

# The Medical Cannabis Advocate's Handbook

## KNOW YOUR RIGHTS

*We must not make criminals of seriously ill people. It is not a crime to be ill and to need to have access to pain relief. People who seek this therapy should be able to receive it. It is long past time for us to base our policies on science, not misguided politics.*

—Congresswoman Nancy Pelosi



# KNOW YOUR RIGHTS

## KNOW THE LAWS

Medical cannabis patients and their providers are vulnerable to federal and state raids, arrest, prosecution, and incarceration and suffer pervasive discrimination in employment, child custody, housing, public accommodation, education and medical care. Laws protecting patients and their providers vary from state to state and in some cases may vary from county to county. Many individuals choose to break outdated state laws that do not account for medical use or their access. And no matter what state you are living in, medical cannabis patients and their providers are always violating federal law.

Making the choice to participate in a medical cannabis program or to resist current laws should be done with thoughtful consideration. Following the law in your local area may not always protect you from law enforcement encounters, and the more you know about your rights, the more likely you will be to have a successful encounter with law enforcement. It's important to also remember that the best law enforcement encounter is the one that never happens.

The information found in this section is meant to educate patients and their providers about the existing federal laws, how to avoid law enforcement encounters, how to be prepared for encounters, how to understand your rights during encounters, and how to navigate the legal system after an encounter. After you understand this material, be sure to share this information with your family, friends, or anyone who may be at risk.

## STATE LAWS

Medical cannabis laws vary from state to state. Consult the Legal section of Americans for Safe Access's website, click on your state, and then check out "Becoming a Patient" for your state. Take a look at the website for your

state's medical cannabis program if one exists. Finally, consult local laws to make sure that you are adhering to any guidelines developed by your county and/or city. Following each law to the letter may not prevent you from having a law enforcement encounter, but it will help you have a successful one.

## FEDERAL LAWS

Despite the promises made by the Obama campaign and the memo issued in 2009 by the Department of Justice, medical cannabis remains illegal at the federal level and carries severe penalties. Federal interference with state medical cannabis programs can happen in every state, and there is no "medical" defense within the federal justice system. If you're participating in your state's medical cannabis program, you are in direct violation of federal law. It is important to remember that even though the media has hyped the meager promises made by different parts of the federal government, patients have no federal protection and are still at risk. Until federal law changes, patients across the country face dire choices between violating the laws of their country and treating their illness with the medication deemed most appropriate by their physician.

The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), which places every controlled substance in a schedule, according to its relative potential for abuse and medicinal value. Under the CSA, cannabis is classified as a Schedule I drug, which means that the federal government views cannabis as being highly addictive and having no medical value. Doctors may not "prescribe" cannabis for medical use, though they can "recommend" its use under the First Amendment.

The Drug Enforcement Administration (DEA), charged with enforcing federal drug laws, has taken a substantial interest in medical

cannabis patients and caregivers in general and, more specifically, in large cultivation and distribution operations. Over the past decade, hundreds of people have been targets of federal enforcement actions. Many of them have been arrested and had property seized. More than a hundred providers are currently in prison or are facing charges or ongoing criminal or civil investigations for the cultivation or distribution of medical cannabis.

Federal cannabis laws are very serious and punishment for people found guilty is frequently very steep. Federal judges have ruled that medical necessity cannot be used as a defense. In fact, medical cannabis cannot even be mentioned during a federal trial.

Federal sentencing guidelines take into account not only the amount of cannabis but also past convictions. Not all cannabis convictions require jail time under federal sentencing guidelines, but all are eligible for imprisonment. If convicted and sentenced to jail, a minimum of 85% of that sentence must be served. The greater the quantity of cannabis involved, the more likely one is to be sentenced to jail time, as opposed to probation or alternative sentencing.

In addition to the sentencing guidelines, there are statutory mandatory minimum sentences, which primarily target offenses involving large quantities of cannabis. There is a five year mandatory minimum for cultivation of 100 plants or possession of 100kgs, and there is a ten year mandatory minimum for these offenses if the defendant has a prior felony drug conviction. Cultivation of 1,000 plants or possession of 1,000kg triggers a ten year mandatory minimum, with a twenty year mandatory sentence if the defendant has one prior felony drug conviction, and a life sentence with two prior felony drug convictions. To avoid a five year mandatory minimum, it is advisable to cultivate well below 100 plants,

including any rooted cuttings or clones.

Low-level federal offenders, even with multiple prior convictions, may end up with probation for the entire sentence of one to twelve months and no jail time required. Possession of over one kg of cannabis with no prior convictions carries a sentence of six to twelve months with a possibility of probation and alternative sentencing. Over 2.5 kg with no criminal record carries a sentence of at least six months in jail; with multiple prior convictions, a sentence might be up to two years to three years in prison with no chance for probation.



