



SONOMA COUNTY LAW ENFORCEMENT CHIEFS' ASSOCIATION

PROTOCOL:	97-3
ADOPTED:	08/08/1997
REVISED:	02/10/2006
	05/03/2007

SUBJECT: MEDICAL MARIJUANA

PURPOSE: To provide for consistency among law enforcement agencies within the County of Sonoma, this Protocol establishes procedures for Peace Officers who are advised or believe that marijuana subject to seizure is used for medicinal purposes according to Section 11362.5 of the California Health and Safety Code. Because legal issues related to medical marijuana in California continue to evolve, internal policies of member agencies (if in conflict) will supersede this protocol.

I. POLICY

All marijuana cases of possession and/or cultivation will be handled in compliance with State law (refer to Sections 11357(a), (b), (c), 11358, and 11359, 11360, 11366, 11366.5 and 11570 of the Health and Safety Code and Sonoma County Board of Supervisors Resolution #06-0846). The Officer must inquire if the marijuana possessed or cultivated is for medicinal purposes pursuant to Section 11362.5 of the California Health and Safety Code. If the Officer believes a person possesses, is transporting, or is cultivating marijuana for medicinal purposes, the Officer shall weigh the marijuana, photograph the marijuana and any other related evidence, and take a small sample of the marijuana. If the marijuana is growing, no weight is necessary.

Qualified patients, persons with valid identifications cards, and primary caregivers, as well as those primary caregivers and patients whom associate within the State of California to collectively or cooperatively cultivate marijuana for the purpose of treating serious medical conditions, under the direction and approval of an attending physician, and within the guidelines contained in Sonoma County Board of Supervisors Resolution #06-0846, should not be, solely on that basis, subject to arrest, criminal prosecution or other sanction.

II. PROCEDURE

A. Determining Medicinal Marijuana Cases

Officers should continue to enforce all laws against marijuana in the same manner as prior to the passage of Proposition 215 (Compassionate Use Act of 1996 and Section 11362.5 of the Health and Safety Code) subject to the following guidelines:

1. **Officer Inquiry**

The Officer must inquire on each marijuana case whether the individual(s) are possessing, cultivating, transporting or using the marijuana for medicinal purposes as a “patient”, “caregiver” or “cooperative”. If the individual has already been taken into custody, these inquiries should be made after Miranda warnings.

Should the suspect claim he/she has an affirmative defense to criminal sanctions as a patient or caregiver, the Officer shall detain the person for the purpose of making those inquiries. If the individual refuses to provide the medical information, the Officer should note the refusal and proceed with the arrest, complaint and/or citation as required by State law.

2. **Patient Qualifications**

Patients must be California residents and must be “seriously ill” as set forth within Section 11362.5 of the Health and Safety Code. Illnesses specified in this section are cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, and any other illness for which marijuana provides relief. Patients must have been examined by a duly licensed California physician, and the physician must have determined that the person has a serious medical condition and that the medical use of marijuana is appropriate, i.e., that the patient’s health would benefit from marijuana as a treatment for the specific illness.

The patient must not be engaged in behavior that endangers others, such as driving a vehicle or being under the influence in a public place. The patient cannot divert any marijuana for non-medical use, such as providing it to another unauthorized person or using it recreationally, nor can the patient distribute it for profit.

Each patient, pursuant to a the Sonoma County Board of Supervisors Resolution #06-0846, is allowed to possess three pounds of processed marijuana per year. If the quantity of processed marijuana exceeds three pounds, you are allowed to seize the excess.

In order to process three pounds, each patient may cultivate a canopy which would fill an area covering one hundred square feet. The number of plants from this particular area may not exceed 30 plants of any height or size. If the patient has more than 30 plants, or if the canopy exceeds 100

square feet, you may seize the excess or entire amount pursuant to agency policy and circumstances of the case.

The name, designation, and contact information of the qualified medical marijuana patient(s) and/or the primary caregiver(s) shall be and remain posted at any growing site where medical marijuana is being cultivated. In addition, a copy of the physician's written recommendation, including name of prescribing doctor, shall also be posted if the amount of marijuana cultivated exceeds the amounts stated in Board of Supervisors Resolution #06-0846.

If, however, a qualified patient or primary caregiver has a duly licensed California physician's recommendation that the above quantities do not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs (as defined by the physician). Any amounts in excess of the physician's recommendation may then be seized.

There is no age limit under Section 11362.5 of the Health and Safety Code. Officers should continue to handle minors by utilizing Section 601 or 602 of the Welfare and Institutions Code. Failure to act on the part of an Officer places him/her and the Department in a position of liability.

Individuals cannot claim the medicinal marijuana defense based on a general recommendation not specifically provided to them, such as one given in a written article, speech, radio show, or television program.

