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## Medical Marihuana

### 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 or use of marihuana under the Michigan Medical Marihuana Act (MCL 333.26421 et seq.).

#### 428.1.1 DEFINITIONS

Definitions related to this policy include (MCL 333.26423):

**Medical use** - The acquisition, possession, cultivation, manufacture, extraction, use, internal possession, delivery, transfer, or transportation of marihuana, marihuana-infused products, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

**Primary caregiver or caregiver** - A person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana; who has not been convicted of any felony within the past 10 years; and who has never been convicted of a felony involving illegal drugs or a violent felony set forth in MCL 333.26423.

**Qualifying patient or patient** - A person who has been diagnosed by a physician as having a debilitating medical condition.

**Registry identification card (RIC)** - A document issued by the Michigan Department of Licensing and Regulatory Affairs that identifies a person as a registered qualifying patient or registered primary caregiver.

**Usable marihuana** - The dried leaves and flowers, plant resin, or extract of the marihuana plant, not including the seeds, stalks, and roots of the plant.

**Usable marihuana equivalent** - An amount of usable marihuana in a marihuana-infused product processed for human consumption by means other than smoking. The amounts that equate to 1 ounce of usable marihuana are (MCL 333.26424):

- (a) 16 ounces of marihuana-infused product if in a solid form.
- (b) 7 grams of marihuana-infused product if in a gaseous form.
- (c) 36 fluid ounces of marihuana-infused product if in a liquid form.

**Written certification** - A document signed by a physician, stating all of the following:

- (a) The patient's debilitating medical condition.
- (b) The physician has completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person medical evaluation.
- (c) In the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's

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debilitating medical condition or symptoms associated with the debilitating medical condition.

### **428.2 POLICY**

It is the policy of the Kalamazoo Department of Public Safety to prioritize resources to avoid making arrests related to marihuana that the arresting public safety officer reasonably believes would not be prosecuted by state or federal authorities.

Michigan's medical marihuana laws are intended to provide protection from prosecution to those who use, possess, deliver or produce marihuana to mitigate the symptoms of certain chronic or debilitating medical conditions. However, Michigan medical marihuana laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of marihuana. The Kalamazoo Department of Public Safety will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under Michigan law and the resources of the Department.

### **428.3 INVESTIGATION**

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

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a person with a RIC.
- (c) Investigations involving a caregiver with a RIC.
- (d) Investigations related to more than an allowable amount by a person with a RIC or medical claim by someone without a RIC.
- (e) Investigations involving a qualifying patient or caregiver interacting with a licensed marihuana facility.

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

In any investigation involving the possession, delivery, production, or use of marihuana or drug paraphernalia where no person claims that the marihuana is used for medicinal purposes, the public safety officer should proceed with a criminal investigation if the amount is greater than permitted for personal use of marihuana under the Michigan Regulations and Taxation of Marihuana Act. A medicinal defense may be raised at any time, so public safety officers should document any statements and observations that may be relevant to whether the marihuana was possessed or produced for medicinal purposes.

#### **428.3.2 INVESTIGATIONS INVOLVING A PATIENT WITH A RIC**

Public Safety Officers shall not arrest or take other enforcement action against a qualifying patient with a RIC for possessing or manufacturing (MCL 333.26424):

- (a) A combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents or less.
- (b) 12 marihuana plants kept in an enclosed, locked facility.

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Incidental amount of seeds, stalks and unusable roots shall not be included in the 2.5 ounces of marihuana.

If a patient exceeds the above amount, the matter should be investigated as if the person did not have a RIC but had a medical claim as set forth below.

### 428.3.3 INVESTIGATIONS INVOLVING A CAREGIVER WITH A RIC

Public Safety Officers shall not arrest or take other enforcement action against a caregiver with a RIC for possessing or manufacturing (MCL 333.26424):

- (a) A combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents or less for each qualifying patient to whom he/she is connected through the registration process.
- (b) 12 marihuana plants kept in an enclosed, locked facility for each registered patient who has specified that the caregiver will be allowed to cultivate marihuana for the patient.