Keep in mind that even though medical cannabis protections may exist in your state, the federal government provides no medical defense to possession, cultivation, or distribution charges, and if you are charged, no mention of your state's medical cannabis laws are admissible

at trial. Federal defendants are prohibited from discussing their illness or the fact that they were following their state's law. Even though the Obama administration and the Department of Justice have made statements that prosecuting patients is a low priority, patients and providers are still being harassed, raided, arrested, and convicted throughout the U.S. Until federal law changes, participating in your state's medical cannabis program still carries some risk.

## **OTHER APPLICABLE LAWS**

### **School Zones**

Patients and providers should avoid possession and cultivation of cannabis in school zones, as there are typically additional penalties for the possession, use, and cultivation of cannabis near schools, whether it is for medical or recreational use. Some state medical cannabis laws have limitations on "sensitive use" areas, limiting cultivation, use, and possession of medical cannabis within a specific amount of space of a school, playground, etc.

## EXERCISE YOUR RIGHTS!

There are three levels of law enforcement interactions and safe ways to handle each encounter. There are three sets of magic words to use during an encounter.

- 1) **CASUAL CONVERSATION**—During a law enforcement encounter, ask if you are being detained or arrested. If you are not being detained or arrested, walk away.
- 2) **DETENTION**—If you are being detained, ask why! Make them cite the law—and remember what they say.
- 3) **ARREST**—Say the first two sets of magic words: "I choose to remain silent!" and "I want to see a lawyer!" Remember to remain silent. Law enforcement may try to trick you into talking. Keep in mind they are highly trained in gathering information and are allowed to lie in order to trick you into talking.

The third set of magic words: I do not consent to a search!

If the officer says: "Do you mind if I look in your purse, bag, home or car?"

You say: "I do not consent to a search."

If the officer says: "Why not? Are you hiding something?"

You say: "I believe in my Constitutional right to privacy, and I do not consent to a search."

Note: This probably will not stop an officer from searching you, but it can help get evidence thrown out of court.

### Search Warrants

Do not let an officer into your home without a search warrant. If an officer does have a warrant, check the address, the date (relatively recent), and look for a judge's signature.

If law enforcement knocks on your door, step outside and close the door behind you while you find out why they are there. Do NOT leave the door open.

If they do enter your home, with or without a search warrant, say, "I do not consent to a search." If they enter your home with a warrant and you do not consent to a search and the warrant is later deemed illegal by a judge, anything that is seized during the search will not be evidence used against you. It is very important to always say, "I do not consent to a search." Say it loudly, multiple times. It might be the officer's word against yours, but if your neighbors heard you yell it 15 times, then the judge might actually take your word over the officer's.

In addition, keep in mind that Drug Free School Zone laws can double the maximum sentences in federal court, where the mention of "medical" cannabis is prohibited.

### Firearms

Firearms can result in harsher federal sentencing and may draw attention to patients. Even if your state protects patients' right to safe access to medical cannabis, the presence of firearms might increase the chances of a state or federal law enforcement encounter. Again, the best law enforcement encounter is the one that never happens.

Under federal law, "any person who, during

any drug trafficking crime for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall:

- (i) Be sentenced to a term of imprisonment of not less than 5 years;
- (ii) If the firearm is brandished, not less than 7 years; and (iii) If the firearm is discharged, not less than 10 years."

Although the U.S. Constitution confers a right to carry firearms, we have seen many patients face extreme legal consequences for having firearms in addition to plants.

In addition, the memo issued by the Department of Justice in 2009, which was intended to provide the U.S. Attorneys' Offices with guidance on the prosecution of medical cannabis patients and providers, specifically mentions the presence of firearms as an example of "potential federal interest" that probably falls outside of "clear and unambiguous compliance" with underlying state law. In other words, beyond the sentencing enhancements, the presence of firearms makes patients and providers a more likely target for federal attention.

ASA strongly advises that if you are a medical cannabis patient, do not carry or keep firearms on your property.

### **Civil Asset Forfeiture**

Federal law provides for the forfeiture of property and profits obtained through or used in the commission of felony drug offenses. Prosecutors are encouraged to include forfeiture offences in all drug indictments. This can apply to landlords who rent to people considered in violation of federal law, and therefore can also be used against the landlords of patients who cultivate or use their medicine on the premises. It should be noted, however, that landlords do have defenses available to them in these types of civil actions and that they are rarely targets of forfeiture if they themselves were not participating in the use, possession, or cultivation of medical cannabis.

