

F I L E D
Clerk of the Superior Court

DEC 28 2022

By: A. Cabrales

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**IN RE BAN ON CANNABIS POSSESSION
AND USE IN COURTHOUSE FACILITIES**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT**

ORDER NO. 010123-23

THIS COURT FINDS AS FOLLOWS:

The San Diego County Sheriff's Department ("Sheriff") is designated as the Court Security Officer in San Diego. Thus, the Sheriff is charged with assuring the security of facilities within which the courts of this county conduct official business. The Sheriff is also responsible for persons in custody who are brought to the courthouse for proceedings.

Penal Code section 4573 prohibits all persons from bringing "any controlled substance" into any place where individuals "are located under custody of any sheriff, chief of police, peace officer, probation officer or employees, or within the grounds belonging to the institution." Under Health and Safety Code section 11007, "'a controlled substance,' unless otherwise specified, means a drug, substance, or immediate precursor which is listed in any schedule in Section 11054, 11055, 11056, 1057, or 11058." Health and Safety Code section 11054(d)(13) specifically identifies "[c]annabis"

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1 as a “controlled substance.” In addition, all “mari[j]uana” is considered an “illegal controlled
2 substance” under federal law. (Controlled Substances Act, 21 U.S.C. § 812.)¹

3 The court recognizes that previously enacted medical marijuana laws and the Control,
4 Regulate and Tax Adult Use of Marijuana Act approved on November 8, 2016, by voters under
5 Proposition 64 (the “Adult Use of Marijuana Act”) allow possession and use of cannabis under state
6 law under certain conditions. (Health & Saf. Code, §§ 11362.1 et seq.) However, the Adult Use of
7 Marijuana Act did not repeal Penal Code section 4573. (See Health and Saf. Code, § 11362.45(d).)
8 In addition, the Adult Use of Marijuana Act expressly “allows a state or local government agency to
9 prohibit or restrict any of the actions or conduct otherwise permitted under section 11362.1 within a
10 building owned, leased, or occupied by the state or local government agency.” (Health & Safety
11 Code, § 11362.45(g).) Furthermore, a public employer retains the right to “maintain a drug and
12 alcohol free workplace,” is not required “to permit or accommodate the use, consumption,
13 possession, transfer, display, transportation, sale, or growth of cannabis in the workplace,” and may
14 have policies “prohibiting the use of cannabis by employees and prospective employees, or prevent
15 employers from complying with state or federal law.” (Health & Saf. Code, § 11362.45(f).)

16 Therefore, pursuant to Penal Code section 4573 and Health and Safety Code section
17 11362.45, IT IS HEREBY ORDERED as follows:

18 No public employee or member of the public is permitted to possess or use cannabis,
19 cannabis products, cannabis accessories, or cannabis plants within any of the San Diego Superior
20 Court courthouse facilities, including but not limited to courtrooms, lobby areas, hallways, stairs,
21 elevators and escalators, and business offices.

22 For purposes of this order, cannabis mean “all parts of the plant *Cannabis sativa* L., whether
23 growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound,
24 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin” (Health & Saf.
25 Code, § 11018); “cannabis products” means “cannabis that has undergone a process whereby the

27 ¹ For purposes of this order the terms “cannabis” and “marijuana” are synonymous. (See Health & Saf. Code, § 11032
28 [“If reference is made to the term ‘marijuana’ in any law not in this division, unless otherwise expressly provided, it
means cannabis as is defined in this division.”])

1 plant material has been transformed into a concentrate, including, but not limited to, concentrated
2 cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other
3 ingredients” (Health & Saf. Code, § 11018.1); and "cannabis accessories" means “any equipment,
4 products or materials of any kind which are used, intended for use, or designed for use in planting,
5 propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing,
6 processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or
7 containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis
8 products into the human body.” (Health & Saf. Code, § 11018.2).

9 Rare exceptions to this rule may be made by court order, in the court’s complete discretion,
10 for persons whose documented medical need to have access to cannabis or cannabis products while
11 conducting business within the courthouse cannot be reasonably accommodated in any other way.

12 The Sheriff, or other authorized security personnel, is authorized to inspect any and all items
13 to determine whether they fall within the scope of this order, and shall forbid possession of such
14 items in the facility by allowing the individual who possesses such item or items to remove them
15 from the building.

16 Disobedience of this order is punishable as a contempt of court and under the general laws
17 of the State of California.

18 Nothing in this order is intended to nor shall diminish the legal and lawful authority of the
19 Sheriff as a peace officer.

20 This order shall become effective on January 1, 2023, and expire on December 31, 2023,
21 unless otherwise ordered by this court.

22 Service of this order is ordered on the San Diego Sheriff’s Department.

23 IT IS SO ORDERED.

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25 DATED: December 28, 2022



26 **HONORABLE MICHAEL T. SMYTH**
27 **PRESIDING JUDGE**
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