Incidental amount of seeds, stalks and unusable roots shall not be included in the 2.5 ounces of marihuana.

If a caregiver exceeds the above amount, the matter should be investigated as if the person did not have a RIC but was cultivating for a person with a medical claim as set forth below.

### 428.3.4 INVESTIGATIONS INVOLVING A MEDICAL CLAIM BY A PERSON WITHOUT A RIC

Public Safety Officers should not arrest a person for possessing marihuana or cultivating marihuana if they claim to be a patient or a caregiver for a patient and (MCL 333.26424; MCL 333.26428):

- (a) There is a written certification or a physician was available and could confirm the patient's status.
- (b) The amount of marihuana in question appeared reasonably necessary to ensure the uninterrupted availability of marihuana to the patient.
- (c) The marihuana was legitimately possessed or cultivated for a medical purpose.
- (d) No other facts suggest the person would not qualify for a defense to the possession under MCL 333.26428.

### 428.3.5 INVESTIGATIONS INVOLVING A QUALIFYING PATIENT OR CAREGIVER INTERACTING WITH A LICENSED MARIHUANA FACILITY

Public Safety Officers shall not arrest or take other enforcement action against a qualified patient or caregiver for (MCL 333.26424a; MCL § 333.27203):

- (a) Transferring or purchasing marihuana in an authorized amount from a licensed provisioning center.
- (b) Transferring or selling marihuana seeds or seedlings to a licensed grower.
- (c) Transferring marihuana for testing to and from a licensed safety compliance facility.

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#### 428.3.6 ADDITIONAL CONSIDERATIONS

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

- (a) Because enforcement of medical marihuana laws can be complex, time consuming, and call for resources unavailable at the time of initial investigation, public safety 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 marihuana 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 marihuana greater than that specified by law, public safety officers should consider and document, in anticipation of an affirmative defense:
  - 1. The amount of marihuana recommended by a medical professional to be ingested.
  - 2. The quality of the marihuana.
  - 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 marihuana).
  - 5. Whether the marihuana is being cultivated indoors or outdoors, the climate.
- (c) Before proceeding with enforcement related to growers, processors, provisioning centers, secure transporters, and safety compliance facilities, public safety officers should consider conferring with appropriate legal counsel and the Michigan Department of Licensing and Regulatory Affairs to ensure their activities are not protected (MCL 333.27201; MCL 333.27401).
- (d) The Michigan Department of Licensing and Regulatory Affairs' statewide monitoring system may be accessed, when available, to verify registry identification cards (MCL 333.27902).
- (e) Transporting or possessing marihuana-infused products in or upon a motor vehicle is restricted as set forth in MCL 333.26424b.

#### 428.3.7 EXCEPTIONS

This policy does not apply to the following offenses. Public Safety Officers may take enforcement action if the person (MCL 333.26427):

- (a) Undertakes any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

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- (b) Possesses marihuana, or otherwise engages in the medical use of marihuana in a school bus, on school grounds or in any correctional facility.
- (c) Smokes marihuana on any form of public transportation or in any public place.
- (d) Operates, navigates or is in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle or motorboat while under the influence of marihuana.
- (e) Uses marihuana when he/she really does not have a serious or debilitating medical condition.
- (f) Separates plant resin from a marihuana plant by butane extraction in any public place or motor vehicle, or inside or near any residential structure.
- (g) Separates plant resin from a marihuana plant by butane extraction in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others.

### **428.4 FEDERAL LAW ENFORCEMENT**

Public Safety Officers should provide information regarding a marihuana investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities or whenever the public safety officer believes those authorities would have a particular interest in the information.

### **428.5 EVIDENCE ROOM SUPERVISOR RESPONSIBILITIES**

The Evidence Room personnel should ensure that marihuana, drug paraphernalia or other related property seized from a person engaged or assisting in the use of medical marihuana is not destroyed. The Evidence Room personnel are not responsible for caring for live marihuana plants.

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

The Evidence Room personnel should not destroy marihuana that was alleged to be for medical purposes except upon receipt of a court order.

The Evidence Room personnel may release marihuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Criminal Investigations Division personnel.