

SPECIAL ORDER



DISTRICT OF COLUMBIA

Title
Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014 (Initiative 71)
Number
SO-15-07
Effective Date
February 26, 2015
Replaces:
SO-14-04 (Marijuana Possession Decriminalization Amendment Act of 2014), Effective Date July 17, 2014
Related to:
GO-SPT-401.01 (Field Reporting System)

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I. PURPOSE

The purpose of this special order is to inform Metropolitan Police Department (MPD) members of the implementation of the *Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014*, effective February 26, 2015 (D.C. Act 20-565), commonly referred to as Initiative 71, which amends the District’s laws regarding drug enforcement, including the District of Columbia Uniform Controlled Substances Act (D.C. Official Code § 48-904.01 *et seq.*) and the Drug Paraphernalia Act of 1982 (D.C. Official Code § 7-1671.01 *et seq.*).

A chart summarizing the main enforcement provisions of the new law is included in this order as Attachment A.

II. DEFINITIONS

1. MPD NOV Coordinator – A member who serves as the liaison to the District NOV Coordinators and the Office of Administrative Hearings (OAH). The MPD NOV Coordinator may be contacted at mpdnov.coordinator@dc.gov.

2. Smoking – To inhale, eat, drink, or otherwise introduce marijuana into the body, or to hold or carry a lighted roll of paper or other lighted smoking equipment filled with marijuana.
3. THC – Tetrahydrocannabinol, the chemical responsible for most of marijuana's psychological effects.
4. Transfer – To give marijuana to another person without payment of any kind (such as money, goods, or services).

III. REGULATIONS

- A. The *Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014* provides that a person who is 21 years of age or older is not subject to any criminal or civil penalty if the person:
 1. Possesses or transports two ounces or less of marijuana;
 2. Transfers one ounce or less of marijuana to another person who is also 21 years of age or older;
 3. Possesses, grows, harvests, or processes, within the interior of a house or rental unit that is the person's principal residence, up to six cannabis plants, with three or fewer being mature, flowering plants;
 4. Possesses, within the person's principal residence, the marijuana produced by the cannabis plants; or
 5. Possesses or uses drug paraphernalia associated with possession of one ounce or less of marijuana (e.g., bongs, cigarette rolling papers, cigar wrappers, etc.).
- B. A person who is under 21 years of age is prohibited from possessing any amount of marijuana.
- C. The following activities are criminal offenses:
 1. Possession of more than two ounces of marijuana;
 2. Selling any amount of marijuana or giving any amount of marijuana to a person in exchange for money, goods, or services;
 3. Smoking or otherwise consuming marijuana in a public space or any of the following places:
 - a. A street, alley, park, sidewalk, or parking area;

- b. A vehicle in or upon any street, alley, park, or parking area;
or
 - c. Any place to which the public is invited; and
 - 4. Operating or being in physical control of a vehicle or watercraft while intoxicated, under the influence of, or impaired by alcohol or a drug.
- D. Reasonable articulable suspicion:
 - 1. None of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime:
 - a. The odor of marijuana;
 - b. The possession of, or the suspicion of possession of, marijuana without evidence of quantity in excess of two ounces;
 - c. The possession of multiple containers of marijuana without evidence of quantity in excess of two ounces; or
 - d. The possession of marijuana without evidence of quantity in excess of two ounces in proximity to any amount of cash or currency.
 - 2. However, Part III.D.1 **shall not** apply when a member is investigating whether a person is operating or in physical control of a vehicle or watercraft while intoxicated, under the influence of, or impaired by alcohol or a drug.
 - 3. A member **shall not** request or apply for a search warrant if the sole basis for its issuance would be the possession or transfer of marijuana weighing two ounces or less.
- E. Members **shall not** arrest persons on public space or someone else's private property for being impaired by marijuana.
- F. Members shall refer to SO-13-08 (Medical Marijuana) for guidance on handling incidents involving medical marijuana.
- G. Nothing contained in this order is intended to prevent or discourage members from making arrests for possession of more than two ounces of marijuana, the sale of any amount of marijuana, or the distribution of more than one ounce of marijuana.

IV. PROCEDURES

A. Issuance of a Notice of Violation (NOV) for Marijuana Possession

Members shall no longer issue an NOV for marijuana possession, except as required by Part IV.D of this order. Any NOV issued as required by Part IV.D shall not carry any monetary fine or criminal penalty.

