



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION
PO BOX 085
TRENTON, NJ 08625-085
TELEPHONE: (609) 376-2800

MATTHEW J. PLATKIN
Acting Attorney General

LYNDSAY V. RUOTOLO
Director

March 7, 2022

Via Email

Office of Administrative Law
Attn: Clerk's Office
P.O. Box 049
Trenton, New Jersey 08625-0049
Transmittals@oal.nj.gov

Re: Dylan Dunne v. New Jersey DOC Training Academy

To Whom It May Concern:

Please file and acknowledge receipt of the above contested case referred by the Police Training Commission. Included herewith are the following, which have been sent to your office via email:

1. Cover Letter (1 page)
2. OAL Transmittal Form (2 pages)
3. Dismissal Notice (1 page)
4. Notice of Appeal and Cover Letter (20 pages)
5. Academy Response (31 pages)
5. Misc. Documents (54 pages)

Please contact me at 609-376-2800 if you need further information or clarification.

Very truly yours,

John F. Cunningham, Administrator
Police Training Commission

c: John J. Armano, Jr., Esq. (Attorney for Petitioner)
Aaron J. Erven, New Jersey DOC Training Academy
Victoria Kuhn, Esq. (Attorney for Academy)

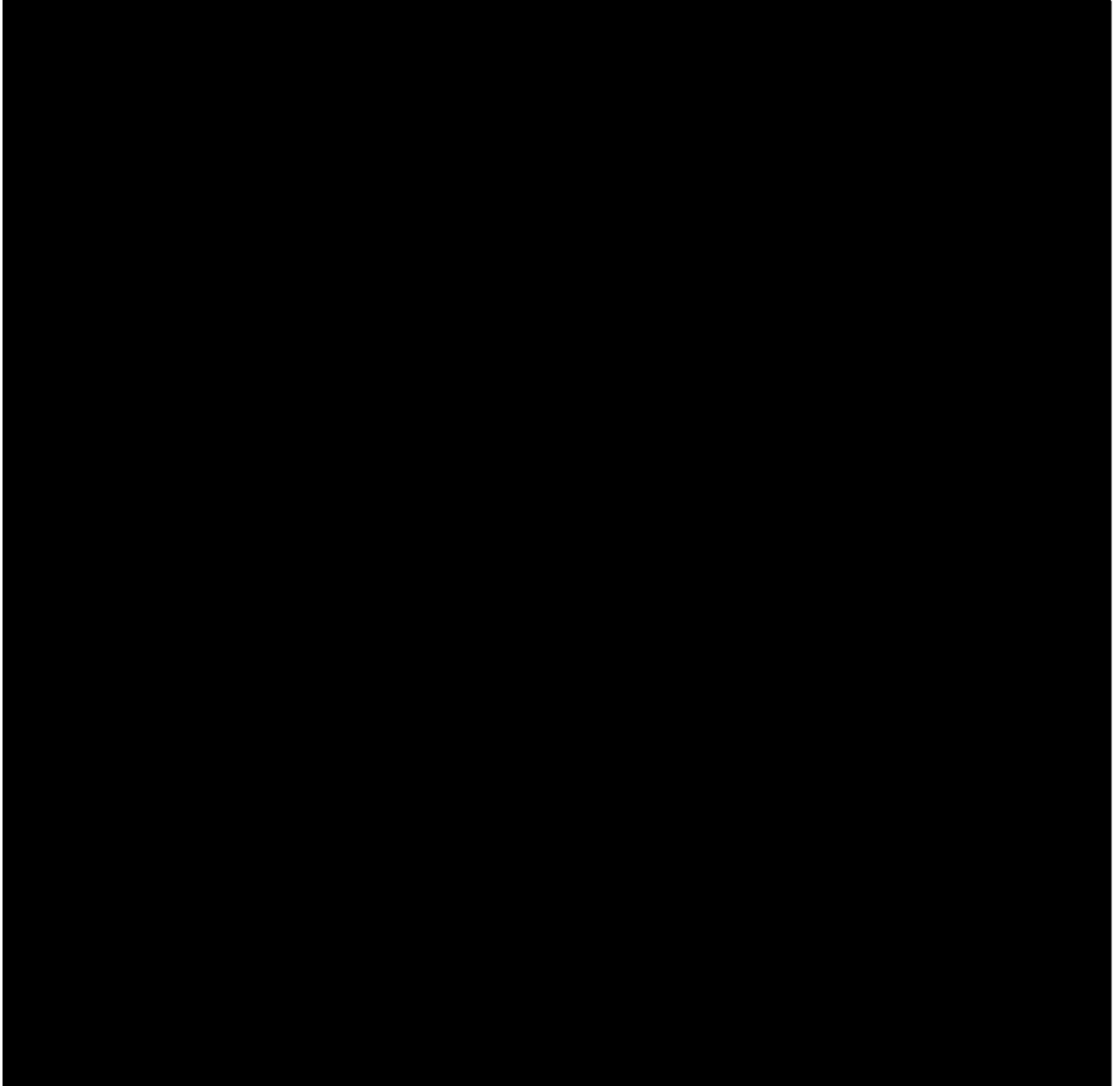


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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION

DISMISSAL NOTICE



Law Office of John J. Armano, Jr.



John Armano, Jr.

Certified by the NJ Supreme Court as a Municipal Court Law Attorney

NJ Attorney ID #050421992

743 Saddlebrook Drive

Williamstown, NJ 08094

Telephone 856-341-5088

Email john.armano@outlook.com

Website jarmanolaw.com

November 15, 2021

State of New Jersey
Office of the Attorney General
Division of Criminal Justice
Police Training Commission
25 Market Street
P.O. Box 085
Trenton, N.J. 08625-0085

Assistant Commissioner, Office of Training
New Jersey Department of Corrections
Correctional Staff Training Academy
P.O. Box 438
Sea Girt, New Jersey 08750-0438

Re: Dylan Dunne
SSN# [REDACTED]
Class # 251
Date of Dismissal 10/20/21

APPEAL OF DISMISSAL

To Whom it May Concern:

Please be advised that I represent Dylan Dunne. Trainee Dylan Dunne, [REDACTED], was dismissed from the Correctional Staff Training Academy on October 20, 2021. Please allow this to serve as a formal appeal of that dismissal. We would request that the matter be forwarded to the Office of Administrative Law for a hearing.

Mr. Dunne was given the rationale for his dismissal that he tested positive on a urinalysis for a controlled substance, THC. The positive test would be a direct violation of CSTA Rules and Regulations, revised 1/27/21. specifically, Page 23 Section. 20, "Dismissal from the CSTA, Section A5 - A positive drug test or refusal to submit to drug screening".

A timeline of events would be helpful in understanding the rationale for this appeal.

- July 6, 2021, Mr. Dunne underwent a pre-employment drug screening which produced a negative result.
- August 30, 2021, Mr. Dunne started as a Trainee at the Department of Corrections Training Academy.
- September 10, 2021, Mr. Dunne underwent a random drug screen that is alleged to test positive for THC.
- October 20, 2021, Mr. Dunne is informed of the results of the September 10, 2021 test and is dismissed from the Department of Corrections Training Academy.
- October 20, 2021, Mr. Dunne undergoes a Urine Test that returns "Negative" for controlled dangerous substances. (see Exhibit A).
- October 21, 2021, Mr. Dunne undergoes a "hair follicle" test that returns "Negative" for controlled dangerous substances. (see Exhibit B).

Firstly, the petitioner would rely upon the attached report of Heather L. Harris, MFS, JD, ABC-CC, ABC-DA, which concludes that "based upon my review of the submitted documents and the associated scientific research, as well as my education, training, and experience in the field of forensic drug chemistry, it is my opinion that Mr. Dunne's positive THC-COOH urine result is consistent with the prolonged excretion of cannabinoids in former chronic users and does not indicate recent use." (Please see attached report of Heather Harris & CV as Exhibit C).

Secondly, the regulations provide for mandatory random drug testing of all recruits during the basic course. *N.J.A.C. 13:1-7.2(a)(19)*. In addition, all drug testing conducted by any law enforcement academy during a basic course "shall be consistent with and utilize the procedures and methods set forth in the New Jersey Law Enforcement Drug Testing Policy and the New Jersey Drug Testing Manual...." *N.J.A.C. 13:1-7.2(a)(19)(i)*. Further, the regulation mandates the penalty for a positive result: "[t]he school director shall dismiss any trainee who

produces a positive test result for illegal drug use. Such dismissal shall constitute a dismissal for misconduct....” *N.J.A.C. 13:1–7.2(a)(19)(ii)*. The positive test result in this matter is for “THC”, which is contained in marijuana. THC is the chemical responsible for most of marijuana’s psychological effects. <https://www.cdc.gov/marijuana/faqs>.

Marijuana is not an illegal drug. On February 22, 2021, Governor Phil Murphy signed adult-use cannabis reform bills into law, legalizing and regulating cannabis use and possession for adults 21 years and older (A21 – “The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act”) and decriminalizing marijuana and hashish possession (A1897). Therefore, even though Mr. Dunne denies any use of marijuana during his time at the Academy, even if he had used marijuana it is not “illegal drug use” that would mandate his dismissal from the Academy.

Respectfully Submitted.

Law Office of John J. Armano, Jr.

John J. Armano, Jr.
By: John J. Armano, Jr.

