

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE**

MEMORANDUM

TO: All County Prosecutor's

FROM: Assistant Attorney General Philip S. Aronow 
Chief, Prosecutors Supervision & Training Bureau

DATE: June 11, 2014

SUBJECT: Revision to Attorney General Directive 2011-1
Drug Evidence Retention Policy

Attached is the signed version of the revision to AG Directive 2011-1. This includes only the drug evidence retention policy.



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lieutenant Governor

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

JOHN J. HOFFMAN
Acting Attorney General

TO: Elie Honig, Director, Division of Criminal Justice

All County Prosecutors

Colonel Joseph R. Fuentes, Superintendent, New Jersey State Police

All County Sheriffs

All Law Enforcement Chief Executives

FROM: John J. Hoffman, Acting Attorney General

DATE: June 11, 2014

SUBJECT: Revisions to Attorney General Law Enforcement Directive 2011-1 and the "Attorney General Guidelines for the Retention of Evidence" to Authorize the Expedited Post-Conviction Destruction of Excess Quantities of Seized Controlled Dangerous Substances.

Attorney General Law Enforcement Directive No. 2011-1 promulgates the "Attorney General Guidelines for the Retention of Evidence" (hereinafter: Guidelines). The current Guidelines provide that following a conviction, controlled dangerous substances (CDS) that constitute evidence of the offense cannot be destroyed for a period of five years from the date of the conviction or the expiration of sentence, whichever is later. Consequently, prosecutors and police departments are required to store large quantities of CDS for an extended period of time, especially in cases involving very large seizures, which by their nature tend to result in lengthy terms of imprisonment.

This evidence retention policy has proven to be unduly restrictive. The inflexible retention period fails to take into account that the long-term storage of bulk quantities of controlled dangerous substances presents health and security concerns and associated logistical and fiscal burdens on police departments and prosecutors offices.

Prosecutors, of course, always must be mindful of the need to protect the rights of defendants



as well as to safeguard convictions from direct or collateral appellate challenges. Prosecutors nonetheless should be permitted on a case-by-case basis to balance those legal concerns against practical and fiscal considerations. It is therefore appropriate to supplement the Evidence Retention Guidelines to allow a prosecutor in the exercise of sound discretion to authorize the expedited destruction of CDS where the evidence to be destroyed no longer is needed for prosecution purposes and the prosecutor has determined that the post-conviction destruction of such evidence would not jeopardize the conviction(s) that already have been obtained.

Accordingly, notwithstanding the provisions of Section 3(b) of the Evidence Retention Guidelines, after a conviction, a County Prosecutor, or the Director of the Division of Criminal Justice in cases prosecuted by the Division, may authorize in writing the destruction of all or any portion of the excess quantity of controlled dangerous substances, as that term is defined herein, provided that:

- a. All post-conviction direct appeals have been concluded, or, in the event that no direct appeal has been filed, one year has elapsed since the entry of the judgment of conviction;
- b. No motion for post-conviction relief is pending;
- c. the defense attorney(s) of record has/have been given written notice of the prosecutor's intention to destroy the evidence not less than 30 days before the evidence is to be destroyed, and no motion is pending before a court to enjoin or delay the destruction of the evidence;
- d. A photographic or video record of the entire quantity of controlled dangerous substance that was seized, and a photographic or video record of all controlled dangerous substances to be destroyed, has been made, and such photographic/video records are maintained in the prosecutor's case file, and
- e. A report documenting the date of destruction, quantity, and type of controlled dangerous substance destroyed, and place and method destruction, is prepared and maintained in the prosecutor's case file.

For purposes of this provision, the term "excess quantity of controlled dangerous substances" means that portion of the aggregate quantity of controlled dangerous substance seized that exceeds the statutory amount threshold set forth in N.J.S.A. 2C:35-5b for the highest degree of crime for which the defendant was convicted (*e.g.*, any amount of seized cocaine in excess of five ounces in the case of a first-degree cocaine conviction), except that with respect to a first-degree conviction for manufacturing, distributing, or possession with intent to distribute marijuana in violation of N.J.S.A. 2C:35-b(10)(a), the term means any amount that exceeds five pounds, or 10 plants.

All remaining controlled dangerous substance (*i.e.*, CDS less than the excess quantity) shall be retained and shall be destroyed in accordance with the provisions of Section 3(b) of the Evidence Retention Guidelines. Furthermore, nothing herein or in those Guidelines shall be construed to preclude the County Prosecutor or Director from seeking a destruction order at any time pursuant to N.J.S.A. 2C:35-21.

The Director of the Division of Criminal Justice in consultation with the County Prosecutors shall on or about June 11, 2016 report to the Attorney General on any litigation or administrative or logistical problems arising from the implementation of the foregoing revision to the Evidence Retention Guidelines. The Director's report shall include recommendations on whether the Attorney General should maintain or further revise the foregoing policy authorizing expedited post-conviction destruction of excess quantities of CDS.

The foregoing revisions to Attorney General Law Enforcement Directive 2011-1 and the Evidence Retention Guidelines shall take effect immediately. Any questions concerning these revisions shall be addressed to the Director of the Division of Criminal Justice, or his designee.



John J. Hoffman
Acting Attorney General

DATED: June 11, 2014