

§4 - C.2C:35-23.1
§5 - C.2C:52-6.1
§15 - C.34:6B-21
§16 –
C.17:16F-11.1
§17 - C.10:5-50
§§19,20 -
C.2B:1-14 &
2B:1-15
§21 - Note

P.L. 2021, CHAPTER 19, *approved February 22, 2021*
Assembly Committee Substitute (*Third Reprint*) for
Assembly, Nos. 1897 and 4269

1 AN ACT concerning certain criminal and civil justice reforms,
2 particularly ¹【with respect to】 addressing¹ the legal
3 consequences associated with certain marijuana and hashish
4 offenses as well as ¹【broadening】 raising¹ awareness of available
5 expungement relief, and amending and supplementing various
6 parts of the statutory law.

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 ³【1. N.J.S.2C:35-5 is amended to read as follows:

12 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
13 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
14 unlawful for any person knowingly or purposely:

15 (1) To manufacture, distribute or dispense, or to possess or have
16 under his control with intent to manufacture, distribute or dispense,
17 a controlled dangerous substance or controlled substance analog; or

18 (2) To create, distribute, or possess or have under his control
19 with intent to distribute, a counterfeit controlled dangerous
20 substance.

21 b. Any person who violates subsection a. with respect to:

22 (1) Heroin, or its analog, or coca leaves and any salt, compound,
23 derivative, or preparation of coca leaves, and any salt, compound,
24 derivative, or preparation thereof which is chemically equivalent or
25 identical with any of these substances, or analogs, except that the
26 substances shall not include decocainized coca leaves or extractions
27 which do not contain cocaine or ecogine, or 3,4-
28 methylenedioxyamphetamine or 3,4-
29 methylenedioxyamphetamine, in a quantity of five ounces or more
30 including any adulterants or dilutants is guilty of a crime of the first
31 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
32 be sentenced to a term of imprisonment by the court. The term of

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted November 9, 2020.

²Senate SBA committee amendments adopted November 12, 2020.

³Assembly floor amendments adopted December 17, 2020.

1 imprisonment shall include the imposition of a minimum term
2 which shall be fixed at, or between, one-third and one-half of the
3 sentence imposed, during which the defendant shall be ineligible for
4 parole. Notwithstanding the provisions of subsection a. of
5 N.J.S.2C:43-3, a fine of up to **【\$500,000.00】** \$500,000 may be
6 imposed;

7 (2) A substance referred to in paragraph (1) of this subsection,
8 in a quantity of one-half ounce or more but less than five ounces,
9 including any adulterants or dilutants is guilty of a crime of the
10 second degree;

11 (3) A substance referred to paragraph (1) of this subsection in a
12 quantity less than one-half ounce including any adulterants or
13 dilutants is guilty of a crime of the third degree except that,
14 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
15 fine of up to **【\$75,000.00】** \$75,000 may be imposed;

16 (4) A substance classified as a narcotic drug in Schedule I or II
17 other than those specifically covered in this section, or the analog of
18 any such substance, in a quantity of one ounce or more including
19 any adulterants or dilutants is guilty of a crime of the second
20 degree;

21 (5) A substance classified as a narcotic drug in Schedule I or II
22 other than those specifically covered in this section, or the analog of
23 any such substance, in a quantity of less than one ounce including
24 any adulterants or dilutants is guilty of a crime of the third degree
25 except that, notwithstanding the provisions of subsection b. of
26 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
27 imposed;

28 (6) Lysergic acid diethylamide, or its analog, in a quantity of
29 100 milligrams or more including any adulterants or dilutants, or
30 phencyclidine, or its analog, in a quantity of 10 grams or more
31 including any adulterants or dilutants, is guilty of a crime of the
32 first degree. Except as provided in N.J.S.2C:35-12, the court shall
33 impose a term of imprisonment which shall include the imposition
34 of a minimum term, fixed at, or between, one-third and one-half of
35 the sentence imposed by the court, during which the defendant shall
36 be ineligible for parole. Notwithstanding the provisions of
37 subsection a. of N.J.S.2C:43-3, a fine of up to **【\$500,000.00】**
38 \$500,000 may be imposed;

39 (7) Lysergic acid diethylamide, or its analog, in a quantity of
40 less than 100 milligrams including any adulterants or dilutants, or
41 where the amount is undetermined, or phencyclidine, or its analog,
42 in a quantity of less than 10 grams including any adulterants or
43 dilutants, or where the amount is undetermined, is guilty of a crime
44 of the second degree;

45 (8) Methamphetamine, or its analog, or phenyl-2-propanone
46 (P2P), in a quantity of five ounces or more including any
47 adulterants or dilutants is guilty of a crime of the first degree.

1 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
2 fine of up to ~~【\$300,000.00】~~ \$300,000 may be imposed;

3 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
4 (P2P), in a quantity of one-half ounce or more but less than five
5 ounces including any adulterants or dilutants is guilty of a crime of
6 the second degree;

7 (b) Methamphetamine, or its analog, or phenyl-2-propanone
8 (P2P), in a quantity of less than one-half ounce including any
9 adulterants or dilutants is guilty of a crime of the third degree
10 except that notwithstanding the provisions of subsection b. of
11 N.J.S.2C:43-3, a fine of up to ~~【\$75,000.00】~~ \$75,000 may be
12 imposed;

13 (10) (a) Marijuana in a quantity of 25 pounds or more
14 including any adulterants or dilutants, or 50 or more marijuana
15 plants, regardless of weight, or hashish in a quantity of five pounds
16 or more including any adulterants or dilutants, is guilty of a crime
17 of the first degree. Notwithstanding the provisions of subsection a.
18 of N.J.S.2C:43-3, a fine of up to ~~【\$300,000.00】~~ \$300,000 may be
19 imposed;

20 (b) Marijuana in a quantity of five pounds or more but less than
21 25 pounds including any adulterants or dilutants, or 10 or more but
22 fewer than 50 marijuana plants, regardless of weight, or hashish in a
23 quantity of one pound or more but less than five pounds, including
24 any adulterants and dilutants, is guilty of a crime of the second
25 degree;

26 (11) ²~~【Marijuana】~~ (a) Prior to the effective date of P.L. _____,
27 c. (C. _____) (pending before the Legislature as this bill),
28 marijuana² in a quantity of ¹【one 【ounce】 pound or】¹ ²【more
29 ¹than】² one ounce¹ ²or more² but less than five pounds including
30 any adulterants or dilutants, or hashish in a quantity of 【five grams】
31 ¹【one-half pound or】¹ ²【more ¹than】² five grams¹ ²or more² but
32 less than one pound including any adulterants or dilutants, is guilty
33 of a crime of the third degree except that, notwithstanding the
34 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
35 ~~【\$25,000.00】~~ \$25,000 may be imposed;

36 ²(b) On and after the effective date of P.L. _____, c. (C. _____)
37 (pending before the Legislature as this bill), marijuana in a quantity
38 of more than one ounce but less than five pounds including any
39 adulterants or dilutants, or hashish in a quantity of more than five
40 grams but less than one pound including any adulterants or
41 dilutants, is guilty of a crime of the third degree except that,
42 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
43 fine of up to \$25,000 may be imposed;²

44 (12) ¹【(a) Marijuana in a quantity of two ounces or more but
45 less than one pound including any adulterants or dilutants, or
46 hashish in a quantity of five grams or more but less than one-half
47 pound including any adulterants or dilutants, is guilty of a

1 disorderly persons offense for a first offense, and guilty of a crime
2 of the fourth degree for a second or subsequent offense;

3 (b)¹ ²**[Marijuana]** (a) Prior to the effective date of P.L. _____,
4 c. (C. _____) (pending before the Legislature as this bill),
5 marijuana² in a quantity of ¹**[less than]**¹ **[one ounce]** ¹**[two**
6 **ounces]** ²**[one ounce or]**² **less¹ ²than one ounce²** including any
7 adulterants or dilutants, or hashish in a quantity of ¹**[less than]**¹
8 ²**less than²** five grams ²**[¹or less¹]**² including any adulterants or
9 dilutants, is **[guilty of a crime of the fourth degree]** guilty of a
10 crime of the fourth degree;

11 ²(b) On and after the effective date of P.L. _____, c. (C. _____)
12 (pending before the Legislature as this bill), marijuana in a quantity
13 of one ounce or less including any adulterants or dilutants, or
14 hashish in a quantity of five grams or less including any adulterants
15 or dilutants, is² ¹, for a first offense, ²**[guilty of¹ an unlawful act]**²
16 subject to a ²**[civil penalty of \$50]** written warning, which also
17 indicates that any subsequent violation is a crime punishable by a
18 term imprisonment, a fine, or both² ¹], and for a second or
19 subsequent offense, is guilty of a crime of the fourth degree;

20 (a) ²(i)² The odor of marijuana or hashish, or burnt marijuana or
21 hashish, shall not constitute reasonable articulable suspicion to
22 initiate a search of a person to determine a violation of
23 ²subparagraph (b) of² paragraph (12) of this subsection. A person
24 who violates this ²**[paragraph]** subparagraph² shall not be subject
25 to arrest, detention, or otherwise be taken into custody, unless the
26 person is being arrested, detained, or otherwise taken into custody
27 for also committing another violation of law for which that action is
28 legally permitted or required;

29 (b) ²(i)¹ The civil penalty provided for in ¹**[this subparagraph]**
30 paragraph (12) of this subsection¹ shall be collected pursuant to the
31 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
32 et seq.), in a summary proceeding before the municipal court having
33 jurisdiction. A penalty recovered under the provisions of this
34 paragraph shall be recovered by and in the name of the State by the
35 local municipality. The penalty shall be paid into the treasury of
36 the municipality in which the violation occurred for the general use
37 of the municipality;

38 ¹(ii)² A person shall not be deprived of any legal or civil right,
39 privilege, benefit, or opportunity provided pursuant to any law
40 solely by reason of committing a violation of ²subparagraph (b) of²
41 paragraph (12) of this subsection, nor shall committing one or more
42 violations modify any legal or civil right, privilege, benefit, or
43 opportunity provided pursuant to any law, including, but not limited
44 to, the granting, renewal, forfeiture, or denial of a license, permit,
45 or certification, qualification for and the receipt, alteration,
46 continuation, or denial of any form of financial assistance, housing
47 assistance, or other social services, rights of or custody by a

1 biological parent, or adoptive or foster parent, or other legal
2 guardian of a child or newborn infant, or pregnant woman, in any
3 action or proceeding by the Division of Child Protection and
4 Permanency in the Department of Children and Families, or
5 qualification, approval, or disapproval to serve as a foster parent or
6 other legal guardian;

7 (c) All local and county law enforcement authorities shall,
8 following the submission process used for the uniform crime
9 reporting system established by P.L.1966, c.37 (C.52:17B-
10 5.1 et seq.), submit a quarterly report to the Uniform Crime
11 Reporting Unit, within the Division of State Police in the
12 Department of Law and Public Safety, or to another designated
13 recipient determined by the Attorney General, containing the
14 number of violations of ²suparagraph (b) of² paragraph (12) of this
15 subsection committed within their respective jurisdictions, plus the
16 race, ethnicity, gender, and age of each person committing a
17 violation, and the disposition of each person's violation. These
18 violations and associated information, along with a quarterly
19 summary of violations investigated, and associated information
20 collected, by the Division of State Police for the same period shall
21 be summarized by county and municipality in an annual report, and
22 both quarterly summaries and annual reports shall be made
23 available at no cost to the public on the Division of State Police's
24 Internet website;¹

25 (13) Any other controlled dangerous substance classified in
26 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
27 third degree, except that, notwithstanding the provisions of
28 subsection b. of N.J.S.2C:43-3, a fine of up to **【\$25,000.00】**
29 \$25,000 may be imposed; or

30 (14) Any Schedule V substance, or its analog, is guilty of a
31 crime of the fourth degree except that, notwithstanding the
32 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
33 **【\$25,000.00】** \$25,000 may be imposed.

34 c. Where the degree of the offense for violation of this section
35 depends on the quantity of the substance, the quantity involved
36 shall be determined by the trier of fact. Where the indictment or
37 accusation so provides, the quantity involved in individual acts of
38 manufacturing, distribution, dispensing or possessing with intent to
39 distribute may be aggregated in determining the grade of the
40 offense, whether distribution or dispensing is to the same person or
41 several persons, provided that each individual act of manufacturing,
42 distribution, dispensing or possession with intent to distribute was
43 committed within the applicable statute of limitations.

44 (cf: P.L.2000, c.136, s.1)**】**³

1 ³[2. N.J.S.2C:35-10 is amended to read as follows:
2 2C:35-10. Possession, Use or Being Under the Influence, or
3 Failure to Make Lawful Disposition.
4 a. It is unlawful for any person, knowingly or purposely, to
5 obtain, or to possess, actually or constructively, a controlled
6 dangerous substance or controlled substance analog, unless the
7 substance was obtained directly, or pursuant to a valid prescription
8 or order form from a practitioner, while acting in the course of his
9 professional practice, or except as otherwise authorized by
10 P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this
11 section with respect to:
12 (1) A controlled dangerous substance, or its analog, classified in
13 Schedule I, II, III or IV other than those specifically covered in this
14 section, is guilty of a crime of the third degree except that,
15 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
16 fine of up to ~~[\$35,000.00]~~ \$35,000 may be imposed;
17 (2) Any controlled dangerous substance, or its analog, classified
18 in Schedule V, is guilty of a crime of the fourth degree except that,
19 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
20 fine of up to ~~[\$15,000.00]~~ \$15,000 may be imposed; ¹or¹
21 (3) ²[**Possession**] (a) Prior to the effective date of P.L. _____,
22 c. (C. _____) (pending before the Legislature as this bill), possession²
23 of more than [50 grams] ¹[two ounces] ²[six ounces¹] 50 grams²
24 of marijuana, including any adulterants or dilutants, or more than
25 ¹[five grams] ²[170 grams¹] five grams² of hashish is guilty of a
26 crime of the fourth degree, except that, notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
28 \$25,000.00 may be imposed; ¹[or]
29 ²[**(a)**] (b) On and after to the effective date of P.L. _____,
30 c. (C. _____) (pending before the Legislature as this bill),
31 possession of more than six ounces of marijuana, including any
32 adulterants or dilutants, or more than 170 grams of hashish is guilty
33 of a crime of the fourth degree, except that, notwithstanding the
34 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
35 \$25,000.00 may be imposed;
36 (i)² The odor of marijuana or hashish, or burnt marijuana or
37 hashish, shall not constitute reasonable articulable suspicion to
38 initiate a search of a person to determine a violation of
39 ²subparagraph (b) of² paragraph (3) of this subsection. A person
40 who violates this paragraph shall not be subject to arrest, detention,
41 or otherwise be taken into custody, unless the person is being
42 arrested, detained, or otherwise taken into custody for also
43 committing another violation of law for which that action is legally
44 permitted or required;
45 ²[**(b)**] (ii)² A person shall not be deprived of any legal or civil
46 right, privilege, benefit, or opportunity provided pursuant to any
47 law solely by reason of committing a violation of ²subparagraph (b)

1 of² paragraph (3), nor shall committing one or more violations
2 modify any legal or civil right, privilege, benefit, or opportunity
3 provided pursuant to any law, including, but not limited to, the
4 granting, renewal, forfeiture, or denial of a license, permit, or
5 certification, qualification for and the receipt, alteration,
6 continuation, or denial of any form of financial assistance, housing
7 assistance, or other social services, rights of or custody by a
8 biological parent, or adoptive or foster parent, or other legal
9 guardian of a child or newborn infant, or pregnant woman, in any
10 action or proceeding by the Division of Child Protection and
11 Permanency in the Department of Children and Families, or
12 qualification, approval, or disapproval to serve as a foster parent or
13 other legal guardian;

14 ²**[(c)] (iii)**² All local and county law enforcement authorities
15 shall, following the submission process used for the uniform crime
16 reporting system established by P.L.1966, c.37 (C.52:17B-
17 5.1 et seq.), submit a quarterly report to the Uniform Crime
18 Reporting Unit, within the Division of State Police in the
19 Department of Law and Public Safety, or to another designated
20 recipient determined by the Attorney General, containing the
21 number of violations of ²subparagraph (b) of² paragraph (3) of this
22 subsection committed within their respective jurisdictions, plus the
23 race, ethnicity, gender, and age of each person committing a
24 violation, and the disposition of each person's violation. These
25 violations and associated information, along with a quarterly
26 summary of violations investigated, and associated information
27 collected, by the Division of State Police for the same period shall
28 be summarized by county and municipality in an annual report, and
29 both quarterly summaries and annual reports shall be made
30 available at no cost to the public on the Division of State Police's
31 Internet website;^{1 2}or²

32 (4) ¹**[(Possession of [50 grams] two ounces** or less of marijuana,
33 including any adulterants or dilutants, or five grams or less of
34 hashish is an unlawful act subject to a [disorderly person] civil
35 penalty of \$50, but this amount of marijuana or hashish is presumed
36 to be the lawful possession of medical cannabis or a medical
37 cannabis product in accordance with the "Jake Honig
38 Compassionate Use Medical Cannabis Act," P.L.2009, c.307
39 (C.24:6I-1 et al.) or P.L.2015, c.158 (C.18A:40-12.22 et al.), and
40 the State shall establish by a preponderance of evidence that the
41 substance possessed was not medical cannabis or a medical
42 cannabis product in order to impose the \$50 civil penalty for
43 possession of marijuana or hashish pursuant to this paragraph. The
44 civil penalty provided for in this paragraph shall be collected
45 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
46 c.274 (C.2A:58-10 et seq.), in a summary proceeding before the
47 municipal court having jurisdiction. A penalty recovered under the
48 provisions of this paragraph shall be recovered by and in the name

1 of the State by the local municipality. The penalty shall be paid
2 into the treasury of the municipality in which the violation occurred
3 for the general use of the municipality.] ²[(Deleted by amendment,
4 P.L. , c.) (pending before the Legislature as this bill)¹]

5 (a) Prior to the effective date of P.L. , c. (C.) (pending
6 before the Legislature as this bill), possession of 50 grams or less of
7 marijuana, including any adulterants or dilutants, or five grams or
8 less of hashish is a disorderly person;

9 (b) On and after the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill), possession of six
11 ounces or less of marijuana, including any adulterants or dilutants,
12 or 170 grams or less of hashish is not punishable as a crime,
13 offense, or civil violation of law;

14 (5) Possession of one ounce or less of psilocybin is a disorderly
15 person;²

16 Any person who commits any offense [defined in] set forth in
17 paragraphs (1) through (3) of this [section] subsection while on any
18 property used for school purposes which is owned by or leased to
19 any elementary or secondary school or school board, or within
20 1,000 feet of any such school property or a school bus, or while on
21 any school bus, and who is not sentenced to a term of
22 imprisonment, shall, in addition to any other sentence which the
23 court may impose, be required to perform not less than 100 hours of
24 community service.

25 b. ¹(1)¹ Any person who uses or who is under the influence of
26 any controlled dangerous substance, or its analog, ¹not including
27 marijuana or hashish,¹ for a purpose other than the treatment of
28 sickness or injury as lawfully prescribed or administered by a
29 physician is a disorderly person.

30 In a prosecution under this subsection, it shall not be necessary
31 for the State to prove that the accused did use or was under the
32 influence of any specific ¹, prohibited¹ drug, but it shall be
33 sufficient for a conviction under this subsection for the State to
34 prove that the accused did use or was under the influence of some
35 prohibited controlled dangerous substance, counterfeit controlled
36 dangerous substance, or controlled substance analog, by proving
37 that the accused did manifest physical and physiological symptoms
38 or reactions caused by the use of any ¹prohibited¹ controlled
39 dangerous substance or controlled substance analog.

40 ¹(2)Notwithstanding that using or being under the influence of
41 marijuana or hashish is not a punishable offense pursuant to this
42 subsection, the smoking, vaping, or aerosolizing of marijuana or
43 hashish may be prohibited or otherwise regulated on or in any
44 property by the person or entity that owns or controls that property,
45 including multifamily housing that is a multiple dwelling as defined
46 in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a
47 condominium, as those terms are defined by section 3 of P.L.1969,

1 c.257 (C.46:8B-3), or a site in a mobile home park as defined in
2 section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to
3 the owner of a manufactured home, as defined in that section, that is
4 installed thereon.¹

5 c. Any person who knowingly obtains or possesses a controlled
6 dangerous substance or controlled substance analog in violation of
7 ¹paragraph (1) or (2) of¹ subsection a. of this section and who fails
8 to voluntarily deliver the substance to the nearest law enforcement
9 officer is guilty of a disorderly persons offense. Nothing in this
10 subsection shall be construed to preclude a prosecution or
11 conviction for any other offense defined in this title or any other
12 statute.

13 (cf: P.L.1997, c.181, s.6)]³

14
15 ³[¹3. N.J.S.2C:36-2 is amended to read as follows:

16 2C:36-2. a. Use or possession with intent to use, disorderly
17 persons offense. It shall be unlawful for any person to use, or to
18 possess with intent to use, drug paraphernalia to plant, propagate,
19 cultivate, grow, harvest, manufacture, compound, convert, produce,
20 process, prepare, test, analyze, pack, repack, store, contain, conceal,
21 ingest, inhale, or otherwise introduce into the human body a
22 controlled dangerous substance, controlled substance analog or
23 toxic chemical in violation of the provisions of chapter 35 of this
24 title, other than when used, or possessed with intent to use, for
25 ingesting, inhaling, or otherwise introducing marijuana or hashish
26 into the human body. Any person who violates this section is guilty
27 of a disorderly persons offense.

28 b. Notwithstanding that using or possessing with intent to use
29 drug paraphernalia to ingest, inhale, or otherwise introduce
30 marijuana or hashish into the human body is not a punishable
31 offense pursuant to this section, the use of drug paraphernalia for
32 that purpose may be prohibited or otherwise regulated on or in any
33 property by the person or entity that owns or controls that property,
34 including multifamily housing that is a multiple dwelling as defined
35 in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a
36 condominium, as those terms are defined by section 3 of P.L.1969,
37 c.257 (C.46:8B-3), or a site in a mobile home park as defined in
38 section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to
39 the owner of a manufactured home, as defined in that section, that is
40 installed thereon.¹

41 (cf: P.L.2007, c.31, s.3)]³

42
43 ¹[^{3.}]³[^{4.}¹ (New section) a. Except to the extent required to
44 dismiss, withdraw, or terminate the charge, no court shall have
45 jurisdiction over any charge, including any charge of delinquency,
46 based on ¹[the distribution of] offenses that occurred prior to the
47 effective date of P.L. , c. (C.) (pending before the Legislature
48 as this bill), involving manufacturing, distributing, or dispensing, or

1 possessing or having under control with intent to manufacture,
 2 distribute, or dispense,¹ marijuana or hashish in violation of
 3 paragraph ²[(11) of subsection b. of N.J.S.2C:35-5, or a lesser
 4 amount of marijuana or hashish in violation of paragraph ¹]² (12) of
 5 subsection b. of ¹[N.J.S.2C:35-5, or the possession] ²[that section]
 6 N.J.S.2C:35-5² , or ²[a violation of either of those paragraphs and a
 7 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
 8 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
 9 distributing, dispensing, or possessing with intent to distribute or
 10 dispense, on or within 1,000 feet of any school property, or on or
 11 within 500 feet of the real property comprising a public housing
 12 facility, public park, or public building, or]² obtaining, possessing,
 13 using, being under the influence of, or failing to make lawful
 14 disposition¹ of marijuana or hashish in violation of paragraph ¹(3)
 15 or¹ (4) of subsection a. ¹, or subsection b., or subsection c.¹ of
 16 N.J.S.2C:35-10, ¹[that occurred prior to the effective date of
 17 P.L. , c. (C.) (pending before the Legislature as this bill)]
 18 or a violation involving marijuana or hashish as described herein
 19 and a violation of N.J.S.2C:36-2 for using or possessing with intent
 20 to use drug paraphernalia with that marijuana or hashish, alone or in
 21 combination with each other¹ , ²or possession of any controlled
 22 dangerous substance while operating a motor vehicle in violation of
 23 section 1 of P.L.1964, c.289 (C.39:4-49.1), or any disorderly
 24 persons offense or petty disorderly persons offense subject to
 25 conditional discharge pursuant to N.J.S.2C:36A-1,² unless a ¹guilty
 26 verdict, plea, or other entry of guilt, or¹ final judgment of
 27 conviction or adjudication of delinquency has been entered on or
 28 before that effective date. These non-prosecutable charges and
 29 cases shall be expeditiously dismissed, which may be accomplished
 30 by appropriate action by a law enforcement agency, or on a motion
 31 to the court which would otherwise have jurisdiction over a case, or
 32 the court's own motion, based upon guidelines ¹[or] ,
 33 administrative¹ directives ¹, and court orders¹ issued by the
 34 Attorney General, the Administrative Director of the Courts, and
 35 the Supreme Court ¹, as appropriate¹.

36 b. ¹[A charge, including any charge of delinquency,
 37 conviction, or adjudication of delinquency, based on a violation of
 38 any of the following laws that occurred prior to, on, or after the
 39 effective date of P.L. , c. (C.) (pending before the
 40 Legislature as this bill), shall not be considered whenever the
 41 Pretrial Services Program established by the Administrative Office
 42 of the Courts pursuant to section 11 of P.L.2014, c.31 (C.2A:162-
 43 25) conducts a risk assessment on an eligible defendant for the
 44 purpose of making recommendations to the court concerning an
 45 appropriate pretrial release decision in accordance with sections 1
 46 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.): a violation of
 47 paragraph (11) of subsection b. of N.J.S.2C:35-5; or a lesser amount

1 of marijuana or hashish in violation of paragraph (12) of subsection
 2 b. of that section; or a violation of either of those paragraphs and a
 3 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
 4 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
 5 distributing, or possessing or having under control with intent to
 6 distribute, on or within 1,000 feet of any school property, or on or
 7 within 500 feet of the real property comprising a public housing
 8 facility, public park, or public building; or for obtaining,
 9 possessing, using, being under the influence of, or failing to make
 10 lawful disposition of marijuana or hashish in violation of paragraph
 11 (3) or (4) of subsection a., or subsection b., or subsection c. of
 12 N.J.S.2C:35-10; or for a violation of any of those provisions and a
 13 violation of N.J.S.2C:36-2 for using or possessing with intent to use
 14 drug paraphernalia with the marijuana or hashish.

15 c.]¹ (1) Regarding a ¹【conviction or adjudication of
 16 delinquency】 guilty verdict, plea, or other entry of guilt¹ entered
 17 prior to the effective date of P.L. , c. (C.) (pending before
 18 the Legislature as this bill), it shall be grounds for ¹【post-
 19 conviction】¹ relief that the ¹【conviction or adjudication of
 20 delinquency】 guilty verdict, plea, or other entry of guilt¹ involved
 21 ¹【unlawful distribution of, or possessing or having under control
 22 with intent to distribute, marijuana or hashish in violation of
 23 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount
 24 of marijuana or hashish in violation of paragraph (12) of subsection
 25 b. of that section, or a violation of either of those paragraphs and a
 26 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
 27 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1),
 28 for distributing, or possessing or having under control with intent to
 29 distribute, on or within 1,000 feet of any school property, or on or
 30 within 500 feet of the real property comprising a public housing
 31 facility, public park, or public building, or obtaining, possessing,
 32 using, being under the influence of, or failing to make lawful
 33 disposition of marijuana or hashish in violation of paragraph (3) or
 34 (4) of subsection a., or subsection b., or subsection c. of
 35 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
 36 described herein and using or possessing with intent to use drug
 37 paraphernalia with that marijuana or hashish in violation of
 38 N.J.S.2C:36-2, alone or in combination with each other】 one or
 39 more crimes or offenses, or delinquent acts which if committed by
 40 an adult would constitute one or more crimes or offenses,
 41 enumerated in subsection a. of this section¹, if a final judgment of
 42 conviction or adjudication of delinquency had not been entered on
 43 or before that effective date.

44 (2) Notwithstanding any court rule limiting the time period
 45 within which a motion to reduce or change a sentence may be filed,
 46 any person who, on the effective date of P.L. , c. (C.)
 47 (pending before the Legislature as this bill), is ¹or will be¹ serving a
 48 sentence of incarceration, probation, parole or other form of

1 community supervision solely as a result of the person's conviction
 2 or adjudication of delinquency for one or more crimes or offenses ¹,
 3 or delinquent acts which if committed by an adult would constitute
 4 one or more crimes or offenses,¹ enumerated in ¹【paragraph (1)】
 5 subsection a.¹ of this ¹【subsection】 section¹ may move to have the
 6 person's sentence reviewed by the court. If the court finds that the
 7 sentence under review is based solely upon a conviction or
 8 adjudication of delinquency for one or more crimes or offenses ¹, or
 9 delinquent acts which if committed by an adult would constitute one
 10 or more crimes or offenses,¹ enumerated in ¹【paragraph (1)】
 11 subsection a.¹ of this ¹【subsection】 section¹, the court shall order
 12 appropriate relief.

13 (3) No fee shall be charged to a person seeking post-conviction
 14 relief pursuant to this subsection.】³

15
 16 ¹【4.】 ³【5.】¹ (New section) Other than the consequences of any
 17 sentence set forth in a judgment of conviction, including a term of
 18 imprisonment and any court-ordered financial assessment, unless
 19 otherwise provided by law, any arrest, charge, conviction, and
 20 adjudication of delinquency that occurred prior to the effective date
 21 of P.L. , c. (C.) (pending before the Legislature as this bill),
 22 and any proceedings related thereto, for ¹【unlawful distribution of】
 23 manufacturing, distributing, or dispensing¹ , or possessing or
 24 having under control with intent to ¹manufacture,¹ distribute, ¹or
 25 dispense,¹ marijuana or hashish in violation of paragraph (11) of
 26 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
 27 hashish in violation of paragraph (12) of subsection b. of that
 28 section, or a violation of either of those paragraphs and a violation
 29 of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
 30 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for
 31 distributing, ¹dispensing,¹ or possessing or having under control
 32 with intent to distribute ¹or dispense¹, on or within 1,000 feet of
 33 any school property, or on or within 500 feet of the real property
 34 comprising a public housing facility, public park, or public
 35 building, or obtaining, possessing, using, being under the influence
 36 of, or failing to make lawful disposition of marijuana or hashish in
 37 violation of paragraph (3) or (4) of subsection a., or subsection b.,
 38 or subsection c. of N.J.S.2C:35-10, or a violation involving
 39 marijuana or hashish as described herein and ¹a violation of
 40 N.J.S.2C:36-2 for¹ using or possessing with intent to use drug
 41 paraphernalia with that marijuana or hashish ¹【in violation of
 42 N.J.S.2C:36-2】 , alone or in combination with each other,¹ shall be
 43 deemed not to have occurred, and the person involved in that
 44 violation may answer any questions relating to their occurrence
 45 accordingly, except that such information shall be revealed by that
 46 person if seeking employment within the judicial branch or with a

1 law enforcement or corrections agency and such information shall
2 continue to provide a disability as otherwise provided by law.】³

3
4 ¹【5. (New section) The Administrative Director of the Courts
5 shall maintain and provide information to any person upon request
6 about the expungement process and legal services programs
7 Statewide and in each county which may be available to assist the
8 person with an expedited expungement pursuant to section 5 of
9 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
10 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3).】¹

11
12 ¹【6. (New section) a. (1) The Administrative Director of the
13 Courts shall develop and maintain a multilingual public awareness
14 campaign to promote awareness of the expungement process,
15 including an expedited expungement pursuant to section 5 of
16 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
17 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), and the
18 expungement e-filing system established pursuant to section 11 of
19 P.L.2019, c.269 (C.2C:52-10.1), as well as information on State,
20 local, non-profit and other private job training programs in
21 consultation with the Department of Labor and Workforce
22 Development, with a focus on assisting those persons eligible for
23 the expedited expungement or “clean slate” expungement of their
24 records pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1) or a
25 “clean slate” expungement pursuant to section 7 of P.L.2019, c.269
26 (C.2C:52-5.3), respectively.

27 (2) The public awareness campaign shall, at a minimum, utilize
28 electronic and print media, and shall make available electronically
29 on an Internet website a petition form and a list of the supporting
30 information necessary for an expungement, including an expedited
31 or “clean slate” expungement pursuant to section 5 of
32 P.L.2019, c.269 (C.2C:52-5.1) or section 7 of P.L.2019, c.269
33 (C.2C:52-5.3), respectively, using the expungement e-filing system
34 once established pursuant to section 11 of P.L.2019, c.269 (C.2C:52-
35 10.1).

36 (3) The petition and supporting information shall, at a minimum,
37 be made available in English and Spanish.

38 b. The Administrative Director of the Courts shall include in the
39 annual report on the activities of the Administrative Office of the
40 Courts, prepared pursuant to N.J.S.2A:12-5, information about the
41 activities and accomplishments of the public awareness campaign
42 developed and maintained pursuant to subsection a. of this section,
43 beginning no later than one year after the effective date of
44 P.L. , c. (C.) (pending before the Legislature as this
45 bill).】¹

46
47 ³1. N.J.S.2C:35-5 is amended to read as follows:

1 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
2 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
3 unlawful for any person knowingly or purposely:

4 (1) To manufacture, distribute or dispense, or to possess or have
5 under his control with intent to manufacture, distribute or dispense,
6 a controlled dangerous substance or controlled substance analog; or

7 (2) To create, distribute, or possess or have under his control
8 with intent to distribute, a counterfeit controlled dangerous
9 substance.

10 b. Any person who violates subsection a. with respect to:

11 (1) Heroin, or its analog, or coca leaves and any salt, compound,
12 derivative, or preparation of coca leaves, and any salt, compound,
13 derivative, or preparation thereof which is chemically equivalent or
14 identical with any of these substances, or analogs, except that the
15 substances shall not include decocainized coca leaves or extractions
16 which do not contain cocaine or ecogine, or 3,4-
17 methylenedioxyamphetamine or 3,4-
18 methylenedioxyamphetamine, in a quantity of five ounces or more
19 including any adulterants or dilutants is guilty of a crime of the first
20 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
21 be sentenced to a term of imprisonment by the court. The term of
22 imprisonment shall include the imposition of a minimum term
23 which shall be fixed at, or between, one-third and one-half of the
24 sentence imposed, during which the defendant shall be ineligible for
25 parole. Notwithstanding the provisions of subsection a. of
26 N.J.S.2C:43-3, a fine of up to **【\$500,000.00】** \$500,000 may be
27 imposed;

28 (2) A substance referred to in paragraph (1) of this subsection,
29 in a quantity of one-half ounce or more but less than five ounces,
30 including any adulterants or dilutants is guilty of a crime of the
31 second degree;

32 (3) A substance referred to paragraph (1) of this subsection in a
33 quantity less than one-half ounce including any adulterants or
34 dilutants is guilty of a crime of the third degree except that,
35 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
36 fine of up to **【\$75,000.00】** \$75,000 may be imposed;

37 (4) A substance classified as a narcotic drug in Schedule I or II
38 other than those specifically covered in this section, or the analog of
39 any such substance, in a quantity of one ounce or more including
40 any adulterants or dilutants is guilty of a crime of the second
41 degree;

42 (5) A substance classified as a narcotic drug in Schedule I or II
43 other than those specifically covered in this section, or the analog of
44 any such substance, in a quantity of less than one ounce including
45 any adulterants or dilutants is guilty of a crime of the third degree
46 except that, notwithstanding the provisions of subsection b. of
47 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
48 imposed;

1 (6) Lysergic acid diethylamide, or its analog, in a quantity of
2 100 milligrams or more including any adulterants or dilutants, or
3 phencyclidine, or its analog, in a quantity of 10 grams or more
4 including any adulterants or dilutants, is guilty of a crime of the
5 first degree. Except as provided in N.J.S.2C:35-12, the court shall
6 impose a term of imprisonment which shall include the imposition
7 of a minimum term, fixed at, or between, one-third and one-half of
8 the sentence imposed by the court, during which the defendant shall
9 be ineligible for parole. Notwithstanding the provisions of
10 subsection a. of N.J.S.2C:43-3, a fine of up to **【\$500,000.00】**
11 \$500,000 may be imposed;

12 (7) Lysergic acid diethylamide, or its analog, in a quantity of
13 less than 100 milligrams including any adulterants or dilutants, or
14 where the amount is undetermined, or phencyclidine, or its analog,
15 in a quantity of less than 10 grams including any adulterants or
16 dilutants, or where the amount is undetermined, is guilty of a crime
17 of the second degree;

18 (8) Methamphetamine, or its analog, or phenyl-2-propanone
19 (P2P), in a quantity of five ounces or more including any
20 adulterants or dilutants is guilty of a crime of the first degree.
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
22 fine of up to **【\$300,000.00】** \$300,000 may be imposed;

23 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
24 (P2P), in a quantity of one-half ounce or more but less than five
25 ounces including any adulterants or dilutants is guilty of a crime of
26 the second degree;

27 (b) Methamphetamine, or its analog, or phenyl-2-propanone
28 (P2P), in a quantity of less than one-half ounce including any
29 adulterants or dilutants is guilty of a crime of the third degree
30 except that notwithstanding the provisions of subsection b. of
31 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
32 imposed;

33 (10) (a) Marijuana in a quantity of 25 pounds or more
34 including any adulterants or dilutants, or 50 or more marijuana
35 plants, regardless of weight, or hashish in a quantity of five pounds
36 or more including any adulterants or dilutants, is guilty of a crime
37 of the first degree. Notwithstanding the provisions of subsection a.
38 of N.J.S.2C:43-3, a fine of up to **【\$300,000.00】** \$300,000 may be
39 imposed;

40 (b) Marijuana in a quantity of five pounds or more but less than
41 25 pounds including any adulterants or dilutants, or 10 or more but
42 fewer than 50 marijuana plants, regardless of weight, or hashish in a
43 quantity of one pound or more but less than five pounds, including
44 any adulterants and dilutants, is guilty of a crime of the second
45 degree;

46 (11) **【Marijuana】** (a) Prior to the effective date of P.L. _____,
47 c. (C. _____) (pending before the Legislature as this bill), marijuana
48 in a quantity of one ounce or more but less than five pounds

1 including any adulterants or dilutants, or hashish in a quantity of
2 five grams or more but less than one pound including any
3 adulterants or dilutants, is guilty of a crime of the third degree
4 except that, notwithstanding the provisions of subsection b. of
5 N.J.S.2C:43-3, a fine of up to **[\$25,000.00]** \$25,000 may be
6 imposed;

7 (b) On and after the effective date of P.L. , c. (C.)
8 (pending before the Legislature as this bill), marijuana in a quantity
9 of more than one ounce but less than five pounds including any
10 adulterants or dilutants, or hashish in a quantity of more than five
11 grams but less than one pound including any adulterants or
12 dilutants, is guilty of a crime of the third degree except that,
13 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
14 fine of up to \$25,000 may be imposed;

15 (12) **【Marijuana】** (a) Prior to the effective date of P.L. ,
16 c. (C.) (pending before the Legislature as this bill), marijuana
17 in a quantity of less than one ounce including any adulterants or
18 dilutants, or hashish in a quantity of less than five grams including
19 any adulterants or dilutants, is guilty of a crime of the fourth
20 degree;

21 (b) On and after the effective date of P.L. , c. (C.)
22 (pending before the Legislature as this bill), marijuana in a quantity
23 of one ounce or less including any adulterants or dilutants, or
24 hashish in a quantity of five grams or less including any adulterants
25 or dilutants, is, for a first offense, subject to a written warning,
26 which also indicates that any subsequent violation is a crime
27 punishable by a term of imprisonment, a fine, or both, and for a
28 second or subsequent offense, is guilty of a crime of the fourth
29 degree;

30 (i) The odor of marijuana or hashish, or burnt marijuana or
31 hashish, shall not constitute reasonable articulable suspicion to
32 initiate a search of a person to determine a violation of
33 subparagraph (b) of paragraph (12) of this subsection. A person
34 who violates this subparagraph shall not be subject to arrest,
35 detention, or otherwise be taken into custody, unless the person is
36 being arrested, detained, or otherwise taken into custody for also
37 committing another violation of law for which that action is legally
38 permitted or required;

39 (ii) A person shall not be deprived of any legal or civil right,
40 privilege, benefit, or opportunity provided pursuant to any law
41 solely by reason of committing a violation of subparagraph (b) of
42 paragraph (12) of this subsection, nor shall committing one or more
43 violations modify any legal or civil right, privilege, benefit, or
44 opportunity provided pursuant to any law, including, but not limited
45 to, the granting, renewal, forfeiture, or denial of a license, permit,
46 or certification, qualification for and the receipt, alteration,
47 continuation, or denial of any form of financial assistance, housing
48 assistance, or other social services, rights of or custody by a

1 biological parent, or adoptive or foster parent, or other legal
2 guardian of a child or newborn infant, or pregnant woman, in any
3 action or proceeding by the Division of Child Protection and
4 Permanency in the Department of Children and Families, or
5 qualification, approval, or disapproval to serve as a foster parent or
6 other legal guardian;

7 (iii) All local and county law enforcement authorities shall,
8 following the submission process used for the uniform crime
9 reporting system established by P.L.1966, c.37 (C.52:17B-
10 5.1 et seq.), submit a quarterly report to the Uniform Crime
11 Reporting Unit, within the Division of State Police in the
12 Department of Law and Public Safety, or to another designated
13 recipient determined by the Attorney General, containing the
14 number of violations of subparagraph (b) of paragraph (12) of this
15 subsection committed within their respective jurisdictions, plus the
16 race, ethnicity, gender, and age of each person committing a
17 violation, and the disposition of each person's violation. These
18 violations and associated information, along with a quarterly
19 summary of violations investigated, and associated information
20 collected, by the Division of State Police for the same period shall
21 be summarized by county and municipality in an annual report, and
22 both quarterly summaries and annual reports shall be made
23 available at no cost to the public on the Division of State Police's
24 Internet website;

25 (13) Any other controlled dangerous substance classified in
26 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
27 third degree, except that, notwithstanding the provisions of
28 subsection b. of N.J.S.2C:43-3, a fine of up to **[\$25,000.00]**
29 \$25,000 may be imposed; or

30 (14) Any Schedule V substance, or its analog, is guilty of a
31 crime of the fourth degree except that, notwithstanding the
32 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
33 **[\$25,000.00]** \$25,000 may be imposed.

34 c. Where the degree of the offense for violation of this section
35 depends on the quantity of the substance, the quantity involved
36 shall be determined by the trier of fact, other than with respect to a
37 first violation of subparagraph (b) of paragraph (12) of subsection
38 b. of this section which is subject to a written warning as set forth in
39 that subparagraph. Where the indictment or accusation so provides,
40 the quantity involved in individual acts of manufacturing,
41 distribution, dispensing or possessing with intent to distribute may
42 be aggregated in determining the grade of the offense, whether
43 distribution or dispensing is to the same person or several persons,
44 provided that each individual act of manufacturing, distribution,
45 dispensing or possession with intent to distribute was committed
46 within the applicable statute of limitations.³

47 (cf: P.L.2000, c.136, s.1)

1 ³2. N.J.S.2C:35-10 is amended to read as follows:

2 2C:35-10. Possession, Use or Being Under the Influence, or
3 Failure to Make Lawful Disposition.

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

12 (1) A controlled dangerous substance, or its analog, classified in
13 Schedule I, II, III or IV other than those specifically covered in this
14 section, is guilty of a crime of the third degree except that,
15 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
16 fine of up to ~~【\$35,000.00】~~ \$35,000 may be imposed;

17 (2) Any controlled dangerous substance, or its analog, classified
18 in Schedule V, is guilty of a crime of the fourth degree except that,
19 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
20 fine of up to ~~【\$15,000.00】~~ \$15,000 may be imposed;

21 (3) ~~【Possession】~~ (a) Prior to the effective date of P.L. _____,
22 c. (C. _____) (pending before the Legislature as this bill),
23 possession of more than 50 grams of marijuana, including any
24 adulterants or dilutants, or more than five grams of hashish is guilty
25 of a crime of the fourth degree, except that, notwithstanding the
26 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
27 【\$25,000.00】 \$25,000 may be imposed; ~~【or】~~

28 (b) On and after to the effective date of P.L. _____, c. (C. _____)
29 (pending before the Legislature as this bill), possession of more
30 than six ounces of marijuana, including any adulterants or dilutants,
31 or more than 17 grams of hashish is guilty of a crime of the fourth
32 degree, except that, notwithstanding the provisions of subsection b.
33 of N.J.S.2C:43-3, a fine of up to \$25,000 may be imposed;

34 (i) The odor of marijuana or hashish, or burnt marijuana or
35 hashish, shall not constitute reasonable articulable suspicion to
36 initiate a search of a person to determine a violation of
37 subparagraph (b) of paragraph (3) of this subsection. A person
38 who violates this paragraph shall not be subject to arrest, detention,
39 or otherwise be taken into custody, unless the person is being
40 arrested, detained, or otherwise taken into custody for also
41 committing another violation of law for which that action is legally
42 permitted or required;

43 (ii) A person shall not be deprived of any legal or civil right,
44 privilege, benefit, or opportunity provided pursuant to any law
45 solely by reason of committing a violation of subparagraph (b) of
46 paragraph (3) of this subsection, nor shall committing one or more
47 violations modify any legal or civil right, privilege, benefit, or
48 opportunity provided pursuant to any law, including, but not limited

1 to, the granting, renewal, forfeiture, or denial of a license, permit,
2 or certification, qualification for and the receipt, alteration,
3 continuation, or denial of any form of financial assistance, housing
4 assistance, or other social services, rights of or custody by a
5 biological parent, or adoptive or foster parent, or other legal
6 guardian of a child or newborn infant, or pregnant woman, in any
7 action or proceeding by the Division of Child Protection and
8 Permanency in the Department of Children and Families, or
9 qualification, approval, or disapproval to serve as a foster parent or
10 other legal guardian;

11 (iii) All local and county law enforcement authorities shall,
12 following the submission process used for the uniform crime
13 reporting system established by P.L.1966, c.37 (C.52:17B-
14 5.1 et seq.), submit a quarterly report to the Uniform Crime
15 Reporting Unit, within the Division of State Police in the
16 Department of Law and Public Safety, or to another designated
17 recipient determined by the Attorney General, containing the
18 number of violations of subparagraph (b) of paragraph (3) of this
19 subsection committed within their respective jurisdictions, plus the
20 race, ethnicity, gender, and age of each person committing a
21 violation, and the disposition of each person's violation. These
22 violations and associated information, along with a quarterly
23 summary of violations investigated, and associated information
24 collected, by the Division of State Police for the same period shall
25 be summarized by county and municipality in an annual report, and
26 both quarterly summaries and annual reports shall be made
27 available at no cost to the public on the Division of State Police's
28 Internet website; or

29 (4) **【Possession】** (a) Prior to the effective date of P.L. _____, c.
30 (C. _____) (pending before the Legislature as this bill), possession of
31 50 grams or less of marijuana, including any adulterants or
32 dilutants, or five grams or less of hashish is a disorderly person;

33 (b) On and after the effective date of P.L. _____, c. (C. _____)
34 (pending before the Legislature as this bill), possession of six
35 ounces or less of marijuana, including any adulterants or dilutants,
36 or 17 grams or less of hashish is not subject to any punishment, as
37 this possession is not a crime, offense, act of delinquency, or civil
38 violation of law;

39 Any person who commits any offense **【defined in】** set forth in
40 paragraphs (1) through (3) of this 【section】 subsection while on any
41 property used for school purposes which is owned by or leased to
42 any elementary or secondary school or school board, or within
43 1,000 feet of any such school property or a school bus, or while on
44 any school bus, and who is not sentenced to a term of
45 imprisonment, shall, in addition to any other sentence which the
46 court may impose, be required to perform not less than 100 hours of
47 community service.

1 b. (1) Any person who uses or who is under the influence of
2 any controlled dangerous substance, or its analog, not including
3 marijuana or hashish, for a purpose other than the treatment of
4 sickness or injury as lawfully prescribed or administered by a
5 physician is a disorderly person.

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

16 (2) Notwithstanding that using or being under the influence of
17 marijuana or hashish is not a punishable crime, offense, act of
18 delinquency, or civil violation pursuant to this subsection, the
19 smoking, vaping, or aerosolizing of marijuana or hashish may be
20 prohibited or otherwise regulated on or in any property by the
21 person or entity that owns or controls that property, including
22 multifamily housing that is a multiple dwelling as defined in section
23 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of
24 the structure of a cooperative as defined in section 3 of P.L.1987,
25 c.381 (C.46:8D-3), the units of a condominium, as those terms are
26 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
27 mobile home park as defined in section 3 of P.L.1983, c.386
28 (C.40:55D-102), which site is leased to the owner of a
29 manufactured home, as defined in that section, that is installed
30 thereon.

31 c. Any person who knowingly obtains or possesses a controlled
32 dangerous substance or controlled substance analog in violation of
33 paragraph (1) or (2) of subsection a. of this section and who fails to
34 voluntarily deliver the substance to the nearest law enforcement
35 officer is guilty of a disorderly persons offense. Nothing in this
36 subsection shall be construed to preclude a prosecution or
37 conviction for any other offense defined in this title or any other
38 statute.³

39 (cf: P.L.1997, c.181, s.6)

40
41 ³3. N.J.S.2C:36-2 is amended to read as follows:

42 2C:36-2. a. Use or possession with intent to use, disorderly
43 persons offense. It shall be unlawful for any person to use, or to
44 possess with intent to use, drug paraphernalia to plant, propagate,
45 cultivate, grow, harvest, manufacture, compound, convert, produce,
46 process, prepare, test, analyze, pack, repack, store, contain, conceal,
47 ingest, inhale, or otherwise introduce into the human body a
48 controlled dangerous substance, controlled substance analog or

1 toxic chemical in violation of the provisions of chapter 35 of this
2 title, other than when used, or possessed with intent to use, for
3 ingesting, inhaling, or otherwise introducing marijuana or hashish
4 into the human body. Any person who violates this section is guilty
5 of a disorderly persons offense.

6 b. Notwithstanding that using or possessing with intent to use
7 drug paraphernalia to ingest, inhale, or otherwise introduce
8 marijuana or hashish into the human body is not a punishable crime,
9 offense, act of delinquency, or civil violation pursuant to this
10 section, the use of drug paraphernalia for that purpose may be
11 prohibited or otherwise regulated on or in any property by the
12 person or entity that owns or controls that property, including
13 multifamily housing that is a multiple dwelling as defined in section
14 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of
15 the structure of a cooperative as defined in section 3 of P.L.1987,
16 c.381 (C.46:8D-3), the units of a condominium, as those terms are
17 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
18 mobile home park as defined in section 3 of P.L.1983, c.386
19 (C.40:55D-102), which site is leased to the owner of a
20 manufactured home, as defined in that section, that is installed
21 thereon.³

22 (cf: P.L.2007, c.31, s.3)

23

24 ³4. (New section) a. Except to the extent required to dismiss,
25 withdraw, or terminate the charge, no prosecutor shall pursue any
26 charge, including any charge of delinquency, based on crimes or
27 offenses pending with a court on the first day of the fifth month
28 next following the effective date of P.L. , c. (C.) (pending
29 before the Legislature as Second Reprint of Assembly Bill No. 21)
30 that occurred prior to that effective date, involving manufacturing,
31 distributing, or dispensing, or possessing or having under control
32 with intent to manufacture, distribute, or dispense, marijuana or
33 hashish in violation of paragraph (12) of subsection b. of
34 N.J.S.2C:35-5, or obtaining, possessing, using, being under the
35 influence of, or failing to make lawful disposition of marijuana or
36 hashish in violation of paragraph (3) or (4) of subsection a., or
37 subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
38 involving marijuana or hashish as described herein and a violation
39 of N.J.S.2C:36-2 for using or possessing with intent to use drug
40 paraphernalia with that marijuana or hashish, alone or in
41 combination with each other, or a violation involving marijuana or
42 hashish and a violation of section 1 of P.L.1964, c.289 (C.39:4-
43 49.1) for possession of a controlled dangerous substance while
44 operating a motor vehicle, alone or in combination with each other,
45 or any disorderly persons offense or petty disorderly persons
46 offense subject to conditional discharge pursuant to N.J.S.2C:36A-
47 1. These non-prosecutable charges and cases shall be expeditiously
48 dismissed, which may be accomplished by appropriate action by the

1 prosecutor based upon guidelines issued by the Attorney General,
2 or the court's own motion based upon administrative directives
3 issued by the Administrative Director of the Courts.

4 b. (1) On the first day of the fifth month next following the
5 effective date of P.L. , c. (C.) (pending before the
6 Legislature as Second Reprint of Assembly Bill No. 21), any guilty
7 verdict, plea, placement in a diversionary program, or other entry of
8 guilt on a matter that was entered prior to that effective date, but the
9 judgment of conviction or final disposition on the matter was not
10 entered prior to that date, and the guilty verdict, plea, placement in
11 a diversionary program, or other entry of guilt solely involved one
12 or more crimes or offenses, or delinquent acts which if committed
13 by an adult would constitute one or more crimes or offenses,
14 enumerated in subsection a. of this section, that guilty verdict, plea,
15 placement in a diversionary program, or other entry of guilt shall be
16 vacated by operation of law. The Administrative Director of the
17 Courts, in consultation with the Attorney General, may take any
18 administrative action as may be necessary to vacate the guilty
19 verdict, plea, placement in a diversionary program, or other entry of
20 guilt.

21 (2) On the first day of the fifth month next following the
22 effective date of P.L. , c. (C.) (pending before the
23 Legislature as Second Reprint of Assembly Bill No. 21), any
24 conviction, remaining sentence, ongoing supervision, or unpaid
25 court-ordered financial assessment as defined in section 8 of
26 P.L.2017, c.244 (C.2C:52-23.1) of any person who, on that effective
27 date, is or will be serving a sentence of incarceration, probation,
28 parole or other form of community supervision as a result of the
29 person's conviction or adjudication of delinquency solely for one or
30 more crimes or offenses, or delinquent acts which if committed by
31 an adult would constitute one or more crimes or offenses,
32 enumerated in subsection a. of this section, shall have the
33 conviction, remaining sentence, ongoing supervision, or unpaid
34 court-ordered financial assessment vacated by operation of law.
35 The Administrative Director of the Courts, in consultation with the
36 Attorney General, may take any administrative action as may be
37 necessary to vacate the conviction, remaining sentence, ongoing
38 supervision, or unpaid court-ordered financial assessment.³

39
40 ^{35.} (New section) On the first day of the fifth month next
41 following the effective date of P.L. , c. (C.) (pending before
42 the Legislature as Second Reprint of Assembly Bill No. 21), any
43 case that, prior to that effective date, includes a conviction or
44 adjudication of delinquency solely for one or more crimes or
45 offenses involving manufacturing, distributing, or dispensing, or
46 possessing or having under control with intent to manufacture,
47 distribute, or dispense, marijuana or hashish in violation of
48 paragraph (12) of subsection b. of N.J.S.2C:35-5, or obtaining,

1 possessing, using, being under the influence of, or failing to make
 2 lawful disposition of marijuana or hashish in violation of paragraph
 3 (3) or (4) of subsection a., or subsection b., or subsection c. of
 4 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
 5 described herein and a violation of N.J.S.2C:36-2 for using or
 6 possessing with intent to use drug paraphernalia with that marijuana
 7 or hashish, alone or in combination with each other, or any
 8 disorderly persons offense or petty disorderly persons offense
 9 subject to conditional discharge pursuant to N.J.S.2C:36A-1, shall
 10 be expunged by operation of law, and any remaining sentence,
 11 ongoing supervision, or unpaid court-ordered financial assessment
 12 as defined in section 8 of P.L.2017, c.244 (C.2C:52-23.1) shall be
 13 vacated by operation of law. The Administrative Director of the
 14 Courts, in consultation with the Attorney General, may take any
 15 administrative action as may be necessary to expeditiously
 16 effectuate the expungement of records associated with any
 17 expunged matter.³

18
 19 ¹6. Section 6 of P.L.2019, c.269 (C.2C:52-5.2) is amended to
 20 read as follows:

21 6. a. (1) No later than three months after the effective date of
 22 this section, the Administrative Office of the Courts shall develop
 23 and maintain a system for sealing records from the public, upon
 24 order of a court, pertaining to offenses **[or] ²[,] or²** delinquent acts
 25 **²[, or unlawful acts subject to a civil penalty,]² ¹[or community**
 26 **service in lieu of payment of a penalty,]¹** involving marijuana or
 27 hashish as described in this section. Once the system is developed,
 28 unless otherwise provided by law, a court shall order the
 29 nondisclosure to the public of the records of the court and probation
 30 services, and records of law enforcement agencies with respect to
 31 any arrest, conviction, **[or] ²or²** adjudication of delinquency **²[, or**
 32 **imposition of a civil penalty]² ¹[or community service]¹ , and any
 33 proceedings related thereto, upon disposition of any case occurring
 34 on or after the development of the system for sealing records that
 35 solely includes the following convictions **[or] ²[,] or²**
 36 **adjudications of delinquency ²[, or imposition of civil penalties]²**
 37 **¹[or community service]¹:****

38 (a) any number of offenses for, **[or] ²or²** delinquent acts which
 39 if committed by an adult would constitute, **[unlawful distribution**
 40 **of] ²[or unlawful acts subject to a civil penalty ¹[, or community**
 41 **service in lieu of payment of a penalty]¹ for,]² **manufacturing,**
 42 **distributing, or dispensing,** or possessing or having under control
 43 with intent to **manufacture, distribute, or dispense,** marijuana or
 44 hashish in violation of paragraph (12) of subsection b. of
 45 N.J.S.2C:35-5, or a violation of that paragraph and a violation of
 46 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
 47 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for**

1 distributing, or possessing or having under control with intent to
2 distribute, on or within 1,000 feet of any school property, or on or
3 within 500 feet of the real property comprising a public housing
4 facility, public park, or public building; or

5 (b) any number of offenses for, ~~or~~² delinquent acts which
6 if committed by an adult would constitute, ~~or unlawful acts~~²
7 subject to a civil penalty ¹, or community service in lieu of
8 payment of a penalty ¹ for. ² obtaining ~~],~~ or possessing ~~],~~ using,
9 being under the influence of, or failing to make lawful disposition
10 of ~~]~~ marijuana or hashish in violation of paragraph (3) ¹~~or (4)~~ ¹ of
11 subsection a. ~~],~~ or subsection b., or subsection c. ~~]~~ of N.J.S.2C:35-
12 10 ~~]; or~~ ~~].~~

13 (c) ~~any number of offenses for, or delinquent acts which if~~
14 ~~committed by an adult would constitute, a violation involving~~
15 ~~marijuana or hashish as described in subparagraph (a) or (b) of this~~
16 ~~paragraph and using or possessing with intent to use drug~~
17 ~~paraphernalia with that marijuana or hashish in violation of~~
18 ~~N.J.S.2C:36-2.] (Deleted by amendment, P.L. _____, c. _____) (pending~~
19 ~~before the Legislature as this bill)~~

20 (2) If the disposition of the case includes a court-ordered
21 financial assessment subject to collection under the comprehensive
22 enforcement program established pursuant to P.L.1995, c.9
23 (C.2B:19-1 et al.), then at the time of issuing the sealing order, the
24 court shall also enter a civil judgment for the unpaid portion of the
25 court-ordered financial assessment in the name of the Treasurer,
26 State of New Jersey and transfer collections and disbursement
27 responsibility to the State Treasurer for the outstanding amount in
28 accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The
29 term "court-ordered financial assessment" as used herein means and
30 includes any fine, fee, penalty, restitution, and other form of
31 financial assessment imposed by the court as part of the sentence
32 for the conviction or convictions that are the subject of the sealing
33 order, for which payment of restitution takes precedence in
34 accordance with chapter 46 of Title 2C of the New Jersey Statutes.
35 The Treasurer may specify, and the Administrative Office of the
36 Courts shall collaborate with, the technical and informational
37 standards required to effectuate the transfer of the collection and
38 disbursement responsibilities. Notwithstanding any provision in this
39 law or any other law to the contrary, the court shall have sole
40 discretion to amend the judgment.

41 b. Notice of the sealing order issued pursuant to subsection a.
42 of this section shall be provided to:

43 (1) The Attorney General, county prosecutor, or municipal
44 prosecutor handling the case; and

45 (2) The State Police and any local law enforcement agency
46 having custody of the files and records.

47 c. Upon the entry of a sealing order issued pursuant to
48 subsection a. of this section, the proceedings in the case shall be

1 sealed and all index references shall be marked "not available" or
2 "no record." Law enforcement agencies shall reply to requests for
3 information or records of a person subject to a sealing order that
4 there is no information or records. The person may also reply to
5 any inquiry that there is no information or record, except that
6 information subject to a sealing order shall be revealed by that
7 person if seeking employment within the judicial branch or with a
8 law enforcement or corrections agency, and the information shall
9 continue to provide a disability to the extent provided by law.

10 d. Records subject to a sealing order issued pursuant to
11 subsection a. of this section may be maintained for purposes of
12 prior offender status, identification, and law enforcement purposes,
13 provided that the records shall not be **【**considered whenever the
14 Pretrial Services Program established by the Administrative Office
15 of the Courts pursuant to section 11 of P.L.2014, c.31 (C.2A:162-
16 25) conducts a risk assessment on an eligible defendant for the
17 purpose of making recommendations to the court concerning an
18 appropriate pretrial release decision in accordance with sections 1
19 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) or **】** ²considered
20 whenever the Pretrial Services Program established by the
21 Administrative Office of the Courts pursuant to section 11 of
22 P.L.2014, c.31 (C.2A:162-25) conducts a risk assessment on an
23 eligible defendant for the purpose of making recommendations to
24 the court concerning an appropriate pretrial release decision in
25 accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-
26 15 et seq.) or² used for sentencing purposes in any other case.¹
27 (cf: P.L.2019, c.269, s.6)

28
29 ¹7. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to
30 read as follows:

31 3. Except as otherwise provided under sections 4 and 5 of
32 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a
33 hearing on pretrial detention, a court shall make, pursuant to this
34 section, a pretrial release decision for an eligible defendant without
35 unnecessary delay, but in no case later than 48 hours after the
36 eligible defendant's commitment to jail.

37 a. The court shall order the pretrial release of the eligible
38 defendant on personal recognizance or on the execution of an
39 unsecured appearance bond when, after considering all the
40 circumstances, the Pretrial Services Program's risk assessment and
41 recommendations on conditions of release prepared pursuant to
42 section 11 of P.L.2014, c.31 (C.2A:162-25), and any information
43 that may be provided by a prosecutor or the eligible defendant, the
44 court finds that the release would reasonably assure the eligible
45 defendant's appearance in court when required, the protection of the
46 safety of any other person or the community, and that the eligible
47 defendant will not obstruct or attempt to obstruct the criminal
48 justice process.

1 b. (1) If the court does not find, after consideration, that the
2 release described in subsection a. of this section will reasonably
3 assure the eligible defendant's appearance in court when required,
4 the protection of the safety of any other person or the community,
5 and that the eligible defendant will not obstruct or attempt to
6 obstruct the criminal justice process, the court may order the
7 pretrial release of the eligible defendant subject to the following:

8 (a) the eligible defendant shall not commit any offense during
9 the period of release;

10 (b) the eligible defendant shall avoid all contact with an alleged
11 victim of the crime;

12 (c) the eligible defendant shall avoid all contact with all
13 witnesses who may testify concerning the offense that are named in
14 the document authorizing the eligible defendant's release or in a
15 subsequent court order; and

16 (d) any one or more non-monetary conditions as set forth in
17 paragraph (2) of this subsection.

18 (2) The non-monetary condition or conditions of a pretrial
19 release ordered by the court pursuant to this paragraph shall be the
20 least restrictive condition, or combination of conditions, that the
21 court determines will reasonably assure the eligible defendant's
22 appearance in court when required, the protection of the safety of
23 any other person or the community, and that the eligible defendant
24 will not obstruct or attempt to obstruct the criminal justice process,
25 which may include that the eligible defendant:

26 (a) remain in the custody of a designated person, who agrees to
27 assume supervision and to report any violation of a release
28 condition to the court, if the designated person is able to reasonably
29 assure the court that the eligible defendant will appear in court
30 when required, will not pose a danger to the safety of any other
31 person or the community, and will not obstruct or attempt to
32 obstruct the criminal justice process;

33 (b) maintain employment, or, if unemployed, actively seek
34 employment;

35 (c) maintain or commence an educational program;

36 (d) abide by specified restrictions on personal associations,
37 place of abode, or travel;

38 (e) report on a regular basis to a designated law enforcement
39 agency, or other agency, or pretrial services program;

40 (f) comply with a specified curfew;

41 (g) refrain from possessing a firearm, destructive device, or
42 other dangerous weapon;

43 (h) refrain from excessive use of alcohol, or any ²unlawful² use
44 of a narcotic drug or other controlled substance without a
45 prescription by a licensed medical practitioner ²[, except that, the
46 court's order shall not refrain the eligible defendant from using
47 marijuana or hashish]²;

- 1 (i) undergo available medical, psychological, or psychiatric
2 treatment, including treatment for drug or alcohol dependency, and
3 remain in a specified institution if required for that purpose;
- 4 (j) return to custody for specified hours following release for
5 employment, schooling, or other limited purposes;
- 6 (k) be placed in a pretrial home supervision capacity with or
7 without the use of an approved electronic monitoring device. The
8 court may order the eligible defendant to pay all or a portion of the
9 costs of the electronic monitoring, but the court may waive the
10 payment for an eligible defendant who is indigent and who has
11 demonstrated to the court an inability to pay all or a portion of the
12 costs; or
- 13 (l) satisfy any other condition that is necessary to reasonably
14 assure the eligible defendant's appearance in court when required,
15 the protection of the safety of any other person or the community,
16 and that the eligible defendant will not obstruct or attempt to
17 obstruct the criminal justice process, which shall not include any
18 prohibition or restriction concerning ²];
- 19 (a) an unlawful act subject only to a civil penalty for]²
20 manufacturing, distributing, or dispensing, or possessing or having
21 under control with intent to manufacture, distribute, or dispense,
22 marijuana or hashish in violation of paragraph (12) of subsection b.
23 of N.J.S.2C:35-5, or ²[possessing any amount] possession² of
24 marijuana or hashish ²[that does not violate] in violation of²
25 paragraph (3) of subsection a. of N.J.S.2C:35-10 ²]; or
- 26 (b) the presence of any cannabinoid metabolites in any bodily
27 fluids of the eligible defendant]².
- 28 c. (1) If the court does not find, after consideration, that the
29 release described in subsection a. or b. of this section will
30 reasonably assure the eligible defendant's appearance in court when
31 required, the court may order the pretrial release of the eligible
32 defendant on monetary bail, other than an unsecured appearance
33 bond. The court may only impose monetary bail pursuant to this
34 subsection to reasonably assure the eligible defendant's appearance.
35 The court shall not impose the monetary bail to reasonably assure
36 the protection of the safety of any other person or the community or
37 that the eligible defendant will not obstruct or attempt to obstruct
38 the criminal justice process, or for the purpose of preventing the
39 release of the eligible defendant.
- 40 (2) If the eligible defendant is unable to post the monetary bail
41 imposed by the court pursuant to this subsection, and for that reason
42 remains detained in jail, the provisions of section 8 of P.L.2014,
43 c.31 (C.2A:162-22) shall apply to the eligible defendant.
- 44 d. (1) If the court does not find, after consideration, that the
45 release described in subsection a., b., or c. will reasonably assure
46 the eligible defendant's appearance in court when required, the
47 protection of the safety of any other person or the community, and
48 that the eligible defendant will not obstruct or attempt to obstruct

1 the criminal justice process, the court may order the pretrial release
2 of the eligible defendant using a combination of non-monetary
3 conditions as set forth in subsection b. of this section, and monetary
4 bail as set forth in subsection c. of this section.

5 (2) If the eligible defendant is unable to post the monetary bail
6 imposed by the court in combination with non-monetary conditions
7 pursuant to this subsection, and for that reason remains detained in
8 jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22)
9 shall apply to the eligible defendant.

10 e. For purposes of the court's consideration for pretrial release
11 described in this section, with respect to whether the particular
12 method of release will reasonably assure that the eligible defendant
13 will not obstruct or attempt to obstruct the criminal justice process,
14 this reasonable assurance may be deemed to exist if the prosecutor
15 does not provide the court with information relevant to the risk of
16 whether the eligible defendant will obstruct or attempt to obstruct
17 the criminal justice process.¹
18 (cf: P.L.2014, c.31, s.3)

19

20 ¹8. Section 6 of P.L.2014, c.31 (C.2A:162-20) is amended to
21 read as follows:

22 6. In determining in a pretrial detention hearing whether no
23 amount of monetary bail, non-monetary conditions or combination
24 of monetary bail and conditions would reasonably assure the
25 eligible defendant's appearance in court when required, the
26 protection of the safety of any other person or the community, or
27 that the eligible defendant will not obstruct or attempt to obstruct
28 the criminal justice process, the court may take into account
29 information concerning:

- 30 a. The nature and circumstances of the offense charged;
31 b. The weight of the evidence against the eligible defendant,
32 except that the court may consider the admissibility of any evidence
33 sought to be excluded;
34 c. The history and characteristics of the eligible defendant,
35 including:

36 (1) the eligible defendant's character, physical and mental
37 condition, family ties, employment, financial resources, length of
38 residence in the community, community ties, past conduct, history
39 relating to drug or alcohol abuse, criminal history, and record
40 concerning appearance appearances at court proceedings, except
41 with respect to these factors, the court shall not consider ²[an
42 unlawful act subject only to a civil penalty for]² manufacturing,
43 distributing, or dispensing, or possessing or having under control
44 with intent to manufacture, distribute, or dispense, marijuana or
45 hashish in violation of paragraph (12) of subsection b. of
46 N.J.S.2C:35-5, or ²[possessing any amount] possession² of
47 marijuana or hashish ²[that does not violate] in violation of²
48 paragraph (3) of subsection a. of N.J.S.2C:35-10; and

1 (2) whether, at the time of the current offense or arrest, the
2 eligible defendant was on probation, parole, or on other release
3 pending trial, sentencing, appeal, or completion of sentence for an
4 offense under federal law, or the law of this or any other state;

5 d. The nature and seriousness of the danger to any other person
6 or the community that would be posed by the eligible defendant's
7 release, if applicable;

8 e. The nature and seriousness of the risk of obstructing or
9 attempting to obstruct the criminal justice process that would be
10 posed by the eligible defendant's release, if applicable; and

11 f. The release recommendation of the pretrial services program
12 obtained using a risk assessment instrument under section 11 of
13 P.L.2014, c.31 (C.2A:162-25).¹

14 (cf: P.L.2014, c.31, s.6)

15
16 ¹9. Section 10 of P.L.2014, c.31 (C.2A:162-24) is amended to
17 read as follows:

18 10. a. Upon motion of a prosecutor, when an eligible defendant
19 is released from custody before trial pursuant to section 3 or 8 of
20 P.L.2014, c.31 (C.2A:162-17 or C.2A:162-22), the court, upon a
21 finding that the eligible defendant while on release has violated a
22 restraining order or condition of release, or upon a finding of
23 probable cause to believe that the eligible defendant has committed
24 a new crime while on release, may not revoke the eligible
25 defendant's release and order that the eligible defendant be detained
26 pending trial unless the court, after considering all relevant
27 circumstances including but not limited to the nature and
28 seriousness of the violation or criminal act committed, finds clear
29 and convincing evidence that no monetary bail, non-monetary
30 conditions of release or combination of monetary bail and
31 conditions would reasonably assure the eligible defendant's
32 appearance in court when required, the protection of the safety of
33 any other person or the community, or that the eligible defendant
34 will not obstruct or attempt to obstruct the criminal justice process.

35 b. A court shall not revoke an eligible defendant's release and
36 order that the eligible defendant be detained pending trial based on
37 ²[(1) an unlawful act subject only to a civil penalty for]²
38 manufacturing, distributing, or dispensing, or possessing or having
39 under control with intent to manufacture, distribute, or dispense,
40 marijuana or hashish in violation of paragraph (12) of subsection b.
41 of N.J.S.2C:35-5, or ²[possessing any amount] possession² of
42 marijuana or hashish ²[that does not violate] in violation of²
43 paragraph (3) of subsection a. of N.J.S.2C:35-10 ²]; or

44 (2) the presence of any cannabinoid metabolites in any bodily
45 fluids of the eligible defendant]² .¹

46 (cf: P.L.2014, c.31, s.10)

1 ¹10. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to
2 read as follows:

3 11. a. The Administrative Director of the Courts shall establish
4 and maintain a Statewide Pretrial Services Program which shall
5 provide pretrial services to effectuate the purposes of sections 1
6 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

7 b. The Pretrial Services Program shall, after an eligible
8 defendant is temporarily detained pursuant to subsection a. of
9 section 2 of P.L.2014, c.31 (C.2A:162-16) following the issuance of
10 a complaint-warrant, conduct a risk assessment on that eligible
11 defendant for the purpose of making recommendations to the court
12 concerning an appropriate pretrial release decision, including
13 whether the eligible defendant shall be: released on the eligible
14 defendant's own personal recognizance or on execution of an
15 unsecured appearance bond; released on a non-monetary condition
16 or conditions as set forth under subsection b. of section 3 of
17 P.L.2014, c.31 (C.2A:162-17); released on monetary bail, other than
18 an unsecured appearance bond; released on a combination of
19 monetary bail and non-monetary conditions set forth under section
20 3 of P.L.2014, c.31 (C.2A:162-17); or any other conditions
21 necessary to effectuate the purposes of sections 1 through 11 of
22 P.L.2014, c.31 (C.2A:162-15 et seq.). The risk assessment shall be
23 completed and presented to the court so that the court can, without
24 unnecessary delay, but in no case later than 48 hours after the
25 eligible defendant's commitment to jail, make a pretrial release
26 decision on the eligible defendant pursuant to section 3 of P.L.2014,
27 c.31 (C.2A:162-17).

28 c. The pretrial risk assessment shall be conducted using a risk
29 assessment instrument approved by the Administrative Director of
30 the Courts that meets the requirements of this subsection.

31 (1) (a) The approved risk assessment instrument shall be
32 objective, standardized, and developed based on analysis of
33 empirical data and risk factors relevant to the risk of failure to
34 appear in court when required and the danger to the community
35 while on pretrial release. The risk assessment instrument shall not
36 be required to include factors specifically pertaining to the risk for
37 obstructing or attempting to obstruct the criminal justice process.

38 (b) The approved risk assessment instrument shall not consider a
39 charge, including any charge of delinquency, conviction, or
40 adjudication of delinquency, or civil penalty if the act was an
41 unlawful act and not a crime or offense, based on a violation of any
42 of the following, as risk factors relevant to the risk of failure to
43 appear in court when required and the danger to the community
44 while on pretrial release: manufacturing, distributing, or dispensing,
45 or possessing or having under control with intent to manufacture,
46 distribute, or dispense, marijuana or hashish in violation of
47 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount
48 of marijuana or hashish in violation of paragraph (12) of subsection

1 b. of that section; or a violation of either of those paragraphs and a
2 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
3 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
4 distributing, dispensing, or possessing with intent to distribute or
5 dispense, on or within 1,000 feet of any school property, or on or
6 within 500 feet of the real property comprising a public housing
7 facility, public park, or public building; or obtaining, possessing,
8 using, being under the influence of, or failing to make lawful
9 disposition of marijuana or hashish in violation of paragraph (3) or
10 (4) of subsection a., or subsection b., or subsection c. of
11 N.J.S.2C:35-10; or a violation involving marijuana or hashish as
12 described herein and a violation of N.J.S.2C:36-2 for using or
13 possessing with intent to use drug paraphernalia with that marijuana
14 or hashish.

15 (2) The approved risk assessment instrument shall gather
16 demographic information about the eligible defendant including, but
17 not limited to, race, ethnicity, gender, financial resources, and
18 socio-economic status. Recommendations for pretrial release shall
19 not be discriminatory based on race, ethnicity, gender, or socio-
20 economic status.

21 d. In addition to the pretrial risk assessments made pursuant to
22 this section, the Pretrial Services Program shall monitor appropriate
23 eligible defendants released on conditions as ordered by the court.¹
24 (cf: P.L.2014, c.31, s.11)

25
26 ¹11. N.J.S.2C:45-1 is amended to read as follows:

27 2C:45-1. Conditions of Suspension or Probation.

28 a. (1) When the court suspends the imposition of sentence on a
29 person who has been convicted of an offense or sentences him to be
30 placed on probation, it shall attach such reasonable conditions,
31 authorized by this section, as it deems necessary to insure that he
32 will lead a law-abiding life or is likely to assist him to do so. These
33 conditions may be set forth in a set of standardized conditions
34 promulgated by the county probation department and approved by
35 the court.

36 (2) The following shall not be prohibited or restricted based on
37 any conditions imposed pursuant to this section: ²[(a) An unlawful
38 act subject only to a civil penalty for]² manufacturing, distributing,
39 or dispensing, or possessing or having under control with intent to
40 manufacture, distribute, or dispense, marijuana or hashish in
41 violation of paragraph (12) of subsection b. of N.J.S.2C:35-5; or
42 ²[possessing any amount] possession² of marijuana or hashish
43 ²[that does not violate] in violation of² paragraph (3) of subsection
44 a. of N.J.S.2C:35-10 ²]; or

45 (b) The presence of any cannabinoid metabolites in any bodily
46 fluids of the person]².

47 b. The court, as a condition of its order, may require the
48 defendant:

- 1 (1) To support his dependents and meet his family
2 responsibilities;
- 3 (2) To find and continue in gainful employment;
- 4 (3) To undergo available medical or psychiatric treatment and to
5 enter and remain in a specified institution, when required for that
6 purpose;
- 7 (4) To pursue a prescribed secular course of study or vocational
8 training;
- 9 (5) To attend or reside in a facility established for the
10 instruction, recreation or residence of persons on probation;
- 11 (6) To refrain from frequenting unlawful or disreputable places
12 or consorting with disreputable persons;
- 13 (7) Not to have in his possession any firearm or other dangerous
14 weapon unless granted written permission;
- 15 (8) (Deleted by amendment, P.L.1991, c.329);
- 16 (9) To remain within the jurisdiction of the court and to notify
17 the court or the probation officer of any change in his address or his
18 employment;
- 19 (10) To report as directed to the court or the probation officer,
20 to permit the officer to visit his home, and to answer all reasonable
21 inquiries by the probation officer;
- 22 (11) To pay a fine;
- 23 (12) To satisfy any other conditions reasonably related to the
24 rehabilitation of the defendant and not unduly restrictive of his
25 liberty or incompatible with his freedom of conscience;
- 26 (13) To require the performance of community-related service;
27 and
- 28 (14) To be subject to Internet access conditions pursuant to
29 paragraph (2) of subsection d. of this section.

30 In addition to any condition of probation, the court may enter an
31 order prohibiting a defendant who is convicted of a sex offense
32 from having any contact with the victim including, but not limited
33 to, entering the victim's residence, place of employment or business,
34 or school, and from harassing or stalking the victim or victim's
35 relatives in any way, and may order other protective relief as
36 provided in section 2 of P.L.2007, c.133 (C.2C:14-12).

37 c. The court, as a condition of its order, shall require the
38 defendant to pay any assessments required by section 2 of P.L.1979,
39 c.396 (C.2C:43-3.1) and shall, consistent with the applicable
40 provisions of N.J.S.2C:43-3, N.J.S.2C:43-4 and N.J.S.2C:44-2 or
41 section 1 of P.L.1983, c.411 (C.2C:43-2.1) require the defendant to
42 make restitution.

43 d. (1) In addition to any condition imposed pursuant to
44 subsection b. or c., the court shall order a person placed on
45 probation to pay a fee, not exceeding \$25.00 per month for the
46 probationary term, to probation services for use by the State, except
47 as provided in subsection g. of this section. This fee may be waived
48 in cases of indigency upon application by the chief probation officer
49 to the sentencing court.

1 (2) In addition to any conditions imposed pursuant to subsection
2 b. or c., the court may order a person who has been convicted or
3 adjudicated delinquent of a sex offense as defined in subsection b.
4 of section 2 of P.L.1994, c.133 (C.2C:7-2), and who is required to
5 register as provided in subsections c. and d. of section 2 of
6 P.L.1994, c.133 (C.2C:7-2), or who has been convicted or
7 adjudicated delinquent for a violation of N.J.S.2C:34-3 to be
8 subject to any of the following Internet access conditions:

9 (a) Prohibit the person from accessing or using a computer or
10 any other device with Internet capability without the prior written
11 approval of the court, except the person may use a computer or any
12 other device with Internet capability in connection with that
13 person's employment or search for employment with the prior
14 approval of the person's probation officer;

15 (b) Require the person to submit to periodic unannounced
16 examinations of the person's computer or any other device with
17 Internet capability by a probation officer, law enforcement officer
18 or assigned computer or information technology specialist,
19 including the retrieval and copying of all data from the computer or
20 device and any internal or external peripherals and removal of such
21 information, equipment or device to conduct a more thorough
22 inspection;

23 (c) Require the person to submit to the installation on the
24 person's computer or device with Internet capability, at the person's
25 expense, one or more hardware or software systems to monitor the
26 Internet use; and

27 (d) Require the person to submit to any other appropriate
28 restrictions concerning the person's use or access of a computer or
29 any other device with Internet capability.

30 e. When the court sentences a person who has been convicted
31 of a crime to be placed on probation, it may require him to serve a
32 term of imprisonment not exceeding 364 days as an additional
33 condition of its order. When the court sentences a person convicted
34 of a disorderly persons offense to be placed on probation, it may
35 require him to serve a term of imprisonment not exceeding 90 days
36 as an additional condition of its order. In imposing a term of
37 imprisonment pursuant to this subsection, the sentencing court shall
38 specifically place on the record the reasons which justify the
39 sentence imposed. The term of imprisonment imposed hereunder
40 shall be treated as part of the sentence, and in the event of a
41 sentence of imprisonment upon the revocation of probation, the
42 term of imprisonment served hereunder shall be credited toward
43 service of such subsequent sentence. A term of imprisonment
44 imposed under this section shall be governed by the "Parole Act of
45 1979," P.L.1979, c.441 (C.30:4-123.45 et al.).

46 Whenever a person is serving a term of parole as a result of a
47 sentence of incarceration imposed as a condition of probation,
48 supervision over that person shall be maintained pursuant to the
49 provisions of the law governing parole. Upon termination of the

1 period of parole supervision provided by law, the county probation
2 department shall assume responsibility for supervision of the person
3 under sentence of probation. Nothing contained in this section shall
4 prevent the sentencing court from at any time proceeding under the
5 provisions of this chapter against any person for a violation of
6 probation.

7 f. The defendant shall be given a copy of the terms of his
8 probation or suspension of sentence and any requirements imposed
9 pursuant to this section, stated with sufficient specificity to enable
10 him to guide himself accordingly. The defendant shall
11 acknowledge, in writing, his receipt of these documents and his
12 consent to their terms.

13 g. Of the moneys collected under the provisions of subsection
14 d. of this section, \$15.00 of each monthly fee collected before
15 January 1, 1995 shall be deposited in the temporary reserve fund
16 created by section 25 of P.L.1993, c.275, and \$10.00 of each shall
17 be deposited into a "Community Service Supervision Fund" which
18 shall be established by each county. The moneys in the
19 "Community Service Supervision Fund" shall be expended only in
20 accordance with the provisions of State law as shall be enacted to
21 provide for expenditures from this fund for the purpose of
22 supervising and monitoring probationers performing community
23 service to ensure, by whatever means necessary and appropriate,
24 that probationers are performing the community service ordered by
25 the court and that the performance is in the manner and under the
26 terms ordered by the court.¹

27 (cf: P.L.2007, c.219, s.4)

28

29 ¹12. N.J.S.2C:45-3 is amended to read as follows:

30 2C:45-3. a. At any time before the discharge of the defendant or
31 the termination of the period of suspension or probation:

32 (1) The court may summon the defendant to appear before it or
33 may issue a warrant for his arrest;

34 (2) A probation officer or peace officer, upon request of the
35 chief probation officer or otherwise having probable cause to
36 believe that the defendant has failed to comply with a requirement
37 imposed as a condition of the order or that he has committed
38 another offense, may arrest him without a warrant;

39 (3) The court, if there is probable cause to believe that the
40 defendant has committed another offense or if he has been held to
41 answer therefor, may commit him without bail, pending a
42 determination of the charge by the court having jurisdiction
43 thereof;

44 (4) The court, if satisfied that the defendant has inexcusably
45 failed to comply with a substantial requirement imposed as a
46 condition of the order or if he has been convicted of another
47 offense, may revoke the suspension or probation and sentence or
48 resentence the defendant, as provided in this section. No revocation

1 of suspension or probation shall be based on: (a) failure to pay a
 2 fine or make restitution, unless the failure was willful; ²or² (b) ²[an
 3 unlawful act subject only to a civil penalty for]² manufacturing,
 4 distributing, or dispensing, or possessing or having under control
 5 with intent to manufacture, distribute, or dispense, marijuana or
 6 hashish in violation of paragraph (12) of subsection b. of
 7 N.J.S.2C:35-5, or ²[possessing any amount]² possession² of
 8 marijuana or hashish ²[that does not violate]² in violation of²
 9 paragraph (3) of subsection a. of N.J.S.2C:35-10 ²[; or (c) the
 10 presence of any cannabinoid metabolites in any bodily fluids,
 11 detected as a result of the administration of a drug test or any other
 12 means]².

13 b. When the court revokes a suspension or probation, it may
 14 impose on the defendant any sentence that might have been
 15 imposed originally for the offense of which he was convicted.

16 c. The commencement of a probation revocation proceeding
 17 shall toll the probationary period until termination of such
 18 proceedings. In the event that the court does not find a violation of
 19 probation, this subsection shall not operate to toll the probationary
 20 period.¹

21 (cf: P.L.1981, c.290, s.41)

22
 23 ¹13. Section 15 of P.L.1979, c.441 (C.30:4-123.59) is amended
 24 to read as follows:

25 15. a. Each adult parolee shall at all times remain in the legal
 26 custody of the Commissioner of Corrections and under the
 27 supervision of the State Parole Board, except that the Commissioner
 28 of Corrections, after providing notice to the Attorney General, may
 29 consent to the supervision of a parolee by the federal government
 30 pursuant to the Witness Security Reform Act, Pub.L.98-473 (18
 31 U.S.C. s.3521 et seq.). An adult parolee, except those under the
 32 Witness Security Reform Act, shall remain under the supervision of
 33 the State Parole Board and in the legal custody of the Department of
 34 Corrections in accordance with the policies and rules of the board.

35 b. (1) (a) Each parolee shall agree, as evidenced by his
 36 signature to abide by specific conditions of parole established by
 37 the appropriate board panel which shall be enumerated in writing in
 38 a certificate of parole and shall be given to the parolee upon release.
 39 Such conditions shall include, among other things, a requirement
 40 that the parolee conduct himself in society in compliance with all
 41 laws and refrain from committing any crime, a requirement that the
 42 parolee will not own or possess any firearm as defined in subsection
 43 f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r.
 44 of N.J.S.2C:39-1, a requirement that the parolee refrain from the
 45 ²unlawful² use, ²or the² possession or distribution of a controlled
 46 dangerous substance, controlled substance analog or imitation
 47 controlled dangerous substance as defined in N.J.S.2C:35-2 and
 48 N.J.S.2C:35-11, other than ²[the use of marijuana or hashish, the]²

1 possession ²[of any amount]² of marijuana or hashish ²[that does
2 not violate] in violation of² paragraph (3) of subsection a. of
3 N.J.S.2C:35-10, and distribution ²[that is an unlawful act subject
4 only to a civil penalty pursuant to] of marijuana or hashish in
5 violation of² paragraph (12) of subsection b. of N.J.S.2C:35-5, a
6 requirement that the parolee obtain permission from his parole
7 officer for any change in his residence, and a requirement that the
8 parolee report at reasonable intervals to an assigned parole officer.
9 In addition, based on prior history of the parolee or information
10 provided by a victim or a member of the family of a murder victim,
11 the member or board panel certifying parole release pursuant to
12 section 11 of P.L.1979, c.441 (C.30:4-123.55) may impose any
13 other specific conditions of parole deemed reasonable in order to
14 reduce the likelihood of recurrence of criminal or delinquent
15 behavior, including a requirement that the parolee comply with the
16 Internet access conditions set forth in paragraph (2) of this
17 subsection. Such special conditions may include, among other
18 things, a requirement that the parolee make full or partial
19 restitution, the amount of which restitution shall be set by the
20 sentencing court upon request of the board. In addition, the member
21 or board panel certifying parole release may, giving due regard to a
22 victim's request, impose a special condition that the parolee have no
23 contact with the victim, which special condition may include, but
24 need not be limited to, restraining the parolee from entering the
25 victim's residence, place of employment, business or school, and
26 from harassing or stalking the victim or victim's relatives in any
27 way. Further, the member, board panel or board certifying parole
28 release may impose a special condition that the person shall not
29 own or possess an animal for an unlawful purpose or to interfere in
30 the performance of duties by a parole officer.

31 (b) The member or board panel certifying parole release shall
32 not impose on any parolee any condition that would prohibit or
33 restrict ²[(i) the commission of an unlawful act subject only to a
34 civil penalty for]² manufacturing, distributing, or dispensing, or
35 possessing or having under control with intent to manufacture,
36 distribute, or dispense, marijuana or hashish in violation of
37 paragraph (12) of subsection b. of N.J.S.2C:35-5, or ²[possessing
38 any amount] possession² of marijuana or hashish ²[that does not
39 violate] in violation of² paragraph (3) of subsection a. of
40 N.J.S.2C:35-10 ²]; or (ii) the presence of any cannabinoid
41 metabolites in any bodily fluids of the person]².

42 (2) In addition, the member or board panel certifying parole
43 release may impose on any person who has been convicted for the
44 commission of a sex offense as defined in subsection b. of section 2
45 of P.L.1994, c.133 (C.2C:7-2), and who is required to register as
46 provided in subsections c. and d. of section 2 of P.L.1994, c.133

- 1 (C.2C:7-2), or who has been convicted for a violation of
2 N.J.S.2C:34-3 any of the following Internet access conditions:
- 3 (a) Prohibit the person from accessing or using a computer or
4 any other device with Internet capability without the prior written
5 approval of the court, except the person may use a computer or any
6 other device with Internet capability in connection with that
7 person's employment or search for employment with the prior
8 approval of the person's parole officer;
- 9 (b) Require the person to submit to periodic unannounced
10 examinations of the person's computer or any other device with
11 Internet capability by a parole officer, law enforcement officer or
12 assigned computer or information technology specialist, including
13 the retrieval and copying of all data from the computer or device
14 and any internal or external peripherals and removal of such
15 information, equipment or device to conduct a more thorough
16 inspection;
- 17 (c) Require the person to submit to the installation on the
18 person's computer or device with Internet capability, at the person's
19 expense, one or more hardware or software systems to monitor the
20 Internet use; and
- 21 (d) Require the person to submit to any other appropriate
22 restrictions concerning the person's use or access of a computer or
23 any other device with Internet capability.
- 24 c. The appropriate board panel may in writing relieve a parolee
25 of any parole conditions, and may permit a parolee to reside outside
26 the State pursuant to the provisions of the Uniform Act for Out-of-
27 State Parolee Supervision (N.J.S.2A:168-14 et seq.) and, with the
28 consent of the Commissioner of the Department of Corrections after
29 providing notice to the Attorney General, the federal Witness
30 Security Reform Act, if satisfied that the change will not result in a
31 substantial likelihood that the parolee will commit an offense which
32 would be a crime under the laws of this State. The appropriate
33 board panel may revoke permission, except in the case of a parolee
34 under the Witness Security Reform Act, or reinstate relieved parole
35 conditions for any period of time during which a parolee is under its
36 jurisdiction.
- 37 d. The appropriate board panel may parole an inmate to any
38 residential facility funded in whole or in part by the State if the
39 inmate would not otherwise be released pursuant to section 9 of
40 P.L.1979, c.441 (C.30:4-123.53) without such placement. But if the
41 residential facility provides treatment for mental illness or mental
42 retardation, the board panel only may parole the inmate to the
43 facility pursuant to the laws and admissions policies that otherwise
44 govern the admission of persons to that facility, and the facility
45 shall have the authority to discharge the inmate according to the
46 laws and policies that otherwise govern the discharge of persons
47 from the facility, on 10 days' prior notice to the board panel. The
48 board panel shall acknowledge receipt of this notice in writing prior

1 to the discharge. Upon receipt of the notice the board panel shall
2 resume jurisdiction over the inmate.

3 e. Parole officers shall provide assistance to the parolee in
4 obtaining employment, education, or vocational training or in
5 meeting other obligations to assure the parolee's compliance with
6 meeting legal requirements related to sex offender notification,
7 address changes and participation in rehabilitation programs as
8 directed by the assigned parole officer.

9 f. (Deleted by amendment, P.L.2019, c.363)

10 g. If the board has granted parole to any inmate from a State
11 correctional facility and the court has imposed a fine on the inmate,
12 the appropriate board panel shall release the inmate on condition
13 that the parolee make specified fine payments to the State Parole
14 Board. For violation of these conditions, or for violation of a
15 special condition requiring restitution, parole may be revoked only
16 for refusal or failure to make a good faith effort to make the
17 payment.

18 h. Upon collection of the fine the Department of Corrections
19 shall forward it to the State Treasury.¹

20 (cf: P.L.2019, c.363, s.12)

21

22 ¹14. Section 16 of P.L.1979, c.441 (C.30:4-123.60) is amended
23 to read as follows:

24 16. a. Any parolee who violates a condition of parole may be
25 subject to an order pursuant to section 17 of P.L.1979, c.441
26 (C.30:4-123.61) providing for one or more of the following:

27 (1) ~~That~~ that he be required to conform to one or more
28 additional conditions of parole;

29 (2) ~~That~~ that he forfeit all or a part of commutation time
30 credits granted pursuant to R.S.30:4-140.

31 An order as described in this subsection shall not be based on ²[:
32 an unlawful act subject only to a civil penalty for]² manufacturing,
33 distributing, or dispensing, or possessing or having under control
34 with intent to manufacture, distribute, or dispense, marijuana or
35 hashish in violation of paragraph (12) of subsection b. of
36 N.J.S.2C:35-5, or ²[possessing any amount] possession² of
37 marijuana or hashish ²[that does not violate] in violation of²
38 paragraph (3) of subsection a. of N.J.S.2C:35-10 ²[: or the presence
39 of any cannabinoid metabolites in any bodily fluids, detected as a
40 result of the administration of a drug test or any other means]².

41 b. (1) Any parolee who has seriously or persistently violated
42 the conditions of his parole, may have his parole revoked and may
43 be returned to custody pursuant to sections 18 and 19 of P.L.1979,
44 c.441 (C.30:4-123.62 and 30:4-123.63). The board shall be notified
45 immediately upon the arrest or indictment of a parolee or upon the
46 filing of charges that the parolee committed an act which, if
47 committed by an adult, would constitute a crime. The board shall
48 not revoke parole on the basis of new charges which have not

1 resulted in a disposition at the trial level except that upon
 2 application by the prosecuting authority or the Director of the State
 3 Parole Board's Division of Parole or his designee, the chairman of
 4 the board or his designee may at any time detain the parolee and
 5 commence revocation proceedings pursuant to sections 18 and 19 of
 6 P.L.1979, c.441 (C.30:4-123.62 and 30:4-123.63) when the
 7 chairman determines that the new charges against the parolee are of
 8 a serious nature and it appears that the parolee otherwise poses a
 9 danger to the public safety. In such cases, a parolee shall be
 10 informed that, if he testifies at the revocation proceedings, his
 11 testimony and the evidence derived therefrom shall not be used
 12 against him in a subsequent criminal prosecution.

13 (2) An action to revoke parole as described in this subsection
 14 shall not be based on ²[(a) an unlawful act subject only to a civil
 15 penalty for]² manufacturing, distributing, or dispensing, or
 16 possessing or having under control with intent to manufacture,
 17 distribute, or dispense, marijuana or hashish in violation of
 18 paragraph (12) of subsection b. of N.J.S.2C:35-5, or ²[possessing
 19 any amount] possession² of marijuana or hashish ²[that does not
 20 violate] in violation of² paragraph (3) of subsection a. of
 21 N.J.S.2C:35-10 ²]; or

22 (b) the presence of any cannabinoid metabolites in any bodily
 23 fluids, detected as a result of the administration of a drug test or any
 24 other means]².

25 c. The parole of any parolee who is convicted of a crime
 26 committed while on parole shall be revoked and the parolee shall be
 27 returned to custody unless the parolee demonstrates, by clear and
 28 convincing evidence at a hearing pursuant to section 19 of
 29 P.L.1979, c.441 (C.30:4-123.63), that good cause exists why the
 30 parolee should not be returned to confinement.¹

31 (cf: P.L.2019, c.363, s.13)

32

33 ¹[7.] 15.¹ (New section) a. An employer shall not be permitted
 34 to ²[consider] ² when making an employment decision, ²rely
 35 solely on, or² require any applicant to disclose or reveal, or take any
 36 adverse action against any applicant for employment ²solely² on the
 37 basis of, any arrest, charge, conviction, or adjudication of
 38 delinquency, ²[or civil penalty or community service imposed in
 39 lieu of a civil penalty if the act was an unlawful act and not a crime
 40 or offense,]² for manufacturing, distributing, or dispensing, or
 41 possessing or having under control with intent to manufacture,
 42 distribute, or dispense, marijuana or hashish in violation of
 43 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount
 44 of marijuana or hashish in violation of paragraph (12) of subsection
 45 b. of that section, or a violation of either of those paragraphs and a
 46 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
 47 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for

1 distributing, dispensing, or possessing with intent to distribute or
2 dispense, on or within 1,000 feet of any school property, or on or
3 within 500 feet of the real property comprising a public housing
4 facility, public park, or public building, or obtaining, possessing,
5 using, being under the influence of, or failing to make lawful
6 disposition of marijuana or hashish in violation of paragraph (3) or
7 (4) of subsection a., or subsection b., or subsection c. of
8 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
9 described herein and a violation of N.J.S.2C:36-2 for using or
10 possessing with intent to use drug paraphernalia with that marijuana
11 or hashish, or an arrest, charge, conviction, or adjudication of
12 delinquency under the laws of another state or of the United States
13 of a crime ²[,] or² offense, ²[or other unlawful act,]² which, if
14 committed in this State, would be a violation of any of the
15 aforementioned crimes ²[,] or² offenses, ²[or unlawful acts,]²
16 regardless of when any such arrest, charge, conviction, or
17 adjudication of delinquency ²[, or imposition of a civil penalty or
18 community service,]² occurred, unless the employment sought or
19 being considered is for a position in law enforcement, corrections,
20 the judiciary, homeland security, or emergency management.

21 b. Any employer who commits an act in violation of this section
22 shall be liable for a civil penalty in an amount not to exceed \$1,000
23 for the first violation, \$5,000 for the second violation, and \$10,000
24 for each subsequent violation, which shall be collectible by the
25 Commissioner of Labor and Workforce Development in a summary
26 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
27 P.L.1999, c.274 (C.2A:58-10 et seq.). The penalties set forth in this
28 subsection shall be the sole remedy provided for violations of this
29 section.

30 c. Nothing set forth in this section shall be construed as
31 creating or establishing a standard of care or duty for employers
32 with respect to any other law. Evidence that an employer has
33 violated, or is alleged to have violated, the provisions of this
34 section, shall not be admissible in any legal proceeding with respect
35 to any law or claim other than a proceeding to enforce the
36 provisions of this section. Nothing set forth in this section shall be
37 construed as creating, establishing, or authorizing a private cause of
38 action by an aggrieved person against an employer who has
39 violated, or is alleged to have violated, the provisions of this
40 section.

41
42 ¹[8] 16.¹ (New section) a. A person that makes a mortgage
43 loan in this State shall not discriminate against an applicant in
44 accepting an application, granting, withholding, extending,
45 modifying or renewing, or in the fixing of the rates, terms,
46 conditions, or provisions of any mortgage loan based on an
47 applicant's arrest, charge, conviction, or adjudication of
48 delinquency, ²[or civil penalty or community service imposed in

1 lieu of a civil penalty if the act was an unlawful act and not a crime
2 or offense,² for manufacturing, distributing, or dispensing, or
3 possessing or having under control with intent to manufacture,
4 distribute, or dispense, marijuana or hashish in violation of
5 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount
6 of marijuana or hashish in violation of paragraph (12) of subsection
7 b. of that section, or a violation of either of those paragraphs and a
8 violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-
9 7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for
10 distributing, dispensing, or possessing with intent to distribute or
11 dispense, on or within 1,000 feet of any school property, or on or
12 within 500 feet of the real property comprising a public housing
13 facility, public park, or public building, or obtaining, possessing,
14 using, being under the influence of, or failing to make lawful
15 disposition of marijuana or hashish in violation of paragraph (3) or
16 (4) of subsection a., or subsection b., or subsection c. of
17 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
18 described herein and a violation of N.J.S.2C:36-2 for using or
19 possessing with intent to use drug paraphernalia with that marijuana
20 or hashish, or an arrest, charge, conviction, or adjudication of
21 delinquency under the laws of another state or of the United States
22 of a crime ²[.] or² offense, ²[or other unlawful act,]² which, if
23 committed in this State, would be a violation of any of the
24 aforementioned crimes ²[.] or² offenses, ²[or unlawful acts,]²
25 regardless of when any such arrest, charge, conviction, or
26 adjudication of delinquency ²[, or imposition of a civil penalty or
27 community service,]² occurred.

28 b. Any applicant who has been discriminated against as a result
29 of a violation of this section may bring an action in New Jersey in a
30 court of competent jurisdiction. Upon finding that a person is in
31 violation of this section, the court may award actual damages,
32 reasonable attorneys' fees, and court costs.

33 c. The Commissioner of Banking and Insurance shall have the
34 power to:

35 (1) Make such investigations into any matter pertaining to this
36 section, including the power to hold hearings and issue subpoenas
37 to compel the attendance of witnesses and the production of
38 evidence. In case of a failure of any person to comply with any
39 subpoena, the Superior Court may issue an order requiring the
40 attendance of such person and the giving of testimony or production
41 of evidence. Any person failing to obey the court's order may be
42 punished for contempt.

43 (2) Order a person found to be in violation of this section to
44 cease its unlawful practices, subject to review, hearing, and relief in
45 the Superior Court. A person that continues to violate the
46 provisions of this act after having been ordered by the
47 commissioner to cease such practices shall be liable to a penalty of
48 \$10,000 for each offense instead of the penalty for a continuous

1 violation set forth in section 10 of P.L.1977, c.1 (C.17:16F-
2 10). This penalty may be collected in a summary proceeding
3 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
4 c.274 (C.2A:58-10 et seq.). Except as set forth herein, the penalty
5 provided by this section shall be in addition to and not in lieu of any
6 other provision of law applicable upon a person's failure to comply
7 with an order of the commissioner.
8

9 ¹[9.] 17.¹ (New section) a. A person alleging discrimination in
10 public or private housing, real property, or a place of public
11 accommodation, based on a prior arrest, charge, conviction, or
12 adjudication of delinquency, ²[or civil penalty or community
13 service imposed in lieu of a civil penalty if the act was an unlawful
14 act and not a crime or offense,]² for manufacturing, distributing, or
15 dispensing, or possessing or having under control with intent to
16 manufacture, distribute, or dispense, marijuana or hashish in
17 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
18 lesser amount of marijuana or hashish in violation of paragraph (12)
19 of subsection b. of that section, or a violation of either of those
20 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
21 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
22 (C.2C:35-7.1) for distributing, dispensing, or possessing with intent
23 to distribute or dispense, on or within 1,000 feet of any school
24 property, or on or within 500 feet of the real property comprising a
25 public housing facility, public park, or public building, or obtaining,
26 possessing, using, being under the influence of, or failing to make
27 lawful disposition of marijuana or hashish in violation of paragraph
28 (3) or (4) of subsection a., or subsection b., or subsection c. of
29 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
30 described herein and a violation of N.J.S.2C:36-2 for using or
31 possessing with intent to use drug paraphernalia with that marijuana
32 or hashish, or an arrest, charge, conviction, or adjudication of
33 delinquency under the laws of another state or of the United States
34 of a crime ²[.] or² offense ²[, or other unlawful act,]² which, if
35 committed in this State, would be a violation of any of the
36 aforementioned crimes ²[.] or² offenses ²[, or unlawful acts]²,
37 regardless of when any such arrest, charge, conviction, or
38 adjudication of delinquency ²[, or imposition of a civil penalty or
39 community service,]² occurred, may institute a civil action in the
40 Superior Court for relief. All remedies available in common law
41 tort actions shall be available to a prevailing plaintiff. The court
42 may also order any or all of the following relief:

43 (1) an assessment of a civil fine of not less than \$1,000 and not
44 more than \$2,000 for the first violation of any of the provisions of
45 this section, and not more than \$5,000 for each subsequent
46 violation;

47 (2) an injunction to restrain the continued violation of
48 subsection a. of this section;

1 (3) if the discrimination impacted the person's employment, and
2 if applicable:

3 (a) reinstatement of the person to the same position of
4 employment or to a position equivalent to that which the person
5 held prior to unlawful discharge or retaliatory action;

6 (b) reinstatement of full fringe benefits and seniority rights; and

7 (c) compensation for any lost wages, benefits and other
8 remuneration; and

9 (4) payment of reasonable costs and attorney's fees.

10 b. An action brought under this section shall be commenced
11 within one year of the date of the alleged violation.

12 c. The private cause of action provided for in this section shall
13 be the sole remedy for a violation of this section.
14

15 **'[10.] 18.¹** Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is
16 amended to read as follows:

17 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
18 and supplemented:

19 "Biotechnology" means any technique that uses living
20 organisms, or parts of living organisms, to make or modify
21 products, to improve plants or animals, or to develop micro-
22 organisms for specific uses; including the industrial use of
23 recombinant DNA, cell fusion, and novel bioprocessing techniques.

24 "Custodian of a government record" or "custodian" means in the
25 case of a municipality, the municipal clerk and in the case of any
26 other public agency, the officer officially designated by formal
27 action of that agency's director or governing body, as the case may
28 be.

29 "Government record" or "record" means any paper, written or
30 printed book, document, drawing, map, plan, photograph,
31 microfilm, data processed or image processed document,
32 information stored or maintained electronically or by sound-
33 recording or in a similar device, or any copy thereof, that has been
34 made, maintained or kept on file in the course of his or its official
35 business by any officer, commission, agency or authority of the
36 State or of any political subdivision thereof, including subordinate
37 boards thereof, or that has been received in the course of his or its
38 official business by any such officer, commission, agency, or
39 authority of the State or of any political subdivision thereof,
40 including subordinate boards thereof. The terms shall not include
41 inter-agency or intra-agency advisory, consultative, or deliberative
42 material.

