

Medical Marijuana

452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for handling and distinguishing between claims of medical marijuana use under California's Compassionate Use Act (Health & Safety Code § 11362.5) and criminal narcotics violations.

452.2 ENFORCEMENT

Although federal law does not currently permit possession of marijuana for medical use, California has created a limited defense (i.e. no penalty) for certain qualified individuals possessing small quantities of marijuana for medical use under strict conditions.

(a) Notwithstanding California Medical Marijuana laws:

1. California does not provide any exception for individuals driving under the influence of marijuana. All such cases should be handled with appropriate enforcement action (e.g., Vehicle Code § 23152, et seq.).
2. Medical marijuana may not be smoked outside of a residence within 1000 feet of a school, recreation center, youth center or in a vehicle or boat (Health & Safety Code § 11362.79).
3. No probationer or parolee may possess medical marijuana unless such possession is authorized in writing by court order or parole conditions (Health & Safety Code § 11362.795).

(b) Possession, cultivation and sales of marijuana in quantities beyond that which might reasonably be construed as for personal use should be handled as criminal cases with appropriate enforcement action taken pursuant to Health & Safety Code §§ 11357, 11358 and 11359.

1. The amount of marijuana possessed must be consistent with the medical needs of the qualified patient or person with valid ID card.
2. The quantity and form of marijuana must also be reasonably related to the patient's current medical needs. de § 11362.77(a)(b).

(c) In any case involving the possession or cultivation of marijuana, the handling deputy should inquire whether the individual is claiming that the marijuana is for medicinal purposes.

1. If no such claim is made, the deputy should proceed with normal enforcement action.
2. If a claim of medicinal use is made, the deputy should proceed as outlined below.

452.3 MEDICINAL USE CLAIMS

In order to qualify for a medicinal marijuana defense, any individual making such a claim must affirmatively establish the following information. If the individual cannot or will not provide all of the required information, the deputy should note such fact in any related report and proceed with appropriate enforcement action.

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452.3.1 PATIENTS

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

1. A unique serial number.
2. An expiration date.
3. The name and telephone number of the county health department approving the application.
4. A 24-hour toll-free number for law enforcement to verify the validity of the card (Verification can be checked at www.calmmp.ca.gov).
5. A photograph of the cardholder.

No deputy shall refuse to accept a properly issued identification card unless the deputy has reasonable cause to believe that the information contained in the card is false or that the card is being used fraudulently (Health & Safety Code § 11362.78).

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

1. Satisfactory identification establishing current residency in California.
2. A current and valid medical marijuana ID card from a local governmental agency (e.g., county) or a current and verifiable, written recommendation for marijuana from a California licensed physician. (If the written recommendation for marijuana use is in question - the deputy should issue a citation to the individual and seize the marijuana per the DA's Office recommendation).
3. In the absence of a valid identification card, the handling deputy should also obtain a written waiver from the involved individual authorizing the release of all related medical records.

452.3.2 PRIMARY CAREGIVERS

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

- (a) A primary caregiver is not authorized to use, 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 recommendation.
- (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 & 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 & Safety Code § 11362.775).

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452.3.3 CLAIM REQUIREMENTS MET

Once the handling deputy is satisfied that the individual making a medicinal marijuana use claim meets the above requirements, the deputy should proceed as follows:

- (a) A small sample of the involved marijuana should be seized and booked into evidence.
- (b) Any allowable amount of marijuana left in possession of a qualified individual for the limited purpose of medicinal use should be described and noted in the related report.
- (c) If the handling deputy has already taken the individual into custody (vs. detention only) prior to establishing qualification for a potential medicinal use defense and there are no other criminal charges pending or being investigated, the individual should be released pursuant to Penal Code § 849(b).
- (d) If the individual remains in custody on any charge(s), the individual will not be permitted to use marijuana while being detained or held in jail or other law enforcement facility (Health & Safety Code § 11362.785(c)).
- (e) The handling deputy shall complete a timely report which will be submitted to the District Attorney with all of the aforementioned documentation for a determination of whether the medicinal marijuana defense will apply.

452.3.4 RETURN OF MARIJUANA

Regardless of the prosecution status or disposition of any related criminal case, this department will not be responsible for the return of any marijuana seized as evidence except as may be required by a valid court order (Cal. Health and Safety Code § 11473.5 and 21 U.S.C. § 885(d)).