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NEW ATTORNEY GENERAL DRUG TESTING POLICY SHOULD PROMPT NEW OFFICER SAFETY AND WELLNESS FOCUS

The New Jersey Attorney General recently issued a revised [Attorney General Drug Testing Policy](#) governing New Jersey's law enforcement officers. This latest revision addresses the issue of drug testing concerning cannabis and provisions to deter illegal drug use by law enforcement officers, including applicants, trainees, and those currently serving.

Every Chief of Police should discuss this latest directive with their Municipal Attorney. Each law enforcement agency likely has drug testing policies and procedures in place. As such, New Jersey Attorney General Requirements concerning drug testing are not new to the New Jersey Law Enforcement Profession. However, since the passage of the [New Jersey CREAMM Act](#) and the new drug testing policy issuance, a thorough review of an agency's rules and regulations by its Municipal Attorney is paramount.

This latest directive does not discuss the potential harm associated with cannabis use. The absence of detailing such risks presents an opportunity for the Chief of Police to appropriately incorporate the potential liability associated with using cannabis into the agency's safety and wellness programs, just as they should be doing now with alcohol.

It is well-recognized that alcohol abuse is a significant concern in law enforcement. Research has found that as many as one in every five officers engage in habitual drinking, and higher levels of individual alcohol consumption are risk factors for Post-Traumatic Stress Disorder (PTSD)¹ Additionally, in response to an anonymous survey administered during our [Front-Line Leadership Training Program](#), on average, more than half of the attendees believe their agencies have at least one officer whom they consider a problem drinker. PTSD, overall mental health, and the risks of suicide should be primary concerns for every Chief of Police and especially considering that 162 law enforcement officers died by suicide in 2022.²

The [Comprehensive Framework for Law Enforcement Suicide Prevention](#) specifically addresses increased alcohol use and other drugs as a serious risk and warning sign of an officer at risk of suicide or suicidal ideation. Furthermore, the National Institute on Drug Abuse reports that marijuana use increases the risk of suicide threats, suicide planning, and suicide attempts in adults 18-34 years old.³ Marijuana use has been largely absent from many studies involving law enforcement, most likely due to it being an illegal substance until recently. However, a study in Colorado found that once recreational marijuana was legalized, adult use of marijuana increased by 94% from 2012 to 2020.⁴ It is unknown at this time what increase might occur in New Jersey. Still, there will likely be an increase in cannabis use by adults in New Jersey, including those serving as law enforcement officers.

Wellness Considerations:

- Despite cannabis being legal in New Jersey, there are risks, just as with alcohol. Agencies have likely addressed the risks of alcohol in their safety and wellness programs. Now is the time for agencies to appropriately address how cannabis use might impact their officers and employees. The possible long-term effects of cannabis use, such as impacts on overall brain health, mental health, athletic performance, mood disorders, and cardiovascular disease, have not yet likely significantly impacted the law enforcement community.⁵⁻⁶ However, the CREAMM act and this latest New Jersey Drug Testing Policy might bring new health and safety challenges that law enforcement leaders should begin to address now.

- The law enforcement agency should have a comprehensive safety and wellness policy. A Sample Officer, Safety and Wellness Policy, is available [here](#), and cannabis is now listed as an area of concern when considering Employee Assistance Programs.
- The Attorney General, Law Enforcement Drug Testing Policy, does not apply to civilian police employees. However, Chiefs of police should include civilian employees in their agency safety and wellness program and work closely with their Municipal Attorney and human resource personnel to establish drug testing policies and procedures.
- Chiefs of police should begin to plan now for [National Law Enforcement Suicide Prevention Day](#) on September 26, 2023, and consider what impact, if any, the risk of cannabis use might play a role in their planning. The Law Enforcement Bulletin, [Suicide Prevention Month](#), might provide some considerations in preparing for this day.