43 A government record shall not include the following information
44 which is deemed to be confidential for the purposes of P.L.1963,
45 c.73 (C.47:1A-1 et seq.) as amended and supplemented:

46 information received by a member of the Legislature from a
47 constituent or information held by a member of the Legislature
48 concerning a constituent, including but not limited to information in

1 written form or contained in any e-mail or computer data base, or in
2 any telephone record whatsoever, unless it is information the
3 constituent is required by law to transmit;
4 any memorandum, correspondence, notes, report or other
5 communication prepared by, or for, the specific use of a member of
6 the Legislature in the course of the member's official duties, except
7 that this provision shall not apply to an otherwise publicly-
8 accessible report which is required by law to be submitted to the
9 Legislature or its members;
10 any copy, reproduction or facsimile of any photograph, negative
11 or print, including instant photographs and videotapes of the body,
12 or any portion of the body, of a deceased person, taken by or for the
13 medical examiner at the scene of death or in the course of a post
14 mortem examination or autopsy made by or caused to be made by
15 the medical examiner except:
16 when used in a criminal action or proceeding in this State which
17 relates to the death of that person,
18 for the use as a court of this State permits, by order after good
19 cause has been shown and after written notification of the request
20 for the court order has been served at least five days before the
21 order is made upon the county prosecutor for the county in which
22 the post mortem examination or autopsy occurred,
23 for use in the field of forensic pathology or for use in medical or
24 scientific education or research, or
25 for use by any law enforcement agency in this State or any other
26 state or federal law enforcement agency;
27 criminal investigatory records;
28 the portion of any criminal record concerning a person's
29 detection, apprehension, arrest, detention, trial or disposition for
30 unlawful ¹[distribution of] manufacturing, distributing, or
31 dispensing¹, or possessing or having under control with intent to
32 ¹manufacture,¹ distribute,¹ or dispense,¹ marijuana or hashish in
33 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
34 lesser amount of marijuana or hashish in violation of paragraph (12)
35 of subsection b. of that section, or a violation of either of those
36 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
37 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
38 (C.2C:35-7.1) for distributing,¹ dispensing,¹ or possessing¹,¹ or
39 having under control with intent to distribute¹ or dispense¹, on or
40 within 1,000 feet of any school property, or on or within 500 feet of
41 the real property comprising a public housing facility, public park,
42 or public building, or for obtaining, possessing, using, being under
43 the influence of, or failing to make lawful disposition of marijuana
44 or hashish in violation of paragraph (3) or (4) of subsection a., or
45 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation
46 of any of those provisions and a violation of N.J.S.2C:36-2 for
47 using or possessing with intent to use drug paraphernalia with
48 ¹[the] that¹ marijuana or hashish;

1 ²On and after the effective date of P.L. _____, c. (C. _____)
2 (pending before the Legislature as this bill), any record concerning
3 a person's commission of an unlawful act of manufacturing,
4 distributing, or dispensing, or possessing or having under control
5 with intent to manufacture, distribute, or dispense, marijuana or
6 hashish in violation of paragraph (12) of subsection b. of
7 N.J.S.2C:35-5, ¹[or possessing marijuana or hashish in violation of
8 paragraph (4) of subsection a. of N.J.S.2C:35-10,]¹ for which a
9 civil penalty was imposed;]²

10 victims' records, except that a victim of a crime shall have access
11 to the victim's own records;

12 any written request by a crime victim for a record to which the
13 victim is entitled to access as provided in this section, including,
14 but not limited to, any law enforcement agency report, domestic
15 violence offense report, and temporary or permanent restraining
16 order;

17 personal firearms records, except for use by any person
18 authorized by law to have access to these records or for use by any
19 government agency, including any court or law enforcement
20 agency, for purposes of the administration of justice;

21 personal identifying information received by the Division of Fish
22 and Wildlife in the Department of Environmental Protection in
23 connection with the issuance of any license authorizing hunting
24 with a firearm. For the purposes of this paragraph, personal
25 identifying information shall include, but not be limited to, identity,
26 name, address, social security number, telephone number, fax
27 number, driver's license number, email address, or social media
28 address of any applicant or licensee;

29 trade secrets and proprietary commercial or financial information
30 obtained from any source. For the purposes of this paragraph, trade
31 secrets shall include data processing software obtained by a public
32 body under a licensing agreement which prohibits its disclosure;

33 any record within the attorney-client privilege. This paragraph
34 shall not be construed as exempting from access attorney or
35 consultant bills or invoices except that such bills or invoices may be
36 redacted to remove any information protected by the attorney-client
37 privilege;

38 administrative or technical information regarding computer
39 hardware, software and networks which, if disclosed, would
40 jeopardize computer security;

41 emergency or security information or procedures for any
42 buildings or facility which, if disclosed, would jeopardize security
43 of the building or facility or persons therein;

44 security measures and surveillance techniques which, if
45 disclosed, would create a risk to the safety of persons, property,
46 electronic data or software;

47 information which, if disclosed, would give an advantage to
48 competitors or bidders;

- 1 information generated by or on behalf of public employers or
- 2 public employees in connection with any sexual harassment
- 3 complaint filed with a public employer or with any grievance filed
- 4 by or against an individual or in connection with collective
- 5 negotiations, including documents and statements of strategy or
- 6 negotiating position;
- 7 information which is a communication between a public agency
- 8 and its insurance carrier, administrative service organization or risk
- 9 management office;
- 10 information which is to be kept confidential pursuant to court
- 11 order;
- 12 any copy of form DD-214, NGB-22, or that form, issued by the
- 13 United States Government, or any other certificate of honorable
- 14 discharge, or copy thereof, from active service or the reserves of a
- 15 branch of the Armed Forces of the United States, or from service in
- 16 the organized militia of the State, that has been filed by an
- 17 individual with a public agency, except that a veteran or the
- 18 veteran's spouse or surviving spouse shall have access to the
- 19 veteran's own records;
- 20 any copy of an oath of allegiance, oath of office or any
- 21 affirmation taken upon assuming the duties of any public office, or
- 22 that oath or affirmation, taken by a current or former officer or
- 23 employee in any public office or position in this State or in any
- 24 county or municipality of this State, including members of the
- 25 Legislative Branch, Executive Branch, Judicial Branch, and all law
- 26 enforcement entities, except that the full name, title, and oath date
- 27 of that person contained therein shall not be deemed confidential;
- 28 that portion of any document which discloses the social security
- 29 number, credit card number, unlisted telephone number or driver
- 30 license number of any person; except for use by any government
- 31 agency, including any court or law enforcement agency, in carrying
- 32 out its functions, or any private person or entity acting on behalf
- 33 thereof, or any private person or entity seeking to enforce payment
- 34 of court-ordered child support; except with respect to the disclosure
- 35 of driver information by the New Jersey Motor Vehicle
- 36 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
- 37 3.4); and except that a social security number contained in a record
- 38 required by law to be made, maintained or kept on file by a public
- 39 agency shall be disclosed when access to the document or
- 40 disclosure of that information is not otherwise prohibited by State
- 41 or federal law, regulation or order or by State statute, resolution of
- 42 either or both houses of the Legislature, Executive Order of the
- 43 Governor, rule of court or regulation promulgated under the
- 44 authority of any statute or executive order of the Governor;
- 45 a list of persons identifying themselves as being in need of
- 46 special assistance in the event of an emergency maintained by a
- 47 municipality for public safety purposes pursuant to section 1 of
- 48 P.L.2017, c.266 (C.40:48-2.67); and

1 a list of persons identifying themselves as being in need of
2 special assistance in the event of an emergency maintained by a
3 county for public safety purposes pursuant to section 6 of P.L.2011,
4 c.178 (C.App.A:9-43.13).

5 A government record shall not include, with regard to any public
6 institution of higher education, the following information which is
7 deemed to be privileged and confidential:

8 pedagogical, scholarly and/or academic research records and/or
9 the specific details of any research project conducted under the
10 auspices of a public higher education institution in New Jersey,
11 including, but not limited to research, development information,
12 testing procedures, or information regarding test participants,
13 related to the development or testing of any pharmaceutical or
14 pharmaceutical delivery system, except that a custodian may not
15 deny inspection of a government record or part thereof that gives
16 the name, title, expenditures, source and amounts of funding and
17 date when the final project summary of any research will be
18 available;

19 test questions, scoring keys and other examination data
20 pertaining to the administration of an examination for employment
21 or academic examination;

22 records of pursuit of charitable contributions or records
23 containing the identity of a donor of a gift if the donor requires non-
24 disclosure of the donor's identity as a condition of making the gift
25 provided that the donor has not received any benefits of or from the
26 institution of higher education in connection with such gift other
27 than a request for memorialization or dedication;

28 valuable or rare collections of books and/or documents obtained
29 by gift, grant, bequest or devise conditioned upon limited public
30 access;

31 information contained on individual admission applications; and
32 information concerning student records or grievance or
33 disciplinary proceedings against a student to the extent disclosure
34 would reveal the identity of the student.

35 "Personal firearms record" means any information contained in a
36 background investigation conducted by the chief of police, the
37 county prosecutor, or the Superintendent of State Police, of any
38 applicant for a permit to purchase a handgun, firearms identification
39 card license, or firearms registration; any application for a permit to
40 purchase a handgun, firearms identification card license, or firearms
41 registration; any document reflecting the issuance or denial of a
42 permit to purchase a handgun, firearms identification card license,
43 or firearms registration; and any permit to purchase a handgun,
44 firearms identification card license, or any firearms license,
45 certification, certificate, form of register, or registration statement.
46 For the purposes of this paragraph, information contained in a
47 background investigation shall include, but not be limited to,
48 identity, name, address, social security number, phone number, fax

1 number, driver's license number, email address, social media
2 address of any applicant, licensee, registrant or permit holder.

3 "Public agency" or "agency" means any of the principal
4 departments in the Executive Branch of State Government, and any
5 division, board, bureau, office, commission or other instrumentality
6 within or created by such department; the Legislature of the State
7 and any office, board, bureau or commission within or created by
8 the Legislative Branch; and any independent State authority,
9 commission, instrumentality or agency. The terms also mean any
10 political subdivision of the State or combination of political
11 subdivisions, and any division, board, bureau, office, commission or
12 other instrumentality within or created by a political subdivision of
13 the State or combination of political subdivisions, and any
14 independent authority, commission, instrumentality or agency
15 created by a political subdivision or combination of political
16 subdivisions.

17 "Law enforcement agency" means a public agency, or part
18 thereof, determined by the Attorney General to have law
19 enforcement responsibilities.

20 "Constituent" means any State resident or other person
21 communicating with a member of the Legislature.

22 "Member of the Legislature" means any person elected or
23 selected to serve in the New Jersey Senate or General Assembly.

24 "Criminal investigatory record" means a record which is not
25 required by law to be made, maintained or kept on file that is held
26 by a law enforcement agency which pertains to any criminal
27 investigation or related civil enforcement proceeding.

28 "Victim's record" means an individually-identifiable file or
29 document held by a victims' rights agency which pertains directly to
30 a victim of a crime except that a victim of a crime shall have access
31 to the victim's own records.

32 "Victim of a crime" means a person who has suffered personal or
33 psychological injury or death or incurs loss of or injury to personal
34 or real property as a result of a crime, or if such a person is
35 deceased or incapacitated, a member of that person's immediate
36 family.

37 "Victims' rights agency" means a public agency, or part thereof,
38 the primary responsibility of which is providing services, including
39 but not limited to food, shelter, or clothing, medical, psychiatric,
40 psychological or legal services or referrals, information and referral
41 services, counseling and support services, or financial services to
42 victims of crimes, including victims of sexual assault, domestic
43 violence, violent crime, child endangerment, child abuse or child
44 neglect, and the Victims of Crime Compensation Board, established
45 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
46 the Victims of Crime Compensation Office pursuant to P.L.2007,
47 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
48 (cf: P.L.2019, c.255, s.4)

1 ²[¹19. N.J.S.2C:52-30 is amended to read as follows:

2 2C:52-30. Except as otherwise provided in this chapter, **[any]**

3 a. Any person who reveals to another the existence of an arrest,
4 conviction, unlawful act violation, or related legal proceeding with
5 knowledge that the records and information pertaining thereto have
6 been expunged or sealed is a disorderly person. Notwithstanding
7 the provisions of [section] N.J.S.2C:43-3, the maximum fine which
8 can be imposed for violation of this section is **[\$200.00] \$2,000.**

9 b. (1) Any person or entity regularly engaged in the business
10 of collecting, assembling, evaluating or disseminating persons'
11 records of occurrences or related legal proceedings described in
12 subsection a. of this section for a fee shall regularly update the
13 records to ensure accuracy, promptly delete a record that has been
14 expunged or sealed, provide clients with the date collected and
15 explain to clients that records are valid only as of the date collected.

16 (2) Any person or entity regularly engaged in the business of
17 collecting, assembling, evaluating or disseminating records of
18 occurrences or related legal proceedings described in subsection a.
19 of this section for a fee, which disseminates a record that has been
20 expunged or sealed and knows or should have known at the time of
21 dissemination that the record has been expunged or sealed is liable
22 to the person who is the subject of the record for damages totaling
23 \$5,000 or the actual damages caused by the violation, whichever is
24 greater, plus costs and attorney fees.¹

25 (cf: N.J.S.2C:52-30)]²

26
27 ²[¹20.] ²19.² (New section) The Administrative Director of the
28 Courts shall maintain and provide information to any person upon
29 request about the expungement process and legal services programs
30 Statewide and in each county which may be available to assist the
31 person with an expedited expungement pursuant to section 5 of
32 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
33 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3).¹

34
35 ²[¹21.] ²20.² (New section) a. (1) The Administrative Director
36 of the Courts shall develop and maintain a multilingual public
37 awareness campaign to promote awareness of the expungement
38 process, including an expedited expungement pursuant to section 5
39 of P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
40 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), and the
41 expungement e-filing system established pursuant to section 11 of
42 P.L.2019, c.269 (C.2C:52-10.1), as well as information on State,
43 local, non-profit and other private job training programs in
44 consultation with the Department of Labor and Workforce
45 Development, with a focus on assisting those persons eligible for
46 the expedited expungement of their records pursuant to section 5 of
47 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement

1 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3),
2 respectively.

3 (2) The public awareness campaign shall, at a minimum, utilize
4 electronic and print media, and shall make available electronically
5 on an Internet website a petition form and a list of the supporting
6 information necessary for an expungement, including an expedited
7 or “clean slate” expungement pursuant to section 5 of
8 P.L.2019, c.269 (C.2C:52-5.1) or section 7 of P.L.2019, c.269
9 (C.2C:52-5.3), respectively, using the expungement e-filing system
10 once established pursuant to section 11 of P.L.2019, c.269
11 (C.2C:52-10.1).

12 (3) The petition and supporting information shall, at a minimum,
13 be made available in English and Spanish.

14 b. The Administrative Director of the Courts shall include in
15 the annual report on the activities of the Administrative Office of
16 the Courts, prepared pursuant to N.J.S.2A:12-5, information about
17 the activities and accomplishments of the public awareness
18 campaign developed and maintained pursuant to subsection a. of
19 this section, beginning no later than one year after the effective date
20 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).¹

22
23 ¹[11.] ²[22. ¹] 21.² ³[This] Sections 1 through 5 of this³ act
24 shall take effect ¹[on the 90th day following enactment, except that
25 the Attorney General, Administrative Director of the Courts, and
26 the Supreme Court may take any anticipatory action as may be
27 necessary to effectuate the provisions of this act] ²[immediately¹]
28 ³[on the 120th day following enactment²] immediately, and the
29 remaining sections of this act shall take effect on the same date as
30 the date that actions occur on matters based on provisions in any
31 sections in P.L. , c. (C.) (pending before the Legislature as
32 Second Reprint of Assembly Bill No. 21), in which those actions
33 are to occur on the first day of the fifth month next following the
34 date of enactment of that act³ .

35
36
37
38
39 Provides for certain criminal and civil justice reforms,
40 particularly addressing legal consequences associated with certain
41 marijuana and hashish offenses as well as raising awareness of
42 available expungement relief.

ASSEMBLY, No. 1897

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

Co-Sponsored by:

Assemblywomen Carter, Tucker and Timberlake

SYNOPSIS

Decriminalizes possession of 10 grams or less of marijuana and personal-use amount of regulated marijuana-infused products; requires substance abuse treatment under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/15/2020)

A1897 WIMBERLY, HOLLEY

2

1 AN ACT concerning marijuana, amending various parts of the
2 statutory law, and supplementing Title 2C of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2B:12-17 is amended to read as follows:

9 2B:12-17. Jurisdiction of specified offenses. A municipal court
10 has jurisdiction over the following cases within the territorial
11 jurisdiction of the court:

12 a. Violations of county or municipal ordinances;

13 b. Violations of the motor vehicle and traffic laws;

14 c. Disorderly persons offenses, petty disorderly persons
15 offenses and other non-indictable offenses except where exclusive
16 jurisdiction is given to the Superior Court;

17 d. Violations of the fish and game laws;

18 e. Proceedings to collect a penalty where jurisdiction is granted
19 by statute;

20 f. Violations of laws regulating boating; **[and]**

21 g. Violations of sections 10 and 11 of P.L. , c. (C.)
22 (pending before the Legislature as this bill); and

23 h. Any other proceedings where jurisdiction is granted by
24 statute.

25 (cf: P.L.1996, c.95, s.12)

26

27 2. N.J.S.2C:35-2 is amended to read as follows:

28 2C:35-2. As used in this chapter:

29 "Administer" means the direct application of a controlled
30 dangerous substance or controlled substance analog, whether by
31 injection, inhalation, ingestion, or any other means, to the body of a
32 patient or research subject by: (1) a practitioner (or, in his
33 presence, by his lawfully authorized agent), or (2) the patient or
34 research subject at the lawful direction and in the presence of the
35 practitioner.

36 "Agent" means an authorized person who acts on behalf of or at
37 the direction of a manufacturer, distributor, or dispenser but does
38 not include a common or contract carrier, public warehouseman, or
39 employee thereof.

40 "Controlled dangerous substance" means a drug, substance, or
41 immediate precursor in Schedules I through V, any substance the
42 distribution of which is specifically prohibited in N.J.S.2C:35-3, in
43 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of
44 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120
45 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 and any drug or substance which, when ingested, is metabolized or
2 otherwise becomes a controlled dangerous substance in the human
3 body. When any statute refers to controlled dangerous substances,
4 or to a specific controlled dangerous substance, it shall also be
5 deemed to refer to any drug or substance which, when ingested, is
6 metabolized or otherwise becomes a controlled dangerous substance
7 or the specific controlled dangerous substance, and to any substance
8 that is an immediate precursor of a controlled dangerous substance
9 or the specific controlled dangerous substance. The term shall not
10 include distilled spirits, wine, malt beverages, as those terms are
11 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
12 products. The term, wherever it appears in any law or
13 administrative regulation of this State, shall include controlled
14 substance analogs.

15 "Controlled substance analog" means a substance that has a
16 chemical structure substantially similar to that of a controlled
17 dangerous substance and that was specifically designed to produce
18 an effect substantially similar to that of a controlled dangerous
19 substance. The term shall not include a substance manufactured or
20 distributed in conformance with the provisions of an approved new
21 drug application or an exemption for investigational use within the
22 meaning of section 505 of the "Federal Food, Drug and Cosmetic
23 Act," 52 Stat. 1052 (21 U.S.C. s.355).

24 "Counterfeit substance" means a controlled dangerous substance
25 or controlled substance analog which, or the container or labeling of
26 which, without authorization, bears the trademark, trade name, or
27 other identifying mark, imprint, number, or device, or any likeness
28 thereof, of a manufacturer, distributor, or dispenser other than the
29 person or persons who in fact manufactured, distributed, or
30 dispensed the substance and which thereby falsely purports or is
31 represented to be the product of, or to have been distributed by,
32 such other manufacturer, distributor, or dispenser.

33 "Deliver" or "delivery" means the actual, constructive, or
34 attempted transfer from one person to another of a controlled
35 dangerous substance or controlled substance analog, whether or not
36 there is an agency relationship.

37 "Dispense" means to deliver a controlled dangerous substance or
38 controlled substance analog to an ultimate user or research subject
39 by or pursuant to the lawful order of a practitioner, including the
40 prescribing, administering, packaging, labeling, or compounding
41 necessary to prepare the substance for that delivery. "Dispenser"
42 means a practitioner who dispenses.

43 "Distribute" means to deliver other than by administering or
44 dispensing a controlled dangerous substance or controlled substance
45 analog. "Distributor" means a person who distributes.

46 "Drugs" means (a) substances recognized in the official United
47 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
48 United States, or official National Formulary, or any supplement to

1 any of them; and (b) substances intended for use in the diagnosis,
2 cure, mitigation, treatment, or prevention of disease in man or other
3 animals; and (c) substances (other than food) intended to affect the
4 structure or any function of the body of man or other animals; and
5 (d) substances intended for use as a component of any article
6 specified in subsections (a), (b), and (c) of this section; but does not
7 include devices or their components, parts, or accessories.

8 "Drug or alcohol dependent person" means a person who as a
9 result of using a controlled dangerous substance or controlled
10 substance analog or alcohol has been in a state of psychic or
11 physical dependence, or both, arising from the use of that controlled
12 dangerous substance or controlled substance analog or alcohol on a
13 continuous or repetitive basis. Drug or alcohol dependence is
14 characterized by behavioral and other responses, including but not
15 limited to a strong compulsion to take the substance on a recurring
16 basis in order to experience its psychic effects, or to avoid the
17 discomfort of its absence.

18 "Hashish" means the resin extracted from any part of the plant
19 Genus Cannabis L. and any compound, manufacture, salt,
20 derivative, mixture, or preparation of such resin.

21 "Manufacture" means the production, preparation, propagation,
22 compounding, conversion, or processing of a controlled dangerous
23 substance or controlled substance analog, either directly or by
24 extraction from substances of natural origin, or independently by
25 means of chemical synthesis, or by a combination of extraction and
26 chemical synthesis, and includes any packaging or repackaging of
27 the substance or labeling or relabeling of its container, except that
28 this term does not include the preparation or compounding of a
29 controlled dangerous substance or controlled substance analog by
30 an individual for his own use or the preparation, compounding,
31 packaging, or labeling of a controlled dangerous substance: (1) by
32 a practitioner as an incident to his administering or dispensing of a
33 controlled dangerous substance or controlled substance analog in
34 the course of his professional practice, or (2) by a practitioner (or
35 under his supervision) for the purpose of, or as an incident to,
36 research, teaching, or chemical analysis and not for sale.

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

46 "Marijuana concentrate" means a product consisting wholly or in
47 part of the resin extracted from any part of the plant Genus

1 Cannabis L. and having a tetrahydrocannabinol concentration
2 greater than 2.5 percent.

3 "Narcotic drug" means any of the following, whether produced
4 directly or indirectly by extraction from substances of vegetable
5 origin, or independently by means of chemical synthesis, or by a
6 combination of extraction and chemical synthesis:

7 (a) Opium, coca leaves, and opiates;

8 (b) A compound, manufacture, salt, derivative, or preparation of
9 opium, coca leaves, or opiates;

10 (c) A substance (and any compound, manufacture, salt,
11 derivative, or preparation thereof) which is chemically identical
12 with any of the substances referred to in subsections (a) and (b),
13 except that the words "narcotic drug" as used in this act shall not
14 include decocainized coca leaves or extracts of coca leaves, which
15 extracts do not contain cocaine or ecogine.

16 "Opiate" means any dangerous substance having an addiction-
17 forming or addiction-sustaining liability similar to morphine or
18 being capable of conversion into a drug having such addiction-
19 forming or addiction-sustaining liability. It does not include, unless
20 specifically designated as controlled pursuant to the provisions of
21 section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
22 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
23 It does include its racemic and levorotatory forms.

24 "Opium poppy" means the plant of the species *Papaver*
25 *somniferum* L., except the seeds thereof.

26 "Person" means any corporation, association, partnership, trust,
27 other institution or entity, or one or more individuals.

28 "Personal-use amount of a regulated marijuana-infused product"
29 means one or more products, containing a total of no more than 100
30 milligrams of tetrahydrocannabinol, comprised of marijuana,
31 marijuana extracts, or marijuana resins and other ingredients and
32 intended for personal use or consumption, including but not limited
33 to edible products, ointments, and tinctures, lawfully obtained from
34 a jurisdiction where marijuana sales to adults are authorized under
35 the law of the jurisdiction, in its original, child-resistant, labeled
36 packaging when stored.

37 "Plant" means an organism having leaves and a readily
38 observable root formation, including, but not limited to, a cutting
39 having roots, a rootball or root hairs.

40 "Poppy straw" means all parts, except the seeds, of the opium
41 poppy, after mowing.

42 "Practitioner" means a physician, dentist, veterinarian, scientific
43 investigator, laboratory, pharmacy, hospital, or other person
44 licensed, registered, or otherwise permitted to distribute, dispense,
45 conduct research with respect to, or administer a controlled
46 dangerous substance or controlled substance analog in the course of
47 professional practice or research in this State.

1 (a) "Physician" means a physician authorized by law to practice
2 medicine in this or any other state and any other person authorized
3 by law to treat sick and injured human beings in this or any other
4 state.

5 (b) "Veterinarian" means a veterinarian authorized by law to
6 practice veterinary medicine in this State.

7 (c) "Dentist" means a dentist authorized by law to practice
8 dentistry in this State.

9 (d) "Hospital" means any federal institution, or any institution
10 for the care and treatment of the sick and injured, operated or
11 approved by the appropriate State department as proper to be
12 entrusted with the custody and professional use of controlled
13 dangerous substances or controlled substance analogs.

14 (e) "Laboratory" means a laboratory to be entrusted with the
15 custody of narcotic drugs and the use of controlled dangerous
16 substances or controlled substance analogs for scientific,
17 experimental, and medical purposes and for purposes of instruction
18 approved by the Department of Health.

19 "Production" includes the manufacture, planting, cultivation,
20 growing, or harvesting of a controlled dangerous substance or
21 controlled substance analog.

22 "Immediate precursor" means a substance which the Division of
23 Consumer Affairs in the Department of Law and Public Safety has
24 found to be and by regulation designates as being the principal
25 compound commonly used or produced primarily for use, and
26 which is an immediate chemical intermediary used or likely to be
27 used in the manufacture of a controlled dangerous substance or
28 controlled substance analog, the control of which is necessary to
29 prevent, curtail, or limit such manufacture.

30 "Residential treatment facility" means any facility licensed and
31 approved by the Department of Human Services and which is
32 approved by any county probation department for the inpatient
33 treatment and rehabilitation of drug or alcohol dependent persons.

34 "Schedules I, II, III, IV, and V" are the schedules set forth in
35 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-
36 8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified
37 by any regulations issued by the Director of the Division of
38 Consumer Affairs in the Department of Law and Public Safety
39 pursuant to the director's authority as provided in section 3 of
40 P.L.1970, c.226 (C.24:21-3).

41 "State" means the State of New Jersey.

42 "Ultimate user" means a person who lawfully possesses a
43 controlled dangerous substance or controlled substance analog for
44 his own use or for the use of a member of his household or for
45 administration to an animal owned by him or by a member of his
46 household.

47 "Prescription legend drug" means any drug which under federal
48 or State law requires dispensing by prescription or order of a

1 licensed physician, veterinarian, or dentist and is required to bear
2 the statement "Rx only" or similar wording indicating that such
3 drug may be sold or dispensed only upon the prescription of a
4 licensed medical practitioner and is not a controlled dangerous
5 substance or stramonium preparation.

6 "Stramonium preparation" means a substance prepared from any
7 part of the stramonium plant in the form of a powder, pipe mixture,
8 cigarette, or any other form with or without other ingredients.

9 "Stramonium plant" means the plant *Datura Stramonium* Linne,
10 including *Datura Tatula* Linne.

11 (cf: P.L.2013, c.35, s.1)

12

13 3. N.J.S.2C:35-10 is amended to read as follows:

14 2C:35-10. Possession, Use or Being Under the Influence, or
15 Failure to Make Lawful Disposition.

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

24 (1) A controlled dangerous substance, or its analog, classified in
25 Schedule I, II, III or IV other than those specifically covered in this
26 section, is guilty of a crime of the third degree except that,
27 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
28 fine of up to \$35,000.00 may be imposed;

29 (2) Any controlled dangerous substance, or its analog, classified
30 in Schedule V, is guilty of a crime of the fourth degree except that,
31 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
32 fine of up to \$15,000.00 may be imposed;

33 (3) Possession of: (a) more than 50 grams of marijuana,
34 including any adulterants or dilutants **[, or]**; (b) more than five
35 grams of hashish or marijuana concentrate; or (c) more than two
36 times a personal-use amount of a regulated marijuana-infused
37 product as defined in N.J.S.2C:35-2, is guilty of a crime of the
38 fourth degree, except that, notwithstanding the provisions of
39 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
40 imposed; **[or]**

41 (4) Possession of : (a) more than 10 grams but less than 50
42 grams of marijuana, including any adulterants or dilutants; (b) more
43 than a personal-use amount of a regulated marijuana-infused
44 product but less than two times a personal-use amount of a
45 regulated marijuana-infused product; or (c) more than one gram but
46 less than five grams of hashish or marijuana concentrate **[or less of**
47 **marijuana, including any adulterants or dilutants]**, or five grams or
48 less of hashish is a disorderly person; or

1 (5) Possession of: (a) 10 grams or less of marijuana, including
2 any adulterants or dilutants; (b) a personal-use amount of a
3 regulated marijuana-infused product; or (c) one gram or less of
4 hashish or marijuana concentrate is not a violation of this title, but
5 shall be subject to the penalties set forth in section 10 of P.L. ,
6 c. (C.) (pending before the Legislature as this bill).

7 Any person who commits any offense defined in this section
8 while on any property used for school purposes which is owned by
9 or leased to any elementary or secondary school or school board, or
10 within 1,000 feet of any such school property or a school bus, or
11 while on any school bus, and who is not sentenced to a term of
12 imprisonment, shall, in addition to any other sentence which the
13 court may impose, be required to perform not less than 100 hours of
14 community service.

15 b. Any person who uses or who is under the influence of any
16 controlled dangerous substance, or its analog, for a purpose other
17 than the treatment of sickness or injury as lawfully prescribed or
18 administered by a physician is a disorderly person. It is not a
19 violation of this subsection if a person is under the influence of
20 marijuana.

21 In a prosecution under this subsection, it shall not be necessary
22 for the State to prove that the accused did use or was under the
23 influence of any specific drug, but it shall be sufficient for a
24 conviction under this subsection for the State to prove that the
25 accused did use or was under the influence of some controlled
26 dangerous substance, counterfeit controlled dangerous substance, or
27 controlled substance analog, other than marijuana, by proving that
28 the accused did manifest physical and physiological symptoms or
29 reactions caused by the use of any controlled dangerous substance
30 or controlled substance analog.

31 c. Any person who knowingly obtains or possesses a controlled
32 dangerous substance or controlled substance analog in violation of
33 subsection a. of this section and who fails to voluntarily deliver the
34 substance to the nearest law enforcement officer is guilty of a
35 disorderly persons offense. Nothing in this subsection shall be
36 construed to preclude a prosecution or conviction for any other
37 offense defined in this title or any other statute. It is not a violation
38 of this subsection if the substance is 10 grams or less of marijuana,
39 including any adulterants or dilutants; a personal-use amount of a
40 regulated marijuana-infused product; or one gram or less of hashish
41 or marijuana concentrate.

42 (cf: P.L.1997, c.181, s.6)

43
44 4. N.J.S.2C:35-18 is amended to read as follows:

45 2C:35-18. Exemption; Burden of Proof. a. If conduct is
46 authorized by the provisions of P.L.1970, c.226 (C.24:21-1 et seq.),
47 P.L.2009, c.307 (C.24:6I-1 et al.), **【or】** P.L.2015, c.158 (C.18A:40-
48 12.22 et al.), or if conduct is not subject to a criminal penalty

1 pursuant to the provisions of paragraph (5) of subsection a. of
2 N.J.S.2C:35-10, that authorization or decriminalization shall,
3 subject to the provisions of this section, constitute an exemption
4 from criminal liability under this chapter or chapter 36, and the
5 absence of such authorization or decriminalization shall not be
6 construed to be an element of any offense in this chapter or chapter
7 36. It is an affirmative defense to any criminal action arising under
8 this chapter or chapter 36 that the defendant is the authorized holder
9 of an appropriate registration, permit or order form or is otherwise
10 exempted or excepted from criminal liability by virtue of any
11 provision of P.L.1970, c.226 (C.24:21-1 et seq.), P.L.2009, c.307
12 (C.24:6I-1 et al.), [or] P.L.2015, c.158 (C.18A:40-12.22 et al.) , or
13 the provisions of paragraph (5) of subsection a. of N.J.S.2C:35-10.
14 The affirmative defense established herein shall be proved by the
15 defendant by a preponderance of the evidence. It shall not be
16 necessary for the State to negate any exemption set forth in this act
17 or in any provision of Title 24 of the Revised Statutes in any
18 complaint, information, indictment or other pleading or in any trial,
19 hearing or other proceeding under this act.

20 b. No liability shall be imposed by virtue of this chapter or
21 chapter 36 upon any duly authorized State officer, engaged in the
22 enforcement of any law or municipal ordinance relating to
23 controlled dangerous substances or controlled substance analogs.
24 (cf: P.L.2015, c.158, s.3)

25

26 5. N.J.S.2C:36-2 is amended to read as follows:

27 2C:36-2. Use or possession with intent to use drug paraphernalia,
28 disorderly persons offense.

29 It shall be unlawful for any person to use, or to possess with
30 intent to use, drug paraphernalia to plant, propagate, cultivate,
31 grow, harvest, manufacture, compound, convert, produce, process,
32 prepare, test, analyze, pack, repack, store, contain, conceal, ingest,
33 inhale, or otherwise introduce into the human body a controlled
34 dangerous substance, controlled substance analog or toxic chemical
35 in violation of the provisions of chapter 35 of this title. Any person
36 who violates this section is guilty of a disorderly persons offense.

37 Use, or possession with intent to use, drug paraphernalia to plant,
38 propagate, cultivate, grow, harvest, manufacture, compound,
39 convert, produce, process, prepare, test, analyze, pack, repack,
40 store, contain, conceal, ingest, inhale, or otherwise introduce into
41 the human body 10 grams or less of marijuana, including any
42 adulterants or dilutants; a personal-use amount of a regulated
43 marijuana-infused product; or one gram or less of hashish or
44 marijuana concentrate is not a violation of this section but shall be
45 subject to the penalties set forth in section 11 of P.L. _____,
46 c. (C. _____) (pending before the Legislature as this bill).

47 (cf: P.L.2007, c.31, s.3)

1 6. N.J.S.2C:36A-1 is amended to read as follows:

2 2C:36A-1. Conditional discharge for certain first offenses.

3 a. Whenever any person who has not previously been convicted
4 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or
5 a disorderly persons or petty disorderly persons offense defined in
6 chapter 35 or 36 of this title or, subsequent to the effective date of
7 this title, under any law of the United States, this State or any other
8 state relating to marijuana, or stimulant, depressant, or
9 hallucinogenic drugs, and who has not previously participated in a
10 program of supervisory treatment pursuant to N.J.S.2C:43-12 or
11 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
12 al.), or a Veterans Diversion Program pursuant to P.L.2017, c.42
13 (C.2C:43-23 et al.), is charged with or convicted of any disorderly
14 persons offense or petty disorderly persons offense under chapter 35
15 or 36 of this title, the court **【upon notice to the prosecutor and】**,
16 subject to subsection c. of this section, **【may on motion of the**
17 **defendant or the court】 shall:**

18 (1) Suspend further proceedings and with the consent of the
19 person after reference to the State Bureau of Identification criminal
20 history record information files, place him under supervisory
21 treatment upon such reasonable terms and conditions as it may
22 require, including the terms and conditions set forth in subsection b.
23 of this section; or

24 (2) After a plea of guilty or finding of guilty, and without
25 entering a judgment of conviction, and with the consent of the
26 person after proper reference to the State Bureau of Identification
27 criminal history record information files, place him on supervisory
28 treatment upon reasonable terms and conditions as it may require,
29 including the terms and conditions set forth in subsection b. of this
30 section, or as otherwise provided by law.

31 b. The court shall order the person to undergo a diagnostic
32 assessment by a professional licensed or certified by the Division of
33 Mental Health and Addiction Services in the Department of Health
34 to perform such assessments to determine if and to what extent the
35 person is drug dependent and would benefit from treatment.

36 (1) If the person is determined to not be drug dependent he shall
37 complete a two-hour education program on marijuana and other
38 controlled dangerous substances, according to a curriculum
39 developed by the Division of Mental Health and Addiction Services
40 in the Department of Health. The curriculum shall include written
41 materials. If the professional determines that the person is not drug
42 dependent, the professional shall report to the court that no further
43 action is needed, and the records of the violation shall be expunged
44 as set forth in subparagraph (b) of paragraph (2) of this subsection.

45 (2) If the person is determined to be drug dependent within the
46 meaning of N.J.S.2C:35-2 and substance abuse treatment and
47 monitoring will serve to benefit the person by addressing his drug
48 dependency, the court shall order the person to undergo treatment

1 for drug dependency at a suitable treatment facility licensed and
2 approved by the Department of Health and to comply with the
3 requirements of the course of treatment. The person shall be
4 required to submit to periodic testing to determine compliance with
5 treatment program goals. The treatment provider shall promptly
6 report to the court any significant failures by the person to comply
7 with any court-imposed term or condition of treatment or any
8 requirements of the course of treatment, including but not limited to
9 a positive drug or alcohol test or the unexcused failure to attend any
10 session or activity.

11 A person may apply for a waiver of the cost of the substance
12 abuse assessment and substance abuse treatment by reason of
13 extreme financial hardship. Costs of the substance abuse assessment
14 may be reimbursed from the Drug Education Program Fund
15 established in section 13 of P.L. , c. (C.) (pending before
16 the Legislature as this bill).

17 (a) Upon completion of treatment, the agency designated by the
18 court to monitor or supervise the person's treatment shall report to
19 the court as to the person's progress in treatment and compliance
20 with court-imposed terms and conditions.

21 (b) After the expiration of a period six months following the
22 court's entry of the order of dismissal, the records of the person's
23 arrest shall be expunged pursuant to N.J.S.2C:52-6. Expungement
24 shall not require any action by the person or the payment of any fee.

25 In no event shall the court require as a term or condition of
26 supervisory treatment under this section, referral to any residential
27 treatment facility for a period exceeding the maximum period of
28 confinement prescribed by law for the offense for which the
29 individual has been charged or convicted, nor shall any term of
30 supervisory treatment imposed under this subsection exceed a
31 period of three years. **■** If a person is placed under supervisory
32 treatment under this section after a plea of guilty or finding of guilt,
33 the court as a term and condition of supervisory treatment shall
34 suspend the person's driving privileges for a period to be fixed by
35 the court at not less than six months or more than two years unless
36 the court finds compelling circumstances warranting an exception.
37 For the purposes of this subsection, compelling circumstances
38 warranting an exception exist if the suspension of the person's
39 driving privileges will result in extreme hardship and alternative
40 means of transportation are not available. In the case of a person
41 who at the time of placement under supervisory treatment under this
42 section is less than 17 years of age, the period of suspension of
43 driving privileges authorized herein, including a suspension of the
44 privilege of operating a motorized bicycle, shall commence on the
45 day the person is placed on supervisory treatment and shall run for a
46 period as fixed by the court of not less than six months or more than
47 two years after the day the person reaches the age of 17 years.