B. Impairment

When conducting a traffic stop involving an impaired person who is suspected of operating a vehicle while under the influence of marijuana, members shall:

1. Handle the incident in accordance with GO-PCA-502.02 [Handling Cases Involving Persons Suspected of "Driving While Intoxicated" and/or "Driving While Under the Influence" (DUI and/or DWI)].
2. If an arrest is made, process any recovered marijuana as evidence.

C. Arrests for Public Consumption of Marijuana

1. Members arresting violators for public consumption of marijuana shall complete a field report in the records management system (RMS) for "Public Consumption of Marijuana."
2. If an arrest is made, members shall process any recovered marijuana as evidence.
3. Members may use a PD Form 61D (Violation Citation) to make a non-custodial arrest for "Public Consumption of Marijuana." Members shall be guided by SOP-05-02 [PD Form 61D (Violation Citation)] in determining whether the specific circumstances of an arrest allow for use of the PD Form 61D or if they must instead make a custodial arrest.
4. When an offender is arrested for this offense, either through a custodial arrest or by issuance of a PD Form 61D, he or she may be eligible for citation release or elect to forfeit.
 - a. Members shall process the arrestee in accordance with existing Department procedures.
 - b. The collateral amount for an elect to forfeit is \$25.00.

D. Possession of Two Ounces or Less of Marijuana by Persons Appearing to Be Under 21 Years of Age

1. Members who witness a person appearing to be, or for whom they have reasonable articulable suspicion is, under the age of 21 and in possession of two ounces or less of marijuana – which can include any marijuana-infused edible goods (e.g., cookies, brownies, etc.) – shall:
 - a. Ask the person his or her date of birth to determine whether he or she is at least 21 years of age. The member **shall not** demand the person provide identification, but the person may show his or her identification to the member if the person so chooses.
 - (1) If the person demonstrates he or she is at least 21 years of age – including, but not limited to, providing government-issued identification – the member shall take no further action.
2. Members who seize marijuana or marijuana-infused edible goods from a person appearing to be under 21 years old shall:
 - a. Conduct or request a field test to confirm the product contains THC;
 - b. Bring the seized marijuana to the District station and make the appropriate entry on the District's property book, including the violator's name and address; and
 - c. **For marijuana seized from a person who is confirmed to be under 21 years of age or who did not prove their claim to be 21 years of age or older:**
 - (1) Bring the seized marijuana to the District station and make the appropriate entry on the property book, including the violator's name and address;
 - (2) Complete a PD Form 81 (Property Record); and
 - (3) Place the marijuana and DEA Form 7 (Report of Drug Property Collected, Purchased or Seized) in a heat-sealed PD Form 95 (Narcotic Evidence Bag) in the drug collection box for destruction as contraband.
 - d. **For marijuana seized from a person who claimed to be 21 years of age or older but did not provide**

identification:

- (1) Issue an NOV (Form OAH-1) (Attachment B) to the violator; **no monetary fine shall be issued.** The issuing member shall:
 - (a) Check the "Possession of Marijuana" violation box on the NOV;
 - (b) Check the box labeled "D.C. Code 48-1201" in the section titled "DC Code/DCMR Reference";
 - (c) Write "WARNING" on the blank space in the section titled "Other Violation";
 - (d) List on the back of Copy C of the NOV the results of the field test and the name and CAD number of the member who conducted the test; and
 - (e) Provide Copy B of the NOV to the violator and inform the person that he or she can:
 - i. Visit the station in the District where the marijuana was seized beginning 24 hours after the date of the seizure, but no later than 21 calendar days after the date of the seizure, and bring Copy B of the NOV;
 - ii. Provide proof of age; and
 - iii. Receive the seized marijuana.
- (2) Once the member returns to the District station, the member shall:
 - (a) Make the appropriate entry on the District's property book, including the violator's name and address;
 - (b) Complete a PD Form 81 (Property Record);
 - (c) "Place Copy A of the NOV, the DEA Form 7 (Report of Drug Property Collected, Purchased or Seized), and the marijuana in a heat-sealed PD Form 95 (Narcotic Evidence Bag), ensuring that the

NOV is visible; and

- (d) Place it in the appropriate location in the District station for property retained for safekeeping, where the Property Clerk shall treat it as general property.

3. Members shall retain:

- a. Copy C of the NOV; and
- b. Any notes related to the incident.

4. Members shall no longer submit any marijuana possession NOVs to the MPD NOV Coordinator, but they may contact the MPD NOV Coordinator with any questions on properly filling out the NOV.

