



DATE: 2021-03-31
TIME: 15:42:15
SER#: 39319402

FINEST MESSAGE

General Administrative Information

TO: ALL COMMANDS
RE: MARIHUANA LEGALIZATION 2021

EFFECTIVE TODAY, MARCH 31, 2021, THE NEW YORK STATE LEGISLATURE HAS OVERHAULED THE LAWS GOVERNING THE POSSESSION, SALE AND USE OF MARIHUANA. THE NEW LAWS WILL CREATE SWEEPING CHANGES TO THE DEPARTMENT'S ENFORCEMENT OF MARIHUANA OFFENSES. THE KEY CHANGES ARE:

INDIVIDUALS WHO ARE 21 OR OLDER MAY LAWFULLY:

- * POSSESS 3 OUNCES OR LESS OF MARIHUANA IN A PUBLIC PLACE
- * POSSESS UP TO 5 POUNDS OF MARIHUANA IN THEIR RESIDENCE
- * POSSESS HIGHER AMOUNTS OF MARIHUANA IF PRESCRIBED BY A DOCTOR
- * GIVE LAWFUL AMOUNTS OF MARIHUANA TO OTHER PEOPLE WHO ARE 21 OR OVER SO LONG AS NO COMPENSATION IS EXCHANGED
- * SMOKE MARIHUANA ALMOST ANYWHERE THAT CIGARETTE SMOKING IS ALLOWED INCLUDING ON SIDEWALKS, ON FRONT STOOPS AND OTHER PUBLIC PLACES. AS A RESULT, SMOKING MARIHUANA IN ANY OF THESE LOCATIONS IS NOT A BASIS FOR AN APPROACH, STOP, SUMMONS, ARREST OR SEARCH.

INDIVIDUALS WHO ARE 21 OR OLDER MAY NOT:

- * GIVE MARIHUANA TO ANYONE UNDER 21 (SEE PL 222.50(2) BELOW + PL 260.10(1) ENDANGERING THE WELFARE OF A MINOR FOR PERSONS 16 OR UNDER)

PERSONS OF ANY AGE MAY NOT:

- * DRIVE UNDER THE INFLUENCE OF MARIHUANA (SEE VTL 1192(4) BELOW)
- * SMOKE MARIHUANA WHILE DRIVING (SEE VTL 1227(1) BELOW)
- * SELL MARIHUANA FOR COMPENSATION (SEE PL 222.45 BELOW)
- * SMOKE MARIHUANA WHERE CIGARETTE SMOKING IS PROHIBITED SUCH AS BARS, RESTAURANTS, CHILDCARE CENTERS, WITHIN 100 FEET OF A SCHOOL ENTRANCE, PLACES OF EMPLOYMENT AND INDOOR ARENAS. (SEE PL 222.10(1) BELOW)
- * SMOKE MARIHUANA IN NYC PARKS WHERE NO SMOKING SIGNS ARE POSTED (PARKS RULES 1-03(C)(3)) OR IN THE TRANSIT SYSTEM (NYC TRANSIT RULES 1050.7(B))

INDIVIDUALS WHO ARE UNDER 21:

- * ARE NOT PERMITTED TO POSSESS MARIHUANA, EVEN IN SMALL QUANTITIES (I.E. 3 OUNCES OR LESS). HOWEVER, UNDER THE CURRENT STATE OF THE LAW, THERE IS NO MECHANISM FOR THE NYPD TO TAKE ENFORCEMENT ACTION AGAINST A PERSON UNDER 21 WHO POSSESSES 3 OUNCES OR LESS. IN THE FUTURE, THE NYPD MAY HAVE THE ABILITY TO ISSUE A CIVIL SUMMONS FOR SUCH VIOLATIONS. UNTIL THAT TIME, POSSESSION OF 3 OUNCES OR LESS BY A PERSON UNDER 21 CANNOT BE THE BASIS OF AN APPROACH, STOP, SUMMONS, JUVENILE REPORT OR ARREST. POSSESSION BY INDIVIDUALS UNDER 21 OF MORE THAN 3 OUNCES IS ENFORCEABLE UNDER ARTICLE 222 OF THE PENAL LAW (SEE BELOW).
- * WHILE THE NYPD DOES NOT HAVE A MECHANISM TO ENFORCE AGAINST MERE POSSESSION IN SMALL AMOUNTS FOR PEOPLE UNDER 21, THERE IS AN ENFORCEMENT MECHANISM FOR INDIVIDUALS AGED 20 AND UNDER WHO ARE OBSERVED SMOKING IN A PLACE WHERE CIGARETTE SMOKING IS PROHIBITED. THOSE INDIVIDUALS MAY BE ISSUED A CRIMINAL COURT SUMMONS PL 222.10(1), OR A JUVENILE AS APPROPRIATE.

