



State of New Jersey

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TO: All Law Enforcement Officers

FROM: Gurbir S. Grewal, Attorney General

DATE: February 22, 2021
Updated March 26, 2021

SUBJECT: Interim Guidance Regarding Marijuana Decriminalization

On February 22, 2021, Governor Phil Murphy signed three bills changing the legal status of marijuana. These laws, which went into immediate effect, create a two-tier framework:

- **Regulated cannabis.** When the substance is bought, sold, and used under certain conditions, it is treated as “regulated cannabis” and fully legal in New Jersey. As a practical matter, however, regulated cannabis will not be available in the State for several months until a new government body, the Cannabis Regulatory Commission, issues rules governing its use.
- **Marijuana and hashish.** All forms of the substance that are not regulated cannabis or medical cannabis are treated as “marijuana” or “hashish.” Under the new laws, marijuana and hashish are still defined as “controlled dangerous substances” under N.J.S.A. 2C:35-2 but are largely decriminalized for non-distribution offenses. The laws eliminate existing prohibitions and create new, more lenient penalties for possession and distribution that remain tiered based on weight.

This document is designed to provide guidance to law enforcement officers regarding the treatment of marijuana and hashish under the new laws. Also issued, and will be routinely updated, are separate documents answering a number of the questions most commonly asked by law enforcement officials about marijuana enforcement (FAQs) and a marijuana reference card for law enforcement. All officers are encouraged to familiarize themselves with the new laws, which are codified as chapters 16 (legalized cannabis), 19 (marijuana decriminalization), 25 (clarifying provisions), and Chapter 38 (clarifying provisions for underage) of the 2021 Public Laws.



I. New Limits on Marijuana and Hashish

As of February 22, 2021, the following conduct no longer violates state law:

- Simple possession of 6 ounces or less of marijuana, 2C:35-10(a)(4)(b);
- Simple possession of 17 grams or less of hashish, 2C:35-10(a)(4)(b);
- Being under the influence of marijuana or hashish, 2C:35-10(b);
- Failure to properly dispose of marijuana or hashish, 2C:35-10(c);
- Possession of paraphernalia for marijuana or hashish, 2C:36-2; and
- Possession of marijuana or hashish as a motor vehicle operator, 39:4-49.1.

In addition, the following weight thresholds now apply to the possession and distribution¹ of marijuana and hashish:

| Possession – 2C:35-10 | | | |
|------------------------------|-----------------|-----------------|---------------|
| Marijuana | Hashish | Subsect. | Degree |
| More than 6 oz. | More than 17 g. | 3(b) | Fourth |
| 6 oz. or less | 17 g. or less | 4(b) | Not a crime |

| Distribution – 2C:35-5(b) | | | |
|----------------------------------|----------------|-----------------|---------------|
| Marijuana | Hashish | Subsect. | Degree |
| 25 lbs. or more | 5 lbs. or more | 10(a) | First |
| 5 lbs. or more | 1 lbs. or more | 10(b) | Second |
| More than 1 oz. | More than 5 g. | 11(b) | Third |
| 1 oz. or less | 5 g. or less | 12(b) | [See below] |

As part of these revised thresholds, the law creates a new framework for individuals who distribute 1 ounce or less of marijuana or 5 grams or less of hashish:

- **First offense.** Officers shall issue a written warning to individuals for their first offense. In the coming weeks, law enforcement agencies will need to build new mechanisms to track the issuance of such warnings. In the interim, agencies should rely on existing resources to track warnings and, out of an abundance of caution, treat any individual's offense as a first offense unless the officer has clear evidence of a prior violation.
- **Second or subsequent offense.** Individuals who engage in a second or subsequent violation of the statute are subject to a complaint-summons for a fourth-degree crime.

¹ Under the new law, the prohibitions against distribution of marijuana also apply to possession with intent to distribute marijuana. Therefore, all references to "distribution" in this guidance document also apply to conduct that involves possession with intent to distribute.

In addition to these changes, law enforcement officers may no longer detain, arrest, or otherwise take into custody an individual for violating certain marijuana or hashish offenses. Instead, officers should collect the individual's personal information and process them accordingly. Those offenses are:

- Simple possession of more than 6 ounces of marijuana, 2C:35-10(a)(3)(b);
- Simple possession of more than 17 grams of hashish, 2C:35-10(a)(3)(b);
- Distribution of 1 ounce or less of marijuana, 2C:35-5(b)(12)(b); and
- Distribution of 5 grams or less of hashish, 2C:35-5(b)(12)(b).