1 If the driving privilege of a person is under revocation,
2 suspension, or postponement for a violation of this title or Title 39
3 of the Revised Statutes at the time of the person's placement on
4 supervisory treatment under this section, the revocation, suspension
5 or postponement period imposed herein shall commence as of the
6 date of the termination of the existing revocation, suspension or
7 postponement. The court which places a person on supervisory
8 treatment under this section shall collect and forward the person's
9 driver's license to the New Jersey Motor Vehicle Commission and
10 file an appropriate report with the commission in accordance with
11 the procedure set forth in N.J.S.2C:35-16. The court shall also
12 inform the person of the penalties for operating a motor vehicle
13 during the period of license suspension or postponement as required
14 in N.J.S.2C:35-16.】

15 Upon violation of a term or condition of supervisory treatment
16 the court may enter a judgment of conviction and proceed as
17 otherwise provided, or where there has been no plea of guilty or
18 finding of guilty, resume proceedings. Upon fulfillment of the terms
19 and conditions of supervisory treatment the court shall terminate the
20 supervisory treatment and dismiss the proceedings against him.
21 Termination of supervisory treatment and dismissal under this
22 section shall be without court adjudication of guilt and shall not be
23 deemed a conviction for purposes of disqualifications or
24 disabilities, if any, imposed by law upon conviction of a crime or
25 disorderly persons offense but shall be reported by the clerk of the
26 court to the State Bureau of Identification criminal history record
27 information files. Termination of supervisory treatment and
28 dismissal under this section may occur only once with respect to
29 any person. Imposition of supervisory treatment under this section
30 shall not be deemed a conviction for the purposes of determining
31 whether a second or subsequent offense has occurred under section
32 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or
33 any law of this State.

34 c. Proceedings under this section shall **【not】** be available to
35 **【any】** every defendant unless the court in its discretion concludes
36 that:

37 (1) The defendant's continued presence in the community, or in
38 a civil treatment center or program, will **【not】** pose a danger to the
39 community; or

40 (2) **【That the】** The terms and conditions of supervisory
41 treatment will be **【adequate】** inadequate to protect the public and
42 will not benefit the defendant by serving to correct any dependence
43 on or use of controlled substances which he may manifest; **【and】** or

44 (3) The person has **【not】** previously received supervisory
45 treatment under section 27 of P.L.1970, c.226 (C.24:21-27),
46 N.J.S.2C:43-12, or the provisions of this chapter.

1 d. A person seeking conditional discharge pursuant to this
2 section shall pay to the court a fee of \$75 which shall be paid to the
3 Treasurer of the State of New Jersey for deposit in the General
4 Fund. The defendant shall also be required to pay restitution, costs
5 and other assessments as provided by law. A person may apply for a
6 waiver of this fee, by reason of poverty, pursuant to the Rules
7 Governing the Courts of the State of New Jersey, or the court may
8 permit the defendant to pay the conditional discharge fee and other
9 assessments in installments or may order other alternatives pursuant
10 to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

11 (cf: P.L.2017, c.42, s.9)

12

13 7. N.J.S.2C:52-1 is amended to read as follows:

14 2C:52-1. Definition of Expungement.

15 a. Except as otherwise provided in this chapter, expungement
16 shall mean the extraction and isolation of all records on file within
17 any court, detention or correctional facility, law enforcement or
18 criminal justice agency concerning a person's detection,
19 apprehension, arrest, detention, trial or disposition of: an offense
20 within the criminal justice system, or a violation of section 10 or 11
21 of P.L. , c. (C.) (pending before the Legislature as this
22 bill).

23 b. Expunged records shall include complaints, warrants,
24 arrests, commitments, processing records, fingerprints,
25 photographs, index cards, "rap sheets" and judicial docket records.
26 (cf: P.L.1979, c.178, s.108)

27

28 8. N.J.S.2C:52-3 is amended to read as follows:

29 2C:52-3. Disorderly persons offenses and petty disorderly
30 persons offenses.

31 a. Any person who has been convicted of one or more
32 disorderly persons or petty disorderly persons offenses under the
33 laws of this State who has not been convicted of any crime, whether
34 within this State or any other jurisdiction, may present an
35 expungement application to the Superior Court pursuant to this
36 section. Any person who has been convicted of one or more
37 disorderly persons or petty disorderly persons offenses under the
38 laws of this State who has also been convicted of one or more
39 crimes shall not be eligible to apply for an expungement pursuant to
40 this section, but may present an expungement application to the
41 Superior Court pursuant to N.J.S.2C:52-2.

42 b. Any person who has been convicted of one or more
43 disorderly persons or petty disorderly persons offenses under the
44 laws of this State who has not been convicted of any crime, whether
45 within this State or any other jurisdiction, may present an
46 expungement application to the Superior Court pursuant to this
47 section if:

1 the person has been convicted, under the laws of this State, on
2 the same or separate occasions of no more than four disorderly
3 persons offenses, no more than four petty disorderly persons
4 offenses, or a combination of no more than four disorderly persons
5 and petty disorderly persons offenses, and the person does not
6 otherwise have any prior or subsequent conviction for a disorderly
7 persons or petty disorderly persons offense, whether within this
8 State or any other jurisdiction, such that the total number of
9 convictions for disorderly persons and petty disorderly persons
10 offenses would exceed four; or

11 the person has been convicted of multiple disorderly persons
12 offenses or multiple petty disorderly persons offenses under the
13 laws of this State, or a combination of multiple disorderly persons
14 and petty disorderly persons offenses under the laws of this State,
15 which convictions were entered on the same day, and does not
16 otherwise have any prior or subsequent conviction for another
17 offense in addition to those convictions included in the
18 expungement application, whether any such conviction was within
19 this State or any other jurisdiction; or

20 the person has been convicted of multiple disorderly persons
21 offenses or multiple petty disorderly persons offenses under the
22 laws of this State, or a combination of multiple disorderly persons
23 and petty disorderly persons offenses under the laws of this State,
24 which offenses or combination of offenses were interdependent or
25 closely related in circumstances and were committed as part of a
26 sequence of events that took place within a comparatively short
27 period of time, regardless of the date of conviction or sentencing for
28 each individual offense, and the person does not otherwise have any
29 prior or subsequent conviction for another offense in addition to
30 those convictions included in the expungement application, whether
31 within this State or any other jurisdiction.

32 The person, if eligible, may present the expungement application
33 after the expiration of a period of five years from the date of his
34 most recent conviction, payment of fine, satisfactory completion of
35 probation or release from incarceration, whichever is later. The
36 term "fine" as used herein and throughout this section means and
37 includes any fine, restitution, and other court-ordered financial
38 assessment imposed by the court as part of the sentence for the
39 conviction, for which payment of restitution takes precedence in
40 accordance with chapter 46 of Title 2C of the New Jersey Statutes.
41 The person shall submit the expungement application to the
42 Superior Court in the county in which the most recent conviction
43 for a disorderly persons or petty disorderly persons offense was
44 adjudged, which contains a separate, duly verified petition as
45 provided in N.J.S.2C:52-7 for each conviction sought to be
46 expunged, praying that the conviction, or convictions if applicable,
47 and all records and information pertaining thereto be expunged.

1 The petition for each conviction appended to an application shall
2 comply with the requirements of N.J.S.2C:52-1 et seq.

3 Notwithstanding the provisions of the five-year time
4 requirement, an application may be filed and presented, and the
5 court may grant an expungement pursuant to this section, when the
6 court finds:

7 (1) the fine is satisfied but less than five years have expired
8 from the date of satisfaction, and the five-year time requirement is
9 otherwise satisfied, and the court finds that the person substantially
10 complied with any payment plan ordered pursuant to N.J.S.2C:46-1
11 et seq., or could not do so due to compelling circumstances
12 affecting his ability to satisfy the fine; or

13 (2) at least three but less than five years have expired from the
14 date of the most recent conviction, payment of fine, satisfactory
15 completion of probation or parole, or release from incarceration,
16 whichever is later; and

17 the person has not been otherwise convicted of a crime,
18 disorderly persons offense, or petty disorderly persons offense since
19 the time of the most recent conviction; and the court finds in its
20 discretion that expungement is in the public interest, giving due
21 consideration to the nature of the offense or offenses, and the
22 applicant's character and conduct since the conviction or
23 convictions.

24 In determining whether compelling circumstances exist for the
25 purposes of paragraph (1) of this subsection, a court may consider
26 the amount of the fine or fines imposed, the person's age at the time
27 of the offense or offenses, the person's financial condition and other
28 relevant circumstances regarding the person's ability to pay.

29 c. The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14
30 shall not apply to an expungement of a conviction of any of the
31 following offenses that occurred prior to the enactment of P.L. _____,
32 c. (C. _____) (pending before the Legislature as this bill) and no fee
33 shall be charged to the person making such application:

34 (1) a violation of subsections a., b., or c. of N.J.S.2C:35-10
35 involving possession of 10 grams or less of marijuana, including
36 any adulterants or dilutants; a personal-use amount of a regulated
37 marijuana-infused product as defined in N.J.S.2C:35-2; or one gram
38 or less of hashish or marijuana concentrate; or

39 (2) a violation of subsection b. of N.J.S.2C:36-2 involving
40 paraphernalia for the use of 10 grams or less of marijuana,
41 including any adulterants or dilutants; a personal-use amount of a
42 regulated marijuana-infused product as defined in N.J.S.2C:35-2; or
43 one gram or less of hashish or marijuana concentrate.

44 (cf: P.L.2017, c.244, s.2)

45

46 9. Section 1 of P.L.1964, c.289 (C.39:4-49.1) is amended to
47 read as follows:

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

14 A person who violates this section shall be fined not less than
15 \$50.00 and shall forthwith forfeit his right to operate a motor
16 vehicle for a period of two years from the date of his conviction.
17 This section shall not apply to possession of 10 grams or less of
18 marijuana, including any adulterants or dilutants; a personal-use
19 amount of a regulated marijuana-infused product as defined in
20 N.J.S.2C:35-2; or one gram or less of hashish or marijuana
21 concentrate.

22 (cf: P.L.1985, c.239, s.1)

23

24 10. (New section) a. Any person who, in violation of paragraph
25 (5) of subsection a. of N.J.S.2C:35-10, possesses 10 grams or less
26 of marijuana, including any adulterants or dilutants; a personal-use
27 amount of a regulated marijuana-infused product as defined in
28 N.J.S.2C:35-2; or one gram or less of hashish or marijuana
29 concentrate, shall be subject to the following civil penalties:

- 30 (1) \$150 for a first violation;
31 (2) \$200 for a second violation;
32 (3) \$500 for a third or subsequent violation.

33 No additional fines, penalties, or fees shall be imposed by the
34 court, except court costs.

35 The penalty shall be collected pursuant to the "Penalty
36 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
37 in a summary proceeding before the municipal court having
38 jurisdiction. A penalty recovered under the provisions of this
39 section shall be recovered by and in the name of the State by the
40 local municipality. The penalty shall be paid into the treasury of
41 the municipality in which the violation occurred. Of each penalty
42 imposed pursuant to this section, \$50 shall be forwarded by the
43 municipality to the State to be deposited in the "Drug Education
44 Program Fund" established pursuant to section 13 of P.L. ,
45 c. C.) (pending before the Legislature as this bill). The
46 remainder of the penalty monies collected pursuant to this section
47 shall be retained by the municipality for the general uses of the
48 municipality.

1 A violation of this section shall be proved by a preponderance of
2 the evidence.

3 The court may waive the penalties in cases of extreme financial
4 hardship. The court shall waive the penalties for a single violation
5 within a three-year period upon proof that, within 60 days of the
6 violation, the person completed a substance abuse assessment by a
7 professional licensed by the Division of Mental Health and
8 Addiction Services in the Department of Health to perform such
9 assessments. A person who intends to undergo such an assessment
10 shall notify the court, which shall schedule the matter for review
11 after 180 days. If proof of completion of the assessment is filed on
12 or before 180 days, the court shall waive the penalties without a
13 hearing unless requested by a party.

14 b. The substance abuse assessment shall determine if, and to
15 what extent, the person is a drug dependent person within the
16 meaning of N.J.S.2C:35-2 and would benefit from treatment. If the
17 person is determined to not be drug dependent he shall complete a
18 two-hour education program on marijuana and other controlled
19 dangerous substances according to a curriculum developed by the
20 Division of Mental Health and Addiction Services in the
21 Department of Health. The curriculum shall include written
22 materials. If the professional determines that the person is not drug
23 dependent, the professional shall report to the court that no further
24 action is needed, and the records of the violation shall be expunged
25 as set forth in subsection e. of this section.

26 c. If the person is determined to be drug dependent within the
27 meaning of N.J.S.2C:35-2 and substance abuse treatment and
28 monitoring will serve to benefit the person by addressing his drug
29 dependency, the court shall order the person to undergo treatment
30 for drug dependency at a suitable treatment facility licensed and
31 approved by the Department of Health and to comply with the
32 requirements of the course of treatment. The person shall be
33 required to submit to periodic testing to determine compliance with
34 treatment program goals. The treatment provider shall promptly
35 report to the court any significant failures by the person to comply
36 with any court-imposed term or condition of treatment or any
37 requirements of the course of treatment, including but not limited to
38 a positive drug or alcohol test or the unexcused failure to to attend
39 any session or activity.

40 d. Upon completion of treatment, the agency designated by the
41 court to monitor or supervise the person's treatment shall report to
42 the court as to the person's progress in treatment and compliance
43 with court-imposed terms and conditions.

44 e. After the expiration of a period of six months following the
45 completion of the education program set forth in subsection b. of
46 this section or following substance abuse treatment as set forth in
47 subsection c. of this section, the records of the violation shall be
48 expunged in accordance with the provisions of section 12 of

1 P.L. , c. (C.) (pending before the Legislature as this bill).
2 Expungement shall not require any action by the person or the
3 payment of any fee.

4 f. A person may apply for a waiver of court fees and the cost
5 of the substance abuse assessment and treatment set forth in this
6 section by reason of extreme financial hardship. Costs of the
7 substance abuse assessment may be reimbursed from the Drug
8 Education Program Fund established in section 13 of
9 P.L. , c. (C.) (pending before the Legislature as this bill).

10

11 11. (New section) a. Any person who possesses drug
12 paraphernalia, as defined in N.J.S.2C:36-1, for the personal use of
13 10 grams or less of marijuana, a personal-use amount of a regulated
14 marijuana-infused product, or one gram or less of hashish or
15 marijuana concentrate, shall be subject to a civil penalty of \$100.
16 No additional fines, penalties, or fees shall be imposed by the court,
17 except court costs.

18 The penalty shall be collected pursuant to the “Penalty
19 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
20 in a summary proceeding before the municipal court having
21 jurisdiction. A penalty recovered under the provisions of this
22 section shall be recovered by and in the name of the State by the
23 local municipality. The penalty shall be paid into the treasury of
24 the municipality in which the violation occurred. Of each penalty
25 imposed pursuant to this section, \$50 shall be forwarded by the
26 municipality to the State to be deposited in the “Drug Education
27 Program Fund” established pursuant to section 13 of
28 P.L. , c. C.) (pending before the Legislature as this bill). The
29 remainder of the penalty monies collected pursuant to this section
30 shall be retained by the municipality for the general uses of the
31 municipality.

32 A violation of this section shall be proved by a preponderance of
33 the evidence.

34 The court may waive the penalty in cases of extreme financial
35 hardship. The court shall waive the penalty for a single violation
36 within a three-year period upon proof that, within 60 days of the
37 violation, the person completed a substance abuse assessment by a
38 professional licensed by the Division of Mental Health and
39 Addiction Services in the Department of Health to perform such
40 assessments. A person who intends to undergo such an assessment
41 shall notify the court, which shall schedule the matter for review
42 after 180 days. If proof of completion of the assessment is filed on
43 or before 180 days, the court shall waive the penalties without a
44 hearing unless requested by a party.

45 b. The substance abuse assessment shall determine if, and to
46 what extent, the person is a drug dependent person within the
47 meaning of N.J.S.2C:35-2 and would benefit from treatment. If the
48 person is determined to not be drug dependent he shall complete a

1 two-hour education program on marijuana and other controlled
2 dangerous substances according to a curriculum developed by the
3 Division of Mental Health and Addiction Services in the
4 Department of Health. The curriculum shall include written
5 materials. If the professional determines that the person is not drug
6 dependent, the professional shall report to the court that no further
7 action is needed, and the records of the violation shall be expunged
8 as set forth in subsection e. of this section.

9 c. If the person is determined to be drug dependent within the
10 meaning of N.J.S.2C:35-2 and substance abuse treatment and
11 monitoring will serve to benefit the person by addressing his drug
12 dependency, the court shall order the person to undergo treatment
13 for drug dependency at a suitable treatment facility licensed and
14 approved by the Department of Health and to comply with the
15 requirements of the course of treatment. The person shall be
16 required to submit to periodic testing to determine compliance with
17 treatment program goals. The treatment provider shall promptly
18 report to the court any significant failures by the person to comply
19 with any court-imposed term or condition of treatment or any
20 requirements of the course of treatment, including but not limited to
21 a positive drug or alcohol test or the unexcused failure to attend
22 any session or activity.

23 d. Upon completion of treatment, the agency designated by the
24 court to monitor or supervise the person's treatment shall report to
25 the court as to the person's progress in treatment and compliance
26 with court-imposed terms and conditions.

27 e. After the expiration of a period of six months following the
28 completion of the education program set forth in subsection b. of
29 this section or following substance abuse treatment as set forth in
30 subsection c. of this section, the records of the violation shall be
31 expunged in accordance with the provisions of section 12 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).
33 Expungement shall not require any action by the person or the
34 payment of any fee.

35 f. A person may apply for a waiver of court fees and the cost
36 of the substance abuse assessment and treatment set forth in this
37 section by reason of extreme financial hardship. Costs of the
38 substance abuse assessment may be reimbursed from the Drug
39 Education Program Fund established in section 13 of
40 P.L. , c. (C.) (pending before the Legislature as this bill).

41
42 12. (New section) Pursuant to the provisions of subsection e. of
43 section 10 of P.L. , c. (C.) (pending before the Legislature
44 as this bill) and subsection e. of section 11 of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 the court shall order the expungement of all records and information
47 relating to a violation of section 10 or 11 of P.L. , c. (C.)
48 (pending before the Legislature as this bill). The provisions of

1 N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to the
2 expungement of such records and no fee shall be charged to the
3 person.
4

5 13. (New section) The “Drug Education Program Fund” is
6 established as a dedicated, nonlapsing, revolving fund in the
7 Department of the Treasury. Monies deposited in the fund shall be
8 appropriated to the Department of Health, Division of Mental
9 Health and Addiction Services for drug education programs.
10 Monies shall also be used to reimburse the costs of substance abuse
11 assessment and treatment pursuant to subsection b. of
12 N.J.S.2C:36A-1 and sections 10 and 11 of P.L. , c. (C.)
13 (pending before the Legislature as this bill).
14

15 14. (New section) In addition to the provisions of any other law,
16 a person who negligently stores a regulated marijuana-infused
17 product, resulting in a minor under the age of 18 years possessing
18 such product, shall be guilty of a disorderly persons offense.

19 It shall be prima facie evidence that the person did not act
20 negligently pursuant to this section if he lawfully obtained the
21 regulated marijuana-infused product from a jurisdiction where
22 marijuana sales to adults are authorized under the law of the
23 jurisdiction, and stored the product in its original, child-resistant,
24 labeled packaging. Failure to store a regulated marijuana-infused
25 product in its original, child-resistant, labeled packaging shall be
26 prima facie evidence of negligence pursuant to this section.
27

28 15. (New section) Any person who is serving a sentence on the
29 effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill) for a violation of: (1) subsection a. of
31 N.J.S.2C:35-10 involving possession of 10 grams or less of
32 marijuana, including any adulterants or dilutants; a personal-use
33 amount of a regulated marijuana-infused product as defined in
34 N.J.S.2C:35-2; or one gram or less of hashish or marijuana
35 concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or (3)
36 N.J.S.2C:36-2 may move to have his sentence reviewed by the
37 sentencing court. The court may impose a civil penalty pursuant to
38 section 10 or 11 of P.L. , c. (C.) (pending before the
39 Legislature as this bill).
40

41 16. (New section) P.L. , c. (C.) (pending before the
42 Legislature as this bill) shall apply to all persons convicted of, but
43 not yet sentenced as of the effective date of P.L. , c. (C.)
44 (pending before the Legislature as this bill) for a violation of: (1)
45 subsection a. of N.J.S.2C:35-10 involving possession of 10 grams
46 or less of marijuana, including any adulterants or dilutants; a
47 personal-use amount of a regulated marijuana-infused product as
48 defined in N.J.S.2C:35-2; or one gram or less of hashish or

1 marijuana concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or
2 (3) N.J.S.2C:36-2. The defendant may move to have his conviction
3 overturned by the court. The court may impose a civil penalty
4 pursuant to section 10 or 11 of P.L. , c. (C.) (pending
5 before the Legislature as this bill).

6
7 17. (New section) P.L. , c. (C.) (pending before the
8 Legislature as this bill) shall apply to all criminal charges pending
9 on the effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill) for a violation of: (1) subsection a. of
11 N.J.S.2C:35-10 involving possession of 10 grams or less of
12 marijuana, including any adulterants or dilutants; a personal-use
13 amount of a regulated marijuana-infused product as defined in
14 N.J.S.2C:35-2; or one gram or less of hashish or marijuana
15 concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or (3)
16 N.J.S.2C:36-2. On and after the effective date of
17 P.L. , c. (C.) (pending before the Legislature as this bill),
18 the court shall dismiss any such criminal charges but the prosecutor
19 may charge the defendant with a violation pursuant to section 10 or
20 11 of P.L. , c. (C.) (pending before the Legislature as this
21 bill).

22
23 18. (New section) The Attorney General shall issue guidelines
24 for prosecutors and law enforcement to effectuate the provisions of
25 P.L. , c. (C.) (pending before the Legislature as this bill).

26
27 19. (New section) The Commissioner of Health, in consultation
28 with the Attorney General, shall adopt rules and regulations
29 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
30 (C.52:14B-1 et seq.), in order to effectuate the purposes of
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32
33 20. This act shall take effect on the 60th day following
34 enactment.

35 36 37 STATEMENT

38
39 This bill would decriminalize possession of 10 grams or less of
40 marijuana and certain marijuana products and impose civil penalties
41 for such possession. The bill would also eliminate all penalties for
42 being under the influence of marijuana.

43 CIVIL PENALTIES. The bill amends N.J.S.2C:35-10, Possession,
44 Use or Being Under the Influence, to provide that a person who
45 possesses 10 grams or less of marijuana, including any adulterants
46 or dilutants; a “personal-use amount of a regulated marijuana-
47 infused product”; or one gram or less of hashish or marijuana
48 concentrate would be subject to a civil penalty: a fine of \$150 for a

1 first violation, a \$200 fine for a second violation, and a \$500 fine
2 for a third or subsequent violation. The bill would allow the court to
3 waive the penalties in case of extreme financial hardship and under
4 certain other circumstances.

5 DEFINITIONS. The bill defines “personal-use amount of a
6 regulated marijuana-infused product” as “one or more products,
7 containing a total of no more than 100 milligrams of
8 tetrahydrocannabinol, comprised of marijuana, marijuana extracts,
9 or marijuana resins and other ingredients and intended for personal
10 use or consumption, including but not limited to edible products,
11 ointments, and tinctures, lawfully obtained from a jurisdiction
12 where marijuana sales to adults are authorized under the law of the
13 jurisdiction, in its original, child-resistant, labeled packaging when
14 stored.”

15 The bill defines “marijuana concentrate” as “a product consisting
16 wholly or in part of the resin extracted from any part of the plant
17 Genus Cannabis L. and having a tetrahydrocannabinol
18 concentration greater than 2.5 percent.”

19 CURRENT LAW. Under current law, possession of 50 grams or
20 less of marijuana or five grams or less of hashish is a disorderly
21 persons offense. Possession of more than 50 grams of marijuana or
22 more than five grams of hashish is a crime of the fourth degree,
23 with an enhanced fine of up to \$25,000. A crime of the fourth
24 degree is generally punishable by a term of imprisonment of up to
25 18 months or a fine up to \$10,000, or both; a disorderly persons
26 offense, by a term of imprisonment of up to six months or a fine of
27 up to \$1,000 or both.

28 Under subsection b. of N.J.S.2C:35-10, it is a disorderly persons
29 offense to use or be under the influence of any controlled dangerous
30 substance, or its analog, for a purpose other than the treatment of
31 sickness or injury as lawfully prescribed or administered by a
32 physician. This bill provides that it would not be a violation to be
33 under the influence of marijuana.

34 Subsection c. of N.J.S.2C:35-10 provides that it is a disorderly
35 person offense to unlawfully obtain or possess a controlled
36 dangerous substance, or its analog, and to fail to voluntarily deliver
37 it to the nearest law enforcement officer. The bill provides that this
38 statute would not apply to possession of 10 grams or less of
39 marijuana, a personal-use amount of a regulated marijuana-infused
40 product, or one gram or less of hashish or marijuana concentrate.

41 N.J.S.2C:36-2 provides that it is a disorderly persons offense to
42 be in possession of drug paraphernalia. Under the bill, this statute
43 would not apply to a person who possesses drug paraphernalia for
44 the use of 10 grams or less of marijuana, a personal-use amount of a
45 regulated marijuana-infused product, or one gram or less of hashish
46 or marijuana concentrate. Instead, the person would be subject to a
47 civil penalty of \$100.

1 SUBSTANCE ABUSE ASSESSMENT. The bill requires the court to
2 waive the penalties for a single violation within a three-year period
3 upon proof that, within 60 days of the violation, the person
4 completed a substance abuse assessment by a professional licensed
5 by the Division of Mental Health and Addiction Services in the
6 Department of Health to perform such assessments. Under the bill, a
7 person who intends to undergo such an assessment would notify the
8 court, which would schedule the matter for review after 180 days.
9 If proof of completion of the assessment is filed on or before 180
10 days, the court would waive the penalties without a hearing unless
11 requested by a party. The bill provides that the substance abuse
12 assessment would determine if, and to what extent, the person is a
13 drug dependent person within the meaning of N.J.S.2C:35-2 and
14 would benefit from treatment.

15 EDUCATION PROGRAM; EXPUNGEMENT OF RECORDS. If the
16 person is determined to not be drug dependent the person would be
17 required to complete a two-hour education program on marijuana
18 and other controlled dangerous substances according to a
19 curriculum developed by the Division of Mental Health and
20 Addiction Services in the Department of Health. The curriculum
21 would include written materials. If the person is not drug
22 dependent, the professional would report to the court that no further
23 action is needed, and the records of the violation would be
24 expunged after the expiration of six months following completion
25 of the education program. Expungement would not require any
26 action by the person or the payment of any fee.

27 SUBSTANCE ABUSE TREATMENT; EXPUNGEMENT OF RECORDS.
28 The bill provides that if the person is a drug dependent person
29 within the meaning of N.J.S.2C:35-2 and substance abuse treatment
30 and monitoring would serve to benefit the person by addressing his
31 drug dependency, the court would order him to undergo treatment
32 for drug dependency at a suitable treatment facility licensed and
33 approved by the Department of Health and to comply with the
34 requirements of the course of treatment. The person would be
35 required to submit to periodic testing to determine compliance with
36 treatment program goals. The treatment provider would promptly
37 report to the court any significant failures by the person to comply
38 with any court-imposed term or condition of treatment or any
39 requirements of the course of treatment, including but not limited to
40 a positive drug or alcohol test or the unexcused failure to to attend
41 any session or activity.

42 Under the bill, upon completion of treatment, the agency
43 designated by the court to monitor or supervise the person's
44 treatment would report to the court as to the person's progress in
45 treatment and compliance with court-imposed terms and conditions.
46 Records would be expunged after the expiration of a period of six
47 months. Expungement would not require any action by the person
48 or the payment of any fee.

1 WAIVER OF FEES AND COST OF ASSESSMENT. The bill provides
2 that a person may apply for a waiver of court fees and the cost of
3 the substance abuse assessment and treatment by reason of extreme
4 financial hardship. Costs of the substance abuse assessment may be
5 reimbursed from the Drug Education Program Fund established in
6 the bill.

7 POSSESSION IN A MOTOR VEHICLE. Under N.J.S.A.39:4-49.1, a
8 person who operates a motor vehicle while in possession of a
9 controlled dangerous substance or prescription drug without a valid
10 prescription is subject to a fine of not less \$50 and forfeits his right
11 to operate a motor vehicle for two years. The bill provides that
12 these penalties would not apply to possession of 10 grams or less of
13 marijuana, including any adulterants or dilutants; a personal-use
14 amount of a regulated marijuana-infused product as defined in
15 N.J.S.2C:35-2; or one gram or less of hashish or marijuana
16 concentrate.

17 DISORDERLY PERSONS OFFENSE: NEGLIGENT STORAGE OF
18 REGULATED MARIJUANA-INFUSED PRODUCT. The bill also
19 establishes a new criminal offense. Under the bill, a person who
20 negligently stores a regulated marijuana-infused product, resulting
21 in a minor under the age of 18 years possessing such product, would
22 be guilty of a disorderly persons offense. It would be prima facie
23 evidence that the person did not act negligently if he lawfully
24 obtained the regulated marijuana-infused product from a
25 jurisdiction where marijuana sales to adults are authorized under the
26 law of the jurisdiction, and stored the product in its original, child-
27 resistant, labeled packaging. Failure to store a regulated marijuana-
28 infused product in its original, child-resistant, labeled packaging
29 would be prima facie evidence of negligence.

30 EXPUNGEMENT OF CERTAIN PRIOR CRIMINAL OFFENSES
31 INVOLVING MARIJUANA. The bill provides that in the case of
32 conviction for the possession of 10 grams or less of marijuana, a
33 personal-use amount of a regulated marijuana-infused product, or
34 one gram or less of hashish or marijuana concentrate that occurred
35 prior to the effective date of the bill, an expungement petition may
36 be filed and presented at any time, without the usual waiting period
37 for expungement. Upon review of the petition, the court would
38 immediately grant the expungement.

39 CONDITIONAL DISCHARGE FOR FIRST OFFENDERS. The bill
40 amends N.J.S.2C:36A-2, which provides conditional discharge for
41 certain first offenders charged with disorderly persons or petty
42 disorderly persons drug offenses, to mandate drug treatment in
43 certain cases. Under the bill, when a first offender is charged with a
44 disorderly persons or petty disorderly persons drug offense, the
45 court would suspend further proceedings and place the person on
46 supervisory treatment. The person would be required to undergo a
47 diagnostic assessment by a professional licensed or certified to
48 perform such assessments by the Division of Mental Health and

1 Addiction Services in the Department of Health to determine if and
2 to what extent the person is drug dependent and would benefit from
3 treatment. If the person is determined to not be drug dependent he
4 would complete a two-hour education program on marijuana and
5 other controlled dangerous substances, according to a curriculum
6 developed by the Division of Mental Health and Addiction Services
7 in the Department of Health. The curriculum would include written
8 materials. If the professional determines that the person is not drug
9 dependent, the professional would report to the court that no further
10 action is needed, and the records of the violation would be
11 expunged.

12 If the person is determined to be drug dependent and substance
13 abuse treatment and monitoring would serve to benefit the person
14 by addressing his drug dependency, the court would order the
15 person to undergo treatment for drug dependency at a suitable
16 treatment facility licensed and approved by the Department of
17 Health and to comply with the requirements of the course of
18 treatment. The person would be required to submit to periodic
19 testing to determine compliance with treatment program goals.
20 Upon completion of treatment, the agency designated by the court
21 to monitor or supervise the person's treatment would report to the
22 court as to the person's progress in treatment and compliance with
23 court-imposed terms and conditions. The treatment provider would
24 promptly report to the court any significant failures by the person to
25 comply with any court-imposed term or condition of treatment or
26 any requirements of the course of treatment, including but not
27 limited to a positive drug or alcohol test or the unexcused failure to
28 attend any session or activity. The bill provides that a person may
29 apply for a waiver of court fees and the cost of the substance abuse
30 assessment and treatment by reason of extreme financial hardship.
31 Costs of the substance abuse assessment may be reimbursed from
32 the Drug Education Program Fund established in the bill.

33 After the expiration of a period of six months following the
34 completion of the education program or following substance abuse
35 treatment, the records of the violation would be expunged.
36 Expungement would not require any action by the person or the
37 payment of any fee. A person may apply for a waiver of court fees
38 and the cost of the substance abuse assessment by reason of extreme
39 financial hardship.

40 Under current law, as a term and condition of supervisory
41 treatment under N.J.S.2C:36A-2 the court must suspend the
42 person's driving privileges for a period of six months to two years
43 unless the court finds compelling circumstances warranting an
44 exception. The bill deletes this provision for all persons
45 participating in supervisory treatment under the statute.

46 Conditional discharge would be available to every defendant
47 unless the court in its discretion concludes that:

1 (1) The defendant's continued presence in the community, or in
2 a civil treatment center or program, will pose a danger to the
3 community; or

4 (2) The terms and conditions of supervisory treatment will be
5 inadequate to protect the public and will not benefit the defendant
6 by serving to correct any dependence on or use of controlled
7 substances which he may manifest; or

8 (3) The person has previously received supervisory treatment
9 under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12,
10 or the conditional discharge program.

11 MUNICIPAL COURT JURISDICTION. The bill would amend
12 N.J.S.2B:12-17, which sets out the jurisdiction of the municipal
13 court, to add jurisdiction for the new civil penalties created by the
14 bill.

15 DRUG EDUCATION PROGRAM FUND. The bill provides that \$50 of
16 each penalty imposed would be forwarded by the municipality to
17 the State to be deposited in the "Drug Education Program Fund"
18 established pursuant to the bill. The remainder of the penalty
19 monies would be retained by the municipality for the general uses
20 of the municipality. Monies deposited in the "Drug Education
21 Program Fund" would be appropriated to the Department of Health,
22 Division of Mental Health and Addiction Services for drug
23 education programs. Monies in the fund would also be used to
24 reimburse the costs of substance abuse assessment and treatment
25 pursuant to the bill.

26 APPLICABILITY. The bill encompasses persons convicted and
27 serving sentences for marijuana offenses under current law; persons
28 convicted but not yet sentenced; and persons charged with offenses
29 who have not yet gone to trial or otherwise had the charges
30 resolved, as follows:

31 -- Any person who is serving a sentence on the effective date of
32 the bill may move to have his sentence reviewed by the sentencing
33 court, and the court may impose a civil penalty pursuant to the bill,
34 if the person is serving a sentence for a violation of: (1) subsection
35 a. of N.J.S.2C:35-10 (possession) for 10 grams or less of marijuana,
36 including any adulterants or dilutants; a personal-use amount of a
37 regulated marijuana-infused product; or one gram or less of hashish
38 or marijuana concentrate; (2) subsection b. or c. of N.J.S.2C:35-10
39 (being under the influence of marijuana, or failing to deliver
40 marijuana to law enforcement); or (3) N.J.S.2C:36-2 (paraphernalia
41 for marijuana use).

42 -- Any person who has been convicted, but is not yet sentenced,
43 on the effective date of the bill may move to have his conviction
44 overturned by the court, and the court may impose a civil penalty
45 pursuant to the bill, if the person has been convicted of a violation
46 of: (1) subsection a. of N.J.S.2C:35-10 (possession) for 10 grams or
47 less of marijuana, including any adulterants or dilutants; a personal-
48 use amount of a regulated marijuana-infused product; or one gram

1 or less of hashish or marijuana concentrate; (2) subsection b. or c.
2 of N.J.S.2C:35-10 (being under the influence of marijuana, or
3 failing to deliver marijuana to law enforcement); or (3)
4 N.J.S.2C:36-2 (paraphernalia for marijuana use).

5 -- Any person who has criminal charges pending on the effective
6 date of the bill would have those criminal charges dismissed, and
7 the prosecutor may charge the person with the civil penalty
8 pursuant to the bill, if the person has been charged with a violation
9 of: (1) subsection a. of N.J.S.2C:35-10 (possession) for 10 grams or
10 less of marijuana, including any adulterants or dilutants; a personal-
11 use amount of a regulated marijuana-infused product; or one gram
12 or less of hashish or marijuana concentrate; (2) subsection b. or c.
13 of N.J.S.2C:35-10 (being under the influence of marijuana, or
14 failing to deliver marijuana to law enforcement); or (3)
15 N.J.S.2C:36-2 (paraphernalia for marijuana use).

