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Frequently Asked Questions **Marijuana Decriminalization and Legalized Cannabis**

This document contains frequently asked questions (FAQs) to address some of the substantial issues, concerns, and situations that will arise for law enforcement as we all strive to understand, implement, and apply the new cannabis legalization and marijuana decriminalization laws. We anticipate expanding the FAQs as we encounter additional, and more subtle and complex, issues and gain experience and insight into the challenges presented by the new laws.

1. What should an officer do if they smell marijuana coming from a vehicle during a motor vehicle stop?

First, the officer should take the traditional investigative steps to determine if there is probable cause to believe that the driver is operating the vehicle while under the influence, in violation of N.J.S.A. 39:4-50. If so, the driver may be arrested and the vehicle may be searched. If the driver is not found to be under the influence, the odor of marijuana, either burned or raw, by itself does not establish reasonable suspicion to justify a continued stop, nor probable cause to conduct a search, in a marijuana possession case or even in a low-level (fourth-degree) possession with intent to distribute marijuana case. As a result, the vehicle and occupants must be released once the initial reason for the stop has been addressed.

2. May an officer initiate or continue a pedestrian stop of an individual based on the officer detecting the odor of marijuana?

No, the new laws are clear that the odor of marijuana, either burned or raw, by itself does not establish reasonable suspicion to justify or continue a pedestrian stop. In addition, the odor of marijuana by itself does not establish probable cause to conduct a search in a marijuana possession case or even a low-level (fourth-degree) possession with intent to distribute marijuana case. The age of the person being stopped is irrelevant in these situations.



3. What happens when a law enforcement officer encounters an individual under the age of 21 who is in possession of marijuana, hashish, cannabis, or alcohol?

Law enforcement officers must be cautious when they encounter an individual under the age of 21 who is in possession of marijuana, hashish, cannabis, or alcohol. The officer can seize the marijuana, hashish, cannabis, and alcohol and issue the appropriate written warning. However, the new law also sets forth the following prohibitions on officers when investigating possession or consumption of marijuana, hashish, cannabis, or alcohol by an underage individual to determine a violation of N.J.S.A. 2C:33-15:

- *Officers may not request consent from an individual who is under the age of 21;*
- *Officers may not use odor of marijuana to stop an individual who is under the age of 21 or to search the individual's personal property or vehicle;*
- *Officers who observe marijuana in plain view will not be able to search the individual or the individual's personal property or vehicle; and*
- *Officers may not arrest, detain, or otherwise take an individual under the age of 21 into custody, or transport the underage individual to a police station, police headquarters, or other place of law enforcement operations, for a violation of N.J.S.A. 2C:33-15, except to the extent that detention or custody at or near the location is required to issue a written warning or collect information necessary to provide notice of a violation to a parent/guardian (**note:** the officer shall provide written notification of the violation to the parent/guardian of the juvenile, regardless of whether it is a first, second, third or subsequent violation).*

4. Does the new law alter the use of an officer's body worn camera (BWC) in any way?

The law requires that whenever an officer is equipped with a BWC, the BWC must be activated when responding to or handling a call involving a violation or suspected violation of the amended N.J.S.A. 2C:33-15, which addresses the underage possession or consumption of alcohol, marijuana, hashish, or cannabis. The BWC may not be deactivated for any reason throughout the entire encounter. Underage refers to people under the age of 21.

5. How do decriminalization and legalization change fingerprinting?

Marijuana is still by definition pursuant to N.J.S.A. 2C:35-2 a "controlled dangerous substance," and, therefore, appropriately charged violations involving marijuana or hashish are still subject to fingerprint compliance under N.J.S.A. 53:1-18.1. However, when law enforcement officers encounter an individual who has violated N.J.S.A. 2C:35-5(b)(12)(b) (distribution/possession with intent to distribute 1 ounce or less) or N.J.S.A. 2C:35-10(a)(3)(b) (possession of more than 6 ounces), the officer is prohibited under the law from arresting, detaining, or otherwise bringing that individual into the station for those offenses, which means the officer will generally be unable to fingerprint the violator at the time of the incident. Therefore, those individuals must be fingerprinted at their first court appearance.

Individuals under the age of 21 who are in violation of N.J.S.A. 2C:33-15 are precluded from being fingerprinted for that offense under the new law.

