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What to Tell Your Children About Marijuana Use in NJ
by Tirza Wahrman, Esq.

‘Summertime, and the livin’ is easy.’ So goes the famous tune from “Porgy and Bess.” But parents and teenagers, do not be lulled into a false sense of complacency with marijuana laws around the country seeming to ease up. Outside of New Jersey the laws making marijuana use a crime are being rethought and repealed. Just this past month, the Sunday Review of the New York Times published a front-page editorial titled “Repeal Prohibition, Again,” asserting that the laws punishing marijuana use are outdated and the dangers of marijuana, compared to cigarettes and alcohol, are overstated.

In recent weeks, the state of Washington became the second state to legalize recreational use of marijuana. This follows on the heels of Colorado’s program, where sales became legal on January 1. This past June, the Philadelphia City Council voted to decriminalize the possession of up to one ounce of marijuana. Our state is not likely to be a part of this trend — not in the short term, and not while Chris Christie is governor.

The governor takes the position that marijuana remains potentially addictive, and the state legislature appears to have little appetite to take on this issue. And the governor’s position is close to that of Michele Leonhart, the administrator of the federal Drug Enforcement Administration, who argues that marijuana is potentially addictive, and that it can be a “gateway” drug to other more dangerous drugs. This is consistent with the view of some professionals who treat young people. In the words of Jacqueline Porter Stewart, a licensed clinical social worker who sees patients in her Princeton office: “Adolescents who use marijuana regularly can become addicted and develop respiratory illnesses, cognitive impairment, and learning difficulties.” Professional opinion on marijuana’s effects, especially on young users, remains mixed.

While the debate continues, we who live in New Jersey must recognize that our state laws have

yet to change. I have represented teenagers in our courts; and they are often surprised at the harshness of our legal system. With that in mind, here are the top six things to share with your teenagers:

1. New Jersey's laws penalizing possession are enforced. Possession of 50 grams (approximately 1.5 ounces) of marijuana is a disorderly persons offense. If convicted, the court may impose a \$500 penalty and a \$50 lab fee for each charge. Conviction can result in the suspension of one's driver's license.

2. When you drive or are a passenger in a car, you have a reduced expectation of privacy. The police have significant power to stop a vehicle to protect the public safety. They can make random stops, for example, if they are concerned about a rash of burglaries in town. If a car makes a funny turn, they can stop it to see if the driver is under the influence, for example, drinking alcohol or smoking marijuana, to cite two common reasons for pulling a motorist over.

3. If you are pulled over, the police do not have to "read you your rights." Routine traffic stops do not constitute an unlawful seizure within the meaning of the Constitution. As they do not rise to the level of a custodial interrogation, they do not require that Miranda warnings be given. So, you do not have the right to remain silent when the police pull you over. A brief roadside stop of a motorist does not trigger your right to be told that you have the right to remain silent or that you have a right to consult an attorney.

4. Marijuana has a strong odor. If the police smell it in the vehicle when they stop you, they can claim the right to search your car. In fact, you may not have smoked marijuana that day or even for several days. Its odor is pungent; it lingers, and the police are trained to be alert for it. In many cases in New Jersey, a judge will uphold the actions of a police officer to search a vehicle based on the officer's statement that he or she smelled the odor of marijuana. You may have a basis for challenging the search in court. But the results are mixed, and you cannot count on a judge finding that the search was unlawful.

5. If you are under 18 years old and you are detained, you have the right to call home. Sometimes the police decide they want more information from a person they pull over. What if the police decide to bring you in for questioning? In that case, your parents must be notified. And if they are not, as intimidating as this may be, you should insist that your parents be called, or that you be permitted to call them. If you are not permitted to call them, then anything the police learn can be challenged in court.

6. New Jersey does have a program of "conditional discharge" for first offenders. The program is available for disorderly persons offenses, and you can be eligible for it if you have not been previously convicted in any state of a drug offense or have not been previously granted a conditional discharge or pre-trial intervention. The average supervisory treatment program generally runs for a year and requires random drug testing. Upon successful completion of the program, the criminal case is dismissed; you will be cleared of all charges and will not have a criminal record.

Some day, New Jersey may join other states in legalizing marijuana use. But that day is not here

yet. And so, teens and parents, be careful out there. Take the time to consult with a lawyer if you are charged with possession, and know what your rights are.

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