

**PROBATION DEPARTMENT
ADULT MANUAL**

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Revised: 12/26/2019	

**Notes and
References**

MARIJUANA USE BY PROBATIONERS

MEDICAL USE:

- I. The Compassionate Use Act of 1996 was established 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.
 - A. This act allows patients to obtain and use marijuana for medical purposes when recommended by a physician. A qualified patient or primary caregiver may possess marijuana for the personal use of the patient. The form and manner of use should be reasonably related to the patient’s current medical needs.

- II. Santa Barbara County Probation Department will recommend the use of the Institute of Medicine (IOM) guidelines and the Medical Board of California (MBC) standards when marijuana has been recommended by a licensed medical doctor to determine if medical necessity for the use of medicinal marijuana is indicated. The IOM recommendations and the MBC standards state the patient must meet the following conditions:
 - A. There is evidence that a good faith medical exam has been completed which includes but is not limited to, the taking of the patient’s history.
 - B. Failure of all approved medications to provide relief has been documented or there is a medical explanation why medications have not been tried.
 - C. The symptoms can reasonably be expected to be relieved by rapid-onset cannabinoid drugs.
 - D. Such treatment is administered under medical supervision in a manner that allows for assessment of treatment effectiveness and a treatment plan with objectives.

11362.5 H&S

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IOM guidelines

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- E. The client is willing to sign consent for the release of information to the probation officer, counselor and/or program physician to communicate with the physician who has authorized medical marijuana use.
- F. Periodic review of the treatment's efficacy.
- G. Providing informed consent, including discussion of side effects.
- H. Keeping medical records supporting the decision to recommend the use of medical marijuana.
- I. Medicinal marijuana must be used for an illness identified by the IOM and the California Medical Association (CMA) to be appropriate for this treatment protocol, such as terminal illness, intractable pain, chemotherapy-induced nausea and vomiting, and AIDS wasting syndrome. Illnesses such as anxiety disorders and mood disorders are not identified as appropriate for this type of treatment.
- V. Process for managing probationers who present medical marijuana necessity:
 - A. Unless the Court has previously authorized the medical use of marijuana via the terms and conditions of probation, those probationers who have a written physician's recommendation from their primary care or treating physician for medical marijuana must place their case on calendar for modification.
 - 1) For probationers that have a Medical Marijuana Identification Card (MMIC) but have not yet received authorization from the Court via the terms and conditions of probation, the assigned officer will check the status of the MMIC at www.calmmmp.ca.gov using the probationer's medical marijuana card number. If the card is valid, the officer will proceed with subsections C, D, E, F (if necessary) G, H, I, J, and K below.
 - B. When the assigned officer becomes aware the defendant desires the medical use of marijuana, the officer will:

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- 1) Direct the defendant to sign a Release of Information authorizing disclosure of his/her full medical record to the Probation Department and authorizing the Probation Department to share criminal and substance abuse history with their primary care or treating physician.
 - 2) Require that the defendant have his/her primary care or treating physician provide supporting medical records, complete the Pro-606 form Determination of Medical Necessity, and return it to the Probation Officer.
 - 3) Once the completed Pro-606 form is returned, indicating the defendant's case meets IOM and CMA guidelines, the officer will check with the Medical Board of California (www.medbd.ca.gov) to determine the doctor's current licensing status and inquire about prior licensing actions.
- C. The officer will staff the case with a supervisor and if the defendant's request is supported, the officer will submit an ex-parte memorandum to the court recommending that the court limit the amount the probationer can possess at any one time to one (1) ounce or marinol as prescribed and that the probationer not be allowed to cultivate marijuana.
- D. If the defendant's diagnosis does NOT meet IOM and CMA guidelines or other concerns are discovered, the Probation Officer will:
- 1) Direct the defendant to place the matter on calendar for modification through their attorney within fifteen (15) days should they wish to continue with the request. The officer will notify the defendant that the Probation Department will oppose a modification of probation to allow the use of marijuana.
 - 2) Should the defendant proceed with calendaring the matter for modification, the officer will submit a memorandum to the Court indicating the reasons why the modification should not be granted.
 - 3) Copies of the medical records, in a sealed envelope, will be provided to the Court, defense attorney and District Attorney.

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- E. The Probation Officer shall notify the DA’s office when it becomes apparent that a defendant will be bringing a request for medical marijuana before the court.

- G. During the time period pending the Court’s decision and if the defendant is subject to drug testing requirements:
 - 1) A violation of probation report will be filed if the defendant has tested clean for 30 days and subsequently provides a positive test result for marijuana

 - 2) A hold in abeyance may be granted to a defendant who tests positive for marijuana on the condition they do not submit a subsequent positive test in the following 30 days.

- H. If probation is modified, the defendant will be directed to carry a copy of the modification order authorizing the medical use of marijuana.

- I. If the defendant refuses to follow this directive and he/she is found to be in possession of marijuana, a violation should be filed. Absent any other violation of probation, the offender is not to be taken into custody.

- J. The matter is to be returned to court should circumstances of the offender’s medical situation change and/or the offender has revoked his Consent for Release of Information.

- K. The Probation Officer will make an event entry and an “officer instruction” entry designated to appear on the overview page in IMPACT, documenting the court’s authorization for the medical use of marijuana and update IMPACT as new orders or circumstances for use change.

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GENERAL USE:

- I. The Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2016 was established to expand The Compassionate Use Act to include adult-use cannabis and adult-use cannabis products for adults 21 years of age and over in California.
 - A. Probationers with a desire to use marijuana must meet the following criteria:
 - 1. The Compassionate Use Act
 - 2. Current Court order / terms and conditions

- II. The Santa Barbara County Probation Department recognizes the conflicting regulations over the use of marijuana. While California state law allows adult use of cannabis, the federal government, and specifically the Drug Enforcement Administration, considers marijuana (medical or otherwise) to be an illegal drug. The goal of this policy is to provide effective supervision and to facilitate treatment referrals for a client population identified as having chemical dependency problems, while at the same time considering the use of marijuana as ancillary treatment for certain medical conditions.

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