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ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2022-13

TO: All Law Enforcement Chief Executives

FROM: Matthew J. Platkin, Attorney General

DATE: October 25, 2022

SUBJECT: **Directive Adjusting the Timeframe and Reporting Requirements of Mandatory Random Law Enforcement Drug Testing Program for 2022.**

The state's mandatory random drug testing program is governed by Attorney General Law Enforcement Directive ("AG Directive") 2018-2, and the Attorney General's Law Enforcement Drug Testing Policy ("AG Drug Testing Policy"), which was most recently revised in December 2020. 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.

In March 2020, at the height of the COVID-19 pandemic response, the Attorney General issued 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. Modifications to the AG Drug Testing Policy were not made at that time, but later became necessary as the New Jersey State Toxicology Laboratory faced significant backlog after it was forced to suspend collection of urine samples between March 23, 2020 and July 1, 2020. Therefore, in August, the Attorney General issued AG Directive 2020-8, modifying the random drug testing deadlines for 2020 and 2021, while still requiring that an equal number of drug tests be performed.

A similar modification to that of AG Directive 2020-8 must again be implemented. In February 2021, the Legislature passed and the Governor signed the New Jersey Cannabis Regulatory, Enforcement Assistance, and Modernization Act (CREAMMA). April 21, 2022 marked the opening of the regulated



cannabis market in New Jersey after the Cannabis Regulatory Commission (CRC) approved applications from Alternative Treatment Centers to expand into recreational cannabis sales. To ensure a safe drug-free workplace, the CRC was tasked, per the CREAMMA, with prescribing standards in regulation for a Workplace Impairment Recognition Expert (WIRE) to “perform services on behalf of an employer, based on education and training in detecting and identifying an employee’s usage of, or impairment from, a cannabis item or other intoxicating substance, and for assisting in the investigation of workplace accidents.” Because the regulated cannabis market opened prior to the establishment of a WIRE program or guidance from the CRC, many significant questions arose surrounding employee drug testing, especially for those employers with safety-sensitive positions, such as law enforcement officers.

As a result, many law enforcement agencies delayed the random drug testing of officers under the AG Drug Testing Policy to allow time for additional guidance and clarity. As was the purpose of AG Directive 2020-8, where COVID strained the resources of many agencies and the State Toxicology Laboratory, the pause in drug testing put in place by many agencies will create significant difficulty in completing the required testing prior to the December 31, 2022 deadline.

Therefore, 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 again 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, 2022, and December 31, 2023. 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 2022 and 2023

- A. Law enforcement agencies must conduct at least two random drug tests during the period from January 1, 2022 to March 31, 2023. 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 2022 shall be extended and interpreted to include the period January 1, 2022 to March 31, 2023.
- B. Law enforcement agencies must conduct at least two random drug tests during the period from April 1, 2023 to December 31, 2023. 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 2023 shall be amended and interpreted to include the period April 1, 2023 to December 31, 2023.
- C. If a law enforcement agency has conducted two random drug tests during calendar year 2022, and then conducts a test during the period, January 1, 2022 to March 31, 2023, that third test may count toward the 2023 requirement of two tests. To summarize, law enforcement agencies must conduct a total of at least four random drug tests between January 1, 2022 and December 31, 2023.

- 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, 2022 to March 31, 2023 for calendar year 2022 only. The reporting requirement for December 31, 2023, shall remain in place for calendar year 2023 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, 2023 to April 30, 2023 for calendar year 2022 reporting only. The reporting requirement for January 31, 2024, shall remain in place for calendar year 2023 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. There remains a zero-tolerance policy for intoxication while performing the duties of a law enforcement officer. It is absolutely imperative that all law enforcement agencies maintain a drug- and alcohol-free workplace, which includes prohibiting cannabis/marijuana whether regulated or illicit.

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 the Director of the Office of Public Integrity and Accountability, or their designee.

D. ***Effective date.*** This Directive shall take effect immediately and shall remain in force until December 31, 2023, unless it is repealed, amended, or superseded by Order of the Attorney General.



Matthew J. Platkin
Attorney General

ATTEST:



Lyndsay V. Ruotolo
First Assistant Attorney General

Dated: October 25, 2022