

The above listed Governmental Agencies enter into this Memo of Understanding with the Office of the State Attorney, Broward County, as it relates to the prosecution of cases involving controlled substances containing the presence of Cannabis and Tetrahydrocannabinol (hereafter referred to as THC). The purpose of this agreement is to be in compliance with SB 1020, hereafter be known as Florida Statute 581.217 creating the State Hemp Program. Florida Governor Ron DeSantis signed the bill into law on June 25, 2019 with an effective date of July 1, 2019.

- Broward Sheriff's Office
- City of Coconut Creek
- City of Coral Springs
- Town of Davie
- Florida Highway Patrol
- City of Ft. Lauderdale
- City of Hallandale Beach
- Town of Hillsborough Beach
- City of Hollywood
- City of Lauderdale
- City of Lighthouse Point
- City of Margate
- City of Miramar
- City of Pembroke Pines
- City of Plantation
- Village of Sea Ranch Lakes
- Seminole Police Department
- City of Sunrise
- City of Wilton Manors

PARTIES:

MEMO OF UNDERSTANDING REGARDING PROSECUTION OF CANNABIS AND TETRAHYDROCANNABINOL (THC) CASES

SUBJECT:

JEFF A. MARCUS
CHIEF ASSISTANT STATE ATTORNEY,
17TH JUDICIAL CIRCUIT BROWARD COUNTY

FROM:

BROWARD COUNTY
GOVERNMENTAL AGENCIES AND POLICE CHIEFS

TO:

July 3, 2019

DATE:

PHONE (954) 831-6955

MICHAEL J. SATZ
STATE ATTORNEY
SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
BROWARD COUNTY COURTHOUSE
201 S.E. SIXTH STREET
FORT LAUDERDALE, FL 33301-3360



SB1020 / F.S. 581.217 STATE HEMP PROGRAM

SECTION I:

(1) **CREATION AND PURPOSE:** The State hemp program was created to regulate the cultivation of Hemp in the State.

(2) **LEGISLATIVE FINDINGS:**

- (a) Hemp is an agricultural commodity.
- (b) Hemp-derived cannabinoids, including but not limited to, cannabidiol, are not controlled substances or adulterants.

(3) **DEFINITIONS:**

- (d) Hemp means 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.
- (e) Hemp extract means a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain other controlled substances.
- (f) Independent Testing Laboratory means a laboratory that:
 - 1. Does not have a direct or indirect interest in the entity whose product is being tested;
 - 2. Does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells hemp or hemp extract in the state or in another jurisdiction or cultivates, processes, distributes, dispenses, or sells marijuana, as defined in s.381.986; and
 - 3. Is accredited by a third-party accrediting body as a competent testing laboratory pursuant to ISO/IEC 17025 of the International Organization for Standardization.

SECTION 2:

Subsection (3) of section 893.02 Florida Statutes, is amended to read:

893.02 Definitions.- The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(3) Cannabis means all parts of any plant of the genus *Cannabis*, whether growing or not; 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.

PRESUMPTIVE POSITIVE TESTING

Law Enforcement utilizes the standard of probable cause in order to effectuate an arrest. Law Enforcement Agencies utilize a field test presumptive positive testing kit to aid in establishing 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 resins and derivatives as defined pursuant to SB 1020 / F.S. 581.217 and F.S. 893.02, there must be a presumption positive that has a total delta-9 tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry-weight basis.

The presumptive positive testing kits currently utilized by Law Enforcement Agencies, do not meet this requirement. Therefore, as of July 1, 2019, the field test presumptive positive testing kits utilized by Law Enforcement Agencies must be able to distinguish between Hemp, Cannabis, and other THC substances, as well as its delta-9 tetrahydrocannabinol concentration percentage to ensure that it exceeds the 0.3 percentage on a dry-weight basis. Please consult with your legal advisor for the current certified, validated Hemp/Cannabis/THC testing kit that complies with this standard. Example: Cannabis/Hemp/THC Field Testing Kit distributed by Syndicate Alliance that can distinguish Cannabis containing more than 1% THC from CBD Hemp containing less than 1% THC.