### **BEST POLICE ENCOUNTER IS THE ENCOUNTER THAT NEVER OCCURS**

While your state may have extensive laws that protect your right to use medical cannabis, many law enforcement officers still believe that medical cannabis is a "sham" and that all use of cannabis is recreational use. Law enforcement officers often seize medicine, harass patients, issue citations, and even arrest patients for exercising their rights. Carry your recommendation and/or state-issued ID Card (following your state's requirement) at all times, but do not present it to law enforce-

ment unless accused of a cannabis related crime. Dealing with criminal charges and/or getting your medicine back can be stressful and costly, and may cause you to be "outed" as a medical cannabis patient. That's why we say that the best police encounter is the one that never occurs. If you follow these tips, you will be that much less likely to be harassed by law enforcement.

### **Use Common Sense**

Consider safety when you choose to medicate; cannabis smoke and vapor have very distinctive smells. You will attract less attention if you do not consume cannabis in plain view or near open windows.

Do not drive your car while medicating. If the police smell cannabis, they have probable cause to search your vehicle. If you are going somewhere, medicate after you arrive. Please note that no medical cannabis laws protect you from charges of driving under the influence of cannabis. Every state has the ability to prosecute patients for driving under the influence if they are impaired while driving.

Although it may help with dosages and rationing, packaging your medicine in eighth- or quarter-ounce baggies looks suspicious. Cannabis actually stores better in glass jars or airtight plastic containers in cool dark places.

Fewer plants attract less attention from thieves and others who may wish you harm, so be realistic about the amount of cannabis you will need.

Try to limit the amount of cannabis you have with you at any given time. While you may seal your medication in airtight containers, there is still a distinctive odor that is hard to prevent and can lead to law enforcement encounters. The less medicine you have with you, the less smell there is.

### **Be a Good Neighbor**

A common cause of trouble for both patients and caregivers is complaints from neighbors. This problem might manifest itself in the form of an unpleasant personal confrontation or

the neighbors may report concerns about nuisance and safety to landlords or police. Subsequent investigations can lead to the arrest of patients and caregivers and to the closure of medical cannabis dispensing centers.

Neighbors and nearby businesses may or may not share your opinion about medical cannabis, but they will be much more likely to respect your right to safe access if you are not causing them problems. By being conscious of neighbors' rights, privacy, and property, patients and dispensing centers can establish and maintain harmonious relationships.

Other issues with your neighbors can lead to law enforcement encounters. Domestic disputes, loud music, illegal parking, barking dogs, and other nuisances should be kept to a minimum. Police are required to investigate these reports and they will come to your location. When neighbors complain to law enforcement, citations or criminal charges for nuisance violations can be difficult to deal with, and investigation into these types of charges may lead to charges related to your medical cannabis use. Being a good neighbor can help you avoid these types of encounters.

### **Sensible Medical Cannabis Use**

Patients and caregivers should educate themselves about medical cannabis and understand the benefits and potential side effects of their medicine. If you are new to using medical cannabis, or are trying a new strain, strength, or route of administration, it might be best to do so when you have no other responsibilities or plans. New routes of administration in particular may cause somnolence, or tiredness. By being a sensible medical cannabis user and making informed decisions, you can be as healthy as possible and help change the way people think about medical cannabis use, and also limit your chances of a law enforcement encounter.

Guidelines for Sensible Cannabis Use:

1. Always listen to the advice of your doctor and use good judgment when using medical cannabis.

2. Carefully determine the amount of cannabis that is right for you. Start with a small amount and slowly increase your dosage to find the proper level for symptomatic relief.
3. Be informed about the side effects of cannabis. It is also important to be aware of the possible risks of using medical cannabis.
4. Think about the benefits of cannabis and relief that its use provides you. Being able to explain your use of medical cannabis can help you be an effective advocate, and you can be an example that helps your friends, family, and community form their own opinions of medical cannabis.
5. Avoid medical cannabis use that puts you or others at risk, such as using it while driving, at work, or in public places. Remember, you can still be arrested for cannabis use and penalties can be stiff. As with any other medication, it remains illegal to drive while under the influence.
6. Always carry a copy of your physician's recommendation, caregiver's agreement, and/or ID card when in possession of medical cannabis.

### **Travel Safely**

Many arrests for cannabis possession arise from traffic stops. Do not medicate and drive. If you travel with cannabis, make sure your vehicle is up to code and your cannabis is concealed—preferably in your trunk.

