

## CHIEF OF DETECTIVES

NOTICE  
1.8

January 1, 2018

**TO:** All Department Personnel

**FROM:** Chief of Detectives

**SUBJECT:** NEW CANNABIS ENFORCEMENT GUIDELINES

This Notice supersedes Chief of Detectives Notices, *Indoor Cannabis Cultivations*, dated July 1, 2008 and *Proposition 64 Adult Use of Marijuana Act*, dated August 11, 2017. The Adult Use of Marijuana Act (AUMA) was passed in November 2016 allowing for anyone 21 years of age or over to possess up to 28.5 grams (one ounce) of cannabis or eight grams of concentrated cannabis.<sup>1</sup> California Proposition 64 (Prop 64) allows for commercialized cannabis retail sales for recreational and medicinal use.

In March 2017, voters in the City of Los Angeles passed Measure M, which allows for commercialized sales, testing, cultivating, and manufacturing of cannabis. Additionally, AUMA has allowed the growth of up to six plants in a household for recreational use. Individuals with a physician's recommendation can possess additional plants if *reasonably related* to a current medical need. Recent changes in laws have also allowed a licensed delivery person or caregiver to transport cannabis from a retail location to a person who is lawfully able to possess cannabis.

Although it is legal to consume on private property, smoking or ingesting cannabis in a public place is illegal and a violation of 11362.3 Health and Safety (H&S) Code. The Compassionate Use Act does not specifically prohibit individuals with a physician's recommendation from smoking or ingesting in public, however under Prop 64, ingestion and consumption in public is an infraction regardless of whether the use is for recreational or medicinal purpose.

Additionally, the transportation of cannabis must be in a container, sealed or unsealed, full or partially empty, that is locked in the trunk area of a vehicle, similar to alcohol. The only exception is for individuals who have a physician's recommendation for medicinal cannabis and/or a State of California issued health card. Under these circumstances, sealed or unsealed containers can be in the driver's compartment but there can be no loose bud flowers. Driving while under the influence of drugs continues to be a misdemeanor in violation of 23152(f) of the California Vehicle Code. If officers conduct an investigation for driving while under the influence, and believe that an operator is impaired by cannabis or any substance other than alcohol, they should contact a Department Drug Recognition Expert.

Proposition 64 allows recreational cultivation of six plants and licensed commercial sales, among other activities. Street sales and illegal grow operations are a misdemeanor, but in some cases, it may still rise to the level of a felony if aggravated circumstances are present<sup>2</sup>, theft of utilities

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<sup>1</sup> Changed to 8 grams in all cases by AB133, passed September 11, 2017.

<sup>2</sup> See footnote number 6 on *Chart of Cannabis Criminal Charges* Attachment.

has occurred, sales to or use of juveniles to sell, or if the location meets the criteria for 11366 H&S-Opening or Maintaining a Drug House.

### **DEPARTMENT OF CANNABIS REGULATIONS**

In August 2017, the Department of Cannabis Regulations (DCR) was created for the purpose of issuing permits, ensuring compliance and conducting inspections of licensed cannabis businesses. All activities that relate to licensed cannabis businesses will be investigated by DCR. It is anticipated that the DCR will be responsible for conducting background checks of applicants for cannabis businesses, coordinating pre-license checks, approving licenses, and other regulatory responsibilities. Although DCR has primary responsibility for compliance and inspections of cannabis businesses, personnel from the Los Angeles Police Department (LAPD) may conduct their own inspections or conduct criminal investigations involving those approved locations as needed.

**Note:** Uniformed officers who respond to a radio call for a crime unrelated to illegal cannabis activities should handle the preliminary investigation the same as any other investigation. If the call is specifically for illegal cannabis activity, such as an indoor grow or illegal sales, uniformed officers should call the Area Narcotics Enforcement Detail (NED) to conduct the investigation.

Although DCR will have the responsibility for pre-license checks, they are not adequately staffed or trained to assume that responsibility for the first group of applicants. As a result, Commission Investigation Division will initially assume responsibility until DCR is adequately staffed. A transition plan will be created and once adequately staffed, DCR will take on that responsibility.

### **GANG AND NARCOTICS DIVISION RESPONSIBILITIES**

Personnel assigned to Gang and Narcotics Division (GND) Cannabis Unit will be responsible for coordinating with DCR, and other city entities as well as the State Bureau of Cannabis Control and the County Department of Health. Additionally, the following responsibilities will be handled by the Cannabis Unit:

- Tracking cannabis related data and statistics
- Liaising with other City Departments, County and State agencies
- Attending meetings with other Departments and passing on information and concerns to NEDs and Patrol
- Providing training to Department employees, other City Departments and community groups with approval from the Commanding Officer
- Attending training for the purpose of disseminating information to personnel involved in cannabis enforcement activities

During business hours, GND Cannabis Unit can be contacted at (213) 833-3700 and through Real-Time Analysis and Critical Response (RACR) Division after hours.

