

<p style="text-align: center;">Contra Costa County Office of the Sheriff</p> <p style="text-align: center;">General Policy and Procedure</p>	<p style="text-align: center;">CCCSO</p>	<p style="text-align: center;">NUMBER: 1.06.50</p>
<p>ISSUE DATE: 2-1-2006 REVISION DATE: 4-1-2011</p>	<p>RELATED ORDERS: Health and Safety Code Sections 11357, 11362.5 and 11362.7 et seq Controlled Substances Act, 21 U.S.C. §844(a)(1) Gonzales v. Raich, U.S. Supreme Court, 2005 PC 1538.5 CVC 23152(a) and 23222(b)</p>	
<p>CHAPTER: Office of the Sheriff Operations</p>	<p>CLEARANCE: Office of the Sheriff</p> <p>SUBJECT: Medical Marijuana</p>	

I. POLICY

- A. The California Health and Safety Code permits the possession and cultivation of marijuana for medical purposes under certain circumstances. Possession and/or cultivation of marijuana for non-medical purposes is illegal; however, possession of not more than 28.5 grams (approximately one ounce) of marijuana, other than concentrated cannabis, is an infraction punishable by a fine of not more than \$100.00 . This policy provides guidance and procedure in the investigation of subjects possessing marijuana and claiming medical marijuana status.

II. DEFINITIONS.

- A. Person with an Identification Card – As defined in Health and Safety Code section 11362.7(c), this means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article. Note: Since December 1, 2005, Contra Costa County Health Services Department has issued identification cards to qualified patients.
- B. Primary Care Giver –As defined in Health and Safety Code section 11362.7(d), this means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health or safety of that patient. A Primary Caregiver is someone who regularly provides care (i.e., someone who is at the patient's bedside). A person whose care-giving consists principally of supplying marijuana and instructing on its use, does not qualify as a primary care-giver. (People v. Mentch.)
- C. Qualified Patient –as defined in Health and Safety Code section 11362.7(f) means a person who is entitled to the protections of sections 11362.5, whether or not he or she has an identification card issued pursuant to this article.

III. GENERAL.

- A. PROPOSITION 215 ("THE COMPASSIONATE USE ACT"). Health and Safety Code ("H&S") section 11362.5 provides "that seriously ill Californians have the right to obtain

and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana." Individuals who are within the scope of the Compassionate Use Act are not subject to criminal liability under H&S Sections 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. In any situation where the provisions relating to "medical marijuana" do not apply, all criminal provisions of the H&S Code relating to marijuana remain in effect.

B. OPERATION OF A VEHICLE. Operating a vehicle under the influence of marijuana, even if medical marijuana, remains unlawful under CVC 23152(a). If articulable, objective signs of marijuana influence are observed in an individual operating a motor vehicle, field tests should be conducted and an arrest made, if appropriate. Smoking Marijuana while "in a motor vehicle that is being operated" is not authorized under medical marijuana provisions and remains unlawful under CVC 23222(b).