Recently, some news outlets have reported that some TSA & airport officials have relaxed their own "policy" regarding medical cannabis; please note that these officials mention turning patients over to local law enforcement officials. It's important to remember that there are plenty of opportunities in airports and on planes to interact with federal law enforcement and there is NO medical defense to possession, transportation, or trafficking charges at the federal level. Federal fines are steep and these types of charges may also lead to jail time. In addition, some states' medical cannabis protections do not extend to people who intend to

leave the state with their medicine, so even if you are arrested in your home state, you may face criminal conviction.

It's best NOT to fly with medicine, even if your flight never leaves your home state.

Also, keep in mind that most medical cannabis states do not recognize patient status for travelers (except AZ, ME, MI, MT, & RI). Just because you are a qualified medical cannabis patient in your home state, that does NOT make you a qualified patient elsewhere.

### **BEING PREPARED IN ADVANCE FOR SUCCESSFUL LAW ENFORCEMENT ENCOUNTERS**

Fortunately, many patients and caregivers never encounter law enforcement problems. Those who do regularly report successful interactions with local and county police. Many municipalities offer strong protection to medical cannabis patients; however, even in friendly jurisdictions, patients are still being harassed and arrested for medical cannabis, even if they present proof of their patient status.

Any patient or caregiver can become the target of a law enforcement action. Each person who decides to use medical cannabis or help a patient to do so should be prepared to successfully maneuver through these encounters. You might not be able to avoid arrest in each instance, but chances of successfully fighting charges are greatly improved by education and careful planning.

There are many measures you can take before legal problems occur. You should carefully study the Law Enforcement Encounters section of this manual and, if possible, attend an ASA Know Your Rights training to most effectively learn this detailed information. You should also stay on top of the basics. Maintain a current doctor's recommendation and have a clearly defined patient/caregiver relationship. Keep a copy of your recommendation and/or ID Card (depending on the state) in your wallet or purse at all times. You may want to memorize your physician's and

lawyer's phone numbers, or write them down to keep with your doctor's recommendation or identification.

It is very important to inform the people in your life, such as family, friends, and roommates, about your medical use of cannabis. They should be prepared to assist if you are harassed or arrested. They should also be educated about their legal rights (see the "know your rights" information), as they may be questioned in an investigation about your cannabis use. Also, be aware of how to get out of jail if you are arrested. You may want to make a plan for bail, bond, or being released from jail on your own recognizance. You may want to protect and organize your personal belongings and financial data and make a plan for emergency child, pet, and plant care. Lastly, always stay alert for signs of surveillance and be aware of potential conflicts with the neighbors to avert problems early.



### **SAFE GARDENING**

#### **Have Your Paperwork Together**

Post a copy of patient medical cannabis recommendation(s) and/or caregiver paperwork and/or other required paperwork prominently at any place where cannabis is cultivated. Keep a copy of all of your paperwork at an off-site location; if a raid occurs, your paperwork may be destroyed or seized.

#### **In the Garden**

Don't be sloppy. Compost or eliminate trash off site. The larger the garden appears, the more likely you are to attract the attention of thieves or others who wish to cause you harm. Cultivating indoors is generally considered safer because it helps avoid nosy neighbors and reduces the risk of theft. Use extra odor control methods during harvest to avoid offending neighbors. The plants smell especially pungent at this time, as they are particularly

resinous, and you may find the smell lingering in the air, on your clothes, and in your hair.

### **Be Smart: Be discreet**

Be mindful about hauling grow equipment, tools, and plants into your home or grow site in view of neighbors. In the same vein, as tempting as it may be, tell as few people as possible about the location of the site.

## **CREATE SECURITY CULTURE IN YOUR COMMUNITY**

"Security Culture" refers to the importance of developing unbreakable unity within the medical cannabis community. If everyone involved maintains this unity, the entire community will be safer. Law enforcement agents frequently aim to turn people against each other and disorganize or disband the community.

### **Implement a Security Culture**

Take care of yourself and your community. Don't gossip, brag or ask for compromising or unnecessary information about medical cannabis operations and activities. Although such behavior may be entertaining, it puts you at greater risk of arrest and the police may use personal splits to divide the community. When you are about to discuss your personal involvement in medical cannabis operations, consider the following:

- Would this person repeat what you are about to tell them to anyone else? When you share information about your use or cultivation of medical cannabis, you are sharing information that may be used against you in court if this person is ever interrogated as a witness. You should also be cautious of theft. Patients and providers have been robbed so it's best to limit the dissemination of sensitive information.
  - Would you want this person to have to perjure him or herself? Think carefully: you may be giving people information that may cause harm to you or to them.
- If someone you know is giving out sensitive

information, talk to him or her in private about why such talk can be hazardous. Someone who repeatedly engages in gossip, bragging or seeking unnecessary information about inappropriate topics after repeated educational talks is a grave risk at best, and a police agent looking to provoke or entrap others at worst.

