Due to changes in Florida law it is necessary to provide deputies and officers with guidance regarding Cannabis (marijuana and hemp) enforcement.

For detailed background information regarding the various forms of Cannabis, including marijuana and hemp and their legal status, please see the accompanying General Counsel's memo titled “Cannabis/Marijuana, Hemp and CBD Oil" dated October 8, 2019. The General Counsel's memo explains the difference between illegal cannabis/marijuana, legal marijuana (medical marijuana), legal hemp, and hemp products (oils, edibles, etc.). The memo further explains what is required to establish probable cause that a substance is illegal marijuana and not legal hemp or some other Cannabis product.

ALL INVESTIGATIONS

Deputies and officers will generally encounter Cannabis and Cannabis products in three forms—plant material, oils and creams, and edibles. Regardless of its form, all Cannabis investigations must first determine whether the substance is an illegal controlled substance, such as street marijuana; a legal controlled substance, such as medical marijuana; or an uncontrolled substance, such as hemp, which is Cannabis that does not exceed .3% THC.

Although deputies and officers are not required to "know" that a substance is a controlled substance prior to conducting a search or making an arrest, they must evaluate the facts available and have probable cause to believe that the substance is a controlled substance (cannabis/marijuana) being illegally possessed.

There is a difference between “knowing” and having “probable cause” to believe. Probable cause is the standard that all deputies and officers must apply when deciding whether to search or arrest. Probable cause may be established in a number of ways but can only be adequately established and withstand scrutiny when deputies and officers clearly articulate in their reports the facts and factors that establish probable cause. If a deputy or officer does not detail everything that supports the probable cause determination, it will be difficult, if not impossible, for the prosecutor to successfully evaluate and prosecute the case. Simply put, the days when the "odor of marijuana" established probable cause are gone, as are the days of a marijuana trained K-9 alerting, without more, establishing probable cause for a search. There must be odor and/or appearance PLUS other factors.
**Plant material**

**Short Answer**
Deputies and officers retain discretion whether to search and/or arrest, but probable cause must be established under an odor/appearance PLUS standard that the material is the controlled substance cannabis/marijuana and is not lawfully possessed medical marijuana. There is no validated and available presumptive test that will establish the Cannabis is above .3% THC (making it marijuana) so deputies and officers must use other facts to establish probable cause.

**Discussion**
Any investigation of a person possessing Cannabis must articulate all the reasons a deputy or officer believes that the substance is the controlled substance cannabis, as opposed to the uncontrolled substance hemp. Cannabis (green plant material) that is .3% or less THC is no longer a controlled substance in Florida as it is hemp and is legal to possess. The “same” green plant material that is above .3% THC is the controlled substance cannabis/marijuana. To arrest or search, probable cause must be established that the material possessed is marijuana with a THC content of above .3%. The belief must be based on more than appearance and/or odor of the plant material. Every investigation must include articulated PLUS factors as described in General Counsel’s memo.

Nothing changes our guidelines for APAD. In these “plant material” cases, deputies and officers have discretion whether to use a diversion program (adult or juvenile), arrest, or refer the case to the SAO. Any arrest must be for a misdemeanor unless the plant material is more than 20 grams.

Every prosecution will require the substance to be available for testing. Deputies and officers’ options are to arrest if they have probable cause and seize the substance and place it in evidence for testing. Or, deputies and officers may elect to not make an arrest, seize the substance, place it in evidence for testing, and then refer the case to the SAO after receiving lab results if they show the material is the controlled substance Cannabis/marijuana.

**Oils/Creams**

**Short Answer**
Deputies and officers retain discretion whether to arrest but must establish probable cause under an odor/appearance PLUS standard that the material for which they are searching/arresting is a controlled substance, meaning it has a THC content above .3%.

**Discussion**
Although investigations of plant material will not always require a lab test to determine probable cause that the substance is a controlled substance (above or below .3%), most investigations of oils or creams will require a lab test. The PLUS factors will be more difficult to establish as to oils and creams as opposed to plant material. For this reason, deputies and officers should only
conduct investigations of oils or creams that are of large quantities and not for personal use amounts, such as those found in vaping devices.

Because determining whether the substance is legal or illegal without a lab test is difficult, and every small quantity of oil cannot be tested, deputies and officers should not seize or take any enforcement action in these situations. If the investigation is of a student in possession of a vaping device at school, since it will not be possible to determine the nature of substance the student is vaping, the matter should be referred to school staff to handle it administratively.

If the person possesses a significant quantity of an oil or cream and it is believed it contains more than .3% THC, then it may be seized and submitted to the lab for analysis, but only if probable cause for the seizure is established. Again, the probable cause must be based on articulated PLUS factors. If the lab results show the oil or cream contains more than .3% THC, then the case may later be referred to the SAO.

**Edibles**

Deputies and officers are not to arrest or take any enforcement action in the case of suspected processed Cannabis edibles such as gummies. A lab test will be required to determine if an edible is a controlled substance (above .3% THC), and the Pinellas County Lab does not have the ability to test these products. If there is some exceptional circumstance, a significant quantity of edibles is encountered and it is believed probable cause can be established that the edibles contain more than .3% THC without a lab test, then the deputy or officer’s supervisor is to be contacted. No arrests for edibles should be made without supervisory approval.