Garden State CLE

Defending a Marijuana Case in Municipal Court

Lesson Plan

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1. Elements of Offenses

Possession of Marijuana under 50 grams

NJSA 2C:35-10(a)(4)

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c. 226 (C.24:21-1 et seq.). Any person who violates this section with respect to:

(4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.

Elements of this offense

1. The substance introduced evidence is marijuana;
2. The marijuana is a controlled dangerous substance;
3. The defendant possessed or obtained the marijuana;
4. The amount possessed was less than 50 grams;
5. The defendant acted knowingly or purposefully in possessing the marijuana;
6. The defendant possessed the marijuana within 1000 feet of a school or school bus.

Marijuana Defined
NJSA 2C:35-2

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, except those containing resin extracted from such plant; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

Possession Defined

NJSA 2C:2-1(c)

c. Possession is an act, within the meaning of this section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

State v. Scott, 398 NJ Super. 142 (App. Div. 2006)

[See sample Jury Charge]

Under the Influence of CDS (marijuana)

NJSA 2C:35-10(b)

b. Any person who uses or who is under the influence of any controlled dangerous substance, or its analog, for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician is a disorderly person.

In a prosecution under this subsection, it shall not be necessary for the State to prove that the accused did use or was under the influence of any specific drug, but it shall be sufficient for a conviction under this subsection for the State to prove that the accused did use or was under the influence of some controlled dangerous substance, counterfeit controlled dangerous substance, or controlled substance analog, by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled dangerous substance or controlled substance analog.

Under the influence defined

We have described generally the term "under the influence" as "a substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit producing drugs." We also have explained that the term "under the influence" means "a condition which so affects the judgment or control of a motor vehicle operator as to make it improper for him to drive on the highway." In the specific context of narcotic, hallucinogenic or habit-producing drug intoxication, we have held that a driver is "under the influence of a narcotic drug ... if the drug produced a narcotic effect 'so altering his or her normal physical coordination and mental faculties as to render such person a danger to himself as well as to other persons on the highway.'

State v. Bealor, 187 NJ 574, 589-590 (2006)

Note: proof must come from an expert (including a qualified police officer) or the court may decide the case on the proofs.

Failure to make a lawful disposition

NJSA 2C: 35-10(c)

Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense. Nothing in this subsection shall be construed to preclude a prosecution or conviction for any other offense defined in this title or any other statute.

State v. Patton, 133 NJ 389, 401-402 (1993)

"[T]he mandate of subsection c must be reconciled with the privilege against self-incrimination. The subsection is susceptible to a constitutional interpretation consistent with the apparent intention of the Legislature. Because the last sentence of subsection c forecloses transactional immunity, drug dealers cannot avoid criminal liability by turning over their merchandise. However, use and derivative-use immunity is not inconsistent with the Legislature's goal of providing a downgrading option to facilitate swift adjudication. Hence, we construe subsection c to provide use and derivative-use immunity to one complying with its mandate, with the result that neither the controlled dangerous substances turned over to police in compliance with its provisions nor evidence directly or indirectly developed therefrom may be introduced into evidence in the prosecution of any other offense. Consistent with the express

provisions of subsection c, however, and subject to observance of the defendant's use and derivative-use immunity, a person's compliance with subsection c does not preclude prosecution for any *other* offense involving the surrendered controlled dangerous substance-the word *other* undoubtedly referring to offenses other than offenses defined in *N.J.S.A.* 2C:35-10. In effect, we construe subsection c as providing transactional immunity for section 10 offenses to persons complying with its provisions, and use and derivative-use immunity in respect of other offenses.

See State v. Gredder, 319 NJ Super. 420 (App. Div. 1999) (Surrender not voluntary but as a result of police initiated questioning.)

NJSA 39:4-49.1.

Operating motor vehicle with controlled dangerous substance or prescription legend drug in possession or in motor vehicle

No person shall operate a motor vehicle on any highway while knowingly having in his possession or in the motor vehicle any controlled dangerous substance as classified in Schedules I, II, III, IV and V of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C. 24:21-1 et seq.) or any prescription legend drug, unless the person has obtained the substance or drug from, or on a valid written prescription of, a duly licensed physician, veterinarian, dentist or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals or unless the person possesses a controlled dangerous substance pursuant to a lawful order of a practitioner or lawfully possesses a Schedule V substance.

