



**Misdemeanor
Marijuana
Diversion
Program**

Harris County District Attorney Kim K. Ogg

Effective Date April 10, 2019

MISDEMEANOR MARIJUANA DIVERSION PROGRAM (MMDP)

Policy Statement. The Harris County District Attorney's Office is committed to public safety, responsible use of taxpayer money, and equal justice for all. Accordingly, this Office instituted a new policy affecting prosecution of misdemeanor possession of marijuana cases on March 1, 2017, revisions effective April 10, 2019.

Pursuant to this policy, this Office will use its prosecutorial discretion to divert offenders in possession of misdemeanor amounts of marijuana **pre-charge**.

The goal of this new policy is to ensure that: (1) the limited resources of this Office, local law enforcement, and the Harris County Jail are used responsibly to increase public safety; and (2) individuals who commit the non-violent crime of possessing a misdemeanor amount of marijuana are not stigmatized by a criminal record that limits their employment, education, and housing opportunities.

During the past decade, this Office prosecuted more than 100,000 cases of misdemeanor possession of marijuana at a cost in excess of \$200 million dollars. The endeavor has produced no tangible public safety benefit for the people of Harris County, yet has deprived neighborhoods of officers' time that could be spent patrolling neighborhoods, jail beds that could be used for violent criminals, crime lab resources needed for DNA testing, and judicial court time that should be spent bringing serious criminals to justice.

Additionally, a District Attorney has the duty "not to convict, but to see that justice is done¹," and the important function of trying "to reform and improve the administration of justice²." Therefore, it is this Office's responsibility to consider the total impact of arrest and conviction for minor law infractions upon all people, especially when past prosecutions have disproportionately impacted communities of color. Long term, the damage to our workforce, economy and to relations between the people and our criminal justice system is greater than any benefit contemplated by past policy makers.

This Office recognizes that the possession of marijuana is illegal in this State, and that the police, when acting in a constitutional manner, have authority to arrest offenders who break the law. This new policy simply reflects a collaborative effort between the Harris County District Attorney's Office and local law enforcement to direct our efforts at those who commit crimes against people and property. Further, it is a commitment to the greater Houston business and labor communities to keep people in the workforce whenever possible by diverting them around the criminal justice system before they are charged with the crime of misdemeanor

¹ Texas Code of Criminal Procedure, Art. 2.01

² American Bar Assn., *Criminal Justice Standards on the Prosecution Function*, Standard 3-1.2

possession of marijuana. Accountability for breaking the law will remain an important component of this Office's new policy as all offenders are required to meet eligibility standards and complete a four-hour education program. Otherwise, they will face traditional arrest and charging procedures for their offense.

Finally, this Office recognizes that there are circumstances when the possession of even small amounts of marijuana may threaten the health and welfare of community members, so those offenders who possess marijuana in drug free zones near schools or in correctional facilities will be charged and prosecuted.

Mission Statement. Using the lawful discretion available to prosecutors under Texas law, the Harris County District Attorney's Office will use this pre-charge diversion program, known as the Misdemeanor Marijuana Diversion Program, to use the limited resources of this Office, local law enforcement, and the Harris County Jail responsibly so as to increase public safety; and (2) to aid individuals who commit Class A or B marijuana possession offenses in avoiding a criminal record that limits their employment, education, and housing opportunities.

Overview. The Misdemeanor Marijuana Diversion Program (MMDP) is a **pre-charge** diversion program offered by the Harris County District Attorney's Office to Offenders who would otherwise be arrested and charged with possession of misdemeanor marijuana, regardless of criminal history. It is a voluntary program which gives the Offender an opportunity to avoid arrest, jail booking, and the filing of a criminal charge. Download the form at: <http://app.dao.hctx.net/OurOffice/MMDP.aspx>

When a person is detained by law enforcement for possession of a misdemeanor amount of marijuana, the officer will contact the Intake Bureau to confirm probable cause for the detention. Thereafter, if the Office determines that the person is eligible for the MMDP, the officer will NOT make a DIMS entry, but instead will refer the person to the MMDP. The program consists of attendance at one four-hour "Cognitive Decision Making" class conducted by the Harris County Community Corrections & Supervision Department. The offender will be presented with an "Agreement" by the detaining officer to memorialize the offender's consent.

