

PA Law

Small Amount of Marihuana Charge

- **Section 13. Prohibited Acts; Penalties.-**
- (a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:
 - (31) Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale.
- NOTE: **For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.**
- (f) Any person who violates clause (31) of subsection (a) is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding thirty days, or to pay a fine not exceeding five hundred dollars (\$500), or both.

CURRENT PROCESS

Small Amount of Marihuana Charge

- **Misdemeanor offense** and persons charged must report to the Centre County Central Booking Center to be **fingerprinted and photographed**
- Next, are scheduled for a **preliminary hearing** held at the Centre County Courthouse. This is the person's first appearance and he/she have the option to have a hearing or waive his/her hearing.
- The purpose of the preliminary hearing is for a Magisterial District Judge to hear testimony to determine whether or not the Commonwealth has established "prima facie" evidence that the person likely committed the charged offense.
- **For 1st time offenders, defendants are offered Accelerated Rehabilitative Disposition (ARD), a one year probation program that is not considered a conviction**

FAFSA (student aid/student loans)

- **Do college students lose their federal loans/financial aid if they are convicted of possession of a small amount of marijuana?**
- A federal or state drug **conviction** (but not a local or municipal conviction) can disqualify a student for FSA funds. The student self-certifies in applying for aid that he is eligible; the financial aid administrator is not required to confirm this unless they have conflicting information.
- **Convictions** only count against a student for aid eligibility purposes (FAFSA question 23c) if they were **convicted** for an offense that occurred during a period of enrollment for which the student was receiving federal student aid—they do not count if the offense was not during such a period, unless the student was denied federal benefits for drug trafficking by a federal or state judge. Also, a conviction that was reversed, set aside, or removed from the student's record does not count, nor does one received when they were a juvenile, unless the student was tried as an adult.
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PSU ENFORCEMENT AUTHORITY

Borough Ordinances

- Based on statutory law below, the two Borough Magisterial District Judges are of the opinion that PSU Police are authorized by statute (though not required) to enforce Borough ordinances on campus property that is located in the Borough of State College.
- This opinion is contrary to the prior belief and practice followed by law enforcement for many decades. More research is required.
- 71 P.S. Section 646.1 (part of the Administrative Code of 1929) says campus police have the power and duty:
 - (5) to exercise the same powers as are now or may hereafter be exercised under authority of law or ordinance by the police of the municipalities wherein the college or university is located, including, but not limited to, those powers conferred pursuant to 42 Pa.C.S. Ch. 89 Subch. D (relating to municipal police jurisdiction).

RECORDS RETENTION

Borough Ordinances

- Most small amount of marijuana cases receive ARD
- ARD places the person on a probationary program for one year and absent any new misdemeanor or felony crime, the person can have their record expunged
- **However, from initial discussion with the Centre County District Attorney if a person is convicted or pleads guilty to a small amount of marijuana through the proposed Borough ordinance, there would be no mechanism for the person to have his/her record expunged. It would remain and available to the public indefinitely**
- More time is needed to research to determine if there is any legal mechanism for Borough ordinance charges to be expunged and if not, the use of this ordinance could have a serious, long term negative impact on those charged under the Borough ordinance.

PSP LAB TESTING

Borough Ordinances

- Currently with the charge being a misdemeanor, police officers do NOT send the marihuana to the PSP Harrisburg Lab unless the person charged does NOT get an ARD plea deal at the preliminary hearing. **For preliminary hearing purposes, the court accepts the drug field test results and since nearly all persons charged receive ARD, we never have to send the marijuana to the Harrisburg lab which saves much time and money.**
- **More time is needed to determine what level of drug testing the MDJ's will require** if a person charged with the Borough ordinance requests a hearing to challenge the charge.
- Police may be required to provide official lab results from the PSP Harrisburg lab which will be more costly and time delays since there is a back log of about 4-6 months. Again, more time is needed to do this research and get clear answers.

PROPOSED ORDINANCE CONCERNS

- **DRUG PARAPHERNALIA** – most marihuana cases not only involve a small amount of marihuana but the person also has drug paraphernalia such as a smoking pipe, bong, rolling papers, etc. **The proposed ordinance does not address drug paraphernalia which means any small amount of marihuana case that also involves a pipe, bong, etc. will remain a misdemeanor and go through the current court process.**
- **SYNTHETIC MARIHUANA and MARIHUANA WAX** – these are very dangerous substances that unfortunately are common in our community. **If this ordinance passes, it is essential that it does NOT include these types of dangerous marihuana-like substances. More time is needed to ensure the language of the ordinance is worded appropriately.**

PROPOSED ORDINANCE CONCERNS

- **DISPARATE ENFORCEMENT IN SAME COMMUNITY** – In the Centre Region, clearly the majority of the small amount of marijuana cases occur on campus, both on property located in the Borough as well as College Township. **This ordinance would not be applicable in College Township or the other townships in the Centre Region. For the State College PD, this ordinance would not apply in 2 of our 3 jurisdictions.** This will result in much confusion and a perception of disparate treatment.
- **JUVENILES AND PARENTS** – **Existing law and juvenile court procedures are best used for juveniles with a small amount of marijuana.** The juvenile system is designed to be rehabilitative and not punitive plus names are not available publicly. Charging parents would be done under PA law if there is evidence of corruption of a minor (even if it is their child).

STATE COLLEGE POLICE - 2015

- 33 persons charged with a small amount of marihuana which is an ungraded misdemeanor offense in Pennsylvania.
- Of the 33 persons charged, **16 were charged with one or more additional misdemeanor charges** (in addition to the small amount of marihuana charge) such as Driving Under the Influence, Other Drug Possession, Simple Assault, etc. There will be no change in how these are enforced
- Of the 17 remaining persons charged, **four (4) of the violations occurred either in College Township or Harris Township** so the proposed Borough ordinance would not apply.
- **For 2015, there would have been 13 persons charged with a small amount of marihuana that COULD be considered for the proposed marihuana Borough ordinance.**

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STATE COLLEGE POLICE - 2015

- Of the 13 applicable cases, the final dispositions were as follows:
- **DISPOSITION:**
- **ARD for 12 months – 9**
- Probation – 2 (one for 12 months and one for 30 days)
- Confinement – 2 (both were homeless with prior convictions)

- **FINE and ALL COSTS:**
- The average total fine, court and other costs for the 13 cases was **\$1,199**. This does not include any attorney fees.

- **PSU STUDENT vs. NON-STUDENT**
- Of the 13 cases, **five (5) were PSU students**; 8 were non-students

PENN STATE UNIVERSITY POLICE - 2015

- 178 persons were charged in 2015 with a small amount of marihuana.
- Of those 178 persons charged, 14 were had other misdemeanor or felony charges associated with the case and would still have to be charged as a misdemeanor offense.
- More time is needed to determine how many of these 178 persons charged occurred in the Borough of State College and how many in College Township or other municipalities.