



OPERATIONS ORDER

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| SUBJECT: CHARGING STANDARDS FOR POSSESSION OF MARIHUANA IN A PUBLIC PLACE OPEN TO PUBLIC VIEW | |
| DATE ISSUED: | NUMBER: |
| 09-19-11 | 49 |

1. Questions have been raised about the processing of certain marihuana arrests. At issue is whether the circumstances under which uniformed members of the service recover small amounts of marihuana (less than 25 grams) from subjects in a public place support the charge of Criminal Possession of Marihuana in the Fifth Degree Penal Law section 221.10 (1) (CPM 5th).

2. The specific circumstances in question include occasions when the officers recover marihuana pursuant to a search of the subject’s person or upon direction of the subject to surrender the contents of his/her pockets or other closed container. A crime will not be charged to an individual who is requested or compelled to engage in the behavior that results in the public display of marihuana. Such circumstances may constitute a violation of Penal Law section 221.05 - Unlawful Possession of Marihuana, a violation *not* Penal Law section 221.10 (1) – Criminal Possession of Marihuana in the 5th degree, a class B misdemeanor.

3. To support a charge of PL 221.10 (1) the public display of marihuana must be an activity undertaken of the subject’s own volition. Thus, uniformed members of the service lawfully exercising their police powers during a stop *may not* charge the individual with PL 221.10(1) CPM 5th if the marihuana recovered was disclosed to public view at an officer’s direction.

4. In such situations, uniformed members of the service must charge the violation, Unlawful Possession of Marihuana (UPM), Penal Law section 221.05. Unlawful Possession of Marihuana is a non-fingerprintable offense and is punishable by a fine. As a general matter, the defendant is entitled to a criminal court summons for the violation Unlawful Possession of Marihuana. Alternately, *Patrol Guide 208-27, “Desk Appearance-General Procedure”* (see *NOTE* at the top of page “6”), provides for the defendant to be released when \$100 pre-arraignment bail is posted under certain circumstances. Finally, a field test on the recovered substance must be conducted pursuant to *Patrol Guide 218-08, “Field Testing of Marijuana by Selected Uniformed Members of the Service Within the Patrol Services and Housing Bureaus.”*

5. Where there is uncertainty regarding what provision of Penal Law Article 221 Offenses Involving Marihuana to charge, members of the service are directed to contact the Legal Bureau.

6. Commanding officers will ensure a sufficient supply of marihuana field test kits are available at their commands. Additionally, commanding officers will ensure and sufficient personnel are trained and available on all tours to conduct marihuana field tests and prepare the relevant reports.

7. Commanding officers will ensure that the contents of this Order are brought to the attention of members of their commands.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands