



County of Santa Cruz

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Sheriff-Coroner

701 Ocean Street, Suite 340, Santa Cruz, CA 95060
(831) 454-2985 FAX: (831) 454-2353

Mark Tracy
Sheriff-Coroner

January 18, 2002

AGENDA: February 5, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: REPORT ON ISSUES RELATING TO MEDICAL MARIJUANA

Members of the Board:

On October 23, 2001, your Board requested the Sheriffs Office, Health Services Agency and the District Attorney to return with a review of the Sonoma County guidelines in relation to their appropriateness and adoptability for Santa Cruz County; directed the Health Services Agency to return with an analysis as to whether the Sonoma guidelines are workable; requested that the Sheriffs Office address the Police Chiefs Association and report back on a possible uniform response within the law enforcement community; and further requested the Sheriffs Office to provide information on the number of people within the past two years that have had marijuana confiscated and had physicians recommendations, the number of people arrested who asserted that they are medical marijuana patients, what charges were filed in these cases, the disposition of those cases and whether the County has had any liability suits. This letter is intended to provide your Board with a report addressing these issues.

The Health Services Agency has reviewed the guidelines from Sonoma County, met with representatives from the Sheriffs and District Attorney's Offices, and has discussed the Sonoma County guidelines with representatives of the medical community in that county. The Sonoma County guidelines have two main components, one which speaks to the amount of medical marijuana a person may have (limited by size of growing areas, number of plants, and amount of product), and one which establishes a medical peer review process to substantiate the claim of medical use.

Additionally, the Health Services Agency stated in addressing the first issue regarding the amount of medical marijuana a person may have, that there is no science-based information to determine the appropriate amount of marijuana to use for medical conditions. The use of marijuana as a medicine has not been studied, and there is no body of information from which to draw conclusions about the appropriate amount for a person to have, whether that amount is determined by growing area, number of plants, or amount of product. Counties which have set limits have had to do so based on opinion or based on what has been done elsewhere. Based on county-by-county research, the Health Services Agency has no opinion or Board recommendation on the appropriate amount of marijuana necessary for a person to have. Circumstances are too individualized to determine plant amounts.

It is the opinion of the Sheriff and District Attorney's Offices that there is no set standard for amounts with regard to the medical use of marijuana. No two patients' needs are identical. A seriously ill person's use may be heavy and constant, where another person with an occasional or recurring problem may have lower or sporadic needs. Even greater variability is found in the potency of harvested marijuana and the potential yield from a particular number of plants. All of these factors affect the amount which a person with a medical need may possess under the law. The Sheriff's Office, in collaboration with the District Attorney's Office, has faced these situations and made sensible judgments. Few cases come to the District Attorney's Office for filing where a defendant later asserts a medical defense.

The second issue in Sonoma involves a medical peer review process. In **1998**, the Sonoma County Medical Association and the District Attorney agreed on a process whereby people who claim to use marijuana legally for medical purposes could substantiate that claim via an independent medical review.

A "peer review" committee of the medical association reviews files on patients that are submitted by local physicians at the request of the patient. That review determines whether:

1. A bona fide physician-patient relationship exists between the patient and the physician,
2. The physician has approved of, or recommended the use of marijuana for the patient pursuant to a consultation or examination,
3. The approved or recommended use of marijuana is reasonably related to the purpose of alleviating one of the conditions set forth in Health and Safety Code section **11362.5(b)(1)(A)**

After making the determinations, the committee takes one of the following actions:

1. Issue a positive finding, meaning that all three criteria have been met.
2. Issue a positive finding with reservations, meaning that while all three criteria have been met, the committee has reservations about the case.
3. Issue a negative finding, meaning that fewer than three criteria have been met.

4. Decline to issue a finding.

The findings of the committee are communicated to the requesting physician, who then forwards the findings to the patient. At that point, the patient may share the results with the District Attorney. The decision of whether to share the committee's finding with the District Attorney is entirely up to the patient. In discussing this program with the executive director of the medical association, HSA was told that they receive approximately 10 requests per month for determinations.

Although the above process works well for Sonoma County, the Health Services Agency does not recommend its adoption for use in Santa Cruz County at this time. To the best of our knowledge, the issue of the appropriateness of use for medical purposes has never been an issue here in legal cases. The cases that have been problematic for individuals and for law enforcement have had at issue the amount of marijuana, or some other factor not related to the appropriateness of use for medical purposes. If the individuals involved in these cases had a positive finding as described above, it would have been of no value to them in their defense, and of no value in terms of deciding whether or not to make an arrest or to prosecute. In short, there is no clear value added to this program. Should the appropriateness of use for medical purposes become an issue, medical consultation on that issue could be sought at the time. The District Attorney, Sheriff's Office and Health Services Agency, because of the preceding opinions on this matter, are not supportive of approaching other local agencies at this time.