EXHIBIT A

WOODBURY URGENT CARE - WOODBURY
975 MANTUA PIKE
WOODBURY, NJ 08096
TEL: 856-384-5949
FAX: 856-384-5958

ORDERED RAPID TEST

NON OCCUPATIONAL/ Dunne, Dylan

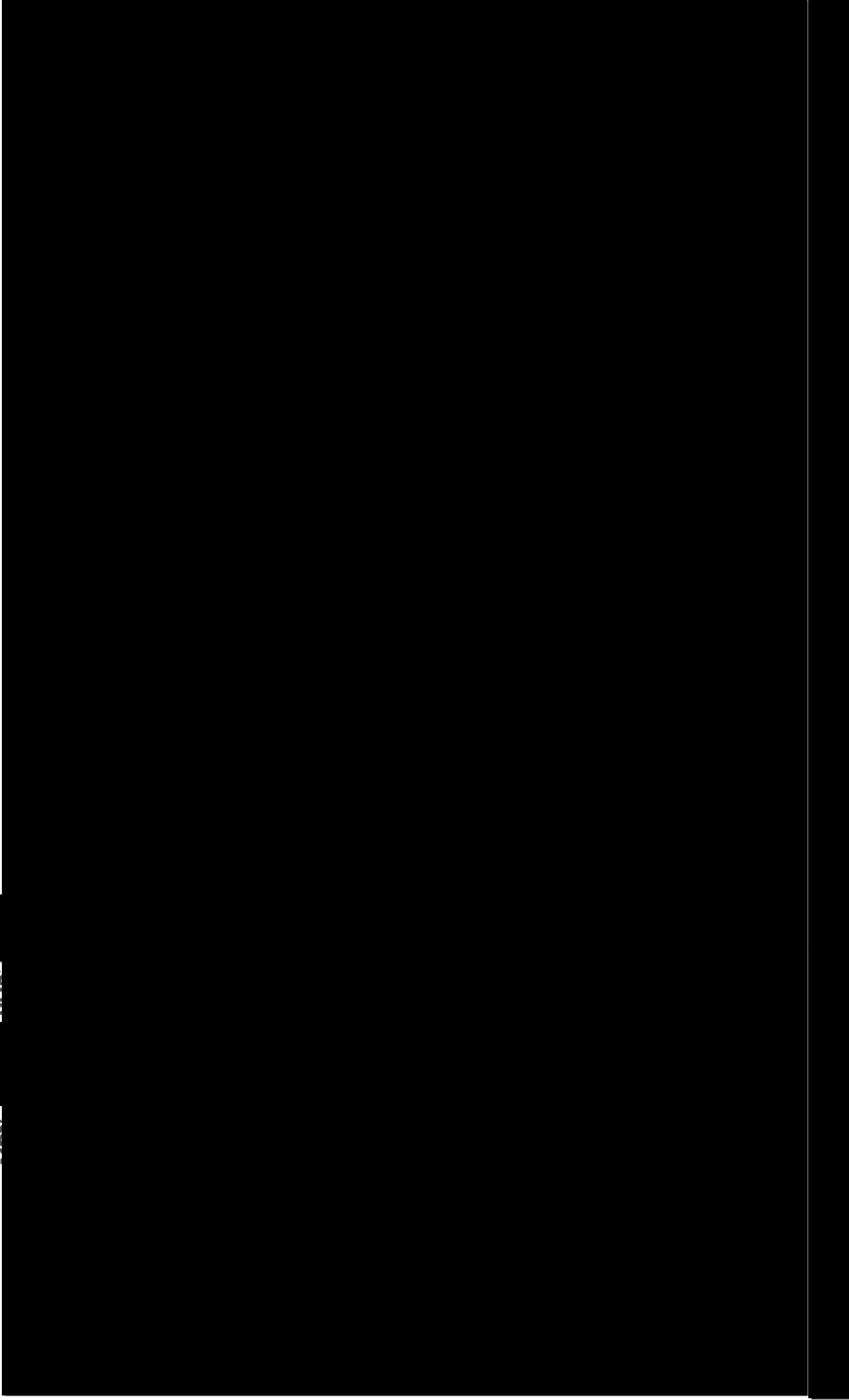


EXHIBIT B

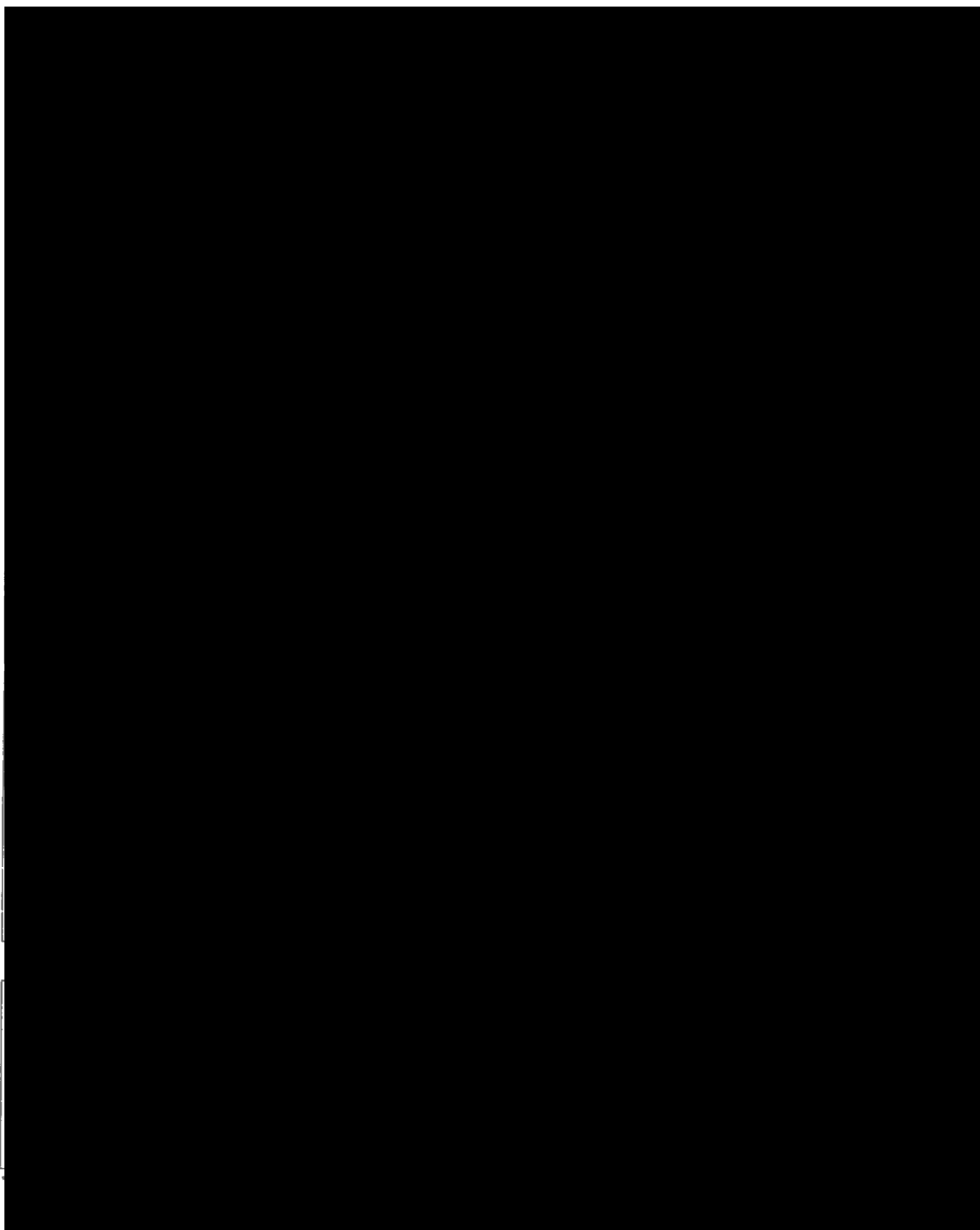


EXHIBIT C

Heather L. Harris, MFS, JD, ABC-CC, ABC-DA

November 15, 2021

TO: John J. Armano, Jr., Esq.
Law Office of John J. Armano, Jr.
743 Saddlebrook Drive
Williamstown NJ 08094

RE: *NJ DOC Trainee Dylan Dunne Workplace Drug Test*

Dear Mr. Armano,

You have retained me as an expert to review documentation and provide an opinion in the matter described above. I reviewed documents produced by the New Jersey Department of Corrections Office of Training and the New Jersey State Toxicology Laboratory to evaluate Mr. Dunne's results on a random urine test conducted in September 2021. Specifically, I reviewed these documents to determine if the results from the urine analysis are consistent with Mr. Dunne's claim that he was not a recent user of *Cannabis*. It is my opinion that these laboratory results are consistent with the prolonged excretion of cannabinoids in former chronic users.

Urine Test Results

Upon selection on September 10, 2021, Mr. Dunne gave a urine specimen to be tested for controlled substances. This specimen was delivered to the New Jersey State Toxicology Lab and was tested by the laboratory using a standard industry protocol. The screening test showed a presumptive positive for cannabinoids, and the confirmation analysis identified 11-Carboxy-THC (THC-COOH), an inactive metabolite of THC, the major psychoactive cannabinoid found in *Cannabis* and *Cannabis* extracts. It should be noted that active THC was not identified in Mr. Dunne's sample.

THC Metabolism

Delta-9-tetrahydrocannabinol (THC) is the main psychoactive compound of the *Cannabis* plant and is a highly lipophilic (fat-loving) compound. As a result of its lipophilicity, THC may bind non-specifically across the body, including in the adipose (fat) tissue. THC has a short elimination half-life once it is absorbed into the bloodstream and begins to distribute into tissues. The time and amount of absorption of THC into the blood stream does depend on the method of ingestion, such as smoking, vaping or oral. THC may also enter the bloodstream from the release of THC stored in body tissues from prior use.

THC is metabolized first to a short-lived active metabolite, 11-Hydroxy-THC (THC-OH), which is further metabolized to the primary inactive metabolite, THC-COOH. Some THC is excreted unchanged in the urine, but the primary compound detected in the urine is the inactive metabolite, THC-COOH. THC-COOH is present in the urine in the largest amount after all routes of administration. This metabolite has a longer elimination half-life than THC, making it beneficial as a marker for past *Cannabis* exposure. In fact, this compound may be detected in urine for days or weeks after last use.

Prolonged Excretion of Cannabinoids

THC accumulates in tissues during chronic, daily *Cannabis* use due to its high lipophilicity and large volume of distribution throughout the body.¹ Upon abstinence, THC stored in the tissues slowly distributes back into the bloodstream and is subsequently metabolized to THC-COOH. This release of THC is highly variable, possibly based on differences in activity, diet, enzymatic activity and other undetermined factors.² It results in long detection times and variable urinary concentrations of cannabinoids in former chronic users.

One study that measured body fat in their participants found some correlation between higher body fat percentages and longer detection times of metabolites in urine.³ Another study showed a similar result due to gender disparities.⁴ Within the study population, abstinent females produced positive urine results up to six days longer than all abstinent males, suggesting that higher body fat percentages resulted in greater THC stored in tissues.⁵ Another study found a significant correlation between body mass index (BMI), a surrogate measure of body fat, and the day of last positive urine specimen.⁶ In general, the greater the participant's BMI, the longer the interval until the last positive urine specimen was produced.⁷

As a result, it has been well-established that chronic users of *Cannabis* can produce positive urine results at least one month after last use. However, detection times as long as 67 days, 78 days, 84 days and 93 days have been noted.⁸ One early study looking at the excretion patterns of chronic users after last use found one-third of their participants were testing positive more than 30 days after last use, and five percent were testing positive more than sixty days after last use.⁹ A more recent study of chronic users showed remarkable persistence in positive THC blood results and THC-COOH urine results over the 33 day study period, demonstrating the slow release of stored THC.¹⁰

Another phenomenon that occurs during abstinence is an unpredictable variability in the concentrations of cannabinoids found in urine. Former chronic users may see urinary concentrations of metabolites decrease before increasing during the elimination of THC from the

¹ "Differentiating new cannabis use from residual urinary cannabinoid excretion in chronic, daily, cannabis users," *Addiction*. 2011; 106, 3, 499-506.

² "Urinary elimination of 11-nor-9-carboxy-9-tetrahydrocannabinol in cannabis users during continuously monitored abstinence," *J Anal Toxicol*. 2008; 32, 8, 562-9.

