



Seattle Police Department

DIRECTIVE



January 13, 2010

D 10-001

Revision
DP&P 15.150-Narcotics
Medical Marijuana

DP&P section 15.150 (Preliminary Investigations-Narcotics) has been revised to address the 2007 amendment to the Washington State Medical Marijuana Act, which allows possession and medical use of limited amounts of marijuana for personal use by patients with certain terminal or debilitating illnesses and who are under the care of a physician.

The 2007 amendment adopted a 60-day supply rule and in 2008 [WAC246-75-010] defined the 60-day supply for qualifying patients or designated providers as no more than 24 ounces (684 grams) of useable marijuana and no more than 15 plants. The WAC states that this is a presumption that may be overcome with a qualifying patient's necessary medical use. Useable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and does not include "stems, stalks, seeds and roots". A plant is defined as "any marijuana plant in any stage of growth".

An offender who claims medical marijuana protection but appears to be operating outside state law can be served with a legal notice that documents the quantity of marijuana found and explains the parameters of the law. If these suspects provide proof or assert they are a qualified marijuana user or designated provider, officers and/or detectives will leave a 60-day supply of marijuana for them. The prosecuting attorney will review the case and make a charging decision. There are two versions of the legal notice, one is for patients (form 18.8) and the other is for providers (form 18.7). The forms are posted online and available via the Word templates, paper versions (triplicate) of the form will be available via the Quartermaster in the near future.

On a safety note, officers should be aware that marijuana is commonly infected with fungi and bacteria, which can be found in both the growing plants and decaying plant material. Additionally, dangerous chemicals can often be found at the scene of grow operations. More information about the hazards of grow operations can be found in Procedures & Tactics Publication #049 (Marijuana Grow Farm Response Protocols).

The revised manual section (excerpt below) provides guidelines for enforcement. The online manual has been updated.

John Diaz
Interim Chief of Police

Excerpt from DP&P 15.150 – Narcotics (paragraph VIII revised)

VIII. Medical Marijuana Act

- A. The purpose of this policy section is to assist police officers and supervisors with the investigation of possession and/or manufacturing of marijuana in cases when people assert that they are either a medical marijuana patient or a designated provider. This type of investigation will involve determining if offenders are in compliance with the definition of “sixty (60) day supply” of medical marijuana as well as the quantity of marijuana that should be seized for various purposes (field testing, evidence for trial, and destruction).
1. This policy does not invalidate the detention or the arrest of a person based either on a warrant or probable cause, or on-view violations of any criminal law. Furthermore, case law states that a suspect’s production of a document purporting to be a marijuana use authorization does not prohibit further investigation by police officers who have probable cause to search the suspect’s home when they smelled the odor of marijuana. (State v. Fry, 142 Wash.App.456, 174 P3rd.1258).
 2. SMC 12A.20.060 states that the Seattle Police Department and the City Attorney’s Office shall make the investigation, arrest and prosecution of marijuana offenses the City’s lowest law enforcement priority, where the marijuana was intended for adult personal use. In addition, the Seattle Police Department is sensitive to the fact that some medical marijuana patients and designated providers may have difficulty obtaining marijuana for medicinal use. Although the Seattle Police Department is required to enforce the Medical Use of Marijuana Act and its subsequent amendments, this does not prohibit the police department from exercising some discretion while investigating these cases.
 - a. In each case, a responding supervisor should consider the totality of the circumstances when considering a course of action. The supervisor’s decision to take action or not should be weighed in favor of keeping the community safe. Factors to consider may include:
 - (1) An apparent “for profit” operation.
 - (2) Presence of weapons.
 - (3) Theft of electrical power.
 - (4) Other illegal drugs at the premise.
 - (5) Record of citizen complaint and/or nuisance behavior consistent with narcotics trafficking.
 - (6) Presence of children.
 - (7) Environmental concerns.
 - (8) Violent crime or other demonstrated dangers to the community.
- B. The Enforcement Policy for the Washington State Medical Marijuana Act (Initiative 692) is predicated on state law. In 2008, the Washington Department of Health clarified the law by

adopting a rule, which defined a sixty (60) day supply of marijuana for qualifying patients with certain terminal or debilitating illnesses, who are under the care of a physician. The law also protects a qualifying patient's designated provider of marijuana.