This report was also requested to provide information regarding the number of people within the past two years that have had marijuana confiscated and had physicians recommendations, the number of people arrested who asserted that they are medical marijuana patients, what charges were filed in these cases, the disposition of those cases and whether the County has had any liability suits. The following tables address these issues:

NUMBER OF CASES WITH A DOCTOR'S RECOMMENDATION

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Year	Case No.	Summary including charges and disposition	NO. of cases with plants seized	No. of Arrests	Liability Suits
300	1237	Cancer patient. No longer wanted to use marijuana. Plants seized. No arrest or prosecution.	1	N/A	N/A
	1913	Cultivation case. Case was referred to the DA's Office and later dismissed at preliminary hearing.	1	0	None.
	4465	Cultivation of marijuana/ possession of marijuana for sales case was initiated by consent search. Case dismissed.	1	1	None.
	5916	Cultivation case. Suspect in violation of terms of probation. The case was referred to the DA's Office who later declined to prosecute.	1	0	None.
	7754	Cultivation case result of search warrant. Suspect was later acquitted.	1	0	None.
	8413	Cultivation case result of search warrant. One of the suspects later pled guilty to cultivation of marijuana.	1	0	None.
	8927	Cultivation/possession for sales case was a result of a probation search. Case was filed and later dismissed.	1	0	None.
	9316	Sale of marijuana. Suspect sold marijuana to DEA agent. The suspect was convicted of sales/transportation of marijuana.	1	1	None.
2001	1263	Cultivation/possession for sales case. Suspect pled guilty to cultivation of marijuana.	1	1	None.
	6474	Cultivation case. Suspect was requested to reduce the amount of plants. The case was referred to the DA's office for review. A warrant of arrest letter was issued to appear in court.	0	0	None
	8956	Cultivation/distribution case was the result of a patrol search warrant. Citation was issued.	0	0	None.

**NUMBER OF CASES THAT MEDICAL NEED WAS ASSERTED, BUT
DID NOT HAVE VALID DOCTOR'S RECOMMENDATION**

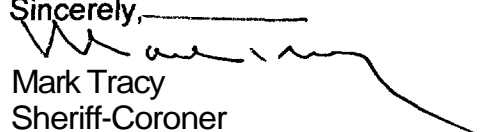
Year	Case No.	Summary including charges and disposition	No. of cases with plants/marijuana buds seized	No. cases with arrests	Liability Suits
2000	963	Possession of marijuana for sale case was initiated by a consent search. Suspect pled guilty to possession of more than 28.5 grams of marijuana.	1	0	None.
	3107	Primary suspect sold marijuana to confidential informant. The primary suspect was convicted of possession of marijuana for sales.	1	1	None.
	4060	Cultivation of marijuana/ possession of marijuana for sales case. Primary suspect was convicted for being in possession of more than 28.5 grams of marijuana.	1	0	None.
	4269	Cultivation of marijuana/ possession case for sales case. Suspect 1 was convicted of cultivating marijuana. Suspect 2 was convicted for being in possession of more than 28.5 grams of marijuana.	1	2	None.
	5964	Cultivation case result of search warrant. DA's office allowed the suspect a diversion program.	1	1	None.
2001	N/A	N/A	N/A	N/A	N/A

The Marijuana Enforcement Team has investigated a total of one hundred and sixteen cases in the past two years. In 2000, fourteen cases involved an assertion or recommendation for medical marijuana and three cases in 2001. One of the preceding cases was turned over to San Mateo County for prosecution. This brings the overall total to sixteen cases or 13.91% of all cases investigated for this two year period.

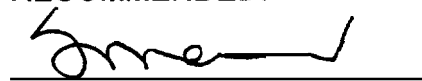
The current process works well in Santa Cruz County. We continue to believe that a case-by-case examination of all the circumstances involved in a situation leads us to the best result.

It is THEREFORE recommended that your Board accept and file this report.

Sincerely,


Mark Tracy
Sheriff-Coroner

RECOMMENDED:


County Administrative Officer
cc: Sheriff-Coroner, HSA and District Attorney