3. Caregiver Qualifications

If a suspect states he/she is a caregiver, he/she must be responsible for the patient's housing, health, and/or safety. The primary caregiver must have personal knowledge of the physician's recommendation to the patient. The primary caregiver cannot use, possess marijuana for sale, or sell marijuana. The primary caregiver must be specifically designated by the patient and is the only individual who can qualify for the specific patient.

If the person claims to be a caregiver, the caregiver must have records available for your inspection which indicate the name, address, and telephone number of the patient. You need not contact the patient(s) at this time but include the information in your report for follow-up by detectives. A caregiver may have more than one patient but must have records indicating the above information for each patient claimed. The amount of processed marijuana for each patient may not exceed three pounds. The number of plants for each patient may not exceed 30 and the canopy for these plants may not exceed 100 square feet. If the number of plants exceeds 30 per patient by the caregiver, or if the canopy exceeds 100 square feet per patient, you may seize those excess plants. If the weight of the accumulated processed marijuana exceeds three pounds per

patient claimed by the caregiver, you may seize the additional processed marijuana. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs (as defined by the physician).

The primary caregiver cannot engage in conduct that endangers others or use marijuana unless he/she also qualifies as a patient under Section 11362.5 of the Health and Safety Code. The primary caregiver cannot be involved in the diversion of marijuana for non-medical purposes or the cultivation or distribution of marijuana for profit.

4. Medical Marijuana Identification Card

In compliance with SB420 (Section 11362.7 of the Health and Safety Code), the Sonoma County Health Services Department is administering a "Medical Marijuana Identification Card" (MMIC) program, which took effect October 1, 2005. Identification cards are being issued to individuals voluntarily participating in the program who are either qualified patients or qualified and designated primary caregivers for authorized patients. The State-issued card will display the applicant's photo, a unique 9-digit ID number, the California State seal, date of card expiration, and contact information for the Sonoma County Department of Health Services.

Peace officers may verify the validity of these cards via the internet at www.calmmp.ca.gov. However, this website will only report whether or not the number being checked is valid (it will not provide card-holder identification, etc.).

5. Officer Response

After using the above guidelines, if the Officer determines, on the amount, packaging, circumstances, and the answers to questions, that he/she has probable cause to believe the suspect possessed, cultivated, transported or used marijuana for other than medical purposes, the Officer may cite or arrest the subject per Sections 11357(a), (b), (c), 11358, 11359 or 11360 of the Health and Safety Code.

After using the above guidelines and the Officer believes the marijuana is being used, possessed, transported or cultivated for medicinal purposes, the Officer should:

- a. Complete the identification of the suspect(s) and cease the detention.
- b. If an arrest was made, release the patient from custody per Section 849(b) of the Penal Code.

- c. In all cases, a sample of the marijuana shall be seized and booked into evidence until notified of the results of the District Attorney's case review. The Officer shall photograph and/or weigh the quantity of marijuana.
- d. A complete detailed report shall be prepared outlining the circumstances of the incident, including the quantity or estimate of quantity of marijuana, and submitted to the Narcotic's Unit and the District Attorney's Office to accept or reject as a charge.
- e. Obtain a signed Medical Records Release form.
- f. If during the investigation the Officer determines that the subject is in possession of marijuana for sale or cultivation for sale, and there is not a medical marijuana defense, the Officer shall request the on-call Narcotic's Detective for follow-up investigation.
- g. This protocol does not address, nor is it intended to require, any accommodation of any medical use of marijuana on the property or premises of any educational facility, correctional facility or place of employment, or during the hours of employment;
- h. This protocol does not address, nor is it intended to limit or restrict the enforcement of any state or federal law;
- i. Notwithstanding this protocol and the guidelines set forth herein, qualified patients and primary caregivers still may be subject to prosecution for marijuana possession or cultivation under federal law.

**GUIDELINES TO ASSIST THE OFFICER
INVESTIGATING THE CULTIVATION OF MEDICAL MARIJUANA**

The officer must inquire on each marijuana case whether the individual(s) are possessing, cultivating, transporting or using the marijuana for medicinal purposes as a “patient”, “caregiver” or “cooperative”. If the individual has already been taken into custody, these inquiries should be made after Miranda warnings.

Should the suspect claim he/she had an affirmative defense to criminal sanctions as a patient, caregiver or cooperative, the officer shall detain the person for the purpose of making those inquiries. If the individual refuses to provide the medical information, the officer should note the refusal and proceed with the arrest and/or citation as required by State law.