1. The sixty (60) day supply is defined by law as no more than twenty-four (24) ounces of usable marijuana (684 grams) and no more than fifteen (15) plants.
 - a. Usable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and does not include "stems, stalks, seeds and roots".
 - b. A "plant" is defined as "any marijuana plant in any stage of growth".
- C. When you have detained someone for possession of marijuana and/or if during a search, a person asserts that they are a qualifying medical marijuana patient or designated provider, then;
 1. Advise the person of their Miranda Rights. Ensure that they understand their rights and the reason for your advisement. (Although it is a low priority for the City of Seattle, "possession of marijuana" remains a federal crime and non-medicinal use remains a crime under Washington State law).
 2. Require proof of identity, such as a Washington State Driver's License or Identification Card.
 3. **Qualifying patients** must carry their valid documentation with them whenever they possess or use medical marijuana. Valid documentation consists of two items:
 - a. Their physician's authorization, and;
 - b. Proof of their identity, such as a Washington State Driver's License or Identification Card.
 4. If a person asserts that they are a **designated provider**, the person must be 18 years of age or older and the designated provider must carry:
 - a. A copy of the patient's designation.
 - b. A copy of the patient's physician authorization, and;
 - c. Proof of identity whenever he or she is growing, obtaining, or in possession of medical marijuana, to be presented to law enforcement upon request.
 5. If a person asserts that they are **both a qualifying patient and a designated provider**, they are required to have the documentation for both (3 & 4 above).
 6. Attempt to document the person's identity either as a qualifying patient or designated provider. If possible, photograph or photocopy the person's identification and medical authorization. Originals must be returned to the person. Only in the case of stolen documents or obvious forgeries should the originals be placed in evidence.
 7. The Office of the King County Prosecuting Attorney does not intend to prosecute individuals who are truly ill. While some of these individuals will have the paperwork to show compliance with the affirmative defense of RCW 69.51A, some will not. Prosecutors are not likely to charge medically ill people who have reasonably tried but failed to have their medical marijuana paperwork in order.

D. Apparent Compliance with the Law**1. Marijuana Possession**

- a. If the designated provider or patient asserts protection under the Medical Marijuana Act and appears to possess only a sixty (60) day supply of marijuana, use the following guidelines:
 - (1) Collect a 1-gram sample, field test it, and place it into evidence.
 - (2) Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor or city attorney.
 - (3) Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - (4) Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.

2. Marijuana Grow Operation

- a. If the designated provider or patient asserts protection under the Medical Marijuana Act and appears to possess only a sixty (60) day supply of marijuana, use the following guidelines:
 - (1) Photograph the entire quantity of marijuana to illustrate the amount, size of plants, paraphernalia, and any other detail related to the size of the “grow”.
 - (2) Include a measurement device in the photos to illustrate the approximate size.
 - (3) Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.
 - (4) Collect a 1-gram sample, field test it, and place it into evidence.
 - (5) Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - (6) Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor or city attorney.
 - (7) Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
 - (8) Inform the patient or designated provider that they should review the Washington State Medical Marijuana Act and obtain the required qualifying documents if they were unable to produce them.

3. Dual coverage under the statute.
 - a. If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the sixty-day supply of marijuana should be doubled to 48 ounces of usable marijuana (1,268 grams) and no more than thirty (30) plants. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with a sixty-day supply for his/her personal use.

