to provide protection from prosecution to those who are seriously ill and whose health would benefit from the use of marijuana in the treatment of illness for which marijuana provides relief. The CUA does not grant immunity from arrest but rather provides an affirmative defense from prosecution for possession of medical marijuana.

**Identification card** - A valid document issued by the California Department of Public Health to both persons authorized to engage in the medical use of marijuana and also to designated primary caregivers.

**Medical marijuana** - Marijuana possessed by a patient or primary caregiver for legitimate medical purposes.

**Medical Marijuana Program (MMP)** (Health and Safety Code § 11362.7 et seq.) - California laws passed following the CUA to facilitate the prompt identification of patients and their designated primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers. MMP prohibits arrest for possession of medical marijuana in certain circumstances and provides a defense in others.

**Qualified Patient** - A person who is entitled to the protections of the CUA because he/she has received a written or oral recommendation or approval from a physician to use marijuana for medical purposes or any person issued a valid identification card (Health and Safety Code § 11362.7(f)).

**Primary caregiver** - A person designated by the patient, who has consistently assumed responsibility for the patient's housing, health or safety, who may assist the patient with the medical use of marijuana under the CUA or the MMP (Health and Safety Code § 11362.5; Health and Safety Code § 11362.7).

**Statutory amount** - Pursuant to current state law (Health and Safety Code § 11362.1 and § 11362.77(a)(b)), a person 21 years and over may possess no more than eight (8) ounces of dried, mature, processed female marijuana flowers ("bud") or the plant conversion (e.g., kief,

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hash, hash oil), and no more than six (6) mature or twelve (12) immature marijuana plants (roots, stems and stem fibers should not be considered).

#### **426.2 POLICY**

It is the policy of the Santa Monica Police Department to prioritize resources to forgo making arrests related to marijuana that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

California's medical marijuana laws are intended to provide protection to those who are seriously ill and whose health would benefit from the use of medical marijuana.

However, California medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Santa Monica Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

#### **426.3 INVESTIGATION**

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

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a cardholder.
- (c) Investigations when a medicinal claim is made by a non-cardholder.

##### **426.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM**

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use under the Control, Regulate and Tax Adult Use of Marijuana Act (Health and Safety Code § 11362.1; Health and Safety Code § 11362.2). A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

##### **426.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER**

A cardholder or designated primary caregiver in possession of an identification card shall not be arrested for possession, transportation, delivery or cultivation of medical marijuana at or below the statutory amount unless there is probable cause to believe that (Health and Safety Code § 11362.71; Health and Safety Code § 11362.78):

- (a) The information contained in the card is false or falsified.
- (b) The card has been obtained or used by means of fraud.
- (c) The person is otherwise in violation of the provisions of the MMP.

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- (d) The person possesses marijuana but not for personal medical purposes.

An individual may establish his/her status as a qualified patient by presenting a current and valid identification card issued by the California Department of Public Health (Health and Safety Code § 11362.735). The identification card shall contain the following information:

- (a) A unique serial number which can be verified by law enforcement via the California Department of Public Health website ([www.calmmp.ca.gov](http://www.calmmp.ca.gov))
- (b) A 24-hour toll free number maintained by the California Department of Public Health for law enforcement to verify the validity of the card
- (c) An expiration date
- (d) The name and telephone number of the county health department approving the application
- (e) A photograph of the cardholder

Cardholders may possess, transport, deliver or cultivate medical marijuana in amounts above the statutory amount if their doctor has concluded that the statutory amount does not meet the patient's medical needs (Health and Safety Code § 11362.71; Health and Safety Code § 11362.77). Investigations involving cardholders with more than the statutory amount of marijuana should be addressed as provided in this policy for a case involving a medicinal claim made by a non-cardholder.

#### 426.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

No patient or primary caregiver should be arrested for possession or cultivation of an amount of medical marijuana if the officer reasonably believes that marijuana is in a form and amount reasonably related to the qualified patient's current medical needs (Health and Safety Code § 11362.5). This arrest guidance also applies to sales, transportation or, delivery of medical marijuana, or maintaining/renting a drug house or building that may be a nuisance if otherwise in compliance with MMP (Health and Safety Code § 11362.765).

If a person does not possess a valid, state-issued identification card, the person claiming status as a qualified patient, must minimally provide the following information:

- (a) Satisfactory identification establishing current residency in California
- (b) A current and valid medical marijuana identification card from a local governmental agency (e.g. county) or a current and verifiable, written recommendation for marijuana from a California licensed physician.

Officers are not obligated to accept a person's claim of having a physician's recommendation when the claim cannot be readily verified with the physician but are expected to use their judgment to assess the validity of the person's medical-use claim.

Officers should review any available written documentation for validity and whether it contains the recommending physician's name, telephone number, address and medical license number for verification.

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Officers should generally accept verified recommendations by a physician that statutory amounts do not meet the patient's needs (Health and Safety Code § 11362.77).