16 ATTORNEY GENERAL GUIDELINES. The bill requires the Attorney
17 General to issue guidelines for prosecutors and law enforcement to
18 effectuate the provisions of the bill.

19 COMMISSIONER OF HEALTH GUIDELINES. The Commissioner of
20 Health, in consultation with the Attorney General, would be
21 required to adopt rules and regulations pursuant to the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), in order to effectuate the purposes of the bill.

24 MEDICAL MARIJUANA NOT AFFECTED. This bill would not be
25 applicable to any person in compliance with the "New Jersey
26 Compassionate Use Medical Marijuana Act," P.L.2009, c.307
27 (C.24:6I-1 et al.).

ASSEMBLY, No. 4269

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 15, 2020

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Co-Sponsored by:

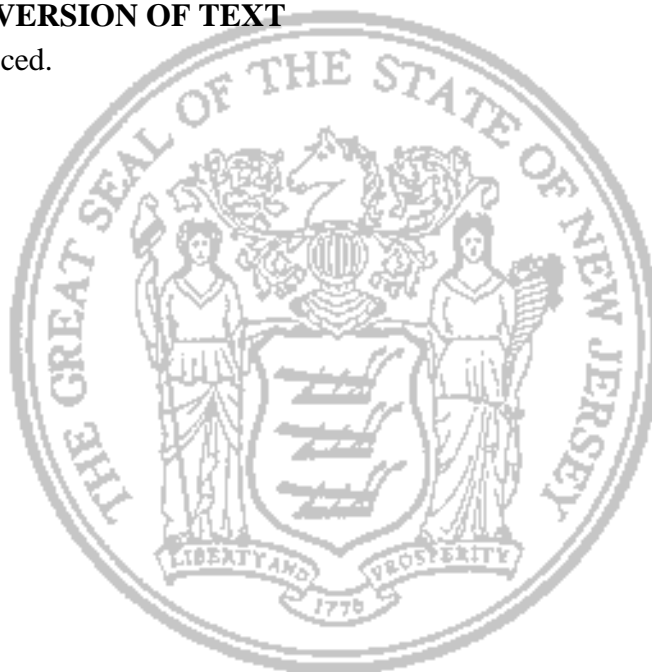
Assemblywoman Reynolds-Jackson and Assemblyman Spearman

SYNOPSIS

Provides for certain criminal and civil justice reforms, particularly with respect to legal consequences associated with certain marijuana and hashish offenses as well as broadening awareness of available expungement relief.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2020)

1 AN ACT concerning certain criminal and civil justice reforms,
2 particularly with respect to the legal consequences associated
3 with certain marijuana and hashish offenses as well as
4 broadening awareness of available expungement relief, and
5 amending and supplementing various parts of the statutory law.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. N.J.S.2C:35-5 is amended to read as follows:

11 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
12 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
13 unlawful for any person knowingly or purposely:

14 (1) To manufacture, distribute or dispense, or to possess or have
15 under his control with intent to manufacture, distribute or dispense,
16 a controlled dangerous substance or controlled substance analog; or

17 (2) To create, distribute, or possess or have under his control
18 with intent to distribute, a counterfeit controlled dangerous
19 substance.

20 b. Any person who violates subsection a. with respect to:

21 (1) Heroin, or its analog, or coca leaves and any salt, compound,
22 derivative, or preparation of coca leaves, and any salt, compound,
23 derivative, or preparation thereof which is chemically equivalent or
24 identical with any of these substances, or analogs, except that the
25 substances shall not include decocainized coca leaves or extractions
26 which do not contain cocaine or ecogine, or 3,4-
27 methylenedioxyamphetamine or 3,4-
28 methylenedioxyamphetamine, in a quantity of five ounces or more
29 including any adulterants or dilutants is guilty of a crime of the first
30 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
31 be sentenced to a term of imprisonment by the court. The term of
32 imprisonment shall include the imposition of a minimum term
33 which shall be fixed at, or between, one-third and one-half of the
34 sentence imposed, during which the defendant shall be ineligible for
35 parole. Notwithstanding the provisions of subsection a. of
36 N.J.S.2C:43-3, a fine of up to **[\$500,000.00]** \$500,000 may be
37 imposed;

38 (2) A substance referred to in paragraph (1) of this subsection,
39 in a quantity of one-half ounce or more but less than five ounces,
40 including any adulterants or dilutants is guilty of a crime of the
41 second degree;

42 (3) A substance referred to paragraph (1) of this subsection in a
43 quantity less than one-half ounce including any adulterants or
44 dilutants is guilty of a crime of the third degree except that,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
2 fine of up to **【\$75,000.00】** \$75,000 may be imposed;

3 (4) A substance classified as a narcotic drug in Schedule I or II
4 other than those specifically covered in this section, or the analog of
5 any such substance, in a quantity of one ounce or more including
6 any adulterants or dilutants is guilty of a crime of the second
7 degree;

8 (5) A substance classified as a narcotic drug in Schedule I or II
9 other than those specifically covered in this section, or the analog of
10 any such substance, in a quantity of less than one ounce including
11 any adulterants or dilutants is guilty of a crime of the third degree
12 except that, notwithstanding the provisions of subsection b. of
13 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
14 imposed;

15 (6) Lysergic acid diethylamide, or its analog, in a quantity of
16 100 milligrams or more including any adulterants or dilutants, or
17 phencyclidine, or its analog, in a quantity of 10 grams or more
18 including any adulterants or dilutants, is guilty of a crime of the
19 first degree. Except as provided in N.J.S.2C:35-12, the court shall
20 impose a term of imprisonment which shall include the imposition
21 of a minimum term, fixed at, or between, one-third and one-half of
22 the sentence imposed by the court, during which the defendant shall
23 be ineligible for parole. Notwithstanding the provisions of
24 subsection a. of N.J.S.2C:43-3, a fine of up to **【\$500,000.00】**
25 \$500,000 may be imposed;

26 (7) Lysergic acid diethylamide, or its analog, in a quantity of
27 less than 100 milligrams including any adulterants or dilutants, or
28 where the amount is undetermined, or phencyclidine, or its analog,
29 in a quantity of less than 10 grams including any adulterants or
30 dilutants, or where the amount is undetermined, is guilty of a crime
31 of the second degree;

32 (8) Methamphetamine, or its analog, or phenyl-2-propanone
33 (P2P), in a quantity of five ounces or more including any
34 adulterants or dilutants is guilty of a crime of the first degree.
35 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
36 fine of up to **【\$300,000.00】** \$300,000 may be imposed;

37 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
38 (P2P), in a quantity of one-half ounce or more but less than five
39 ounces including any adulterants or dilutants is guilty of a crime of
40 the second degree;

41 (b) Methamphetamine, or its analog, or phenyl-2-propanone
42 (P2P), in a quantity of less than one-half ounce including any
43 adulterants or dilutants is guilty of a crime of the third degree
44 except that notwithstanding the provisions of subsection b. of
45 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
46 imposed;

1 (10) (a) Marijuana in a quantity of 25 pounds or more
2 including any adulterants or dilutants, or 50 or more marijuana
3 plants, regardless of weight, or hashish in a quantity of five pounds
4 or more including any adulterants or dilutants, is guilty of a crime
5 of the first degree. Notwithstanding the provisions of subsection a.
6 of N.J.S.2C:43-3, a fine of up to **[\$300,000.00]** \$300,000 may be
7 imposed;

8 (b) Marijuana in a quantity of five pounds or more but less than
9 25 pounds including any adulterants or dilutants, or 10 or more but
10 fewer than 50 marijuana plants, regardless of weight, or hashish in a
11 quantity of one pound or more but less than five pounds, including
12 any adulterants and dilutants, is guilty of a crime of the second
13 degree;

14 (11) Marijuana in a quantity of one **[ounce]** pound or more but
15 less than five pounds including any adulterants or dilutants, or
16 hashish in a quantity of **[five grams]** one-half pound or more but
17 less than one pound including any adulterants or dilutants, is guilty
18 of a crime of the third degree except that, notwithstanding the
19 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
20 **[\$25,000.00]** \$25,000 may be imposed;

21 (12) (a) Marijuana in a quantity of two ounces or more but
22 less than one pound including any adulterants or dilutants, or
23 hashish in a quantity of five grams or more but less than one-half
24 pound including any adulterants or dilutants, is guilty of a
25 disorderly persons offense for a first offense, and guilty of a crime
26 of the fourth degree for a second or subsequent offense;

27 (b) Marijuana in a quantity of less than **[one ounce]** two
28 ounces including any adulterants or dilutants, or hashish in a
29 quantity of less than five grams including any adulterants or
30 dilutants, is **[guilty of a crime of the fourth degree]** an unlawful act
31 subject to a civil penalty of \$50. The civil penalty provided for in
32 this subparagraph shall be collected pursuant to the “Penalty
33 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
34 in a summary proceeding before the municipal court having
35 jurisdiction. A penalty recovered under the provisions of this
36 paragraph shall be recovered by and in the name of the State by the
37 local municipality. The penalty shall be paid into the treasury of
38 the municipality in which the violation occurred for the general use
39 of the municipality;

40 (13) Any other controlled dangerous substance classified in
41 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
42 third degree, except that, notwithstanding the provisions of
43 subsection b. of N.J.S.2C:43-3, a fine of up to **[\$25,000.00]**
44 \$25,000 may be imposed; or

45 (14) Any Schedule V substance, or its analog, is guilty of a
46 crime of the fourth degree except that, notwithstanding the

1 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
2 **[\$25,000.00]** \$25,000 may be imposed.

3 c. Where the degree of the offense for violation of this section
4 depends on the quantity of the substance, the quantity involved
5 shall be determined by the trier of fact. Where the indictment or
6 accusation so provides, the quantity involved in individual acts of
7 manufacturing, distribution, dispensing or possessing with intent to
8 distribute may be aggregated in determining the grade of the
9 offense, whether distribution or dispensing is to the same person or
10 several persons, provided that each individual act of manufacturing,
11 distribution, dispensing or possession with intent to distribute was
12 committed within the applicable statute of limitations.
13 (cf: P.L.2000, c.136, s.1)

14

15 2. N.J.S.2C:35-10 is amended to read as follows:

16 2C:35-10. Possession, Use or Being Under the Influence, or
17 Failure to Make Lawful Disposition.

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

26 (1) A controlled dangerous substance, or its analog, classified in
27 Schedule I, II, III or IV other than those specifically covered in this
28 section, is guilty of a crime of the third degree except that,
29 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
30 fine of up to **[\$35,000.00]** \$35,000 may be imposed;

31 (2) Any controlled dangerous substance, or its analog, classified
32 in Schedule V, is guilty of a crime of the fourth degree except that,
33 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
34 fine of up to **[\$15,000.00]** \$15,000 may be imposed;

35 (3) Possession of more than **[50 grams]** two ounces of
36 marijuana, including any adulterants or dilutants, or more than five
37 grams of hashish is guilty of a crime of the fourth degree, except
38 that, notwithstanding the provisions of subsection b. of
39 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed; or

40 (4) Possession of **[50 grams]** two ounces or less of marijuana,
41 including any adulterants or dilutants, or five grams or less of
42 hashish is an unlawful act subject to a [disorderly person] civil
43 penalty of \$50, but this amount of marijuana or hashish is presumed
44 to be the lawful possession of medical cannabis or a medical
45 cannabis product in accordance with the “Jake Honig Compassionate
46 Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.) or
47 P.L.2015, c.158 (C.18A:40-12.22 et al.), and the State shall establish

1 by a preponderance of evidence that the substance possessed was
2 not medical cannabis or a medical cannabis product in order to
3 impose the \$50 civil penalty for possession of marijuana or hashish
4 pursuant to this paragraph. The civil penalty provided for in this
5 paragraph shall be collected pursuant to the “Penalty Enforcement
6 Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
7 proceeding before the municipal court having jurisdiction. A
8 penalty recovered under the provisions of this paragraph shall be
9 recovered by and in the name of the State by the local municipality.
10 The penalty shall be paid into the treasury of the municipality in
11 which the violation occurred for the general use of the municipality.

12 Any person who commits any offense **【defined in】** set forth in
13 paragraphs (1) through (3) of this 【section】 subsection while on any
14 property used for school purposes which is owned by or leased to
15 any elementary or secondary school or school board, or within
16 1,000 feet of any such school property or a school bus, or while on
17 any school bus, and who is not sentenced to a term of
18 imprisonment, shall, in addition to any other sentence which the
19 court may impose, be required to perform not less than 100 hours of
20 community service.

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

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

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

42 (cf: P.L.1997, c.181, s.6)

43

44 3. (New section) a. Except to the extent required to dismiss,
45 withdraw, or terminate the charge, no court shall have jurisdiction
46 over any charge, including any charge of delinquency, based on the
47 distribution of marijuana or hashish in violation of paragraph (12)
48 of subsection b. of N.J.S.2C:35-5, or the possession of marijuana or

1 hashish in violation of paragraph (4) of subsection a. of
2 N.J.S.2C:35-10, that occurred prior to the effective date of P.L. ,
3 c. (C.) (pending before the Legislature as this bill), unless a
4 final judgment of conviction or adjudication of delinquency has
5 been entered on or before that effective date. These non-
6 prosecutable charges and cases shall be expeditiously dismissed,
7 which may be accomplished by appropriate action by a law
8 enforcement agency, or on a motion to the court which would
9 otherwise have jurisdiction over a case, or the court's own motion,
10 based upon guidelines or directives issued by the Attorney General,
11 the Administrative Director of the Courts, and the Supreme Court.

12 b. A charge, including any charge of delinquency, conviction,
13 or adjudication of delinquency, based on a violation of any of the
14 following laws that occurred prior to, on, or after the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this bill),
16 shall not be considered whenever the Pretrial Services Program
17 established by the Administrative Office of the Courts pursuant to
18 section 11 of P.L.2014, c.31 (C.2A:162-25) conducts a risk
19 assessment on an eligible defendant for the purpose of making
20 recommendations to the court concerning an appropriate pretrial
21 release decision in accordance with sections 1 through 11 of
22 P.L.2014, c.31 (C.2A:162-15 et seq.): a violation of paragraph (11)
23 of subsection b. of N.J.S.2C:35-5; or a lesser amount of marijuana or
24 hashish in violation of paragraph (12) of subsection b. of that section;
25 or a violation of either of those paragraphs and a violation of
26 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
27 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
28 possessing or having under control with intent to distribute, on or
29 within 1,000 feet of any school property, or on or within 500 feet of
30 the real property comprising a public housing facility, public park, or
31 public building; or for obtaining, possessing, using, being under the
32 influence of, or failing to make lawful disposition of marijuana or
33 hashish in violation of paragraph (3) or (4) of subsection a., or
34 subsection b., or subsection c. of N.J.S.2C:35-10; or for a violation of
35 any of those provisions and a violation of N.J.S.2C:36-2 for using or
36 possessing with intent to use drug paraphernalia with the marijuana or
37 hashish.

38 c. (1) Regarding a conviction or adjudication of delinquency
39 entered prior to the effective date of P.L. , c. (C.) (pending
40 before the Legislature as this bill), it shall be grounds for post-
41 conviction relief that the conviction or adjudication of delinquency
42 involved unlawful distribution of, or possessing or having under
43 control with intent to distribute, marijuana or hashish in violation of
44 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of
45 marijuana or hashish in violation of paragraph (12) of subsection b. of
46 that section, or a violation of either of those paragraphs and a violation
47 of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
48 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for

1 distributing, or possessing or having under control with intent to
2 distribute, on or within 1,000 feet of any school property, or on or
3 within 500 feet of the real property comprising a public housing
4 facility, public park, or public building, or obtaining, possessing,
5 using, being under the influence of, or failing to make lawful
6 disposition of marijuana or hashish in violation of paragraph (3) or
7 (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-
8 10, or a violation involving marijuana or hashish as described herein
9 and using or possessing with intent to use drug paraphernalia with
10 that marijuana or hashish in violation of N.J.S.2C:36-2, alone or in
11 combination with each other, if a final judgment of conviction or
12 adjudication of delinquency had not been entered on or before that
13 effective date.

14 (2) Notwithstanding any court rule limiting the time period
15 within which a motion to reduce or change a sentence may be filed,
16 any person who, on the effective date of P.L. , c. (C.)
17 (pending before the Legislature as this bill), is serving a sentence of
18 incarceration, probation, parole or other form of community
19 supervision solely as a result of the person's conviction or
20 adjudication of delinquency for one or more crimes or offenses
21 enumerated in paragraph (1) of this subsection may move to have
22 the person's sentence reviewed by the court. If the court finds that
23 the sentence under review is based solely upon a conviction or
24 adjudication of delinquency for one or more crimes or offenses
25 enumerated in paragraph (1) of this subsection, the court shall order
26 appropriate relief.

27 (3) No fee shall be charged to a person seeking post-conviction
28 relief pursuant to this subsection.

29

30 4. (New section) Other than the consequences of any sentence
31 set forth in a judgment of conviction, including a term of
32 imprisonment and any court-ordered financial assessment, unless
33 otherwise provided by law, any arrest, charge, conviction, and
34 adjudication of delinquency that occurred prior to the effective date
35 of P.L. , c. (C.) (pending before the Legislature as this bill),
36 and any proceedings related thereto, for unlawful distribution of, or
37 possessing or having under control with intent to distribute,
38 marijuana or hashish in violation of paragraph (11) of subsection b. of
39 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
40 of paragraph (12) of subsection b. of that section, or a violation of
41 either of those paragraphs and a violation of subsection a. of section 1
42 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
43 P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or
44 having under control with intent to distribute, on or within 1,000 feet
45 of any school property, or on or within 500 feet of the real property
46 comprising a public housing facility, public park, or public building,
47 or obtaining, possessing, using, being under the influence of, or
48 failing to make lawful disposition of marijuana or hashish in

1 violation of paragraph (3) or (4) of subsection a., or subsection b., or
2 subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or
3 hashish as described herein and using or possessing with intent to use
4 drug paraphernalia with that marijuana or hashish in violation of
5 N.J.S.2C:36-2 shall be deemed not to have occurred, and the person
6 involved in that violation may answer any questions relating to their
7 occurrence accordingly, except that such information shall be
8 revealed by that person if seeking employment within the judicial
9 branch or with a law enforcement or corrections agency and such
10 information shall continue to provide a disability as otherwise
11 provided by law.

12

13 5. N.J.S.2C:52-30 is amended to read as follows:

14 2C:52-30. Except as otherwise provided in this chapter, **[any]**

15 a. Any person who reveals to another the existence of an arrest,
16 conviction or related legal proceeding with knowledge that the
17 records and information pertaining thereto have been expunged or
18 sealed is a disorderly person. Notwithstanding the provisions of
19 **[section]** N.J.S.2C:43-3, the maximum fine which can be imposed
20 for violation of this section is **[\$200.00]** \$2,000.

21 b. (1) Any person or entity regularly engaged in the business of
22 collecting, assembling, evaluating or disseminating criminal records
23 on individuals for a fee shall regularly update the records to ensure
24 accuracy, promptly delete a record that has been expunged or
25 sealed, provide clients with the date collected and explain to clients
26 that records are valid only as of the date collected.

27 (2) Any person or entity regularly engaged in the business of
28 collecting, assembling, evaluating or disseminating criminal records
29 on individuals for a fee, which disseminates a criminal record that
30 has been expunged or sealed and knows or should have known at
31 the time of dissemination that the record has been expunged or
32 sealed is liable to the individual who is the subject of the criminal
33 record for damages totaling \$5,000 or the actual damages caused by
34 the violation, whichever is greater, plus costs and attorney fees.

35 (cf: N.J.S.2C:52-30)

36

37 6. (New section) The Administrative Director of the Courts
38 shall maintain and provide information to any person upon request
39 about the expungement process and legal services programs
40 Statewide and in each county which may be available to assist the
41 person with an expedited expungement pursuant to section 5 of
42 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
43 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3).

44

45 7. (New section) a. (1) The Administrative Director of the
46 Courts shall develop and maintain a multilingual public awareness
47 campaign to promote awareness of the expungement process,
48 including an expedited expungement pursuant to section 5 of

1 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
2 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), and the
3 expungement e-filing system established pursuant to section 11 of
4 P.L.2019, c.269 (C.2C:52-10.1), as well as information on State,
5 local, non-profit and other private job training programs in
6 consultation with the Department of Labor and Workforce
7 Development, with a focus on assisting those persons eligible for
8 the expedited expungement or “clean slate” expungement of their
9 records pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1) or a
10 “clean slate” expungement pursuant to section 7 of P.L.2019, c.269
11 (C.2C:52-5.3), respectively.

12 (2) The public awareness campaign shall, at a minimum, utilize
13 electronic and print media, and shall make available electronically
14 on an Internet website a petition form and a list of the supporting
15 information necessary for an expungement, including an expedited
16 or “clean slate” expungement pursuant to section 5 of
17 P.L.2019, c.269 (C.2C:52-5.1) or section 7 of P.L.2019, c.269
18 (C.2C:52-5.3), respectively, using the expungement e-filing system
19 once established pursuant to section 11 of P.L.2019, c.269 (C.2C:52-
20 10.1).

21 (3) The petition and supporting information shall, at a minimum,
22 be made available in English and Spanish.

23 b. The Administrative Director of the Courts shall include in the
24 annual report on the activities of the Administrative Office of the
25 Courts, prepared pursuant to N.J.S.2A:12-5, information about the
26 activities and accomplishments of the public awareness campaign
27 developed and maintained pursuant to subsection a. of this section,
28 beginning no later than one year after the effective date of
29 P.L. , c. (C.) (pending before the Legislature as this
30 bill).

31

32 8. (New section) a. An employer shall not be permitted to
33 consider when making an employment decision, require any
34 applicant to disclose or reveal, or take any adverse action against
35 any applicant for employment on the basis of, any arrest, charge,
36 conviction, or adjudication of delinquency, or civil penalty if the act
37 was an unlawful act and not a crime or offense, for manufacturing,
38 distributing, or dispensing, or possessing or having under control with
39 intent to manufacture, distribute, or dispense, marijuana or hashish in
40 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
41 lesser amount of marijuana or hashish in violation of paragraph (12) of
42 subsection b. of that section, or a violation of either of those
43 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
44 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
45 (C.2C:35-7.1) for distributing, or possessing or having under control
46 with intent to distribute, on or within 1,000 feet of any school
47 property, or on or within 500 feet of the real property comprising a
48 public housing facility, public park, or public building, or for

1 obtaining, possessing, using, being under the influence of, or failing
2 to make lawful disposition of marijuana or hashish in violation of
3 paragraph (3) or (4) of subsection a., or subsection b., or subsection c.
4 of N.J.S.2C:35-10, or for a violation of any of those provisions and a
5 violation of N.J.S.2C:36-2 for using or possessing with intent to use
6 drug paraphernalia with the marijuana or hashish, or an arrest, charge,
7 conviction, or adjudication of delinquency under the laws of another
8 state or of the United States of a crime, offense, or other unlawful
9 act, which, if committed in this State, would be a violation of any of
10 the aforementioned crimes, offenses, or unlawful acts, regardless of
11 when any such arrest, charge, conviction, or adjudication of
12 delinquency, or imposition of a civil penalty occurred, unless the
13 employment sought or being considered is for a position in law
14 enforcement, corrections, the judiciary, homeland security, or
15 emergency management.

16 b. Any employer who commits an act in violation of this
17 section shall be liable for a civil penalty in an amount not to exceed
18 \$1,000 for the first violation, \$5,000 for the second violation, and
19 \$10,000 for each subsequent violation, which shall be collectible by
20 the Commissioner of Labor and Workforce Development in a
21 summary proceeding pursuant to the "Penalty Enforcement Law of
22 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The penalties set
23 forth in this subsection shall be the sole remedy provided for
24 violations of this section.

25 c. Nothing set forth in this section shall be construed as
26 creating or establishing a standard of care or duty for employers
27 with respect to any other law. Evidence that an employer has
28 violated, or is alleged to have violated, the provisions of this
29 section, shall not be admissible in any legal proceeding with respect
30 to any law or claim other than a proceeding to enforce the
31 provisions of this section. Nothing set forth in this section shall be
32 construed as creating, establishing, or authorizing a private cause of
33 action by an aggrieved person against an employer who has
34 violated, or is alleged to have violated, the provisions of this
35 section.

36
37 9. (New section) a. A person that makes a mortgage loan in
38 this State shall not discriminate against an applicant in accepting an
39 application, granting, withholding, extending, modifying or
40 renewing, or in the fixing of the rates, terms, conditions, or
41 provisions of any mortgage loan based on an applicant's arrest,
42 charge, conviction, or adjudication of delinquency, or civil penalty if
43 the act was an unlawful act and not a crime or offense, for
44 manufacturing, distributing, or dispensing, or possessing or having
45 under control with intent to manufacture, distribute, or dispense,
46 marijuana or hashish in violation of paragraph (11) of subsection b. of
47 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
48 of paragraph (12) of subsection b. of that section, or a violation of

1 either of those paragraphs and a violation of subsection a. of section 1
2 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
3 P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having
4 under control with intent to distribute, on or within 1,000 feet of any
5 school property, or on or within 500 feet of the real property
6 comprising a public housing facility, public park, or public building,
7 or for obtaining, possessing, using, being under the influence of, or
8 failing to make lawful disposition of marijuana or hashish in
9 violation of paragraph (3) or (4) of subsection a., or subsection b., or
10 subsection c. of N.J.S.2C:35-10, or for a violation of any of those
11 provisions and a violation of N.J.S.2C:36-2 for using or possessing
12 with intent to use drug paraphernalia with the marijuana or hashish, or
13 an arrest, charge, conviction, or adjudication of delinquency under the
14 laws of another state or of the United States of a crime, offense, or
15 other unlawful act, which, if committed in this State, would be a
16 violation of any of the aforementioned crimes, offenses, or unlawful
17 acts, regardless of when any such arrest, charge, conviction, or
18 adjudication of delinquency, or imposition of a civil penalty occurred.

19 b. Any applicant who has been discriminated against as a result
20 of a violation of this section may bring an action in New Jersey in a
21 court of competent jurisdiction. Upon finding that a person is in
22 violation of this section, the court may award actual damages,
23 reasonable attorneys' fees, and court costs.

24 c. The Commissioner of Banking and Insurance shall have the
25 power to:

26 (1) Make such investigations into any matter pertaining to this
27 section, including the power to hold hearings and issue subpoenas
28 to compel the attendance of witnesses and the production of
29 evidence. In case of a failure of any person to comply with any
30 subpoena, the Superior Court may issue an order requiring the
31 attendance of such person and the giving of testimony or production
32 of evidence. Any person failing to obey the court's order may be
33 punished for contempt.

34 (2) Order a person found to be in violation of this section to
35 cease its unlawful practices, subject to review, hearing, and relief in
36 the Superior Court. A person that continues to violate the
37 provisions of this act after having been ordered by the
38 commissioner to cease such practices shall be liable to a penalty of
39 \$10,000 for each offense instead of the penalty for a continuous
40 violation set forth in section 10 of P.L.1977, c.1 (C.17:16F-
41 10). This penalty may be collected in a summary proceeding
42 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
43 c.274 (C.2A:58-10 et seq.). Except as set forth herein, the penalty
44 provided by this section shall be in addition to and not in lieu of any
45 other provision of law applicable upon a person's failure to comply
46 with an order of the commissioner.

1 10. (New section) a. A person alleging discrimination in public
2 or private housing, real property, or a place of public accommodation,
3 based on a prior arrest, charge, conviction, or adjudication of
4 delinquency, or civil penalty if the act was an unlawful act and not a
5 crime or offense, for manufacturing, distributing, or dispensing, or
6 possessing or having under control with intent to manufacture,
7 distribute, or dispense, marijuana or hashish in violation of paragraph
8 (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana
9 or hashish in violation of paragraph (12) of subsection b. of that
10 section, or a violation of either of those paragraphs and a violation of
11 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
12 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
13 possessing or having under control with intent to distribute, on or
14 within 1,000 feet of any school property, or on or within 500 feet of
15 the real property comprising a public housing facility, public park, or
16 public building, or for obtaining, possessing, using, being under the
17 influence of, or failing to make lawful disposition of marijuana or
18 hashish in violation of paragraph (3) or (4) of subsection a., or
19 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of
20 any of those provisions and a violation of N.J.S.2C:36-2 for using or
21 possessing with intent to use drug paraphernalia with the marijuana or
22 hashish, or an arrest, charge, conviction, or adjudication of
23 delinquency under the laws of another state or of the United States
24 of a crime, offense, or other unlawful act, which, if committed in
25 this State, would be a violation of any of the aforementioned crimes,
26 offenses, or unlawful acts, regardless of when any such arrest, charge,
27 conviction, or adjudication of delinquency, or imposition of a civil
28 penalty occurred, may institute a civil action in the Superior Court for
29 relief. All remedies available in common law tort actions shall be
30 available to a prevailing plaintiff. The court may also order any or all
31 of the following relief:

32 (1) an assessment of a civil fine of not less than \$1,000 and not
33 more than \$2,000 for the first violation of any of the provisions of this
34 section, and not more than \$5,000 for each subsequent violation;

35 (2) an injunction to restrain the continued violation of subsection
36 a. of this section;

37 (3) if the discrimination impacted the person's employment, and if
38 applicable:

39 (a) reinstatement of the person to the same position of
40 employment or to a position equivalent to that which the person held
41 prior to unlawful discharge or retaliatory action;

42 (b) reinstatement of full fringe benefits and seniority rights; and

43 (c) compensation for any lost wages, benefits and other
44 remuneration; and

45 (4) payment of reasonable costs and attorney's fees.

46 b. An action brought under this section shall be commenced
47 within one year of the date of the alleged violation.

1 c. The private cause of action provided for in this section shall be
2 the sole remedy for a violation of this section.

3
4 11. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read
5 as follows:

6 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
7 supplemented:

8 "Biotechnology" means any technique that uses living organisms,
9 or parts of living organisms, to make or modify products, to improve
10 plants or animals, or to develop micro-organisms for specific uses;
11 including the industrial use of recombinant DNA, cell fusion, and
12 novel bioprocessing techniques.

13 "Custodian of a government record" or "custodian" means in the
14 case of a municipality, the municipal clerk and in the case of any other
15 public agency, the officer officially designated by formal action of that
16 agency's director or governing body, as the case may be.

17 "Government record" or "record" means any paper, written or
18 printed book, document, drawing, map, plan, photograph, microfilm,
19 data processed or image processed document, information stored or
20 maintained electronically or by sound-recording or in a similar device,
21 or any copy thereof, that has been made, maintained or kept on file in
22 the course of his or its official business by any officer, commission,
23 agency or authority of the State or of any political subdivision thereof,
24 including subordinate boards thereof, or that has been received in the
25 course of his or its official business by any such officer, commission,
26 agency, or authority of the State or of any political subdivision thereof,
27 including subordinate boards thereof. The terms shall not include
28 inter-agency or intra-agency advisory, consultative, or deliberative
29 material.

30 A government record shall not include the following information
31 which is deemed to be confidential for the purposes of P.L.1963, c.73
32 (C.47:1A-1 et seq.) as amended and supplemented:

33 information received by a member of the Legislature from a
34 constituent or information held by a member of the Legislature
35 concerning a constituent, including but not limited to information in
36 written form or contained in any e-mail or computer data base, or in
37 any telephone record whatsoever, unless it is information the
38 constituent is required by law to transmit;

39 any memorandum, correspondence, notes, report or other
40 communication prepared by, or for, the specific use of a member of the
41 Legislature in the course of the member's official duties, except that
42 this provision shall not apply to an otherwise publicly-accessible
43 report which is required by law to be submitted to the Legislature or its
44 members;

45 any copy, reproduction or facsimile of any photograph, negative or
46 print, including instant photographs and videotapes of the body, or any
47 portion of the body, of a deceased person, taken by or for the medical
48 examiner at the scene of death or in the course of a post mortem

1 examination or autopsy made by or caused to be made by the medical
2 examiner except:

3 when used in a criminal action or proceeding in this State which
4 relates to the death of that person,

5 for the use as a court of this State permits, by order after good
6 cause has been shown and after written notification of the request for
7 the court order has been served at least five days before the order is
8 made upon the county prosecutor for the county in which the post
9 mortem examination or autopsy occurred,

10 for use in the field of forensic pathology or for use in medical or
11 scientific education or research, or

12 for use by any law enforcement agency in this State or any other
13 state or federal law enforcement agency;

14 criminal investigatory records;

15 the portion of any criminal record concerning a person's detection,
16 apprehension, arrest, detention, trial or disposition for unlawful
17 distribution of, or possessing or having under control with intent to
18 distribute, marijuana or hashish in violation of paragraph (11) of
19 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
20 hashish in violation of paragraph (12) of subsection b. of that section,
21 or a violation of either of those paragraphs and a violation of
22 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
23 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
24 possessing or having under control with intent to distribute, on or
25 within 1,000 feet of any school property, or on or within 500 feet of
26 the real property comprising a public housing facility, public park, or
27 public building, or for obtaining, possessing, using, being under the
28 influence of, or failing to make lawful disposition of marijuana or
29 hashish in violation of paragraph (3) or (4) of subsection a., or
30 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of
31 any of those provisions and a violation of N.J.S.2C:36-2 for using or
32 possessing with intent to use drug paraphernalia with the marijuana or
33 hashish;

34 on and after the effective date of P.L. , c. (C.) (pending
35 before the Legislature as this bill), any record concerning a person's
36 commission of an unlawful act of manufacturing, distributing, or
37 dispensing, or possessing or having under control with intent to
38 manufacture, distribute, or dispense, marijuana or hashish in
39 violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or
40 possessing marijuana or hashish in violation of paragraph (4) of
41 subsection a. of N.J.S.2C:35-10, for which a civil penalty was
42 imposed;

43 victims' records, except that a victim of a crime shall have access
44 to the victim's own records;

45 any written request by a crime victim for a record to which the
46 victim is entitled to access as provided in this section, including, but
47 not limited to, any law enforcement agency report, domestic violence
48 offense report, and temporary or permanent restraining order;

1 personal firearms records, except for use by any person authorized
2 by law to have access to these records or for use by any government
3 agency, including any court or law enforcement agency, for purposes
4 of the administration of justice;

5 personal identifying information received by the Division of Fish
6 and Wildlife in the Department of Environmental Protection in
7 connection with the issuance of any license authorizing hunting with a
8 firearm. For the purposes of this paragraph, personal identifying
9 information shall include, but not be limited to, identity, name,
10 address, social security number, telephone number, fax number,
11 driver's license number, email address, or social media address of any
12 applicant or licensee;

13 trade secrets and proprietary commercial or financial information
14 obtained from any source. For the purposes of this paragraph, trade
15 secrets shall include data processing software obtained by a public
16 body under a licensing agreement which prohibits its disclosure;

17 any record within the attorney-client privilege. This paragraph
18 shall not be construed as exempting from access attorney or consultant
19 bills or invoices except that such bills or invoices may be redacted to
20 remove any information protected by the attorney-client privilege;

21 administrative or technical information regarding computer
22 hardware, software and networks which, if disclosed, would jeopardize
23 computer security;

24 emergency or security information or procedures for any buildings
25 or facility which, if disclosed, would jeopardize security of the
26 building or facility or persons therein;

27 security measures and surveillance techniques which, if disclosed,
28 would create a risk to the safety of persons, property, electronic data or
29 software;

30 information which, if disclosed, would give an advantage to
31 competitors or bidders;

32 information generated by or on behalf of public employers or
33 public employees in connection with any sexual harassment complaint
34 filed with a public employer or with any grievance filed by or against
35 an individual or in connection with collective negotiations, including
36 documents and statements of strategy or negotiating position;

37 information which is a communication between a public agency
38 and its insurance carrier, administrative service organization or risk
39 management office;

40 information which is to be kept confidential pursuant to court
41 order;

42 any copy of form DD-214, NGB-22, or that form, issued by the
43 United States Government, or any other certificate of honorable
44 discharge, or copy thereof, from active service or the reserves of a
45 branch of the Armed Forces of the United States, or from service in the
46 organized militia of the State, that has been filed by an individual with
47 a public agency, except that a veteran or the veteran's spouse or
48 surviving spouse shall have access to the veteran's own records;

1 any copy of an oath of allegiance, oath of office or any affirmation
2 taken upon assuming the duties of any public office, or that oath or
3 affirmation, taken by a current or former officer or employee in any
4 public office or position in this State or in any county or municipality
5 of this State, including members of the Legislative Branch, Executive
6 Branch, Judicial Branch, and all law enforcement entities, except that
7 the full name, title, and oath date of that person contained therein shall
8 not be deemed confidential;

9 that portion of any document which discloses the social security
10 number, credit card number, unlisted telephone number or driver
11 license number of any person; except for use by any government
12 agency, including any court or law enforcement agency, in carrying
13 out its functions, or any private person or entity acting on behalf
14 thereof, or any private person or entity seeking to enforce payment of
15 court-ordered child support; except with respect to the disclosure of
16 driver information by the New Jersey Motor Vehicle Commission as
17 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that
18 a social security number contained in a record required by law to be
19 made, maintained or kept on file by a public agency shall be disclosed
20 when access to the document or disclosure of that information is not
21 otherwise prohibited by State or federal law, regulation or order or by
22 State statute, resolution of either or both houses of the Legislature,
23 Executive Order of the Governor, rule of court or regulation
24 promulgated under the authority of any statute or executive order of
25 the Governor;

26 a list of persons identifying themselves as being in need of special
27 assistance in the event of an emergency maintained by a municipality
28 for public safety purposes pursuant to section 1 of P.L.2017, c.266
29 (C.40:48-2.67); and

30 a list of persons identifying themselves as being in need of special
31 assistance in the event of an emergency maintained by a county for
32 public safety purposes pursuant to section 6 of P.L.2011, c.178
33 (C.App.A:9-43.13).

