

Medical Marijuana

436.1 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 North Dakota's medical marijuana laws.

436.1.1 DEFINITIONS

Definitions related to this policy include (N.D.C.C. § 19–24.1–01):

Allowable amount of usable marijuana – Possession of no more than three ounces of dried leaves or flowers, or the amount that can be purchased in concentrated form, or combination of both as set forth in N.D.C.C. § 19-24.1-01.

Registered designated caregiver - An individual who agrees to manage the well-being of a registered qualifying patient with respect to the qualifying patient's medical use of marijuana and who has been issued a valid registry identification card from the North Dakota Department of Health and Human Services.

Registered qualifying patient - An individual who has been diagnosed by a health care provider as having a debilitating medical condition and issued a valid registry identification card from the North Dakota Department of Health and Human Services.

436.2 POLICY

It is the policy of the Fargo 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.

North Dakota medical marijuana laws are intended to provide protection from prosecution to those who produce, process, sell, dispense, and use medical marijuana. However, North Dakota 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 Fargo Police Department will exercise discretion to ensure laws are appropriately enforced without unreasonably burdening both those individuals protected under North Dakota law and the resources of the Department.

436.3 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 qualifying patient
- (c) Investigations involving a registered designated caregiver

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436.3.1 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.

436.3.2 INVESTIGATIONS INVOLVING A REGISTERED QUALIFYING PATIENT

Officers shall not take enforcement action against a registered qualifying patient for acquiring, using, or possessing medical marijuana or related supplies who are in compliance with North Dakota's medical marijuana program. This will generally include a registered qualifying patient in possession of his/her registry identification card who possesses no more than an allowable amount of usable marijuana (N.D.C.C. § 19–24.1–32).

Enforcement action should not be taken because a registered qualifying patient is not in physical possession of his/her registry identification card if it can be established the person is a registered qualifying patient.

436.3.3 INVESTIGATIONS INVOLVING A REGISTERED DESIGNATED CAREGIVER

Officers shall not take enforcement action against a registered designated caregiver for assisting a registered qualifying patient to acquire, use, or possess medical marijuana or related supplies in compliance with North Dakota's medical marijuana program (N.D.C.C. § 19–24.1–32).

Enforcement action should not be taken because a registered designated caregiver is not in physical possession of his/her registry identification card if it can be established the person is a registered designated caregiver. A registered designated caregiver may receive compensation for associated costs (N.D.C.C. § 19–24.1–32).

436.3.4 ADDITIONAL CONSIDERATIONS

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

- (a) Registry identification cards specify when a patient is authorized to use the dried leaves or flowers of marijuana (N.D.C.C. § 19–24.1–11).
- (b) Because enforcement of medical marijuana laws can be complex, time-consuming, and 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.
 - 3. Sufficient evidence, such as photographs or samples, has been lawfully obtained.

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4. Any other relevant factors, such as available department resources and time constraints.
- (c) Manufacturing facilities, dispensaries, and registered compassion center agents are also protected from prosecution for possession and transfer of marijuana or related products when conducted in accordance with North Dakota's medical marijuana program (N.D.C.C. § 19–24.1–32).
- (d) Before proceeding with enforcement related to a manufacturing facility, dispensary, or a registered compassion center agent, officers should consider conferring with appropriate legal counsel and the North Dakota Department of Health and Human Services.
- (e) Registry cards can be verified through the North Dakota Department of Health and Human Services' secure verification system (N.D.C.C. § 19–24.1–31).

436.3.5 EXCEPTIONS

Officers may take enforcement action if the person (N.D.C.C. § 19–24.1–33):

- (a) Possesses or consumes an allowable amount of usable marijuana:
 1. On a school bus or school van that is used for school purposes.
 2. On the grounds of any public or private school.
 3. At any location while a public or private school sanctioned event is occurring at that location.
 4. On the grounds of a correctional facility.
 5. On the grounds of a child care facility or licensed home day care, unless authorized under rules adopted by the North Dakota Department of Health and Human Services.
- (b) Undertakes specified offenses related to smoking in public.
- (c) Allows the smoke or vapor to be inhaled by a minor who is not the registered qualifying patient.
- (d) Operates, navigates, or is in actual physical control of a motor vehicle, aircraft, train, or motorboat while under the influence of marijuana.

436.4 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.

436.5 PROPERTY SUPERVISOR RESPONSIBILITIES

The Evidence Property Manager (EPM) 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 EPM 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 EPM should, as soon as practicable, return to the person from whom it was seized any useable marijuana, plants, drug paraphernalia, or other related property.

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

The EPM may release marijuana to federal law enforcement authorities upon presentation of a valid court order or by a written order of the Investigation Division supervisor.

436.6 REPORTING

436.6.1 REPORTABLE INCIDENTS

Officers who reasonably believe one of the following has occurred are required to report the incident to the North Dakota Department of Health and Human Services within five days on the form provided by the Department of Health and Human Services (N.D.A.C. § 33-44-01-34):

- (a) Individuals who are found to be in possession of usable marijuana dispensed pursuant to the state medical marijuana program and who are not registered cardholders.
- (b) Registered qualifying patients or designated caregivers who are found in possession of more than the allowable amount of usable marijuana.

436.6.2 ADVERSE REACTIONS

Officers who reasonably believe that an incident involving an overdose or adverse reaction may be related to the use of usable marijuana are required to report the incident to the North Dakota Department of Health and Human Services as set forth in N.D.A.C. § 33-44-01-35.

436.7 REVISION DATE 06/21/2023