

Garden State CLE Presents:

# Underage marijuana and alcohol use



**Instructor:**



**Joseph P. Rem, Jr.,**

**Certified Criminal Trial Attorney**

## Lesson Plan

## **NJSA 2C:33-15 – Location of violation**

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 following consequences:

### **First Violation**

[F]or a first violation, a written warning issued by a law enforcement officer to the underage person. The written warning shall include the person's name, address, and date of birth, and a copy of the warning containing this information, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a second or subsequent violation subject to the consequences set forth in subparagraph (b) or (c) of this paragraph. If the violation of this section is by a person under 18 years of age, a written notification concerning the violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with [N.J.S.A. 33:1-81.1a.]

Note that N.J.S.A. 33:1-81.1a has been repealed.

## **Second Violation**

For a second violation, a written warning issued by a law enforcement officer to the underage person indicating that a second violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall provide the person with informational materials about how to access community services provided by public or private agencies and organizations that shall assist the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives.

If the [second] violation is by a person under 18 years of age, a written notification concerning the second violation, along with a copy of the written warning for the person's first violation, shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with NJSA 33:1-81.1a. The written notification shall include the same or similar informational materials about how to access community services provided by public or private agencies and organizations as those provided directly by a law enforcement officer to a person 18 years of age or older who commits a second violation of this paragraph. A copy of the second written warning to the underage person, and, if applicable, the written notification to the parent, guardian or other person having legal custody of the underage person concerning the second warning, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the second violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a subsequent violation subject to the consequences for a third offense.

## **Third or Subsequent Violation**

For a third or subsequent violation, a write-up issued by a law enforcement officer to the underage person indicating that a third or subsequent violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall include with the write-up a referral for accessing community services provided by a public or private agency or organization, and provide notice to that agency or organization of the referral which may also be used to initiate contact with the person, and the agency or organization shall offer assistance to the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. If the violation is by a person under 18 years of age, a written notification concerning the third or subsequent violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with NJSA 33:1-81.1a.

## **Content of written notification**

The written notification shall include a referral for the person and the parent, guardian or other person having legal custody of the underage person for accessing community services provided by a public or private agency or organization, and provide notice to that agency or organization of the referral which may also then be used to initiate contact with both persons, and the agency or organization shall offer assistance to both with opportunities to access further social services, including counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. A copy of a write-up for a third or subsequent violation, the written notification to the parent, guardian or other person having legal custody of the underage person, if applicable, and accompanying referrals, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the third or subsequent violation, shall be temporarily maintained in accordance with this section only to the extent necessary to track referrals to agencies and organizations, as well as for the purposes of determining a subsequent violation subject to the consequences set forth in this subparagraph.

The failure of a person under the legal age to purchase alcoholic beverages or cannabis items, or the failure of a parent, guardian or other person having legal custody of the underage person, to accept assistance from an agency or organization to which a law enforcement referral was made, or to access any community services provided by that agency or organization shall not result in any summons, initiation of a complaint, or other legal action to be adjudicated and enforced in any court.

## **Fourth Amendment Issues**

### **Consent**

A person under the legal age to purchase alcoholic beverages or cannabis items is not capable of giving lawful consent to a search to determine a violation of this section, and a law enforcement officer shall not request that a person consent to a search for that purpose.

### **Odor not establishing probable cause or reasonable suspicion**

The odor of an alcoholic beverage, marijuana, hashish, cannabis, or cannabis item, or burnt marijuana, hashish, cannabis, or cannabis item, shall not constitute reasonable articulable suspicion to initiate an investigatory stop of a person, nor shall it constitute probable cause to initiate a search of a person or that person's personal property to determine a violation of this subsection. Additionally, the unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of this subsection, observed in plain sight by a law enforcement officer, shall not constitute probable cause to initiate a search of a person or that person's personal property to determine any further violation of that paragraph or any other violation of law.