The MMDP is voluntary. A person is eligible to participate in MMDP if the person is an adult (age seventeen or older), detained for Class A or B Possession of Marijuana, and possesses sufficient identifying information for the arresting officer to confirm the offender's identity. That confirmation is determined by the detaining officer, in accordance with their law enforcement agency's policy.

A person is not eligible for the MMDP if they are currently in the MMDP, possesses marijuana in a "drug free zone" or correctional facility, or is in possession of a concealed handgun and marijuana (in which case the charge will be Unlawfully Carrying a Weapon only and the marijuana will be tagged as evidence). If they are charged with additional crime(s) arising out of the instant detention, other than Class C misdemeanor tickets, the Offender should only be charged with the other

crime. In such instances, the marijuana should be tagged by the officer as evidence. The contraband should NOT be submitted to the lab, unless the officer's law enforcement agency requires it.

At the time of the detention, eligible offenders who elect to participate in the MMDP must sign an MMDP agreement provided to them by the detaining officer. This agreement contains the information necessary for the offender to register for a "Cognitive Decision Making" class, instead of facing traditional arrest and prosecution.

Offenders will have 90 calendar days to complete the MMDP. If the offender successfully completes the MMDP, no criminal charge will be filed against the offender and there will be no criminal history of the event. If the offender fails to comply with the MMDP requirements, a formal criminal charge will be entered into DIMS and an arrest warrant or citation will be issued for the offender by the Intake Bureau.

Eligibility. A person is eligible to participate in the MMDP program if he or she:

- Is an adult, age 17 or older;
- Is detained or arrested for possession of marijuana (Class A & B);
- Possesses sufficient identifying information at the time of detention or arrest according to the intervening law enforcement agency's policy;
- Has no outstanding warrants.

Not Eligible. A person is not eligible to participate in the MMDP program if he or she:

- Is in possession of a concealed handgun and marijuana; in such instances, the Offender will be charged with Unlawfully Carrying A Weapon only; the marijuana will be tagged as evidence and stored by the agency, not submitted to the lab;
- Possesses a misdemeanor amount of marijuana in a "drug free zone;"
- Possesses a misdemeanor amount of marijuana in a corrections facility; or
- Is currently in the MMDP Program 90-day program period, prior to completion of the program.
- Is charged with additional crime(s) arising out of the instant detention, other than Class C misdemeanor tickets; in such instances, the Offender will be charged with the other crime only; the marijuana will be tagged as evidence and stored by the agency, not submitted to the lab.

**LAW ENFORCEMENT PROCEDURE FOR
PRE-CHARGE DIVERSION OF ELIGIBLE OFFENDERS**

1. Officer downloads the 2-page **Program Acknowledgement & Acceptance Form** and **Program Notice Form** at: Download the form at: <http://app.dao.hctx.net/OurOffice/MMDP.aspx>
2. Officer conducts an investigation and detains Offender for possession of a misdemeanor amount of marijuana.
3. Officer seizes contraband.
4. Officer reviews Offender's identification to determine and authenticate identity of Offender pursuant to Officer's law enforcement agency policy.
5. Officer runs a criminal history check to determine if the Offender has any outstanding warrants and is eligible to participate in the program, specifically determining he or she:
 - Is an adult, age 17 or older;
 - Is detained or arrested for possession of marijuana (Class A & B);
 - Possesses sufficient identifying information for the Officer to authenticate Offender's identity in accordance with agency policy; and
 - Has no additional charges arising out of the instant detention other than Class C misdemeanor tickets.
6. Officer calls Harris County District Attorney's Office Intake Division to articulate probable cause and confirm same for use in writing Officer's offense report. Upon confirmation by an Asst. District Attorney that probable cause exists. If Offender is not eligible for MMDP, Officer will arrest Offender and will make a DIMS entry.
7. **Weapons.** If the Offender is carrying a concealed weapon in his/her vehicle without a CHL AND is in possession of a misdemeanor amount of marijuana, the Officer should ONLY file the unlawfully carrying a weapon charge. The Officer should also tag the marijuana as evidence in the weapon case.
8. If Offender is eligible for the program, Officer will present a MMDP **Program Acknowledgement & Acceptance Form** offering Offender the opportunity to participate.
9. If the Offender elects to participate, the Officer shall:

- a. Complete the identifying information on the top portion of the **Program Acknowledgement & Acceptance Form**;
 - b. Explain that by signing the **Program Acknowledgement & Acceptance Form**, the Offender promises to complete the class within 90 calendar days;
 - c. Explain that the failure to complete the class will result in the filing of a criminal charge, the issuance of a warrant, and the Offender's arrest;
 - d. Obtain the Offender's signature of acknowledgement and program acceptance on the **Program Acknowledgement & Acceptance Form**;
 - e. Give the Offender the **Program Notice Form**;
 - f. Release the Offender from detention per law enforcement agency's policies; and
 - f. **NOT** file a DIMS report.
10. After the **Program Acknowledgement & Acceptance Form** is completed, the Officer shall:
- a. Assign an Offense Report Number to the case and enter it on the **Program Acknowledgement & Acceptance Form**.
 - b. **SCAN Program Acknowledgement & Acceptance Form** and email it to Email: MarijuanaDiversionProgram@csc.hctx.net or Fax: 713-437-8491.
 - c. Retain the **Program Acknowledgement & Acceptance Form** as evidence, along with the contraband, and provide the Offender with Page 2 of the **Program Acknowledgement & Acceptance Form** at the scene.
 - d. Complete a brief, detailed offense report with specific probable cause sufficient to draft a "TO BE WARRANT". Officers are asked to include in their reports a notation that the Offender opted to participate in the MMDP Program.
 - e. **Evidence Retention: OFFICERS SHOULD NOT SUBMIT THE MARIJUANA TO THE CRIME LAB. INSTEAD THEY SHOULD TAG THE MARIJUANA UNDER THE OFFENSE REPORT NUMBER AND INCLUDE THE SCANNED FORM IN THE EVIDENCE ENVELOPE.**

- f. **Evidence Destruction:** The Harris County District Attorney's Office will send all local Law Enforcement agencies a monthly Destruction Report to give the agency authorization to destroy the marijuana.

**OFFENDER PROCEDURE FOR ACCEPTANCE OF
PRE-CHARGE DIVERSION PROGRAM**

Offender must:

- Sign **Program Acknowledgement & Acceptance Form** acknowledging intent to participate and to complete program within 90 days;
- Complete the MMDP class within 90 calendar days of detention;
- The Participant must:
 - (1) Not break the law (excluding Class C offenses) prior to completion of the program during the 90 day program period;
 - (2) Pay a \$150 program fee, which may be waived if Offender is determined by the HCCCS&D to be indigent; and
 - (3) Complete a 4-hour "Cognitive Decision Making" class through the HCCCS&D.

DEFERRED PROSECUTION POLICY FOR JUVENILES

Juveniles will continue to be diverted through the Juvenile Justice System.

**LAW ENFORCEMENT PROCEDURE FOR OFFENDERS WHO ARE ELIGIBLE FOR
PRE-CHARGE DIVERSION PROGRAM BUT DECLINE**

If the Offender does **not** wish to participate, the Officer shall explain that the Offender will be taken to jail, the Possession of Marijuana charge will be filed immediately, bond will be set and the case will proceed through the courts. In such instances, the Officer **must submit** the marijuana to the appropriate Crime Lab for analysis.

The Officer shall fill out the top portion of the **Program Acknowledgement & Acceptance Form** and have the Offender initial in the bottom box that he or she does not wish to participate and submit the completed form and Email form to: MarijuanaDiversionProgram@csc.hctx.net or Fax: 713-437-8491.