

Marijuana Medical

419.1 PURPOSE AND SCOPE

State **MODIFIED**

The purpose of this policy is to provide employees of the Department of State Hospitals (DSH) with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under California's marijuana laws. Patients of DSH shall neither possess or be treated with marijuana. DSH employees are prohibited from possessing marijuana on state hospital grounds (Administrative Letter 2014-12; Medical Marijuana).

419.1.1 DEFINITIONS

State **MODIFIED**

Definitions related to this policy include:

Cardholder - A person issued a current identification card.

Compassionate Use Act (CUA) (Health & Saf. Code § 11362.5) - California law intended to provide protection from prosecution to those who are seriously ill and whose health would benefit from the use of marijuana in the treatment of illness for which marijuana provides relief. The CUA does not grant immunity from arrest but rather provides an affirmative defense from prosecution for possession of medical marijuana.

Identification card - A valid document issued by the State Department of Public Health to both persons authorized to engage in the medical use of marijuana and also to designated primary caregivers.

Medical marijuana - Marijuana possessed by a patient or primary caregiver for legitimate medical purposes.

Medical Marijuana Program (MMP) (Health & Saf. Code § 11362.7 et seq.) - California laws passed following the CUA to facilitate the prompt identification of patients and their designated primary caregivers in order to avoid unnecessary arrests and provide needed guidance to law enforcement officers. MMP prohibits arrest for possession of medical marijuana in certain circumstances and provides a defense in others.

Patient - A person who is entitled to the protections of the CUA because he/she has received a written or oral recommendation or approval from a physician to use marijuana for medical purposes or any person issued a valid identification card.

Primary caregiver - A person designated by the patient, who has consistently assumed responsibility for the patient's housing, health or safety, who may assist the patient with the medical use of marijuana under the CUA or the MMP. (Health & Saf. Code §§ 11362.5, 11362.7.)

"Recreational" Marijuana - (Health & Saf. Code § 11362.1 et seq.) - Proposition 64 was enacted with voter approval in 2017 and legalizes possession and use of marijuana under a certain quantity, for adults age 21, and over regardless of medical need.

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Statutory amount - For medical purposes no more than eight ounces of dried, mature, processed female marijuana flowers ("bud") or the plant conversion (e.g., kief, hash, hash oil), and no more than six mature or 12 immature marijuana plants (roots, stems and stem fibers should not be considered).

For "recreational" use no more than 28 grams of unconcentrated cannabis, 8 grams of concentrated cannabis, or 6 living cannabis plants.

419.2 POLICY

Best Practice **MODIFIED**

It is the policy of DSH to prioritize resources to forgo making arrests related to marijuana that the arresting officer reasonably believes would not be prosecuted by state or federal authorities.

California's medical marijuana laws are intended to provide protection to those who are seriously ill and whose health would benefit from the use of medical marijuana.

However, California medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. DSH will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under California law and public resources.

California's marijuana laws are intended to provide a person over the age of 21 years legal protections for the possession and/or use of marijuana.

Proposition 64 (Recreational Marijuana) does not affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees (Health & Saf. Code § 11362.45.)

419.3 INVESTIGATION

State **MODIFIED**

Investigations involving the possession, delivery, production or use of marijuana generally fall into one of several categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a cardholder.
- (c) Investigations when a medicinal claim is made by a non-cardholder.

419.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

State **MODIFIED**

California laws (Health & Saf. Code § 11362.1 et seq.) provide that a person over the age 21, shall not be in violation of state or local law if they:

- (a) Possess, process, transport, purchase, obtain, or give away the persons 21 years of age or older without compensation, not more than 28.5 grams of unconcentrated cannabis.

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- (b) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without compensation, not more than eight grams of concentrated including as contained in cannabis products.
- (c) Possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants.
- (d) Smoke or ingest cannabis products and
- (e) Possess, transport, purchase, obtain, use, manufacture, or give away cannabis accessories to persons 21 years of age or older without any compensation whatsoever.

Health and Safety Code section 11362.1 does not permit a person to:

- (a) Smoke or ingest cannabis or cannabis product in a public place.
- (b) Where smoking tobacco is prohibited.
- (c) Within 1,000 feet of a school, day care center, or youth center while children are present except in or upon grounds of a private residence in accordance with Health and Safety Code section 26200.
- (d) Possess an open container or open package of cannabis products while driving, operating or riding in the passenger seat or compartment of a motor vehicle, or other vehicle used for transportation.
- (e) Smoke or ingest cannabis or cannabis products while driving, operating an motor vehicle or other vehicle used for transportation.
- (f) Smoke or ingest cannabis or cannabis products while a passenger in a motor vehicle or other vehicle used for transportation (Health & Saf. Code § 11362.3.)

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use under the Health and Safety Code sections 11362.1, 11362.2 or is in violation of Health and Safety Code section 11362.3:

- (a) Smoke or ingest cannabis or cannabis product in a public place.
- (b) Where smoking tobacco is prohibited.
- (c) Within 1,000 feet of a school, day care center, or youth center while children are present except in or upon grounds of a private residence in accordance with Health and Safety Code section 26200.
- (d) Possess an open container or open package of cannabis products while driving, operating or riding in the passenger seat or compartment of a motor vehicle, or other vehicle used for transportation.
- (e) Smoke or ingest cannabis or cannabis products while driving, operating an motor vehicle or other vehicle used for transportation.
- (f) Smoke or ingest cannabis or cannabis products while a passenger in a motor vehicle or other vehicle used for transportation (Health & Saf. Code § 11362.3.)

