

LEGAL BULLETIN 2019- 9

JULY 8, 2019

GAINESVILLE POLICE DEPARTMENT
GAINESVILLE FLORIDA**TO: ALL PERSONNEL VIA DIVISION/SECTION COMMANDERS****RE: HEMP- Chapter 2019-132, Laws of Florida (SB 1020)**

Adapted from a Legal Bulletin distributed by the Broward County Sheriff's Office

On June 25, 2019, SB 1020, also known as the "Hemp" Bill was signed into law by the Governor. The bill does two major things that directly affect law enforcement. First, it creates a State Hemp program and second it revises the definition of the term "cannabis", amending Florida State Statute 893.02. **Hemp is no longer a controlled substance.** This is law **takes effect JULY 1, 2019.** This is an update on the current status of the field of cannabis enforcement here bases on this change.

WHAT IS HEMP?

Hemp and Cannabis are both derived from the SAME plant-Cannabis Sativa. While hemp contains .3% THC or less, illegal Cannabis typically contains between 2% and 30% THC. Hemp is defined under a new section of Florida Statute, 581.217 as the plant Cannabis sativa L and any part of that plant that has a total Delta 9 THC concentration that does not exceed .3% on a dry weight basis. Hemp and Cannabis look, feel and smell THE SAME and both CAN be smoked. Currently, there is no way to distinguish hemp and cannabis based on plain view or plain odor alone.

HOW DO WE TEST FOR IT?

Our current THC field test kits do not have the ability to distinguish between cannabis and hemp. Therefore, arrests should not be based on the use of our current kits. There are kits available in the market that will distinguish between the two by testing THC at the level of 1% and above. Our Department is in the process of purchasing some. The FDLE crime Lab does not do any quantitative analysis of cannabis at this time. Until they are set up to differentiate between cannabis and hemp, private labs will have to be used for formal testing.

WHAT ABOUT PROBABLE CAUSE TO SEARCH (HEMP/CANNABIS)?

It is my opinion that the sight or odor of “cannabis” alone will no longer be sufficient for search or arrest, since, as I understand it, the hemp and cannabis smell the same. *This applies to alerts by canines who are trained to detect cannabis as well as odor detection by officers.* There is NO definitive standard for PC to search based on odor/sight alone in states that have legalized hemp. However, many states have considered and followed the “odor plus standard.” This standard would require officers to obtain circumstantial evidence beyond the mere sight/scent of marijuana (burnt or fresh) in order to establish probable cause for a search. (i.e baggies, scales, paraphernalia, guns, other illegal substances, signs of impairment, or a statement.) This is similar to a “totality of the circumstances” standard.

Plain view/smell of Marijuana plus something else

Here is a non-exclusive list of things that could qualify as the extra “something else” to create PC to search:

1. Criminal record of *drug offenses* if known prior/during the stop and before search
2. Information/intelligence regarding illicit activity prior to stop and search
3. Visual observation-Plain View/Plain Feel of an illegal substance
4. Any other illegal activity/conduct
5. Hand to hand transaction prior to vehicle stop
6. Admission of possessing a controlled substance during initial contact
7. Conflicting or nonsensical statements by suspect or passenger
8. Indicators that the driver does not know what hemp is.
9. Signs of deceptions, hands shaking, nervousness, avoiding eye contact
10. Furtive movements
11. Destroying, discarding, or distancing themselves from a object/substance
12. Signs of impairment (driving pattern, bloodshot, watery eyes, slurred speech)
13. A large amount of currency
14. Currency in “quick count bundles”
15. Rubber banded bundles of currency
16. Masking agents i.e. Fabric softener, air fresheners, etc.
17. Drug Paraphernalia, baggies, pipes, heat sealers, scales
18. Weapon/firearm
19. Admissions/statements of the occupants. Ask questions (“What is that smell?”; “Is that Hemp?”)

