

HUMBOLDT COUNTY DISTRICT ATTORNEY'S  
HEALTH & SAFETY CODE §§ 11357 - 11360, PROSECUTION GUIDELINES

INTRODUCTION:

*Health & Safety Code* §§ 11357 through 11360 provide generally that it is illegal to possess, cultivate, transport, distribute, or import marijuana in or into the state of California. *Health & Safety Code* § 11362.5 (Also known as Proposition 215 and/or the Compassionate Use Act of 1996) provides limited immunity from the prosecution of possession and cultivation of marijuana. The stated purposes of section 11362.5 are:

(i) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (Herein medical marijuana.) (*Health & Safety Code* § 11362.5(B), Emphasis added.)

(ii) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. (*Health & Safety Code* § 11362.5(B), Emphasis added.)

The goal and the purpose of these guidelines are:

(i) To provide for the public safety and security of the people of Humboldt County.

(ii) To fairly and consistently apply the law equally to all people of Humboldt County.

(iii) To ensure that the right of anyone with a recommendation from a physician to obtain and use marijuana for medical purposes (herein patients) is honored and respected in Humboldt County.

(iv) To ensure that patients and their primary caregivers are not subject to unnecessary criminal prosecution or sanction for legal cultivation and/or possession of marijuana.

(v) To provide guidelines regarding medical marijuana to all concerned: patients, caregivers, physicians and law enforcement agencies so that mutual rights, privileges and responsibilities may be mutually understood, honored and respected.

The Humboldt County District Attorney's Office will not prosecute patients whose use and possession of medical marijuana are within these guidelines.

#### GUIDELINES

##### GENERALLY:

It is presumed, based on various government and non-governmental sources, that a patient will use up to three (3) pounds of processed usable marijuana per year.<sup>1</sup> Therefore, these guidelines are intended to allow for the cultivation and use of up to three (3) pounds of marijuana per year.

Outdoor cultivation provides the opportunity for only one (1) harvest per year while indoor cultivation provides the opportunity for up to three (3) harvests per year. These guidelines distinguish between outdoor and indoor cultivation, presume three (3) indoor harvests per year and treat outdoor and indoor harvests differently, but with the goal to provide for the use and cultivation of up to three (3) pounds of dried usable marijuana for patients per year whether through outdoor or indoor cultivation.

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<sup>1</sup>. The federal Investigational New Drug (IND) program provides patients with 10 to 12 medical marijuana cigarettes per day -- from 5.6 to 7.23 pounds per year of processed usable marijuana which amounts to 8.24 grams per day, or 6.63 pounds per year.

OUTDOOR CULTIVATION:

Patients or their caregivers cultivating marijuana in an area within one hundred (100) square feet cumulatively measured by the vegetative canopy of the plants and who have ninety-nine (99) plants or less, including starts, shall be deemed within the District Attorney's prosecution guidelines and will not be prosecuted.

This limit applies to marijuana grown in a greenhouse, provided it is without the benefit of artificial light sources of any kind.

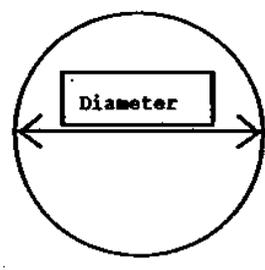
In measuring canopy diameter to determine compliance, the following approximate figures may be used:<sup>2 3</sup>

<u>Plant Canopy Diameter</u> <u>(Width in feet)</u>	<u>Approximate</u> <u>Square feet</u>	<u>Approximate number of</u> <u>plants of equal square feet</u> <u>in 100 square feet</u>
1	1	99
2	3	33
3	7	14
4	13	7
5	20	5
6	28	3
7	38	2
8	50	2
9	64	1
10	79	1
11	95	1

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<sup>2</sup> Actual Square foot per diameter: Area = diameter squared x 0.7854, e.g. Plant Diameter = 30", Area = (30 x 30) x 0.7854, Area = 900 x 0.7854, Area = 706.86 square inches, Area = 706.86 ÷ 144, (144 square inches per square foot), Area = 4.9 square feet.

<sup>3</sup> To arrive at plants of equal size per 100 square feet divide 100 by square feet of plants, e.g., 30" plant diameter = 4.9 square feet, 100 ÷ 4.9 = 20.40 plants of 30" diameter in 100 square feet.



