

Medical Marijuana

452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of the Sheriff's Office 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.
- (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.calmmmp.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.
 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).

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.

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- (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, the Sheriff's Office 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)).

**SHERIFF'S OFFICE AND DISTRICT ATTORNEY'S REQUEST
FOR COURT ORDERS FOR THE DESTRUCTION OF SEIZED MARIJUANA
IN THE CUSTODY OF THE SHERIFF'S OFFICE**

The primary issue involves requests for destruction of marijuana with respect to possible later requests for release to persons who could have possessed marijuana at the time of seizure, pursuant to the Compassionate Use Act (CUA)/Medical Marijuana Initiative, also known as Proposition 215.

The Sheriff's Office will mark evidence containers if the contents are potentially or known to be medical marijuana. The following procedures will be followed by the Sheriff's Office in order to facilitate disposition and disposal of seized marijuana.

I) Marijuana seized by search warrant:

- a) Penal Code §1536 requires a court order for disposition of any evidence seized by search warrant. (Health & Safety Code § 11473.5 requires a court order for destruction of controlled substances whereas § 11479 requires an affidavit be filed with the court within 30 days of destruction.)
 - i) In cases where there has been a criminal case filing (i.e. as shown in LS¹), written requests for orders of destruction should be sent to the District Attorney's Office.
 - ii) In each case involving a search warrant where a court order for destruction of marijuana is requested, each request must be made separately.
- b) In cases of a criminal filing, prior to requesting an order for destruction of marijuana seized under a search warrant:
 - i) Determine whether there was a conviction of a marijuana related charge.
 - (1) Marijuana cannot be returned to a defendant convicted of a marijuana related charge regardless whether the person possessed a Proposition 215 card or a doctor's recommendation.
 - ii) In multiple defendant cases, determine from LS whether other charged co-defendants in the same case were convicted of a marijuana related charge, or whether charges were dismissed in their entirety as to those other defendants.

¹ LS is the current case management system where Sheriff's Office personnel can research criminal filings. If LS is replaced, the replacement system should be used.

- (1) If these other co-defendant(s) possessed a valid Prop. 215 card or doctor's recommendation at the time of the seizure and were not convicted of a marijuana related charge, those persons must obtain a court order for return of marijuana.²
- iii) In either single or multiple defendant cases, determine through LS whether there was a conviction of a marijuana charge and determine whether a Notice of Appeal was filed.
 - (1) If so, do not request an order of destruction until the appeal has been resolved.
- c) In filed cases which are dismissed in their entirety, or where marijuana charges are dismissed, or where there was a conviction only of non-marijuana charges, or where there was an acquittal of all charges, the following applies:
 - i) Time limits are pursuant to notice given at time of seizure (i.e. 90 days after adjudication of the case).
 - ii) Determine if written notice regarding disposition of seized property was provided at time of seizure.
 - (1) Property receipts provided at time of seizure explain time limits and procedures.
 - (2) If notice cannot be confirmed, notice shall be mailed to the last known address of the defendant.
 - (3) All claims must be filed within time limit provided on notice (i.e. 90 days).
 - iii) Requests for destruction are to be submitted as soon as practical after expiration of statutory time limits.
- d) All requests for orders of destruction in filed cases which are sent to the District Attorney's Office must contain the Sheriff's Office case number, D.A. case number, court case number, and description of items sought to be destroyed.
- e) For marijuana not claimed as medical, attach a declaration to all requests for orders of destruction that are sent to the District Attorney's Office that appropriate research documenting the following has been conducted:

² City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4th 355, 371-373, 381-382

- i) that none of the marijuana requested to be destroyed is believed to be “medical marijuana”;
 - (1) that proper notice has been given to persons from whom marijuana was seized;
 - (2) that the 90 day time limit since adjudication has passed;
 - (3) that neither a Notice of Appeal was filed nor an appeal is pending;
 - (4) that no court order was served on the Sheriff’s Office for return of the listed seized marijuana; and,
 - (5) that the Sheriff’s Office has researched whether the seized marijuana requested to be destroyed relates to a defendant convicted of a marijuana related charge.
- f) For marijuana claimed as medical, attach a declaration to all requests for orders of destruction that are sent to the District Attorney’s Office that appropriate research documenting the following has been conducted:
 - i) that the marijuana requested to be destroyed is believed to be “medical marijuana”;
 - (1) that proper notice has been given to persons from whom marijuana was seized;
 - (2) that the 90 day time limit since adjudication has passed;
 - (3) that no one has requested the marijuana be returned and appears unclaimed;
 - (4) that no court order was served on the Sheriff’s Office for return of the listed seized marijuana;
 - (5) that no Notice of Appeal was filed; and,
 - (6) that the Sheriff’s Office has researched whether the seized marijuana requested to be destroyed relates to a defendant convicted of a marijuana related charge.
- g) In cases where there is a final rejection and in cases which were not submitted for filing, requests for orders of destruction should be sent to the County Counsel’s Office.