As the law is new and there is no applicable case law in Florida, we can only look to other states that have dealt with the issue. Colorado courts have held that probable cause does not require specific information that a particular crime has been committed, and stating that the possibility of an innocent alternative explanation is merely a factor in the totality of the circumstances test.

In making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but *the degree of suspicion that attaches to particular types of non-criminal acts.*

I have attached a copy of the Session Law to this Update.

If you have any questions about this Legal Bulletin, please contact the Legal Office at 393-7505 or email at libbylc@cityofgainesville.org.

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CHAPTER 2019-132

Committee Substitute for
Committee Substitute for Senate Bill No. 1020

An act relating to the state hemp program; creating s. 581.217, F.S.; creating the state hemp program within the Department of Agriculture and Consumer Services; providing legislative findings; providing definitions; directing the department to submit a plan for the state program to the United States Secretary of Agriculture for approval; providing licensure requirements; requiring licensees to use specified hemp seeds and cultivars; providing requirements for the distribution and sale of hemp extract; directing the department to maintain a land registry and submit monthly reports to the United States Secretary of Agriculture; providing for violations and corrective measures; providing for enforcement of the state hemp program; directing the department, in consultation with the Department of Health and the Department of Business and Professional Regulation, to adopt specified rules; providing applicability; establishing, adjunct to the department, the Industrial Hemp Advisory Council; providing for council purpose, membership, and meetings; amending s. 893.02, F.S.; revising the definition of the term "cannabis"; amending s. 1004.4473, F.S.; revising the colleges and universities at which the department is required to authorize and oversee the development of industrial hemp pilot projects; removing a condition for the implementation of industrial hemp commercialization projects; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 581.217, Florida Statutes, is created to read:

581.217 State hemp program.—

(1) CREATION AND PURPOSE.—The state hemp program is created within the department to regulate the cultivation of hemp in the state. This section constitutes the state plan for the regulation of the cultivation of hemp for purposes of 7 U.S.C. s. 1639p.

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Hemp is an agricultural commodity.

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

(3) DEFINITIONS.—As used in this section, the term:

(a) "Certifying agency" has the same meaning as in s. 578.011(8).

(b) “Contaminants unsafe for human consumption” includes, but is not limited to, any microbe, fungus, yeast, mildew, herbicide, pesticide, fungicide, residual solvent, metal, or other contaminant found in any amount that exceeds any of the accepted limitations as determined by rules adopted by the Department of Health in accordance with s. 381.986, or other limitation pursuant to the laws of this state, whichever amount is less.

(c) “Cultivate” means planting, watering, growing, or harvesting hemp.

(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.

(4) FEDERAL APPROVAL.—The department shall seek approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture in accordance with 7 U.S.C. s. 1639p within 30 days after adopting rules. If the state plan is not approved by the United States Secretary of Agriculture, the Commissioner of Agriculture, in consultation with and with final approval from the Administration Commission, shall develop a recommendation to amend the state plan and submit the recommendation to the Legislature.

(5) LICENSURE.—

(a) It is unlawful for a person to cultivate hemp in this state without a license issued by the department.

(b) A person seeking to cultivate hemp must apply to the department for a license on a form prescribed by the department and must submit a full set of fingerprints to the department along with the application.

1. The department shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

2. Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph must be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and must be retained as provided in s. 943.05(4) when the Department of Law Enforcement begins participation in the Federal Bureau of Investigation's national retained fingerprint arrest notification program.

3. Any arrest record identified shall be reported to the department.

(c) The department shall adopt rules establishing procedures for the issuance and annual renewal of a hemp license.

(d) A person seeking to cultivate hemp must provide to the department the legal land description and global positioning coordinates of the area where hemp will be cultivated.

(e) The department shall deny the issuance of a hemp license to an applicant, or refuse to renew the hemp license of a licensee, if the department finds that the applicant or licensee:

1. Has falsified any information contained in an application for a hemp license or hemp license renewal; or

2. Has been convicted of a felony relating to a controlled substance under state or federal law. A hemp license may not be issued for 10 years following the date of the conviction.