#### 426.3.4 INVESTIGATIONS INVOLVING A PRIMARY CAREGIVER

Primary caregivers are subject to the following requirements (Health and Safety Code § 11362.765):

- (a) A primary caregiver is not authorized to sell, or possess marijuana for sale.
- (b) A primary caregiver must provide sufficient proof that he/she is responsible for the patient's housing, health and/or safety.
- (c) A primary caregiver must provide sufficient proof of personal knowledge of the patient's medical needs and the details of the attending physician's recommendations.
- (d) Upon proof that a qualified primary caregiver is caring for more than one qualified patient, he/she may aggregate possession and cultivation limits. For example, a primary caregiver caring for three qualified patients may possess 24 ounces (eight ounces per patient) of marijuana (Health and Safety Code § 11362.7(d)(2)).
- (e) While qualified patients and primary caregivers may be permitted to collectively or cooperatively associate to cultivate medical marijuana, such individuals must strictly adhere to all non-profit and local business requirements (Health and Safety Code § 11362.775).

#### 426.3.5 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production, or use:

- (a) Because enforcement of medical marijuana laws can be complex, time consuming, and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
  - 1. The suspect has been identified and can be easily located at a later time.
  - 2. The case would benefit from review by a person with expertise in medical marijuana investigations.
  - 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
  - 4. Other relevant factors, such as available Department resources and time constraints prohibit making an immediate arrest.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:
  - 1. The amount of marijuana recommended by a medical professional to be ingested.
  - 2. The quality of the marijuana.

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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 marijuana).
  5. Whether the marijuana is being cultivated indoors or outdoors.
- (c) Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area, and/or appropriate legal counsel (Business and Professions Code § 26010; Business and Professions Code § 26060). Licensing, zoning, and other related issues can be complex. Patients, primary caregivers, and cardholders who collectively or cooperatively cultivate marijuana for medical purposes may be licensed or may have a defense in certain circumstances (Business and Professions Code § 26032; Business and Professions Code § 26033).
- (d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

#### 426.3.6 EXCEPTIONS

This policy does not apply to, and officers should consider taking enforcement action for the following:

- (a) Persons who engage in illegal conduct that endangers others, such as driving under the influence of marijuana in violation of the Vehicle Code (Health and Safety Code § 11362.5).
- (b) Marijuana possession in jails or other correctional facilities that prohibit such possession (Health and Safety Code § 11362.785).
- (c) Smoking marijuana (Health and Safety Code § 11362.79):
1. In any place where smoking is prohibited by law.
  2. In or within 1,000 feet of the grounds of a school, recreation center or youth center, unless the medical use occurs within a residence.
  3. On a school bus.
  4. While in a motor vehicle that is being operated.
  5. While operating a boat.
- (d) Use of marijuana by a person on probation or parole, or on bail and use is prohibited by the terms of release (Health and Safety Code § 11362.795).

#### 426.3.7 INVESTIGATIONS INVOLVING A STATE LICENSEE

No person issued a state license under the Business and Professions Code shall be arrested or cited for cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution or sale of medical cannabis or a medical cannabis product related to qualifying patients and primary caregivers when conducted lawfully. Whether conduct is lawful

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may involve questions of license classifications, local ordinances, specific requirements of the Business and Professions Code and adopted regulations. Officers should consider conferring with a supervisor, the applicable state agency or other member with special knowledge in this area and/or appropriate legal counsel before taking enforcement action against a licensee or an employee or agent (Business and Professions Code § 26032).

#### **426.4 SEIZURE AND RETURN OF MARIJUANA**

Absent probable cause a person is in unlawful possession of marijuana, marijuana and marijuana products deemed lawful pursuant to Health and Safety Code § 11362.1, are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search or arrest (Health and Safety Code § 11362.1(5)(c)).

Any marijuana seized as evidence will not be returned except as required by a valid court order and/or in accordance with existing law.

#### **426.5 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.

#### **426.6 PROPERTY UNIT SUPERVISOR RESPONSIBILITIES**

The Property Unit supervisor should ensure that marijuana, marijuana paraphernalia or other related property seized from a person engaged or assisting in the use of marijuana, and booked as evidence, is not destroyed pending any charges and without a court order. The Property Unit supervisor is not responsible for caring for any live marijuana plants. Upon the prosecutors' decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property Unit supervisor should, as soon as practicable, return to the person from whom it was seized any useable marijuana, marijuana paraphernalia or other related property.

In those cases involving marijuana, marijuana plants, or other marijuana-related property recognized as legal under California statutes, and booked as safekeeping, the Property Unit supervisor should, as soon as practicable, return the property to the person from whom it was seized following the Department's disposition of property held for safekeeping procedures:

- Property booked and held as safekeeping shall be released to the person from whom it was secured after the individual's identity has been verified. The recipient of property previously held as safekeeping shall be required to sign a Property Receipt prior to accepting custody of the item(s).

The Property Unit supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Criminal Investigations Division supervisor.