

5-09/360.05 - Possession of Marijuana

Sections 11357(b) - possession of one ounce or less, is an infraction and 11360(b) - gives away or transports one ounce or less - of the Health and Safety Code are non-arrestable misdemeanors. Persons in violation of these sections shall be issued a Notice to Appear (Form 76T551-CR-66) and shall not be booked. A Statement of Facts (SH-CR-607) shall be completed and submitted with the citation.

If, by prudent judgment, the total volume of loose marijuana appears to be in excess of two ounces, the suspect shall be booked at the Station. If the handling Deputy has doubt that the total volume is more than two ounces, he shall issue the suspect a Notice to Appear and write a Statement of Facts (SH-CR-607).

When the quantity of marijuana involved is less than an ounce, it is possible that the facts and circumstances could justify an arrest for "possession for sale," 11359 H&S. While there are no specific guidelines establishing the quantity which would be sufficient to justify a possession for sale arrest, it should be noted that under 11357(b) H&S, simple possession of one ounce or less of marijuana is an infraction and 11357(c) H&S, any amount of marijuana over one ounce is only a misdemeanor. The quantity involved, the manner in which it is packaged, and the circumstances surrounding its seizure should all be taken into consideration when contemplating an arrest for possession for sale. The greater the quantity, the greater the likelihood that a possession for sale arrest would be justified.

A person in possession of an ounce or less could be arrested for "sales" under 11360 H&S if the Deputy has personal knowledge of sales occurring, which can be supported by evidence. When there is doubt concerning the probable cause to believe that sales are occurring and the situation involves an ounce or less of marijuana, the individual should be cited and released. The Deputy's report should then be presented to the District Attorney for his consideration in the matter of filing a felony complaint.

The following crimes involving marijuana are felony charges:

- Possession of concentrated cannabis (11357(a) & (c) H&S);
- Possession for sale (11359 H&S);
- Importing into this State, selling, furnishing or administering any amount of marijuana (11360(a) H&S);
- Offering to sell, import into this State, furnish or administer any amount of marijuana (11360(a) H&S);
- Attempting to import into this State any amount of marijuana (11360(a) H&S);
- Transporting, giving away; offering or attempting to transport or give away more than 28.5 grams of marijuana (11360(a) H&S);
- Cultivating marijuana (11358 H&S);
- Adults employing minors to transport, sell or furnish marijuana (11361 H&S);
- Adults selling or furnishing marijuana to minors (11361 H&S); and
- Adults inducing minors to use marijuana (11361 H&S).