

# Medical Cannabis

## 428.1 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, and use of cannabis under Maryland's medical cannabis laws (Md. Code CR § 5-601(c)(3); Md. Code AB § 36-101 et seq.).

### 428.1.1 DEFINITIONS

Definitions related to this policy include (Md. Code AB § 36-101; COMAR 10.62.06.01):

**30-day supply** - 120 grams of usable cannabis or 36 grams of tetrahydrocannabinol (THC).

**Administration** – The Maryland Cannabis Administration.

**Cannabis licensee** – A business licensed by the Administration to operate in the cannabis industry.

**Cannabis registrant** – An independent testing laboratory, transporter, security guard company, waste disposal company, or any other business authorized under the Administration to work with a cannabis licensee.

**Caregiver** - A person who has agreed to assist with a qualifying patient's medical use of cannabis, including a parent or legal guardian, or a designee of a parent or legal guardian of a qualified patient under the age of 18.

**Certifying provider** - A person licensed by the State Board of Physicians, the State Board of Dental Examiners, the State Board of Podiatric Medical Examiners, or the State Board of Nursing who has a state-controlled dangerous substances registration and is approved by the Administration to make cannabis available to patients for medical use.

**Dispensary** - An entity licensed by the Administration that acquires, possesses, repackages, transports, sells, distributes, or dispenses cannabis; products containing cannabis; related supplies; related products including tinctures, aerosols, oils, or ointments; or educational materials for use by a qualifying patient or caregiver.

**Identification card** - An identification card provided by the Administration to qualifying patients and caregivers.

**Processor** - An entity licensed by the Administration that transforms cannabis into another product or extract and packages and labels the cannabis product.

**Qualifying patient** - A person who possesses a written certification by a certifying provider with whom the person has a bona fide provider-patient relationship. If the person is under the age of 18, the person must have a caregiver.

**Written certification** - Certification issued by a certifying provider which includes a written statement confirming that, in the certifying provider's professional opinion, the patient has a

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condition justifying the use of medical cannabis and, if appropriate, that a 30-day supply of medical cannabis is not sufficient to meet the patient's medical needs.

#### **428.2 POLICY**

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

Maryland medical cannabis laws are intended to provide protection from prosecution to those who possess a written certification by a certifying provider for the use of cannabis for medical use. However, Maryland medical cannabis laws do not affect federal laws, and there is no medical exception under federal law for the possession or distribution of cannabis. The Havre de Grace Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Maryland law and the resources of the Department.

#### **428.3 INVESTIGATION**

Investigations involving the possession, delivery, production, or use of cannabis generally fall into the following categories:

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when the person is a qualifying patient or caregiver.
- (c) Investigations when the person is otherwise authorized.

##### **428.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM**

In any investigation involving the possession, delivery, production, or use of cannabis or drug paraphernalia where no person claims that the cannabis is used for medicinal purposes, the officer should proceed with a criminal investigation. A medicinal claim may be raised at any time, so officers should document any statements and observations that may be relevant to whether the cannabis was possessed or used for medicinal purposes.

##### **428.3.2 INVESTIGATIONS INVOLVING A QUALIFYING PATIENT OR CAREGIVER**

A qualifying patient or caregiver shall not be arrested for the authorized medical use or possession of cannabis from a dispensary, provided (Md. Code AB § 36-302; Md. Code AB § 36-1201):

- (a) Any qualifying patient possesses no more than a 30-day supply, unless the patient's written certification allows for the possession of more.
- (b) In the case of a caregiver, the caregiver is in possession of the cannabis for a qualifying patient the caregiver has agreed to assist in the use of medical cannabis.

Qualifying patients 21 years or older may also possess four or fewer cannabis plants for cultivation in compliance with Md. Code CL § 5-601.2.

A patient or caregiver identification card should suffice as evidence that a written certification has been issued. Certification or lack of certification should be verified through the Administration's

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registry before making an arrest (COMAR 10.62.04.06; COMAR 10.62.06.01 et seq.). No arrest should be made if there is reason to believe that the individual has a valid claim to possess.

#### 428.3.3 ADDITIONAL CONSIDERATIONS

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

- (a) Because enforcement of medical cannabis 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 cannabis investigations.
  - 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
  - 4. Any other relevant factors, such as available department resources and time constraints.
- (b) Whenever the initial investigation reveals an amount of marijuana greater than that specified by law, officers should consider and document, in anticipation of an affirmative defense:
  - 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. Whether the marijuana is being cultivated indoors or outdoors.
  - 6. The climate.

#### 428.3.4 INVESTIGATIONS INVOLVING OTHER AUTHORIZED INDIVIDUALS

Any person falling into the following categories shall not be arrested for the authorized medical possession of cannabis (Md. Code AB § 36-1201):

- (a) Certifying providers.
- (b) Hospitals, medical facilities, and hospice programs where a qualifying patient is receiving treatment.
- (c) Academic research representatives authorized under Md. Code AB § 36-701 et seq. to research the medical uses, properties, or composition of cannabis.

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- (d) Designated school personnel authorized to administer cannabis to a student under Md. Code ED § 7-446 unless there is reasonable belief of gross negligence or wanton or willful misconduct.
- (e) Cannabis licensees and cannabis registrants.

### **428.4 FEDERAL LAW ENFORCEMENT**

Officers should provide information regarding a cannabis 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.

### **428.5 EVIDENCE**

#### **428.5.1 MEMBER RESPONSIBILITIES**

The investigating member should notify the receiving Property and Evidence Section member in writing when cannabis may be the subject of a medical cannabis claim.

#### **428.5.2 PROPERTYBUREAU SUPERVISOR RESPONSIBILITIES**

The Property and Evidence Section supervisor should ensure that cannabis, drug paraphernalia, or other related property seized from a person engaged or assisting in the use of medical cannabis is not destroyed. The Property and Evidence Section supervisor is not responsible for caring for live cannabis plants.

Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Property and Evidence Section supervisor should return to the person from whom it was seized any useable cannabis, plants, drug paraphernalia, or other related property.

The Property and Evidence Section supervisor should not destroy cannabis that was alleged to be for medical purposes except upon receipt of a court order.

The Property and Evidence Section supervisor may release cannabis to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Criminal Investigations Division supervisor.