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Drug Court Practitioner **Fact Sheet**

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Delta-8 THC and Drug Testing in Treatment Courts

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Paul L. Cary, M.S., retired as director of the Toxicology and Drug Monitoring Laboratory at the University of Missouri in Columbia, Missouri, in 2015. For forty years, Mr. Cary was actively involved in the management of a nationally recognized toxicology laboratory. He has authored numerous scientific publications, has served on a variety of clinical and technical advisory committees, has taught at the university, is involved in drug testing research, and serves as a consultant in toxicology-related matters. He has been certified as an expert and provided expert testimony in court (local, state, and federal) and in labor arbitration and is a member of the Society of Forensic Toxicology. Mr. Cary has been a resource to treatment court teams throughout the nation and overseas for the past two decades.

On the heels of the widely popular hemp-based product cannabidiol (CBD) now comes delta-8 tetrahydrocannabinol (THC). Delta-8 is currently all the rage among cannabis enthusiasts. Widely available, products infused with Delta-8 THC include preloaded vape cartridges, tinctures and oils (used in vaping), soft gels, gummies, cookies, brownies, candy, and other edibles. These products are commercially available over the internet and from a wide variety of retail outlets that specialize in cannabis merchandise.

Delta-8 THC products are likely attractive to treatment court participants for several reasons. First, the legality of delta-8 material is unsettled and in a state of flux. While delta-8 products have not been classified as illegal at the federal level, the actual manufacture of delta-8 probably violates federal law. Recently, numerous states have moved to ban retail products that contain delta-8. Second, treatment court clients may be drawn to delta-8 products

because they are generally reported to have a less intense “high” than delta-9 THC, the primary psychoactive chemical in marijuana. Lastly, individuals participating in a treatment court program may be under the false impression that delta-8 use will not be detected by drug testing strategies designed to monitor client abstinence.

While delta-8 THC occurs naturally in the cannabis (marijuana) plant, it is present in only very small quantities. Most commercially available delta-8 products are produced in a laboratory by extracting and concentrating delta-8 from the hemp flower. Laboratory-based drugs of questionable legality don’t carry labels stating the concentration or strength of their products, assuming they even know that information. As a result, delta-8 products contain wildly variable concentrations of the drug and may also contain other cannabinoid and noncannabinoid “impurities.”

After consumption, delta-8 THC produces a metabolite that is similar to the metabolite produced following the use of cannabis. Therefore, participants using delta-8 will likely screen positive for cannabinoids—either from the delta-8 metabolites themselves or from other cannabinoids that are present in the product being used. Keep in mind that a positive cannabinoid screening test results from immunoassay cross-reactivity toward the “total cannabinoids” present in the urine sample.

However, the same urine that tested positive for cannabinoids in the initial screening test may not confirm as positive by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography with tandem mass spectrometry (LC/MS/MS). THC confirmation tests are usually designed to detect only specific compounds related to the use of cannabis. If the confirmation test does not specifically search for delta-8 metabolites (and it does not do so routinely), the GC/MS or LC/MS/MS testing will not detect the delta-8 metabolites, and the original positive cannabinoid test may be erroneously reported as negative for THC or unconfirmed. (Note: Due to the popularity of delta-8 THC, some commercial laboratories are now beginning to offer confirmation analyses for the delta-8 metabolite.)

Drug testing results can be even more befuddling if the delta-8 THC product lacks sufficient purity. If there are varying concentrations of delta-9 THC in the product as an impurity, the confirmation test may indeed come back as positive or confirmed.

Confused yet? Given that delta 8-THC use by treatment court participants will likely produce a positive urine cannabinoid drug test at the screening stage and may or may not produce a positive urine cannabinoid test result at confirmation, the use of delta-8 does not allow a treatment court to effectively and reliably monitor for abstinence from prohibited substances such as marijuana.

In their supervisory role, courts often prohibit the use of products that have the potential to interfere with the evaluation of drug testing results. Courts routinely ban the use of alcohol or products containing alcohol that are likely to interfere with a test for alcohol. The

consumption of poppy seeds is also prohibited because of the potential to interfere with opiate testing, as are creatine supplements for their potential to interfere with overall drug tests. Inasmuch as it is not possible to list all of the commercially available products participants must avoid, treatment courts should consider a general prohibition of problematic over-the-counter (OTC) merchandise, including OTC chemicals, ingestibles, OTC drugs, nonmedicinal products, non-FDA-approved supplements, herbal products, kombucha, energy drinks, dietary supplements, sports medicine powders, etc.) that have the potential to interfere with the ability to accurately and reliably evaluate the results of abstinence monitoring tests—including delta-8 THC. In other words, treatment courts should ban the use of all delta-8 products because of the probability that they will interfere with the evaluation of abstinence monitoring strategies.

Beyond the drug testing concerns detailed above, even though the psychoactive potential of delta-8 THC may be less than that of delta-9 THC, its use either directly or indirectly from products that contain delta-8 is entirely antithetical to the mission and best practice standards of a treatment court program. Additionally, reports pertaining to adverse health risks associated with its use continue to surface and suggest that treatment court participants be prohibited from using it or any products that may contain it.

The advent of delta-8 THC and the issues it poses to treatment court abstinence monitoring is a harbinger of things to come. On the horizon are numerous cannabinoid-related products already commercially available, including delta-10 THC, THC-O, THC-P, and THCV. With little or no regulatory oversight, scant research into the effects of these compounds, few legal restrictions, and limited testing capabilities, the courts, in their supervisory role, must be willing to prohibit a wide range of cannabinoid-related products to ensure proper interpretation of abstinence monitoring strategies.

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Further information can be found at the following sites:

5 Things to Know about Delta-8 THC (U.S. FDA Consumer Update)
<https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>

Increases in Availability of Cannabis Products Containing Delta-8 THC and Reported Cases of Adverse Events (Centers for Disease Control and Prevention Health Advisory)
<https://emergency.cdc.gov/han/2021/han00451.asp>



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