

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: 06/19/06
NUMBER: 3.28 – INVESTIGATIONS
SUBJECT: MEDICAL USE OF MARIJUANA
ENFORCEMENT PROCEDURES
RELATED POLICY: 3.13
ORIGINATING DIVISION: INVESTIGATIONS I
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 3.28 05/13/2005

I. PURPOSE

This Department procedure establishes guidelines on the enforcement of narcotic violations related to medical use of marijuana.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

In November of 1996, California voters passed Proposition 215, referred to as The Compassionate Use of Marijuana Act of 1996. Proposition 215 was codified as Health and Safety Code Section 11362.5. This statute provides an affirmative defense for patients and their caregivers who possess or cultivate marijuana to alleviate the symptoms of certain medical conditions under the recommendation of a physician. This law does not allow patients and/or caregivers to distribute or transport marijuana, nor does it supersede the federal laws governing marijuana.

The City Council formed the Proposition 215 Implementation Task Force (also known as the Medicinal Marijuana/Cannabis Task Force) to determine the most efficient way to regulate the use of medicinal marijuana in accordance with Proposition 215. The Council approved the San Diego Medical Cannabis Voluntary Verification Card Program ordinance, codified at San Diego Municipal Code sections 42.1301 through 42.1311, to create a verification card program to be

administered by an external contracting agency. Law enforcement guidelines were later amended concerning possession of medical marijuana. Permissible amounts of medicinal marijuana a patient and caregiver may possess are defined in Section V. Enforcement, Subsection E., of this procedure.

On October 12, 2003, Governor Davis signed SB 420, which establishes state enforcement guidelines. This bill requires the State Department of Health to create a statewide card program. Locally, the San Diego County Health and Human Services is responsible for issuing the cards. At this time, there is no City or county operated identification card program for medical marijuana.

IV. DEFINITIONS

Patient – a patient is a California resident who has a serious illness including, but not limited to, cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. The patient must have a recommendation from a physician who has examined him/her and determined that the person's health would benefit from the use of marijuana. (This definition includes minors.)

Primary caregiver – a primary caregiver means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person. (A primary caregiver can also be a patient.)

V. ENFORCEMENT PROCEDURES

- A. When an officer encounters an individual possessing or cultivating marijuana, it is the detainee/arrestee's obligation to assert the defense, **not the officer's duty to inquire**. If an arrest is made, evidence should be impounded in accordance with DP 3.15, Narcotics Impounds/Release of Evidence.
- B. If the individual asserts the affirmative defense, the officer should determine whether the individual meets all of the following requirements. The individual must:
1. Be a California resident.
 2. Have a serious illness including but not limited to cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. Common conditions like the flu, colds, or acne do not qualify.
 3. Have been examined by a physician (licensed to practice medicine in California) for that illness.

4. The physician must have made a recommendation (either orally or in writing) that the patient's health would benefit from the use of marijuana. The patient is not required to have written documentation of the recommendation.

Refer to Attachment A – Patient Questionnaire.

- C. If the individual asserts the affirmative defense of a primary caregiver, the officer should determine that the individual meets all of the following requirements. The primary caregiver must:
1. Be an individual. A marijuana growers' co-op does not qualify as a primary caregiver;
 2. Be designated as such by the patient;
 3. Be the only person who can qualify for that particular patient;
 4. Have prior and consistent responsibility for the patient's housing, health, or safety;
 5. Have knowledge of the nature of the patient's illness and personal knowledge of the physician's recommendation that the patient's health would benefit from the use of marijuana; or,
 6. Be the patient's sole provider of medical cannabis.

Refer to Attachment B Caregiver Questionnaire.

- D. Patients and caregivers may not:
1. Possess or cultivate marijuana for other than the personal medical purposes of the patient;
 2. Divert marijuana to any other person or sell it;
 3. Possess or cultivate an amount greater than is reasonable for the patient's personal use;
 4. Engage in behavior that would endanger others, such as driving a motor vehicle while under the influence of marijuana; or,
 5. Patient(s) may **NOT** smoke medical marijuana anywhere in public or in public view, even on private property per Municipal Code Section 42.13.13. A violation of this section is an infraction.

- E. Determining who qualifies as a legitimate patient and/or caregiver is a process that requires the expertise of personnel assigned to the Narcotics Section. In addition to the statutory provisions, there has been case law that affects how the section is enforced. Therefore, anytime officers encounter individuals exercising the affirmative defense described in Health and Safety Code Section 11362.5, the San Diego Police Department's Narcotics Section shall be notified.

Officers must telephone the Narcotics Section during normal business hours (0730 to 1800), Monday through Friday, at (619) 531-2468 when they encounter an incident where the person asserts affirmative defense of either a patient or caregiver. After hours, and on weekends, officers must contact the Watch Commander's Office.

The Watch Commander will notify an on-call Narcotics Section sergeant who will evaluate the information and determine the appropriate level of response.

If individuals do not assert the affirmative defense, officer(s) should proceed with enforcement action in accordance with Department Procedure 3.13, Narcotic Enforcement Procedures.