6. What is the difference between marijuana and cannabis?

Despite the different names, there is no difference in substance, as the two terms both describe parts of the plant Cannabis sativa L.. However, the law now creates a distinction between legal “cannabis,” which is parts of the plant cultivated and produced for use in a cannabis item regulated by the Cannabis Regulatory Commission in accordance with the provisions of P.L.2021, c.16 (the cannabis legalization act), and illegal “marijuana,” which is parts of the same plant that have not been subject to Cannabis Regulatory Commission regulation. Cannabis may be legally manufactured and distributed, while marijuana may not.

Until the Cannabis Regulatory Commission promulgates and implements regulations governing the cultivation, production, processing, distribution and consumption of cannabis in accordance with P.L.2021, c.16, legal cannabis does not exist, and (except for regulated medical cannabis) any Cannabis sativa L. cultivated and produced until that time is to be considered marijuana and remains illegal and subject to seizure.

7. May law enforcement officers continue to use K-9s to “sniff” for the odor of marijuana?

The new laws are clear that the odor of marijuana alone may not be used to establish reasonable suspicion for a stop, nor probable cause for a search, to determine a violation of marijuana possession, low-level (fourth-degree) distribution, or underage possession or consumption under N.J.S.A. 2C:33-15. Therefore, a K-9 which has been trained to alert, or signal its handler, when it detects the odor of marijuana may not be used to “sniff” in these situations.

However, K-9s may still be used in the investigation of higher-level marijuana distribution cases. In such cases, if significant circumstances exist demonstrating a higher-level of marijuana distribution, a K-9 may be used to alert for the presence of marijuana. The totality of those factors, including the odor, may be considered to develop reasonable suspicion for a stop or probable cause for a search, but only in these higher-level marijuana distribution cases. In addition, K-9s may still be used in non-criminal investigations in places such as correctional facilities, when locating marijuana will generally result only in administrative violations and not criminal charges or warnings pursuant to N.J.S.A. 2C:33-15.

8. Can a law enforcement officer use marijuana while off duty without consequence?

No. Until the Cannabis Regulatory Commission promulgates and implements regulations, there is no regulated, legal cannabis in New Jersey. Therefore, any marijuana consumed by a law enforcement officer or applicant for a law enforcement position will be a

controlled dangerous substance and illegal. The Attorney General's Law Enforcement Drug Testing Policy remains unchanged.

9. What should an officer do if an underage individual (under 21) refuses to provide identifying information for the written warning?

*Reasonable efforts should be taken to explain the situation to the underage individual (procedural-justice techniques). If the underage individual continues to refuse, the law **does not** allow for the underage individual to be placed under arrest (adult) or taken into custody (juvenile) for violating N.J.S.A. 2C:29-1, unless the individual has engaged in some affirmative act of interference with the officer; simply refusing to provide identifying information does not constitute an affirmative act under N.J.S.A. 2C:29-1. However, because the law states that the officer may detain or hold the underage individual in custody at or near the location of the incident to the extent required to issue the written warning or collect information necessary to provide notice of violation to a parent/guardian, should the underage individual walk away from the officer, the underage individual would be in violation of N.J.S.A. 2C:29-1.*

10. What can an officer do if they observe an underage individual with marijuana but the underage individual puts the marijuana in their pocket or conceals it in some way?

Amended 2C:33-15 states, "As part of the process for the issuance of a written warning or write-up to a person for a violation of paragraph (1) of this subsection, the law enforcement officer shall take possession of any alcoholic beverage, marijuana, hashish, or cannabis item from the person, and any drug or cannabis paraphernalia for use with any marijuana, hashish, or cannabis item." Thus, the officer may order the underage person to turn over the marijuana.

Should the underage individual refuse, reasonable efforts should be taken to explain the situation to the underage individual (procedural-justice techniques) just as the officer would if the underage individual refused to give their identifying information (reference question #9 above).

*If the underage individual continues to refuse, the law **does not** allow for the underage individual to be placed under arrest (adult) or taken into custody (juvenile) for violating N.J.S.A. 2C:29-1, unless the individual has engaged in some affirmative act of interference with the officer; simply refusing to turn over the marijuana does not constitute an affirmative act under N.J.S.A. 2C:29-1.*

11. The directive says an officer can be charged with Deprivation of Civil Rights even if they did not intentionally violate the law (2C:33-15) – what is the standard?