AUTOMOBILES

EFFECTIVE IMMEDIATELY, THE SMELL OF MARIHUANA ALONE NO LONGER ESTABLISHES PROBABLE CAUSE OF A CRIME TO SEARCH A VEHICLE. THIS CHANGE APPLIES TO BOTH BURNT AND UNBURNT MARIHUANA. SEARCHES OF VEHICLES RELATED TO MARIHUANA ENFORCEMENT MAY ONLY BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING:

- * DRIVING WHILE IMPAIRED BY DRUGS VTL 1192(4): IF THE DRIVER APPEARS TO BE UNDER THE INFLUENCE OF MARIHUANA AND THERE IS PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE CONTAINS EVIDENCE OF THE IMPAIRING MARIHUANA (E.G. SMELL OF BURNT MARIHUANA OR ADMISSION OF HAVING SMOKED RECENTLY), A SEARCH OF THE PASSENGER COMPARTMENT OF THE VEHICLE IS PERMISSIBLE. HOWEVER, THE TRUNK MAY NOT BE SEARCHED UNLESS THE OFFICER DEVELOPS SEPARATE PROBABLE CAUSE TO BELIEVE THE TRUNK CONTAINS EVIDENCE OF A CRIME (E.G. GUN RECOVERED FROM UNDER DRIVER SEAT) OR MOS MAY REQUEST CONSENT TO SEARCH THE TRUNK IN COMPLIANCE WITH THE RIGHT TO KNOW LAW UNDER PG 212-11. IF VOLUNTARY CONSENT IS GIVEN, MOS MAY SEARCH THE AREAS OF THE VEHICLE COVERED BY THE CONSENT. IF AN ARREST IS MADE, THE VEHICLE SHOULD BE VOUCHERED PURSUANT TO PG 218-19.
- * SMOKING/CONSUMING MARIHUANA WHILE OPERATING A VEHICLE VTL 1227(1): IF A DRIVER EXHIBITS NO SIGNS OF IMPAIRMENT BUT IS OBSERVED SMOKING/CONSUMING MARIHUANA WHILE OPERATING A VEHICLE, OR ADMITS TO SMOKING/CONSUMING MARIHUANA WHILE DRIVING, OR THERE IS A SMELL OF BURNT MARIHUANA IN THE VEHICLE THAT IS ATTRIBUTABLE TO THE DRIVER, ENFORCEMENT CAN BE TAKEN FOR VTL 1227(1). THIS TRAFFIC INFRACTION ALONE CANNOT BE THE BASIS OF A SEARCH OF THE VEHICLE. IF AN MOS DEVELOPS LEVEL 2 FOUNDED SUSPICION OF CRIMINALITY DURING ANY VEHICLE TRAFFIC VIOLATION STOP, THE MOS MAY ASK FOR CONSENT TO SEARCH IN COMPLIANCE WITH PG 212-11. PASSENGERS OBSERVED SMOKING, ADMITTING TO SMOKING IN THE CAR OR A SMELL OF BURNT MARIHUANA ATTRIBUTABLE TO A PASSENGER MAY ALSO BE SUBJECT TO ENFORCEMENT UNDER VTL 1227(1).

* SMOKING/VAPING IN VEHICLE PROHIBITED PL 222.10(1): NO PERSON MAY SMOKE OR VAPE MARIHUANA INSIDE A VEHICLE. ANYONE OBSERVED OR ADMITTING TO SMOKING IN A VEHICLE MAY BE ISSUED A CRIMINAL COURT SUMMONS FOR PL 222.10(1), SMOKING IN A PROHIBITED LOCATION.

NYS PENAL LAW ARTICLE 222

THE NEW LAW REPEALS PENAL LAW ARTICLE 221 AND CREATES A NEW PENAL LAW ARTICLE 222, WHICH PROHIBITS THE POSSESSION OF MARIHUANA IN EXCESS OF 3 OUNCES.