A person who violates this section shall be fined not less than $50.00 and shall forthwith forfeit his right to operate a motor vehicle for a period of two years from the date of his conviction.

State v. Newman 218 NJ Super. 580 (Law Div. 1987) (No double jeopardy)

But see State v. Hand ____ NJ Super. ____ (App. Div. 2010) (Same evidence Test)

2. Police Seizure of Evidence

Plain Smell – State v. Judge, 275 NJ Super. 194, 201 (App. Div. 1994)

[The trooper] was familiar with the characteristic odor of burnt marijuana. Once the trooper smelled burnt marijuana, a reasonable inference could be drawn that it was smoked recently by casual users of marijuana. Similarly, the smell of burnt marijuana gave "rise to an inference that would lead a police officer of ordinary prudence and experience conscientiously to entertain a strong suspicion that additional contraband is present in the ... automobile." Expressed another way, an odor of unburned marijuana creates an inference that marijuana is physically present in the vehicle. An odor of burnt marijuana creates an inference that marijuana is not only physically present in the vehicle, but that some of it has been smoked recently. The suspected marijuana could reasonably have been located in the passenger compartment and/or on the person of the occupants of the vehicle. To be sure, possession and/or use of marijuana in this State, in any amount, is illegal. Therefore, the smell of burnt marijuana alone suggested a breach of law.

Plain View – State v. Damplias, 282 N.J. Super. 471, 477-478 (App. Div. 1995)

Elements

1. Lawfully in viewing area
2. Discovery must be inadvertent; and
3. Officer must have probable cause to associate the item in plain view with a violation of the law.

The State asserts that the exception to the warrant requirement involved here is the "plain view" exception enunciated in *Coolidge v. New Hampshire*, 403 *U.S.* 443, 91 *S.Ct.* 2022, 29 *L.Ed.*2d 564 (1971). There, the Court held that in order for an item seized in "plain view" to be constitutional: (1) the officer must be legally in a position to view the evidence; (2) the discovery of the evidence must be inadvertent; [FN1] and, (3) it must be immediately apparent to the officer that the objects in his view are evidence related to a crime or contraband.. However, in a subsequent case, *Texas v. Brown*, 460 *U.S.* 730, 103 *S.Ct.* 1535, 75 *L.Ed.*2d 502 (1983), the United States Supreme Court modified the "immediately apparent" requirement to mean that "in order to seize evidence in "plain view" a police officer must have 'probable cause to associate the property with criminal activity.'

Exigency and the Continuing Development of Pena-Flores

Introduction: Exigency & Pena-Flores

State v. Cooke, 63 N.J. 657 (2000)

We emphasize that there is a constitutional preference for a warrant, issued by a neutral judicial officer, supported by probable cause. "The cautionary procedure of procuring a warrant ensures that there is a reasonable basis for the search and that the police intrusion will be reasonably confined in scope. The automobile exception applies only in cases in which probable cause and exigent circumstances are evident, making it impracticable for the police to obtain a warrant.

State v. Dunlap, 185 N.J. 543 (2006)

In addition, we reject the State's argument that "it would have been unduly burdensome and unreasonably restrictive to require the police to post a guard and repair to the courthouse for a warrant," There were at least ten officers present on the evening in question and even assuming that some were needed for other duties in connection with defendant's arrest and the on-going investigation, the State did not establish that an insufficient number ***1283* would have been left to guard the car. To say that the late hour made access to a judge difficult or unpracticable, is to ignore the procedures in place for emergent duty judges in every vicinage and the existence, since 1984, of the telephonic warrant procedure. *R.* 3:5-3(b). Indeed, it is not without significance that the investigators here had time to call the prosecutor's office at about 10:00 pm and obtain verbal authorization for the consensual recording of defendant's conversation with Tiaa.

One final note. Nothing in this opinion should be viewed as a retrenchment from the well-established principles governing the automobile exception to the warrant requirement. The standards remain the same: probable cause and exigent circumstances, each of

which to be determined on a case-by-case basis. Here, the unique facts, particularly the presence of ten officers, fully justified the Appellate Division's conclusion that exigency was absent. Different facts, such as a roadside stop effectuated by only one or two officers, would likely have changed the calculus. Police safety and the preservation of evidence remain the preeminent determinants of exigency.

