



OFFICE OF AGRICULTURAL LAW ENFORCEMENT

LEGAL BULLETIN

2019-04

VEHICLE SEARCHES AND CANNABIS

Background

As of July 1, 2019, Senate Bill 1020, titled "State Hemp Program", became effective. SB 1020 amended the criminal definition of "Cannabis" in s. 893.02, F.S., to exclude "Hemp" as defined in s. 581.217, F.S., or industrial hemp as defined in s. 1004.4473, F.S. Pursuant to s. 581.217, F.S., "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. Therefore, Hemp (D-9 THC concentration of 0.3% or less) is legal in the state of Florida.

Hemp and illegal cannabis can look, feel, and smell the same, and both substances can be smoked. Currently, there is no known way to distinguish Hemp and illegal cannabis based on plain view or plain odor alone. There is no definitive universal probable cause search standard. Subsequently, many law enforcement agencies have adopted what is called the "odor plus standard" to determine probable cause to conduct a search of a vehicle upon the smell of cannabis. See s. 581.217, 893.02, and 1004.4473, F.S. Effective immediately, Office of Agricultural Law Enforcement (OALE) officers shall follow the "odor plus standard" procedures provided in this bulletin until superseded by policy.

As of July 1, 2019, Senate Bill 182 became effective. SB 182 amended s. 381.986, F.S., redefining the term "medical use" to include the possession, use, or administration of marijuana in a form for smoking. Therefore, pursuant to s. 381.986, F.S., a person is now permitted to smoke medical marijuana in the state of Florida.

Investigations

Officers are expected to continue to conduct cannabis investigations but should not rely solely on the smell of cannabis for conducting a search.

Example:

While conducting a traffic stop, you detect the odor of cannabis emanating from the vehicle. Prior to searching, you should ask the subject, "Do you have any marijuana or hemp in the vehicle?" If the subject answers "No," then you have reached the threshold to detain and search. If the subject answers "Yes," then you need to determine if it is marijuana or hemp. If the subject advises it is marijuana, then you must determine if the marijuana is legally obtained (medical marijuana). If the subject has illegal marijuana, then you may now detain and search. Other observations that should be considered and included in your documentation are provided below.

The "odor plus standard" requires officers to obtain circumstantial evidence beyond the mere scent of cannabis (burnt or fresh) in order to establish probable cause for a search

of a vehicle. Officers shall articulate in their case narratives/arrest reports all specific observations.

The following are some examples of "odor plus standards" that may be used to determine probable cause:

- Admission of possession of a controlled substance during initial contact OR denial of possession of Hemp
- Visual observation – plain view/plain feel of an illegal substance
- Any other illegal activity/conduct
- Conflicting or nonsensical statements by suspect or passenger
- Signs of deceptions, hands shaking, nervousness, avoiding eye contact
- Furtive movements
- Destroying, discarding, or distancing themselves from an object/substance
- Signs of impairment (driving pattern, bloodshot or watery eyes, slurred speech, delayed reaction/responses)
- A large amount of currency and/or currency bundled, rubber banded, or packaged in a manner consistent with illegal narcotics activity
- Masking agents
- Drug paraphernalia (scales, baggies, or other paraphernalia when combined with other factors on list)
- Weapon/firearm
- Criminal records if known prior to stop and subsequent search (applies more to the determination of whether material is Hemp or cannabis rather than probable cause to search)
- Information/intelligence regarding illicit activity prior to stop and search

Presumptive Testing and Arrests

The Office of Agricultural Law Enforcement has purchased new Cannabis Typification Test kits that have the ability to presumptively distinguish between legal hemp and illegal marijuana. Due to the legalization of hemp, the following procedures shall be followed.

- Legal medical marijuana shall not be subject to presumptive field testing.
- Suspected samples of cannabis should be tested utilizing a traditional marijuana presumptive field test kit (Duquenois-Levine Reagent System). If this test is negative, no further action should be taken.
- In the event the sample presumptively tests positive, members should then utilize the new Cannabis Typification Test kit to determine if the sample has a THC level of 0.3%. Instructions on how to utilize the Cannabis Typification Test kit are attached. A positive test result by the Cannabis Typification Test kit indicates that the substance in question has a THC level above 0.3% and is therefore illegal marijuana. When the new Cannabis Typification Test kit is not available, members shall develop probable cause by use of investigative techniques and/or post Miranda statements.
- Members should take appropriate law enforcement action after both presumptive tests are positive for the presence of illegal marijuana, which could include a notice to appear or a physical arrest. It is recommended that a notice to appear be issued for all misdemeanor marijuana violations. Officers who obtained additional evidence but did not have access to the new Cannabis Typification Test kit, must consult with the FDACS Office of General Counsel prior to taking enforcement

action.

- Officers must document in their uniform crime reports/arrest reports, evidence property receipts and other documentation that, "The cannabis sample presumptively tested positive for the presence of marijuana and that a Cannabis Typification Test indicates that the substance in question has a THC level above 0.3%." Members who are unable to use the Cannabis Typification Test kit shall document all additional evidence and that they consulted the Office of General Counsel. Failure to do so may result in a finding of no probable cause.
- Post-Miranda interviews are encouraged in order to confirm a suspect's knowledge of the illegal marijuana.
- This bulletin should not be construed in any way to hinder an individual's right to possess, transport, or use medical marijuana as authorized by Florida Statutes.

Syndicate Alliance Cannabis Typification Field Test Kit

Prior to use, members should be familiar with and follow the manufacturer's instructions for the Syndicate Alliance cannabis typification field test kit.

Officers should continue to consult with an OALE Legal Advisor for guidance regarding felony marijuana cases.

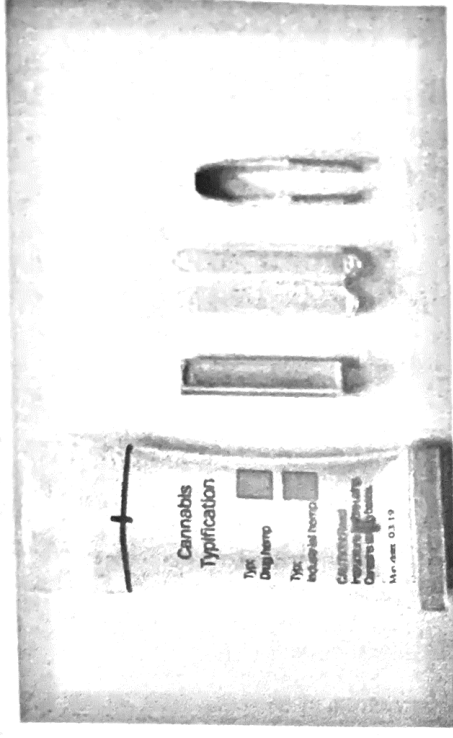
After utilizing the CURRENT field test kit:

Cannabis Field Testing

- Distinguishes cannabis containing more than 1% THC from hemp containing less than 1% THC.
- Turns BLUE with illegal cannabis.
- Turns RED with hemp.

Instructions for Use

- Remove Clip.
- Insert sample (pinch) of suspect material.
- Reseal with clip and gently tap on a hard surface to bring the sample to the bottom of the pouch.
- With the printed side of the pouch facing towards you, break the ampoules by squeezing them between thumb and index finger.
- Shake gently and observe color change.
- Compare color after approximately 2 minutes.



Blue Color – Typical Marijuana Result

Sample is likely Marijuana – Submit for testing

Pink Color – Typical Hemp Result

Sample likely Hemp – Do NOT submit for testing