- * PL 222.10, RESTRICTION ON CANNABIS USE - SMOKING MARIJUANA IN A LOCATION WHERE CIGARETTE SMOKING IS PROHIBITED UNDER ARTICLE 13-E OF THE STATE PUBLIC HEALTH LAW OR UPON SCHOOL GROUNDS (VIOLATION)
- * PL 222.25, UNLAWFUL POSSESSION OF CANNABIS - POSSESSION OF MORE THAN 3 OUNCES UNLESS THEY ARE INSIDE A PERSON'S HOME WHERE 5 POUNDS MAY BE POSSESSED (VIOLATION)
- * PL 222.30, CRIMINAL POSSESSION OF CANNABIS IN THE THIRD DEGREE - POSSESSION OF MORE THAN 16 OUNCES/1 POUND, UNLESS INSIDE A PERSON'S HOME WHERE 5 POUNDS MAY BE POSSESSED BY A PERSON 21 OR OVER (A MISDEMEANOR)
- * PL 222.35, CRIMINAL POSSESSION OF CANNABIS IN THE SECOND DEGREE - POSSESSION OF MORE THAN 5 POUNDS (E FELONY)
- * PL 222.40, CRIMINAL POSSESSION OF CANNABIS IN THE FIRST DEGREE - POSSESSION OF MORE THAN 10 POUNDS (D FELONY)

UNDER THE NEW LAWS, A PERSON CANNOT BE CHARGED WITH THE SALE OF MARIHUANA UNLESS THEY RECEIVE COMPENSATION IN EXCHANGE FOR THE MARIHUANA. THEREFORE, THE HAND TOHAND EXCHANGE OF LAWFUL AMOUNTS (3 OZ OR LESS) OF MARIHUANA, WITHOUT COMPENSATION TO A PERSON 21 OR OVER, IS NOT CONSIDERED A SALE OF MARIHUANA.

- * PL 222.45, UNLAWFUL SALE OF CANNABIS - SALE OF 3 OUNCES OR LESS (VIOLATION)
- * PL 222.50, CRIMINAL SALE OF CANNABIS IN THE THIRD DEGREE - SALE OF MORE THAN THREE OUNCES; OR SELLING OR GIVING ANY AMOUNT BY A PERSON 21 AND OLDER TO A PERSON LESS THAN 21 (A MISDEMEANOR)
- * PL 222.55, CRIMINAL SALE OF CANNABIS IN THE SECOND DEGREE - SALE OF MORE THAN 16 OUNCES; OR SALE BY PERSON 21 OR OLDER TO PERSON LESS THAN 18 OF MORE THAN 3 OUNCES (E FELONY)
- * PL 222.60, CRIMINAL SALE OF CANNABIS IN THE FIRST DEGREE - SALE OF MORE THAN FIVE POUNDS OF CANNABIS (D FELONY)
- * PL 222.65, AGGRAVATED CRIMINAL SALE OF CANNABIS - SALE OF 100 POUNDS OR MORE (C FELONY)

PAROLE

UNDER THE NEW LAW, PAROLEES ARE PERMITTED TO USE MARIHUANA UNLESS THE TERMS OF

THEIR PAROLE SPECIFICALLY PROHIBIT IT. THIS MEANS THAT MOS MAY NOT APPROACH, STOP OR DETAIN A PAROLEE BASED ON THEIR USE OR POSSESSION OF LAWFUL AMOUNTS OF MARIHUANA (3 OZ OR LESS). IF MOS OBSERVE A PERSON KNOWN TO THE DEPARTMENT, WHOSE TERMS OF PAROLE DO PROHIBIT POSSESSING OR SMOKING MARIHUANA, MOS SHOULD NOTIFY THE RELEVANT PAROLE OFFICERS.

GROWING MARIHUANA

THE OFFICE OF CANNABIS MANAGEMENT WILL BE ISSUING REGULATIONS GOVERNING THE HOME GROWING OF MARIHUANA. WHEN THOSE REGULATIONS TAKE EFFECT, INDIVIDUALS 21 OR OLDER WILL BE PERMITTED TO GROW A MAXIMUM OF 6 PLANTS AT THEIR HOME (3 MATURE AND 3 IMMATURE). EACH HOME IS PERMITTED TO HAVE NO MORE THAN 12 PLANTS REGARDLESS OF HOW MANY INDIVIDUALS 21 OR OLDER LIVE IN THAT HOME.

QUESTIONS

FURTHER GUIDANCE WILL BE ISSUED WITH MORE DETAILS. QUESTIONS MAY BE DIRECTED TO THE LEGAL BUREAU AT 646-610-5400; MONDAY THROUGH FRIDAY, FROM 0700 - 2300 HOURS. AT ALL OTHER TIMES CALL OPERATIONS AT 646-610-5800.

AUTHORITY: DEPUTY COMMISSIONER, LEGAL MATTERS

OPERATOR: DET SMERTIUK

LOG: OCD 2021-1022

APRT