



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

MATTHEW J. PLATKIN
Acting Attorney General

LYNDSAY V. RUOTOLO
Director

TO: All Law Enforcement Chief Executives

FROM: Matthew J. Platkin, Acting Attorney General

DATE: April 13, 2022

SUBJECT: Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), P.L.2021, c.16, Compliance.

On November 3, 2020, New Jersey citizens voted to amend the New Jersey Constitution to legalize regulated marijuana, referred to as “cannabis.” Enabling legislation for such amendment was enacted by Governor Philip D. Murphy on February 22, 2021, known as the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA). P.L. 2021, c.16. And this week, the Cannabis Regulatory Commission approved applications from Alternative Treatment Centers to expand into recreational cannabis sales, a major step toward opening the regulated cannabis market in New Jersey.

In light of this, I write to remind law enforcement of the provisions of the CREAMMA that set the parameters for departments issuing policies pertaining to *cannabis* use—please be reminded, however, that unregulated *marijuana* continues to be a controlled dangerous substance, N.J.S.A. 24:2I-2, and the cannabis legalization law in no way insulates employees from adverse consequences from their employers for the possession or consumption of unregulated marijuana. Law enforcement agencies shall continue to maintain a drug- and alcohol-free workplace, which prohibition includes marijuana/cannabis whether regulated or illicit. The CREAMMA does not require law enforcement agencies to permit or accommodate the possession, use, or consumption of cannabis in the workplace, or restrict the ability of an agency to implement a policy prohibiting use of cannabis items or intoxication by employees “during work hours.” N.J.S.A. 24:6I-52(b)(1)(a).

The CREAMMA further provides that law enforcement agencies may not take any adverse action against any officers because they do or do not use cannabis off-duty. But should there be reasonable suspicion of an officer’s use of cannabis while engaged in the performance of their



duties, or upon finding any observable signs of intoxication related to cannabis use (including following a work-related accident subject to investigation by the agency), that officer may be required to undergo a drug test. N.J.S.A. 24:6I-52(a)(1). Per the CREAMMA, the drug test shall include scientifically reliable objective testing methods and procedures, such as testing of blood, urine, or saliva, and a physical evaluation, set forth in the CREAMMA, in order to determine the officer's state of impairment. N.J.S.A. 24:6I-52(a)(1) –(a)(2)(b). Per the CREAMMA, law enforcement agencies may randomly require a drug test as part of pre-employment screening or regular screening of employees “to determine use during an employee’s prescribed work hours[,]” following the above described process for drug testing, including the physical evaluation. The law enforcement agency may use the results of the drug testing procedure, defined above, to determine the appropriate employment action concerning the officer, including, but not limited to dismissal, suspension, demotion, or other disciplinary action. A revised Law Enforcement Drug Testing Policy to reflect the CREAMMA is forthcoming.

While marijuana is a schedule I controlled dangerous substance under federal law, 21 U.S.C. § 812, the CREAMMA makes clear that no agency in this State may refuse to perform any duty under the CREAMMA “on the basis that manufacturing, transporting, distributing, dispensing, delivering, possessing, or using any cannabis item or marijuana is prohibited by federal law.” Such a duty under the law would include the agency’s obligation to refrain from “tak[ing] any adverse action against any employee . . . because that person does or does not . . . use cannabis items, and an employee shall not be subject to any adverse action by an employer solely due to the presence of cannabinoid metabolites in the employee’s bodily fluid from engaging in conduct permitted under [the CREAMMA.]” N.J.S.A. 24:6I-54(b).

But to be clear, there should be zero tolerance for cannabis use, possession, or intoxication while performing the duties of a law enforcement officer. And there should be zero tolerance for unregulated marijuana consumption by officers at any time, on or off duty, while employed in this State. The safety of our communities and our officers demands no less.