³ "Detection times of marijuana metabolites in urine by immunoassay and GC-MS," *J Anal Toxicol*. 1995;19, 6, 443-9.

⁴ "Do delta-9-tetrahydrocannabinol concentrations indicate recent use in chronic cannabis users?" *Addiction*. 2009; 104,12, 2041-8.

⁵ *id.*

⁶ *J Anal Toxicol*. 2008.

⁷ *id.* *Addiction*, 2009.

⁸ *Addiction*. 2011. "Urinary excretion of 11-nor-9-carboxy-delta-9-tetrahydrocannabinol: A case with an apparent long terminal half-life," *Scand J Clin Lab Invest*. 2006; 66, 169-72. "Short communication: Urinary excretion of 11-nor-9-carboxy-delta-9-tetrahydrocannabinol in a pregnant woman following heavy, chronic cannabis use," *J Anal Toxicol*. 2009; 33, 9, 610-4.

⁹ "Excretion patterns of cannabinoid metabolites after last use in a group of chronic users," *Clin Pharmacol Ther*, 1985; 38, 5, 572-8.

¹⁰ "Impact of prolonged cannabinoid excretion in chronic daily cannabis smokers' blood on per se drugged driving laws," *Clin Chem*. 2013; 59, 3, 519-26.

body.¹¹ Former chronic users also may alternate between positive and negative results during the period of elimination after last use.¹² One study found the probability of a positive result to be between 60% and 100% for 28 days following the first negative result.¹³

Conclusion

In summary, based upon my review of the submitted documents and the associated scientific research, as well as my education, training, and experience in the field of forensic drug chemistry, it is my opinion that Mr. Dunne's positive THC-COOH urine result is consistent with the prolonged excretion of cannabinoids in former chronic users and does not indicate recent use.

If any additional information is forthcoming concerning this case, I reserve the right to re-evaluate my opinions and conclusions. Feel free to contact me if you have any further questions or concerns.

Respectfully,

Heather L. Harris

Heather L. Harris, MFS, JD, ABC-CC, ABC-DA
Forensic Chemistry Consultant

¹¹ "Implications of plasma delta-9-tetrahydrocannabinol, 11-hydroxy-THC, and 11-nor-9-carboxy-THC concentrations in chronic cannabis smokers," J Anal Toxicol. 2009; 33, 469-77.

¹² J Anal Toxicol. 2008. "Detection time for THC in oral fluid after frequent cannabis smoking," Ther Drug Monit. 2014; 36, 6, 808-14.

¹³ *id.*

Heather L. Harris

EDUCATION

Juris Doctor, Temple University Beasley School of Law, Philadelphia, PA

- Evidence Tainted by Forensic Fraud, a major review article discussing the practice and implications of fraudulent forensic science, produced as independent research under Professor M. Libonati, 2004-2005
- Admitted to the Pennsylvania Bar, October 2006

Master of Forensic Science, The George Washington University, Washington D.C.

- Areas of Concentration: Chemistry and Toxicology
- Admitted to the American Board of Criminalistics as a Certificant in Comprehensive Criminalistics and Drug Analysis, August 2008

Bachelor of Arts in General Studies, University of North Texas, Denton, TX

- Areas of Concentration: Anthropology, Biology and Chemistry

PROFESSIONAL EXPERIENCE

Forensic Chemistry Consultant, October 2006-Present

- Review and evaluate available case information, including methods of analysis, quality control records, analyst qualifications, law enforcement incident reports, laboratory data and reports, pharmacy records, medical records, environmental monitoring records, laboratory operating procedures, etc.
- Produce expert reports on legal and scientific issues involving forensic evidence.
- Provide expert opinions in depositions and courtroom testimony.
- Develop and instruct forensic chemist training program for ANAB/ISO accredited crime laboratory.
- Provide technical advice and review for controlled substance casework and special project work.
- Develop and supervise validation projects for forensic chemistry analytical methods.
- Develop and instruct CLE classes covering the forensic sciences and their use in casework.
- Perform grant review for National Institute of Justice Office of Forensic Sciences and the PA Commission on Crime and Delinquency
- Produce independent research and studies for conference presentations or publications.

Assistant Professor, Arcadia University, Forensic Science Department, January 2017-Present

Interim Program Director, August 2018-January 2019

Adjunct Professor, October 2006-December 2016

FEPAC Accredited

- Develop and instruct Forensic Chemistry, Advanced Forensic Chemistry, Forensic Microscopy and Trace Evidence lecture and lab courses.

Heather L. Harris

- Participate on faculty panel for student oral technical review boards and moot courts.
- Direct and supervise research projects for selected students and prepare final results for publication and/or presentation.
- Manage internship relationships for Forensic Science students
- Serve on Graduate Academic Standing committee
- Manage day-to-day operations of the Forensic Science Department

Forensic Chemist, NMS Labs, Criminalistics Section, July 2002-March 2006

Forensic Chemistry Consultant, April 2011-December 2018

ASCLD-LAB Accredited

- Identify and analyze controlled substances and pharmaceutical preparations using chemical, microscopic and instrumental methods of analysis.
- Produce reports and supporting documents concerning evidence analysis, findings and conclusions.
- Provide expert services, such as consultations and case reviews, through both reports and testimony.
- Testify to results of analyses and opinions in local, state and federal courts.
- Monitor quality assurance/quality control activities of section to ensure compliance with authorized policies, procedures and good laboratory practices.
- Develop and instruct forensic chemist training program in compliance with accreditation standards.
- Provide technical advice and review for controlled substance casework and special project work.
- Develop and supervise validation projects for forensic chemistry analytical methods.

Forensic Scientist, Bexar County Forensic Science Center, Criminal Investigation Laboratory, August 2000-May 2002

ASCLD-LAB Accredited

- Identify and analyze controlled substances, pharmaceutical preparations and fire debris using chemical, microscopic and instrumental methods of analysis.
- Produce reports and supporting documents concerning evidence analysis, findings and conclusions.
- Testify to results of analyses in local, state and federal courts.
- Assist senior analysts in microscopic hair comparisons, gunshot residue analyses and shooting distance determinations.

Toxicology Research Assistant, Nichols T. Lappas, PhD., The George Washington University, Department of Forensic Sciences, April 1999-June 2000

- Conduct literature research in the areas of toxicology and pharmacology.
- Review case files to determine what information is necessary for trial.
- Prepare reports of findings to assist expert witnesses in preparation for trial.

INTERNSHIP

Dallas Police Department, Physical Evidence Unit, Spring 1998

- Assist officers in collecting evidence at crime scenes.

Heather L. Harris

- Prepare evidence for transfer to laboratory.
- Enter fingerprint profiles into the Automated Fingerprint Information System.

PROFESSIONAL MEMBERSHIPS

Advisory Committee for the Evaluation of Controlled Substance Analogs, Founding Member, 2012-2014

- Structure Subcommittee Chair, 2012-2014

American Academy of Forensic Sciences, Member, 2003-present

- Emerging Forensic Scientist Award Reviewer, 2014-present
- Criminalistics Abstract Review Committee, 2015-present

American Board of Criminalistics, Certificant in Comprehensive Criminalistics and Drug Analysis, 2008-present

American Chemical Society, National Affiliate, 2001-2007, 2011-present

- Government Affairs Committee, 2006-2007
- Forensic Chromatography Instructor, 2012-present
 - Solid Drug and DUID Courses

AOAC International (formerly the Association of Official Analytical Chemists), Member, 2010-present

- Cannabis Analytical Science Program, Cannabinoids in Consumables Working Group, 2015-present
- Cannabis Analytical Science Program, Chemical Contaminants Working Group, 2020-present
- Cannabis Expert Review Panel, 2018-present

Chemical Consultants Network, Member, 2006-present

Council of Forensic Science Educators, Member, 2018-present

Northeastern Association of Forensic Sciences, Member, 2005-present

SELECTED PROFESSIONAL PRESENTATIONS

Cocaine Salt v. Base Determinations: The Science You Should Be Using at Sentencing, NACDL 13th Annual Forensic Science Seminar (Virtual), April 2021

Marijuana or Hemp? Legal and Lab Considerations, New Jersey Bar Association Webinar, February 2021

Drug Chemistry for the Defense, Public Defender Service for the District of Columbia and the Harris County Public Defender's Office Webinar, August 2020

What You Need to Know about Marijuana DUI?, FACDL 2019 Blood, Breath and Tears Seminar (Orlando FL), September 2019

Drug Chemistry for the Defense, Administrative Office of the U.S. Courts, Defender Services Office Training Division, Multi-Track Federal Criminal Defense Seminar (Denver CO), August 2019

Field Tests: Controlled Substances and Driver Impairment, Administrative Office of the U.S. Courts, Defender Services Office Training Division, Winning Strategies Seminar (San Antonio TX), August 2018

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Fundamentals of Forensic Toxicology, Administrative Office of the U.S. Courts, Defender Services Office Training Division, Winning Strategies Seminar (San Antonio TX), August 2018

Controlled Substance Analysis: Anatomy of a Drug Case, National Forensic College, Innocence Project at Cardozo Law School (New York NY), June 2018

Examining the Drug Toxicology Report, PACDL 2018 Defending Drug Crimes Seminar (King of Prussia PA), May 2018

Drug and Alcohol Issues in Civil Litigation, Pennsylvania Bar Institute, May 2018

Ambiguous Field Test Results Lead to Wrongful Arrest, NEAFS Annual Meeting (Pocono Manor PA), November 2017

Terpene Identification in Cannabis by Headspace GC-MS, Perkin Elmer INTour (Chicago IL), September 2017

Synthetic Drugs and Analogues: Issues for the Defense, Texas Criminal Defense Lawyers Association, 30th Annual Rusty Duncan Advanced Criminal Law Course (San Antonio TX), June 2017

Field Tests: Controlled Substances and Driver Impairment, National Forensic College, Innocence Project at Cardozo Law School (New York NY), June 2016

Controlled Substance Analysis: Anatomy of a Drug Case, National Forensic College, Innocence Project at Cardozo Law School (New York NY), June 2016

The Legal and Scientific Landscape of a Federal Analogue Prosecution post-McFadden, presented with T. Douglas Clifford, Esq. AAFS Annual Meeting (Las Vegas NV), February 2016

Error Analysis of a Forensic Controlled Substance Case, NIST International Symposium on Forensic Science Error Management (Crystal City VA), July 2015

Controlled Substance Analysis: Anatomy of a Drug Case, Administrative Office of the U.S. Courts, Defender Services Office Training Division, Winning Strategies Seminar (Hilton Head SC), February 2015

Opening the Closet Door: An Overview of Testing and Discovery in Drug Cases, presented with Brian Manchester, Esq., Office of the Federal Public Defender and The Charles F. Greevy, Jr. American Inn of Court Federal Criminal Defense Training (Williamsport PA), March 2014

