

## Medical Marijuana

### 452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana under Arizona's medical marijuana laws (ARS § 36-2801).

This policy is meant to provide guidance regarding the application of department resources related to medical marijuana laws.

#### 452.1.1 DEFINITIONS

**Allowable amount of marijuana** (ARS § 36-2801):

- Generally for a registered qualifying patient, 2.5 ounces of usable marijuana.
- If the patient's registry card permits them to also cultivate (grow) marijuana, the limit is twelve (12) plants. The plants must be contained in an enclosed, locked facility, unless the plants are being transported because the qualifying patient is moving.
- For designated caregivers, the allowable amount of marijuana is 2.5 ounces, or if the caregiver is authorized to cultivate, twelve (12) plants, times the number of the caregiver's registered qualifying patients. The plants must be in an enclosed, locked facility, unless the plants are being transported because the caregiver is moving. Caregivers may also be qualifying patients, adding another 2.5 ounces of if they are authorized to cultivate, twelve (12) plants.

**Cardholder** €š A qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card (ARS § 36-2801).

**Designated caregiver** - A person who is at least 21 years of age, has agreed to assist with a patient's medical use of marijuana, has not been convicted of an excluded felony offense and assists no more than five qualifying patients (ARS § 36-2801).

**DHS** €š Arizona Department of Health Services

**DHS verification system** - A secure, password-protected, web-based system established and maintained by Arizona DHS. It is available to law enforcement personnel and nonprofit medical marijuana dispensary agents on a 24-hour basis for verification of registry identification cards (ARS § 36-2801).

**Enclosed, locked facility** - A closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder (ARS § 36-2801).

**Medical use of marijuana** - The acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition (ARS § 36-2801).

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**Qualifying patient** - A person who has been diagnosed by a physician as having a debilitating medical condition, whether or not the person has registered with the Arizona DHS. (ARS § 36-2801).

**Registry identification card** - A document issued by Arizona DHS that identifies a person as a registered qualifying patient, registered designated caregiver or a registered nonprofit medical marijuana dispensary agent (ARS § 36-2801).

**Usable marijuana** - The dried flowers of the marijuana plant and any mixture or preparation thereof. It does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink (ARS § 36-2801).

**Visiting qualifying patient** - A person who is not a resident of Arizona or who has been a resident of Arizona less than 30 days, and who has been diagnosed with a debilitating medical condition by a person who is licensed with authority to prescribe drugs to humans in the state of the person's residence or, in the case of a person who has been a resident of Arizona less than 30 days, the state of the person's former residence.

#### **452.2 POLICY**

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

Arizona medical marijuana laws are intended to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest, prosecution, and property forfeiture if such patients engage in the use of marijuana for medical purposes. However, Arizona medical marijuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marijuana. The Peoria Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Arizona law and the resources of the Department.

#### **452.3 INVESTIGATION**

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

- Investigations when no person makes a medicinal claim.
- Investigations when a medicinal claim is made by a cardholder.

##### **452.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM**

In any investigation involving the possession, delivery or production of marijuana where no person claims that the marijuana is for used for medicinal purposes, the officer should proceed with reasonable enforcement action. 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.

##### **452.3.2 INVESTIGATIONS INVOLVING A CARDHOLDER**

There is a presumption that a cardholder is engaged in the medical use of marijuana if he/she possesses no more than an allowable amount of marijuana. When this presumption is met, no arrest should be made for the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana as permitted by state

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law. However, the presumption may be rebutted by, and enforcement action may be taken when there is evidence that conduct related to the marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

Officers should not arrest a person for providing a registered qualifying patient, a registered designated caregiver or a registered nonprofit medical marijuana dispensary with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana. Nor should a person be arrested merely for being in the presence or vicinity of the medical use of marijuana.

Medical use and possession of marijuana authorized under the Arizona medical marijuana statutes does not support the forfeiture of property as set forth in the Asset Forfeiture Policy.

Mere possession of, or application for, a registry identification card may not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person or property of the person possessing or applying for the registry identification card. However, the possession of, or application for, a registry identification card does not preclude the existence of probable cause if probable cause exists on other grounds.

#### **452.3.3 ADDITIONAL CONSIDERATIONS**

Officers should consider the following when investigating an incident involving marijuana:

- (a) Marijuana that is incidental to medical use but is not usable marijuana as defined in this policy, shall not be counted toward a qualifying patient's or designated caregiver's allowable amount of marijuana (ARS § 36-2801).
- (b) There is no presumption of neglect or child endangerment for conduct permitted by Arizona's medical marijuana laws unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence (ARS § 36-2813).
- (c) A registered qualifying patient may not directly, or through his/her designated caregiver, obtain more than 2 1/2 ounces of marijuana from registered nonprofit medical marijuana dispensaries in any 14-day period (ARS § 36-2816).
- (d) The equivalent of a registry identification card issued under the laws of another state that allows a visiting qualifying patient to possess or use marijuana for medical purposes in that state has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by DHS. A visiting qualifying patient is not authorized to obtain marijuana from a nonprofit medical marijuana dispensary (ARS § 36-2804.03)
- (e) Marijuana plants are not required to be in an enclosed, locked facility if the plants are being transported because the qualifying patient is moving (ARS § 36-2801).
- (f) Arizona's medical marijuana laws do not require any person or establishment in lawful possession of property to allow a guest, client, customer or other visitor to use marijuana on or in that property (ARS § 36-2814).
- (g) A registered nonprofit medical marijuana dispensary or its agents are not subject to prosecution, search or inspection except by DHS pursuant to ARS § 36-2806 (ARS § 36-2811(E)).
- (h) 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:

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1. The suspect has been identified and can be easily located at another 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.

#### **452.4 DHS VERIFICATION SYSTEM**

DHS has developed a web-based verification system for use on a 24-hour basis. The verification system allows law enforcement personnel to enter a registry identification number and verify whether the number corresponds with a current, valid identification card.

Officers may use the verification system in conjunction with legitimate investigations only. Officers shall not disclose any information obtained from the verification system to the public or any person without a legitimate law enforcement purpose (ARS § 36-2807).

##### **452.4.1 EXCEPTIONS**

This policy does not apply to the following offenses. Officers may take enforcement action if the person is (ARS § 36-2802):

- (a) Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.
- (b) Possessing or engaging in the medical use of marijuana on a school bus, on the grounds of any school, college, child care facility or in any correctional facility (ARS § 36-2802; ARS § 36-894; ARS § 15-108).
- (c) Smoking marijuana on any form of public transportation or in any public place.
- (d) Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana. A registered qualifying patient shall not be considered to be under the influence of marijuana solely if the concentration of metabolites or marijuana components is not enough to cause impairment (A registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment).
- (e) Using marijuana except as authorized under Arizona's medical marijuana laws.

#### **452.5 FEDERAL LAW ENFORCEMENT**

Officers should provide information regarding a marijuana investigation with federal law enforcement authorities when information is requested by federal law enforcement authorities or whenever the officer reasonably believes federal law enforcement authorities would request the information if the authorities were aware of the information.

#### **452.6 PROPERTY SUPERVISOR RESPONSIBILITIES**

The Property and Evidence Unit Supervisor shall ensure that marijuana, drug paraphernalia or other related property seized from a person allegedly engaged or assisting in the use of medical marijuana is destroyed under the same guidelines as those used for any other seized marijuana, drug paraphernalia or other related property.