

## Medical Marijuana

### 422.1 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 cannabis under the Illinois Compassionate Use of Medical Cannabis Pilot Program Act (the Act) (410 ILCS 130/1 et seq.).

#### 422.1.1 DEFINITIONS

Definitions related to this policy include (410 ILCS 130/10):

**Authorized amount** - No more than 2.5 ounces of usable cannabis unless the person has a Department of Public Health-approved quantity waiver for more than 2.5 ounces. The pre-mixed weight of cannabis used in making cannabis-infused products shall apply toward the authorized amount of cannabis.

**Cardholder** - A person who has been issued a valid registry identification card by the Department of Public Health.

**Dispensary** - An organization or business that is registered by the Department of Financial and Professional Regulation to acquire medical cannabis from a registered cultivation center for the purpose of dispensing cannabis, paraphernalia or related supplies and educational materials to cardholders.

**Medical use of cannabis** - The acquisition, administration, delivery, possession, transfer, transportation or use of cannabis to treat or alleviate a person's debilitating medical condition or symptoms associated with the debilitating medical condition.

**Qualifying patient** - A person who has been diagnosed by a physician as having a debilitating medical condition listed in 410 ILCS 130/10(h).

**Registered designated caregiver** - A person who has a valid registry identification card to assist a qualifying patient with the medical use of cannabis.

**Registry identification card** - A document issued by the Department of Public Health that identifies a person as a registered qualifying patient or registered designated caregiver.

**Usable cannabis** - The seeds, leaves, buds and flowers of the cannabis plant. It does not include the stalks and roots of the plant or the weight of any non-cannabis ingredients combined with cannabis, such as ingredients added to prepare a topical administration, food or drink.

### 422.2 POLICY

It is the policy of the Urbana 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.

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Illinois medical cannabis laws are intended to provide protection from arrest and prosecution to those who comply with the registration requirements of the law and who use, possess or provide care to mitigate the symptoms of certain chronic or debilitating medical conditions, or produce or deliver cannabis. However, Illinois 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 Urbana Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Illinois law and the resources of the Department.

### **422.3 INVESTIGATION**

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

- (a) Investigations when no person makes a medicinal claim
- (b) Investigations when a medicinal claim is made by a cardholder

#### **422.3.1 INVESTIGATIONS WITH NO MEDICINAL 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 defense 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 produced for medicinal purposes.

#### **422.3.2 INVESTIGATIONS INVOLVING A CARDHOLDER**

No arrest should be made when a person is in possession of, delivers or uses cannabis or cannabis paraphernalia when the following amounts of cannabis are not exceeded (410 ILCS 130/10):

- (a) 2.5 ounces of cannabis obtained from a dispensary
- (b) More than 2.5 ounces of cannabis obtained from a dispensary if the person has a Department of Public Health-approved quantity waiver

The total amount possessed between the patient and caregiver shall not exceed the patient's adequate supply.

Despite the existence of a valid registry identification card, if there is evidence that the conduct related to cannabis was not for the purpose of treating or alleviating the qualifying patient's medical condition or symptoms associated with the medical condition, a criminal investigation should occur (410 ILCS 130/25(a)-(d)).

Registered qualifying patients and their designated caregivers are required to possess their registry identification card at all times when engaging in the medical use of cannabis (410 ILCS 130/70). However, officers who reasonably believe that a person who does not have a registry identification card in his/her possession has been issued a card may treat the investigation as if the person had the card in his/her possession.

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#### 422.3.3 ADDITIONAL CONSIDERATIONS

Officers should consider the following when investigating an incident involving cannabis possession, delivery, production or use (410 ILCS 130/25):

- (a) No person may be arrested solely for:
  - 1. Selling cannabis paraphernalia to a cardholder, if the person is employed and registered as a dispensing agent of a dispensary.
  - 2. Being in the presence or vicinity of the medical use of cannabis.
  - 3. Assisting a qualifying patient in possession of a registry identification card with the act of administering cannabis.
- (b) Cannabis, cannabis paraphernalia, illegal property, or interest in legal property that is possessed, owned or used in connection with the medical use of cannabis may not be seized or forfeited. However, nothing in this policy prohibits cannabis exceeding the authorized amounts or unrelated to any cannabis that is possessed, manufactured, transferred or used under the Act from being seized or forfeited
- (c) Possession of, or application for, a registry identification card or registration certificate does not itself constitute reasonable suspicion or probable cause to search, nor does it preclude the existence of other independent probable cause.
- (d) 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. There are any other relevant factors, such as available department resources and time constraints.
- (e) Registered cultivation centers and dispensaries, as well as their officers, agents and employees, may not be searched or seized solely because they are a cultivation center or dispensary, or officers, agents or employees of such facilities.
- (f) Before proceeding with enforcement related to a cultivation center, officers should consider conferring with appropriate legal counsel.

#### 422.3.4 EXCEPTIONS

This policy does not apply to the following offenses. Officers may take enforcement action if the person (410 ILCS 130/30):

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- (a) Undertakes any task under the influence of cannabis when doing so would constitute negligence, professional malpractice or professional misconduct.
- (b) Possesses or uses cannabis:
  - 1. In a school bus.
  - 2. On the grounds of any preschool, or primary or secondary school.
  - 3. In any correctional facility.
  - 4. In a vehicle, except that a person may possess medical cannabis if it is in a reasonably secured, sealed, tamper-evident container and is reasonably inaccessible while the vehicle is moving.
  - 5. In a private residence that is used at any time to provide licensed child care or other similar social service care on the premises.
- (c) Uses cannabis:
  - 1. In any motor vehicle.
  - 2. In any place except a private residence where an individual could reasonably be expected to be observed by others.
  - 3. Knowingly in close physical proximity to anyone under the age of 18.
  - 4. As an active duty law enforcement officer, correctional officer, correctional probation officer or firefighter.
  - 5. As a person with a school bus permit or a Commercial Driver's License (CDL).
- (d) Smokes medical cannabis in any place where smoking is prohibited under the Smoke Free Illinois Act.
- (e) Operates, navigates or is in actual physical control of any motor vehicle, aircraft or motorboat while using or under the influence of cannabis, in violation of Sections 11-501 and 11-502.1 of the Illinois Vehicle Code
- (f) Uses or possesses cannabis if that person does not have a debilitating medical condition and is not a registered qualifying patient or registered designated caregiver.
- (g) Allows another person who is not allowed to use cannabis under the Act to use cannabis that a cardholder is allowed to possess.
- (h) Transfers cannabis to any person contrary to the provisions of the Act
- (i) Drives any vehicle in violation of Section 11-503 of the Illinois Vehicle Code (reckless driving).

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### **422.4 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.

### **422.5 PROPERTY AND EVIDENCE DIVISION SUPERVISOR RESPONSIBILITIES**

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

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