

# **San Diego Police Department**

## **TRAINING BULLETIN**

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

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### **POSSESSION OF CONTROLLED SUBSTANCE FOR SALE** **A GUIDE FOR PATROL**

Subsection A of Section IV of this document is deemed by the San Diego Police Department to be privileged by section 1040 of the California Evidence Code and is exempt from disclosure under the California Public Records Act by section 6254(k) of the California Government Code.

#### **I. PURPOSE**

This training bulletin provides a guide to patrol officers to enhance investigations and reports when arresting and charging a suspect with possession of a controlled substance for sale. This guide is designed to enhance the likelihood of successful issuing and prosecution. In addition to utilizing this training bulletin, officers and sergeants should contact the on-call Narcotics Sergeant on all possession for sale investigations and arrests. The on-call Narcotics Sergeant will be able to provide guidance and, if necessary, a detective to assist.

#### **II. POSSESSION VS. POSSESSION FOR SALE**

Determining whether a suspect possessed a controlled substance for sale versus mere possession should be based on the totality of the circumstances, including the amount of drugs, the evidence supporting the officer's determination it was for sales, and the officer's training and experience. Solely relying on the amount seized without further supporting evidence may not be adequate, even if based on narcotics training and experience. Therefore, it is crucial that the following steps be taken when charging a suspect with possession for sale. These steps can be used universally for almost all drugs.

### III. EVIDENCE GATHERING

Collect, photograph, document and impound everything related to the case including:

- A. Controlled Substances - Document the type, if known, and amount possessed, including the weight. **(REMINDER: officers shall no longer field test any controlled substance due to the dangers associated with exposure to Fentanyl.)**
- B. Packaging - Describe the type, quantity, and how the controlled substance is packaged. (Ex: "I found the drugs packaged in 10 equally portioned jewelry sized zip lock baggies.") Also describe and seize any additional empty packaging.
- C. Scales - Electronic or mechanical devices used to measure out the controlled substances. Note if there is residue on the scale.
- D. Pay and Owes - Notebooks, paperwork, and/or electronic entries containing mathematical notations of buying and selling controlled substances.
- E. Paraphernalia - hypodermic needles, pipes, straws or other instruments for snorting, burnt spoons, burnt tinfoil, etc. (Make sure to document the lack of paraphernalia if there is none.)
- F. Cash - denominations and location of cash. Contact the on-call Narcotics Sergeant if over \$1000 to evaluate for asset seizure.
- G. Cell Phones - One of the most important pieces of evidence. Seize and impound the phone as evidence. If legally able to do so (4<sup>th</sup> waiver or consent), search the phone to document and take photographs of any sales related text messages. Officers can also legally take a photo of any text message that pops up in plain view on the screen of the phone; consent or a 4<sup>th</sup> waiver is not required to photograph the text messages in plain view. If there is no legal means to search the phone, a search warrant can be used to gain access to the phone before or after it is impounded. If the suspect does give the phone access code, please note it in the report and in the notes section of the impound.

### IV. SUSPECT INTERVIEW

If the suspect is willing to talk, asking the right questions about the suspect's use and habits as they relate to drug use and sales becomes very important to building a proper sales case. Record the statement if possible. If the suspect makes any spontaneous statements about the drugs be sure to document those statements.

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**A.     Questions to ask the suspect:**

**How much is here?**  
**What did you pay for it?**  
**How much do you typically use (i.e. dose)?**  
**How many times a day?**  
**How do you typically ingest it?**  
**Do you use any other drugs?**  
**How long do you feel the effects of the drug when you use it?**  
**What effects do you feel?**  
**Do you use any other drugs (besides those found in suspect's possession)?**  
**When do you use drugs?**  
**When was last time you used?**  
**What time of the day?**  
**Do you use drugs by yourself or with other people?**  
**Where do you use drugs? Home? Friends' houses? Car? Work?**  
**How often do you buy drugs?**  
**Do you buy the same amount every time?**  
**When did you buy the drugs you currently have in your possession?**  
**How much of these drugs have you used between the time you purchased them and today's date?**  
**How long have you been using drugs?**  
**Do you consider yourself to be an addict?**  
**Do you work?**  
**Where do you work?**  
**How much do you make? What are your work hours?**  
**Do you ever use drugs while you are at work?**  
**How often are you paid?**  
**What are your monthly expenses/bills?**  
**Do you have any other source of income besides working?**  
**Where did you get the money in your possession?**  
**What do you use the scale for?**  
**Why do you have empty baggies?**  
**What are the mathematical notations in your (notebook, phone, and piece of paper)?**  
**What do the words represent? Numbers represent?**  
**Do you sell the drugs?**

**If yes, get details of sales.**

**If no, have the suspect explain all the sales related evidence found in his or her possession.**

- B. Any other questions not listed above that may be specific to the particular case.

## **V. DOCUMENTATION**

Make a clear and concise statement of each step taken and each piece of evidence leading to the conclusion that the suspect possessed the controlled substance for sale. Include any and all narcotic training and experience in the report. For example:

*I stopped a vehicle for running a stop sign. Upon contact, I identified the driver as John Smith. A records check revealed Smith was on probation and had a 4<sup>th</sup> waiver. I searched Smith and found a sandwich sized zip lock baggie containing approximately 8 grams of methamphetamine in his left front pocket (or “8 grams of an off-white crystalline powder that I believed to be a controlled substance in his left front pocket”). Smith had a small notebook in his pocket that contained two pages of names and dollar amounts next to the names that I recognized as drug “pay and owes” in which drug sales are recorded. In his right front pocket, I found ten \$20 bills individually stuffed into his pocket. A further search of his car revealed a small digital gram scale in his glove box that had a residue similar to the controlled substance found in his pocket. Also in the glove box were 30 small empty zip lock baggies. These baggies were all inside of a larger zip lock bag. There was no residue on these baggies and they appeared new and unused. I did not find any drug paraphernalia in the car or on his person. Smith had a cellphone in the car but I could not access the screen and Smith would not give me the unlock code to look at the texts within it. I seized Smith’s cellphone so that a search warrant could be utilized to access the phone for evidence of drug sales (texts, voicemails, and notes). I admonished Smith and he agreed to talk with me. (USE LIST OF QUESTIONS ABOVE) . . . Based on the totality of the circumstance and evidence, combined with my training and experience in narcotic investigations, I believe Smith possessed the controlled substance for the purpose of selling it. (MAKE SURE TO INCLUDE A DETAILED TRAINING AND EXPERIENCE SECTION IN THE REPORT.)*