### **AREA NED RESPONSIBILITIES**

All Area NEDs are primarily responsible for the investigation and enforcement of illegal cannabis activities within their respective divisions, based upon the priorities set by their Area Commanding Officer. Personnel assigned to GND will be available for advice and will assist in the investigation of problematic dispensaries throughout the City. Examples of enforcement responsibilities by NEDs could include enforcement of illegal cannabis sales, cultivation, and transportation which involve other significant criminal activities such as:

- 11366 H&S- Opening or maintaining a drug house
- 11366.5 H&S- Allowing a drug house (property owner)
- 11379.6(a) H&S- Manufacture of concentrated cannabis using a volatile solvent unless pursuant to a state license (Butane Honey Oil laboratories)
- Cannabis activities involving gang crimes or nexus to organized crime
- Cannabis cases in conjunction with a federal task force
- Cannabis cases which involve the felony theft of utilities
- Cannabis activities where suspect(s) is known to be a convicted felon for a category listed as unqualified for a license or permit
- Cannabis activities where there is reasonable suspicion that suspect(s) are possibly unlawfully in possession of a firearm, that could result in felony charges (i.e. ex-con with a gun)
- Cannabis activities which involve the unlawful sales to a minor or use of a minor for sales

### **PATROL OFFICERS RESPONSIBILITIES**

Patrol officers who observe a person smoking or ingesting cannabis products in public may cite the violators for 11362.3(a)(1) H&S on a personal service citation. If the person is smoking or ingesting within 1000 feet of a school, day care center or youth center where children are present, officers can cite under section 11362.3(a)(3) H&S.<sup>3</sup>

Patrol officers who encounter an illegal indoor or outdoor cannabis cultivation should make an effort to determine the number of plants at the grow location. The AUMA allows individuals to grow up to six cannabis plants per household for recreational use. A person may only exceed six plants if they possess a physician's recommendation and the quantity must be reasonable in order to treat their condition. If there are more than six plants, patrol officers should seek guidance from their Area NED.

### **SAFETY**

Growing cannabis plants indoors creates special challenges which can cause respiratory difficulties. Plants that grow inside with altered or inadequate ventilation can grow powdery

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<sup>3</sup> There is an exception when a person is on their private property, not in public view, unless children are present and the odor can be detected.

mildew, and growers may introduce sulfur dioxide into the air through the use of sulfur burners. The sulfur dioxide kills the mildew that is harmful to the plants but can cause respiratory complications. Additionally, many growers make efforts to increase the levels of Tetrahydrocannabinol (THC) by introducing carbon dioxide into the air. Carbon dioxide is an integral part of photosynthesis for the plants, increasing THC, however it also alters the levels of oxygen in the air. Investigators must be sure to have carbon dioxide distributors turned off. Since uniformed officers will not have devices to check and measure air quality, they should avoid any extended period of time in close proximity to an indoor grow. Any time officers suspect they have encountered illegal cannabis activities involving extraction using volatile solvents, they shall notify RACR. Only the Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force, Lab Squad may dismantle a suspected illegal lab.

### **PERSONAL PROTECTIVE EQUIPMENT**

Investigators assigned to a NED are encouraged to use Personal Protective Equipment (PPE), which at a minimum should include an Air-Purifying Respirator, lightweight disposable overalls, protective footwear and disposable gloves. Illegal grow locations are frequently encountered with improper electrical wiring, moisture, and even standing water. Although the use of pesticides are a valid concern, research indicates the most prevalent danger is from the inhalation of toxic molds. Limited exposure duration is unlikely to produce respiratory complications. Exposure during harvest or when investigators are dismantling the plants is the time when toxic particles are most likely to be disturbed and released into the air. It is recommended that PPE always be used during that process.

### **CRIME SCENE**

There are no crime scene exemptions for indoor cannabis growing operations, therefore, a search warrant should be acquired for the premises. Even if the property owner or resident gives consent to search, it is recommended that investigators obtain a search warrant. Photographs of the crime scene and Tactical Warrant Service Plan, LAPD Form 12.25, are required.<sup>4</sup> Frequently, illicit growers of indoor cannabis bypass the electrical meter into the residence or building where the operation is located. Alterations to the electrical system may not be easily detected and should be deferred to an expert. The Department of Water and Power Revenue Security Unit should be notified at the onset of an indoor cannabis growing investigation at (818) 771-2212.