C. APPLICATION OF MARIJUANA PATIENTS' RIGHTS.

1. A Qualified Patient or his or her designated Primary Care Giver, in compliance with quantity and use restrictions, shall not be subject, on the sole basis of possession, cultivation or transportation of marijuana, to criminal liability.
2. Deputies encountering a subject with marijuana must ascertain whether the subject is declaring any rights under the Compassionate Use Act. Once a suspect has made such an assertion, the officer shall investigate the validity of the claim.
3. The previous limitations on the amount of marijuana a qualified patient may possess (no more than six mature marijuana plants or twelve immature plants per Qualified Patient and eight ounces of dried marijuana per Qualified Patient) have been eliminated (*People v. Kelly*). The only "limit" on how much Marijuana a person may possess under the Compassionate Use Act is that it must be "reasonably related to the patient's current medical needs." A Primary Care Giver may possess an equal amount to the total aggregate amount that all of his or her Qualified Patients may lawfully possess. There is no limit on the number of Qualified Patients for whom a Primary Care Giver may be responsible, but no more than one Qualified Patient may live outside the county of residence of the Primary Care Giver. A Deputy questioning a subject claiming Primary Care Giver status may ask for the names, addresses and telephone numbers of the subject's Qualified Patients for the purpose of investigating the legitimacy of the claim. The subject's failure to provide such information may be considered in determining whether or not an arrest should be made.
4. Contra Costa Health Services issues Identification Cards identifying the named individual as an authorized medical marijuana user or Primary Care Giver. However, an individual need not possess this card in order to claim protected status under the Compassionate Use Act. If a card is displayed, Deputies may make reasonable inquiries into the validity of the card.
5. Deputies investigating medical marijuana status or the legitimacy of a medical marijuana Identification Card may inquire into a patient's particular diagnosis if such a line of questioning is pertinent to the investigation.
6. Unless a Deputy has probable cause to believe an H&S violation has occurred, i.e., to believe the subject is not protected under the Compassionate Use Act or that the Act's quantity restrictions have been exceeded, the investigating Deputies shall not confiscate the marijuana. No subject shall be detained longer

than the time necessary for a reasonable investigation based on the individual situation and factors presented.

- a. If the subject has more than the amount of marijuana reasonably related to the patient's current medical needs, the investigating Deputies may seize all marijuana above the maximum legal amount. Obviously, a Deputy may not be able to immediately ascertain the amount of marijuana that is reasonably related to the patient's current medical needs. But in the event of a large or major cultivation, if the amount so clearly exceeds what a single qualified patient could possibly require, or in the case of a caregiver, the amount clearly exceeds the aggregate amount possibly required by the caregiver's patients, the Deputy will have probable cause to believe that the quantity limitations permitted under the Compassionate Use Act have been exceeded, and may continue a criminal investigation for possession, possession for sales, transportation and/or cultivation of marijuana.
 - b. Should a Deputy have a reasonable suspicion to believe that an H&S violation may have occurred, but less than probable cause to support an arrest, the investigating Deputy may seize only a testable sample (approximately one gram) of the subject's marijuana pending further investigation. Whenever possible, the Deputy should weigh and photograph the total quantity prior to removing the sample.
7. In any investigation for possession, possession for sales, transportation and/or cultivation of marijuana in which the subject does not claim medical marijuana status, the case shall proceed as a normal criminal investigation, keeping in mind that possession of 28.5 grams or less of marijuana is an infraction punishable by a fine of not more than \$100.00. Possession of any amount of concentrated cannabis is punishable by not more than one year in the County Jail or by a fine of not more than \$500.00, or both. Possession of more than 28.5 ounces of marijuana, not concentrated cannabis, is punishable by not more than six months in County Jail or a fine of up to \$500.00, or both. Exceptions apply on school grounds (see PC 11357).
 8. The Sheriff will not allow use of medical marijuana in any custody facility or at any time or place a suspect is in custody.
 9. In all cases in which marijuana is confiscated, including only a testable sample, a report shall be written and a sample should be sent to the Crime Lab for analysis.

D. USE RESTRICTIONS.

1. Nothing in Health and Safety Code Sections 11362.5 et. seq. authorizes a Qualified Patient to engage in smoking marijuana under any of the following circumstances:
 - a. In any place where smoking is prohibited.
 - b. 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 of an authorized user.
 - c. On a school bus.

d. While in a motor vehicle that is being operated.

e. While operating a boat.

2. Proposition 215 provides a defense to the crimes of possession and cultivation of marijuana. It does not provide a right to use marijuana. Proposition 215 accordingly does not provide any right to use marijuana at work in violation of an employer's rules (Ross v. Raging Wire Telecommunications) nor does it restrict a city's or county's power to enact zoning laws prohibiting marijuana dispensaries (City of Claremont v. Krauss).

E. RETURN OF MARIJUANA Whenever a determination is made under the medical marijuana provisions that confiscated marijuana should be returned to a subject, or whenever a subject requests the return of confiscated marijuana, the subject should be advised to obtain a court order under PC 1538.5 and to provide a certified copy of the court order. No confiscated marijuana will be returned in the absence of a court order.