Legal Issues and Analytical Challenges with Emerging Drug Analogs, presented with J. Graham Rankin, Ph.D., MAAFS Annual Meeting (Roanoke VA), May 2013

Designer Drugs: Legal and Analytical Challenges for Forensic Laboratories and the

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Courts, presented with Barry K. Logan, Ph.D., AAFS Annual Meeting (Washington D.C.), February 2013

Scientific Method for Controlled Substance Analog Determination, presented with the subcommittee chairs of the Advisory Committee for the Evaluation of Controlled Substance Analogs, AAFS Annual Meeting (Washington D.C.), February 2013

Synthetic Designer Drugs: Is It an Analog? How Do You Know?, NEAFS Annual Meeting (Saratoga Springs NY), November 2012

Structural Analogs, Novel Compounds and the Federal Analog Act: The Disconnect between Science and the Law, American Chemical Society Annual Meeting (Philadelphia PA), August 2012

K2 and Beyond: A Synthetic Cannabinoid Legal Primer, AAFS Annual Meeting (Chicago IL), February 2011

Forensic Investigations: Problems with Contextual Bias, Villanova University School of Law, Matthew J. Ryan Law and Public Policy Forum, January 2011

Don't Bomb in Court: How Arson and Bomb Scene Investigators and Laboratory Personnel can Survive a Frye or Daubert Hearing, AAFS Annual Meeting (Washington D.C.), February 2008

The Reliability of a Controlled Substance Field Test Kit as a Basis for Probable Cause (Poster), AAFS Annual Meeting (Seattle WA), February 2006

Proper Techniques for Collection and Submission of Physical Evidence, Montgomery County District Attorney's Municipal Drug Task Force Training Seminar, March 2004 and April 2005

Basics of Forensic Drug Chemistry, Montgomery County District Attorney's Office, April 2003

SELECTED TRAINING COURSES COMPLETED

Prioritizing Science Over Fear: An Interdisciplinary Response to Fentanyl Analogues, The Ohio State University Moritz College of Law, Drug Enforcement and Policy Center, March 2021

Structural Characterization of Emerging Synthetic Drugs by Mass Spectrometry, NIJ and RTI International Webinar, March 2021

Current Trends in Seized Drug Analysis, The Center for Forensic Science Research and Education Online Forensic Symposium, January 2021

Criminal Justice Reform and Forensics: The Importance of Evidence, University of Pennsylvania Carey Law School, the Quattrone Center and the Houston Forensic Science Center, October 2020

Heather L. Harris

Cannabis Impaired Driving, SOFT Annual Meeting (Virtual), September 2020

NIST Tools for Confidently Distinguishing between Hemp and Cannabis, NIST and Shimadzu Webinar, June 2020

Hemp: A Forensic Perspective, Agilent and RTI International Webinar, March 2020

Marijuana or Hemp: From Farm Bill to Forensic Analysis, NIJ and RTI International Webinar, January 2020, March 2020

SWGDRUG Supplemental Document 6 and Statistical Sampling Calculator Workshop, NEAFS Annual Meeting (Lancaster PA), November 2019

A Practical Guide to Analytical Method Development, LC/GC Magazine and Agilent Technologies Webinar, July 2019

Is it Hemp? An Analytical Strategy To Make Sure It Is, RTI International and Agilent Technologies Webinar, May 2019

How to Measure and Reduce Drug Background Levels in Forensic Laboratories and Their Implications on Safety and Data Integrity, AAFS Annual Meeting (Baltimore MD), February 2019

Identifying Seized Drugs using MS Library Searching, NIST Mass Spectrometry Data Center Webinar, August 2018

Residual Solvents and Terpenes by Gas Chromatography/Mass Spectrometry, Agilent Technologies Webinar, August 2017

The Application of Spectral Accuracy to Mass Spectrometry for Enhanced Formula ID and Mixture Analysis, Don Kuehl, Cerno Bioscience and LC/GC Webinar, June 2017

NHTSA/IACP Standardized Field Sobriety Testing Practitioner (2015 Curriculum), Platt and Associates (Cherry Hill NJ), September 2016

How to Get More from Your Light and IR Microscopes, NIJ Impression, Pattern and Trace Evidence Symposium (San Antonio TX), August 2015

Using Statistics to Determine Sample Size, Steven Walfish, Statistical Outsourcing Services Webinar, July 2015

Enhanced Detection and Confirmation in Forensic Toxicology Screening Using a UHPLC-QTOF System, LCGC/Bruker Webinar, June 2014

The Science of DUID, Axion Analytical Laboratories (Chicago IL), January 2014

Heather L. Harris

Emerging Trends in Synthetic Drugs Workshop, NIST Law Enforcement Standards
Office in collaboration with DEA (Rockville MD), April 30-May 1, 2013

Analysis and Interpretation of Chemical Unknowns, AAFS Annual Meeting (Washington
D.C.), February 2013

Infrared and Raman Microanalysis of Forensic Evidence, American Chemical
Society/Bruker Webinar, Nov 2012

Mass Measurement Uncertainty for Laboratories, Rod Gullberg at NMS Labs (Willow
Grove PA), October 2012

Best Ethical Practices for Hiring and Managing Expert Witnesses, Jenkins Law
Library (Philadelphia PA), August 2012

Analysis and Interpretation of Mass Spectral Data, American Chemical Society at
Chemspec USA (Philadelphia PA), May 2012

Synthesis and Chemistry of Synthetic Cannabinoid Compounds, Iteramed at NMS
Labs (Willow Grove PA), November 2011

Dyes, Fibers and Recent Advances in Textile Chemistry, NIJ Trace Evidence
Symposium (Kansas City MO), August 2011

Advanced Fire Debris Analysis Interpretation, NIJ Trace Evidence Symposium
(Kansas City MO), August 2011

Chemical Aspects of Fire Debris, NEAFS Annual Meeting (Long Branch NJ),
November 2009

Sixth Edition Sentencing Guidelines and Sentencing in Pennsylvania,
Pennsylvania Commission on Sentencing, October 2007

Clandestine Laboratories, Montgomery County District Attorney's Municipal Drug
Task Force Training Seminar, April 2005

How to Develop, Validate and Troubleshoot Capillary GC and HPLC Methods,
American Chemical Society National Meeting (Philadelphia PA), August 2004

Agilent GC/MSD ChemStation Data Analysis and Reporting, Agilent Technologies
(Plano TX), September 2003

***Rapid Screening of Drugs for Forensic Toxicology using Retention Time Locking
with GC/MS***, Agilent Technologies Webinar, August 2003

Analytical Tools for the Forensic Scientist, NEAFS Annual Meeting (Atlantic City NJ),
November 2002

Heather L. Harris

Methamphetamine: Clandestine Laboratory Investigation and Analytical Approaches, SWAFS Annual Meeting (San Antonio TX), November 2001

Forensic Chemist Seminar, Drug Enforcement Administration Special Testing and Research Laboratory, June 2001

PROFESSIONAL MEETINGS ATTENDED

American Academy of Forensic Sciences Annual Meeting

- Atlanta 2002
- Chicago 2003
- Seattle 2006, Poster presentation to the Jurisprudence section
- Washington, D.C. 2008, Participated in Jurisprudence workshop
- Chicago 2011, Participated in Toxicology workshop
- Washington, D.C. 2013, Paper presentations to the Jurisprudence and Toxicology sections
- Seattle 2014, Paper presentation to the Jurisprudence section and moderated Drug Chemistry technical paper session
- Las Vegas 2016, Paper presentation to the Jurisprudence section
- Seattle 2018
- Baltimore 2019
- Anaheim 2020
- Virtual Meeting 2021

American Chemical Society National Meeting

- Philadelphia Fall 2008, Hosted booth for Chemical Consultants Network
- Philadelphia Summer 2012, Participated on Chemistry and the Law panel discussion
- Philadelphia Summer 2016

Forensics @ NIST Conference

- Virtual Meeting 2020

Mid-Atlantic Association of Forensic Scientists

- Ellicott City MD 2012
- Roanoke VA 2013, Participated in Drug Chemistry workshop

National Institute of Justice Biannual Trace Evidence Symposium

- Kansas City 2011
- San Antonio 2015, Poster presentation
- Arlington VA 2018

NIST International Symposium on Forensic Science Error Management

- Crystal City VA 2015, Paper presentation on Criminalistics track

Northeastern Association of Forensic Scientists Annual Meeting

- Atlantic City 2002
- Long Branch NJ 2009

Heather L. Harris

- Saratoga Springs NY 2012, Paper presentation in Drug Chemistry Scientific Session
- Pocono Manor PA 2017, Paper presentation in Drug Chemistry Scientific Session
- Lancaster PA 2019
- Virtual Meeting 2020

Pittsburgh Conference on Analytical Chemistry and Applied Spectroscopy (Pittcon)

- Philadelphia 2019

Society of Forensic Toxicologists Annual Meeting

- Virtual Meeting 2020

Southwestern Association of Forensic Scientists Annual Meeting

- San Antonio 2001, Moderated technical paper session

PUBLICATIONS

AOAC SMPR® 2019.003 Standard Method Performance Requirements (SMPRs) for Quantitation of Cannabinoids in Plant Materials of Hemp (Low THC Varieties Cannabis sp.), In press, Journal of AOAC International 2020.

AOAC SMPR® 2017.001 Standard Method Performance Requirements (SMPRs) for Quantitation of Cannabinoids in Cannabis Concentrates, Audino, et al: Journal of AOAC International, Vol. 100, No. 4, 2017

AOAC SMPR® 2017.002 Standard Method Performance Requirements (SMPRs) for Quantitation of Cannabinoids in Dried Plant Materials, Audino, et al: Journal of AOAC International, Vol. 100, No. 4, 2017

The Fundamentals of Uncertainty of Measurement, Understanding DUI Scientific Evidence, J. McShane and J. Lee, Eds., Thomson Reuters/Aspatore, 2015

The Fundamentals of Calibration, Understanding DUI Scientific Evidence, J. McShane and J. Lee, Eds., Thomson Reuters/Aspatore, 2014.

Brief of Expert Forensic Scientists as Amici Curiae in Support of Petitioner, Stephen Dominick McFadden v. United States of America, 576 U.S. ____ (2015) (No. 14-378).



State of New Jersey
DEPARTMENT OF CORRECTIONS
OFFICE OF TRAINING
PO Box 438
SEA GIRT NJ 08750-0438

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

VICTORIA L. KUHN, ESQ.
Acting Commissioner

December 10, 2021

John F. Cunningham, Administrator
Police Training Commission
New Jersey Division of Criminal Justice
25 Market Street
Trenton, NJ 08625

Dear Mr. Cunningham,

I am contacting you to provide a response to the appeal of dismissal filed by Dylan Dunne. Please be advised that the appellant was tested in accordance with the existing Attorney General's Law Enforcement Drug Testing Policy (Revised December 2020). The appellant failed the drug screening due to the presence of cannabinoids (THC). As a result, the appellant was dismissed from basic training for a positive result. Accordingly, the New Jersey Department of Corrections Training Academy followed the established dismissal protocol by reporting the dismissed recruit to the Central Drug Registry maintained by the Division of State Police.