34 A government record shall not include, with regard to any public
35 institution of higher education, the following information which is
36 deemed to be privileged and confidential:

37 pedagogical, scholarly and/or academic research records and/or the
38 specific details of any research project conducted under the auspices of
39 a public higher education institution in New Jersey, including, but not
40 limited to research, development information, testing procedures, or
41 information regarding test participants, related to the development or
42 testing of any pharmaceutical or pharmaceutical delivery system,
43 except that a custodian may not deny inspection of a government
44 record or part thereof that gives the name, title, expenditures, source
45 and amounts of funding and date when the final project summary of
46 any research will be available;

1 test questions, scoring keys and other examination data pertaining
2 to the administration of an examination for employment or academic
3 examination;

4 records of pursuit of charitable contributions or records containing
5 the identity of a donor of a gift if the donor requires non-disclosure of
6 the donor's identity as a condition of making the gift provided that the
7 donor has not received any benefits of or from the institution of higher
8 education in connection with such gift other than a request for
9 memorialization or dedication;

10 valuable or rare collections of books and/or documents obtained by
11 gift, grant, bequest or devise conditioned upon limited public access;

12 information contained on individual admission applications; and

13 information concerning student records or grievance or
14 disciplinary proceedings against a student to the extent disclosure
15 would reveal the identity of the student.

16 "Personal firearms record" means any information contained in a
17 background investigation conducted by the chief of police, the county
18 prosecutor, or the Superintendent of State Police, of any applicant for a
19 permit to purchase a handgun, firearms identification card license, or
20 firearms registration; any application for a permit to purchase a
21 handgun, firearms identification card license, or firearms registration;
22 any document reflecting the issuance or denial of a permit to purchase
23 a handgun, firearms identification card license, or firearms
24 registration; and any permit to purchase a handgun, firearms
25 identification card license, or any firearms license, certification,
26 certificate, form of register, or registration statement. For the purposes
27 of this paragraph, information contained in a background investigation
28 shall include, but not be limited to, identity, name, address, social
29 security number, phone number, fax number, driver's license number,
30 email address, social media address of any applicant, licensee,
31 registrant or permit holder.

32 "Public agency" or "agency" means any of the principal
33 departments in the Executive Branch of State Government, and any
34 division, board, bureau, office, commission or other instrumentality
35 within or created by such department; the Legislature of the State and
36 any office, board, bureau or commission within or created by the
37 Legislative Branch; and any independent State authority, commission,
38 instrumentality or agency. The terms also mean any political
39 subdivision of the State or combination of political subdivisions, and
40 any division, board, bureau, office, commission or other
41 instrumentality within or created by a political subdivision of the State
42 or combination of political subdivisions, and any independent
43 authority, commission, instrumentality or agency created by a political
44 subdivision or combination of political subdivisions.

45 "Law enforcement agency" means a public agency, or part thereof,
46 determined by the Attorney General to have law enforcement
47 responsibilities.

1 "Constituent" means any State resident or other person
2 communicating with a member of the Legislature.

3 "Member of the Legislature" means any person elected or selected
4 to serve in the New Jersey Senate or General Assembly.

5 "Criminal investigatory record" means a record which is not
6 required by law to be made, maintained or kept on file that is held by a
7 law enforcement agency which pertains to any criminal investigation
8 or related civil enforcement proceeding.

9 "Victim's record" means an individually-identifiable file or
10 document held by a victims' rights agency which pertains directly to a
11 victim of a crime except that a victim of a crime shall have access to
12 the victim's own records.

13 "Victim of a crime" means a person who has suffered personal or
14 psychological injury or death or incurs loss of or injury to personal or
15 real property as a result of a crime, or if such a person is deceased or
16 incapacitated, a member of that person's immediate family.

17 "Victims' rights agency" means a public agency, or part thereof,
18 the primary responsibility of which is providing services, including but
19 not limited to food, shelter, or clothing, medical, psychiatric,
20 psychological or legal services or referrals, information and referral
21 services, counseling and support services, or financial services to
22 victims of crimes, including victims of sexual assault, domestic
23 violence, violent crime, child endangerment, child abuse or child
24 neglect, and the Victims of Crime Compensation Board, established
25 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the
26 Victims of Crime Compensation Office pursuant to P.L.2007, c.95
27 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
28 (cf: P.L.2019, c.255, s.4)

29
30 12. This act shall take effect on the 90th day following
31 enactment, except that the Attorney General, Administrative
32 Director of the Courts, and the Supreme Court may take any
33 anticipatory action as may be necessary to effectuate the provisions
34 of this act.

35

36

37

STATEMENT

38

39 This bill would provide for various "social justice" reforms,
40 some based on criminal justice and others based on civil justice,
41 which would reduce the legal consequences associated with certain
42 marijuana and hashish offenses as well as broaden awareness of
43 available expungement relief, concerning both marijuana and
44 hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses

45
46 The bill would address the manufacturing, distributing, or
47 dispensing, or possessing or having under control with intent to
48 manufacture, distribute, or dispense (hereafter shortened to just

1 distributing, which includes possessing or having under control)
2 less than five pounds of marijuana or less than one pound of
3 hashish, by either regrading the offense or altering the threshold
4 amounts for grading an offense.

5 Under current law, distribution of less than five pounds, but at
6 least one ounce or more, of marijuana, or distribution of less than
7 one pound, but at least five grams or more, of hashish, is punishable
8 as a crime of the third degree; this crime can be punished by a term
9 of imprisonment of three to five years, a fine of up to \$25,000, or
10 both. Distribution of any smaller amounts, that is, less than one
11 ounce of marijuana or less than five grams of hashish, is punishable
12 as a crime of the fourth degree; this crime can be punished by a
13 term of imprisonment of up to 18 months, a fine of up to \$10,000,
14 or both. See N.J.S.2C:35-10, subsection b., paragraphs (11) and
15 (12).

16 The bill would either regrade or alter the threshold amounts for
17 grading an unlawful distribution offense involving less than five
18 pounds of marijuana or less than one pound of hashish as follows:

19 - one pound or more but less than five pounds of marijuana, or
20 one-half pound or more but less than one pound of hashish would
21 be a crime of the third degree (three to five years imprisonment; up
22 to \$25,000 fine; or both);

23 - two ounces or more but less than one pound of marijuana, or
24 five grams or more but less than one-half pound of hashish would
25 be a disorderly persons offense based on a first offense (up to six
26 months imprisonment; up to \$1,000 fine; or both), and would be a
27 crime of the fourth degree for a second or subsequent offense (up to
28 18 months imprisonment; up to \$10,000 fine; or both); and

29 - less than two ounces of marijuana, or less than five grams of
30 hashish would be an unlawful act subject only to a civil penalty of
31 \$50. This penalty would be recovered in a summary proceeding
32 before the municipal court having jurisdiction, and would get paid
33 into the treasury of the municipality in which the violation occurred
34 for the general use of the municipality.

35 The bill would also regrade or alter the threshold amounts for
36 grading the unlawful possession of marijuana or hashish. First, the
37 maximum amount constituting a small amount marijuana possession
38 violation under paragraph (4) of subsection a. of N.J.S.2C:35-10
39 would increase from 50 grams (1.76 ounce) or less to two ounces or
40 less (the amount constituting a small amount hashish possession
41 violation under this paragraph would remain the same, at five grams
42 or less). Second, possession of this amount of marijuana or hashish
43 would be reduced from a fourth degree crime or disorderly persons
44 offense, depending upon the amount possessed in accordance with
45 the pre-reform possession categories, to an unlawful act subject
46 only to a civil penalty of \$50; and the bill would establish a legal
47 presumption that the possession of such amount of marijuana or
48 hashish is the authorized possession of medical cannabis or a

1 medical cannabis product in accordance with the “Jake Honig
2 Compassionate Use Medical Cannabis Act,” P.L.2009, c.307
3 (C.24:6I-1 et al.), or the authorized possession of such amount in
4 accordance with P.L.2015, c.158 (C.18A:40-12.22 et al.). If the
5 presumption can be overcome, by a preponderance of evidence, that
6 a substance possessed was illegal marijuana or hashish, the \$50
7 civil penalty may be imposed. The civil penalty would be
8 recovered in a summary proceeding before the municipal court
9 having jurisdiction, and would get paid into the treasury of the
10 municipality in which the violation occurred for the general use of
11 the municipality.

12 Reducing the Legal Consequences of Certain Marijuana and
13 Hashish Offenses

14 No court would have jurisdiction over any charge, including any
15 charge of delinquency, except to the extent required to dismiss,
16 withdraw, or terminate the charge, based on a prior small amount
17 distribution or possession violation that would now only be
18 punishable by a civil penalty, unless a final judgment of conviction
19 or adjudication of delinquency had been entered on or before the
20 bill’s effective date. These non-prosecutable charges and cases
21 would be expeditiously dismissed, which could be accomplished by
22 appropriate action by a law enforcement agency, or on a motion to
23 the court with jurisdiction over a case, or the court’s own motion,
24 based upon guidelines or directives issued by the Attorney General,
25 the Administrative Director of the Courts, and the Supreme Court.

26 Any past, present, or future charge, conviction, or adjudication
27 of delinquency for an even broader array of marijuana and hashish
28 offenses would not be considered whenever the Pretrial Services
29 Program established by the Administrative Office of the Courts
30 conducted a risk assessment on a person for the purpose of making
31 recommendations to a court about an appropriate pretrial release or
32 pretrial detention decision for that individual in accordance with
33 sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).
34 These non-considered offenses would include:

35 - unlawful distribution of less than five pounds of marijuana, or
36 less than one pound of hashish, in violation of paragraph (11) or (12)
37 of subsection b. of N.J.S.2C:35-5, or a violation of either of those
38 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
39 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
40 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school
41 property, or on or within 500 feet of the real property comprising a
42 public housing facility, public park, or public building;

43 - obtaining, possessing, using, being under the influence of, or
44 failing to make lawful disposition of any amount of marijuana or
45 hashish in violation of paragraph (3) or (4) of subsection a., subsection
46 b., or subsection c. of N.J.S.2C:35-10; or

1 - a violation involving any of the aforementioned offenses and
2 using or possessing with intent to use drug paraphernalia with that
3 marijuana or hashish in violation of N.J.S.2C:36-2.

4 The bill would also establish grounds for post-conviction relief
5 due to a past conviction or adjudication of delinquency for any of
6 the above described marijuana or hashish offenses, which would
7 permit an opportunity to have a sentence reduced or changed as
8 permitted by the court.

9 New Form of “Virtual” Expungement for Certain Marijuana and
10 Hashish Offenses

11 Beginning immediately upon the enactment of the bill, any arrest,
12 charge, conviction, or adjudication of delinquency, and proceedings
13 related thereto, for any of the above described broad list of marijuana
14 or hashish offenses that occurred prior to the bill’s effective date
15 would be deemed not to have occurred (other than, generally, with
16 respect to the consequences of any sentence set forth in a judgment of
17 conviction), providing such legal relief without need to petition a
18 court for an expungement order granting such result. While persons
19 would be able to respond to questions about such past occurrences
20 accordingly, information about such would still need to be revealed if
21 seeking employment within the judicial branch or with a law
22 enforcement or corrections agency, and the record would be subject to
23 review in accordance with N.J.S.2C:52-15 et seq.

24 Reforms Applicable to All Expungements

25 Penalties for Wrongful Dissemination of Expunged Records or
26 Information

27 The bill would increase the maximum fine, from \$200 to \$2,000,
28 which could be imposed on a person who reveals to another the
29 existence of an arrest, conviction, or related legal proceeding with
30 knowledge that the record or information has been expunged or
31 sealed. A person could also be subject to a term of imprisonment of
32 up to six month because such an act is categorized as a disorderly
33 persons offense. See N.J.S.2C:52-30.

34 In addition, the bill provides that any person or entity regularly
35 engaged in the business of collecting, assembling, evaluating or
36 disseminating records on individuals for a fee would be required to
37 regularly update their records to ensure accuracy, promptly delete a
38 record that has been expunged or sealed, provide clients with the
39 date collected and explain to clients that records are valid only as of
40 the date collected. Any such regularly-engaged person or entity
41 who disseminates a record that has been expunged or sealed, and
42 knows or should have known at the time of dissemination that the
43 record has been expunged or sealed, would be liable to the
44 individual who is the subject of the record for a damages totaling
45 \$5,000 or the actual damages caused by the violation, whichever is
46 greater, plus costs and attorney fees.

47 Promoting Awareness of the Expungement Process

48 The Administrative Director of the Courts would:

1 - develop and maintain information, to be provided to a person
2 upon request, about the expungement process and legal services
3 programs Statewide and in each county which may be available to
4 assist the person with an expedited expungement, pursuant to
5 section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the various
6 marijuana and hashish distribution, possession, and drug paraphernalia
7 offenses described above under the statement subheading for
8 Reducing the Legal Consequences of Certain Marijuana and
9 Hashish Offenses, or a “clean slate” expungement, which generally
10 addresses a person’s entire criminal record, pursuant to section 7 of
11 P.L.2019, c.269 (C.2C:52-5.3); and

12 - develop a multilingual public awareness campaign to promote
13 awareness of the expungement process, as well as information on
14 State, local, nonprofit and other private job training programs in
15 consultation with the Department of Labor and Workforce
16 Development, with a focus on assisting those persons eligible for an
17 expedited expungement or “clean slate” expungement.

18 Civil Justice Reforms

19 In addition to the above described criminal justice relief largely
20 focused on marijuana and hashish offenses and broadening
21 awareness of the expungement process for clearing records, the bill
22 would provide an array of civil protections against discrimination
23 targeting persons with an arrest, charge, conviction, or adjudication
24 of delinquency involving any of the aforementioned marijuana and
25 hashish distribution, possession, and drug paraphernalia crimes or
26 offenses (see list under statement heading Reducing the Legal
27 Consequences of Certain Marijuana and Hashish Offenses), or
28 targeting persons with a civil penalty for committing an unlawful
29 act of distribution or possession with marijuana or hashish. These
30 protections would include monetary penalties, enforceable by the
31 State, against employers regarding employment actions or persons
32 involved with mortgage lending activities, as well as a private cause
33 of action for discrimination in public or private housing, real
34 property, or any place of public accommodation.

35 Lastly, the bill would make confidential, and no longer a
36 government record subject to public inspection under P.L.1963,
37 c.73 (C.47:1A-1 et seq.), the portion of any criminal record
38 concerning a person’s detection, apprehension, arrest, detention,
39 trial or disposition for any of the aforementioned crimes or
40 offenses, or any record concerning a person’s commission of any of
41 the aforementioned unlawful acts subject to a civil penalty.

ASSEMBLY COMMUNITY DEVELOPMENT AND AFFAIRS
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

The Assembly Community Development and Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269.

This substitute bill would provide for various “social justice” reforms, some based on criminal justice and others based on civil justice, which would reduce the legal consequences associated with certain marijuana and hashish offenses as well as broaden awareness of available expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses

The bill would address the manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense (hereafter shortened to just distributing, which includes possessing or having under control) less than five pounds of marijuana or less than one pound of hashish, by either regrading the offense or altering the threshold amounts for grading an offense.

Under current law, distribution of less than five pounds, but at least one ounce or more, of marijuana, or distribution of less than one pound, but at least five grams or more, of hashish, is punishable as a crime of the third degree; this crime can be punished by a term of imprisonment of three to five years, a fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can be punished by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-10, subsection b., paragraphs (11) and (12).

The bill would either regrade or alter the threshold amounts for grading an unlawful distribution offense involving less than five pounds of marijuana or less than one pound of hashish as follows:

- one pound or more but less than five pounds of marijuana, or one-half pound or more but less than one pound of hashish would be a crime of the third degree (three to five years imprisonment; up to \$25,000 fine; or both);

- two ounces or more but less than one pound of marijuana, or five grams or more but less than one-half pound of hashish would be a disorderly persons offense based on a first offense (up to six months imprisonment; up to \$1,000 fine; or both), and would be a crime of the fourth degree for a second or subsequent offense (up to 18 months imprisonment; up to \$10,000 fine; or both); and

- less than two ounces of marijuana, or less than five grams of hashish would be an unlawful act subject only to a civil penalty of \$50. This penalty would be recovered in a summary proceeding before the municipal court having jurisdiction, and would get paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

The bill would also regrade or alter the threshold amounts for grading the unlawful possession of marijuana or hashish. First, the maximum amount constituting a small amount marijuana possession violation under paragraph (4) of subsection a. of N.J.S.2C:35-10 would increase from 50 grams (1.76 ounce) or less to two ounces or less (the amount constituting a small amount hashish possession violation under this paragraph would remain the same, at five grams or less). Second, possession of this amount of marijuana or hashish would be reduced from a fourth degree crime or disorderly persons offense, depending upon the amount possessed in accordance with the pre-reform possession categories, to an unlawful act subject only to a civil penalty of \$50; and the bill would establish a legal presumption that the possession of such amount of marijuana or hashish is the authorized possession of medical cannabis or a medical cannabis product in accordance with the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), or the authorized possession of such amount in accordance with P.L.2015, c.158 (C.18A:40-12.22 et al.). If the presumption can be overcome, by a preponderance of evidence, that a substance possessed was illegal marijuana or hashish, the \$50 civil penalty may be imposed. The civil penalty would be recovered in a summary proceeding before the municipal court having jurisdiction, and would get paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge, including any charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, based on a prior small amount distribution or possession violation that would now only be punishable by a civil penalty, unless a final judgment of conviction or adjudication of delinquency had been entered on or before the bill’s effective date. These non-prosecutable charges and cases would be expeditiously dismissed, which could be accomplished by

appropriate action by a law enforcement agency, or on a motion to the court with jurisdiction over a case, or the court's own motion, based upon guidelines or directives issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Any past, present, or future charge, conviction, or adjudication of delinquency for an even broader array of marijuana and hashish offenses would not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts conducted a risk assessment on a person for the purpose of making recommendations to a court about an appropriate pretrial release or pretrial detention decision for that individual in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.). These non-considered offenses would include:

- unlawful distribution of less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of any amount of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., subsection b., or subsection c. of N.J.S.2C:35-10; or

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

The bill would also establish grounds for post-conviction relief due to a past conviction or adjudication of delinquency for any of the above described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

New Form of "Virtual" Expungement for Certain Marijuana and Hashish Offenses

Beginning immediately upon the enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency, and proceedings related thereto, for any of the above described broad list of marijuana or hashish offenses that occurred prior to the bill's effective date would be deemed not to have occurred (other than, generally, with respect to the consequences of any sentence set forth in a judgment of conviction), providing such legal relief without need to petition a court for an expungement order granting such result. While persons would be able to respond to questions about such past occurrences accordingly, information about such would still need to be revealed if seeking employment within the judicial branch or with a law

enforcement or corrections agency, and the record would be subject to review in accordance with N.J.S.2C:52-15 et seq.

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would:

- develop and maintain information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist the person with an expedited expungement, pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the various marijuana and hashish distribution, possession, and drug paraphernalia offenses described above under the statement subheading Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses, or a “clean slate” expungement, which generally addresses a person’s entire criminal record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and

- develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit and other private job training programs in consultation with the Department of Labor and Workforce Development, with a focus on assisting those persons eligible for an expedited expungement or “clean slate” expungement.

Civil Justice Reforms

In addition to the above described criminal justice relief largely focused on marijuana and hashish offenses and broadening awareness of the expungement process for clearing records, the bill would provide an array of civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the aforementioned marijuana and hashish distribution, possession, and drug paraphernalia crimes or offenses (see list under statement heading Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses), or targeting persons with a civil penalty for committing an unlawful act of distribution or possession with marijuana or hashish. These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

Lastly, the bill would make confidential, and no longer a government record subject to public inspection under P.L.1963, c.73 (C.47:1A-1 et seq.), the portion of any criminal record concerning a person’s detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned crimes or offenses, or any record concerning a person’s commission of any of the aforementioned unlawful acts subject to a civil penalty.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1897 and 4269

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2020

The Senate Judiciary Committee reports favorably and with committee amendments an Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269.

This bill, as amended, would provide for various “social justice” reforms, some based on criminal justice and others based on civil justice, which would reduce the legal consequences associated with certain marijuana and hashish offenses as well as raise awareness of the availability of expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses

Under current law, manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense (hereafter shortened to just distributing, which includes possessing or having under control), one ounce or more but less than five pounds of marijuana, or five grams or more but less than one pound of hashish, is punishable as a crime of the third degree; this crime can be punished by a term of imprisonment of three to five years, an enhanced fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can be punished by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-5, subsection b., paragraphs (11) and (12).

The bill would retain as a crime of the third degree the distribution of less than five pounds of marijuana, but slightly raise the minimum amount that falls under this degree to be *more than one ounce* instead of *one ounce or more*, and distribution of less than one pound of hashish would also remain a third degree crime, but the minimum amount for this violation would be *more than five grams* instead of *five grams or more*; it would regrade the distribution of lesser amounts of marijuana and hashish as follows:

- one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an unlawful act, subject to a civil penalty of \$50; and

- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and subject to the same penalties, including an enhanced fine, as described above.

The civil penalty would be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), before the municipal court having jurisdiction. The enforcement action would be recovered by and in the name of the State by the local municipality, and paid into its treasury for the general use of the municipality.

The bill would also change the applicable amounts that constitute the unlawful possession of marijuana or hashish, which is currently a crime of the fourth degree (up to 18 months imprisonment; up to \$25,000 fine; or both) when the act involves more than 50 grams of marijuana or more than five grams of hashish, and, when the act involves lesser amounts, a disorderly persons offense (up to six month imprisonment; up to \$1,000 fine; or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

Under the bill, unlawful possession would be any amount of marijuana over six ounces, and for hashish, over 170 grams, punishable as a crime of the fourth degree (with the same penalties as the current law). Possession of up to six ounces of marijuana, or up to 170 grams of hashish would be completely decriminalized and have no associated criminal or civil penalties. The bill addresses this point by completely deleting paragraph (4) of subsection a. of N.J.S.2C:35-10, the "small amount" category of marijuana or hashish possession, leaving the only punishable possession offense of having over six ounces of marijuana or over 170 grams of hashish.

Regarding the above described unlawful act of distribution subject to a civil penalty and unlawful possession with associated criminal penalties, the odor of marijuana or hashish, or burnt marijuana or hashish, would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of law. Additionally, a person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person had committed another violation of the law. Also, a person who committed such a violation could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing that act, nor would committing one or more such acts modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law.

All local and county law enforcement authorities would, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the

Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of distribution or possession violations committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated and associated information collected by the State Police for the same period would be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's Internet website.

Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer, both currently disorderly persons offenses (up to six months imprisonment; up to \$1,000 fine; or both), would no longer be illegal acts, and thus there would be no legal consequences flowing from using, being under the influence of, or failing to deliver to law enforcement, marijuana or hashish. Using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body would also no longer be considered an illegal act; under current law, it is graded as a disorderly persons offense.

Notwithstanding that using or being under the influence of marijuana or hashish, or using or possessing drug paraphernalia to use with marijuana or hashish, would no longer be illegal acts, the smoking, vaping, or aerosolizing of marijuana or hashish, and the use of drug paraphernalia to ingest or otherwise introduce these substances into the human body, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

Lastly concerning the above described unlawful act of distribution subject only to a civil penalty, and the decriminalized possession of up to six ounces of marijuana or 170 grams of hashish, as well as using or being under the influence of marijuana or hashish, none of these acts: (1) could be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, or (2) could be considered a violation of the terms of pretrial release, probation, or parole.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge awaiting further proceedings on the effective date of the bill, including any charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, unless a guilty verdict, plea, or other entry of guilt, or final judgment of conviction or adjudication of delinquency, had been entered on or before that effective date, for any of the following violations:

- unlawful distribution of less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; or

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

The non-prosecutable charges and cases for the above violations would be expeditiously dismissed, which could be accomplished by appropriate action by a law enforcement agency, or on a motion to the court with jurisdiction over a case, or the court's own motion, based upon guidelines, administrative directives, and court orders issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Regarding a guilty verdict, plea, or other entry of guilt entered prior to the bill's effective date, the bill would establish grounds for relief if the guilty verdict, plea, or other entry of guilt involved one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated above, if a final judgment of conviction or adjudication of delinquency had not been entered on or before that effective date.

The bill would also establish grounds for post-conviction relief for any person serving a sentence due to a past conviction or adjudication of delinquency for any of the above described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

Additionally, any past or future charge, conviction, or adjudication of delinquency for the same array of marijuana and hashish offenses, as well as future unlawful acts of distribution subject only to a civil penalty, would not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts conducted a risk assessment on a person for the purpose of making recommendations to a court about an appropriate pretrial release or pretrial detention decision for that individual in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

New Form of “Virtual” Expungement for Certain Marijuana and Hashish Offenses

Beginning immediately upon the enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency, and proceedings related thereto, for any of the above described broad list of marijuana or hashish offenses that occurred prior to the bill’s effective date would be deemed not to have occurred (other than, generally, with respect to the consequences of any sentence set forth in a judgment of conviction), providing such legal relief without need to petition a court for an expungement order granting such result. While persons would be able to respond to questions about such past occurrences accordingly, information about such would still need to be revealed if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the record would be subject to review in accordance with N.J.S.2C:52-15 et seq.

Sealing of Records Associated With Unlawful Acts of Marijuana and Hashish Distribution

Once the Administrative Office of the Courts develops and maintains its system for sealing records related to various marijuana and hashish distribution, possession, and drug paraphernalia offenses pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), then all records relating to unlawful acts of marijuana distribution as described above, for which only a civil penalty was imposed, would, upon disposition of the case and any proceedings related thereto, be sealed based upon a court order of nondisclosure to the public of such records.

Reforms Applicable to All Expungements and Sealed Records

Penalties for Wrongful Dissemination of Expunged Records or Information

The bill would increase the maximum fine, from \$200 to \$2,000, which could be imposed on a person who reveals to another the existence of an arrest, conviction, unlawful act violation, or related legal proceeding with knowledge that the record or information has been expunged or sealed. A person could also be subject to a term of imprisonment of up to six months because such an act is categorized as a disorderly persons offense. See N.J.S.2C:52-30.

In addition, the bill provides that any person or entity regularly engaged in the business of collecting, assembling, evaluating or

disseminating records on individuals for a fee is required to regularly update their records to ensure accuracy, promptly delete a record that has been expunged or sealed, provide clients with the date collected and explain to clients that records are valid only as of the date collected. Any such regularly-engaged person or entity who disseminates a record that has been expunged or sealed, and knows or should have known at the time of dissemination that the record has been expunged or sealed, would be liable to the individual who is the subject of the record for damages totaling \$5,000 or the actual damages caused by the violation, whichever is greater, plus costs and attorney fees.

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would develop and maintain:

- information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist the person with an expedited expungement, pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the various marijuana and hashish distribution, possession, and drug paraphernalia offenses described above under the statement subheading for Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses, or a “clean slate” expungement, which generally addresses a person’s entire criminal record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and
- develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit and other private job training programs in consultation with the Department of Labor and Workforce Development, with a focus on assisting those persons eligible for an expedited expungement or “clean slate” expungement.

Civil Justice Reforms

In addition to the above described criminal justice relief largely focused on marijuana and hashish offenses and promoting awareness of the expungement process for clearing records, the bill would provide an array of civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the aforementioned marijuana and hashish distribution, possession, and drug paraphernalia offenses described above under the statement subheading for Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses, or targeting persons with a civil penalty for committing an unlawful act of distribution with marijuana or hashish. These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

Lastly, the bill would make confidential, and no longer a government record subject to public inspection under P.L.1963, c.73 (C.47:1A-1 et seq.), the portion of any criminal record concerning a person's detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned offenses, or any record concerning a person's commission of an unlawful act of distribution subject to a civil penalty.

The bill, as amended and reported, is identical to Senate Bill No. 2535, also amended and reported today by the committee.

The committee amendments to the bill:

- change the amounts applicable to an unlawful marijuana or hashish distribution offense, when graded as a crime of the third degree or fourth degree, or considered an unlawful act subject only to a civil penalty of \$50, as described above;

- make distribution of one ounce or less of marijuana, or five grams or less of hashish an unlawful act subject only to a civil penalty when it is a first offense, and a fourth degree crime for a second or subsequent offense;

- remove provisions that would have created an unlawful act of possession for small amounts of marijuana or hashish, as well as provisions that would have established a legal presumption, for this and an unlawful act of small amount distribution, that the substance possessed or distributed was legal medical cannabis;

- completely decriminalize, with no civil or criminal penalties, possession of up to six ounces of marijuana or up to 170 grams of hashish;

- completely decriminalize, with no civil or criminal penalties, using or being under the influence of marijuana or hashish, or failing to deliver such to a law enforcement order, or using or possessing drug paraphernalia to introduce either substance into the human body, but allowing persons that own or control property to prohibit or otherwise regulate the smoking, vaping, or aerosolizing of marijuana or hashish, or the use of drug paraphernalia with either substance;

- add provisions concerning the smell of marijuana or hashish, or burnt marijuana or hashish, not constituting reasonable articulable suspicion to initiate a search of a person to determine a violation of law;

- prohibit a person from being subject to arrest, being detained, or otherwise taken into custody for an unlawful act of distribution or possession of marijuana or hashish, as described above;

- indicate that a person could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing an unlawful act of distribution or possession;

- require law enforcement reporting on unlawful acts of distribution and possession of marijuana and hashish, as described above;
- expand the list of marijuana and hashish offenses for which pending charges awaiting further proceedings on the effective date of the bill would be expeditiously dismissed, as described above;
- clarify potential legal relief for persons with a guilty verdict, plea, or other entry of guilt, as well as post-conviction relief for persons serving or who will be serving a sentence for any of the marijuana and hashish offenses appearing on that same list;
- provide that acts involving an unlawful act of distribution subject to a civil penalty or decriminalized possession of up to six ounces of marijuana or 170 grams of hashish could not be prohibited or restricted as conditions imposed with respect to court-ordered pretrial release or probation, or certified parole release, or considered a violation of the terms of pretrial release, probation, or parole;
- similarly provide that those same acts would not be considered as part of a court's risk assessment for making appropriate pretrial release or pretrial detention decisions;
- include records related to unlawful acts of distribution subject to a civil penalty included in the new system being developed by the Administrative Office of the Courts, pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), for sealing records immediately upon disposition of a case;
- relocate the sections that promote awareness of the expungement process to the end of the bill to make this bill identical to the Senate counterpart, Senate Bill No. 2535;
- change the bill's effective date so that it takes effect immediately, instead of the 90th day following enactment; and
- update the bill's title and synopsis to make it identical to the Senate counterpart, also amended and reported today by the committee.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1897 and 4269**

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 2020

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1897/4269 ACS (1R), with committee amendments.

This bill, as amended, would provide for various “social justice” reforms, some based on criminal justice and others based on civil justice, which would reduce the legal consequences associated with certain marijuana and hashish, and other possession offenses for other controlled dangerous substances, as well as raise awareness of the availability of expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses, and Psilocybin Mushroom Possession

Under current law, manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense (hereafter shortened to just distributing, which includes possessing or having under control), one ounce or more but less than five pounds of marijuana, or five grams or more but less than one pound of hashish, is punishable as a crime of the third degree; this crime can result in a term of imprisonment of three to five years, an enhanced fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can result in a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-5, subsection b., paragraphs (11) and (12).

The bill would retain as a crime of the third degree the distribution of less than five pounds of marijuana, but slightly raise the minimum amount that falls under this degree to be *more than one ounce* instead of *one ounce or more*, and distribution of less than one pound of hashish would also remain a third degree crime, but the minimum amount for this violation would be *more than five grams* instead of *five grams or more*; it would regrade the distribution of lesser amounts of marijuana and hashish as follows:

- one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an act subject to a written warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both; and

- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and be subject to the same penalties, including an enhanced fine, as described above.

The bill would also change the applicable amounts that constitute the unlawful possession of marijuana or hashish, which is currently a crime of the fourth degree (up to 18 months imprisonment; up to \$25,000 fine; or both) when the act involves more than 50 grams of marijuana or more than five grams of hashish, and, when the act involves lesser amounts, a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

Under the bill, unlawful possession would be any amount of marijuana over six ounces, and for hashish, over 170 grams, punishable as a crime of the fourth degree (with the same penalties as the current law). Possession of up to six ounces of marijuana, or up to 170 grams of hashish would be completely decriminalized and have no associated criminal or civil penalties.

Regarding the above described small amount unlawful distribution and unlawful possession with associated criminal penalties, the odor of marijuana or hashish, or burnt marijuana or hashish, would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of law. Additionally, a person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person had committed another violation of the law. Also, a person who committed such a violation could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing that act, nor would committing one or more such acts modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law.

All local and county law enforcement authorities would, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of distribution or possession violations committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations

investigated and associated information collected by the State Police for the same period would be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's Internet website.

Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer, both currently disorderly persons offenses (up to six months imprisonment; up to \$1,000 fine; or both), would no longer be illegal acts, and thus there would be no legal consequences flowing from using, being under the influence of, or failing to deliver to law enforcement, marijuana or hashish. Using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body would also no longer be considered an illegal act; under current law, it is graded as a disorderly persons offense.

Notwithstanding that using or being under the influence of marijuana or hashish, or using or possessing drug paraphernalia to use with marijuana or hashish, would no longer be illegal acts, the smoking, vaping, or aerosolizing of marijuana or hashish, and the use of drug paraphernalia to ingest or otherwise introduce these substances into the human body, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

Lastly concerning the above described small amount unlawful distribution and unlawful possession with associated criminal penalties, neither of these acts: (1) could be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, or (2) could be considered a violation of the terms of pretrial release, probation, or parole.

The bill would also make possession of one ounce or less of psilocybin mushroom a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). This act is a crime of the third degree under current law because psilocybin is a Schedule I drug, punishable under paragraph (1) of subsection a. of N.J.S.2C:35-10.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge awaiting further proceedings on the effective date of the bill, including any

charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, unless a guilty verdict, plea, or other entry of guilt, or final judgment of conviction or adjudication of delinquency, had been entered on or before that effective date, for any the following violations:

- unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10;

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2;

- possession of any controlled dangerous substance while operating a motor vehicle in violation of section 1 of P.L.1964, c.289 (C.39:4-49.1); and

- any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

The non-prosecutable charges and cases for the above violations would be expeditiously dismissed, which could be accomplished by appropriate action by a law enforcement agency, or on a motion to the court with jurisdiction over a case, or the court's own motion, based upon guidelines, administrative directives, and court orders issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Regarding a guilty verdict, plea, or other entry of guilt entered prior to the bill's effective date, the bill would establish grounds for relief if the guilty verdict, plea, or other entry of guilt involved one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated above, if a final judgment of conviction or adjudication of delinquency had not been entered on or before that effective date.

The bill would also establish grounds for post-conviction relief for any person serving a sentence due to a past conviction or adjudication of delinquency for any of the above described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

Additionally, any past or future charge, conviction, or adjudication of delinquency for any of the following array of marijuana and hashish offenses would not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts

conducted a risk assessment on a person for the purpose of making recommendations to a court about an appropriate pretrial release or pretrial detention decision for that individual in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.):

- unlawful distribution of less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; and

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

New Form of “Virtual” Expungement for Certain Marijuana and Hashish Offenses

Beginning immediately upon the enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency, and proceedings related thereto, for any of the above described broad array of marijuana or hashish offenses that occurred prior to the bill’s effective date would be deemed not to have occurred (other than, generally, with respect to the consequences of any sentence set forth in a judgment of conviction), providing such legal relief without need to petition a court for an expungement order granting such result. While persons would be able to respond to questions about such past occurrences accordingly, information about such would still need to be revealed if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the record would be subject to review in accordance with N.J.S.2C:52-15 et seq.