State v. Johnson, 193 N.J. 528 (2008)

When the circumstances are sufficiently exigent that appearing before a judge to obtain a written warrant is either impossible or impracticable, but not so exigent that there is insufficient time to stabilize the situation and call for a warrant, police officers must obtain a telephonic warrant rather than conduct a warrantless search or seizure..

The State has argued that the exigent circumstances needed for a telephonic warrant are no different from the exigent circumstances justifying a bypass of the warrant requirement. We disagree, because if the State were correct the police would never have reason to apply for a telephonic warrant. Simply stated, for purposes of a telephonic warrant, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain a written warrant. For purposes of a warrantless search, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain any form of warrant.

State v. Pena-Flores, 198 N.J. 6 (2009)

Legitimate considerations are as varied as the possible scenarios surrounding an automobile stop. They include, for example, the time of day; the location of the stop; the nature of the neighborhood; the unfolding of the events establishing probable cause; the ratio of officers to suspects; the existence of confederates who know the location of the car and could remove it or its contents; whether the arrest was observed by passersby who could tamper with the car or its contents; whether it would be safe to leave the car unguarded and, if not, whether the delay that would be caused by obtaining a warrant would place the officers or the evidence at risk. As we have previously noted, "[f]or purposes of a warrantless search, exigent circumstances are present when law enforcement officers do not have sufficient time to obtain *any form* of warrant."

State v. Pompa, 414 N.J. Super. 219 (App. Div. 2010)

The State had the burden of demonstrating exigent circumstances and its failure in this regard is revealed by the Trooper's testimony. During cross-examination at the suppression hearing, Trooper Budrewicz admitted defendant's vehicle was incapable of being moved because he was in possession of defendant's keys; common sense strongly suggested it was not likely another person with another set of keys was in the vicinity. In addition, the Trooper admitted he could have had the vehicle towed to a safe location while he applied for a warrant prior to conducting a search beyond the scope of the administrative inspection:

Q: But you could have towed [the truck] to Perryville station, secured it there, and gotten a warrant, or you could have left it there, or called a detective, or called the [prosecutor's] office and said I've got probable cause to search this thing, get me a warrant....

A: I could have done that but I had plain smell.

And, when asked why he decided to search instead of first obtaining a warrant, the officer insisted: "I don't need a warrant **236* with probable cause." Again, *Pena-Flores* requires more than probable cause; exigent circumstances are also required.

State v. Minitee, 415 N.J. Super. 475 (App. Div. 2010)

The Pena-Flores Court thus established three basic requirements to uphold the warrantless search of a motor vehicle: (1) the stop must be unexpected; (2) the police must have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) there must exist exigent circumstances under which it is impracticable to obtain a warrant. As to the exigency requirement, the Court emphasized that it "encompasses far broader considerations than the mere mobility of the vehicle."

Applying these principles here, we hold that the police clearly had sufficient time to seek a warrant before searching the SUV the day after seizing it. After the car was taken into custody, there was no justification to search it without a warrant. Once the vehicle was removed from the scene, impounded, and taken to the Fort Lee police station, the State had sufficient time to obtain either a telephonic warrant or a traditional one. The warrantless search of the vehicle once it was in the custody of the State was clearly unjustified and unconstitutional.

Applying this mandate to these facts, the exigency that existed at the scene dissipated once the SUV was removed and placed in the custody of the Fort Lee Police Department. Thereafter, the police clearly had sufficient time to obtain, at a minimum, a telephonic warrant before searching the vehicle. Stated differently, the exigent circumstances that permitted the police to seize the SUV from the scene do not justify its subsequent warrantless search at the Fort Lee police station.

We harmonize the seemingly inconsistent holdings in *Martin* and *Pena-Flores* by finding that the exigent circumstances that existed at the scene only permitted the police to seize the vehicle and transport it to a secure location. Thereafter, the police were constitutionally required to obtain a warrant before searching the vehicle. This approach distinguishes between, and guards against, unreasonable *searches* and unreasonable *seizures,* the two fundamental protections embodied in Article I, Paragraph 7 of our State Constitution.