(6) HEMP SEED.—A licensee may only use hemp seeds and cultivars certified by a certifying agency or a university conducting an industrial hemp pilot project pursuant to s. 1004.4473.

(7) DISTRIBUTION AND RETAIL SALE OF HEMP EXTRACT.—Hemp extract may only be distributed and sold in the state if the product:

(a) Has a certificate of analysis prepared by an independent testing laboratory that states:

1. The hemp extract is the product of a batch tested by the independent testing laboratory;

2. The batch contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry-weight basis pursuant to the testing of a random sample of the batch; and

3. The batch does not contain contaminants unsafe for human consumption.

(b) Is distributed or sold in packaging that includes:

1. A scannable barcode or quick response code linked to the certificate of analysis of the hemp extract by an independent testing laboratory;
2. The batch number;
3. The Internet address of a website where batch information may be obtained;
4. The expiration date;
5. The number of milligrams of hemp extract; and
6. A statement that the product contains a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

(8) LAND REGISTRY.—The department shall maintain a registry of land on which hemp is cultivated or has been cultivated within the past 3 calendar years, including the global positioning coordinates and legal land description for each location.

(9) DEPARTMENT REPORTING.—The department shall submit monthly to the United States Secretary of Agriculture a report of the locations in the state where hemp is cultivated or has been cultivated within the past 3 calendar years. The report must include the contact information for each licensee.

(10) VIOLATIONS.—

(a) A licensee must complete a corrective action plan if the department determines that the licensee has negligently violated this section or department rules, including negligently:

1. Failing to provide the legal land description and global positioning coordinates pursuant to subsection (5);
2. Failing to obtain a proper license or other required authorization from the department; or
3. Producing Cannabis sativa L. that has a total delta-9 tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry-weight basis.

(b) The corrective action plan must include:

1. A reasonable date by which the licensee must correct the negligent violation; and
2. A requirement that the licensee periodically report to the department on compliance with this section and department rules for a period of at least 2 calendar years after the date of the violation.

(c) A licensee who negligently violates the corrective action plan under this subsection three times within 5 years is ineligible to cultivate hemp for 5 years following the date of the third violation.

(d) If the department determines that a licensee has violated this section or department rules with a culpable mental state greater than negligence, the department shall immediately report the licensee to the Attorney General and the United States Attorney General.

(11) ENFORCEMENT.—

(a) The department shall enforce this section.

(b) Every state attorney, sheriff, police officer, and other appropriate county or municipal officer shall enforce, or assist any agent of the department in enforcing, this section and rules adopted by the department.

(c) The department, or its agent, is authorized to enter any public or private premises during regular business hours in the performance of its duties relating to hemp cultivation.

(d) The department shall conduct random inspections, at least annually, of each licensee to ensure that only certified hemp seeds are being used and that hemp is being cultivated in compliance with this section.

(12) RULES.—By August 1, 2019, the department, in consultation with the Department of Health and the Department of Business and Professional Regulation, shall initiate rulemaking to administer the state hemp program. The rules must provide for:

(a) A procedure that uses post-decarboxylation or other similarly reliable methods for testing the delta-9 tetrahydrocannabinol concentration of cultivated hemp.

(b) A procedure for the effective disposal of plants, whether growing or not, that are cultivated in violation of this section or department rules, and products derived from those plants.

(13) APPLICABILITY.—Notwithstanding any other law:

(a) This section does not authorize a licensee to violate any federal or state law or regulation.

(b) This section does not apply to a pilot project developed in accordance with 7 U.S.C. 5940 and s. 1004.4473.

(c) A licensee who negligently violates this section or department rules is not subject to any criminal or civil enforcement action by the state or a local government other than the enforcement of violations of this section as authorized under subsection (10).

(14) INDUSTRIAL HEMP ADVISORY COUNCIL.—An Industrial Hemp Advisory Council, an advisory council as defined in s. 20.03, is established to provide advice and expertise to the department with respect to plans, policies, and procedures applicable to the administration of the state hemp program.

