

New Police Drug Test Aims to Tell Pot From CBD

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Commonly used drug field tests in the U.S. can't distinguish between marijuana and hemp products.

With the rise in use of CBD to treat ailments from anxiety to arthritis, police across the U.S. now have a problem: Commonly used drug field tests can't tell the difference between legal hemp products and marijuana.

But the News4 I-Team has learned a new test developed by forensic chemists in Switzerland could help keep American CBD users out of legal trouble.

Area police have yet to deploy the new test, which was just made available in the U.S. in June. But the I-Team, the first news outlet in the U.S. to obtain and try out the Swiss kits, has learned Virginia is now evaluating the test to see whether it's a suitable replacement for the current drug field kits used by law enforcement in the Commonwealth.

Local

Virginia's chief forensic scientist told the I-Team that her department, along with the Drug Enforcement Administration, is testing samples "so that we can understand the limitations of that test."

Linda Jackson has warned the state's prosecutors and law enforcement about the old tests' limitations, but as of now, they are still the only kits her agency has approved for use by law enforcement.

"Those regulations would need to be altered to include the use of another test," Jackson told the I-Team in a May interview, adding that it could happen at an upcoming meeting of the state's oversight board.

Changing Laws

The test, which police in Zurich developed after Swiss law changed in recent years to allow hemp with up to 1% THC, only recently became available in the U.S. And it comes as law enforcement across the country grapples with evolving CBD laws.

After federal statute changed with the 2018 Farm Bill to allow for hemp-derived CBD products with up to 0.3% of THC – the chemical that can produce a high – states including Virginia, Florida and Ohio followed suit.

In March, Virginia changed the definition of marijuana to mirror federal law. Now, Virginia allows for “finished” hemp-derived products, such as CBD, as long as they contain no more than 0.3 percent THC. Marijuana remains illegal.

But as the I-Team first reported in May, some CBD users have been arrested because popular police field tests are designed to detect cannabinoids, which include both hemp and marijuana.

The I-Team has interviewed multiple people who said they were detained or arrested after their CBD products tested positive for marijuana in the disposable police field test.

They include Michael, a Virginia man who asked News4 not to use his last name, who was detained last year during a police raid of a Washington, D.C., party where others were selling marijuana. While D.C. legalized marijuana possession in small amounts, it’s illegal to sell it.

"I was shocked," Michael told News4. "I literally was like, is this really happening right now?"

He said police seized his inventory but he was able to avoid arrest after showing the officer the lab results detailing the product’s CBD content.

The I-Team found another case — this time out of Virginia — in which a store owner was arrested and charged with felony distribution of marijuana in March.

Kyle Traugh showed the I-team laboratory results that show that the product in question, which looks and smells similar to marijuana, contains less than 0.3 percent THC. But when Fredericksburg police sent the material to a lab, it came back positive for the presence of THC. It’s unclear just how much THC is in the product, however, because Virginia state labs do not have the

capability of measuring the exact amount of THC in most CBD or marijuana products.

Coming to America

Michael Bovens, chief scientist at the Zurich Forensic Science Institute, told the I-Team the Swiss police initially intended to develop the new test just for their own use. After validating its accuracy with hundreds of lab tests, he said, police there began using the test last September.

"We are happy if the test is used successfully in other countries as well, of course," Bovens added.

The Swiss kits are similar in appearance to the older tests used throughout the U.S. But the chemicals in the Swiss test turn a purplish-pink when detecting products with a higher concentration of CBD and blue if the product is mostly marijuana.

John Waldheim, the sole U.S. distributor of the Swiss tests, signed on to distribute the product just as Florida law was about to change. He said he's already received as many as 25,000 orders from Florida police agencies, outpacing the speed at which the Swiss manufacturer can provide them. It's unclear, however, whether any Florida agency is already using the new Swiss tests in the field.

Waldheim said he's hoping to launch a manufacturing arm in the U.S.

"With the way laws are changing in each state, this could blow up probably overnight," Waldheim told the I-Team.

Constance Stanley, the chief of police in Lauderhill, Florida, is among those who have ordered the kits for her department.

"We wanted to get ahead of the game," Stanley said. "We definitely don't want to put anyone who's innocent in jail."

Stanley also serves as president of the Broward County Police Chief's Association, which already decided to adopt the new tests, predicting demand around the country will be high.

Earlier this year, the Broward County Sheriff's Office issued a legal bulletin that stated: "All current THC test kits must be disposed of and replaced with the new test kits."

Chris Martinez, a scientist whom Waldheim asked to validate the Swiss tests in his Florida cannabis lab, said he's still evaluating the kits to see how they fare in various conditions, such as in extreme hot or cold temperatures.

"If this does prove to be true ... this is definitely going to help a lot of people stay out of jail," Martinez said.

This story was reported by Jodie Fleischer, produced by Katie Leslie, shot by Steve Jones and Anthony James (WTVJ in Miami) and edited by Steve Jones