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A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant to whether the marijuana was possessed or produced for medicinal purposes.

419.3.2 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A CARDHOLDER

State **MODIFIED**

A cardholder or designated primary caregiver in possession of an identification card shall not be arrested for possession, transportation, delivery or cultivation of medical marijuana at or below the statutory amount unless there is probable cause to believe that (Health & Saf. Code §§ 11362.71, 11362.78):

- (a) The information contained in the card is false or falsified.
- (b) The card has been obtained or used by means of fraud.
- (c) The person is otherwise in violation of the provisions of the MMP.
- (d) The person possesses marijuana but not for personal medical purposes, subject to Health and Safety Code section 11362.1 et seq.
- (e) The person attempts to introduce marijuana into a state hospital facility.

Officers who reasonably believe that a person who does not have an identification card in his/her possession has been issued an identification card may treat the investigation as if the person had the card in his/her possession.

Cardholders may possess, transport, deliver or cultivate medical marijuana in amounts above the statutory amount if their doctor has concluded that the statutory amount does not meet the patient's medical needs. (Health & Saf. Code §§ 11362.71, 11362.77.) Investigations involving cardholders with more than the statutory amount of marijuana should be addressed as provided in this policy for a case involving a medicinal claim made by a non-cardholder.

419.3.3 INVESTIGATIONS INVOLVING A MEDICINAL CLAIM MADE BY A NON-CARDHOLDER

State **MODIFIED**

No patient or primary caregiver should be arrested for possession or cultivation of an amount of medical marijuana if the officer reasonably believes that marijuana is in a form and amount reasonably related to the qualified patient's current medical needs. (Health & Saf. Code, § 11362.5.)

A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use cannabis, or for payment for out-of-pocket expenses incurred in providing those services or both, shall not, on the sole basis of that fact, be subject to prosecution. (Health & Saf. Code, § 11362.765.)

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Officers are not obligated to accept a person's claim of having a physician's recommendation when the claim cannot be readily verified with the physician but are expected to use their judgment to assess the validity of the person's medical-use claim.

Officers should review any available written documentation for validity and whether it contains the recommending physician's name, telephone number, address and medical license number for verification.

Officers should generally accept verified recommendations by a physician that statutory amounts do not meet the patient's needs. (Health & Saf. Code, § 11362.77.)

419.3.4 ADDITIONAL CONSIDERATIONS

State **MODIFIED**

Officers should consider the following when investigating an incident involving marijuana possession, delivery, production, or use:

- (a) Because enforcement of medical marijuana laws can be complex, time consuming and call for resources unavailable at the time of initial investigation, officers may consider submitting a report to the prosecutor for review, in lieu of making an arrest. This can be particularly appropriate when:
 1. The suspect has been identified and can be easily located at a later time.
 2. The case would benefit from review by a person with expertise in medical marijuana investigations.
 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
 4. Other relevant factors, such as available OPS resources and time constraints prohibit making an immediate arrest.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than the statutory amount, officers should consider the following when determining whether the form and amount is reasonably related to the patient's needs:
 1. The amount of marijuana recommended by a medical professional to be ingested.
 2. The quality of the marijuana.
 3. The method of ingestion (e.g., smoking, eating, nebulizer).
 4. The timing of the possession in relation to a harvest (patient may be storing marijuana).
 5. Whether the marijuana is being cultivated indoors or outdoors,.
- (c) Before proceeding with enforcement related to collective gardens or dispensaries, officers should consider conferring with a supervisor, an applicable state regulatory agency or other member with special knowledge in this area and/or appropriate legal counsel (Bus & Prof. Code § 26060.) Licensing, zoning and other related issues can be complex. Patients, primary caregivers and cardholders who collectively or

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cooperatively cultivate marijuana for medical purposes may be licensed or may have defense in certain circumstances. (Bus. & Prof. Code. §§ 26032, 26033.)

- (d) Investigating members should not order a patient to destroy marijuana plants under threat of arrest.

419.3.5 EXCEPTIONS

State **MODIFIED**

This policy does not apply to, and officers should consider taking enforcement action for the following:

- (a) Persons who engage in illegal conduct that endangers others, such as driving under the influence of marijuana in violation of the Vehicle Code (Health & Saf.Code § 11362.3.)
- (b) Medical Marijuana possession in jails or other correctional facilities that prohibit such possession (Health & Saf. Code § 11362.785).
- (c) Smoking medicinal marijuana (Health & Saf. Code § 11362.79):
 - 1. In any place where smoking is prohibited by law.
 - 2. 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.
 - 3. On a school bus.
 - 4. While in a motor vehicle that is being operated.
 - 5. While operating a boat.
- (d) Use of marijuana by a person on probation or parole, or on bail and use is generally prohibited by the terms of release however terms of probation, parole, or bail may include the permission for an individual to use medical cannabis (Health & Saf. Code, § 11362.795.)

419.4 FEDERAL LAW ENFORCEMENT

Federal

Officers should provide information regarding a marijuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the officer believes those authorities would have a particular interest in the information.

419.5 PROPERTY ROOM SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED**

The Property Room Supervisor should ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not destroyed pending any charges and without a court order. The Property Room Supervisor is not responsible for caring for live marijuana plants.

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Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property Room Supervisor should, as soon as practicable, return to the person from whom it was seized any useable medical marijuana, plants, drug paraphernalia or other related property.

The Property Room Supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Investigations Supervisor.