

Medical Marijuana

452.1 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 medical marijuana laws.

452.1.1 DEFINITIONS

Definitions related to this policy include:

Cardholder - A person issued a current identification card.

Compassionate Use Act (CUA) (Health and Safety § 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 State Department of Health Services 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 § 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.

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.

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 - No more than eight ounces of dried, mature, processed female marijuana flowers (bud) or the plant conversion (e.g., kief, hash, hash oil), and no more than six mature or 12 immature marijuana plants (roots, stems and stem fibers should not be considered).

452.2 POLICY

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

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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 Humboldt County Sheriff's Office will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

452.3 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.

452.3.1 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 deputy should proceed with a criminal investigation. A medicinal defense may be raised at any time, so deputies should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

452.3.2 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 reasonable 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.
- (d) The person does not possess marijuana for personal medical purposes.

Deputies who reasonably believe that a person who does not have an identification card in his/her possession has been issued an identification card may treat the investigation as if the person had the card in his/her possession.

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.

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452.3.3 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 deputy 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).

Deputies 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.

Deputies 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.

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

452.3.4 ADDITIONAL CONSIDERATIONS

Deputies 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, deputies 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, deputies 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.
 - 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, the climate, etc.
- (c) Before proceeding with enforcement related to collective gardens or dispensaries, deputies should consider conferring with a supervisor or other member with special knowledge in this area and/or appropriate legal counsel. Licensing, zoning and other related issues can be complex. Patients, primary caregivers and cardholders who

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collectively or cooperatively cultivate marijuana for medical purposes are provided a defense under MMP (Health & Safety Code § 11362.775).

- (d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

452.3.5 EXCEPTIONS

This policy does not apply to, and deputies 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).

452.4 FEDERAL LAW ENFORCEMENT

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

452.5 PROPERTY SECTION SUPERVISOR RESPONSIBILITIES

The Property Section Supervisor should ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not destroyed pending any charges and without a court order. The Property Section Supervisor is not responsible for caring for live marijuana plants.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property Section Supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property.

The Property Section Supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Bureau Supervisor.



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June 26, 2013

Omar Figueroa
Law Offices of Omar Figueroa
7770 Healdsburg Avenue, Suite A
Sebastopol, CA 95472

RE: California Public Records Act Request dated June 6, 2013

Dear Mr. Figueroa,

The Humboldt County Sheriff's Office ("HCSO") is in receipt of your request for records dated June 6, 2013, and received on June 11, 2013, made under the California Public Records Act ("CPRA"). In your CPRA request, you seek all documents related to medical marijuana, specified California statutes, and "medical marijuana doctors, patients, caregivers, dispensaries, collectives, cooperatives, and/or associations." While the request describes certain types of records sought (such as guidelines and bulletins), it states that it is not limited to the types of records identified. As the request is directed to Humboldt County Sheriff Michael Downey, we interpret it to seek documents only in the custody of the Sheriff's Office, and not in the custody of any other administrative subdivision of the County of Humboldt, its Board of Supervisors, other County public officers, or the State of California.

As an initial matter, your CPRA request is extraordinary over broad, and is so vague that it is difficult to discern the specific types of records you seek. In other words, the broad nature of the request does not permit us to easily identify the records that you seek. However, based on the general language in your request, we interpret it to seek two categories of records: (1) HCSO policies and procedures relating to medical marijuana; and (2) investigatory materials with respect to HCSO seizures of marijuana that the holder allegedly possessed pursuant to medical marijuana laws.

With respect to the first category of records regarding policies and procedures, we will provide you with copies of all current HCSO policies and procedures relating to medical marijuana, its seizure and storage. In addition, to the extent that the CPRA request seeks disclosure of particular operational plans/orders issued pursuant to such policies, such documents shall not be disclosed as they constitute intelligence information, which is exempt from disclosure under Government Code Section 6254(f). Further, to the extent the CPRA request seeks training materials, such materials are maintained by individual officers or are located in their personnel files, making them exempt from



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disclosure under Government Code Section 6254(k), incorporating Evidence Code Section 1043, and Penal Code Sections 832.7 and 832.8.

With respect to the second category of records you seek in the CPRA request -- investigatory materials regarding medical marijuana -- such information shall not be provided pursuant to your request as they are exempt from disclosure for the following four independent reasons.

A. Investigatory files which are exempt from disclosure under the CPRA by virtue of Government Code § 6254(f). However, to the extent that you seek information relating to a particular and identifiable arrest, the information designated to be produced pursuant to Government Code § 6254(f)(1) can be made available to you, but only if it relates to a current arrest or to an individual who is currently in custody. (See *County of Los Angeles v. Superior Court (Kusar)* 18 Cal.App.4th 588, 599; 89 Ops. Cal. Atty. Gen 204 (2006).)

B. Specific information regarding arrests and evidence seizures from individuals is defined as "summary criminal history information," which is prohibited from being released to the general public under the provisions of Penal Code § 13300, *et seq.*, and accordingly is exempt from disclosure under the CPRA pursuant to Government Code § 6254(k). (See also *Westbrook v. County of Los Angeles* (1994) 27 Cal. App. 4th 157; 89 Ops. Cal. Atty. Gen. 204 (2006).)

C. The requested release of information regarding particular doctors, patients and caregivers implicates their privacy rights under Article I, Section 1 of the California Constitution. Such information is exempt from disclosure pursuant to a CPRA request under Government Code § 6254(k).

D. The HCSO does not maintain the information sought in the CPRA request in a report, spreadsheet, or other summary format; responding to the request would therefore require the HCSO to gather, review, redact and produce a large volume of separate records (or create summaries of such records that do not currently exist), requiring a tremendous and unjustifiable expenditure of resources in these fiscally trying times. Further, the benefit of disclosing such information in response to the CPRA request appears to be nominal. Hence, the burden of producing the requested records clearly outweighs any demonstrated need for them, making them exempt pursuant to Government Code § 6255, as well as the provisions of Evidence Code § 1040 (incorporated into the CPRA under Government Code § 6254(k)). (See also *American Civil Liberties Union v. Deukmejian* (1982) 32 Cal.3d 440.)



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Copies of the documents disclosed pursuant to your CPRA request consistent with this response will be provided to you upon paying the copying cost of \$.80¢. Please contact me directly should you have any questions.

Sincerely,

MICHAEL T. DOWNEY, SHERIFF

A handwritten signature in blue ink that reads "Melva Paris".

Melva Paris, Records Supervisor/Custodian of Records
707-268-3604