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"INTEGRITY...FAIRNESS...SERVICE"

SPECIAL ORDER # 2014-06

Date: March 31, 2017

TO: All Police Department Personnel. To be Announced at Roll Call and a Copy Posted on the Department's Intranet site.

RE: Addendum to Special Order #2014-06, Possession of Marijuana-THC - Civil Offense.

EFFECTIVE: Immediately.

BACKGROUND: Special Order #2014-06 was distributed to Department members in 2014 to address changes in Maryland law which made possession of marijuana-THC in certain circumstances a civil offense. This addendum is being released to address two additional changes made to the marijuana-THC laws in Maryland during 2016: Senate Bill SB0517, which took effect on February 20, 2016, and House Bill HB0565 which went into effect on October 1, 2016.

During the 2014 Legislative Session, the Maryland General Assembly passed Senate Bill SB0364, which went into effect on October 1, 2014. This bill made the use or possession of less than 10 grams of marijuana-THC a civil offense rather than a criminal violation. As a result of this bill, the Department developed new policy and procedures for members to follow when enforcing the laws addressing the possession of marijuana-THC.

It is important for members to understand that this legislation did not legalize the possession of marijuana-THC. The possession of marijuana-THC is still illegal in Maryland; however individuals found in possession of small amounts are not subject to prosecution in the criminal courts of the state, but are subject to penalties in the civil courts. Members also continue to be required to submit all recovered marijuana-THC to the Evidence Management Unit (EMU) to be held as evidence or destroyed.

In 2014, the District Court of Maryland for Baltimore County agreed to schedule the civil court trials in reference to these violations on Department members' scheduled court dates. To assist the courts in selecting the correct trial dates, members are now required to place a sufficient number of their scheduled criminal court dates on the Forms DC/CR4, Statement of Probable Cause, attached to civil citations.

Distribution of civil citations written for possession of marijuana-THC remains the same as that for other civil violations.

It is important to remember that subjects in possession of less than 10 grams of marijuana-THC are being charged with a civil violation, and cannot be searched incident to the citation. Members must also know that a requirement to provide officers with identification was not included in the law. Due to the lack of this requirement, members cannot arrest a subject to determine their identity as we do with other civil violations.

ADDENDUM TO SPECIAL ORDER #2014-06 (Continuation)

During the 2016 Legislative Session, previously vetoed Senate Bill SB0517 from the 2015 Legislative Session was overturned. Effective February 20, 2016, the following changes to the marijuana-THC laws went into effect:

The smoking of marijuana-THC in a public place, including smoking marijuana-THC in a vehicle, is now considered a civil offense, subject to penalties in civil court. Members charging subjects with smoking marijuana-THC in public will do so by way of a civil citation. Subjects charged by way of a civil citation for smoking marijuana-THC in public cannot be searched incident to the citation. Subjects may not be arrested for failing to provide identification for the purpose of issuing the citation. It is important to note that the decriminalization of smoking marijuana-THC in public does not change the laws regarding the operating of a motor vehicle while impaired or under the influence of a controlled dangerous substance.

Additionally, possession of marijuana-THC related drug paraphernalia (e.g., baggies, rolling papers, smoking devices, etc.) has been decriminalized, except in cases where evidence supports felony possession with intent to distribute, distribution, or manufacturing of marijuana-THC. As of February 20, 2016, there are no civil or criminal penalties for possession of marijuana-THC paraphernalia, unless the evidence supports felony possession with intent to distribute, distribution, or manufacturing of marijuana-THC. Members will not seize marijuana-THC related drug paraphernalia, unless criminal charges for felony possession with intent to distribute, distribution, or manufacturing of marijuana-THC are being placed. Smoking devices will not be seized, regardless of charges placed. All other paraphernalia not related to personal use or possession (e.g., baggies, grow lights, scales, etc.) may be seized in cases where the evidence supports felony possession with intent to distribute, distribution, or manufacturing of marijuana-THC.

During the 2016 Legislative Session, House Bill HB0565 was also passed. Effective October 1, 2016, the following additional change to the marijuana-THC laws also went into effect: Fine amounts for civil violations of possession of marijuana-THC are based on the number of previous findings of guilt for the use or possession of less than 10 grams of marijuana-THC, instead of for previous violations.

Members should also note that, in January of 2017, the Maryland Court of Appeals held, in the case of Robinson et. al. v. State of Maryland, that marijuana-THC in any amount is contraband, and that officers may use the odor of marijuana-THC as probable cause to search a vehicle under the Carroll doctrine.

PURPOSE: To establish procedures for members to follow when enforcing the laws addressing possession of marijuana-THC after October 1, 2014. To establish procedures for members to follow when enforcing the laws addressing the smoking of marijuana-THC in public, and the possession of marijuana-THC paraphernalia, after February 20, 2016. To establish procedures for determining fine amounts for possession of marijuana –THC, based on previous findings of guilt, after October 1, 2016.

RELATIONSHIP TO DEPARTMENTAL VALUES: This Special Order demonstrates the Department's commitment to **SERVICE** by providing members with policy and procedures that reflect changes in Maryland's law.