Thank you for your consideration of this response. If you have any questions, please do not hesitate to contact me. Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "A. Erven".

Aaron J. Erven, Assistant Commissioner
Division of Training, Recruitment, and Professional Development

AE:md

c: File



PHILIP D. MURPHY
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Issued February 22, 2021

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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 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, 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.



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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; and*
- *Officers may not arrest, detain, or otherwise take an individual under the age of 21 into custody, or transport the underage individual to a police station, police headquarters, or other place of law enforcement operations, for a violation of N.J.S.A. 2C:33-15, except to the extent that detention or custody at or near the location is required to issue a written warning or collect information necessary to provide notice of a violation to a parent/guardian (note: the officer shall provide written notification of the violation to the parent/guardian of the juvenile, regardless of whether it is a first, second, third or subsequent violation).*

4. Does the new law alter the use of an officer's 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 do 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 for those offenses, which means the officer will generally 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 are precluded from being fingerprinted for that offense under the new law.

6. What is the difference between marijuana and cannabis?

Despite the different names, there is no difference in substance, as the two terms both describe parts of the plant Cannabis sativa L.. However, the law now creates a distinction between legal "cannabis," which is parts of the plant cultivated and produced for use in a cannabis item regulated by the Cannabis Regulatory Commission in accordance with the provisions of P.L.2021, c.16 (the cannabis legalization act), and illegal "marijuana," which is parts of the same plant that have not been subject to Cannabis Regulatory Commission regulation. Cannabis may be legally manufactured and distributed, while marijuana may not.

Until the Cannabis Regulatory Commission promulgates and implements regulations governing the cultivation, production, processing, distribution and consumption of cannabis in accordance with P.L.2021, c.16, legal cannabis does not exist, and (except for regulated medical cannabis) any Cannabis sativa L. cultivated and produced until that time is to be considered marijuana and remains illegal and subject to seizure.

7. May law enforcement officers continue to use K-9s to "sniff" for the odor of marijuana?

The new laws are clear that the odor of marijuana alone may not be used to establish reasonable suspicion for a stop, nor probable cause for a search, to determine a violation of marijuana possession, low-level (fourth-degree) distribution, or underage possession or consumption under N.J.S.A. 2C:33-15. Therefore, a K-9 which has been trained to alert, or signal its handler, when it detects the odor of marijuana may not be used to "sniff" in these situations.

However, K-9s may still be used in the investigation of higher-level marijuana distribution cases. In such cases, if significant circumstances exist demonstrating a higher-level of marijuana distribution, a K-9 may be used to alert for the presence of marijuana. The totality of those factors, including the odor, may be considered to develop reasonable suspicion for a stop or probable cause for a search, but only in these higher-level marijuana distribution cases. In addition, K-9s may still be used in non-criminal investigations in places such as correctional facilities, when locating marijuana will generally result only in administrative violations and not criminal charges or warnings pursuant to N.J.S.A. 2C:33-15.

8. Can a law enforcement officer use marijuana while off duty without consequence?

No. Until the Cannabis Regulatory Commission promulgates and implements regulations, there is no regulated, legal cannabis in New Jersey. Therefore, any marijuana consumed by a law enforcement officer or applicant for a law enforcement position will be a

controlled dangerous substance and illegal. The Attorney General's Law Enforcement Drug Testing Policy remains unchanged.

- 9. What should an officer do if an underage individual (under 21) refuses to provide identifying information for the written warning?**

Reasonable efforts should be taken to explain the situation to the underage individual (procedural-justice techniques). If the underage individual continues to refuse, the law does not allow for the underage individual to be placed under arrest (adult) or taken into custody (juvenile) for violating N.J.S.A. 2C:29-1, unless the individual has engaged in some affirmative act of interference with the officer; simply refusing to provide identifying information does not constitute an affirmative act under N.J.S.A. 2C:29-1. However, because the law states that the officer may detain or hold the underage individual in custody at or near the location of the incident to the extent required to issue the written warning or collect information necessary to provide notice of violation to a parent/guardian, should the underage individual walk away from the officer, the underage individual would be in violation of N.J.S.A. 2C:29-1.

- 10. What can an officer do if they observe an underage individual with marijuana but the underage individual puts the marijuana in their pocket or conceals it in some way?**

Amended 2C:33-15 states, "As part of the process for the issuance of a written warning or write-up to a person for a violation of paragraph (1) of this subsection, the law enforcement officer shall take possession of any alcoholic beverage, marijuana, hashish, or cannabis item from the person, and any drug or cannabis paraphernalia for use with any marijuana, hashish, or cannabis item." Thus, the officer may order the underage person to turn over the marijuana.

Should the underage individual refuse, reasonable efforts should be taken to explain the situation to the underage individual (procedural-justice techniques) just as the officer would if the underage individual refused to give their identifying information (reference question #9 above).

If the underage individual continues to refuse, the law does not allow for the underage individual to be placed under arrest (adult) or taken into custody (juvenile) for violating N.J.S.A. 2C:29-1, unless the individual has engaged in some affirmative act of interference with the officer; simply refusing to turn over the marijuana does not constitute an affirmative act under N.J.S.A. 2C:29-1.

- 11. The directive says an officer can be charged with Deprivation of Civil Rights even if they did not intentionally violate the law (2C:33-15) – what is the standard?**

The applicable provision is found in P.L. 2021, chapter 25 (A5342) and the standard in the newly enacted law is "knowingly." Specifically, the law states: "A law enforcement officer...shall be guilty of a crime of official deprivation of civil rights as defined in section

2 of P.L.2003, c.31 45 (C.2C:30-6) if that officer knowingly violates the provisions of subsection a. of section 1 of P.L.1979, c.264 (C.2C:33-15) that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items by... [engaging in one of the listed prohibited actions]."

To have criminal liability, therefore, the officer must act knowingly, but the law does not "...require that the law enforcement officer have acted with the purpose to intimidate or discriminate against a person or group of persons because of race, color, religion, gender, handicap, sexual orientation or ethnicity." For example, if an officer approaches an individual who they know to be 20 years old (either because they ask them or from prior experience) and the individual places the suspected marijuana in their pocket as the officer approaches, the officer may not then ask the individual for consent to search their person. In this scenario, the simple act of requesting consent from an individual under 21 would constitute a violation of N.J.S.A. 2C:33-15 and the officer could be in jeopardy of being charged with deprivation of civil rights.

- 12. When an officer comes across a juvenile (under 18 years of age) who is using marijuana, can the officer do a curbside warning rather than issue a written warning under N.J.S.A. 2C:33-15?**

No. N.J.S.A. 2C:33-15 sets forth the mechanism for underage individuals, including juveniles, who are in possession of or consuming marijuana or alcohol, as it is no longer a disorderly persons offense or a crime. However, if the juvenile is in possession of over 6 ounces of marijuana, they are in violation of N.J.S.A. 2C:35-10(a)(3)(b) and can be charged with the fourth-degree crime.

- 13. Can an officer conduct a search of an underage individual based on the smell of marijuana? What if the officer observes the underage individual holding marijuana?**

If the officer smells marijuana on an underage individual, the officer cannot stop or search the underage individual or the individual's personal property. Thus, unless there are other factors that support a finding of probable cause that the underage individual is in possession of marijuana, the officer may not issue a warning.

However, if the officer observes the marijuana in plain sight or comes across the marijuana during a search incident to arrest for another crime or in accordance with another lawful procedure, the officer may seize the marijuana and issue the warning. Under the new law, the officer cannot use plain sight to initiate a search to determine any "further violation of [2C:33-15] or any other violation of law."

- 14. Is it illegal for a student to possess marijuana on school property?**

N.J.S.A. 2C:33-15 states that "any person under the legal age to purchase alcoholic beverages, or under the legal age to purchase cannabis items, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public

assembly, or motor vehicle, shall" be subject to the written warnings. Thus, when a student under the age of 21 is in possession of marijuana in any school, the officer may issue a written warning pursuant to 2C:33-15. However, if that student is in possession of over 6 ounces, it is a fourth-degree crime under N.J.S.A. 2C:35-10(a)(3)(b) and can be charged. If the student is 21 or older and in possession of under 6 ounces in a school, the officer cannot charge the individual with N.J.S.A. 2C:35-10(a)(4)(b) because that is no longer a crime and cannot issue a warning under N.J.S.A. 2C:33-15 because the individual is not underage. However, if the student is 21 years of age or older and in possession of over 6 ounces of marijuana in a school, the officer can charge N.J.S.A. 2C:35-10(a)(3)(b), a fourth-degree crime. Regardless of the age of the student, nothing in the law precludes the school from imposing any administrative disciplinary action for possession of marijuana on school property.

15. What should an officer do when they encounter a person who is intoxicated and unable to reasonably care for themselves?

The new marijuana laws have not changed the community caretaking duties of law enforcement officers to protect individuals, either under or over 21 years of age, who may be highly intoxicated because of alcohol, marijuana, or any other substance. Officers must still protect such individuals by getting them to a safe place, such as a medical facility or home. Officers who adhere to this standard will have the full support of the Attorney General and the entire law enforcement community.

In situations involving juveniles, N.J.S.A. 2C:33-15 does not affect the applicability of N.J.S.A. 2A:4A-31 to -33, which permit an officer to take a juvenile into short term custody if the officer has reasonable grounds to believe the juvenile's health and safety is in serious danger and taking the juvenile into immediate custody is necessary. This would include situations where the law enforcement officer reasonably believes that the juvenile is under the influence based upon all available information, including physical observations at the scene. Notice to the juvenile's parent or guardian is required in these circumstances.

Attorney General's Law Enforcement Drug Testing Policy



Revised December 2020

DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Revised December 2020

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DRUG TESTING

Attorney General's Law Enforcement Drug Testing Policy

Revised December 2020

I. INTRODUCTION

As the chief law enforcement officer of the State, the Attorney General is duty bound to ensure that the citizens of New Jersey receive police services from law enforcement officers whose competency and integrity are beyond question. The Attorney General is responsible for ensuring that the illegal use of drugs by individual law enforcement officers does not undermine the integrity of law enforcement agencies or threaten the safety and morale of other law enforcement officers.

