

Medical Marijuana

432.1 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 marijuana under Ohio's medical marijuana laws.

432.1.1 DEFINITIONS

Definitions related to this policy include:

Medical marijuana - Can include any of the following marijuana products obtained from a licensed dispensary (ORC § 3796.06; OAC § 3796:8-2-01):

- (a) Oil, tincture, capsule, or edible forms
- (b) Metered oil or solid preparation for vaporization
- (c) Patches for transdermal administration or lotions, creams, or ointments for topical administration
- (d) Plant material

Registry identification card - A card issued by the State of Ohio Board of Pharmacy as evidence that an individual is registered as a patient or caregiver (OAC § 3796:7-1-01).

432.2 POLICY

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

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

432.3 INVESTIGATION

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

- (a) Investigations when no person makes a medicinal claim
- (b) Investigations involving a registered patient
- (c) Investigations involving a caretaker

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432.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM

In any investigation involving the possession, delivery, production, or use of marijuana or drug paraphernalia where no person claims that the marijuana 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 marijuana was possessed or produced for medicinal purposes.

432.3.2 INVESTIGATIONS INVOLVING A REGISTERED PATIENT

Officers should not arrest or take enforcement action against registered patients who (ORC § 3796.22):

- (a) Obtain, use, or possess a quantity of medical marijuana allowed under OAC § 3796:8-2-04.
- (b) Possess any permissible paraphernalia or accessories associated with medical marijuana.

Patients who do not have a registry identification card in their possession should not be arrested when investigation supports a reasonable belief that the person is a registered patient.

432.3.3 INVESTIGATIONS INVOLVING A CAREGIVER

Officers should not arrest or take enforcement action against registered caregivers who (ORC § 3796.23):

- (a) Obtain or possess a quantity of medical marijuana allowed under OAC § 3796:8-2-04.
- (b) Possess any permissible paraphernalia or accessories associated with medical marijuana.

Caregivers who do not have a registry identification card in their possession should not be arrested when investigation supports a reasonable belief that the person is a registered caregiver.

432.3.4 ADDITIONAL CONSIDERATIONS

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

- (a) The State of Ohio Board of Pharmacy may enter into reciprocity agreements with other states to allow their medical marijuana patient registration to be recognized in Ohio (ORC § 3796.16).
- (b) Because enforcement of medical marijuana laws can be complex, time-consuming, and can 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 marijuana investigations.

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3. Sufficient evidence, such as photographs or samples, have been lawfully obtained.
 4. Any other relevant factors exist, such as limited available department resources and time constraints.
- (c) A person's status as a registered patient or caregiver is not a sufficient basis for conducting a field sobriety test. To conduct any field sobriety test, a law enforcement officer must have an independent, factual basis giving reasonable suspicion that the person was operating a vehicle under the influence of marijuana or with a prohibited concentration of marijuana in the person's whole blood, blood serum, plasma, breath, or urine (ORC § 3796.24).
- (d) Before proceeding with enforcement related to medical marijuana cultivators, processors, laboratories that test medical marijuana, and retail dispensaries, officers should consider conferring with appropriate legal counsel, the Ohio Department of Commerce, and/or the State of Ohio Board of Pharmacy.
- (e) Patients and caregivers shall not cultivate medical marijuana or manufacture medical marijuana extract unless specifically licensed to do so (OAC § 3796:7-2-05).

432.3.5 EXCEPTIONS

This policy does not apply to the following offenses. Officers may take enforcement action if the person:

- (a) Operates a vehicle, streetcar, trackless trolley, watercraft, or aircraft while under the influence of medical marijuana (ORC § 3796.22; OAC § 3796:7-2-05).
- (b) Uses, possesses, or administers medical marijuana on federal land or in other prohibited areas (ORC § 3796.24; OAC § 3796:7-2-05).

432.4 FEDERAL LAW ENFORCEMENT

Officers should provide information regarding a marijuana 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.

432.5 EVIDENCE

432.5.1 MEMBER RESPONSIBILITIES

The investigating member should notify the receiving Evidence Room member in writing when marijuana may be the subject of a medical claim.

432.5.2 PROPERTY BUREAU SUPERVISOR RESPONSIBILITIES

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

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Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Evidence Room supervisor should, as soon as practicable, return to the person from whom it was seized any usable marijuana, plants, drug paraphernalia, or other related property.

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

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