If the affirmative defense is used, the officer must ask the following questions:

1. Are you a caregiver or a patient or is this a cooperative grow?
2. Obtain full identification (including name, address, DOB, home and work phone numbers, driver’s license number, Social Security number and any other identifying information) of caregiver and patient.
3. What is the name, address and phone number of the duly licensed California physician who prescribed and/or recommended the use of marijuana for medicinal purposes.
4.
 - A. How long has the patient had the medical condition for which a physician has recommend the use of medicinal marijuana?
 - B. What is the diagnosed illness from which the patient suffers?
 - C. When did the patient’s physician make the diagnosis?
 - D. How long has the patient been under the care of the diagnosing physician? Or
 - E. When did the physician recommend marijuana?
 - F. Officer should obtain a signed Medical Records Release form from the patient (if refused, note refusal in report).
5. How much marijuana does the caregiver or patient use, per day, for the medical condition?
6. Do you provide medical marijuana to anyone else?
7. Note the total number of plants under cultivation in your report.
8. Each patient, pursuant to Board of Supervisors Resolution #06-0846, is allowed to possess three pounds of processed marijuana per year. If the quantity of processed marijuana exceeds three pounds, you are allowed to seize the excess.

9. In order to process three pounds, each patient may cultivate a canopy that would fill an area covering one hundred square feet. The number of plants from this particular area may not exceed 30 plants of any height or size. If the patient has more than 30 plants, or if the canopy exceeds 100 square feet, you may seize the excess or entire amount pursuant to agency policy and circumstances of the case.
10. If, however, a qualified patient or primary caregiver has a physician's recommendation that the above quantities do not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs (as defined by the physician).
11. If the person claims to be a caregiver, the caregiver must have records available for your inspection that indicate the name, address and telephone number of the patient. You need not contact the patient(s) at this time but include the information in your report for follow-up by detectives. A caregiver may have more than one patient but must have records indicating the above information for each patient claimed.

The amount of processed marijuana for each patient claimed by any caregiver is three pounds. The number of plants for each possible patient may not exceed 30, and the canopy for these plants may not exceed 100 square feet. If the number of plants exceeds 30 per patient by the caregiver, or if the canopy exceeds 100 square feet per patient, you may seize those excess plants or entire amount pursuant to agency policy and circumstances of the case.

If the weight of the accumulated processed marijuana exceeds three pounds per patient claimed by the caregiver, you may seize the additional processed marijuana or entire amount pursuant to agency policy and circumstances of the case.

However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs (as defined by the physician).

Although not required, it is preferable that the caregiver be able to provide you a copy their Medical Marijuana ID Card.

After the questions are asked, if you believe it is medical marijuana, weigh the processed marijuana (growing marijuana does not need to be weighed), take a small sample of both the processed and growing marijuana (approximately one gram sample each). Photograph the marijuana and related evidence. Write your report for detective follow-up.

After the questions are asked, if you believe the marijuana is cultivated for illegal sales, call the on-call Narcotics Detective.

GUIDELINES TO ASSIST THE OFFICER INVESTIGATING POSSESSION OF MEDICAL MARIJUANA

The officer must inquire on each marijuana case whether the individual(s) are possessing, cultivating, transporting or using the marijuana for medicinal purposes as a “patient” or “caregiver.” If the individual has already been taken into custody, these inquiries should be made after Miranda warnings.

Should the suspect claim he/she had an affirmative defense to criminal sanctions as a patient or caregiver, the officer shall detain the person for the purpose of making those inquiries. If the individual refuses to provide the medical information, the officer should note the refusal and proceed with the arrest and/or citation as required by State law.

If the affirmative defense is used, the officer must ask the following questions:

1. Are you a caregiver or a patient?
2. Obtain full identification (including name, address, DOB, home and work phone numbers, driver’s license number, Social Security number and any other identifying information) of caregiver and patient.
3. What is the name, address and phone number of the duly licensed California physician who prescribed and/or recommended the use of marijuana for medicinal purposes?
 - A. How long has the patient had the medical condition for which a physician has recommended the use of medicinal marijuana?
 - B. What is the diagnosed illness from which the patient suffers?
 - C. When did the patient’s physician make the diagnosis?
 - D. How long has the patient been under the care of the diagnosing physician?
 - E. When did the physician recommend marijuana?
 - F. Officer should obtain a signed Medical Records Release form from the patient (if refused, note refusal in report).
5. How much marijuana does the caregiver or patient use, per day, for the medical condition?
6. Do you provide medical marijuana to anyone else?

After the questions, if you believe the marijuana is possessed for medical purposes, weigh the marijuana, take a small sample, and photograph the marijuana and related evidence. Release the remaining marijuana back to the subject and write your report for detective follow-up.

After the questions are asked, if you believe the marijuana is possessed for illegal sales, call the on-call Narcotics Detective.