This policy supersedes the *New Jersey Law Enforcement Drug Testing Manual (7/15/01)* as well as prior versions of the *Attorney General's Law Enforcement Drug Testing Policy* (last rev. April 2018). The December 2020 revisions are intended to implement the New Jersey State Medical Examiner Toxicology Laboratory's transition to updated urine specimen collection kits and the necessary related procedures. The Policy was last revised in accordance with Attorney General Directive 2018-2 requiring the implementation of a random drug testing policy by all state, county and municipal law enforcement agencies under the legal authority of the Attorney General. It also requires the drug testing of law enforcement applicants as a condition of employment. The Division of Criminal Justice together with the New Jersey State Medical Examiner Toxicology Laboratory (the Laboratory) is responsible for coordinating the New Jersey law enforcement drug testing program. Information concerning the program may be found at the Division's website www.njdci.org.

The goal of the policy is deterring illegal drug use by law enforcement officers. The policy provides law enforcement agencies with a mechanism to identify and remove those law enforcement officers engaged in the illegal use of drugs. Because illegal drug use is inconsistent with the duties, obligations and responsibilities of sworn law enforcement officers, the policy mandates that officers who test positive shall be terminated from employment.

The policy sets forth uniform methods and procedures for implementing and administering law enforcement drug testing. The policy further outlines the duties and responsibilities of the State's law enforcement agencies and chief executive officers with respect to the drug testing process. Every law enforcement agency under the authority of the Attorney General must implement a drug testing program consistent with this policy.

The policy seeks to ensure that the employment rights of individual law enforcement officers are safeguarded consistent with legal principles. As a result, the policy sets forth procedures for the uniform collection, submission and analysis of drug test specimens. The procedure further seeks to ensure the accuracy and reliability of the drug testing process. Every law enforcement agency must administer its drug testing program in a way that is fundamentally fair to individual law enforcement officers and is consistent with due process requirements and the laws of this State.

II. APPLICABILITY

A. Personnel

1. Applicants for a position as a law enforcement officer who, if appointed, will be responsible for the enforcement of the criminal laws of this State and will be authorized to carry a firearm under N.J.S.A. 2C:39-6.
2. Law enforcement officer trainees subject to the Police Training Act while they attend a mandatory basic training course.
3. Sworn law enforcement officers who are responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act and are authorized to carry a firearm under N.J.S.A. 2C:39-6.
4. The *Law Enforcement Drug Testing Policy* does not apply to civilian employees of a law enforcement agency. Agencies that wish to drug test civilian employees should consult with legal counsel to establish drug testing policies and procedures consistent with human resource policy and/or collective bargaining rights.

B. Employment Status

Drug testing may be categorized by the employment status of the individual being tested and the method by which the individual was selected for testing. These methods include applicant testing, trainee testing, and officer testing. Testing is required of all police applicants and trainees. Pursuant to AG Directive 2018-2, law enforcement agencies are required to implement a random drug testing program for all sworn officers in their departments. Further, law enforcement agencies have an independent obligation to undertake drug testing of individual officers and trainees when there is reasonable suspicion to believe that the officer or trainee is illegally using drugs.

1. Applicant Testing

The Law Enforcement Drug Testing Policy recognizes that drug testing is an important component of a pre-employment background investigation. Thus, prospective employees should be drug tested as a condition of employment. The policy requires law enforcement agencies engaged in the hiring process to drug test prospective employees at any point during the pre-employment process.

In addition, applicants for employment may be tested as many times as the law enforcement agency deems necessary to ensure that the applicants are not engaged in the illegal use of drugs. For example, applicants who have been drug tested as part of the application process may be tested again if a significant amount of time has elapsed since the previous step in the employment process.

During the pre-employment process, the agency must ensure that it complies with the provisions of the Americans with Disabilities Act (ADA) by refraining from making any medical inquiries. Therefore, the medication information form should not be used at the applicant stage, unless a positive test result requires an explanation by the prospective employee.

2. Trainee Testing

Individuals hired as law enforcement officers who are required to attend and successfully complete a mandatory basic training course approved by the Police Training Commission are subject to drug testing during their attendance at a police academy. Trainees will be required to submit one or more urine specimens for testing while they attend a mandatory basic training course. The drug testing of law enforcement trainees will be conducted by the police academy staff under rules and regulations adopted by the Police Training Commission.

Individual trainees shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the trainee is illegally using drugs. A trainee shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor, the chief executive officer of the trainee's agency, or the academy director.

3. Officer Testing

Sworn law enforcement officers shall be ordered to submit a urine specimen for testing when they have been randomly selected to submit to a drug test. Random selection shall be defined as a method of selection in which each and every sworn member of the law enforcement agency, regardless of rank or assignment, has an equal chance to be selected for drug testing each and every time a selection is conducted.

Sworn law enforcement officers shall also be required to submit a urine specimen for testing when there exists reasonable suspicion to believe that the officer is illegally using drugs. An officer shall be ordered to submit to a drug test based on reasonable suspicion only with the approval of the county prosecutor or the chief executive officer of the officer's agency.

Urine specimens may also be collected from law enforcement officers during a regularly scheduled and announced medical examination or a fitness for duty examination. However, the collection and analysis of these specimens are not governed by this policy.

C. Types of Testing

1. Random Testing

Random drug testing of all state, county and local sworn law enforcement officers is required by AG Directive 2018-2. Random selection is defined as a method of selecting employees for drug testing in which every member of the agency, regardless of rank or assignment, has an equal chance of being selected each and every time a selection is made.¹ The number of officers to be selected each time a random test is conducted shall be less than the total number of sworn officers employed by the agency. AG Directive 2018-2 requires a minimum of ten percent of the sworn officers within an agency be randomly tested each time. Each agency must perform the random test at least twice in every calendar year.

¹ New Jersey Transit PBA Local 304 v. New Jersey Transit Corp., 290 N.J. Super 406, 432 (App. Div. 1996)

Agencies must establish a random drug testing program by rule, regulation or procedure. A municipal police department should have the appropriate authority adopt a rule or regulation as defined by N.J.S.A. 40A:14-118 mandating random drug testing. County, State, or campus police agencies should have the appropriate administrative, executive, or law enforcement official adopt a policy or procedure mandating random drug testing. Random drug testing cannot be implemented until the rule, regulation or procedure has been in effect for a minimum of 60 days.

The agency must choose a method of random selection which ensures that every sworn officer in the agency has an equal chance of being selected each and every time a selection takes place. In other words, an officer who has been selected on one or more previous occasions for a random drug test is not excused from future tests. The mechanism for selecting officers can be as simple and inexpensive as placing names in a hat, or as complex and expensive as a custom computer program.

The random selection process should be verified and documented. The agency should permit representatives of the affected collective bargaining units to witness the selection process. Everyone present at the time of the selection, however, must understand that anyone who discloses the identity of an officer selected for random testing, or the fact that a random selection is scheduled to take place prior to the collection of urine specimens, will be subject to discipline.

2. Reasonable Suspicion

Agencies must undertake drug testing when there is reasonable suspicion to believe a law enforcement officer is engaged in the illegal use of controlled substances. Reasonable suspicion "requires objective facts which, with inferences, would lead a reasonable person to conclude that drug-related activity is taking or has taken place and that a particular individual is involved in that drug activity."²

The reasonable suspicion standard is "less demanding" than the probable cause standard in two ways.³ First, the amount of evidence needed to satisfy the reasonable suspicion standard is less than that needed to satisfy the probable cause standard.⁴ Second, the type of information used to satisfy the reasonable suspicion standard may be "less reliable than that required to show probable cause."⁵ The following factors should be evaluated to determine the quality and relevance of the information acquired by the law enforcement agency:

- a. The nature and source of the information;
- b. Whether the information constitutes direct evidence or is hearsay in nature;
- c. The reliability of the informant or source;
- d. Whether corroborating information exists and the degree to which it corroborates the accusation; and

² Caldwell v. New Jersey Department of Corrections, 250 N. J. Super. 592, (App. Div. 1991) certif. denied, 127 N.J. 555(1991)

³ Drake v. County of Essex, 275 N.J. Super. 592, 609 (App. Div. 1994)

⁴ Id.

⁵ Id.

- e. Whether and to what extent the information may be stale.

Every law enforcement agency subject to the jurisdiction of the Attorney General must include in its rules and regulations a provision governing reasonable suspicion drug testing. Before a law enforcement executive may order an individual officer to undergo reasonable suspicion testing, the agency shall prepare a written report documenting the basis for the test. Under emergent circumstances, approval may be given for a reasonable suspicion test on the basis of a verbal report. Law enforcement executives who wish to discuss whether the information they possess is sufficient to conduct reasonable suspicion testing should contact their county prosecutor's office for advice.

III. NOTIFICATION OF DRUG TESTING PROCEDURES

A. Applicants

Agencies must notify applicants for law enforcement positions that the pre-employment process will include drug testing. The notification will also indicate that a negative result is a condition of employment and that a positive result will: a) result in the applicant being dropped from consideration for employment; b) cause the applicant's name to be reported to the central drug registry maintained by the Division of State Police; and c) preclude the applicant from being considered for future law enforcement employment for a period of two years from the date of the drug test. In addition, the notification will indicate that if the applicant is currently employed by another agency as a sworn law enforcement officer and the officer tests positive for illegal drug use, the officer's employing agency will be notified of the test results and the officer will be terminated from employment and permanently barred from future law enforcement employment in New Jersey. Applicants shall be further informed that their refusal to submit to a drug test shall result in their no longer being considered for law enforcement employment in New Jersey.

B. Trainees

All newly appointed law enforcement officers shall be informed that drug testing is mandatory during basic training. Newly appointed officers shall also be informed that a negative result is a condition of employment and that a positive result will result in: a) the trainee being dismissed from basic training; b) the trainee's termination from employment; c) inclusion of the trainee's name in the central drug registry maintained by the Division of State Police; and d) the trainee being permanently barred from future law enforcement employment in New Jersey.

Newly appointed officers shall be further informed that the refusal to submit to a drug test shall result in their dismissal from employment and a permanent ban from future law enforcement employment in New Jersey and inclusion of the trainee's name in the central drug registry maintained by the Division of State Police. Each police academy shall include in its rules and regulations a provision implementing drug testing during basic training.

C. Sworn Law Enforcement Officers

Each municipal law enforcement agency shall include in its rules and regulations as defined in N.J.S.A. 40A:14-118, and every county and state law enforcement agency shall include in appropriate standard operating procedures, a provision that individual law enforcement officers will be ordered to submit to a drug test when there is a reasonable suspicion to believe that the

officer is illegally using drugs as well as they are subject to mandatory random drug testing pursuant to AG Directive 2018-2.

The agency's rules and regulations or appropriate standard operating procedures shall also provide that a negative result is a condition of employment as a sworn officer and that a positive result for an illegal substance will result in the following: a) the officer's termination from employment; b) inclusion of the officer's name in the central drug registry maintained by the Division of State Police; and c) the officer being permanently barred from future law enforcement employment in New Jersey.