- Measuring Diameter

Summary:

Patients or their caregivers cultivating marijuana outdoors pursuant to *Health & Safety Code* § 11362.5, will not be prosecuted if the cultivation:

- i. Is within 100 square feet cumulatively measured by vegetative canopy; and
- ii. Contains 99 plants or less, including starts.

INDOOR CULTIVATION:

Patients or their caregivers cultivating marijuana in an area within one hundred (100) square feet cumulatively measured by the vegetative canopy of the plants and who ninety-nine (99) plants or less, including starts, and who are using one and one half (1.5) kilowatts (1500 watts) or less of illumination by artificial growing lights of any kind shall be deemed within the District Attorney's prosecution guidelines and will not be prosecuted.

Summary:

Patients or their caregivers cultivating marijuana indoors pursuant to *Health & Safety Code* § 11362.5, will not be prosecuted if the cultivation:

- i. Is within 100 square feet cumulatively measured by vegetative canopy; and
- ii. Contains 99 plants or less, including starts; and
- iii. Is using 1.5 kilowatts (1500 watts) or less of illumination by artificial growing lights of any kind.

PROCESSED MARIJUANA:

Patients or their caregivers who possess three (3) pounds or less of processed useable marijuana will be deemed within the District Attorney's prosecution guidelines and will not be prosecuted.

Unharvested plants are not to be included in this weight.

The District Attorney's Office recognizes that possession of certain amounts of cannabis product such as baked goods, tinctures, concentrated cannabis, infusions, salves and other cannabis derivatives may be consistent with medicinal use. However, such possession must necessarily and will be treated on a case by case basis with deference to state laws which prohibit possession of those products.

DOCUMENTATION:

A prompt and noninvasive determination of whether cultivation and/or possession is legal or illegal can best be accomplished with the cooperation of all parties involved. Therefore, the District Attorney's Office recommends that physician recommendations and/or other supporting documentation be conspicuously posted at cultivation sites and that such documentation or a copy of the documentation be carried with the patient and caregiver at all times. Failure to post and carry such documentation may result in unnecessary legal fees and costs and/or criminal prosecution.

The District Attorney's Office recognizes that under *Health & Safety Code* § 11362.5, an individual may qualify as a patient by an oral recommendation. However, a prompt and noninvasive determination of whether cultivation and/or possession is legal or illegal is best accomplished with a written recommendation. Therefore, the District Attorney's Office recommends that patients and caregivers obtain written recommendations. <sup>4</sup>

4. The Humboldt County Public Health Department has a patient card program. Participation in the program is voluntary and is not required by law or these guidelines. However, obtaining a card may enable a patient and caregiver to avoid arrest, legal fees and costs and prosecution.

PHYSICIAN RECOMMENDATIONS:

The District Attorney's Office recognizes that citizens have the right to choose their physicians and that their communications with them are privileged. Therefore, the District Attorney's Office will honor the possession of a valid physician's recommendation regardless of whether that physician resides in Humboldt County. Further, disclosure of confidential physician-patient communications will not be deemed a waiver of the physician-patient privilege by the District Attorney's Office.

ENFORCEMENT OPTIONS:

The District Attorney's Office does not regulate or advise law enforcement except as is explicitly provided by law. The following are suggestions to minimize the risk of unnecessary governmental destruction of private property and intrusion.

Health & Safety Code § 11362.5 provides that a physician can recommend marijuana use for "any illness for which marijuana provides relief." Physician-patient communications are privileged. Inquiry into the patient's physician-patient communications should be avoided unless necessary to obtain medical care for the patient.

Both the United States and the California Constitutions prohibit governmental taking without due process and compensation. Therefore, if an officer or officers believe marijuana cultivation and/or possession is pursuant to *Health & Safety Code* § 11362.5, but that the cultivation and/or possession exceeds these guidelines, the officer or officers should only seize that amount in excess of the guidelines.

These guidelines nullify any existing guidelines and shall remain in effect until further clarified by statute, case law or written revision by the District Attorney's Office.

NOTICE:

These guidelines and the policy they embody reflect the position of the Humboldt County District Attorney's Office only. Persons using or considering the use of marijuana, its possession, transportation or recommendation must be aware that the policies of other counties within may differ. More significantly, the federal government and other states

criminalize marijuana and all activities associated with its possession, cultivation, use, transportation, distribution and sale. These guidelines offer no protection against actions brought by other agencies.

Dated: 2/14/03

By:   
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