### **Keeping an Eye Out for Surveillance**

Take precautions. Assume you are under surveillance if you are in any way involved in providing medical cannabis to patients. Do not discuss sensitive matters on the telephone, through the mail, by email, or in your home, car, dispensing collective, or office. Be cautious with whom you discuss sensitive information. Keep written materials and lists of patients in a secure place. If you are arrested, the police may investigate all of your contacts. Police officers have the right not only to go through your address book, but can also answer any calls made to your phone. Keep in mind that electronic data such as emails and text messages still exist even after they've been deleted, and your phone company or ISP may be willing to turn them over to law enforcement without even being subpoenaed.

Excerpted from "Security Culture," Slingshot Issue #72, [slingshot.tao.ca/](http://slingshot.tao.ca/) with modifications by ASA.

## **SUCCESSFUL POLICE ENCOUNTERS**

When dealing with law enforcement officers, keep your hands in view and don't make sudden movements. Avoid passing behind them. Nervous officers are dangerous officers. Also, never touch the officers or their equipment—you can get injured and/or charged with assault and battery.

Law enforcement officers do not decide your charges; they can only make recommendations. The prosecutor is the only person who can actually charge you. Remember that the police have no power to negotiate or charge; promises of leniency or threats of harsher penalties are all lies and are designed to get you to start talking.

## POLICE ENCOUNTERS

### Conversation

When law enforcement officers are trying to get information, but don't have enough evidence to detain or arrest you, they'll try to coerce information from you. They may call this a "casual encounter" or a "friendly conversation." If you talk to them, you may give them the information they need to arrest you or your friends. In most situations, it is not advisable to volunteer information to the police. Ask if you are free to leave, and, if you are, walk away. If you are being detained or arrested, let the officer know that you do not consent to a search and that you wish to remain silent and want a lawyer.



### Detention

Police can detain you only if they have reasonable suspicion (see below) that you are involved in a crime. Detention means that, though you aren't arrested, you can't leave. Detention is supposed to last a short time and they are not supposed to move you. During detention, the police can pat you down and go into your bag to make sure you don't have any weapons. They aren't supposed to go into your pockets unless they feel a weapon.

If the police are asking you questions, ask if you are being detained. If not, leave and say nothing else to them. If you are being detained, you should ask why, and remember their answer. Then you should say the Magic Words: "I am going to remain silent. I want a lawyer" and nothing else. Remain silent. Anything you say to law enforcement may be used against you, and sometimes it's hard to recognize that the information you are volunteering might harm you. It is always better to say nothing at all. If they ask to search your person or belongings, say, "I do not consent to a search." They may say, "Empty your pockets." You are within your rights to refuse. If you do empty your pockets, it is

considered consent and anything they find in your pockets may be used against you.

A detention can easily turn into arrest. If the police are detaining you and they get information that you are involved in a crime, they will arrest you, even if it has nothing to do with your detention.

For example, if someone is pulled over for speeding (detained) and an officer sees drugs in the car, the officer may arrest her for possession of the drugs, even though it has nothing to do with her being pulled over. Law enforcement officers

have two reasons to detain you: 1) they are writing you a citation (a traffic ticket, for example), or 2) they want to arrest you but they don't yet have enough information to do so.

### Arrest

Police can arrest you only if they have probable cause (see below) that you are involved in a crime. When you are arrested, law enforcement officers can search you to the skin and go through your car and any belongings. By law, an officer strip-searching you must be the same gender as you. If arrested, you should still say, "I do not consent to a search" to preserve your rights. After that, say, "I choose to remain silent and I want a lawyer." After that, remain silent. Law enforcement will try to get you to give them information about the crime(s) they are holding you for. Keep in mind that denying things that they say is NOT remaining silent.

### Reasonable Suspicion vs. Probable Cause

Reasonable suspicion must be based on more than a hunch—law enforcement officers must be able to put their suspicion into words. For example, an officer can't just stop someone and say, "She looked like she was up to something." They need to be more specific, such as, "She was standing under the overpass star-

ing up at graffiti that wasn't there two hours earlier. She had the same graffiti pattern written on her backpack. I suspected that she had put up the graffiti."

Officers need more proof to say they have probable cause than to say they have a reasonable suspicion. For example, "A store owner reported someone matching her description tagging a wall across the street. As I drove up to the store, I saw her running away spattered with paint and carrying a spray can in her hand."