E. **Apparent Non-Compliance with the Law**

1. If the patient or designated provider asserts protection under the Medical Marijuana Act and possesses a quantity of marijuana and/or plants clearly in excess of the definition of sixty (60) day supply, appropriate steps should be taken to seize the usable marijuana and plants that are in excess of the definition of personal use. Refer the case to the Office of the King County Prosecuting Attorney to determine if criminal charges should be filed.
 - a. Serve the Medical Marijuana user/claimant a *Legal Notice to Medical Marijuana Patient* (form 18.8) and/or the provider a *Legal Notice to Designated Medical Marijuana Provider* (form 18.7). The forms are available online or via the Quartermaster Unit (triplicate version).
 - (1) Attempt to obtain a signature on the form(s) from the user/claimant and/or the provider.
 - (2) If there is a refusal to sign, make note of this fact on the form, an unsigned form is acceptable.
 - (3) Provide the user/claimant and/or provider with a copy of the form.
 - (4) The original copy of the form shall be forwarded to the Records Section.
 - (5) Inform the patient or designated provider that they should review the Washington State Medical Marijuana Act and obtain the required qualifying documents if they are unable to produce them.
2. **Marijuana Possession**
 - a. Provide the claimant with approximately twenty-four (24) ounces (684 grams) of usable marijuana by filling two 15" x 18" air-dry bags with marijuana.
 - b. Take a random sample of the marijuana by filling one 9" by 12" air-dry bag for evidence.
 - c. The excess marijuana (excluding the claimant's twenty-four (24) ounces and the random sample) shall be placed in evidence for destruction.
 - d. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor.

- e. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - f. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.
3. Marijuana Grow Operation
- a. Seize all but fifteen (15) marijuana plants.
 - (1) If the patient or designated provider is present, then they may select the fifteen (15) marijuana plants that will remain at the location.
 - (2) If the suspect is not present at the grow operation and the investigating officer or detective has knowledge that the suspect is a patient or designated provider, then fifteen (15) plants in various stages of growth (including mature plants if present) should be left at the scene.
 - b. Photograph the entire quantity of marijuana to illustrate the amount, size of plants, paraphernalia and any other detail related to the size of the “grow”.
 - c. Include a measurement device in the photos to illustrate the approximate size.
 - d. Count the number of plants and note all equipment used for growing, harvesting, packaging or using marijuana.
 - e. Provide the claimant with approximately twenty-four (24) ounces (684 grams) of usable marijuana by filling two 15” x 18” air-dry bags with the substance. DO NOT harvest 24-ounces from growing marijuana plants for the claimant or provider because fresh marijuana does not meet the definition of usable (dried) marijuana.
 - f. Take a random sample of the marijuana by filling one 9” by 12” air-dry bag for evidence and for use at trial.
 - g. The excess marijuana (excluding the claimant’s 15 plants, 24 ounces, and the random sample) shall be seized and placed in evidence for destruction.
 - h. Leave all of the grow equipment at the scene, unless removal is authorized by a Narcotics supervisor.
 - i. Make a note if the person claims medical marijuana protection but has no documentation; share this with follow-up detectives and the prosecutor.
 - j. Complete a *General Offense Report* and forward a copy to the Narcotics Section.
 - k. Advise the suspect that it is a misdemeanor to use or display medical marijuana in a manner or place that is open to the public and note such advice in the *General Offense Report*.

4. Dual coverage under the statute.
 - a. If a qualifying patient also asserts that he/she is also a designated provider to one other qualifying patient, and can provide the name and contact information of the other qualifying patient, the sixty-day supply of marijuana should be doubled to 48 ounces of usable marijuana (1,268 grams) and no more than thirty (30) plants. However, if the patient cannot supply the identification information of the other patient, the patient/provider will only be provided with a sixty-day supply for his/her personal use.
 - (1) If the patient or designated provider is present, then they may select the thirty (30) marijuana plants that will remain at the location.

F. Screening Medical Marijuana Incidents with Narcotics

1. It is recommended that officers and supervisors screen medical marijuana incidents with a Narcotics Section sergeant prior to taking action, including leaving the scene, booking the suspect, or seizing marijuana.

G. Medical Marijuana Suspects who are Seriously Ill

1. Avoid booking individuals who are seriously ill, because it is unlikely that the King County Prosecuting Attorney's Office will charge them. If there are no outstanding arrest warrants, the best option is to investigate and release.

H. Narcotics Section sergeants are available 24 hours a day and may be contacted via SPD Communications Section.



Seattle Police Department Legal Notice to Designated Medical Marijuana Provider

Name: _____ General Offense Number: _____

Address: _____ Date of Incident: _____

On the ____ day of _____, 20__ the Seattle Police Department conducted a search at the above address and found: _____ Marijuana plants _____ Ounces (approximately) of usable marijuana

You have informed the Seattle Police Department that you are a designated medical marijuana provider entitled to possess a 60-day supply of medical marijuana pursuant to the **Medical Use of Marijuana Act (I-692)**.