LABORATORY TESTING

A field test is only a presumptive positive for probable cause purposes. Therefore, a confirmatory quantitative and chemical analysis will also need to be performed by an independent testing laboratory that is accredited pursuant to ISSO/IEC 17025 of the International Organization for Standardization. Such laboratory testing will need to be performed on all suspect Hemp, Cannabis, and Tetrahydrocannabinol (THC) substances, so as to confirm the identification of the specific substance and the specific quantification of the THC percentage specifically as it relates to the delta-9 tetrahydrocannabinol percentages.

Currently the Forensic Laboratory for the Broward County Sheriff's Office and the Florida Department of Law Enforcement, as well as any Drug Recognition Expert, do not have the capability to identify the specific D-9 THC compound or quantify the required percentage of D-9 THC, as required by SB 1020 / F.S. 581.217 and F.S. 893.02. Therefore, the quantitative chemical analysis will have to be performed by an independent certified accredited laboratory pursuant to ISSO/IEC 17025 of the International Organization for Standardization. Please consult with your legal advisor for the certified laboratory that complies with this standard. Example: EVIO Labs. A 2 gram minimum sampling is required by EVIO Labs in order for the lab to perform a quantitative chemical analysis. Therefore, a 3 gram minimum will be required for the prosecution of all Misdemeanor, Juvenile, and Felony cases.

- A minimum net weight greater than 3 grams of suspect Cannabis will be required for Prosecution of all Misdemeanor Possession of Cannabis cases.
- The certified validated Hemp/Cannabis/THC presumptive positive field test kit must be utilized to establish probable cause for all misdemeanor Cannabis and THC arrests.
- Probable Cause Affidavits, Property Receipts, and Police Reports must indicate that the specific new field test kit was utilized for presumptive positive field testing. Example: Field Test Kit (Syndicate Alliance) indicated presumptive positive testing for 1% or greater D-9 THC concentration.
- Provided the field test kit indicates a presumptive positive for Cannabis/THC that does exceed 0.3 percent on a dry-weight basis of delta-9 tetrahydrocannabinol (THC), the Office of the State Attorney, Broward County, will rely on that presumptive positive field test (Distributed by Syndicate Alliance) to file an Information for a Misdemeanor arrest.
- Should the case not be resolved and set for trial, the presenting Law Enforcement Agency will be responsible for arranging the required 2 gram minimum quantitative chemical analysis to be performed by the previously mentioned independent certified accredited laboratory (EVIO Labs).
- The presenting Law Enforcement Agency will be responsible for forwarding the independent test results and chain of custody documentation to the Office of the State Attorney, Broward County at least two weeks prior to the trial date.
- Such costs for the independent laboratory testing will be incurred by the presenting Law Enforcement Agency.
- The Office of the State Attorney, Broward County, will incur the costs of the Expert Witness Fee for trial testimony.

MISDEMEANOR CASES:

- The certified validated Hemp/Cannabis/THC presumptive positive field test kit must be utilized to establish probable cause for the issuance of all Civil Citations.
- The Civil Citation must indicate that the specific new field test kit was utilized for presumptive positive field testing. Example: Field Test Kit (Syndicate Alliance) indicated presumptive positive testing for 1% or greater D-9 THC concentration.
- If a person otherwise qualifies, it is recommended that the Civil Citation be issued.

CIVIL CITATION PROGRAM FOR JUVENILES AND ADULTS:

To be in compliance with SB 1020 /F.S. 581.217 and F.S. 893.02, the Office of the State Attorney, Broward County, will prosecute Cannabis and Tetrahydrocannabinol (THC) cases pursuant to the following guidelines:

PROSECUTION

JUVENILE CASES:

