

7.1.31 MARIJUANA POSSESSION - ISSUANCE OF CITATIONS

(Revision: September 23, 2004)

The following procedures shall apply when citing subjects in possession of one ounce or less of marijuana. If the offender is not driving a motor vehicle, he/she shall be cited using Section 11357(b) of the Health & Safety Code.

The date to appear for arraignment in Municipal Court shall be set for 1300 hours on the 60th day following the date on which the citation was issued. If the 60th day falls on a weekend or legal holiday, the court date shall be set for the first business day following that weekend or legal holiday.

A DR Follow-up and an Evidence Report shall be filed with each citation issued. In the event that a subject in possession of one ounce or less of marijuana is the driver of a vehicle, he/she shall be cited using Section 23222(b) of the California Vehicle Code. The procedure used in completing the associated paper work will be similar to that used for citing under Section 11357(b) H&S. If the driver is cited for additional Vehicle Code violations, he/she will be cited on the same citation, and a follow up must be included for the 11357(b) H&S.

7.1.31.1 Medical Marijuana (Proposition 215 - The Compassionate Use Act of 1996)**Background**

In October 2003 new State Legislation (SB420) was signed which clarified the scope and application of the Compassionate Use Act of 1996. Proposition 215 allows the medicinal use of marijuana by ill Californians where such use would be beneficial in the treatment of any illness where marijuana would provide relief. The rights granted to "patients" also extend to persons identified as patient "caregivers."

In addition, the State Department of Health Services (SDHS) must establish a voluntary program for the issuance of medical marijuana identification cards to qualified patients. These identification cards and guidelines have yet to be developed by the SDHS; however, the new laws are in effect.

Purpose

The purpose of this manual section is to provide officers with procedures related to enforcing marijuana laws when the issue of medical possession has been presented. This procedure is not intended to discourage illegal drug enforcement in the city of Long Beach. In contrast, the procedure is to provide clear direction for a convoluted law.

Procedure

This procedure does not apply to those incidents where there is evidence of possession of marijuana for sale. This activity does not fall under the medical marijuana criteria. In these incidents, the suspect will be arrested and the contraband seized.

It is not incumbent on a police officer to inquire whether a suspect cultivating, possessing, or using marijuana is doing so for medicinal purposes. It is the responsibility of the suspect to claim an affirmative defense under the law as either a "qualified patient" or "caregiver". Should the person make such a claim, the officer should detain the person and conduct an investigation.

Upon encountering a person (patient or caregiver) in possession of medical marijuana and the person has "oral or written documentation" authorizing medical use of the drug, an officer shall:

- Request a field supervisor respond to the location
- Contact the attending physician to verify authorization
 - When verification cannot be accomplished, document such in the Incident Report
 - If authorization is verified, officers should not ask any further questions of a medical nature
- File an Incident Report detailing circumstances of the incident. The report will include information received from asking the following questions of a "qualified patient":
 - Are you taking medication and if so, what medication?
 - For what condition are you taking medication?
 - What is the name, office address and office telephone number of the prescribing physician?
 - What is the duration of treatment?
- The report will include information received from asking the following questions of a "primary caregiver":
 - For whom are you a primary caregiver?
 - How long have you been a primary caregiver?
 - What type of primary caregiver services do you provide?
 - For what condition is the patient being treated?
 - What is the name, office address and office telephone number of the prescribing physician?

If after a thorough investigation, officers and supervisor determine that a person is in possession of marijuana for medical reasons as described and authorized under the law, the marijuana shall not be seized. In lieu of arrest or citation, the officer shall file an Incident Report documenting the contact and actions.

If the person does not claim a medical affirmative defense, the investigation will be handled in the normal manner. Possession of marijuana is still illegal in the State of California.

Upon encountering a person claiming to be in possession of medical marijuana and the possession is questionable, officers shall follow the same investigative procedure as described for persons with oral or written authorization. If after a thorough investigation, officers and supervisor determine that a person is not in possession of marijuana for medical reasons as described and authorized under the law, the Watch Commander will be notified and respond to the scene.

The Watch Commander shall evaluate the facts and exercise the discretion required to resolve the incident in accordance with this policy.

If enforcement action is necessary, officers shall not arrest the individual without the approval of the Watch Commander. Officers should obtain the necessary information to complete an Incident Report that will be forwarded to the appropriate prosecuting agency for consideration.

Health & Safety (H&S) Laws Related to Medical Marijuana

H&S §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. It also ensures that patients, and their primary caregivers, who cultivate, possess and use marijuana for medical purposes upon the oral or written recommendation of a physician are not subject to criminal prosecution or sanction.

H&S §11362.71(a) requires the State Department of Health Services (SDHS) to establish a voluntary program for the issuance of medical marijuana identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. However, a qualified patient need not possess such an identification card in order to claim protection by the act. The SDHS has yet to work out the procedures for issuing of identification cards and our Health Department is awaiting their guidelines before acting.

H&S §11362.71(e) states that no person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in the established amount, unless there is reasonable cause to believe that the information contained in the card is false, falsified, the card has been obtained by fraud, or the person is otherwise in violation of the provisions of this article. Subsection (f) states that it is not necessary for a person to obtain an identification card in order to claim protections of H&S §11362.5.

H&S §11362.71(g) defines an Identification Card. Identification Card means a document issued by the State Department of Health Services. The document identifies a person authorized to engage in the medical use of marijuana.

H&S §11362.735 (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

- A unique user identification number of the cardholder
- The date of expiration of the identification card
- The name and telephone number of the county health department or the county's designee that has approved the application
- A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card
- Photo identification of the cardholder

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

H&S §11362.77 establishes that:

- A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient
- A qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient
- If the qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs

H&S §11362.785(a) states the law does not require accommodation of medical use of marijuana at places of employment, or during the hours of employment, or on the premises of any jail.

H&S §11362.79 states the law does not authorize the smoking of medical marijuana in any place where smoking is prohibited by law; within 1,000 feet of a school, recreation center or youth center unless the use occurs within a residence; on a school bus; while in a motor vehicle that is being operated; or while operating a boat.

Definitions

"Qualified Patient" H&S §11362.7(f) – To qualify as a patient, a person must be a seriously ill California resident and have been examined by a physician, where the physician has determined that the specific patient's health would benefit from marijuana as a treatment for a specific illness.

“Serious Medical Condition” H&S §11362.7(h) – means all of the following:

- Acquired immune deficiency syndrome (AIDS)
- Anorexia
- Arthritis
- Cachexia
- Cancer
- Chronic Pain
- Glaucoma
- Migraine
- Persistent muscle spasms, including, but not limited to, spasm associated with multiple sclerosis
- Seizures, including, but not limited to, seizures associated with epilepsy
- Severe nausea
- Any other chronic or persistent medical symptom that either:
 - Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990
 - If not alleviated, may cause serious harm to the patient's safety or physical or mental health

“Primary Caregiver” H&S §11362.7(d) – means the individual designated by the person exempted under H&S §11362.5 who has consistently assumed responsibility for the housing, health, or safety of that person.

“Written Documentation” H&S §11362.7(i) – means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician stating that the subject has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.