All marijuana seizures in municipal court are presumed to be unreasonable and must fit within one of the well-defined exceptions to the warrant requirement

Filing Motions to Suppress Evidence – Rule 7:5-2
Burdens of Proof
Conditional Pleas – Rule 7:6-2(c)

Common Exceptions to the Warrant Requirement under N.J. Law

Abandoned Property - State v. Johnson, 193 NJ 528 (2008)
Administrative Inspection Exception - State v. Hewitt, 400 NJ Super. 476 (App. Div. 2008)
Attenuation Doctrine - State v. Badessa, 185 NJ 303 (2005)
Automobile Exception - State v. Cooke, 163 NJ 657 (2000)
Border Searches - State v. Green, 346 NJ Super. 87 (App. Div. 2001)
Community Caretaking Exception - State v. Goetaski, 209 NJ Super. 362 (App. Div. 1986)
Consent - State v. Carty, 170 NJ 632 (2002)
Consent Once Removed - State v. Penalber, 396 NJ Super. 1 (App. Div. 2006)
Emergency Aid Exception - State v Frankel, 179 NJ 586 (2004)
Field Inquiry - State v. Nishina, 175 NJ 502 (2003)
Frisk - State v. Thomas, 110 NJ 673 (1988)
Hot Pursuit - State v. Bolte, 115 NJ 579 (1989)
Incident to a Lawful Arrest - State v. Dangerfield, 171 NJ 446 (2002)
Inevitable Discovery - State v. Sugar, 100 NJ 214 (1985)
Inventory Searches - State v. Mangold, 82 NJ 575 (1980)
Investigative Detention - State v. Dickey, 152 NJ 468 (1998)
Probable Cause & Exigent Circumstances - State v. LaBoo, 396 NJ Super. 97 (App. Div. 2007)
Road Blocks - State v. Kirk, 202 NJ Super. 28 (1985)
Special Needs Exception - State v. Best, 201 NJ 100 (2010)
Strip Searches - State v. Harris, 384 NJ Super. 29 (App. Div. 2006)

3. Discovery & Pre-trial Procedures

A. Entry of Appearance & Demand for Discovery

Rule 7:7-9

> **The attorney for the defendant in an action before the municipal court shall immediately file an appearance with the municipal court administrator of the court having jurisdiction over the matter and shall serve a copy on the appropriate prosecuting attorney or other involved party, as identified by the municipal court administrator.**

Rule 7:7-7(f)

> **(f) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. Unless otherwise ordered by the judge, the parties may exchange discovery through the use of e-mail, internet or other electronic means.**

2C:35-19. Laboratory certificates

a. The Attorney General of New Jersey may designate State Forensic Laboratories. These laboratories shall be staffed by employees of this State or any of the State's political subdivisions. In a proceeding for a violation of the provisions of chapters 35 and 36 of this title or any other statute concerning controlled dangerous substances or controlled dangerous substance analogs, a law enforcement agency may submit to one of these laboratories any substance, including, but not limited to, any substance believed to be a controlled dangerous substance or controlled substance analog thereof, or any poisons, drugs or medicines or human body tissues or fluids. The laboratory shall analyze these substances.

b. Upon the request of any law enforcement agency, the laboratory employee performing the analysis shall prepare a certificate. This employee shall sign the certificate under oath and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall be sworn to before a notary public or other person empowered by law to take oaths and shall contain a statement establishing the following: the type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or experience to perform the analysis; and the nature and condition of the equipment used. When properly executed, the certificate shall, subject to subsection c. of this section and notwithstanding any other provision of law, be admissible evidence of the composition, quality, and quantity of the substance submitted to the laboratory for analysis, and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that he is that person.

c. Whenever a party intends to proffer in a criminal or quasi-criminal proceeding, a certificate executed pursuant to this section, notice of an intent to proffer that certificate and all reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least 20 days before the proceeding begins. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the grounds for the objection within 10 days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later than two days before the beginning of the trial. A proffered certificate shall be admitted in evidence unless it appears from the notice of objection and specific grounds for that objection that the composition, quality, or quantity of the substance submitted to the laboratory for analysis will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate. The time limitations set forth in this section shall not be relaxed except upon a showing of good cause.

