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Albany County DA David Soares Announces Policy Change in Marijuana Prosecutions

ALBANY, NY- District Attorney P. David Soares announced today that effective December 1, 2018, the Office of the Albany County District Attorney will no longer prosecute simple possession of marijuana cases.

Specifically, the Office will decline to prosecute cases solely involving simple possession of less than two ounces of marijuana, roughly equivalent to personal use. The Office will decline to prosecute Unlawful Possession of Marijuana (Penal Law § 221.05, a Violation) and Criminal Possession of Marijuana in the 5th Degree (Penal Law § 221.10, a Class B misdemeanor) charges. In addition, we will be seeking dismissals where appropriate for cases currently pending where these are the sole charges.

This policy has been developed after conducting a number of public meetings across the county in order to hear from the people we represent. In conjunction with the public meetings, we sought the opinion of residents via our website. The vast majority of our constituents indicated that they wanted to see a shift in the legal status of recreational adult use marijuana and in the enforcement of existing laws. Given the near certain impending changes in the law, and given the sea change in society's views of the issue, it is no longer the best use of our resources to prosecute these low-level marijuana offenses.

“As the war on marijuana comes to an end, the District Attorney’s Office has an important role in play in the process. In order to ease the transition into market regulated marijuana, we will be adopting a new policy on how to deal with low-level marijuana cases in courts throughout Albany County,” commented DA David Soares. “We will also be strengthening our vehicular crimes DWI policies to include Driving While Ability Impaired by Drugs, to best serve the public safety needs of our county residents and the thousands of drivers who traverse the many thoroughfares in and out of our jurisdiction on a daily basis.”

As such, the addition of Driving While Ability Impaired (DWAI) by Drugs will be added to the current office policy for handling misdemeanor Driving While Intoxicated (DWI) files in Albany County. A full detailing of our vehicular crimes DWI/DWAI Drug policy can be found on the [Vehicular Crimes Unit section of our website](#).

Changes in our prosecution strategies must not have an adverse impact on roadway or overall public safety. Where an individual is charged with a marijuana offense in connection with a DWAI-drugs charge, the marijuana offense will still be aggressively prosecuted along with the DWAI. In addition, the policy change will not apply to anyone openly smoking or consuming cannabis while in a vehicle or in public. Other caveats to the policy include smoking or consuming cannabis in the presence of a child or children.

As we strive to provide present relief and as we look forward to future legalization, we will not forget those who have been effected by marijuana arrests in the past.

Therefore, our office will begin accepting applications for our Clean Slate program for expungement of past marijuana convictions through CPL 440.10 applications. The criteria for consideration will be the same criteria under our policy: we will only consent to expungement of covered marijuana-only, simple possession offenses with no special aggravating factors. Please visit the [Clean Slate area of our website](#) to learn more about our sealing and expungement efforts in this regard.

As we move into a new era of legal marijuana usage, we must dynamically help to ease the transition from illicit substance to legal, regulated industry. These policies will help us do just that, while also protecting the public at large.

For more information please contact Cecilia Walsh (518) 275-4710.

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