E. Procedures for Returning Seized Marijuana to Persons Over the Age of 21

1. A person whose marijuana or marijuana-infused edible goods was seized pursuant to Part IV.D. may seek the return of their property by visiting the station in the District where the marijuana was seized no sooner than 24 hours after the seizure and providing the designated District station member with:

- a. Copy B of the NOV issued by the member pursuant to Part IV.D.2.d.1; and
- b. A form of government-issued identification showing the person's date of birth, such as a driver's license, birth certificate, or passport.

2. The designated District station member shall:

- a. Review the documents provided by the person whose marijuana was seized;
- b. Make a determination that the person is the same person whose name is listed on Copy A of the NOV;
- c. Make a determination that the person is at least 21 years of age;
- d. Return the seized marijuana to the person; and
- e. Make the appropriate notation in the entry for the seized marijuana on the District's property book.

3. If the seized marijuana is not claimed by the 30th calendar day after the date listed on Copy A of the NOV, the designated District station member shall:
 - a. Place the marijuana in the drug collection box for destruction as contraband; and
 - b. Note in the entry for the marijuana on the District's property book that the property was destroyed and the date.
 4. Each District shall maintain records detailing the outcome of all marijuana seized under Part IV.D.2 and delivered to it, including the number of seizures returned to their lawful owner(s) and the number of seizures destroyed as contraband.
- F. Seizure of Marijuana for Persons Over the Age of 21 When Arrested for a Crime
1. When a member arrests a person who is 21 years of age or older for any type of prohibited activity and that person has two ounces or less of marijuana or marijuana-infused edible goods in their possession, the member shall:
 - a. Place the marijuana in a heat-sealed PD Form 95 (Narcotic Evidence Bag); and
 - b. Treat it as prisoner's property in accordance with GO-SPT-601.01 (Recording, Handling, and Disposition of Property Coming into the Custody of the Department).

V. ROLES AND RESPONSIBILITIES

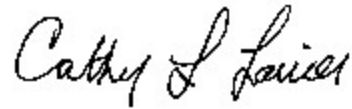
- A. District Commanders shall be responsible for:
1. Ensuring that any marijuana seized for safekeeping from persons 21 years of age or over is returned to the owner and records maintained in accordance with Part IV.E.2-4.

VI. CROSS REFERENCES

- A. GO-SPT-601.01 (Recording, Handling, and Disposition of Property Coming into the Custody of the Department)
- B. GO-PCA-502.02 [Handling Cases Involving Persons Suspected of "Driving While Intoxicated" and/or "Driving While Under the Influence" (DUI and/or DWI)]
- C. SO-13-08 (Medical Marijuana)

VII. ATTACHMENTS

1. Attachment A: Summary of Enforcement Provisions of Initiative 71
2. Attachment B: Office of Administrative Hearings Form-1



Cathy L. Lanier
Chief of Police

CLL:KDO:HG

Summary of Enforcement Provisions of Initiative 71

	Amount	Under 21*	21 & Over
Possession	2 oz. or less	Prohibited. Seize marijuana and may issue a ticket under Section IV.D if person claims to be 21 but has no ID.	Legal
	More than 2 oz.	Prohibited, criminal. Seize marijuana and charge under existing law.	
Transfer	1 oz. or less	Prohibited. Seize marijuana and may issue a ticket under Section IV.D if person claims to be 21 but has no ID.	Legal
	More than 1 oz.	Prohibited, criminal. Seize marijuana and charge under existing law.	
Distribution	(1) Any plants; (2) any amount not covered above; (3) distribution for gain (whether money, goods, or services); or (4) to anyone under 21 years of age	Prohibited, criminal. Seize marijuana and charge under existing law.	
Cultivation	Up to 6 plants, with 3 or fewer being mature, flowering plants. No more than 12 plants/6 mature in a home with more than one person 21 years of age or older.	Prohibited, criminal. Seize marijuana & charge under existing law. (This would likely only apply if the owner or principal resident is under 21.)	Legal
Paraphernalia	Associated with marijuana	Legal	
	Associated with any other type of narcotic	Prohibited, criminal. Seize paraphernalia and charge under existing law.	

* If the person is a medical marijuana patient, then Special Order 13-08 (Medical Marijuana) applies. As specified in the order, with appropriate documentation, a person may be under 21 and possess up to 2 ounces of marijuana.



