

# DEPARTMENT OF PUBLIC SAFETY

## INTEROFFICE MEMORANDUM

**TO:** All Commissioned Personnel

**Date:** 07-10-19

**FROM:** Randall Prince, Deputy Director

**SUBJECT:** HB 1325 – Enforcement Guidance

Texas House Bill 1325, better known as the Hemp Bill, became law on June 10, 2019. Some members of the public believe that HB 1325 decriminalized marijuana – it did not. Marijuana and the controlled substance of tetrahydrocannabinol (THC) are still illegal in Texas. HB 1325, however, did exclude “hemp” from the definition of “controlled substance” and “marihuana” in the Texas Health and Safety Code. “Hemp” is defined as the cannabis plant and any substance derived from the plant with a THC level of 0.3 percent or less. These changes took effect immediately. Thus, as of June 10, 2019, any cannabis substance containing a THC level of 0.3 percent or less is no longer marijuana or a controlled substance.

**Laboratory Testing:** Because marijuana and hemp come from the same plant, it is difficult to definitively distinguish the two without a laboratory analysis. Currently, our crime labs do not have the capacity to measure the THC concentration level. It will take some time to acquire the equipment, procedures, and resources necessary to conduct these tests.

**Probable Cause:** Officers, however, do not need to negate the possibility that a substance is hemp to enforce laws regarding marijuana and controlled substances. In fact, HB 1325 specifically states that it is not intended to restrict officers from enforcing these laws to the fullest extent.

In addition to the typical factors used to establish probable cause for marijuana related offenses, including the odor of cannabis, officers should also consider whether the suspected substance is possessed outside of the regulatory hemp program. Departmental personnel should be aware that neither the federal nor state hemp regulatory program has been established yet and it will be several months before these programs are in place. Thus, it is unlikely that any substance encountered now is hemp.

Additionally, once the regulatory programs are established, they will not allow:

- Cultivating, handling, processing, manufacturing, or selling hemp without the required license or registration;
- A product that is manufactured for smoking;
- A product that is not labeled;
- Transporting hemp plant materials that are not accompanied by a shipping certification or other required documentation; and
- Transporting hemp plant materials with other cargo.

Evidence of violation of the regulatory requirements established by HB 1325 would help provide probable cause to support a conclusion that cannabis material is not hemp and is in fact marijuana.

**Unlawful Transportation of Hemp Plant Materials:** HB 1325 does create some criminal offenses related to hemp. The most likely violation encountered by officers is the improper transportation of hemp plant materials. Under section 122.356 of the Agriculture Code, a person is prohibited from transporting these materials, unless they are produced in compliance with an approved hemp program and the person has a shipping certificate or other documentation verifying this information. A person is required to show an officer the required documentation upon request, and the officer may detain any hemp being transported until the person produces the required documentation. Hemp plant material also cannot be transported with any other cargo. A violation of this provision is a Class C misdemeanor under section 122.360.

**Directive Regarding Citation in Lieu of Arrest:** Departmental personnel are expected to continue enforcing marijuana related offenses. However, effective immediately, personnel will cite and release for any misdemeanor amount of marijuana, as authorized by article 14.06 of the Texas Code of Criminal Procedure. A citation in these circumstances is only authorized when the suspect resides in the county where the offense occurred.

Before implementing this directive, each area should discuss custody arrests preferences with their local prosecutor and follow each prosecutors' direction regarding whether to cite or arrest. Personnel must also follow 37 TAC § 3.23 when determining whether a custody arrest may be more appropriate in a given situation. Under this rule, custody arrests should only be used when necessary:

- to have a violator forthcoming in court;
- to protect the violator or the public from injury; or
- when required by law.

All evidence will be seized and submitted to the lab following standard procedures. Personnel should ensure they are documenting:

- the nature in which the substance was being stored or concealed,
- any paraphernalia that was associated with it, and
- any statements the suspect made about the content and use of the contraband.

### **Key Takeaways:**

- HB 1325 generally decriminalized hemp by removing it from the definition of a controlled substance and marijuana.
- The decriminalization of hemp does not negate probable cause for marijuana related offenses.

- It will be several months before the crime lab has the capability to definitively distinguish between hemp and marijuana.
- Personnel will cite and release suspects for any misdemeanor amount of marijuana, as appropriate.

As more information becomes available, additional guidance will be forthcoming.