

Commonwealth of Virginia

COUNTY OF FAIRFAX

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FAIRFAX, VIRGINIA 22030-4047

STEVE DESCANO
COMMONWEALTH'S ATTORNEY

COMMONWEALTH'S ATTORNEY PROCEDURE MEMORANDUM

Date: 9/10/2020

Policy Title: Policy regarding probation violations based solely on a: (i) positive screen for marijuana, or (ii) conviction for possession of marijuana.

Summary: The policy of the office shall be to decline to proceed with probation violations based solely on a positive screen for marijuana or a conviction for possession of marijuana.

Authorizing Signature:



I. PROBATION VIOLATION BASED ON POSITIVE SCREEN FOR MARIJUANA

On June 24, 2020, the Chief of Probation and Parole advised the circuit court and the Commonwealth's Attorney's Office that despite the decriminalization of marijuana, "the Department of Corrections is not going to change any policies or procedures regarding substance abuse issues especially since marijuana is illegal in the State of Virginia." The letter further stated that:

[P]robation officers will continue to follow established protocols regarding any use of marijuana. We will continue to sanction the offenders accordingly and refer to available resources when necessary. The Officers will continue to submit the usual violations of 18.2-251 cases per the court and on any court ordered special condition as specified in the Court Order.

With respect to violations that are filed in accordance with the above-referenced procedure, it is the policy of the Commonwealth's Attorney's Office to do as follows:

- The ACA shall not proceed with a violation based solely on a positive screen for marijuana. If the positive marijuana screen is the only basis for the violation, the ACA shall ask the court to dismiss the violation. The ACA shall not remain silent and/or defer to the court. If the court declines to dismiss the violation, the ACA shall decline to present evidence of the violation.
- If there are other grounds for the violation, the ACA may proceed on the other grounds. However, the ACA shall advise the court that it is electing not to proceed based on the positive marijuana screen.

II. PROBATION VIOLATION BASED ON CONVICTION FOR POSSESSION OF MARIJUANA

With respect to violations that are based on a conviction for possession of marijuana (whether before or after July 1, 2020), it is the policy of the Commonwealth's Attorney's Office to do as follows:

- The ACA shall not proceed with a violation based solely on a conviction for possession of marijuana. If the conviction is the only basis for the violation, the ACA shall ask the court to dismiss the violation. The ACA shall not remain silent and/or defer to the court. If the court declines to dismiss the violation, the ACA shall decline to present evidence of the violation.
- If there are other grounds for the violation, the ACA may proceed on the other grounds. However, the ACA shall advise the court that it is electing not to proceed based on the conviction for possession of marijuana.