*The applicable provision is found in P.L. 2021, chapter 25 (A5342) and the standard in the newly enacted law is "**knowingly.**" Specifically, the law states: "A law enforcement officer...shall be guilty of a crime of official deprivation of civil rights as defined in section*

2 of P.L.2003, c.31 45 (C.2C:30-6) if that officer **knowingly** violates the provisions of subsection a. of section 1 of P.L.1979, c.264 (C.2C:33-15) that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items by... [engaging in one of the listed prohibited actions].”

To have criminal liability, therefore, the officer must act **knowingly**, but the law does not “...require that the law enforcement officer have acted with the purpose to intimidate or discriminate against a person or group of persons because of race, color, religion, gender, handicap, sexual orientation or ethnicity.” For example, if an officer approaches an individual who they know to be 20 years old (either because they ask them or from prior experience) and the individual places the suspected marijuana in their pocket as the officer approaches, the officer may **not** then ask the individual for consent to search their person. In this scenario, the simple act of requesting consent from an individual under 21 would constitute a violation of N.J.S.A. 2C:33-15 and the officer could be in jeopardy of being charged with deprivation of civil rights.

12. When an officer comes across a juvenile (under 18 years of age) who is using marijuana, can the officer do a curbside warning rather than issue a written warning under N.J.S.A. 2C:33-15?

No. N.J.S.A. 2C:33-15 sets forth the mechanism for underage individuals, including juveniles, who are in possession of or consuming marijuana or alcohol, as it is no longer a disorderly persons offense or a crime. However, if the juvenile is in possession of over 6 ounces of marijuana, they are in violation of N.J.S.A. 2C:35-10(a)(3)(b) and can be charged with the fourth-degree crime.

13. Can an officer conduct a search of an underage individual based on the smell of marijuana? What if the officer observes the underage individual holding marijuana?

If the officer smells marijuana on an underage individual, the officer cannot stop or search the underage individual or the individual’s personal property. Thus, unless there are other factors that support a finding of probable cause that the underage individual is in possession of marijuana, the officer may not issue a warning.

However, if the officer observes the marijuana in plain sight or comes across the marijuana during a search incident to arrest for another crime or in accordance with another lawful procedure, the officer may seize the marijuana and issue the warning. Under the new law, the officer cannot use plain sight to initiate a search to determine any “further violation of [2C:33-15] or any other violation of law.”

14. Is it illegal for a student to possess marijuana on school property?

N.J.S.A. 2C:33-15 states that “any person under the legal age to purchase alcoholic beverages, or under the legal age to purchase cannabis items, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public

assembly, or motor vehicle, shall” be subject to the written warnings. Thus, when a student under the age of 21 is in possession of marijuana in any school, the officer may issue a written warning pursuant to 2C:33-15. However, if that student is in possession of over 6 ounces, it is a fourth-degree crime under N.J.S.A. 2C:35-10(a)(3)(b) and can be charged. If the student is 21 or older and in possession of under 6 ounces in a school, the officer cannot charge the individual with N.J.S.A. 2C:35-10(a)(4)(b) because that is no longer a crime and cannot issue a warning under N.J.S.A. 2C:33-15 because the individual is not underage. However, if the student is 21 years of age or older and in possession of over 6 ounces of marijuana in a school, the officer can charge N.J.S.A. 2C:35-10(a)(3)(b), a fourth-degree crime. Regardless of the age of the student, nothing in the law precludes the school from imposing any administrative disciplinary action for possession of marijuana on school property.

15. What should an officer do when they encounter a person who is intoxicated and unable to reasonably care for themselves?

The new marijuana laws have not changed the community caretaking duties of law enforcement officers to protect individuals, either under or over 21 years of age, who may be highly intoxicated because of alcohol, marijuana, or any other substance. Officers must still protect such individuals by getting them to a safe place, such as a medical facility or home. Officers who adhere to this standard will have the full support of the Attorney General and the entire law enforcement community.

*In situations involving juveniles, N.J.S.A. 2C:33-15 does not affect the applicability of N.J.S.A. 2A:4A-31 to -33, which permit an officer to take a juvenile into short term custody if the officer has reasonable grounds to believe the juvenile’s health and safety is in serious danger and taking the juvenile into immediate custody is necessary. This would include situations where the law enforcement officer reasonably believes that the juvenile is under the influence based upon all available information, including physical observations at the scene. **Notice to the juvenile’s parent or guardian is required in these circumstances.***