

CITY OF SAN JOSÉ MEMORANDUM

TO SWORN PERSONNEL

FROM LOUIS A. COBARRUVIAZ
CHIEF OF POLICE

SUBJECT PROPOSITION 215 — 11362.5 H&S
MEDICINAL USE OF MARIJUANA

DATE FEBRUARY 18, 1997

APPROVED

DATE 97-04

BACKGROUND

Proposition 215, which allows the medicinal use of marijuana, was approved by the voters and became effective November 6, 1996. This legislation has been added to the Health and Safety Code as Section 11362.5.

ANALYSIS

This law allows for an affirmative defense by a physician, patient, or a primary caregiver who uses, assists to use, or cultivates marijuana to treat serious illness. Medicinal use of marijuana is still a federal crime, but the Santa Clara County District Attorney does not intend to enforce federal statutory law where it conflicts with Proposition 215. The District Attorney believes, "Truly ill persons should go unmolested for using (or cultivating) marijuana in a reasonable way for medical purposes if approved by a physician."

The law provides that the physician and one primary caregiver should not be punished for acts resulting in marijuana use by the ill person. A primary caregiver is defined as "an individual designated by the patient who consistently assumes responsibility for the patient's housing, health, or safety."

The District Attorney's Office will prosecute persons using Proposition 215 as an excuse to possess or use marijuana outside a legitimate medical context. Standards of reasonableness in deciding enforcement issues are similar to those in needle or drug possession cases where a prescription is claimed or in a gun possession case where a permit is claimed. It should be kept in mind that mere oral approval by the physician is all that is necessary to comply with the law. Standards of probable cause for a vehicle search, person search, arrest, or a search warrant request should take into account known facts regarding the permitted uses of marijuana under Proposition 215.

ORDER

Effective immediately, officers will not cite or arrest physicians, primary caregivers, or patients possessing or using marijuana for legitimate medicinal purposes in accordance with 11362.5 H&S.



**POLICY
L 3200**

**DETENTION AND ARREST —
MARIJUANA LAW VIOLATIONS:**

Whenever a Department member makes an arrest involving a marijuana law violation, the criminal citation will be employed as an alternative to physical arrest if the law or proper authority mandates its use. When the use of the criminal citation is not mandated by law or required by proper authority, violators will be booked. Officers will not cite or arrest physicians, primary caregivers, or patients possessing or using marijuana for legitimate medicinal purposes in accordance with 11362.5 H&S.

PROCEDURE

L 3201 MEDICINAL USE OF MARIJUANA:

When encountering marijuana in a field situation, officers will determine if the person possessing or furnishing the drug has been given a written or oral recommendation or approval for its use for a serious illness by a physician. If necessary, officers shall investigate whether a suspect meets the criteria for being a primary caregiver under the law. Officers shall intelligently employ the same reasonable person standards utilized in other cases for determining whether there is probable cause for citation or arrest. If the recommendation or approval can be substantiated, no enforcement action should be taken.

If the possession is more consistent with recreational use, no medical documentation can be provided and any story given as to a physician's recommendation is unreasonable or cannot be confirmed, officers should cite or arrest for the appropriate sections. Officers will document the names and capacity of any involved parties, addresses, phone numbers, duration of care, nature of the suspect's illness, date of physician's approval or recommendation for marijuana use, and any other pertinent information when a suspect may claim a medicinal use of marijuana defense.

Persons arrested or receiving a citation should be notified by the arresting or citing officer to call, or have their attorney call if they are represented. the District Attorney's Office as soon as possible if they can produce any verification of a physician's recommendation or authorization for marijuana use.

L 3202 ADULT PROCEDURE:

The following procedure will be adhered to in all marijuana law violations involving adults.

**L 3203 POSSESSION, TRANSPORTATION, OR GIVING AWAY OF MARIJUANA
— ONE OUNCE OR LESS:**

As required by law, officers arresting an adult for a marijuana law violation will utilize the criminal citation and field release the violator whenever the following elements are satisfied.

— The amount of marijuana is one ounce or less and is not "concentrated cannabis."

— The violator provides satisfactory evidence of identity.

Officers will, when encountering marijuana in a field enforcement situation, determine if the person possessing or furnishing the drug has been given a written or oral recommendation or approval for its use for a serious illness by a physician. If necessary, officers shall investigate whether a suspect meets the criteria for being a primary caregiver under the law.

Officers will document the names and capacity of any involved parties, addresses, phone numbers, durations of care, nature of the suspect's illness, date of physicians' approval or recommendation for marijuana use, and any other pertinent information when a suspect may claim a medicinal use of marijuana defense.

Persons arrested or receiving a citation should be notified by the arresting or citing officer to call, or have their attorney call if they are represented, the D.A.'s Office 299-8490 as soon as possible if they can produce any verification of a physician's recommendation or authorization for marijuana use. Officers may contact Deputy District Attorney Kim Connors at 299-8490 if they have questions regarding the technical application of this law.

LOUIS A. COBARRUVIAZ
Chief of Police

LAC/DOD/gd