(a) The advisory council is adjunct to the department for administrative purposes.

(b) The advisory council shall be composed of all of the following members:

1. Two members appointed by the Commissioner of Agriculture.
2. Two members appointed by the Governor.
3. Two members appointed by the President of the Senate.
4. Two members appointed by the Speaker of the House of Representatives.
5. The dean for research of the Institute of Food and Agricultural Sciences of the University of Florida or his or her designee.
6. The president of Florida Agricultural and Mechanical University or his or her designee.
7. The executive director of the Department of Law Enforcement or his or her designee.
8. The president of the Florida Sheriffs Association or his or her designee.
9. The president of the Florida Police Chiefs Association or his or her designee.
10. The president of the Florida Farm Bureau Federation or his or her designee.
11. The president of the Florida Fruit and Vegetable Association or his or her designee.

(c) The advisory council shall elect by a two-thirds vote of the members one member to serve as chair of the council.

(d) A majority of the members of the advisory council constitutes a quorum.

(e) The advisory council shall meet at least once annually at the call of the chair.

(f) Advisory council members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

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; the 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.

Section 3. Paragraph (a) of subsection (2) and subsections (3) through (7) of section 1004.4473, Florida Statutes, are amended to read:

1004.4473 Industrial hemp pilot projects.—

(2)(a) The department shall authorize and oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture, and any Florida College System institution or state university that has an established agriculture, engineering, or pharmacy program. The department shall adopt rules as required under the Agricultural Act of 2014, 7 U.S.C. s. 5940, to implement this section, including rules for the certification and registration of sites used for growth or cultivation. The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state.

(3) An institution or a university must obtain the authorization of its board of trustees before implementing an industrial hemp pilot project. A pilot project authorized by an institution or a university must be registered with the department and must comply with rules adopted by the department.

(4) An institution or a university that implements an industrial hemp pilot project shall develop partnerships with qualified project partners to attract experts and investors experienced with agriculture and may develop the pilot project in partnership with public, nonprofit, and private entities in accordance with this section and all applicable state and federal laws.

(5) The research office of an institution or a university that implements an industrial hemp pilot project shall oversee the pilot project and ensure

compliance with rules adopted by the department. The office must identify a contact person who is responsible for oversight of the pilot project and shall adopt procedures and guidelines to ensure the proper operation of the pilot project, the proper handling of hemp material and products, compliance with state and federal law, and the safety and security of the pilot project facility. At a minimum, the guidelines must:

(a) Designate the physical location, global positioning system position, and map of the pilot project facility. Areas within the facility must be designated as general access or limited access. An area where hemp material is cultivated, processed, stored, or packaged or where industrial hemp research is conducted must be designated as limited access. Limited-access areas must be restricted to entry by qualified program personnel and authorized visitors accompanied at all times by qualified program personnel. All other areas of the facility may be designated as general access and are open to authorized visitors, regardless of whether accompanied by qualified program personnel.

(b) Identify the qualified program personnel involved in the pilot project who meet the requirements of 21 CFR s. 1301.18 pursuant to the Agricultural Act of 2014, 7 U.S.C. s. 5940.

(c) Authorize the qualified program personnel to handle, grow, cultivate, process, and manufacture hemp materials.

(d) Establish a testing program and protocols to ensure the proper labeling of hemp material.

~~(6) An industrial hemp commercialization project may only be conducted after an industrial hemp pilot project has been in place for 2 years to determine if there are any adverse impacts of hemp cultivation on current indigenous crops in the state.~~

~~(6)(7) An institution or a university that implements an industrial hemp pilot project shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of its pilot project and any research related to the cultivation, harvesting, processing, and uses of industrial hemp. The report must be prepared and submitted within 2 years after the pilot project is implemented project's creation.~~

Section 4. This act shall take effect July 1, 2019.

Approved by the Governor June 25, 2019.

Filed in Office Secretary of State June 25, 2019.