

SHASTA COUNTY MEDICAL MARIJUANA  
INTER-AGENCY GUIDELINES  
2011

Investigations into the possession and/or cultivation of marijuana for medical purposes requires different approaches as a result of the passage of Proposition 215, the Compassionate Use Act of 1996 and section 11362.7 et.seq. of the Health and Safety Code, allowing marijuana for medicinal purposes in certain circumstances. Possession, transportation, sales and/or cultivation of marijuana for non-medicinal purposes will remain illegal. For purposes of this Inter-Agency Guidelines, all the above referenced legislation shall be referred to as "Health and Safety Code section 11362.5 et. seq."

Although this document represents the requirements set forth in Health and Safety Code Section 11362.5 et. seq., it is not intended to increase the civil or criminal liability of member agencies or their employees. Agencies represented will review their related policies and make efforts to modify them to avoid conflict with this document.

**GUIDELINES FOR MEDICAL MARIJUANA CASES**

I. INTRODUCTION

The passage of Proposition 215, the Compassionate Use Act of 1996, added section 11362.5 to the Health and Safety Code, allowing possession of marijuana for medicinal purposes in certain circumstances. **The purpose of this document is to** clarify what instances of marijuana possession will be considered for personal medical use versus illegal possession and/or cultivation and establish consistent investigative techniques.

The passage of Senate Bill 420 (Health and Safety Code §11362.7 et. seq.) requires the State Department of Health Services establish and maintain a voluntary program for the issuance of identification cards to qualified patients. A patient need not possess a state identification card in order to claim the protection afforded by Health and Safety Code Section 11362.5.

II. PURPOSE

The purpose of this document is to establish Inter-Agency criteria for verification of medical marijuana cases and thereby not infringe on legitimate possession of marijuana for medicinal purposes as set forth in Health and Safety Code Section 11362.5 et. seq., and to help assure that all marijuana cases are investigated completely, impartially, and that proper disposition of such cases are made based upon all the legally available and relevant evidence.

### III. ENFORCEMENT OPTIONS / ENFORCEMENT AND PROSECUTION

#### A. Persons who possess marijuana

Persons authorized to possess marijuana pursuant to Health and Safety Code section 11362.5 et. seq. are the following.

1. Person with an identification card as defined in Health and Safety Code section 11362.7(c).

**No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the law.**

**(Health and Safety Code section 11362.71(e).)**

2. "Primary caregiver" As defined in Health and Safety Code section 11362.7(d) and (e).
  - a. A "primary caregiver is defined as "the individual designated by the person (patient) who has consistently assumed responsibility for the housing, health, or safety of the person.
  - b. A primary caregiver must "attend to and assume responsibility for the core survival needs of the dependent." For example, a spouse or domestic partner caring for ailing companion, child caring for his or her ailing parent, or hospice nurse caring for his or her ailing patient.
  - c. A primary caregiver must establish responsibility as a caregiver based on evidence of providing housing, health or safety independent of the administration of medical marijuana.
  - d. A primary caregiver must prove at a minimum that he or she (1) consistently provided care-giving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana.  
*(People v. Mentch (2008) 45 Cal.4<sup>th</sup> 274.)*

3. Qualified patient who have a valid medical marijuana recommendation as defined in Health and Safety Code section 11362.7(f).

## B. Amounts

Officers investigating a possession, possession for sales, transportation and/or cultivation of marijuana scenario must ascertain, as part of the investigation, whether the suspect in actual or constructive possession of the marijuana is declaring any rights under Health and Safety Code section 11362.5 et. seq.

Once a suspect has made an assertion under Health and Safety Code section 11362.5 et. seq., the officer shall investigate the validity of the claim.

**By decision of the California Supreme Court, the limits on possession as set forth in Health and Safety Code section 11362.77(a) of quantities of not more than eight ounces of dried marijuana or six mature or twelve immature marijuana plants are no longer enforceable.**

**A qualified patient or caregiver may assert, as a defense, that he or she possessed or cultivated an amount of marijuana “reasonably related to meet his or her current medical needs” even if such amount exceed 8 ounces or 6 mature or 12 immature plants. (*People v. Kelly* (2010) 47 Cal.4<sup>th</sup> 148.)**

### Transportation

**When transporting marijuana, a qualified patient or caregiver is limited to transporting an amount reasonably related to the patient’s current medical needs. Factors to consider include: quantity, method, timing, and distance transported. (*People v. Wayman* (2010) 189 Cal.App.4<sup>th</sup> 215.)**

### Cultivation

**Qualified patients, persons with valid ID cards, and designated primary caregivers of qualified patients and persons with ID cards, who associate within the state of California may lawfully collectively or cooperatively cultivate marijuana for medical purposes, and shall not solely on the basis of that fact be subject to state criminal sanctions under Health and Safety Code sections 11357(possession), 11358 (possession for sale), 11360 (sale or transportation), 11366 (maintaining a place), 11366.5 (making available a building for manufacture, distribution), 11570 (nuisance).**

## C. Assessing valid recommendations

The suspect must be able to validate the claim in one of the following ways:

1. Providing a valid identification card for medical marijuana issued pursuant to Health and Safety Code section 11362.5 et. seq.. (Health and Safety Code sections 11362.71, 11362.715, 11362.72.) Investigating Officers may make reasonable inquiry into valid use of the identification card. **In no case should an**

**Investigating Officer make an arrest of a person presenting a medical marijuana identification card for possession, transportation, delivery, or cultivation of marijuana unless there is reasonable cause to believe the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the law. (Health and Safety Code section 11362.71(e).)**