### Searches

Never consent to a search. If police try to search your house, car, backpack, pockets, etc. say the Magic Words: "I do not consent to this search." This may not stop them from forcing their way in and searching anyway, but if they search you illegally, they probably won't be able to use the evidence against you in court.



You have nothing to lose from refusing to consent to a search and lots to gain. Do not physically resist officers when they are trying to search, because you could get hurt and/or charged with resisting arrest or assault and battery. Just keep repeating the Magic

Words so that the law enforcement officers and all witnesses know that this is your stance.

Be careful about casual consent. That is, if law enforcement officers stop you and you get out of the car but don't close the door, they might search the car and claim that they thought you were indicating consent by leaving the door ajar. Also, if you say, "I'd rather you didn't search," they can claim that you were reluctantly giving them permission to search. Always just say the Magic Words: "I do not consent to this search."

### Questioning

Interrogation isn't always bright lights and rubber hoses -- usually it's just a conversation.

Whenever law enforcement officers ask you anything besides your name and address, it's legally safest to say these Magic Words:

"I am going to remain silent. I want to see a lawyer." This invokes legal rights, which protect you from interrogation. When you say this, officers (and all other law enforcement officials) are legally required to stop asking you questions. They probably won't stop, so just repeat the Magic Words or remain silent until they catch on. If you forget your decision to remain silent and start talking to the police, you can and should re-invoke the Magic Words, then remain silent. Do not raise your status as a medical cannabis patient, unless you are specifically asked about this or the medicine has already been found.

Remember, anything you say to the authorities can and will be used against you and your friends in court. There's no way to predict what information the police might try to use or how they will use it. Plus, the police often misquote or lie altogether about what was said. So say only the Magic Words and let all law enforcement officers and witnesses know that this is your policy. Make sure that when you're arrested with other people, the rest of the group knows the Magic Words and promises to use them.

One of the jobs of law enforcement officers is to get information out of people. Officers are legally allowed to lie when they're investigating, and they are trained to be manipulative. The only thing you should say to officers, other than identifying yourself, are the Magic Words: "I am going to remain silent. I want to see a lawyer."

Here are some lies they may tell you:

- "You're not a suspect -- just help us understand what happened here and then you can go."
- "If you don't answer my questions, I'll have no choice but to arrest you. Do you want to go to jail?"
- "If you don't answer my questions, I'm going to charge you with resisting arrest."
- "All of your friends have cooperated, and

we let them go home. You're the only one left."

Law enforcement can be sneaky, and there are lots of ways they can trick you into talking. Here are some scams they may pull:

- "Good Cop/ Bad Cop": "Bad Cop" is aggressive and menacing, while "Good Cop" is nice, friendly, and familiar (usually "Good Cop" is the same race and gender as you). The idea is "Bad Cop" scares you so badly you are desperately looking for a friend. "Good Cop" is that friend.
- Prisoners' Dilemma: law enforcement officers will tell you that your friends ratted on you so that you will snitch on them. Meanwhile, they tell your friends the same thing. If anyone breaks down and talks, you all go down.
- Law enforcement officers will tell you that they have all the evidence they need to convict you, but that if you "take responsibility" and confess, the judge will be impressed by your honesty and go easy on you. What they really mean is: "We don't have enough evidence yet, please confess."

Jail is a very isolating and intimidating place. It is really easy to believe what law enforcement officers tell you. Insist on speaking with a lawyer before you answer any questions or sign anything.

### **Miranda Rights**

The police do not have to read you your rights (also known as the Miranda warnings). Miranda applies when there is (a) an interrogation (b) by a police officer or other agent of law enforcement (c) while the suspect is in police custody (you do not have to be formally arrested to be "in custody"). Even when all of these conditions are met, the police intentionally violate the Miranda requirement. And though your rights have been violated, what you say can be used against you. For this reason, it is better not to wait for law enforcement officers to inform you of your rights. You know what your rights are, so you can invoke them by saying the Magic Words, "I am going

to remain silent. I want to see a lawyer."

If you've been arrested and realize that you have started answering questions, don't panic. Just re-invoke your rights by saying the Magic Words again. Don't let them trick you into thinking that because you answered some of their questions, you have to answer all of them.

### **Arrest and Search Warrants**

If the police come to your door with an arrest warrant, step outside and lock the door behind you. Law enforcement officers are allowed to search any room you go into, so don't go back into the house for any reason. If they have an arrest warrant, hiding won't help, because they are allowed to force their way in if they know you are there. It's usually better to just go with them without giving them an opportunity to search.