The agency's rules and regulations or appropriate standard operating procedures shall further provide that officers who refuse to submit to a drug test based on reasonable suspicion or random drug testing after being lawfully ordered to do so are subject to the same penalties as those officers who test positive for the illegal use of drugs. A sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

IV. SPECIMEN ACQUISITION PROCEDURES

A. Preliminary acquisition procedures

1. The law enforcement agency shall designate a member of its staff to serve as monitor of the specimen acquisition process. The monitor shall always be of the same gender as the individual being tested (the donor). In the event there is no member of the same gender available from the agency collecting the specimens, the agency may request that a member of the same gender from another law enforcement agency serve as monitor of the process.
2. Prior to the submission of a specimen, an applicant for a law enforcement position shall execute a form consenting to the collection and analysis of their urine for illegal drugs (Attachment A). The form shall also advise the applicant that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III A of this policy. Applicants are not required to complete a Drug Testing Medication Information form at this time.
3. Prior to the submission of a urine specimen, a trainee enrolled in a basic training course shall execute a form (Attachment B) advising the trainee that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III B of this policy. The form shall also advise the trainee that the refusal to participate in the test process carries the same penalties as testing positive. Trainees shall complete a Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the officer during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.

4. Prior to the submission of a urine specimen, an officer shall execute a form (Attachment C) advising the officer that a negative result is a condition of employment and that a positive result will result in the consequences outlined in Section III C of this policy. The form shall also advise the officer that the refusal to participate in the test process carries the same penalties as testing positive. Sworn officers shall complete the Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the officer during the past 14 days. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their unique identifier (Donor ID) on the envelope.

B. Monitor's Responsibilities

1. The monitor of the specimen acquisition process shall be responsible for the following:
 - a. Ensuring that all documentation is fully and accurately completed by the individual submitting the specimen (the donor).
 - b. Collecting specimens in a manner that provides for individual privacy while ensuring the integrity of the specimen. Individual specimens and forms shall be identified throughout the process by the use of donor identification numbers (Donor ID). At no time shall a name appear on any form or specimen container sent to the Laboratory.
 - c. Complying with chain of custody procedures established by the Laboratory for the collection and submission for analysis of urine specimens.
 - d. Specimens shall be collected utilizing split collection kits supplied by the Laboratory.⁶ Under no circumstances shall a specimen be collected and submitted for analysis in a specimen container that has not been approved by the NJ State Medical Examiner Toxicology Laboratory. It is the responsibility of each agency to contact the Laboratory to obtain the Split Specimen Kits and Forensic Urine Drug Testing Custody and Submission Forms (CSF).
 - e. Collecting and submitting urine specimens in accordance with procedures established by the Laboratory.

⁶ The New Jersey State Medical Examiner Toxicology Laboratory intends to begin making the new split sample collection kits available to law enforcement agencies on or about December 1, 2020. Once agencies acquire the new split sample collection kits, these kits should be utilized to collect and submit urine samples in accordance with the Attorney General's Law Enforcement Drug Testing Policy (updated December 2020) and Law Enforcement Directive 2018-2. The Laboratory will continue to accept urine samples collected utilizing specimen containers issued prior to December 1, 2020 only until January 31, 2021. Test results on urine samples submitted utilizing these test kits shall still be recognized as valid. The procedure for using these older kits is described in the Attorney General's Law Enforcement Drug Testing Policy, issued April 2018. Beginning on February 1, 2021, the Laboratory will only accept urine specimens collected using the new split sample collection kits issued after December 1, 2020.

2. In order to ensure the accuracy and integrity of the collection process a monitor may:
 - a. Direct an individual officer who has been selected for drug testing to remove outer clothing (jackets, sweaters, etc.), empty their pockets, and wash their hands under running water, before they produce a specimen.
 - b. Add tinting agents to toilet water and secure the area where the specimens are to be collected prior to specimen collection.
3. If the monitor has reason to believe that an individual officer will attempt to adulterate or contaminate a specimen, substitute another substance or liquid for their specimen, or compromise the integrity of the test process, the monitor may conduct a direct observation of the individual officer. If a monitor concludes that direct observation is necessary, he or she must document the facts supporting the belief that the officer will attempt to compromise the integrity of the test process before there can be direct observation.

C. Urine Specimen Collection Procedure

1. Unless otherwise noted, all steps must be completed by the donor in the presence of the monitor.
2. The monitor completes the agency information, donor identification, and test information sections of the Custody and Submission Form (CSF).
3. The monitor allows the donor to select one NJ Medical Examiner State Toxicology Laboratory issued sealed split specimen collection kit.
4. The donor unseals the split specimen collection kit, removes the specimen bag and specimen containers from the specimen collection container, and places all items on a clean surface.
 - a. The specimen containers shall be kept closed/unsealed at this time.
 - b. The specimen collection container and specimen containers should be kept within view of both the donor and the monitor.
5. The monitor instructs the donor to void a specimen of *at least* 45 mL into the specimen collection container, to not flush the toilet, and return with the specimen container immediately after the specimen is produced.
6. The monitor checks the specimen for adequate volume and the temperature indicator strip on the specimen container within 4 minutes.
 - a. A color change between 90° and 100°F indicates an acceptable specimen temperature. The monitor indicates if the temperature is acceptable by marking either the "Yes" or "No" box in the specimen collection section of the CSF. If a temperature strip does not indicate the acceptable temperature, the monitor must consider the possibility that the officer attempted to tamper with the collection.

- b. The monitor must follow the "shy bladder" procedure for donors that initially are unable to produce an adequate amount of urine (See Section D, "Shy Bladder" Procedure).
- 7. The monitor instructs the donor to split the collected specimen into the specimen containers.
 - a. The donor opens both specimen containers and pours *at least* 30 mL of urine from the collection container in the primary specimen container and *at least* 15 mL of urine from the collection container in the secondary specimen container.
 - b. The donor secures both specimen containers by placing and securing the lids/caps on the specimen containers.
- 8. The monitor instructs the donor to seal the specimen containers with tamper-evidence seals from the CSF.
 - a. The donor carefully removes the Bottle A Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the primary specimen container with the greater volume of urine (30 mL).
 - b. The donor carefully removes the Bottle B (SPLIT) Specimen Container Security Seal from the CSF and places it over the lid/cap and down the sides of the secondary specimen container with the lesser volume of urine (15 mL).
 - c. After the seals are placed on the specimen containers, the donor writes the collection date and his or her initials in the space provided on the security seals to certify that the specimen containers contain the specimen that he or she provided.
- 9. The monitor prints his/her name, signs and dates the monitor/agency acknowledgement section of the CSF.
- 10. The monitor instructs the donor to place both specimens in the front pouch of the specimen bag that contains the absorbent pad.
- 11. The monitor separates the white laboratory copy of the CSF, folds it, and places it in the rear pouch of the specimen bag along with the sealed medication information sheet, if provided.
- 12. The monitor seals the specimen bag by removing the release liner from the flap and folding the blue adhesive flap to cover the cross hatch slit opening.
- 13. Any remaining urine and the specimen collection container may be discarded.

14. The monitor will take possession of the sealed specimen bag and ensure that it is delivered to the NJ State Medical Examiner Toxicology Laboratory in a timely manner (See Section V. Submission of Specimens for Analysis below).

D. "Shy Bladder" Procedure

1. When a donor initially produces an inadequate amount of urine, the monitor must take the following steps:
 - a. Advise the donor to remain on the premises and under the supervision of the test monitor until the monitor is satisfied that the donor cannot produce a specimen.
 - b. While the donor is under supervision, allow the donor to drink up to 40 ounces of fluids distributed reasonably over a period of up to three hours in an attempt to induce the production of a specimen.
 - c. Under no circumstances, should multiple voids be combined to produce an adequate sample volume.
2. If the donor remains unable to provide a specimen after a reasonable period of time, the monitor may have the donor examined by a doctor to determine whether the inability to produce a specimen was the result of a medical or physical infirmity or constituted a refusal to cooperate with the drug testing process.

E. Split Specimen

1. A donor whose specimen tested positive may only challenge the positive test result by having the split specimen independently tested by an accredited laboratory. The first specimen will not be retested.
2. The split specimen will be maintained at the Laboratory for a minimum of one year following the receipt of a positive drug test result from the Laboratory by the submitting agency.
3. The split specimen will be released by the Laboratory under the following circumstances:
 - a. The agency is notified by the Laboratory that the first specimen tested positive for a controlled substance;
 - b. The agency notifies the donor that the first specimen tested positive for a controlled substance; and
 - c. The agency is informed by the donor whose specimen tested positive that he/she wishes to challenge the positive test result.
4. A representative of the second test laboratory may, in person, take possession of the second sample in accordance with accepted chain of custody procedures or the sample may be sent to the second test laboratory by commercial courier also following accepted chain of custody procedures.
5. Following testing of the split specimen, the independent laboratory will report the result of the split specimen drug test to the donor, to the submitting agency, and to the NJ State Medical Examiner Toxicology Laboratory medical review officer.

V. SUBMISSION OF SPECIMENS TO THE LABORATORY

- A. The NJ State Medical Examiner Toxicology Laboratory is the only facility approved for the analysis of law enforcement drug tests conducted under the Law Enforcement Drug Testing Policy. Law enforcement agencies are not permitted to use any other facility or laboratory for the purpose of analyzing urine specimens for illegal drug use by law enforcement officers.**
- B. Urine specimens should be submitted to the Laboratory as soon as possible after their collection. In the event specimens cannot be submitted to the Laboratory within one working day of collection, the law enforcement agency shall store the specimens in a controlled access refrigerated storage area until submission to the Laboratory (Attachment E).**
- C. Specimens may be submitted to the Laboratory by commercial courier using "next day delivery" or in person (appointments only).**
- D. The Laboratory will inspect all documentation to ensure that it has been properly completed. Failure to include the appropriate documentation with each submission will cause the Laboratory to delay conducting an analysis of the specimen or specimens until the missing documentation is submitted.**
- E. In addition to ensuring that the appropriate documentation has been completed and submitted for each specimen, the Laboratory shall inspect each specimen for damage and evidence of tampering.**
 - 1. The Laboratory may reject any specimen it has reason to believe has been tampered with or is damaged; and**
 - 2. Notify the submitting agency in writing with the reason for rejection clearly stated.**

VI. ANALYSIS OF SPECIMENS

- A. The analysis of the first specimen shall be done in accordance with currently accepted procedures adopted by the Laboratory. These procedures shall include but not be limited to security of the test specimens, chain of custody, initial screening and confirmation testing, parent drug and metabolite cut-off levels and the issuance of final reports. In addition to the controlled substances listed below, every Law Enforcement Executive may request that specimens be analyzed for the presence of steroids.**
- B. The Laboratory's drug testing procedures will screen specimens for the following controlled substances:**
 - Amphetamines**
 - Barbiturates**
 - Benzodiazepines**
 - Cocaine**
 - Marijuana/Cannabis**
 - Methadone**
 - Opiates**
 - Oxycodone/Oxymorphone**
 - Phencyclidine**
- C. The Laboratory utilizes a two-stage procedure to analyze specimens.**