II) Marijuana seized without a search warrant:

- a) Health & Safety Code § 11473.5 requires a court order for destruction of controlled substances whereas § 11479 requires an affidavit be filed with the court within 30 days of destruction.
 - i) In cases where there has been a criminal case filing (i.e. as shown in LS), written requests for orders of destruction should be sent to the District Attorney's Office.
 - (1) Multiple cases may be combined in one request for destruction.
- b) In cases of a criminal filing, prior to requesting an order for destruction of marijuana:
 - i) Determine whether there was a conviction of a marijuana-related charge.
 - (1) Marijuana cannot be returned to a defendant convicted of a marijuana related charge regardless whether the person possessed a Proposition 215 card or a doctor's recommendation.
 - ii) In multiple defendant cases, determine from LS whether other charged co-defendants in the same case were convicted of a marijuana related charge, or whether charges were dismissed in their entirety as to those other defendants.
 - (1) If these other co-defendant(s) possessed a valid Prop. 215 card or doctor's recommendation at the time of the seizure and were not convicted of a marijuana related charge, those persons must obtain a court order for return of marijuana.³
 - iii) In either single or multiple defendant cases determine through LS whether there was a conviction of a marijuana charge and determine whether a Notice of Appeal was filed.
 - (1) If so, do not request an order of destruction until the appeal has been resolved.

³ City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4th 355, 371-373, 381-382

- c) In filed cases which are dismissed in their entirety, or where marijuana charges are dismissed, or where there was a conviction only of non-marijuana charges, or where there was an acquittal of all charges, the following applies:
 - i) Time limits are pursuant to notice given at time of seizure (i.e. 90 days after adjudication of the case).
 - ii) Determine if written notice regarding disposition of seized property was provided at time of seizure.
 - (1) Property receipts provided at time of seizure explain time limits and procedures.
 - (2) If notice cannot be confirmed, notice shall be mailed to the last known address of the defendant.
 - (3) All claims must be filed within time limit provided on notice (i.e. 90 days).
 - iii) Requests for destruction are to be submitted as soon as practical after expiration of statutory time limits.
- d) All requests for orders of destruction in filed cases which are sent to the District Attorney's Office must contain the Sheriff's Office case number, D.A. case number, court case number, and description of items sought to be destroyed.
- e) For marijuana not claimed as medical, attach a declaration to all requests for orders of destruction that are sent to the District Attorney's Office that appropriate research documenting the following has been conducted:
 - i) that none of the marijuana requested to be destroyed is believed to be "medical marijuana";
 - (1) that proper notice has been given to persons from whom marijuana was seized;
 - (2) that the 90 day time limit since adjudication has passed;
 - (3) that neither a Notice of Appeal was filed nor an appeal is pending;
 - (4) that no court order was served on the Sheriff's Office for return of the listed seized marijuana; and,
 - (5) that the Sheriff's Office has researched whether the seized marijuana requested to be destroyed relates to a defendant convicted of a marijuana related charge.

- f) For marijuana claimed as medical, attach a declaration to all requests for orders of destruction that are sent to the District Attorney's Office that appropriate research documenting the following has been conducted:
 - i) that the marijuana requested to be destroyed is believed to be "medical marijuana";
 - (1) that proper notice has been given to persons from whom marijuana was seized;
 - (2) that the 90 day time limit since adjudication has passed;
 - (3) that no one has requested the marijuana be returned and appears unclaimed;
 - (4) that no court order was served on the Sheriff's Office for return of the listed seized marijuana;
 - (5) that no Notice of Appeal was filed; and,
 - (6) that the Sheriff's Office has researched whether the seized marijuana requested to be destroyed relates to a defendant convicted of a marijuana related charge.
- g) In cases where there is a final rejection from the District Attorney's Office and in cases which were not submitted for filing, requests for orders of destruction should be sent to the County Counsel's Office.