2. Providing a written recommendation from an Attending Physician as defined in Health and Safety Code section 11362.7(a). Investigating Officer[s] may make reasonable inquiries into the validity of the recommendation.
3. Providing the name and contact information for the recommending physician. Investigating Officers should attempt to verify the physician information as soon as practical.
4. **If the suspect is not a qualified patient but claims he is a “designated caregiver” for a qualified patient, the officer should attempt to ascertain whether the claim is valid. In order to qualify, the individual must have consistently assumed responsibility for the housing, health or safety of the patient independent of the administration of medical marijuana. (See section III(A)(2).)**

#### D. Investigative options

1. Valid Recommendation.

**If a suspect has provided legally sufficient information as described above, and possesses no more than an amount reasonably related to meet the patient’s current medical need as specified by the recommending physician pursuant to Health and Safety Code section 11362.77(b), the Investigating Officer[s] shall not seize the marijuana.**

2. Valid Recommendation/more than permissible amount.

**If the suspect has more than an amount reasonably related to meet the patient’s current medical need as specified by the recommending physician or if, in the expert opinion of the Investigating Officer, the marijuana possession and/or cultivation is for sales, the Investigating Officer shall seize all the marijuana, and continue a criminal investigation for possession, possession for sales, transportation and/or cultivation of marijuana at the Investigating Officer[s] discretion.**

3. Questionable, fraudulent or legally deficient recommendation.

If a suspect has supplied an identification card, a written recommendation by a physician, or has made claim to be a primary caregiver for a qualified patient that the Investigating Officer[s], after a reasonable investigation, have reason to believe is false, fraudulent, or **possesses marijuana in quantities which exceed an amount reasonably related to the patient's current medical needs, or in any other way does not comply with Health and Safety Code section 11362.5 et. seq.**, the Investigating Officer[s] may, in their discretion, seize the marijuana pending further investigation for the validity of the recommendation or caregiver status and for criminal conduct involving possession, possession for sales, transportation and/or cultivation of marijuana. Circumstances that, in any other way does not comply with Health and Safety Code section 11362.5 et. seq." includes, but is not limited to, the cultivation, transportation, or possession *for profit* of marijuana, as prohibited by Health and Safety Code section 11362.765(a).

4. No valid recommendation.

In any investigation for possession, possession for sales, transportation and/or cultivation of marijuana **in which the suspect does not have a written recommendation or identification card and is not a "primary caregiver" for a qualified patient the case shall proceed as a normal criminal investigation unless and until the suspect can provide proof of a valid recommendation.**

5. Probationers

Investigating Officers should ascertain whether a suspect is on probation in Shasta County. All Shasta County felony and misdemeanor Probationers must possess a valid court order that permits possession and/or cultivation of medicinal marijuana in addition to any valid doctor recommendation. Failure to have both in possession shall constitute a violation of probation terms and may constitute a new crime. If both a court order and a recommendation are not present, the Investigating Officer shall seize all the marijuana. Just as with the doctor's recommendation, the burden shall be on the suspect to produce or prove the existence of a valid court order allowing the suspect to possess and/or cultivate marijuana.

6. **Medical Marijuana Collectives, Cooperatives and Dispensaries**

**Nothing in the medical marijuana laws immunize sales of marijuana for profit or sales of any kind outside of collectives, cooperatives and dispensaries.**

**The terms “Collective,” “Cooperative” and “Dispensary” may be used interchangeably to describe organizations established to cultivate and distribute medical marijuana among qualified patients and their caregivers.**

**“Collective”:** means an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues.

*(California Attorney General Medical Marijuana Guidelines (2008).)*

**Collectives may not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.**

**Collectives are jointly owned and operated by members of the group. They must be non-profit operations. They may acquire marijuana only from their constituent members. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead the cycle should be a closed circuit of marijuana cultivation and consumption. [C]ollectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They should also track and record the source of their marijuana.’ [¶] Distribution and sales to nonmembers is prohibited [...] Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.’” *(Id. at pp. 1010 – 1011. Internal citations omitted.)*  
*(People v. Hohanadel (2009) 176 Cal.App.4<sup>th</sup> 977.)***

**A storefront dispensary and its operators do not qualify as primary caregivers simply because a qualified medical marijuana patient has so designated them.**

*(People v. Hohanadel (2009) 176 Cal.App.4<sup>th</sup> 997, at 1016.)*

## **7. Miscellaneous.**

Although Health and Safety Code section 11362.5 et. seq. allows for the use of medical marijuana in a jail facility under certain circumstances, Shasta County will not allow use of medical marijuana in any custodial facility or at any time or place a suspect is in custody.

In all cases in which there is a criminal investigation, a written report shall be forwarded to the District Attorney's Office for consideration of prosecution. The ultimate discretion whether to bring criminal charges in any case rests solely with the District Attorney.

**E. Use restrictions**

Nothing in Health and Safety Code section 11362.5 et. seq. shall authorize a qualified patient to engage in smoking marijuana under any of the following circumstances:

1. In any place where smoking is prohibited
  2. In or within 1000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence of an authorized user
  3. On a school bus
  4. While in a motor vehicle that is being operated
  5. While operating a boat
- (Health and Safety Code section 11362.79.)

These Guidelines will remain in effect until further clarified by statute, case law, or Departmental Order.

DATE: \_\_\_\_\_

Signed by: \_\_\_\_\_  
TOM BOSENKO, Sheriff-Coroner  
Shasta County

\_\_\_\_\_  
PETER HANSEN, Chief of Police  
City of Redding

\_\_\_\_\_  
DALE WEBB, Chief of Police  
City of Anderson

\_\_\_\_\_  
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, Parole Unit Supervisor  
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