

Medical Marijuana

424.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transportation, delivery, production or use of marijuana under Colorado's medical marijuana laws.

424.1.1 DEFINITIONS

Definitions related to this policy include:

Allowed amount of marijuana - No more marijuana than is medically necessary to address a debilitating or disabling medical condition. Though the amount may be greater, anything at or below the following amount qualifies as an allowed amount (Colo. Const. art. XVIII, § 14; CRS § 25-1.5-106):

- a. No more than 2 ounces of a usable form of marijuana
- b. No more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana

Medical use - The acquisition, possession, production, use or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating or disabling medical condition, which may be authorized only after a diagnosis of the patient's debilitating or disabling medical condition by a physician (Colo. Const. art. XVIII, § 14; CRS § 25-1.5-106).

Patient - A person who has a debilitating or disabling medical condition (Colo. Const. art. XVIII, § 14; CRS § 25-1.5-106).

Primary caregiver - A person, other than the patient and the patient's physician, who is 18 years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating or disabling medical condition (Colo. Const. art. XVIII, § 14). A primary caregiver may have one or more relationships with a patient, including as (CRS § 25-1.5-106):

- a. A parent of a child and anyone who assists that parent with caregiver responsibilities, including cultivation and transportation.
- b. An advising caregiver who advises a patient on which medical marijuana products to use and how to dose them, and does not possess, provide, cultivate or transport marijuana on behalf of the patient.
- c. A transporting caregiver who purchases and transports marijuana to a patient who is homebound.
- d. A cultivating caregiver who grows marijuana for a patient.

Medical Marijuana

Registry Identification Card(RIC) - That document, issued by the Colorado Department of Public Health and Environment, that identifies a patient authorized to engage in the medical use of marijuana and such patient's primary caregiver, if one has been designated (Colo. Const. art. XVIII, § 14).

Usable form of marijuana - The seeds, leaves, buds and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use. It does not include the plant's stalks, stems and roots.

424.2 POLICY

It is the policy of the Louisville 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.

Colorado medical marijuana laws are intended to provide protection from prosecution to those who acquire, possess, manufacture, produce, use, sell, distribute, dispense or transport marijuana for debilitating or disabling medical conditions. However, Colorado 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 Louisville Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Colorado law and the resources of the Department.

424.3 INVESTIGATION

Investigations involving the acquisition, possession, manufacture, production, use, sale, distribution, dispensing or transportation of marijuana generally fall into one of the following categories:

- a. Investigations when no person makes a medicinal claim
- b. Investigations when a medical-use claim is made by an adult who has not been issued a RIC
- c. Investigations when a medical-use claim is made by an adult who has been issued a RIC
- d. Investigations when a medical-use claim is made by a juvenile

424.3.1 INVESTIGATIONS WITH NO MEDICINAL CLAIM

In any investigation involving the possession, delivery, production or use of marijuana or drug paraphernalia where no person claims that the marijuana is being used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use of marijuana under the Colorado Constitution (Colo. Const. art. XVIII, § 16). A medicinal defense may be raised at any time, so officers should document any statements and observations that may be relevant as to whether the marijuana was possessed or produced for medicinal purposes.

Medical Marijuana

424.3.2 INVESTIGATIONS INVOLVING A MEDICAL-USE CLAIM BY AN ADULT WHO HAS NOT BEEN ISSUED A RIC

An adult making a medical-use claim, either as a patient or primary caregiver, should not be arrested for a marijuana-related offense when:

- a. The patient (Colo. Const. art. XVIII, § 14(2); CRS § 25-1.5-106):
 1. Was previously diagnosed by a physician as having a debilitating or disabling medical condition.
 2. Was advised by his/her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating or disabling medical condition.
 3. Was collectively in possession of an allowed amount of marijuana.
- b. The amount is permitted for personal use of marijuana under the Colorado Constitution (Colo. Const. art. XVIII, § 16).

A copy of an application submitted to the Colorado Department of Public Health and Environment, including the written documentation and proof of the date of mailing or other transmission of the written documentation, shall be accorded the same legal effect as a RIC until such time as the patient receives notice that the application has been denied (Colo. Const. art. XVIII, § 14(3)(d)).