1. In the first stage, all specimens will undergo an initial screening. The initial screening determines whether one or more of the nine substances listed and/or their metabolites are present at or above a designated cutoff. All presumptive positive specimens will undergo a second and more specific type of testing.
 2. The second type of testing will employ mass spectrometry detection for the definitive identification and quantitation of drugs and/or metabolites presumptively identified by the initial screen.
- D. When a specimen tests positive at both the initial stage and the second stage, a medical review officer assigned to the Laboratory will review the test results together with the medication information form submitted for the specimen. The medical review officer will seek to determine whether any of the substances listed on the form would explain the positive test result. The medical review officer may direct the agency that collected the sample to obtain further information from the individual being tested concerning the medications listed on the medical information form. The medical review officer will then issue a report indicating whether or not the sample tested positive due to a listed medication on the medication information form.
- E. Applicants for law enforcement employment are not required to submit a Drug Testing Medication Information form with their specimen. Therefore, if an applicant tests positive, the law enforcement agency, following notification from the Laboratory, must have the candidate complete the Drug Testing Medication Information form (Attachment D) listing all prescription medication, non-prescription (over-the-counter) medication, dietary supplements, and nutritional supplements that were ingested by the donor during the 14 days prior to the specimen collection. The Drug Testing Medication Information form shall be placed in an envelope which is sealed by the donor. The donor shall date and initial the seal, and write their Donor ID on the envelope. The agency is responsible for submitting the envelope to the Laboratory. A review of the form will be conducted by the medical review officer as outlined above.
- F. In addition to the testing outlined above, specimens submitted to the Laboratory may be tested for additional substances at the request of the law enforcement agency submitting the specimen. The Laboratory has the ability through its own facilities, as well as facilities employed as reference laboratories, to arrange drug testing for steroid abuse, as well as other currently abused substances.

VII. DRUG TEST RESULTS

- A. The Laboratory will provide written test results for every specimen submitted for analysis. All efforts will be made to deliver these reports within 15 working days of the submission. Reports will be addressed to the contact person listed on the specimen submission record. Positive test results will be sent to the contact person by certified mail.
- B. In some cases, the Laboratory will report that a specimen tested positive for a particular substance and that the information on the medication information form explains the test result. For example, the Laboratory may report that a specimen tested positive for barbiturates and a prescription for that barbiturate was listed on the form by the officer. At this point, it is the responsibility of the submitting agency to determine whether the officer had a valid prescription for that drug. Officers who do not have a valid prescription are subject to disciplinary action including termination by the agency.

- C. Under no circumstances will the Laboratory provide law enforcement agencies with verbal reports of drug test results. In addition, no individual or agency may ask the Laboratory to conduct a second analysis of a specimen that has already been analyzed.

VIII. CONSEQUENCES OF A POSITIVE TEST RESULT

A. When an applicant tests positive for illegal drug use:

1. The applicant shall be immediately removed from consideration for employment by the agency.
2. The applicant shall be reported to the Central Drug Registry maintained by the Division of State Police by the law enforcement agency to which the individual applied.
3. The applicant shall be precluded from consideration for future law enforcement employment by any law enforcement agency in New Jersey for a period of two years.
4. Where the applicant is currently employed by another agency as a sworn law enforcement officer, the officer's current employer shall be notified of the positive test result. Under these circumstances, the officer's current employer is required to dismiss the officer from employment and also report his or her name to the Central Drug Registry maintained by the Division of State Police.

B. When a trainee tests positive for illegal drug use, subject to rules adopted by the Police Training Commission:

1. The trainee shall be immediately dismissed from basic training subject to rules adopted by the Police Training Commission and suspended from employment by his or her appointing authority.
2. Upon final disciplinary action by the appointing authority, the trainee shall be terminated from employment as a law enforcement officer.
3. The trainee shall be reported to the Central Drug Registry maintained by the Division of State Police.
4. The trainee shall be permanently barred from future law enforcement employment in New Jersey.

C. When a sworn law enforcement officer tests positive for illegal drug use:

1. The officer shall be immediately suspended from all duties.
2. The officer shall be administratively charged and, upon final disciplinary action, terminated from employment as a law enforcement officer.
3. The officer shall be reported by his or her employer to Central Drug Registry maintained by the Division of State Police.
4. The officer shall be permanently barred from future law enforcement employment in New Jersey.

IX. CONSEQUENCES OF A REFUSAL TO SUBMIT TO A DRUG TEST

- A. Applicants who refuse to submit to a drug test during the pre-employment process shall be immediately removed from consideration for law enforcement employment and barred

from consideration for future law enforcement employment for period of two years from the date of the refusal. In addition, the appointing authority shall forward the applicant's name to the Central Drug Registry and note that the individual refused to submit to a drug test.

- B. Trainees who refuse to submit to a drug test during basic training shall be immediately removed from the academy and immediately suspended from employment. Upon a finding that the trainee did in fact refuse to submit a sample, the trainee shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the trainee's name to the Central Drug Registry and note that the individual refused to submit to a drug test.
- C. Sworn law enforcement officers who refuse to submit to a drug test ordered in response to reasonable suspicion or random selection shall be immediately suspended from employment. Upon a finding that the officer did in fact refuse to submit a sample, the officer shall be terminated from law enforcement employment and permanently barred from future law enforcement employment in New Jersey. In addition, the appointing authority shall forward the officer's name to the Central Drug Registry and note that the individual refused to submit to a drug test. Please note that if there is no valid reason why an officer cannot produce a specimen, the officer's actions will be treated as a refusal. In addition, a sworn law enforcement officer who resigns or retires after receiving a lawful order to submit a urine specimen for drug testing and who does not provide the specimen shall be deemed to have refused to submit to the drug test.

X. RESIGNATION/RETIREMENT IN LIEU OF DISCIPLINARY ACTION

A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.

XI. RECORD KEEPING

- A. Each law enforcement agency's Internal Affairs Unit shall maintain all records relating to the drug testing of applicants, trainees and law enforcement officers.
- B. Each agency's drug testing records shall include but not be limited to:
 - 1. All drug testing:
 - a. the identity of those ordered to submit urine samples;
 - b. the reason for that order;
 - c. the date the urine was collected;
 - d. the monitor of the collection process;
 - e. the chain of custody of the urine sample from the time it was collected until the time it was received by the Laboratory;
 - f. the results of the drug testing;
 - g. copies of notifications to the subject;

- h. for any positive result, documentation from the officer's physician that the medication was lawfully prescribed and does not render the officer unfit for duty;
 - i. for any positive result or refusal, appropriate documentation of disciplinary action.
2. Random drug testing, the records shall also include the following information:
- a. a description of the process used to randomly select officers for drug testing;
 - b. the date selection was made;
 - c. a copy of the document listing the identities of those selected for drug testing;
 - d. a list of those who were actually tested; and
 - e. the date(s) those officers were tested.
- C. Drug testing records shall be maintained with the level of confidentiality required for internal affairs files pursuant to the New Jersey Internal Affairs Policy and Procedures.

XII. CENTRAL DRUG REGISTRY

- A. Every law enforcement agency shall notify the Central Drug Registry maintained by the Division of State Police of the identity of applicants, trainees and sworn law enforcement officers who test positive for the illegal use of drugs or refuse an order to submit to a drug test (Attachment F).
- B. A sworn law enforcement officer who tests positive for illegal drug use or refuses to submit to a drug test, and who resigns or retires in lieu of disciplinary action or prior to the completion of final disciplinary action, shall be reported by his or her employer to Central Drug Registry and shall be permanently barred from future law enforcement employment in New Jersey.
- C. Notifications to the Central Drug Registry shall include the following information as to each individual:
 - 1. Name and address of the submitting agency, and contact person;
 - 2. Name of the individual who tested positive;
 - 3. Last known address of the individual;
 - 4. Date of birth;
 - 5. Social security number;
 - 6. SBI number (if known);
 - 7. Gender;
 - 8. Race;
 - 9. Eye color;
 - 10. Substance the individual tested positive for, or circumstances of the refusal to submit a urine sample;

11. Date of the drug test or refusal;
 12. Date of final dismissal or separation from the agency; and
 13. Whether the individual was an applicant, trainee or sworn law enforcement officer.
- D. The certification section of the notification form must be completed by the chief or director, and notarized with a raised seal.
- E. Notifications to the central registry shall be sent to:
- Division of State Police
State Bureau of Identification
Central Drug Registry
P.O. Box 7068
West Trenton, New Jersey 08628-0068
- F. Information contained in the central registry may be released by the Division of State Police only under the following circumstances:
1. In response to an inquiry from a criminal justice agency as part of the background investigation process for prospective or new personnel; and
 2. In response to a court order.

ATTACHMENT A

DRUG TESTING

APPLICANT NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the pre-employment process, the _____ will conduct a comprehensive background investigation to determine my suitability for the position for which I have applied.

I understand that as part of this process, I will undergo drug testing through urinalysis. I understand that a negative drug test result is a condition of employment. I understand that if I refuse to undergo the testing, I will be rejected from employment.

I understand that if I produce a positive test result for illegal drug use, I will be rejected for employment.

I understand that if I produce a positive test result for illegal drug use or refuse to take the test, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use and am not currently employed as a sworn law enforcement officer, I will be barred from future law enforcement employment in New Jersey for two years from the date of the test. After this two-year period, the positive test result may be considered in evaluating my fitness for future criminal justice employment.

I understand that if I am currently employed as a sworn law enforcement officer and I produce a positive test result for illegal drug use, my current law enforcement employer will be notified of the positive test result. In addition, I will be dismissed from my law enforcement position and I will be permanently barred from law enforcement employment.

I have read and understand the information contained on this "Applicant Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the pre-employment process.

Signature of Applicant

Date

Signature of Witness

Date

ATTACHMENT B

DRUG TESTING

TRAINEE NOTICE AND ACKNOWLEDGMENT

I, _____, understand that as part of the program of training at the _____, I will undergo unannounced drug testing by urinalysis during the training period.

I understand that a negative drug test result is a condition of my continued attendance at the above listed training program. I understand that if I refuse to undergo the testing, I will be dismissed from the training program and from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use, I will be dismissed from the academy.

I understand that if I produce a positive test result for illegal drug use, the academy will notify my employer of the positive test result. In addition, I will be permanently dismissed from my law enforcement position.

I understand that if I produce a positive test result for illegal drug use or refuse to take the test, that information will be forwarded to the Central Drug Registry maintained by the Division of State Police. Information from that registry can be made available by court order or as part of a confidential investigation relating to employment with a criminal justice agency.

I understand that if I produce a positive test result for illegal drug use, I will be permanently barred from serving as a law enforcement officer in New Jersey.

I have read and understand the information contained on this "Trainee Notice and Acknowledgment" form. I agree to undergo drug testing through urinalysis as part of the academy training program.

Signature of Trainee Date

Signature of Witness Date