All four of these offenses constitute fourth-degree crimes, except when an individual engages in their first violation of the distribution offenses (which, as noted above, only results in a warning). Officers should therefore charge these fourth-degree offenses by complaint-summons rather than complaint-warrant, and will not be able to fingerprint the individual until their initial court appearance on the summons.

Finally, the odor of marijuana or hashish, either burnt or raw, by itself no longer establishes "reasonable articulable suspicion" to initiate a stop or search to determine a violation of a possession offense or a fourth-degree distribution offense.

II. Special Rules for Those Under the Age of 21

The law also establishes a new framework for individuals under the age of 21 who possess or consume any amount of marijuana, hashish, cannabis, or alcohol in any public place, including a school or motor vehicle:

- **First offense.** Officers shall issue a written warning, which must include the person's name, address, and date of birth. The law was amended on March 26, 2021 (P.L.2021, c.38) to require, rather than prohibit, the officer to provide written notification of the violation to the individual's parent or guardian if the individual is under the age of 18.
- **Second offense.** Officers shall issue a written warning, and also provide the person with informational materials on community treatment services. For individuals under the age of 18, the officer shall provide written notification of the violation to the individual's parent or guardian, including the informational materials.
- **Third or subsequent offense.** Officers shall issue a written warning and provide the individual with a referral for community treatment services. The officer shall provide notice of the written warning and referral to the community treatment services program regardless of the age of the individual; if the individual is under 18, then the officer shall provide the juvenile's parents or guardian with written notification of the violation and the referral.

Law enforcement officers must also retain, with any of the written warnings outlined above, a sworn statement with a description of the factual circumstances that support a finding of the violation. As with the new warning system required for adults who distribute small amounts of marijuana, this new framework for individuals under the age of 21—codified at N.J.S.A. 2C:33-15—will require law enforcement agencies to develop new mechanisms to track the issuance of these warnings. In the interim, agencies should use existing resources to track this information. Additional guidance on this issue will be forthcoming.

Please note that, under this framework, officers may not fingerprint individuals under the age of 21 for their first, second, third, or subsequent offenses. However, if an individual under 21 is in possession of more than 6 ounces of marijuana or 17 grams of hashish, that individual is also in violation of N.J.S.A. 2C:35-10(a)(3)(b), a fourth-degree crime, and may be issued a complaint-summons and fingerprinted at their first court appearance.

The new law also prohibits law enforcement officers from engaging in certain actions when investigating an individual under the age of 21 for possession of marijuana, hashish, cannabis, or alcohol, in violation of N.J.S.A. 2C:33-15(a)(1). Importantly, officers who violate these provisions may be charged criminally with depriving the individual of their civil rights, *regardless of whether the officer intended to do so*. Prohibited conduct includes:

- Officers shall not ask an individual under 21 for consent to search the person to determine a violation of that provision. (However, if the individual is over 18 and the officer reasonably believes that other criminal activity is afoot, the individual may grant consent to search);
- The odor of marijuana, hashish, or alcohol no longer constitutes reasonable articulable suspicion to initiate a stop of an individual under the age of 21, nor does it provide probable cause to search the person's personal property or vehicle to determine a violation of N.J.S.A. 2C:33-15(a)(1).
- The unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of N.J.S.A. 2C:33-15(a)(1) that is observed in plain sight shall not constitute probable cause to initiate a search of an individual under the age of 21 or that individual's personal property or vehicle to determine a violation of any law.
- An individual under the age of 21 who violates N.J.S.A. 2C:33-15(a)(1) shall not be arrested, detained, or otherwise taken into custody, and shall not be transported to a police station, police headquarters, or other place of law enforcement operations, except to the extent that detention or custody at or near the location where the incident occurred is required to issue a written warning or collect information necessary to provide notice of a violation to a parent/guardian, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required.

- When responding to a violation or suspected violation of N.J.S.A. 2C:33-15(a)(1), law enforcement officers must activate their body worn cameras, which must remain activated throughout the encounter.