### **BOOKING**

Booking large quantities of cannabis, in excess of 30 pounds, can be problematic. The cannabis must be taken to Forensic Sciences Division (FSD). Personnel should contact FSD's "Haz-Chem" representative prior to transporting cannabis at (323) 415-8100. The "Haz-Chem" team will assist with the proper weighing, testing, and packaging of the evidence. If the seizure is after hours, RACR should be contacted and the on-call "Haz-Chem" team should be requested. When placing the cannabis into evidence storage boxes, keep the weight to 25-30 pounds

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<sup>4</sup> A Tactical Plan Report is not required for warrants served after an unplanned tactical operation.

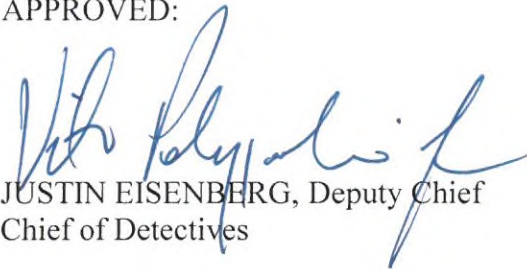
maximum. Significant seizures will result in a large quantity of boxes being used. If a large transportation vehicle is required, it is suggested that Property Division be contacted for assistance.

### CHANGES IN FILING CHARGES

The changes as a result of AUMA, Senate Bill 94, and Assembly Bill 133 have made most cannabis related criminal charges misdemeanors or infractions, absent aggravating circumstances. Although some H&S sections as listed in the attached chart are wobblers, they are most likely to be filed as misdemeanors if all conditions are not met. As a result of limited resources, the Department will generally focus cannabis enforcement activities to sales, transportation, and cultivations which involve **significant criminal activity or complaints of illicit activity at the facility**. Unlicensed cannabis businesses which only involve a failure to obtain a license for the activity taking place will be deferred to DCR. The attached chart illustrates some significant changes to the law officers and investigators are most likely to encounter.

Should you have any questions, please contact Lieutenant II Stacy Spell, Officer-in-Charge, Gang and Narcotics Division, Major Enforcement Section, at (213) 833-3700.

APPROVED:



JUSTIN EISENBERG, Deputy Chief  
Chief of Detectives



SEAN W. MALINOWSKI, Deputy Chief  
Chief of Staff  
Office of the Chief of Police

DISTRIBUTION "D"

Attachment

### Chart of Cannabis Criminal Charges

ACTIVITY	UNDER 18	18 - 20	21 & OVER
Smoking / Ingesting cannabis in public place <sup>1</sup>	Infraction 11362.3(a)(1) H&S	Infraction 11362.3(a)(1) H&S	Infraction 11362.3(a)(1) H&S
Smoking cannabis within 1000 feet of a school, day care center, or youth center when children are present	Infraction 11362.3(a)(3) H&S	Infraction 11362.3(a)(3) H&S	Infraction 11362.3(a)(3) H&S
Possess/Smoke/Ingest cannabis or cannabis products on grounds of school, day care center, or youth center when children are present	Infraction 11362.3(a)(5) H&S	Misdemeanor 11362.3(a)(5) H&S	Misdemeanor 11362.3(a)(5) H&S
Operating a vehicle under the influence of drugs	Misdemeanor 23152(f) CVC	Misdemeanor 23152(f) CVC	Misdemeanor 23152(f) CVC
Operating a vehicle under the influence of drugs in combination with alcohol (g)	Misdemeanor 23152(g) CVC	Misdemeanor 23152(g) CVC	Misdemeanor 23152(g) CVC
Smoking or ingesting any cannabis or cannabis product, while driving (a) or occupying (b) a motor vehicle upon a highway	Infraction 23221(a)VC 23221(b) VC	Infraction 23221(a)VC 23221(b) VC	Infraction 23221(a)VC 23221(b) VC
Possession, on the person, of an "open container" <sup>2</sup> , unless exemption applies <sup>3</sup>	Infraction 23222(b) VC	Infraction 23222(b) VC	Infraction 23222(b) VC
Possession of concentrated cannabis, 8 grams or less	Infraction 11357(a)(1) H&S	Infraction 11357(a)(2) H&S	LEGAL <sup>4</sup>
Possession of 28.5 grams or less of cannabis or 8 grams or less of concentrated cannabis on K-12 school grounds during school hours	Infraction 11362.3(a)(5) H&S	Misdemeanor 11362.3(a)(5) H&S	Misdemeanor 11362.3(a)(5) H&S
Possession of 28.5 grams or less of cannabis	Infraction 11357(a)(1) H&S	Infraction 11357(a)(2) H&S	LEGAL
Possession of more than 28.5 grams of cannabis	Infraction 11357(b)(1) H&S	Misdemeanor 11357(b)(2) H&S	Misdemeanor 11357(b)(2) H&S

<sup>1</sup> Smoke means to inhale, exhale, burn, or carry any lighted or heated device or pipe...Includes electronic smoking devices that creates an aerosol or vapor, in any manner or form, or the use of any oral smoking device for purposes of circumventing the prohibition of smoking in a public place.