### **Immunity from arrest or detention**

A person under the legal age to purchase alcoholic beverages or cannabis items who violates paragraph (1) of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item shall not be subject to arrest, shall not be transported to a police station, police headquarters, or other place of law enforcement operations, and shall not otherwise be subject to detention or be taken into custody by a law enforcement officer at or near the location where the violation occurred, except to the extent that detention or custody at or near the location is required to issue a written warning or write-up, collect the information necessary to provide notice of a violation to a parent, guardian or other person having legal custody of the underage person in accordance with [N.J.S.A. 33:1-81a], or make referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required.

## **Mandatory body camera recording**

Consistent with the provisions of NJSA 40A:14-118.5, the video and audio recording functions of a law enforcement officer's body worn camera, as defined in that section, shall be activated whenever the law enforcement officer is responding to a call for service related to a violation or suspected violation of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that paragraph, and shall remain activated until the encounter has fully concluded and the officer leaves the scene of the encounter; provided, however, that the video and audio recording functions of a body worn camera shall not be deactivated based on a request to deactivate the camera by a person who is the subject of a responsive call for service or law enforcement or investigative encounter related to a violation or suspected violation of this subsection.

## **Seizure of contraband**

As part of the process for the issuance of a written warning or write-up to a person for a violation 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. The existence and description of the alcoholic beverage, marijuana, hashish, or cannabis item, and any drug or cannabis paraphernalia shall be included in the sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed a violation, and which record is temporarily maintained in accordance with this section to determine subsequent possession or consumption violations, and track referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation. Any alcoholic beverage, marijuana, hashish, cannabis item, or drug or cannabis paraphernalia obtained by the law enforcement officer shall either be destroyed or secured for use in law enforcement training or educational programs in accordance with applicable law and directives issued by the Attorney General.

## **Identification procedures**

With respect to any violation of this subsection concerning the possession or consumption of an alcoholic beverage, marijuana, hashish, or any cannabis item:

a person under the legal age to purchase alcoholic beverages or cannabis items shall not be photographed or fingerprinted.

## **Confidentiality of records - Destruction**

Any copy of any written warning or write-up issued to a person under the legal age to purchase alcoholic beverages or cannabis items, written notification provided to the person's parent, guardian or other person having legal custody in accordance with section NJSA 33:1-81.1a, sworn statement describing the relevant facts and circumstances that support an officer's determination that a person committed a violation, or referrals for accessing community services provided by a public or private agency or organization pertaining to a third or subsequent violation shall be segregated and maintained in a separate physical location or electronic repository or database from any other records maintained by a law enforcement agency, and reported to the Attorney General in a manner so that they are similarly segregated and maintained in a separate physical location or electronic repository or database from other law enforcement records accessible to the Attorney General and State and local law enforcement agencies, and shall not be transferred to or copied and placed in any other physical location or electronic repository or database containing any other law enforcement records. These records shall only be used to the extent necessary to determine a subsequent violation of this subsection or to track referrals to agencies and organizations, and shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of OPRA, and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

The Attorney General may use the records described herein to generate the number of occurrences and other statistics concerning first, second, third and subsequent violations of paragraph (1) of this subsection, the municipal, county or other geographic areas within which first, second, third and subsequent violations occur, and the law enforcement agencies involved in first, second, third and subsequent violations, which are to be compiled and made available by the Attorney General. The identity of any person named in a record shall not be revealed or included in the information to be compiled and made available in accordance with that section.

The records of violations shall only be maintained temporarily and shall be destroyed or permanently deleted.