If the police have a search warrant, nothing changes—it's legally safest to say the Magic Words. Again, you have nothing to lose from refusing to consent to a search and lots to gain if the search warrant is incorrect or invalid. If they do have a search warrant, ask to read it. A valid warrant must have a recent date, the correct address, and a judge's or magistrate's signature; some warrants also indicate the time of day law enforcement officers can search. You should say the Magic Words whether or not the search warrant appears correct. The same goes for encounters with any other government official who tries to search you, your belongings, or your house.

### **Infiltrators and Informants**

Undercover officers sometimes infiltrate organizations. They can lie about being officers even if asked directly. Undercover officers can even break the law and encourage others to do so. This is not legally entrapment.

### **FBI, DEA, and Other Government Agents**

The essence of the Magic Words "I'm keeping my mouth shut until I talk to a lawyer" not only applies to police but also to the FBI, DEA, INS, CIA, even the IRS. If you want to be nice

and polite, say that you don't wish to speak with them until you've spoken with your lawyer or that you won't answer questions without a lawyer present.

### **Phone Calls in Jail**

You're entitled to make a phone call from jail, but that doesn't mean you're going to get one right away. Jail telephones are often rigged to only make collect calls, although some take coins as well. All telephone calls from people in custody can be monitored. You should not discuss anything that is secret or sensitive—circumstances of your arrest, people you are close to, any contact information for those people, etc.

### **Taking Notes**

Whenever you interact with or observe the police, always write down what is said and who said it. Write down officers' names and badge numbers and the names and contact information of any witnesses. Record everything that happens. If you are expecting a lot of law enforcement contact, get in the habit of carrying a small tape recorder and a camera with you. Be careful—law enforcement officers don't like people taking notes, especially if they are planning on doing something illegal. Observing them and documenting their actions may have very different results; for example, it may cause them to respond aggressively, or it may prevent them from abusing you or your friends.

### **Conclusion**

People deal with law enforcement officers in all kinds of circumstances. You must make an individual decision about how you will interact with law enforcement. It is important to know your legal rights, but it is also important for you to decide when and how to use them in order to best protect yourself.

## **DEMYSTIFYING THE LEGAL SYSTEM**

### **Getting Out of Jail**

There are several procedures for getting out of jail while a case is in process. Once arrested,

the judge will decide whether to offer you bail, bond, or release you on your own recognizance (OR).

**Citation:** Citing out is a type of release from custody in which you sign a citation, which is a promise to appear in court. It is usually a form that looks like a traffic ticket. Never sign a piece of paper that is an admission of guilt. Read the form closely and make sure you know what you are signing.

**Bail:** Bail is money you pay to the court, to be forfeited if you don't appear at scheduled hearings. A bail bondsman can put up the money for you, but you have to give the bondsman a percentage of the total bail, which the bondsman keeps as payment. Often, there is a pre-set bail for misdemeanors and lesser felonies that you can pay at the jail without waiting to go before a judge.

**Bond:** A bond is like bail except that you put up collateral instead of paying money. Collateral is something of value, like a car, a house, or property.

**OR:** Release on your own recognizance (OR, ROR or PR) is simply your promise to come to court for scheduled hearings without having to put up bond or pay bail. Usually you will only be released on your own recognizance if you can prove that: (1) you are not a danger to the community; and (2) you are not a flight risk or unlikely to return for court appearances.

You are likely to be kept in jail if you:

- Have an outstanding warrant for another charge
- Are already out on OR, bond or bail for another charge
- Are currently on probation or parole
- Have failed to appear for court dates in the past
- Have immigration problems

You are likely to be released from jail if you can prove you're not a flight risk by organizing documents for your first court appearance that show the judge you have long term ties to the community and are therefore unlikely to skip town. Assemble as many of the following documents as possible. You need the orig-

inals, plus a copy to give the court:

- Lease, rent receipts, utility bills, phone bills (both current bills and old ones to show the time you've been at this residence)
- Employment contract, pay stubs, records of volunteer work
- School ID, school records
- Proof of membership in community organizations or churches
- General character reference letters from landlords, roommates, employers, teachers, clergy
- Character references with phone numbers
- Letters on doctor's stationery about any medical conditions or appointments that necessitate your release

It would be very difficult for your friends to assemble such materials while you are sitting in jail. It makes more sense for you to put together this packet in advance and keep it in a safe, accessible place. If you are arrested, your friends can bring these papers to your lawyer



so that you will have this material in court.

### **Going to Court**

*When do I go to court for the first time?*

If you are in custody, the authorities are legally supposed to bring you to court within two business days or "as soon as reasonably possible." If you are not being held in jail, your first court date may be anywhere from one week to a month after arrest. Court dates should be written on the citation or release forms.

