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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 new laws are clear that 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 of the vehicle or the person, 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.*
- *Officers may not arrest, detain, or otherwise take an individual under the age of 21 into custody for a violation of N.J.S.A. 2C:33-15 except to the extent required to issue a written warning or provide notice of a violation to a parent/guardian.*

4. Does the new law alter the use of my 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 does 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, which means the officer will 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(a)(1) are precluded from being fingerprinted under the new law.