1. Processed Marijuana (Medicinal Marijuana Users)

An individual may possess an amount of processed marijuana not to exceed **one pound** or the amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana (Primary Caregivers)

An individual who is a primary caregiver may possess no more than the amount specified for each of his/her patients, not to exceed **two pounds**, or the amount consistent with the physician's recommendation, whichever is less.

3. Indoor Plants

A medical marijuana user may possess a maximum of **24 unharvested plants in a growing area no larger than 64 square feet.**

A primary caregiver may possess no more than the amount specified for each patient for whom the caregiver serves, not to exceed a **total of 48 plants in a growing area not to exceed 94 square feet.**

H&S 11362.5 only applies to patients and primary caregivers either possessing or cultivating marijuana for their medicinal use. The law does not protect people who possess marijuana for sales (H&S 11359) or sell, furnish or distribute marijuana (H&S 11360).

Therefore, if officers discover evidence that a person is selling, furnishing or possessing marijuana for sales, they are subject to arrest, regardless of their status as a patient or caregiver. In all such cases, officers must call the Narcotics Section for guidance in handling these cases.

If it appears to the officer that the person is eligible to use the affirmative defense, the officer should return any marijuana and release the person. Officers will complete a Detention Only report, detailing the circumstances of the initial encounter, the amount of marijuana found, the facts that led to the conclusion that the person was eligible to assert the affirmative defense and that all marijuana seized was returned to the person at the time of their release.

Officers should use 11362.5 H&S in the "Charges" section of the report. This will allow for retrieval of the reports for statistical purposes.

F. Medical Marijuana Enforcement with Federal Authorities

The San Diego Police Department has several investigators assigned to federal law enforcement task forces. These investigators operate under the direction and jurisdiction of the federal agency responsible for the task force. Department personnel including those who are assigned to task forces will not knowingly participate in any federal operation or investigation that is in conflict with our established policies and procedures concerning medicinal marijuana.

- G. Officers must use the following questionnaires to assist in determining whether the individual qualifies as a patient or caregiver. If the person refuses to provide the information on the questionnaire, provides answers which do not substantiate their eligibility to use the affirmative defense, or, at the end of the investigation, the officer has probable cause to believe that the person possessed or cultivated marijuana for other than medical purposes, the officer should proceed with the citation or arrest as appropriate. If an arrest is made, the officer should include the questions and answers in the arrest report.

Officers should consider the totality of the circumstances in arriving at a decision on the person's eligibility to assert the affirmative defense. They should consider the time of day and location where the person is detained/ arrested, and any other evidence that supports or refutes the person's statements.

NEW
06/19/06

ATTACHMENT A - PATIENT QUESTIONNAIRE

1) What illness(es) do you have? _____ _____
2) Approximately when did your illness(es) begin? _____
3) What symptoms do you suffer from this illness? _____ _____
4) Have you been examined by a medical doctor for this illness? Yes _____ No _____ When _____
5) What are the names, addresses and phone numbers of the doctors who examined you for this illness? Name: Dr. _____ Address: City: _____ State: _____ Phone Number: (_____) _____
6) Did this doctor recommend that the use of marijuana would be beneficial to your health? Yes _____ No _____ When _____
7) How much marijuana did the doctor recommend, at what intervals and for what length of time? _____
8) Do you take any prescription drugs for this illness? (May I see them?) Name of Drug: _____ Script# _____ Date Issued: _____ Doctor: _____ Name of Drug: _____ Script# _____ Date Issued: _____ Doctor: _____ Name of Drug: _____ Script# _____ Date Issued: _____ Doctor: _____
9) Do you have a primary caregiver? Yes _____ No _____
10) What is the name, address and phone number of your caregiver? _____
11) How long has he/she been your caregiver? _____
12) What services do you depend on your caregiver for? _____
I authorize the release of the medical records in the possession of Dr. _____ which verify that I have been examined for the above listed illness(es) and that there has been a recommendation for the medical use of marijuana for relief from this illness or illnesses. Signature: _____ Date: _____

ATTACHMENT B - PRIMARY CAREGIVER QUESTIONNAIRE

1) What is the name of the patient for whom you are the primary caregiver? Name: _____ Address: _____ City: _____ State: _____ Phone: (____) _____
2) What is the illness that this person suffers from? _____ _____
3) Has this patient been examined by a physician for this illness? Yes _____ No _____
4) What is the name, address and phone number of the doctor who examined this patient? _____
5) Are you personally aware of the physician's recommendation that this patient use marijuana to benefit his health? Yes _____ No _____
6) What is your relationship to this patient? _____ _____
7) Has this patient specifically designated you as the primary caregiver? Yes _____ No _____
8) How long have you been the primary caregiver? _____
9) What services do you provide for this patient? _____ _____
10) What is your frequency of contact with this patient? _____
11) What is your patient's normal daily quantity of use of marijuana? _____ _____
12) For what length of time is the patient recommended to use marijuana? _____
13) How many patients are you the primary caregiver for? _____
14) Do you also qualify as a patient under the Compassionate Use of Marijuana Act of 1996? Yes _____ No _____