*What happens at the first court appearance?*

The first hearing generally involves the appointment of counsel. You indicate who's going to represent you: yourself, a private attorney, or a court-appointed lawyer. Also at the first hearing, you find out the charges against you, and respond by making a demurrer or entering a plea. This part is called the arraignment.

If you've been in jail up until your first court appearance, the first hearing usually focuses on release issues: bail, bond or release on your own recognizance (OR). This part is called a bail hearing. Even if you're not released the first time, the subject can be brought up at later hearings. The appointment of counsel, arraignment, and bail hearing can sometimes be separate appearances. Many people choose to waive the right to a speedy trial at this time, called "waiving time." This is mainly done to have the most amount of time to plan your defense and build public support.

*What are my choices when it's time to enter a plea?*

Pleas generally fall into two categories: guilty and not guilty. Normally, people only plead guilty if they've negotiated a plea bargain. If you do not reach or want a plea bargain plead "not guilty" and go to trial.

*What happens if I don't show up for a court hearing?*

If you miss a scheduled hearing, the judge will usually issue a bench warrant. If an individual with an outstanding bench warrant gets into any kind of trouble, like a traffic violation, s/he is subject to arrest. Judges usually accept extreme excuses for missing a hearing, like funerals or medical emergencies. Conflicts with school or work schedules are not acceptable excuses.

*When does the trial happen?*

When you do not waive time, trial usually occurs a month or two after arraignment. When time is waived, trial might not begin for many months. In both cases, trials are often preceded by hearings at which written

and/or oral "motions" are made and heard.

#### *What goes on at trial?*

At trial, you can testify if you want to. You can also put on eye- (and ear-) witnesses, and possibly witnesses to testify about your good character. In addition, you have the right to cross-examine the witnesses against you, who will probably be law enforcement officers.

You also get to make opening and closing arguments.

The judge may try to forbid you from talking about anything political, and even disallow mention of medical cannabis, on the grounds that it would be irrelevant. Lawyers may be able to get around the judge's prohibitions, but there's considerable precedent (published results of earlier trials) supporting the notion that judges can forbid discussion of political matters at trial.

Your lawyer will handle witnesses, make opening and closing arguments, and file motions. All you do is testify. Sometimes, people represent themselves (called pro per or pro se). In these situations, it's useful to have an attorney as advisory counsel or co-counsel to help with technical legal matters.

You don't necessarily get a jury trial. The alternative is a bench trial, or trial by judge in which the judge hears the evidence and reaches a verdict. The judge will also decide what will be allowed as testimony and evidence. In state court, you must be charged with at least a misdemeanor to get a jury trial. In federal court, you must be charged with an offense that carries a maximum sentence of greater than six months to get a jury trial. This requirement rules out all infractions and most misdemeanors.

The trial ends with the verdict: guilty, not guilty, or a hung jury. If found not guilty, celebrate. If there is a hung jury (the jury couldn't agree on the verdict), then the prosecutor gets to decide whether to retry you or dismiss the case. Prosecutors often give up or offer a really good deal at this point. If you're found guilty, then the judge sentences you. The

judge can either sentence you immediately after the verdict or set a separate hearing for sentencing. You may be qualified to appeal this sentence or the original case ruling, so consult with an attorney.

#### *What happens at sentencing?*

You can pack the courthouse. You get to make a speech, because you have the right to allocution. This sentencing statement is normally a chance to ask for mercy and explain mitigating factors, but activists often use it as a chance to discuss political matters, especially if they didn't get to speak their minds at trial.

#### **Return of Property**

In nearly every case where a patient or caregiver is cited or arrested for medical cannabis, law enforcement will seize the medicine and often other property they feel is connected with the alleged offense. If this happens and you are found not guilty or have your charges dismissed or dropped, you can petition the court for the return of your property. The police typically do not return property without a court order. This requires a patient to file a motion for return of property. ASA has an ongoing return of property campaign and has information on its website to help you file a motion.

If you are certain that the property has been destroyed or is damaged beyond use, you may want to sue the city or county responsible for the property's damage or destruction. In this instance, you would be filing a civil suit. This process can often take years to complete. In order to qualify for filing a civil suit, you must first file a claim form with the appropriate government entity shortly after the seizure. It may be helpful to have the civil suit complaint drafted by an attorney, but that is not necessary. Contact ASA about how to file a Tort claim, which is a civil suit against law enforcement for reimbursement for the destruction of property.

This information provided to ASA by the Midnight Special Law Collective—[www.midnightspecial.net](http://www.midnightspecial.net).