

Medical Cannabis

428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for investigating the acquisition, possession, transfer, transportation, delivery, administration, or use of cannabis under New York's medical cannabis laws (Cannabis Law § 1 et seq.).

428.1.1 DEFINITIONS

Definitions related to this policy include (Cannabis Law § 3; 9 NYCRR § 113.1):

Allowable amount - Possession of a 60-day dosage of medical cannabis by a certified patient or designated caregiver. This may include possession of the certified patient's next 60-day supply during the last seven days of any 60-day period (Cannabis Law § 31).

Certified medical use - The acquisition, possession, transportation, or other authorized use of medical cannabis by a certified patient or designated caregiver.

Certified patient - A person residing or receiving treatment in New York for a condition that qualifies the person to receive a certification from an authorized practitioner to use medical cannabis pursuant to Cannabis Law § 30.

Designated caregiver - A person designated by a certified patient in a registry application to assist the certified patient in the acquisition, possession, transportation, or other authorized use of medical cannabis, or an employee of a registered designated caregiver facility.

Licensee or permittee - A person granted a license or a permit to cultivate, process, distribute, deliver, or dispense cannabis, or a cannabis research license, by the Cannabis Control Board.

Registered facility or organization - A designated caregiver facility that is registered with the Office of Cannabis Management, or a business or organization registered by the Cannabis Control Board (Cannabis Law § 32; Cannabis Law § 33; Cannabis Law § 34).

Registry identification card (RIC) - The card that is issued in accordance with Cannabis Law § 32 based upon a certification provided by an authorized practitioner that identifies an individual as a certified patient or a designated caregiver.

428.2 POLICY

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

New York medical cannabis laws are intended to provide protection from prosecution to those who acquire, possess, cultivate, use, or transport cannabis to mitigate the symptoms of medical conditions. However, New York medical cannabis laws do not affect federal laws and there is no medical exception under federal law for the possession or distribution of cannabis. The Town of Cheektowaga Police Department will exercise discretion to ensure laws are appropriately enforced

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without unreasonably burdening both those individuals protected under New York law and the resources of the Department.

428.3 INVESTIGATION

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

- (a) Investigations when no person makes a medicinal claim.
- (b) Investigations when a medicinal claim is made by a person possessing an RIC.

428.3.1 INVESTIGATIONS WITH NO MEDICAL CLAIM

In any investigation involving the possession, delivery, production, or use of cannabis or drug paraphernalia where no person claims that the cannabis is used for medicinal purposes, the officer should proceed with a criminal investigation if the amount is greater than permitted for personal use (Penal Law § 222.00 et seq.). A medicinal claim may be raised later, so officers should document any statements and observations that may be relevant to whether the cannabis was possessed or produced for medicinal purposes.

428.3.2 INVESTIGATIONS INVOLVING PERSONS WITH AN RIC

Officers shall not take enforcement action against a certified patient or designated caregiver who is in possession of a valid RIC when (Cannabis Law § 32):

- (a) The certified patient or designated caregiver possesses an allowable amount of cannabis.
 - 1. A designated caregiver may possess the allowable amount of cannabis for up to four certified patients.
- (b) The form of medical cannabis that is possessed is in compliance with the recommended amount or limitation set by the medical practitioner who issued the patient's certification for the use of medical cannabis.
- (c) The medical cannabis is in the original package that it was dispensed in except for the portion removed for immediate consumption.

Officers should not take enforcement action if the officer can reasonably ascertain that the person otherwise has a valid RIC. The officer should document attempts to verify the existence and validity of an RIC issued to the patient or designated caregiver in a written report.

428.3.3 ADDITIONAL CONSIDERATIONS

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

- (a) Because enforcement of medical cannabis 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.

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2. The case would benefit from review by a person with expertise in medical cannabis investigations.
 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.
 4. Any other relevant factors exist, such as limited available department resources and time constraints.
- (b) Before proceeding with enforcement related to registered organizations or dispensing facilities that supply cannabis for patients, licensees, or permittees, officers should consider conferring with appropriate legal counsel (Cannabis Law § 134).
- (c) The Cannabis Control Board should be contacted should questions arise regarding cannabinoid hemp and hemp extract activity (Cannabis Law, Article 5; Cannabis Law § 109).
- (d) Cannabis involved in any way with conduct deemed to be lawful under New York State law is not subject to seizure and does not support the forfeiture of property as set forth in the Asset Forfeiture Policy (Penal Law § 222.05).
- (e) Questions regarding the validity of an RIC, a registered facility, or organization, licensee, or permittee should be referred to the New York State Cannabis Control Board (Cannabis Law § 32).

428.3.4 EXCEPTIONS

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

- (a) Consumes cannabis through smoking or vaporization in any location where smoking is prohibited by New York law, including but not limited to (Public Health Law § 1399-o):
1. Places of employment.
 2. Places of mass transportation.
 3. Child care facilities and all public and private educational institutions.
 4. Hospitals and residential health care facilities (unless use is in a designated smoking room for patients of such facilities).
 5. Within 100 feet of the entrance, exit, or outdoor area of a public or private elementary or secondary school.
- (b) Obtains, possesses, stores, or maintains an amount of cannabis in excess of the amount that the certified patient or designated caregiver is authorized to possess under New York's medical cannabis laws (Penal Law § 179.15).
- (c) Sells, trades, delivers, or otherwise provides medical cannabis to another person with knowledge or reasonable grounds to believe that the person is not registered under New York's medical cannabis laws (Penal Law § 179.11).
- (d) Is a medical practitioner who issues a certification with knowledge or reasonable grounds to believe that the person to receive it has no medical need for it or that it is for a purpose other than to treat a condition (Penal Law § 179.10).

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- (e) Consumes cannabis while in any motor vehicle (9 NYCRR § 113.19)

428.4 FEDERAL LAW ENFORCEMENT

Officers should provide information regarding a cannabis investigation to federal law enforcement authorities when it is requested by federal law enforcement authorities pursuant to a valid court order (Cannabis Law § 127).

428.5 RECORDS MANAGEMENT UNIT SUPERVISOR RESPONSIBILITIES

The Records Management Unit supervisor should ensure that cannabis, drug paraphernalia, or other related property seized from a person engaged or assisting in the use of medical cannabis is not destroyed. Upon the prosecutor's decision to forgo prosecution, or the dismissal of charges or an acquittal, the Records Management Unit supervisor should as soon as practicable return to the person from whom it was seized any useable cannabis, drug paraphernalia, or other related property.

The Records Management Unit supervisor should not destroy cannabis that was alleged to be for medical purposes except upon receipt of a court order.

The Records Management Unit supervisor may release cannabis to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Detective Bureau supervisor.