POLICY:

MEMBERS ENCOUNTERING SUBJECTS IN POSSESSION OF MARIJUANA-THC

- Under circumstances providing probable cause to believe the subject was manufacturing marijuana-THC, distributing marijuana-THC, or possessed marijuana-THC with the intent to distribute it may:
 1. Arrest the subject, and complete the required charging documents (i.e., Forms DC/CR2, Statement of Charges, and DC/CR4, for adults or a Form 117, Juvenile Referral/Custody Report, for juveniles).
 2. Seize the marijuana-THC and submit it for analysis pending further investigation.
- Under circumstances that do not provide probable cause to believe the subject was manufacturing marijuana-THC, distributing marijuana-THC, or possessed marijuana-THC with the intent to distribute it, but do provide probable cause to believe the subject possesses 10 or more grams of marijuana-THC may:
 1. Arrest the subject, and complete the required charging document, if the arrest is intended to further another criminal investigation.
 2. Charge the subject with criminal possession of 10 or more grams of marijuana-THC in the event the subject has been arrested for other criminal charges.
 3. Seize the marijuana-THC and submit it for analysis pending further investigation.
 4. Seize the marijuana-THC and issue the subject a civil citation for possession of less than 10 grams of marijuana-THC.

NOTE: In cases where the subject is arrested, the charging document will explain how the arresting member preliminarily determined the amount of marijuana-THC recovered was 10 grams or greater based upon the member's training, knowledge, and experience.

- Under circumstances that do not provide probable cause to believe the subject was manufacturing marijuana-THC, distributing marijuana-THC, or possessed marijuana-THC with the intent to distribute it, and the amount of marijuana-THC is less than 10 grams or undetermined, will seize the marijuana-THC and:
 1. Issue the subject a civil citation for possession of less than 10 grams of marijuana, or
 2. Submit it to the EMU pending further investigation.
- Will not complete a civil citation if the marijuana-THC being seized is an element of a traffic or criminal charge.

MEMBERS ENCOUNTERING SUBJECTS SMOKING MARIJUANA-THC IN PUBLIC

- Will seize the marijuana-THC and submit it to the EMU.
- May issue the subject a civil citation for smoking marijuana-THC in public.
EXCEPTION: When the marijuana-THC is an element of a traffic or criminal charge.

MEMBERS ENCOUNTERING SUBJECTS IN POSSESSION OF MARIJUANA-THC PARAPHERNALIA

- May seize marijuana-THC paraphernalia that is not related to personal use or possession (e.g., baggies, grow lights, scales, etc.) and place appropriate criminal charges, in cases where there is probable cause to believe the subject was manufacturing marijuana-THC, distributing marijuana-THC, or possessed marijuana-THC with the intent to distribute it.
EXCEPTION: Smoking devices will not be seized, regardless of criminal charges placed.
- May not, seize marijuana-THC paraphernalia in cases where there is not probable cause to believe the subject was manufacturing marijuana-THC, distributing marijuana-THC, or possessed marijuana-THC with the intent to distribute it.
NOTE: There are no criminal or civil penalties for the possession of marijuana-THC related drug paraphernalia in these cases.
- May attempt to collect marijuana-THC/residue from the paraphernalia, and return the paraphernalia to the subject.
NOTE: A civil citation may only be issued for possession of marijuana-THC, if residue is able to be extracted from the paraphernalia.

ADDENDUM TO SPECIAL ORDER #2014-06 (Continuation)

SUSPECT IDENTIFICATION.

- Members will not arrest subjects to determine their identities when issuing a civil citation in reference to possession of marijuana-THC or smoking marijuana-THC in public.
- Subjects being issued civil citations shall not be compelled to present valid identification.
- Members who cannot identify a subject in reference to a civil marijuana-THC violation will:
 1. Seize the marijuana and submit it to the EMU.
 2. Follow-up all available information to determine the subject's identity.
 3. Issue a civil citation only after the subject's identity has been confirmed.

MEMBERS COMPLETING CIVIL CITATIONS.

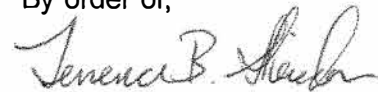
- Request the precinct desk officer conduct a search of the court system's civil citation records, to determine if the suspect has prior findings of guilt for possession of less than 10 grams of marijuana-THC.
NOTE: Only adult offender records will be available in the court system's records.
- Indicate the appropriate fine on the citation:
 1. Based upon the number of prior findings of guilt discovered, for possession of less than 10 grams of marijuana-THC.
NOTE: If the number of prior findings of guilt is unknown or cannot be determined, members will charge the subject indicating it is their first violation.
 2. Based on the current fine amount preset by the court, for smoking marijuana-THC in public.
- Place a sufficient number of their assigned criminal court dates on the Form DC/CR4.
- Will use the command's copier to scan the packaged marijuana-THC. Members will place a copy of the scanned image into their case file and attach a copy to the citation.

MEMBERS SUBMITTING MARIJUANA-THC TO THE EVIDENCE MANAGEMENT UNIT.

- Follow current procedures addressing the packaging and submitting of marijuana-THC.
- Will not submit a Form 98, Request for CDS Analysis, if only charging a subject with a civil violation.
- Complete a Form 128, Disposition of Property/Evidence, indicating disposal/destruction if the suspect was issued a civil citation.

IMPLEMENTATION: This Special Order addendum will be distributed electronically to all Department members. Shift/unit supervisors will be responsible for the posting and referencing of this Special Order addendum. This addendum supersedes Special Order #2014-06.

By order of,



Terrence B. Sheridan
Chief of Police