- Possession of Cannabis outside of schools shall be processed in the same manner as possession of cannabis cases involving adult defendants.
- A minimum net weight greater than 3 grams of suspect Cannabis will be required for Prosecution on all Misdemeanor Possession of Cannabis cases.
- A minimum net weight greater than 25 grams of suspect Cannabis will be required for Prosecution on all Felony Possession of Cannabis cases.
- Possession of Cannabis in an amount of less than 25 grams on school grounds shall, if the responding law enforcement officer determines the juvenile does not pose a threat to school safety, be treated as misdemeanor Possession of Cannabis and shall be referred to the Promise Program. The School Board Investigative Unit shall take possession of the Cannabis and maintain it in a manner that ensures chain of custody is maintained. The Cannabis may be disposed of upon the juvenile successfully completing the PROMISE program requirements.
- Possession of Juuls, Vape Pens, and other THC Cartridges on school grounds, the contents of which cannot otherwise be readily identified, if the responding law enforcement officer determines the juvenile does not pose a threat to school safety, shall be treated as a Possession of Paraphernalia and referred to the PROMISE Program. The School Board Investigative Unit shall take possession of the item in question and maintain it in a manner that ensures chain of custody is maintained. The item may be disposed of upon the juvenile successfully completing the PROMISE program requirements.
- Should the juvenile have multiple devices and/or the responding law enforcement officer determines that the juvenile does pose a threat to school safety or other grounds exist that in the officer's discretion require formal processing of charges, the responding law enforcement officer may effectuate an arrest of the juvenile pursuant to the below guidelines.
- The certified validated Hemp/Cannabis/THC presumptive positive field test kit must be utilized to establish probable cause for all juvenile Cannabis and THC arrests.
- Probable Cause Affidavits, Property Receipts, and Police Reports must indicate that the specific new field test kit was utilized for presumptive positive field testing. Example: Field Test Kit (Syndicate Alliance) indicated presumptive positive testing for 1% or greater D-9 THC concentration.
- Provided the field test kit indicates a presumptive positive for Cannabis/THC that does exceed 0.3 percent on a dry-weight basis of delta-9 tetrahydrocannabinol (THC), the Office of the State Attorney, Broward County, will rely on that presumptive positive field test (Distributed by Syndicate Alliance) to file a Petition or an Information as may be appropriate.
- Should the case not be resolved and set for trial, the presenting Law Enforcement Agency will be responsible for arranging the required 2 gram minimum quantitative chemical analysis to be performed by the previously mentioned independent certified accredited laboratory (EVIOLabs).
- The presenting Law Enforcement Agency will be responsible for forwarding the independent test results and chain of custody documentation to the Office of the State Attorney, Broward County at least two weeks prior to the trial date.

- The certified validated Hemp/Cannabis/THC presumptive positive field test kit must be utilized to establish probable cause for all Drug Trafficking and Conspiracy to Traffic Cannabis and THC arrests.
- Probable Cause Affidavits, Property Receipts, and Police Reports must indicate that the specific new field test kit was utilized for presumptive positive field testing. Example: Field Test Kit (Syndicate Alliance) indicated presumptive positive testing for 1% or greater D-9 THC concentration.
- Provided the field test kit (Distributed by Syndicate Alliance) indicates a presumptive positive for Cannabis/THC that does exceed 0.3 percent on a dry-weight basis of delta-9 tetrahydrocannabinol (THC), the Office of the State Attorney, Broward County, will *ALSO*

DRUG TRAFFICKING AND CONSPIRACY TO TRAFFIC CASES - EXCEPTION:

