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## **MARIJUANA CHARGING AND PLEA NEGOTIATION POLICY**

Effective Date – 8/2018

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### **I. BACKGROUND**

The enforcement of marijuana offenses requires balancing public safety concerns while reducing negative interactions with law enforcement, and minimizing collateral consequences for low level offenders. Arrests and felony convictions raise significant barriers for individuals seeking employment, housing, and education. As with any criminal justice policy, law enforcement and prosecutors must respond to public safety risks, including illegal sales that have been a source of violent crime. We must also recognize the public health dangers of impaired driving and marijuana use by children.

Nevertheless, the Minnesota Legislature has already made a significant policy determination to decriminalize the possession of up to 42.5 grams of marijuana – an amount roughly the size of a sandwich bag. Possession of up to 42.5 grams is not a crime and is punishable only with a fine of up to \$300. Unfortunately, the legislature has not created a graduated series of penalties for possession of more than 42.5 grams of marijuana or the sale of small amounts of marijuana. Instead, possession of more than 42.5 grams of marijuana goes from a non-criminal petty misdemeanor to a felony and the sale of any amount of marijuana is immediately a felony. Prosecuting low-level marijuana offenses as felonies also consumes a considerable amount of resources in the criminal justice system.

For these reasons, the Hennepin County Attorney's Office has decided to no longer expend its limited felony prosecution resources to criminally prosecute people arrested for possessing and selling small amounts of marijuana. Instead, the office will exercise its discretion to decline cases involving small amounts of marijuana where appropriate, and allow for diversion, stays of adjudication, and non-jail or non-prison sanctions as a way to protect public safety and hold people accountable in a more fair and common sense manner. This is not to say that we believe individuals should be able to possess or sell marijuana with absolute impunity. It is

simply recognition that such conduct need not be addressed with the full weight and resources of felony convictions and sanctions.

Further policy reform should be achieved through legislation, which this office will support, that seeks broad stakeholder input and recognizes the economic and policy implications of this situation. Ultimately, our state should not have to rely solely on discretionary decisions by local police and prosecutors to ensure that our laws are sensible and just. In the meantime, this office will use its discretion to make decisions which reflect the values and needs of the residents of Hennepin County. We will continue to do this as fairly and thoughtfully as we can.

## **II. EXCLUSIONS**

These marijuana charging and plea negotiation guidelines do not apply if:

1. An aggravating factor identified by the legislature in Minn. Stat. § 152.01, subd. 24 is present;
2. The offender possesses a firearm or simulated firearm along with the marijuana;
3. The offender also possesses more than a trace amount of other controlled substances;
4. The substance is THC oil or wax; or
5. A child is present during a marijuana sale.

## **III. CHARGING AND PLEA STANDARDS FOR MARIJUANA ONLY CRIMES**

### **A. 5<sup>th</sup> Degree Possession of Marijuana**

1. If diversion eligible, divert<sup>1</sup>.
  - a. Pre-charge diversion for possession of under 100 grams marijuana.
  - b. Pre-trial diversion for all other 4<sup>th</sup> and 5<sup>th</sup> degree possession of marijuana.
2. If not diversion eligible, offer a stay of adjudication pursuant to Minn. Stat. § 152.18 if eligible, no same or similar offenses, no other conditions for 1 year.
3. If not 152.18 eligible, offer to sentence as a gross misdemeanor, 1 day Sentencing to Service or restorative justice, and no same or similar offenses for 1 year.
4. If presumptive prison, offer departure to a stayed sentence with workhouse time and other conditions left to the discretion of the court.

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<sup>1</sup> See HCAO Drug Diversion Criteria for diversion exclusions covering prior diversions, prior convictions, aggravating factors, and firearms.

**B. 5<sup>th</sup> Degree Sale of Marijuana**

1. Sale of less than 5 grams (total possession less than 15 grams):  
Subject to the exclusions listed in section II of this policy, the Hennepin County Attorney's Office generally will not charge cases involving the sale of less than 5 grams of marijuana, where the total amount of marijuana possessed is less than 15 grams.
2. Other 5<sup>th</sup> Degree Sale of Marijuana
  - a. If diversion eligible, divert<sup>1</sup>.
    - i. Pre-trial diversion for sale of 5-42.5 grams of marijuana.
  - b. If the defendant possessed a felony amount of marijuana and meets the statutory requirements for a 152.18, offer to amend the charge to possession with a stay of adjudication pursuant to Minn. Stat. 152.18, 10 days STS or restorative justice and no same or similar offenses for 2 years.
  - c. If the defendant possessed less than a felony amount of marijuana and would meet the statutory requirements for a 152.18 but for the sale charge, offer a stay of adjudication pursuant to 609.095 (agreement of the parties), 10 days STS or restorative justice and no same or similar offenses for 2 years. Note: This is a limited exception to the general office policy regarding stays of adjudication and applies to marijuana sale cases only. Please see your senior or managing attorney with questions.
  - d. If not 152.18 eligible, but presumptive probation offer stay of execution of sentence with 30-90 days workhouse time and all other conditions to the court, probation minimum 3 years.
  - e. If presumptive prison, offer stay of execution of sentence with minimum of 90 days workhouse and all other conditions to the court, probation minimum 3 years. If the attorney believes that in the interest of public safety prison is appropriate, approval from the managing attorney is required.

**IV. BAIL**

Bail shall not be requested on the complaint on any case involving solely the 4<sup>th</sup> Degree or 5<sup>th</sup> Degree possession or sale of marijuana unless the presumptive sentence is prison.

**V. Minn. Stat. § 152.01 DEFINITIONS.**

Subd. 24. **Aggravating factor.** Each of the following is an "aggravating factor":

(1) the defendant, within the previous ten years, has been convicted of a violent crime, as defined in section [609.1095, subdivision 1](#), paragraph (d), other than a violation of a provision under this chapter, including an attempt or conspiracy, or was convicted of a similar offense by the United States or another state;

(2) the offense was committed for the benefit of a gang under section [609.229](#);

(3) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;

(4) the offense involved the transfer of controlled substances across a state or international border and into Minnesota;

(5) the offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to sell or transfer;

(6) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(7) the defendant used a position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships;

(8) the offense involved the sale of a controlled substance to a person under the age of 18 or a vulnerable adult as defined in section [609.232, subdivision 11](#);

(9) the defendant or an accomplice manufactured, possessed, or sold a controlled substance in a school zone, park zone, correctional facility, or drug treatment facility; or

(10) the defendant or an accomplice possessed equipment, drug paraphernalia, documents, or money evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than the minimum threshold amount for the offense.