

**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 LS<sup>1</sup>), 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.

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<sup>1</sup> 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.<sup>2</sup>
- 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:

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<sup>2</sup> City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4<sup>th</sup> 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.<sup>3</sup>
  - 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.

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<sup>3</sup> City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4<sup>th</sup> 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.