# MEMORANDUM

TO: All Sworn Personnel

FROM: Craig A. Capri, Chief of Police

SUBJECT: Cannabis Investigation Procedures

DATE: June 30, 2019

 On July 1, 2019, a law goes into effect permitting low THC hemp. This law complicates how law enforcement throughout the state conducts investigations related to cannabis as well as changes the requirement needed to prosecute these cases in the future. The complications come as a result of needing to determine the percentage of the THC contained within the substance before determining whether it is illegal or not. Currently, there are no test kits available for our agency to determine the percentage of THC contained within the substance. After a presentation, put on by the State Attorney’s Office, and a brief discussion, it has been determined that the following temporary procedures should be followed:

1. **As of midnight July 1, 2019, no officer shall make a custodial arrest for cannabis**
2. Officers should still be seizing cannabis and filing complaint affidavits.
3. Officers should continue cannabis investigations but do not rely solely on the smell of cannabis for a search. Use a “sniff plus” method of when determining whether to search or not. The “sniff plus” method is a method being used in some other states as well as areas of this state and is being recommended by the State Attorney’s Office.

Example:

*While conducting a traffic stop you smell the odor of cannabis emanating from the vehicle. Prior to searching, you should ask: Do you have any marijuana or hemp in the vehicle. If they answer “No” then you have reached the threshold to detain and search. If they say “Yes” you need to then determine if it is marijuana or hemp. If they advise it is marijuana, then you may now detain and search. Other observations that may be used to determine whether you can search after smelling cannabis may be:*

* *Scales*
* *Baggies*
* *or other visual indicators that you can articulate.*
1. Police K-9 can and should still be used for sniffs in order to determine whether to search or not, however, the “sniff plus” needs to be applied here as well.

Example:

*While conducting a traffic stop you summon a Police K-9 who alerts on the vehicle. Prior to searching, you should ask: Do you have any illegal narcotics, marijuana, or hemp in the vehicle. Note the change in this question to include “illegal narcotics.” Please remember our dogs do not differentiate between types of narcotics they simply alert for the presence of a narcotic. If they answer “No” then you have reached the threshold to detain and search. If they say “Yes” you need to then determine if it is a narcotic or hemp. If they advise it is narcotics, then you may now detain and search. Other observations that may be used to determine whether you can search after smelling cannabis may be:*

* *Scales*
* *Baggies*
* *or other visual indicators that you can articulate.*
1. It is important to remember that all questioning that may be used as evidence in the case must be conducted post Miranda.
2. It is also important to remember that often great seizures of illegal narcotics or stolen property or evidence in other cases start with a simple smell of cannabis. This is why these investigations need to continue with the above modifications.

 There is no guarantee that any of the “sniff plus” search will not be challenged and that is why it is important to build the best possible case you can during the investigation. The more pluses you have, most likely, the stronger your probable cause for a search will be. There is no clear answer at this time as to what to do if the subject advises that they have hemp. The reason is that your investigation may not end at that point. There may be other articulable facts that make the seizure of the substance warranted. I recommend conferring with your supervisor and that if a clear answer cannot be established error on the side of caution and do not seize the substance. Either way remember do **not** make a custodial arrest at this time.

 I am fully aware that this memorandum does not answer all questions. This is in part because each situation will have its own unique set of facts that you will have to work through during these investigations. I am also aware that this new law complicates much of what law enforcement does during these types of investigations. In this time of transition, please rely upon the sergeants of our narcotics units and K-9 unit to assist you. They will make themselves available to you as needed to help with this process. In the next week or so, the command staff will be meeting with our legal advisor, the supervisors of our narcotics units, K-9 supervisor, and training to craft a more permanent practice and procedure which will be presented to all sworn employees through training. Thank you for your understanding and stay safe while conducting these investigations.

CAC/sl

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