A designated provider is defined as a person who: (a) Is 18 years of age or older; (b) Has been designated in writing by a patient to serve as a designated provider under this chapter; (c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as a designated provider (this does not prohibit a patient from being a designated provider for another patient and consuming his or her own personal supply of medical marijuana); and (d) Is the designated provider to only one patient at any one time.

The qualifying patient must designate the provider in writing before the provider assumes responsibility for the patient's medical marijuana, and **the designated provider must carry (1) a copy of the patient's designation, (2) a copy of the patient's physician authorization, and (3) proof of identity whenever he or she is growing, obtaining, or in possession of medical marijuana**, to be presented to law enforcement upon request.

RCW 69.51A.040 states that qualifying patients and designated providers are permitted to possess "no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a 60-day supply." **WAC 246-75-010** defines a 60-day supply as "a total of no more than twenty-four ounces/684 grams of usable marijuana, and no more than fifteen plants." Usable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and a plant is defined as "any marijuana plant in any stage of growth."

The evidence recovered during this search provides probable cause that you have violated **RCW 69.50.401**. However since you have asserted to the Seattle Police Department that you are a designated medical marijuana provider as defined by (I-692) a "60-day supply" of medical marijuana will not be seized and is being left for the patient's personal use.

The Office of the King County Prosecuting Attorney will review the case and make a charging decision. You are advised to contact an attorney familiar with the Medical Use of Marijuana Act so that your use of medical marijuana is in compliance with the law.

Date Served: _____

Served By: _____
(Detective/Officer serial #)

Signed: _____
Acknowledged receipt of document

Distribution: Original to Records Copy to Designated Medical Marijuana Provider Copy to Unit of Origin



Seattle Police Department Legal Notice to Designated Medical Marijuana Patient

Name: _____ General Offense Number: _____

Address: _____ Date of Incident: _____

On the ____ day of _____, 20__ the Seattle Police Department conducted a search at the above address and found: _____ Marijuana plants _____ Ounces (approximately) of usable marijuana

You have informed the Seattle Police Department that you are a qualifying patient entitled to possess a 60 day supply of medical marijuana pursuant to the **Medical Use of Marijuana Act (I-692)**.

This document is legal notice to you that the Washington Department of Health clarified the Medical Use of Marijuana Act (I-692) by adopting a rule defining a "**60-day supply**" of medical marijuana. Under **WAC 246-75-010** a qualifying medical marijuana patient can possess **up to 24 ounces/684 grams of usable marijuana and up to 15 plants, at any stage of growth**. Usable marijuana is defined as "the dried leaves and flowers of the Cannabis plant Moraceae" and a plant is defined as "any marijuana plant in any stage of growth."

Qualifying patients must carry "valid documentation," that is their physician's authorization **and** proof of their identity, such as a Washington State driver's license or identification card, with them whenever they possess or use medical marijuana. A qualifying patient must present **both** of these items of documentation to any law enforcement officer who questions the patients about his or her use of medical marijuana.

RCW 69.51.A. 060 prohibits medical marijuana patients from using or displaying medical marijuana in a manner or place that is open to the view of the general public. It also prohibits the use of medical marijuana in a way that endangers the health or well being of any person through the use of a motorized vehicle on a street, road, or highway.

The evidence recovered during the search provides probable cause that you have violated **RCW 69.50.401**. However, since you asserted that you are a qualified medical marijuana user as defined by (I-692) a "**60-day supply**" of medical marijuana is being left for your personal use.

The Office of the King County Prosecuting Attorney will review the case and make a charging decision. You are advised to contact an attorney familiar with the Medical Use of Marijuana Act so that your use of medical marijuana is in compliance with the law.

Date Served: _____

Served By: _____
(Detective/Officer serial #)

Signed: _____
Acknowledged receipt of document

Distribution: Original to Records Copy to Designated Medical Marijuana Patient Copy to Unit of Origin