



State of New Jersey

PHILIP D. MURPHY
Governor

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

VERONICA ALLENDE
Director

TO: All Law Enforcement Officers

FROM: Gurbir S. Grewal, Attorney General

DATE: February 22, 2021

SUBJECT: **Interim Guidance Regarding Marijuana Decriminalization**

Earlier today, 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 interim guidance to law enforcement officers regarding the treatment of marijuana and hashish under the new laws. In addition, today I am issuing a separate document answering a number of the questions most commonly asked by law enforcement officials about marijuana enforcement. My office will continue to update that document and post answers on our website in the coming weeks and months. In the meantime, all officers are encouraged to familiarize themselves with the three new laws, which are codified as chapters 16 (legalized cannabis), 19 (marijuana decriminalization), and 25 (clarifying provisions) 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 should not 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 of a person or their vehicle 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:

- **First offense.** Officers shall issue a written warning, which must include the person's name, address, and date of birth, but the warning shall *not* be provided to the individual's parent or guardian.
- **Second offense.** Officers shall issue a written warning, and also provide the person with informational materials on community drug treatment services. For individuals under the age of 18, the officer shall provide the individual's parent or guardian with copies of the warnings issued for both the first and second offenses.
- **Third or subsequent offense.** Officers shall issue a written warning and again provide the individual with information on community drug treatment services. If the individual is between 18 and 21, then the officer shall provide notice of the written warning to the community drug treatment program; if the individual is under 18, then the officer shall again provide the juvenile's parents or guardian with a copy of the written warning.

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 crime. (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 except to the extent required to issue a written warning or 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.