

HAWAII POLICE DEPARTMENT
RULES AND REGULATIONS GOVERNING
INVESTIGATIONS INVOLVING THE MEDICAL AND RELIGIOUS
USE OF MARIJUANA

I. PURPOSE

To establish rules and regulations relative to investigations conducted by the Hawaii Police Department, involving the medical and religious use of marijuana.

II. DEFINITIONS

- A. "Adequate supply" means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant (Hawaii Revised Statutes Section 329-121).
- B. "Debilitating medical condition" means:
1. Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
 2. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - (a) Cachexia or wasting syndrome;
 - (b) Severe pain;
 - (c) Severe nausea;
 - (d) Seizures, including those characteristic of epilepsy; or
 - (e) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
 3. Any other medical condition approved by the Department of Health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient (Hawaii Revised Statutes Section 329-121).
- C. "Immature marijuana plants" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination (Hawaii Administrative Rules, Title 23, Department of

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Public Safety, Subtitle 3, Law Enforcement, Chapter 202, Medical Use of Marijuana, Section 2).

- D. "Marijuana" means all parts of the plant (genus) Cannabis whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber oil, or cake, or the sterilized seed of the plant which is incapable of germination. (Hawaii Revised Statutes Section 712-1240).
- E. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination (Hawaii Administrative Rules, Title 23, Department of Public Safety, Subtitle 3, Law Enforcement, Chapter 202, Medical Use of Marijuana, Section 2).
- F. "Primary caregiver" means a person, other than the qualifying patient and the qualifying patient's physician, who is eighteen-years-of-age or older who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody (Hawaii Revised Statutes Section 329-121).
- G. "Probable cause" means facts and circumstances within a law enforcement officer's knowledge and of which the officer has reasonably trustworthy information that are sufficient in themselves to warrant a person of reasonable caution in the belief that a crime has been or is being committed (Hawaii Revised Statutes Section 803-5).
- H. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition (Hawaii Revised Statutes Section 329-121).
- I. "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture of preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant (Hawaii Revised Statutes Section 329-121).

III. MEDICAL MARIJUANA GUIDELINES

The medical marijuana law places a substantial burden on law enforcement officers to anticipate potential medical use claims in the initial stages of the investigation. Officers are to be guided by:

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- A. Hawaii Administrative Rules, Title 23, Department of Public Safety, Subtitle 3, Law Enforcement, Chapter 202, Medical Use of Marijuana;
- B. Sections 329-121 through 329-128 of the Hawaii Revised Statutes, as amended, governing the medical use of marijuana, registration requirements, and the afforded protection it may provide to the qualifying patient, primary caregiver and physician.

IV. CONDITIONS OF USE (REGISTRATION REQUIREMENTS)

- A. A qualifying patient must have a registry identification certificate from the Department of Public Safety that identifies a patient authorized to engage in the medical use of marijuana, the patient's physician, the patient's designated primary caregiver, if any, and the location of the authorized marijuana plants.
- B. All primary caregivers must have a valid registry identification certificate from the Department of Public Safety that identifies a patient authorized to engage in the medical use of marijuana, the patient's physician, the patient's designated primary caregiver, and the location of the authorized marijuana plants. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.
- C. A qualifying patient and a primary caregiver may not jointly possess more than the "adequate supply." If a qualifying patient and a primary caregiver possess, deliver, or produce marijuana in excess of the amounts allowed, such individuals are not exempted from the criminal laws of the Federal and/or State governments.
- D. The medical use of marijuana authorization shall not apply to the medical use of marijuana that endangers the health or well-being of another person; in a school bus, public bus or any moving vehicle; in the workplace of one's employment; on any school grounds; at any public park, public beach, public recreation center, recreation or youth center; or any other place open to the public.

V. DETERMINING REGISTRATION STATUS

Officers investigating a possession and/or cultivation of marijuana incident should ascertain as part of the investigation whether the person has a legal right to acquire, possess, cultivate, or use marijuana as described in Section 329-122 of the Hawaii Revised Statutes, as amended, Medical use of marijuana; condition of use.

- A. Stops and Encounters – Warrantless Arrests and Searches. Before making a warrantless arrest or warrantless search or seizure based on probable cause, an officer shall ascertain if the person has a registry identification certificate, unless

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evidence exists of conduct that would disqualify the person from the medical use of marijuana defense (Hawaii Revised Statutes, Chapter 329-125).

1. An officer may confirm the claim of possessing a registry identification certificate by a qualifying patient or primary caregiver by contacting the Department of Public Safety. The Department of Public Safety can be contacted by telephone, 24 hours a day, at (808) 837-8470.
 2. If the person is not present, but their identification is known, an officer shall check with the Department of Public Safety to determine if the person is a registered qualifying patient or primary caregiver.
 3. If the identification of the person is not known, an officer shall check with the Department of Public Safety, to determine if the location is a registered medical marijuana growing site.
- B. Search Warrants. Before seeking a search warrant, an officer shall check with the Department of Public Safety, by name and/or location, to determine whether the person under investigation has been issued a registry identification certificate.
1. If the Department of Public Safety indicates that the person under investigation is currently registered or that the location where marijuana is being grown is listed as a medical marijuana growing site, no warrant should be sought, unless evidence exists of conduct that would disqualify the person from the medical use of marijuana defense, or probable cause exists that another criminal offense has been or is being committed.
 2. The Affidavit for Search Warrant shall include that checks were conducted with the Department of Public Safety and the result of such checks.
- C. Marijuana Eradication. Officers participating in marijuana eradication missions shall be guided by the above procedures and the rules and regulations governing marijuana eradication operations and reconnaissance missions.

VI. EXCEPTIONS

- A. If the validity of the registry identification certificate cannot be determined and the amount of marijuana plants fall within the criteria of the Medical Use of Marijuana Law, the officer shall seize only enough small cuttings of marijuana not to exceed two grams, to conduct confirmatory testing and document the extent of the grow through photography. The investigation shall be routed to the Prosecutor's Office for disposition.

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- B. Any additional number of marijuana plants or product exceeding adequate supply shall be considered more than is reasonably necessary and subject the entire crop of product to criminal investigation and prosecution.

VII. PROTECTION OF MARIJUANA AND OTHER SEIZED PROPPERTY

- A. Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protection offered by the Medical Use of Marijuana Law.
 - 1. The Hawaii Police Department shall not be responsible for the care and maintenance of seized live marijuana plants (Hawaii Revised Statutes Section 329-127).

VIII. FRAUDULENT MISREPRESENTATION

- A. Fraudulent misrepresentation to a law enforcement official of any fact or circumstances relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable under Section 329-128 of the Hawaii Revised Statutes.
- B. Fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician not covered under Section 329-126 of the Hawaii Revised Statutes, as amended, for the medical use of marijuana shall be punishable under Section 329-128 of the Hawaii Revised Statutes.

IX. RELIGIOUS USE OF MARIJUANA

- A. An officer shall document all claims of religious use of marijuana made by a defendant.
 - 1. Spontaneous utterances and statements made after the defendant is advised of his/her rights shall be documented in a supplementary report and submitted as part of the investigation.
 - 2. All documents explaining the religious use of marijuana to include fliers, identification cards, etc., voluntarily given to the investigating officer, shall be recovered as evidence and submitted as part of the investigation.
- B. Arrests, as in any other criminal case, shall be based upon probable cause.