2C:35-19 - Interpreting Case Law

State v. Miller, 170 NJ 417 (2002) (No grounds necessary)

State v. Simbara, 175 NJ 37 (2002)

Crawford v. Washington, 541 US 36 (2004)

Davis v. Washington, 547 US 813 (2006)

State v. Berezansky, 386 NJ Super. 84 (App. Duiv. 2006)

State v. Kent, 391 NJ Super. 352 (App. Div. 2007) (Notice or Waiver)

Melendez-Diaz v. Masschusetts, 129 S. Ct. 2527 (2009)

Chain of custody – In general

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims." *N.J.R.E.* 901. "A party introducing tangible evidence has the burden of laying a proper foundation for its admission This foundation should include a showing of an uninterrupted chain of custody. The determination of whether the State sufficiently established the chain of custody is within the discretion of the trial court. Generally, evidence will be admitted if the court finds "in reasonable probability that the evidence has not been changed in important respects or is in substantially the same condition as when the crime was committed." "[A] defect in the chain of custody goes to the weight, not the admissibility, of the evidence introduced."

4. Plea Bargaining Limitations

Rule 7:6-2(d) – Plea bargaining

Guideline 4 - Limitations

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No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:

A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).

If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor. Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.

5. Diversions & Expungements

NJSA 2C:2-11 - Not *de minimis* – State v. Wells, 336 N.J. Super. 139 (Law Div. 2000)

Conditional Discharge – NJSA 2C:36A-1

1. **No prior drug convictions in New Jersey or any other state or federal jurisdiction;**
2. **No prior conditional discharge or PTI;**
3. **Continued presence in community will not pose a danger to the community;**
4. **Terms of supervisory treatment will protect the public and benefit the defendant thru correcting drug dependency.**

No minimum term – maximum is three years

May be entered with not guilty plea, guilty plea or following a finding of guilty.

License suspension (6 months to 2 years) is mandatory with guilty plea/finding but may be waived as a result of compelling circumstances NJSA 2C:36A-1(b). (See generally State v. Bendix, 396 N.J. Super. 91 (App. Div. 2007).

D/L loss discretionary with plea of not guilty (NJSA 2C:35-16(c).

Sanctions include:

$500 Drug Enforcement & Demand Reduction Penalty NJSA 2C:25-15(b)
$33 Court Costs NJSA 22A:3-4
$50 VCCA Assessment NJSA 2C:43-3.1(d)
$75 Safe Neighborhoods Fund NJSA 2C:43-3.2(a)(2)
$75 Juror Fee NJSA 2C:36A-1(d)
$50 Lab Fee NJSA 2C:35-20
$50 DARE Penalty NJSA 54A-9-25.11

Multiple Offenses – State v. Gray, 215 NJ Super. 286 (App. Div. 1987)

Six-month Delay for Expungement – NJSA 2C:52-6(b)

Possible denial of grounds for future relief – NJSA 2C:52-14 (f)

A petition for expungement filed pursuant to this chapter shall be denied when:

f. The person seeking the relief of expungement of a conviction for a disorderly persons, petty disorderly persons, or criminal offense has prior to or subsequent to said conviction been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.

6. Sentencing Issues

NJSA 2C:35-10(a)(4) is a disorderly persons offense

Fine range $0 to $1000

Costs $33

DEDR $500

Lab Fee $50

VCCA $50

SNF $75

Jail 0 to 180 days

Community service for school zone/bus offenses of 100 hours

D/L Loss of 6 months to 2-years may be waived based upon hardship (See generally State v. Bendix, 396 N.J. Super. 91 (App. Div. 2007)).

Notification of leased residential premises – NJSA 2C:35-16.1

Collateral Consequences

1. Removal from the United States (non-citizens only)

8 USCA 1227(a)(2)(B)(i)

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

2. Forfeiture of public office – NJSA 2C:51-2

a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office , position or employment if:

(1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;

(2) He is convicted of an offense involving or touching such office, position or employment; or

(3) The Constitution so provides.

As used in this subsection, "involving or touching such office, position or employment" means that the offense was related directly to the person's performance in, or circumstances flowing from, the specific public office, position or employment held by the person.

Note – Waiver is available for marijuana cases under NJSA 2C:51-2(c)

3. Removal from leased premises – see NJSA 2C:35-16.1