Additional Considerations:

- The Attorney General, Drug Testing Policy, defines the drug testing selection process for trainees and law enforcement officers. However, Section II.B, Page 2, indicates law enforcement applicants “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.” The Chief of Police should discuss this with their Municipal Attorney to ensure that the testing of applicants is consistent with protecting the agency from accusations that they are attempting to disqualify a particular applicant or group of applicants.
- Section II.C, Page 5 addresses when a Workplace Recognition Expert (WIRE) should be utilized to determine an officer’s state of impairment with a urinalysis and references the New Jersey Cannabis Regulatory Commission Interim Guidance document for further reference until the WIRE program is finalized. The courts in New Jersey are currently reviewing the DRE program, and changes to the program may occur, and its applicability in impairment evaluations of employees is dynamic. The Chief of Police should consistently monitor whether using DREs to determine an employee’s impairment in the workplace is applicable or permissible. Furthermore, the Chief of Police should consult with their Municipal Attorney and County Prosecutor before developing a procedure that utilizes a DRE in an employment or workplace conduct investigation. Suppose it is determined by the Municipal Attorney and the County Prosecutor that using a DRE is permitted and appropriate for an employment investigation. In that case, the Chief of Police should consider the following:
 - Familiarizing DREs with New Jersey Drug Testing Policy and agency rules and regulations.
 - Ensure the DRE is aware of the confidentiality requirement with internal affairs investigations.
 - Determine in advance if any specific DREs should be eliminated from being involved in such an investigation due to conflicts, such as being a member of the agency’s collective bargaining unit.
- Section IV, Page 12, addresses urine specimen analysis and details when the laboratory will test for marijuana/cannabis. The directive indicates that marijuana/cannabis is only to be included in the testing process when the officer is assigned to a federal task force, the officer holds a federally regulated license, which requires testing (e.g., pilot or commercial driver’s license); the law enforcement agency is specifically required to test by the terms of a federal contract or federal grant; or as outlined in the reasonable suspicion sections II.C.2 and II.C.3. Chiefs of Police should discuss this provision with their municipal attorney to ensure consistency with this process. For example, a Chief or other agency personnel might believe that an officer utilizes cannabis, as perhaps the officer has told others that they use cannabis. The officer later requests an assignment to a federal task force. Denying that officer an opportunity based on past usage ora

belief of past usage might create a claim from an officer that they suffered an adverse employment action when not dealt with properly and consistently.

- Chiefs of Police, agency command-level officers, front-line supervisors, and even political leaders might have a personal disdain for the permitted off-duty use of cannabis by law enforcement officers. However, Chiefs are encouraged to frame their messaging concerning cannabis use similar to what they have done or should be doing with alcohol. Alcohol and now cannabis should be part of a more extensive safety and wellness initiative that addresses risks of use, effective stress coping strategies, and physical wellness. Chiefs and other leaders who narrowly denounce or chastise officers who legally utilize cannabis might later face a claim by an officer that they were not promoted or given a specific assignment because of their cannabis use.
- Absent exigent circumstances, before formally disciplining a law enforcement employee concerning cannabis, The Chief of Police should consult with their Municipal Attorney.

Please contact your Law Enforcement Risk Control Consultant if you have any questions.

Sources:

¹Syed, S., Ashwick, R., Schlosser, M., Jones, R., Rowe, S., & Billings, J. (2020). Global Prevalence and Risk Factors for Mental Health Problems in Police Personnel: A Systematic Review

²Blue Help. (2023, February 19). *Honoring the Service of Law Enforcement by Suicide*. Retrieved from Blue Help: <https://bluehelp.org/>

³National Institute on Drug Abuse. (2021, June 22). *Cannabis Use May Be Associated With Suicidality in Young Adults*. Retrieved from National Institute on Drug Abuse: <https://nida.nih.gov/news-events/news-releases/2021/06/cannabis-use-may-be-associated-with-suicidality-in-young-adults>

⁴Prevention Resources. (2020). *The Impacts on Marijuana on Communities*. NJ Prevent.

⁵SAMHSA. (2023, February 19). *Learn About Marijuana Risks*. Retrieved from Substance Abuse and Mental Health Services Administration: <https://www.samhsa.gov/marijuana>

⁶Karilia, L., Roux, P., Roland, B., Benyamina, A., Reynaud, M., & Aubin, H. J. (2014). Acute and Long-Term Effects of Cannabis: A Review. *National Library of Medicine*.