424.3.3 INVESTIGATIONS INVOLVING A MEDICAL-USE CLAIM BY AN ADULT WHO HAS BEEN ISSUED A RIC

An adult making a medical-use claim, either as a patient or primary caregiver, shall not be arrested for a marijuana-related offense when all of the following exist (Colo. Const. art. XVIII, § 14(2); CRS § 25-1.5-106):

- a. The patient or primary caregiver is in lawful possession of a RIC.
- b. The marijuana in question is for medical use.
- c. The patient or primary caregiver is in possession of no more than 2 ounces of a usable form of marijuana and no more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

A patient or primary caregiver in lawful possession of a RIC should not be arrested for any quantity of marijuana above the specified amounts of marijuana (2 ounces, six plants) if the amount is no more than is medically necessary to address a debilitating or disabling medical condition.

Medical Marijuana

Evidence that an extended amount is medically necessary may include a voluntary disclosure by the patient in his/her registration information that he/she intends to cultivate more than six plants for his/her own medical use (CRS § 25-1.5-106).

424.3.4 INVESTIGATIONS RELATED TO A MEDICAL-USE CLAIM BY A JUVENILE

A juvenile under the age of 18 shall not be arrested for a marijuana-related offense if all of the following conditions exist (Colo. Const. art. XVIII, § 14(6); CRS § 25-1.5-106):

- a. The juvenile is in lawful possession of a RIC.
- b. The juvenile and parental primary caregiver collectively possess no more than an allowed amount of marijuana.
- c. The parental primary caregiver controls the acquisition, dosage and frequency of use of the marijuana.

424.3.5 ADDITIONAL CONSIDERATIONS

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

1. Officers shall immediately notify the Colorado Department of Public Health and Environment when any person in possession of a RIC has been determined by a court of law to have willfully violated the provisions of medical marijuana laws or has pleaded guilty to such an offense (Colo. Const. art. XVIII, § 14(3); CRS § 25-1.5-106).
2. 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 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.
 4. Any other relevant factors exist, such as limited available department resources and time constraints.
3. Whenever the initial investigation reveals an amount of marijuana greater than that specified by law, officers should consider:
 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. Other factors such as the climate and whether the marijuana is being cultivated indoors or outdoors.

Medical Marijuana

4. Before proceeding with enforcement related to a locally approved business that cultivates, manufactures or sells medical marijuana or medical marijuana-infused products, officers should consider conferring with appropriate legal counsel.
5. Primary caregivers must be registered to cultivate or transport marijuana and have supporting receipts when transporting the marijuana. Officers may report a primary caregiver to the state licensing authority if the primary caregiver fails to provide proper documentation showing that he /she has registered (CRS § 25-1.5-106).
 1. Primary caregivers have additional registration requirements if they grow 37 or more plants. Additionally, primary caregivers may not grow 100 or more plants (CRS § 25-1.5-106).

424.3.6 EXCEPTIONS

Officers may take enforcement action against a patient or primary caregiver who (Colo. Const. art. XVIII, § 14(5); CRS § 25-1.5-106):

- a. Engages in the medical use of marijuana in a way that endangers the health or well-being of any person.
- b. Unlawfully engages in the medical use of marijuana in plain view of, or in a place open to, the general public (CRS § 44-10-702).
- c. Undertakes any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice.
- d. Possesses or uses non-smokable medical marijuana without authorization on school grounds, in a school bus, or at a school-sponsored event (CRS § 22-1-119.3; CRS § 25-1.5-106).
- e. Possesses or uses smokable medical marijuana on school grounds, in a school bus, or at a school-sponsored event (CRS § 22-1-119.3; CRS § 25-1.5-106).
- f. Engages in the use of medical marijuana in a correctional facility, community corrections facility, or in a vehicle, aircraft, or motorboat.
- g. Engages in the use of medical marijuana while sentenced to jail/prison.
- h. Operates, navigates, or is in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana.
- i. Manufactures marijuana concentrate in an unregulated environment using an inherently hazardous substance (CRS § 18-18-406.6).
- j. Grows or possesses on residential property more than the number of marijuana plants as set forth in CRS § 25-1.5-106.

424.4 FEDERAL LAW ENFORCEMENT

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.

424.5 EVIDENCE

Medical Marijuana

424.5.1 MEMBER RESPONSIBILITIES

The investigating member should advise the receiving Property and Evidence Section member when marijuana may be the subject of a medical claim.

424.5.2 PROPERTY AND EVIDENCE SECTION SUPERVISOR RESPONSIBILITIES

The Property and Evidence Section Supervisor shall ensure that marijuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marijuana is not harmed, neglected, injured or destroyed (Colo. Const. art. XVIII, § 14(2)(e)).

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property and Evidence Section Supervisor should follow the Property and Evidence Policy and related procedures.

The Property and Evidence Section Supervisor may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Section Supervisor.