Any records pertaining to a person's acceptance of assistance from an agency or organization to which a law enforcement referral was made shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of OPRA, and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

All of the records maintained by a law enforcement agency and reported to the Attorney General as described in this paragraph shall be destroyed or permanently deleted by the law enforcement agency and Attorney General on the second anniversary following the creation of the record concerning a violation, or not later than the last day of the month in which that second anniversary date falls, or alternatively not later than the 21st birthday of a person who is the subject of a record, or not later than the last day of the month in which that birthday falls, whichever date occurs sooner, except that a record shall be maintained upon request by the person named in the record or representative thereof, the law enforcement officer who made the record, or the law enforcement agency currently maintaining the record if it involves a lawsuit, disciplinary complaint, or criminal prosecution arising from the violation described in the record, based on an assertion that the record has evidentiary or exculpatory value. Upon final disposition of the matter for which the extended record retention was requested, the record shall be destroyed or permanently deleted.



## **Criminal liability of law enforcement officers**

A law enforcement officer shall be guilty of the crime of official deprivation of civil rights for violating the provisions of this subsection that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items.

### **NJSA 2C:30-6.1**

#### **Law enforcement action related to possession or consumption of alcoholic beverages or cannabis items by underage persons; conduct constituting official deprivation of civil rights; penalties**

A law enforcement officer, when responding to a call for service or upon the initiation of any other law enforcement or investigative encounter related to a violation or suspected violation NJSA 2C:33-15, concerning the possession or consumption of alcoholic beverages, marijuana, hashish, or any cannabis item by a person under the legal age to purchase alcoholic beverages or cannabis items, shall be guilty of a crime of official deprivation of civil rights if that officer knowingly violates the provisions of NJSA 2C:33-15 that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items by requesting that a person consent to a search who is not capable of giving lawful consent or searching a person after wrongfully obtaining that person's consent, initiating an investigatory stop without reasonable articulable suspicion, initiating a search without probable cause, issuing a warning or write-up without a proper basis that a person committed a violation, or detaining or taking into custody a person in a manner or for a longer period beyond the extent required to issue a warning or write-up, or arresting a person for a possession or consumption violation NJSA 2C:33-15 or if that officer knowingly engages in any other unlawful act, as described in NJSA 2C:30-6, against the person arising out of the call for service or initiation of any other law enforcement or investigative encounter, including but not limited to the unjustified use of force in violation of N.J.S.2C:3-7. A violation set forth in this section shall 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. A violation of this section shall be graded in the same manner as other crimes of official deprivation of civil rights.

## **Industry employment by underage people**

Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R.S.33:1-26, or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post-secondary educational institution; and nothing in this section shall apply to possession of cannabis items by any such person while actually engaged in the performance of employment by a cannabis establishment, distributor, or delivery service as permitted pursuant to the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,"

Except as otherwise provided in this section, the provisions of NJSA 33:1-81.1a shall apply to a parent, guardian or other person with legal custody of a person under 18 years of age who is found to be in violation of this section.

## **Immunity for life-saving calls for help**

An underage person and one or two other persons shall be immune from prosecution under this section if:

- (1) one of the underage persons called 9-1-1 and reported that another underage person was in need of medical assistance due to alcohol consumption , or the consumption of marijuana, hashish, or a cannabis item;
- (2) the underage person who called 9-1-1 and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1 provided each of their names to the 9-1-1 operator;
- (3) the underage person was the first person to make the 9-1-1 report; and
- (4) the underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 9-1-1 call remained on the scene with the person under the legal age in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

The underage person who received medical assistance also shall be immune from prosecution under this section.

### **NJSA 33:1-81a**

#### **[Repealed effective March 27, 2021]**

~~A parent, guardian or other person having legal custody of a person under 18 years of age found in violation of NJSA 33:1-81 or NJSA 2C:33-15 with respect to purchasing, possessing, or consuming any alcoholic beverage or cannabis item available for lawful consumption pursuant to the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," shall be notified of the violation in writing. The parent, guardian or other person having legal custody of a person under 18 years of age shall be subject to a fine in the amount of \$500.00 upon any subsequent violation of NJSA 33:1-81 or NJSA 2C:33-15) on the part of such person if it is shown that the parent, guardian or other person having legal custody failed or neglected to exercise reasonable supervision or control over the conduct of the person under 18 years of age.~~