

NEVADA COUNTY MEDICAL MARIJUANA INTER-AGENCY PROTOCOL

With the passage of Proposition of 215, The Compassionate Use Act, investigations into the possession and/or cultivation of marijuana left counties, law enforcement and medicinal marijuana users struggling with the issues of unnecessary investigations, arrests and prosecutions of persons that fall within the statutory exception to possession, growth, and use of marijuana by specified class of people. The Act, codified by Health and Safety Code section 11362.5, allows marijuana to be cultivated, possessed and used for medicinal purposes in certain circumstances. Possession and/or cultivation of marijuana for non-medicinal purposes remain illegal in California and, without exception, under federal law.

In light of these developments, Nevada County agencies have adopted guidelines to serve as a reference for individual agencies to aid in development of appropriate policies, directives, and procedures for the investigation of marijuana cases. The purposes of these guidelines are to help assure that cases are investigated uniformly and impartially.

While this document represents the consensus and concept of member agencies as to how such cases are to be investigated, the guidelines allow for individual agency discretion. These guidelines are not statutes, ordinances, nor regulations; and they shall not be construed to create any mandatory obligations to, or on behalf of the parties.

Agencies represented herein will review their related policies and make efforts to modify them to avoid conflict with the guidelines.

PROTOCOL FOR MEDICAL MARIJUANA CASES

I. INTRODUCTION

On November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana. The initiative added Health and Safety code section 11362.5 which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician” The codified section is known as the Compassionate Use Act of 1996. Additionally, the state legislature passed Senate Bill 420 in 2003; it became the Medical Marijuana Program Act and took effect on January 1, 2004. This act expanded the definitions of “patient” and “primary caregiver” and created guidelines for identification cards. It defined the amount of marijuana that “patients” and “primary caregivers” can possess. It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana.

The medical marijuana statutes in California craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law and subject to prosecution. To invoke the medical use exception, a person

must be a “qualified patient” or a “primary caregiver”. If a person can prove an applicable legal status, they are entitled to assert this statutory defense.

II. PURPOSE

It is intended that these guidelines will fulfill two important goals: first, clarify what instances of marijuana possession will be considered for personal medical use versus illegal possession and/or cultivation and establish consistent investigative criteria for law enforcement and prosecution; and, secondly, allow the legitimate medicinal user/grower peace of mind that they will not be arrested and prosecuted. Our purpose is to establish Inter-Agency criteria for verification of medicinal marijuana cases and thereby not infringe on legitimate possession of marijuana for medicinal purposes as set forth in Health and Safety Code Section 11362.5.

III. GUIDELINES

Law Enforcement will recognize individuals claiming a medical need for the use of marijuana who have a verifiable oral or written recommendation from one of the following persons:

- A primary care physician in good standing with the Medical Board of California; or
- A physician in good standing with the Medical Board of California to whom the primary care physician has referred the patient.

The recommendation shall include:

- Date of the recommendation and the patient’s name.
- The illness which requires the medical use of marijuana.

- Prescribed or recommended dosage, quantity, and frequency of usage.
- Duration of the recommendation, which is subject to at least annual renewal.

The investigation of the case will remain the responsibility of the jurisdictional agency in which the case occurs. Investigators should attempt to verify the physician's recommendation for the medicinal use of marijuana as outlined.

- Based upon verification of a valid oral or written recommendation and absent evidence of sales or possession for sale, a person with such a recommendation from a physician shall be allowed to possess up to two pounds of dried marijuana per qualified patient consistent with that patient's recommendation.
- A qualified patient or primary caregiver may also maintain no more than six mature female plants or, in the alternative, up to seventy-five (75) square feet of total garden canopy, measured by the combined vegetative growth area, so long as the grow is consistent with the patient's recommendation.
- A qualified patient or primary caregiver may possess any combination of growing or processed marijuana consistent with the above guidelines and their recommendation.

- A qualified patient or primary caregiver may possess an amount greater than listed if the amount is reasonably related to, and consistent with, the patient's **documented** recommendation.

IV. ENFORCEMENT OPTIONS

Officers investigating a possession and/or cultivation of marijuana case should ascertain, as a part of the investigation, whether the marijuana owner is declaring the marijuana to be for medical purposes. To validate this claim, the owner must provide a doctor's written recommendation or supply the doctor's name that gave an oral recommendation and not be in possession of marijuana over the quantities set forth in this directive. In the event the amount of marijuana in question is within the guidelines set forth above and a recommendation is in the possession of the marijuana owner which can be verified, the investigating officer may:

- Release the marijuana to the owner with no further action.
- Weigh, photograph, and take a sample of the marijuana, as well as take a copy of the recommendation. An investigation will take place to determine the validity of the recommendation. If the recommendation is found to be valid, the case may be closed. If not valid, the case will be referred to the District Attorney's Office for review.

Seizure will take place:

- When the validity of the recommendation is in question, or;

- When a claim of “oral recommendation by physician” is made by the marijuana owner with no written recommendation and the claim cannot be verified at the time.

When the officer determines there are questions about the validity of the recommendation or the amount of marijuana exceeds the criteria or both, a written report will be completed, evidence processed, and upon completion of the investigation a copy of the report shall be submitted to the District Attorney for review of potential criminal charges.

V. EXCEPTIONS

- The ultimate discretion whether to bring criminal charges in any case rests solely with the District Attorney.
- Written or oral recommendations, not falling within these guidelines, will be investigated on a case-by-case basis.
- Any additional number of marijuana plants or product not consistent with the guidelines will be considered beyond the allowable amount associated with personal medical use and may subject the entire group or product to criminal investigation and prosecution.

The medical marijuana affirmative defense granted in section 11362.5 Health and Safety Code shall not be applicable when sufficient evidence of possession and/or cultivation of marijuana for sales is present.

These guidelines will remain in effect until further clarified by statute, case law, or modification by the parties.

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DATED: _____