



State of New Jersey

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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-8

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: August 28, 2020

SUBJECT: Directive Modifying Requirements of Mandatory Random Law Enforcement Drug Testing Program in Response to COVID-19 Pandemic

In March 2020, at the height of the COVID-19 pandemic response, I issued Attorney General Law Enforcement Directive (“AG Directive”) No. 2020-2, which sought to ease the administrative burden on New Jersey’s law enforcement agencies by suspending or delaying certain statewide reporting, training, and certification deadlines. At the time, I declined to modify any requirements relating to New Jersey’s mandatory random drug testing program, but indicated that I would revisit the issue if circumstances required. Based on recent developments, I have concluded that it is necessary to temporarily adjust some of the program’s requirements.

The state’s mandatory random drug testing program is governed by AG Directive 2018-2, which I issued in March 2018, and the Attorney General’s Law Enforcement Drug Testing Policy (“AG Drug Testing Policy”), which was most recently revised in April 2018. Pursuant to Section II.C of AG Directive 2018-2, law enforcement agencies are required to conduct random drug testing at least twice in each calendar year and to test at least 10 percent of the total number of sworn officers within the agency each time. However, the only laboratory currently approved to conduct such tests—the New Jersey State Toxicology Laboratory (NJSTL)—is facing a significant backlog after it was forced to suspend collection of urine specimens between March 23, 2020 and July 1, 2020.

To ensure the most efficient use of law enforcement resources and maintain the numerous benefits associated with the law enforcement mandatory random drug testing program, I have determined that it is necessary and appropriate to adjust the timeframe and reporting requirements of Directive 2018-2, while still requiring that every agency test at least 10 percent of its officers at least four times over the two-year period between January 1, 2020, and



December 31, 2021. Therefore, pursuant to the authority granted to me under the New Jersey Constitution and Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, I hereby direct all law enforcement agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the following policies, procedures, standards, and practices.

I. Modifications to Random Drug Testing Deadlines for 2020 and 2021

- A. Law enforcement agencies must conduct at least two random drug tests during the period from January 1, 2020 to March 31, 2021. Each of these tests must include at least 10 percent of the total number of sworn officers within the agency, and every officer must have an equal chance of selection during each test. In effect, the requirement contained in Section II.C of Directive 2018-2 that two random tests be conducted during the “calendar year” of 2020 shall be extended and interpreted to include the period January 1, 2020 to March 31, 2021.
- B. Law enforcement agencies must conduct at least two random drug tests during the period from April 1, 2021 to December 31, 2021. Each of these tests must include at least 10 percent of the total number of sworn officers within the agency, and every officer must have an equal chance of selection during each test. In effect, the requirement contained in Section II.C of Directive 2018-2 that two random tests be conducted during the “calendar year” of 2021 shall be amended and interpreted to include the period April 1, 2021 to December 31, 2021.
- C. If a law enforcement agency has conducted two random drug tests during calendar year 2020, and then conducts a test during the period, January 1, 2021 to March 31, 2021, that third test may count toward the 2021 requirement of two tests. To summarize, law enforcement agencies must conduct a total of at least four random drug tests between January 1, 2020 and December 31, 2021.
- D. The requirement in Section II.F of AG Directive 2018-2 that every law enforcement agency report by December 31 to their County Prosecutor the dates of testing, total number of sworn officers employed, total number of sworn officers tested, and total number of sworn officers who test positive, shall be extended from December 31, 2020 to March 31, 2021 for calendar year 2020 only. The reporting requirement for December 31, 2021 shall remain in place for calendar year 2021 reporting.
- E. The requirement in Section II.G of AG Directive 2018-2 that each County Prosecutor report by January 31 to the Attorney General, through the Division of Criminal Justice's Prosecutors' Supervision and Training Bureau, those agencies under the County Prosecutor's supervision that are in compliance with this Directive and those that are not, shall be extended from January 31, 2021 to April 30, 2021 for calendar year 2020 reporting only. The reporting requirement for January 31, 2022 shall remain in place for calendar year 2021 reporting.

- F. Nothing in this Directive shall be interpreted to alter the drug testing requirements for law enforcement applicants or trainees contained in AG Directive 2018-2 and the AG Drug Testing Policy.
- G. Nothing in this Directive shall be interpreted to alter the drug testing requirements for law enforcement officers for whom reasonable suspicion exists to believe are using drugs illegally, contained in AG Directive 2018-2 and the AG Drug Testing Policy.

II. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the state. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. ***Questions.*** Questions concerning this Directive shall be addressed to Jeffrey J. Barile, Deputy Bureau Chief, Prosecutors Supervision and Training Bureau within the Division of Criminal Justice at BarileJ@njdcj.org.
- D. ***Effective date.*** This Directive shall take effect immediately and shall remain in force until December 31, 2021, unless it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Veronica Allende
Director, Division of Criminal Justice
Dated: August 28, 2020