- A minimum net weight greater than 25 grams of suspect Cannabis will be required for prosecution on all Felony Possession of Cannabis cases.
- The certified validated Hemp/Cannabis/THC presumptive positive field test kit must be utilized to establish probable cause for all Felony Cannabis and THC arrests.
- Probable Cause Affidavits, Property Receipts, and Police Reports must indicate that the specific new field test kit was utilized for presumptive positive field testing. Example: Field Test Kit (Syndicate Alliance) indicated presumptive positive testing for 1% or greater D-9 THC concentration.
- Provided the field test kit indicates a presumptive positive for Cannabis/THC that does exceed 0.3 percent on a dry-weight basis of delta-9 tetrahydrocannabinol (THC), the Office of the State Attorney, Broward County, will rely on that presumptive positive field test (Distributed by Syndicate Alliance) to file an Information for a Felony arrest.
- Should the case not be resolved and set for trial, the presenting Law Enforcement Agency will be responsible for arranging the required 25 gram minimum quantitative chemical analysis to be performed by the previously mentioned independent certified accredited laboratory (EVIO Labs).
- The presenting Law Enforcement Agency will be responsible for forwarding the independent test results and chain of custody documentation to the Office of the State Attorney, Broward County at least two weeks prior to the trial date.
- Such costs for the independent laboratory testing will be incurred by the presenting Law Enforcement Agency.
- The Office of the State Attorney, Broward County, will incur the costs of the Expert Witness Fee for trial testimony.

FELONY CASES:

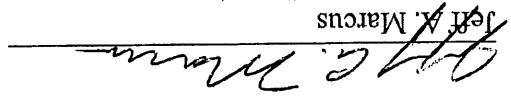
- Such costs for the independent laboratory testing will be incurred by the presenting Law Enforcement Agency.
- The Office of the State Attorney, Broward County, will incur the costs of the Expert Witness Fee for trial testimony.

- require the confirmatory quantitative and chemical analysis to be performed by the independent testing laboratory (EVIO Labs) to confirm the identification of the specific substance, the specific quantification of the THC percentage specifically as it relates to the delta-9 tetrahydrocannabinol percentages, and the net weight of the substance.
- This testing must be completed *PRIOR* to the filing of an Information for a Drug Trafficking or Conspiracy to Traffic arrest.
- The Office of the State Attorney, Broward County, Office (Drug Trafficking Unit) will need the lab report results no later than twenty-five (25) days from the arrest date.
- The presenting Law Enforcement Agency will be responsible for arranging the required quantitative chemical analysis to be performed by the previously mentioned independent certified accredited laboratory (EVIO).
- The presenting Law Enforcement Agency will be responsible for forwarding the independent test results and chain of custody documentation to the Office of the State Attorney, Broward County (Drug Trafficking Unit).
- Such costs for the independent laboratory testing will be incurred by the presenting Law Enforcement Agency.
- The individual testing samples must be up to the net weight of the specific Trafficking or Conspiracy to Traffic threshold for the specific Trafficking or Conspiracy to Traffic weight charged in the probable cause affidavit.
- The net weight to substantiate a Trafficking or Conspiracy to Traffic in Cannabis charge are: 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); more than 10,000 plants (Level 9).
- The net weight to substantiate a Trafficking or Conspiracy to Traffic in Tetrahydrocannabinol (THC) or a Synthetic Tetrahydrocannabinol (THC) charge are: 280 grams but less than 500 grams (Level 7); 500 grams but less than 1,000 grams (Level 8); 1,000 grams but less than 30 kilograms (Level 9).
- The presenting Law Enforcement Agency will be responsible for incurring the costs for all the sample testing necessary to establish the specific Trafficking and Conspiracy to Traffic net weight charged in the Information.
- The Office of the State Attorney, Broward County, will incur the costs of the Expert Witness Fee for trial testimony.

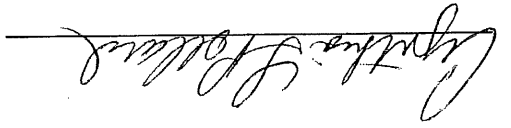
**DURATION OF AGREEMENT FOR PROSECUTION OF CANNABIS AND
TETRAHYDROCANNABINOL (THC) CASES**

This Agreement shall be in effect as of July 3, 2019, among those Governmental Entities executing this Agreement.

IN WITNESS WHEREOF, the parties hereby execute this Agreement for Prosecution on Cannabis and Tetrahydrocannabinol (THC) cases, on the dates(s) set forth below


Jeff X. Marcus
Chief Assistant State Attorney
17th Judicial Circuit, Broward County

Date: 07/03/2019


Cynthia Stollman

Date: 07/03/2019