Government of the District of Columbia
METROPOLITAN POLICE DEPARTMENT

Civil Infraction Notice of Violation

OFFICE OF ADMINISTRATIVE HEARINGS FORM 1
CIVIL INFRACTION NOV
JULY 2014

No. Series _____

Officer _____

Dept. and Element _____

ATTENTION

Tickets in this book are for civil infractions adjudicated by the Office of Administrative Hearings (OAH) only. They are not to be used for criminal infractions under the jurisdiction of the D.C. Superior Court, nor are they to be used to enforce Traffic Violations.

DISTRIBUTION

Copy A OAH Control Copy to Station Clerk
Copy B Violator's Copy
Copy C Officer's Copy

OAH NOTICE OF VIOLATION TABLE

The following are the proper references to the District of Columbia Official Code or District of Columbia Municipal Regulations that can be used in conjunction with the Notice of Violation in this ticket book.

DC Code/ DCMR Reference	Violation	Collateral
21 DCMR §700.4	Littering	\$75.00
D.C. Code 48-1201	Possession of Marijuana	\$25.00

Government of the District of Columbia
METROPOLITAN POLICE DEPARTMENT

Notice of Violation

00001

Violator's Name

FIRST MIDDLE LAST

DATE OF BIRTH

Street Address

NUMBER STREET APT./SUITE

CITY STATE ZIP CODE

Violation Details

DATE TIME AM PM

LOCATION OF INCIDENT DISTRICT

LITTERING/21 DCMR §700.4 (\$75) POSS. OF MARIJUANA/DC CODE §48-1201 (\$25)

OTHER VIOLATION

DC CODE/DCMR REFERENCE FINE

PHOTOS TAKEN? YES NO NCIC CHECK? YES NO

SWORN OFFICER'S TESTIMONY

I personally observed and/or determined that the Violator committed the violation charged above. I certify that I served this Notice on the Violator by personal service.

I further certify under penalty of perjury that (CHECK ONE):

- the Violator is not in the military service of the United States
- the Violator is in the military service of the United States
- I am unable to determine whether the Violator is in the military service of the United States.

OFFICER'S SIGNATURE FULL NAME (PRINTED)

ELEMENT CAD # BADGE NO. RANK DATE

VIOLATOR'S ACKNOWLEDGMENT

I hereby acknowledge receipt of this Notice of Violation. Acknowledgment of receipt IS NOT an admission of liability.

VIOLATOR'S SIGNATURE DATE

INCIDENT DETAILS

Was there a vehicle involved? YES NO

If Yes, describe fully:

MAKE MODEL

YEAR TAG/STATE

COLOR VIN#

Is there physical evidence? YES NO

ELEMENT PROPERTY BOOK PAGE #

Notes

Notes section with multiple horizontal lines for text entry.

OFFICER'S SIGNATURE PRINT NAME

ELEMENT BADGE NO. CAD NO.

Answering a Notice of Violation

You are charged with violating the District of Columbia regulation stated on the other side of this Notice. You **MUST** answer this Notice within 14 calendar days of the day you receive it. If you do not, you will be subject to an order finding you in default and assessing both the fine stated on the other side, and an additional penalty equal to the amount of that fine.

You must answer with a plea of **ADMIT**, **ADMIT WITH EXPLANATION**, or **DENY**. See the instructions below.

1. To Admit and Pay the Fine. If you wish to Admit liability and pay the fine, sign at the bottom and check the Admit box. Mail or bring this form, with a personal check, cashier's check, or money order for the amount of the fine payable to "DC Treasurer" to the address below. **We cannot accept cash payments.** Write the notice of violation number on your check or money order.

2. To Admit with Explanation and Request a Hearing by Mail. If you wish to Admit liability, but want to submit an explanation that you would like an Administrative Law Judge to consider in deciding whether the fine should be reduced or suspended, sign at the bottom and check the Admit with Explanation box. Mail or bring this form, along with your written explanation and any supporting documents, photographs or other materials, to the address below.

3. To Deny and Request an In-Person Hearing. If you wish to Deny liability for the violation, sign at the bottom and check the Deny box. Mail or bring this form to the address below. You will receive a notice from the Office of Administrative Hearings with information about your hearing date. The hearing will be conducted by an independent Administrative Law Judge.

MAILING ADDRESS/OFFICE LOCATION HOURS OF OPERATION
Office of Administrative Hearings 9 AM-5 PM Monday through Friday
441 4th Street, NW
Washington, DC 20001

OAH INFORMATION LINE: 202-442-9094

ANSWER

Admit Admit with Explanation Deny

SIGNATURE PRINT NAME

ADDRESS

PHONE NUMBER

OAH Form 1 Civil Notice of Violation / JULY 2014