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TO: BROWARD COUNTY LAW ENFORCEMENT AGENCIES,
BROWARD COUNTY POLICE CHIEFS and
ASSISTANT STATE ATTORNEYS

FROM: JEFF A. MARCUS *J.M.*
CHIEF ASSISTANT STATE ATTORNEY

SUBJECT: POLICIES AND PROCEDURES FOR THE PROSECUTION OF CANNABIS
AND TETRAHYDROCANNABINOL (THC) CASES

EFFECTIVE: JULY 1, 2019

As you are aware, Florida Governor Ron DeSantis signed SB 1020 on June 25, 2019, hereafter to be known as the State Hemp Program under Florida Statute 581.217. The bill also amended the definition of cannabis under F.S. 893.02. The law was signed on June 25, 2019, and was effective as of July 1, 2019.

Pursuant to F.S. 581.217, hemp is defined as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, thereof, whether growing or not, that has a total delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis. Hemp-derived cannabinoids, including but not limited to, cannabidiol, are no longer controlled substances.

Pursuant to F.S. 893.02, cannabis is defined as all parts of any plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "marijuana" as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986. The term does not include hemp as defined in s. 581.217 or industrial hemp as defined in s. 1004.4473.

It is our understanding Broward County law enforcement agencies will utilize a field test kit which provides a presumptive positive result to establish probable cause for an arrest for a controlled substance. In order to establish probable cause for an arrest for the controlled substance of Cannabis and Tetrahydrocannabinol (THC), including its extracts, resins and derivatives, the field test kits utilized by law enforcement will distinguish between hemp, cannabis, and other THC substances. The field test kits will also indicate a presumptive positive for a total delta-9 tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry-weight basis.

MISDEMEANOR, JUVENILE AND FELONY CHARGES OTHER THAN TRAFFICKING

In recognition of the tremendous costs in confirming the chemical analysis of the drugs seized, it is recommended that law enforcement use their discretion when warranted and when otherwise appropriate and consistent with the practices within their own agency, refer juvenile or adult misdemeanor amount cases to a local diversion program, Civil Citation, or Promise Program. Likewise, the State Attorney's Office will refer appropriate cases to Pre-Trial Intervention and Drug Court.

The Office of the State Attorney, Broward County, will rely upon a presumptive positive field test for the filing of an information/juvenile petition for misdemeanor and felony charges (other than trafficking level). The field test kit that is utilized must be specified on the civil citation, notice to appear, probable cause affidavit, property receipt, and police report, and indicate that there was a presumptive positive for cannabis or tetrahydrocannabinol (THC) and that the testing was for a 1% or greater D-9 THC concentration.

The Office of the State Attorney has been advised that a confirmatory chemical analysis will consume as much as 2 grams in the testing process. Therefore, in order for some amount of evidence to be available for court presentation, we are requiring a 3 gram minimum net weight for the prosecution of all misdemeanor cannabis cases. For felony cases, the State Attorney's Office will require a 24 gram minimum net weight to account for the consumption of evidence during testing and the specified scale variance. A 3 gram minimum net weight will be required for the prosecution of all felony tetrahydrocannabinol (THC) cases.

Should any case not be resolved and set for hearing or trial, the presenting law enforcement agency will be responsible for arranging the confirmatory quantitated chemical analysis to be conducted by a law enforcement or independent testing laboratory in the tri-county area. The analysis must confirm the identification of the specific substance, the specific quantification of the THC percentage as it relates to the delta-9 tetrahydrocannabinol percentages, and any necessary weight requirements to substantiate the charged offense.

Such costs for all laboratory testing will be incurred by the presenting law enforcement agency. The presenting law enforcement agency will be responsible for forwarding the laboratory test results and chain of custody documentation to the Office of the State Attorney, Broward County. Subject to the cooperation of the courts, we hope to be able to provide a two-week notice to law enforcement prior to the trial to get the drugs tested for misdemeanor and felony cases. The Office of the State Attorney, Broward County, will incur the costs of the expert witness fee for hearing or trial testimony.

DRUG TRAFFICKING CHARGES

Prior to the filing of an information for all Trafficking and Conspiracy to Traffic in Cannabis and Tetrahydrocannabinol (THC) cases, the Office of the State Attorney, Broward County, will require a presumptive positive field test for Cannabis or Tetrahydrocannabinol (THC) at 1% or greater of D-9 THC concentration AND a confirmatory quantitated chemical analysis conducted by a law enforcement or independent testing laboratory in the tri-county area. The field test kit that is utilized must be specified in the probable cause affidavit, property receipt, and police report.

The analysis must confirm the identification of the specific substance, the specific quantification of the THC percentage as it relates to the delta-9 tetrahydrocannabinol percentages, and the weight of the substance to substantiate the charged trafficking weight. The individual testing samples must be up to the net weight of the specific trafficking or conspiracy to traffic threshold.

The net weight to substantiate trafficking or conspiracy to traffic in cannabis charges are as follows: 25 pounds but less than 2,000 pounds (Level 7); 2,000 pounds but less than 10,000 pounds (Level 8); over 10,000 pounds (Level 9); or 300 plants but less than 2,000 plants (Level 7); 2,000 plants but less than 10,000 plants (Level 8); and, more than 10,000 plants (Level 9).

The net weight to substantiate trafficking or conspiracy to traffic in tetrahydrocannabinol (THC) or a synthetic tetrahydrocannabinol (THC) charges are as follows: 280 grams but less than 500 grams (Level 7); 500 grams but less than 1,000 grams (Level 7); 1,000 grams but less than 30 kilograms (Level 8); and, 30 kilograms or more (Level 9).

Such costs for all laboratory testing will be incurred by the presenting law enforcement agency. The presenting law enforcement agency will be responsible for forwarding the laboratory test results and chain of custody documentation to the Office of the State Attorney, Broward County Drug Trafficking Unit. Such testing will be independent of the non-quantified analysis also conducted by the Broward Sheriff's Office Crime Laboratory. All testing must be completed with the laboratory results received by the Drug Trafficking Unit no later than 25 days from the arrest date so that an Information can be timely filed. The Office of the State Attorney, Broward County, will incur the costs of the expert witness fee for hearing or trial testimony.

Should the presenting law enforcement agency seek reimbursement from the defendant for laboratory testing fees as an investigate costs, such agency shall provide a copy of the invoice which should have the defendant's name, agency case number, and court case number. When appropriate, a request will be made of the court for investigative costs for the law enforcement agency in a manner compliant with F.S. 938.27.