<sup>2</sup> Any receptacle containing any cannabis or cannabis product which has been opened or has a seal broken, or loose cannabis flower not in a container.

<sup>3</sup> No violation if driver is a qualified patient or person with an identification card, under Section 11362.7 H&S, and if BOTH of the following apply (1) Driver is carrying a current identification card or physician's recommendation; (2) The cannabis or cannabis product is in a container or receptacle that is sealed, resealed, or closed and there is no loose cannabis flower not in a container. The described container can be in the truck or driver's compartment of the vehicle as per AB 133.

<sup>4</sup> Misdemeanor if more than 8 grams.

## Chart of Cannabis Criminal Charges

Cultivation of 6 plants or less and possession of the cannabis produced by the plants	Infraction 11358(a) H&S	Infraction 11358(b) H&S	LEGAL If in compliance with restrictions <sup>5</sup>
Cultivation of more than 6 plants <sup>6</sup> (* Potential FELONY if Aggravating Factors exist)	Infraction 11358(a) H&S	Misdemeanor 11358(c) H&S *	Misdemeanor 11358(c) H&S *
Possession of cannabis for sales <sup>7</sup> (* Potential FELONY if Aggravating Factors exist)	Infraction 11359(a) H&S	Misdemeanor 11359(b) H&S *	Misdemeanor 11359(b) H&S *
Transport for purpose of import/export/sell/furnish/give away/offer to do any of the same activities 28.5 grams or less of cannabis other than concentrated cannabis <sup>8</sup> (* Potential FELONY if Aggravating Factors exist)	Infraction 11360(a)(1) H&S	Misdemeanor 11360(a)(2) H&S *	Misdemeanor 11360(a)(2) H&S *
Give away/offer to give away/transport/offer or attempt to transport for sale not more than 28.5 grams of cannabis, other than concentrated cannabis <sup>9</sup>	Infraction 11360(b) H&S	Infraction 11360(b) H&S	Infraction 11360(b) H&S
Opening or Maintaining a Drug House for dispensing controlled substance(s) if certain circumstances exist (11366.5 for property owner)	Felony 11366 H&S Wobbler	Felony 11366 H&S Wobbler	Felony 11366 H&S Wobbler
Manufacture of concentrated cannabis using a volatile solvent, unless pursuant to state license and local license and in accordance with 11362.775(b) <sup>10</sup>	Felony 11379.6 H&S	Felony 11379.6 H&S	Felony 11379.6 H&S

<sup>5</sup> Restrictions: Must comply with local ordinances and be upon residential grounds, in a locked space, and not visible from public space. Violation of any of these restrictions is an infraction under 11362.2(a) H&S.

<sup>6</sup> Except as authorized by law. For instance, commercial cultivation activity may be authorized under state and local law beginning January 1, 2018. May charge felony if aggravating factors from H&S 11358(d)(1)-(3) are present.

<sup>7</sup> Except as authorized by law. For instance, commercial sale activity may be authorized under state and local law beginning January 1, 2018. May charge felony if aggravating factors from H&S 11359(c) or (d) are present.

<sup>8</sup> Except as authorized by law. May charge felony if aggravating factors from H&S 11360(a)(3)(A)-(C) are present or if provided to a person under the age of 14. H&S 11360(a)(3)(D) addresses the offense involving the import, offer to import, or attempted import into this state, or the transport for sale, offer to transport for sale, or attempted transport for sale out of this state, of more than 28.5 grams of cannabis.

<sup>9</sup> Except as authorized by law. For instance, commercial cultivation activity may be authorized under state and local law beginning January 1, 2018. May charge felony if aggravating factors from H&S 11358(d)(1)-(3) are present. In any case in which a person arrested for a violation of H&S 11360(b) does not demand to be taken before a magistrate, that person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his or her written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subject to booking.

<sup>10</sup> Concentrated cannabis includes butane honey oil (BHO). Manufacturing activity may be authorized under state and local law beginning January 1, 2018.