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would develop and maintain:

- information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist the person with an expedited expungement, pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia offenses or a “clean slate” expungement, which generally addresses a person’s

entire criminal record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and

- develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit and other private job training programs in consultation with the Department of Labor and Workforce Development, with a focus on assisting those persons eligible for an expedited expungement or “clean slate” expungement.

Civil Justice Reforms

In addition to the above described criminal justice relief largely focused on marijuana and hashish offenses and promoting awareness of the expungement process for clearing records, the bill would provide several civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia offenses. These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

Lastly, the bill would make confidential, and no longer a government record subject to public inspection under P.L.1963, c.73 (C.47:1A-1 et seq.), the portion of any criminal record concerning a person’s detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned offenses.

As reported by the committee, Assembly Bill No. 1897/4269 (ACS/2R) is identical to Senate Bill No. 2535 (2R), which also was reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- revise the amount thresholds for the lowest and next lowest levels of marijuana and hashish distribution offenses, making the lowest level distribution offense of one ounce or less of marijuana, or five grams or less of hashish, with the next lowest offense starting at distribution of more than one ounce of marijuana or more than five grams of hashish, further described in the statement above;

- eliminate civil penalties for the unlawful act of distribution of small amounts of marijuana and hashish, and re-establish such acts to be crimes, except that a first offense for distribution of one ounce or less of marijuana, or five grams or less of hashish is subject only to a written warning;

- distinguish between the grading and penalties under current law for the distribution or possession of marijuana or hashish as amended

by the bill and the new grading and penalties by separating the relevant parts of the statutory law into subparagraphs;

- make the possession of one ounce or less of psilocybin mushroom, a Schedule I controlled dangerous substance, a disorderly persons offense;

- reduce the types of distribution offenses for which currently pending charges would have been dismissed, including distribution of just under five pounds of marijuana or just under one pound of hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or distribution on or near school property, public housing, or other public properties;

- add possession of a controlled dangerous substance while operating a motor vehicle to the types of possession offenses for which currently pending charges would be dismissed;

- add disorderly persons or petty disorderly persons offenses subject to conditional discharge under N.J.S.2C:36A-1, as described in the statement above, to the types of offense for which currently pending charges would be dismissed;

- re-establish that all marijuana and hashish offenses involving distribution, possession, and drug paraphernalia subject to the Judiciary's record sealing system would not be considered as part of a pretrial risk assessment for making determinations for a defendant's pretrial release or detention;

- provide that the lowest level distribution offense involving marijuana or hashish, and possession of marijuana or hashish, could not be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, and would not be considered a violation of the terms of pretrial release, probation, or parole;

- clarify that anti-discrimination protections against an employer's actions on the basis of an employee's marijuana or hashish offense or offenses involving distribution, possession, and drug paraphernalia, as described in the statement above, would take into consideration whether an employer "relied solely" on such offenses when making an employment decision, allowing some consideration of such offenses by employers; and

- remove the section of the bill which would have increased the penalties and permitted civil actions against persons or entities regularly engaged in the business collecting, assembling, evaluating or disseminating records on individuals, for knowingly distributing records that are expunged or sealed.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.

STATEMENT TO
[Second Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

with Assembly Floor Amendments
(Proposed by Assemblyman WIMBERLY)

ADOPTED: DECEMBER 17, 2020

The sole purpose of these amendments is to ensure that this bill, largely focusing on the re-grading and decriminalization of certain future marijuana and hashish offenses, as well as reducing the legal consequences of past offenses, does so in a unified and consist manner with several sections of Assembly Bill No. 21, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” as amended by the Assembly Appropriations Committee on December 15, 2020, and which amendments also address the above described criminal justice reforms.

New sections 1 and 2 would re-grade and decriminalize the same marijuana and hashish distribution and possession offenses, as well as using or being under the influence of marijuana or hashish, in the same manner (except for a change to the possession amount of hashish that is decriminalized), as well as provide the same legal protections associated with such offenses, as the underlying current versions of sections 1 and 2 of this bill.

In new section 1 (distribution), there is an additional provision to ensure that a person who commits a first offense of distributing one ounce or less of marijuana, or five grams or less of hashish in violation of subparagraph (b) of paragraph (12) of subsection b. of N.J.S.2C:35-5, subject to a written warning, would not have to appear before a trier of fact (in court) to determine the actual amount distributed in order to receive the written warning. This provision is based on language contained in section 55 of Assembly Bill No. 21, as amended on December 15.

New section 2 decriminalizes possession of 17 grams or less of hashish, instead of 170 grams or less as stated in the underlying current version, and clarifies that the decriminalization for possession of this amount of hashish, or six ounces or less of marijuana (same as the current bill) means that any such act is not “an act of delinquency,” in addition to not being a crime, offense, or civil violation of law. Additionally, although using or being under the influence of marijuana or hashish would no longer be unlawful, smoking, vaping, or aerosolizing with either or both could be prohibited or otherwise regulated upon or in various properties, and the new section 2 adds “the structure or specific units of the structure of a cooperative as

defined in section 3 of P.L.1987, s.381 (C.46:8D-3)” to the list of such properties with the authority to do so, which list is copied from the underlying current version of section 2. Also, new section 2 does not contain a re-grading of possession of one ounce or less of psilocybin mushroom to a disorderly persons offense, which appears in the underlying current section. These changes are based upon new provisions contained in, or missing from, section 56 of Assembly Bill No. 21, as amended.

New section 3, which would make it no longer an illegal act to use or possess with intent to use drug paraphernalia with marijuana or hashish is identical to section 3 of the underlying current version, with two additions from section 58 of Assembly Bill No. 21, as amended, both being similar to additions in new section 2: first, expressly stating that such an act involving drug paraphernalia would not be considered “an act of delinquency,” in addition to not otherwise being punishable as a violation of law; and the second addition adding to the list of properties upon or in which the use of drug paraphernalia with marijuana or hashish, although not unlawful, could be prohibited or otherwise regulated – “the structure or specific units of the structure of a cooperative as defined in section 3 of P.L.1987, s.381 (C.46:8D-3).”

New section 4, based entirely on section 59 of Assembly Bill No. 21, as amended, addresses (1) the dismissal of various pending marijuana and hashish charges, (2) vacating, by operation of law, existing entries of guilty or placements in a diversionary program for matters without a judgment of conviction or final disposition, and (3) vacating, by operation by law, existing convictions, remaining sentences, ongoing supervision, and unpaid court-ordered financial assistance; these actions would all occur on the first day of the fifth month next following the effective date of Assembly Bill No. 21, as amended, to ensure consistent timing of the actions as set forth in that bill and now included in this bill. The underlying current section 4 generally addressed the same matters, but for points (2) and (3) it required a person with an entry of guilt, or serving or soon to be serving a sentence of incarceration, probation, parole or other form of community supervision, to make a motion to a court for relief from the entry of guilt or the sentence imposed; unlike the new section, there was no automatic operation under the law for action providing persons relief. The marijuana and hashish crimes and offenses which are addressed by the new section 4 in the above described manner are the same as those addressed in the underlying current section 4.

New section 5, based entirely on section 60 of Assembly Bill No. 21, as amended, would expunge, by operation of law, as of the first day of the fifth month next following the effective date of Assembly Bill No. 21, as amended (for proper timing between the bills), any case that, prior to that bill’s effective date, included a conviction or adjudication of delinquency solely for one or more of the following crimes or offenses, which list includes some, but not all of the crimes or offenses that would have been subject to a “virtual expungement” pursuant to the underlying current section 5:

(1) unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

(2) obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; and

(3) a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

It also adds an additional category for expungement by operation of law:

(4) any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance (which only applies to small amount marijuana or hashish offenses) or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

New section 5 would additionally permit anticipatory administrative action by the Administrative Director of the Courts, in consultation with the Attorney General, necessary to expeditiously effectuate the expungements of records carried out by this operation of law. The “virtual expungement” set forth in the underlying current section 5 would have made the past incidents of marijuana and hashish crimes and offenses “deemed not to have occurred,” thereby providing such relief without the need to petition a court for an expungement order granting such result. The new section 5’s action of expungement by operation of law similarly will not require a person with such an expungement to petition a court.

Lastly, section 21, concerning the effective date of the bill, or more specifically the effective dates of individual sections of the bill, is updated so that the effective date of all of the aforementioned provisions set forth in new sections 1 through 5 (immediately upon enactment) will coincide with the effective date of their counterpart sections in Assembly Bill No. 21, as amended, sections 55 and 56, and 58 through 60 (immediately upon enactment), and link the effective date of the other sections of this bill to the date that actions occur on matters set forth in Assembly Bill No. 21, as amended, based on provisions in that bill that those actions are to occur on the first day of the fifth month next following enactment. This update to the effective date section will ensure a consistent timing for the changes to the law brought about by both bills.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 24, 2020

SUMMARY

- Synopsis:** Provides for certain criminal and civil justice reforms, particularly with respect to legal consequences associated with certain marijuana and hashish offenses as well as broadening awareness of available expungement relief.
- Type of Impact:** Annual expenditure increases and revenue decreases to the State General Fund. Annual expenditure and revenue increases to the municipal and county governments.
- Agencies Affected:** Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board; Department of Labor and Workforce Development; Department of Banking and Insurance; Municipal and County governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Net Expenditure Impact	Indeterminate
State Net Revenue Decrease	Indeterminate
Local Cost Increase	Indeterminate
Local Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that downgrading certain small amounts of marijuana and hashish crimes to a \$50 civil penalty would result in the Judiciary, the Department of Law and Public Safety (LPS), the Office of the Public Defender, the Department of Corrections (DOC), and the State Parole Board incurring indeterminate caseload and expenditure decreases.
- Downgrading these offenses would reduce the State’s annual revenue, as collections from court filing fees and penalties would decrease by an indeterminate amount.

- Municipalities would incur indeterminate caseload and expenditure increases, as cases would move from State to municipal courts. There would also be an indeterminate increase in annual revenue for the municipalities as a result of collecting the \$50 civil penalty.
- The Judiciary would incur an indeterminate expenditure increase in developing a public awareness campaign concerning the expungement process.
- The Department of Labor and Workforce Development would incur an indeterminate revenue increase from collecting civil penalties from employers that discriminate against applicants based on an arrest, charge, conviction, or adjudication of delinquency for certain marijuana and hashish offenses. The Department of Banking and Insurance would also incur an indeterminate revenue increase from penalties levied on mortgage lenders that engage in such discriminatory practices.

BILL DESCRIPTION

This bill would reduce the legal consequences associated with certain marijuana and hashish offenses as well as broaden awareness of available expungement relief, concerning both marijuana and hashish offenses and more generally.

The bill would reduce the penalties for possessing and distributing smaller quantities of marijuana and hashish. At the lowest level, the possession of less than two ounces of marijuana or less than five grams of hashish would only be punishable by a \$50 civil fine when the lowest level offense is a crime of the fourth degree under current law. A fourth degree crime is punishable by up to 18 months imprisonment, up to a \$10,000 fine, or both. The civil penalty would be recovered in a summary proceeding before the municipal court having jurisdiction, and would be paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

Additionally, unadjudicated charges and cases involving marijuana and hashish offenses being reduced to a civil penalty that occurred before the bill's effective date would be expeditiously dismissed after appropriate action by a law enforcement agency or the courts. Any past, present, or future charge, conviction, or adjudication of delinquency relating to these marijuana or hashish offenses would not be considered when the Judiciary's Statewide Pretrial Service Program conducts risk assessments. The bill would also establish grounds for post-conviction relief due to a past conviction or adjudication of delinquency for these marijuana and hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

The Administrative Office of the Courts would also be required to develop and maintain information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county and to develop a multilingual public awareness campaign to promote awareness of the expungement process.

Additionally, the bill prohibits employers and mortgage lenders from discriminating against applicants based on an arrest, charge, conviction, or adjudication of delinquency for certain marijuana and hashish offenses. Notably, employers will not be able to make employment decisions, require applicants to disclose, or take adverse action against applicants for any such marijuana and hashish offenses unless it is for a position in law enforcement, corrections, the Judiciary, homeland security, or emergency management. Employers who violate these provisions would be subject to a civil penalty of \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for subsequent offenses to be collected by the Department of Labor and Workforce

Development. Also, mortgage lenders who continue to violate the bill's provisions after being ordered by the Department of Banking and Insurance to cease the discriminatory practices would be liable for a penalty of \$10,000 for each offense. In addition, individuals who allege discrimination in public or private housing, real property, or places of public accommodation based on such marijuana and hashish offenses are authorized to institute a civil action in Superior Court for relief.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Downgrading Certain Marijuana and Hashish Offenses

The OLS estimates that in regrading certain small amounts of marijuana and hashish crimes to a civil penalty, the following State agencies would incur indeterminate caseload and expenditure decreases: a) the Judiciary would have to adjudicate fewer cases, b) the LPS would have to prosecute fewer cases, c) the Office of the Public Defender would represent fewer low-income criminal defendants, d) the DOC would have to house and care for fewer incarcerated individuals, and e) the State Parole Board would have to supervise fewer individuals. The Judiciary's annual revenue would also decrease an indeterminate amount as collections from court filing fees and penalties would decline.

The OLS projects that municipalities would incur indeterminate caseload and expenditure increases, as cases would move from State to municipal courts. There would also be an indeterminate increase in annual revenue for the municipalities as a result of collecting the \$50 civil penalty.

Expungement

The administrative costs to the Judiciary are likely to increase as the Administrative Office of the Courts would be required to develop and maintain information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county and to develop a multilingual public awareness campaign to promote awareness of the expungement process. However, the OLS lacks sufficient information to quantify the costs involved.

Penalties for Violations by Employers and Mortgage Lenders

Employers and mortgage lenders that discriminate against applicants based on an arrest, charge, conviction, or adjudication of delinquency for certain marijuana and hashish offenses would be subject to penalties to be collected by the Department of Labor and Workforce Development and the Department of Banking and Insurance, respectively. The two departments would likely incur an indeterminate revenue increase from these penalties.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Assistant Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: NOVEMBER 19, 2020

SUMMARY

- Synopsis:** Provides for certain criminal and civil justice reforms, particularly addressing legal consequences associated with certain marijuana and hashish offenses as well as raising awareness of available expungement relief.
- Type of Impact:** Annual expenditure decreases to the State, counties, and municipal governments. Annual revenue decreases to the State and municipal governments.
- Agencies Affected:** Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board; Department of Labor and Workforce Development; Department of Banking and Insurance; Municipal and County Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Decrease	Indeterminate
State Revenue Decrease	Indeterminate
County and Municipal Expenditure Decreases	Indeterminate
Municipal Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill would reduce annual State expenditures by an indeterminate amount as fewer marijuana- and hashish-related acts would enter the criminal justice system and other marijuana- and hashish-related delinquencies would be downgraded to lower terms of incarceration. The State expenditure decrease would be somewhat offset by additional expenses the Judiciary would incur in developing a multilingual public awareness concerning the expungement process.
- An indeterminate decrease in annual State revenues would occur from the decriminalization and downgrading of certain marijuana- and hashish-related offenses, as collections from court

filing fees and penalties would decline by indeterminate amounts. The annual revenue loss would be somewhat offset by the collection of certain new civil penalties.

- Annual county expenditures would decrease by an indeterminate amount on account of the bill reducing the number of cases county prosecutor's offices would have to prosecute and the number of defendants who would be convicted to county jail terms.
- Annual municipal expenditures would decrease attributable to a reduction in the number of marijuana- and hashish-related disorderly persons offenses that would be tried in municipal courts. Annual municipal revenue in the form of court filing fees would also be reduced as fewer cases would enter municipal court.

BILL DESCRIPTION

This bill would eliminate or reduce the legal consequences associated with certain marijuana, hashish and controlled dangerous substances offenses. Among other provisions, the bill would decriminalize the possession of up to 6 ounces (170 grams) of marijuana and hashish, when under current law the act is punishable as either a crime of the fourth degree (up to 18 months of imprisonment and up to \$25,000 fine) or a disorderly persons offense (up to six months imprisonment and up to \$1,000 fine), depending on the amount. In addition, the bill would regrade the distribution of lesser amounts of marijuana and hashish. The distribution of one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an act subject to a written warning. A second or subsequent offense would remain a crime of the fourth degree. In addition, the bill would permit anyone to petition a court for a reduction or change in a sentence that person is currently serving due to a past conviction of any delinquency for marijuana or hashish offenses for which this bill eliminates or reduces the legal consequences.

Furthermore, the bill requires the automatic expungement of any arrest or court record related to a delinquency that is the subject of this bill if the delinquency occurred prior to the bill's effective date but is still awaiting final disposition.

The Administrative Office of the Courts would also be required to maintain and provide to any person upon request information about the expungement process and pertinent legal services programs statewide and in each county. In addition, the office would be required to develop a multilingual public awareness campaign to promote awareness of the expungement process existing under current law as well as job training programs available to certain marijuana offenses-related expungees.

Additionally, the bill prohibits employers and mortgage lenders from discriminating against applicants based on an arrest, charge, conviction, or adjudication of delinquency for certain marijuana and hashish offenses. Employers who violate these provisions would be subject to a civil penalty of \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for subsequent offenses to be collected by the Department of Labor and Workforce Development. Also, mortgage lenders who continue to violate the bill's provisions after being ordered by the Department of Banking and Insurance to cease the discriminatory practices would be liable for a penalty of \$10,000 for each offense.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would reduce annual State expenditures by an indeterminate amount as fewer marijuana- and hashish-related acts would enter the criminal justice system and other marijuana- and hashish-related delinquencies would be downgraded to lower terms of incarceration. The State expenditure decrease would be somewhat offset by additional expenses the Judiciary would incur in developing a multilingual public awareness concerning the expungement process.

An indeterminate decrease in annual State revenues would occur from the decriminalization and downgrading of certain marijuana- and hashish-related offenses, as collections from court filing fees and penalties would decline by indeterminate amounts. The annual revenue loss would be somewhat offset by the collection of certain new civil penalties.

Annual county expenditures would decrease by an indeterminate amount on account of the bill reducing the number of cases county prosecutor's offices would have to prosecute and the number of defendants who would be convicted to county jail terms.

Annual municipal expenditures would decrease attributable to a reduction in the number of marijuana- and hashish-related disorderly persons offenses that would be tried in municipal courts. Annual municipal revenue in the form of court filing fees would also be reduced as fewer cases would enter municipal court.

Section: Judiciary

Analyst: Anuja Pande Joshi
Assistant Research Analyst

Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2535

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 4, 2020

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator RONALD L. RICE

District 28 (Essex)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

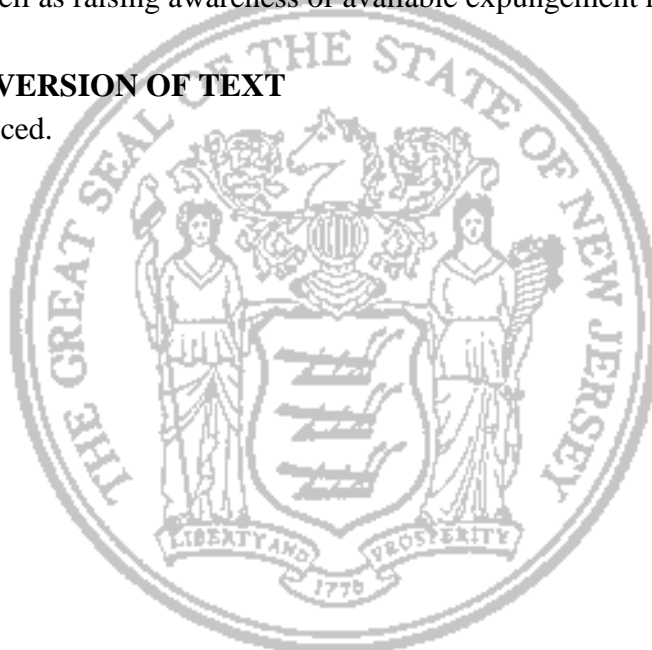
Senators Gopal and Turner

SYNOPSIS

Provides for certain criminal and civil justice reforms, particularly addressing legal consequences associated with certain marijuana and hashish offenses as well as raising awareness of available expungement relief.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/8/2020)

1 AN ACT concerning certain criminal and civil justice reforms,
2 particularly addressing the legal consequences associated with
3 certain marijuana and hashish offenses as well as raising
4 awareness of available expungement relief, and amending and
5 supplementing various parts of the statutory law.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. N.J.S.2C:35-5 is amended to read as follows:

11 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
12 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
13 unlawful for any person knowingly or purposely:

14 (1) To manufacture, distribute or dispense, or to possess or have
15 under his control with intent to manufacture, distribute or dispense,
16 a controlled dangerous substance or controlled substance analog; or

17 (2) To create, distribute, or possess or have under his control
18 with intent to distribute, a counterfeit controlled dangerous
19 substance.

20 b. Any person who violates subsection a. with respect to:

21 (1) Heroin, or its analog, or coca leaves and any salt, compound,
22 derivative, or preparation of coca leaves, and any salt, compound,
23 derivative, or preparation thereof which is chemically equivalent or
24 identical with any of these substances, or analogs, except that the
25 substances shall not include decocainized coca leaves or extractions
26 which do not contain cocaine or ecogine, or 3,4-
27 methylenedioxyamphetamine or 3,4-
28 methylenedioxyamphetamine, in a quantity of five ounces or more
29 including any adulterants or dilutants is guilty of a crime of the first
30 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
31 be sentenced to a term of imprisonment by the court. The term of
32 imprisonment shall include the imposition of a minimum term
33 which shall be fixed at, or between, one-third and one-half of the
34 sentence imposed, during which the defendant shall be ineligible for
35 parole. Notwithstanding the provisions of subsection a. of
36 N.J.S.2C:43-3, a fine of up to **[\$500,000.00]** \$500,000 may be
37 imposed;

38 (2) A substance referred to in paragraph (1) of this subsection,
39 in a quantity of one-half ounce or more but less than five ounces,
40 including any adulterants or dilutants is guilty of a crime of the
41 second degree;

42 (3) A substance referred to paragraph (1) of this subsection in a
43 quantity less than one-half ounce including any adulterants or
44 dilutants is guilty of a crime of the third degree except that,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
2 fine of up to **【\$75,000.00】** \$75,000 may be imposed;

3 (4) A substance classified as a narcotic drug in Schedule I or II
4 other than those specifically covered in this section, or the analog of
5 any such substance, in a quantity of one ounce or more including
6 any adulterants or dilutants is guilty of a crime of the second
7 degree;

8 (5) A substance classified as a narcotic drug in Schedule I or II
9 other than those specifically covered in this section, or the analog of
10 any such substance, in a quantity of less than one ounce including
11 any adulterants or dilutants is guilty of a crime of the third degree
12 except that, notwithstanding the provisions of subsection b. of
13 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
14 imposed;

15 (6) Lysergic acid diethylamide, or its analog, in a quantity of
16 100 milligrams or more including any adulterants or dilutants, or
17 phencyclidine, or its analog, in a quantity of 10 grams or more
18 including any adulterants or dilutants, is guilty of a crime of the
19 first degree. Except as provided in N.J.S.2C:35-12, the court shall
20 impose a term of imprisonment which shall include the imposition
21 of a minimum term, fixed at, or between, one-third and one-half of
22 the sentence imposed by the court, during which the defendant shall
23 be ineligible for parole. Notwithstanding the provisions of
24 subsection a. of N.J.S.2C:43-3, a fine of up to **【\$500,000.00】**
25 \$500,000 may be imposed;

26 (7) Lysergic acid diethylamide, or its analog, in a quantity of
27 less than 100 milligrams including any adulterants or dilutants, or
28 where the amount is undetermined, or phencyclidine, or its analog,
29 in a quantity of less than 10 grams including any adulterants or
30 dilutants, or where the amount is undetermined, is guilty of a crime
31 of the second degree;

32 (8) Methamphetamine, or its analog, or phenyl-2-propanone
33 (P2P), in a quantity of five ounces or more including any
34 adulterants or dilutants is guilty of a crime of the first degree.
35 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
36 fine of up to **【\$300,000.00】** \$300,000 may be imposed;

37 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
38 (P2P), in a quantity of one-half ounce or more but less than five
39 ounces including any adulterants or dilutants is guilty of a crime of
40 the second degree;

41 (b) Methamphetamine, or its analog, or phenyl-2-propanone
42 (P2P), in a quantity of less than one-half ounce including any
43 adulterants or dilutants is guilty of a crime of the third degree
44 except that notwithstanding the provisions of subsection b. of
45 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
46 imposed;

1 (10) (a) Marijuana in a quantity of 25 pounds or more
2 including any adulterants or dilutants, or 50 or more marijuana
3 plants, regardless of weight, or hashish in a quantity of five pounds
4 or more including any adulterants or dilutants, is guilty of a crime
5 of the first degree. Notwithstanding the provisions of subsection a.
6 of N.J.S.2C:43-3, a fine of up to **[\$300,000.00]** \$300,000 may be
7 imposed;

8 (b) Marijuana in a quantity of five pounds or more but less than
9 25 pounds including any adulterants or dilutants, or 10 or more but
10 fewer than 50 marijuana plants, regardless of weight, or hashish in a
11 quantity of one pound or more but less than five pounds, including
12 any adulterants and dilutants, is guilty of a crime of the second
13 degree;

14 (11) Marijuana in a quantity of more than one **[ounce]** pound
15 **[or more]** but less than five pounds including any adulterants or
16 dilutants, or hashish in a quantity of **[five]** more than 80 grams **[or**
17 **more]** but less than one pound including any adulterants or
18 dilutants, is guilty of a crime of the third degree except that,
19 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
20 fine of up to **[\$25,000.00]** \$25,000 may be imposed;

21 (12) Marijuana in a quantity of one pound or less **[than one**
22 **ounce]** including any adulterants or dilutants, or hashish in a
23 quantity of 80 grams or less **[than five grams]** including any
24 adulterants or dilutants, is **[guilty of a crime of the fourth degree]**
25 an unlawful act;

26 (a) The odor of marijuana or hashish, or burnt marijuana or
27 hashish, shall not constitute reasonable articulable suspicion to
28 initiate a search of a person to determine a violation of paragraph
29 (12) of this subsection. A person who violates this paragraph shall
30 not be subject to arrest, detention, or otherwise be taken into
31 custody, unless the person is being arrested, detained, or otherwise
32 taken into custody for also committing another violation of law for
33 which that action is legally permitted or required;

34 (b) (i) A first violation of paragraph (12) of this subsection is
35 subject to a written warning, which also indicates that any
36 subsequent violation is subject to a civil penalty or imposition of
37 community service, and a second or subsequent violation is subject
38 to a civil penalty of \$25, or the performance of community service
39 in lieu of payment of the penalty, which may be imposed without
40 requiring a finding that a person does not have the ability to pay the
41 penalty in full, notwithstanding the provisions of section 1 of
42 P.L.2009, c.317 (C.2B:12-23.1). Whenever community service is
43 not imposed, the civil penalty shall be recovered by and in the name
44 of the State in a summary proceeding in accordance with the
45 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-
46 10 et seq.), by the local municipality before the municipal court
47 having jurisdiction, and remitted in accordance with that act.

1 Whenever community service is imposed in lieu of payment of the
2 penalty, the value of each hour of service shall be considered to be
3 not less than the State minimum wage established by the “New
4 Jersey State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-
5 56a et seq.), or federal minimum wage established by 29 U.S.C.
6 s.206, or any successor State or federal law, whichever wage is
7 higher, and the community service imposed shall not exceed \$25 in
8 value;

9 (ii) A person shall not be deprived of any legal or civil right,
10 privilege, benefit, or opportunity provided pursuant to any law
11 solely by reason of committing a violation of paragraph (12) of this
12 subsection, nor shall committing one or more violations modify any
13 legal or civil right, privilege, benefit, or opportunity provided
14 pursuant to any law, including, but not limited to, the granting,
15 renewal, forfeiture, or denial of a license, permit, or certification,
16 qualification for and the receipt, alteration, continuation, or denial
17 of any form of financial assistance, housing assistance, or other
18 social services, rights of or custody by a biological parent, or
19 adoptive or foster parent, or other legal guardian of a child or
20 newborn infant, or pregnant woman, in any action or proceeding by
21 the Division of Child Protection and Permanency in the Department
22 of Children and Families, or qualification, approval, or disapproval
23 to serve as a foster parent or other legal guardian;

24 (c) All local and county law enforcement authorities shall,
25 following the submission process used for the uniform crime
26 reporting system established by P.L.1966, c.37 (C.52:17B-
27 5.1 et seq.), submit a quarterly report to the Uniform Crime
28 Reporting Unit, within the Division of State Police in the
29 Department of Law and Public Safety, or to another designated
30 recipient determined by the Attorney General, containing the
31 number of violations of paragraph (12) of this subsection committed
32 within their respective jurisdictions, plus the race, ethnicity, gender,
33 and age of each person committing a violation, and the disposition
34 of each person’s violation. These violations and associated
35 information, along with a quarterly summary of violations
36 investigated, and associated information collected, by the Division
37 of State Police for the same period shall be summarized by county
38 and municipality in an annual report, and both quarterly summaries
39 and annual reports shall be made available at no cost to the public
40 on the Division of State Police’s Internet website;

41 (13) Any other controlled dangerous substance classified in
42 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
43 third degree, except that, notwithstanding the provisions of
44 subsection b. of N.J.S.2C:43-3, a fine of up to **[\$25,000.00]**
45 **\$25,000** may be imposed; or

46 (14) Any Schedule V substance, or its analog, is guilty of a
47 crime of the fourth degree except that, notwithstanding the

1 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
2 **[\$25,000.00]** \$25,000 may be imposed.

3 c. Where the degree of the offense for violation of this section
4 depends on the quantity of the substance, the quantity involved
5 shall be determined by the trier of fact, other than with respect to a
6 first violation of paragraph (12) of subsection b. of this section
7 which is subject to a written warning as set forth in that paragraph.
8 Where the indictment or accusation so provides, the quantity
9 involved in individual acts of manufacturing, distribution,
10 dispensing or possessing with intent to distribute may be aggregated
11 in determining the grade of the offense, whether distribution or
12 dispensing is to the same person or several persons, provided that
13 each individual act of manufacturing, distribution, dispensing or
14 possession with intent to distribute was committed within the
15 applicable statute of limitations.

16 (cf: P.L.2000, c.136, s.1)

17

18 2. N.J.S.2C:35-10 is amended to read as follows:

19 2C:35-10. Possession, Use or Being Under the Influence, or
20 Failure to Make Lawful Disposition.

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

29 (1) A controlled dangerous substance, or its analog, classified in
30 Schedule I, II, III or IV other than those specifically covered in this
31 section, is guilty of a crime of the third degree except that,
32 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
33 fine of up to **[\$35,000.00]** \$35,000 may be imposed;

34 (2) Any controlled dangerous substance, or its analog, classified
35 in Schedule V, is guilty of a crime of the fourth degree except that,
36 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
37 fine of up to **[\$15,000.00]** \$15,000 may be imposed;

38 (3) Possession of more than **[50 grams]** one pound of
39 marijuana, including any adulterants or dilutants, or more than
40 **[five]** 80 grams of hashish is **[guilty of a crime of the fourth**
41 **degree, except that, notwithstanding the provisions of subsection b.**
42 **of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed]** a
43 disorderly person; or

44 (4) Possession of **[50 grams]** one pound or less of marijuana,
45 including any adulterants or dilutants, or **[five]** 80 grams or less of
46 hashish is **[a disorderly person]** an unlawful act;

1 (a) The odor of marijuana or hashish, or burnt marijuana or
2 hashish, shall not constitute reasonable articulable suspicion to
3 initiate a search of a person to determine a violation of paragraph
4 (4) of this subsection. A person who violates this paragraph shall
5 not be subject to arrest, detention, or otherwise be taken into
6 custody, unless the person is being arrested, detained, or otherwise
7 taken into custody for also committing another violation of law for
8 which that action is legally permitted or required;

9 (b) (i) A first violation of paragraph (4) of this subsection is
10 subject to a written warning, which also indicates that any
11 subsequent violation is subject to a civil penalty or imposition of
12 community service, and a second or subsequent violation is subject
13 to a civil penalty of \$25, or the performance of community service
14 in lieu of payment of the penalty, which may be imposed without
15 requiring a finding that a person does not have the ability to pay the
16 penalty in full, notwithstanding the provisions of section 1 of
17 P.L.2009, c.317 (C.2B:12-23.1). Whenever community service is
18 not imposed, the civil penalty shall be recovered by and in the name
19 of the State in a summary proceeding in accordance with the
20 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-
21 10 et seq.), by the local municipality before the municipal court
22 having jurisdiction, and remitted in accordance with that act.
23 Whenever community service is imposed in lieu of payment of the
24 penalty, the value of each hour of service shall be considered to be
25 not less than the State minimum wage established by the “New
26 Jersey State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-
27 56a et seq.), or federal minimum wage established by
28 29 U.S.C. s.206, or any successor State or federal law, whichever
29 wage is higher, and the community service imposed shall not
30 exceed \$25 in value;

31 (ii) A person shall not be deprived of any legal or civil right,
32 privilege, benefit, or opportunity provided pursuant to any law
33 solely by reason of committing a violation of paragraph (4) of this
34 subsection, nor shall committing one or more violations modify any
35 legal or civil right, privilege, benefit, or opportunity provided
36 pursuant to any law, including, but not limited to, the granting,
37 renewal, forfeiture, or denial of a license, permit, or certification,
38 qualification for and the receipt, alteration, continuation, or denial
39 of any form of financial assistance, housing assistance, or other
40 social services, rights of or custody by a biological parent, or
41 adoptive or foster parent, or other legal guardian of a child or
42 newborn infant, or pregnant woman, in any action or proceeding by
43 the Division of Child Protection and Permanency in the Department
44 of Children and Families, or qualification, approval, or disapproval
45 to serve as a foster parent or other legal guardian;

46 (c) All local and county law enforcement authorities shall,
47 following the submission process used for the uniform crime
48 reporting system established by P.L.1966, c.37 (C.52:17B-

1 5.1 et seq.), submit a quarterly report to the Uniform Crime
2 Reporting Unit, within the Division of State Police in the
3 Department of Law and Public Safety, or to another designated
4 recipient determined by the Attorney General, containing the
5 number of violations of paragraph (4) of this subsection committed
6 within their jurisdictions, plus the race, ethnicity, gender, and age of
7 each person committing a violation, and the disposition of each
8 person's violation. These violations and associated information,
9 along with a quarterly summary of violations investigated, and
10 associated information collected, by the Division of State Police for
11 the same period shall be summarized by county and municipality in
12 an annual report, and both quarterly summaries and annual reports
13 shall be made available at no cost to the public on the Division of
14 State Police's Internet website.

15 Any person who commits any offense **[defined in]** set forth in
16 paragraphs (1) through (3) of this [section] subsection while on any
17 property used for school purposes which is owned by or leased to
18 any elementary or secondary school or school board, or within
19 1,000 feet of any such school property or a school bus, or while on
20 any school bus, and who is not sentenced to a term of
21 imprisonment, shall, in addition to any other sentence which the
22 court may impose, be required to perform not less than 100 hours of
23 community service.

24 b. (1) Any person who uses or who is under the influence of
25 any controlled dangerous substance, or its analog, not including
26 marijuana or hashish, for a purpose other than the treatment of
27 sickness or injury as lawfully prescribed or administered by a
28 physician is a disorderly person.

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

39 (2) Notwithstanding that using or being under the influence of
40 marijuana or hashish is not a punishable offense pursuant to this
41 subsection, the smoking of marijuana or hashish may be prohibited
42 or otherwise regulated on or in any property by the person or entity
43 that owns or controls that property, including multifamily housing
44 that is a multiple dwelling as defined in section 3 of P.L.1967, c.76
45 (C.55:13A-3), the units of a condominium, as those terms are
46 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
47 mobile home park as defined in section 3 of P.L.1983, c.386

1 (C.40:55D-102), which site is leased to the owner of a manufactured
2 home, as defined in that section, that is installed thereon.

3 c. Any person who knowingly obtains or possesses a controlled
4 dangerous substance or controlled substance analog in violation of
5 paragraph (1) or (2) of subsection a. of this section and who fails to
6 voluntarily deliver the substance to the nearest law enforcement
7 officer is guilty of a disorderly persons offense. Nothing in this
8 subsection shall be construed to preclude a prosecution or
9 conviction for any other offense defined in this title or any other
10 statute.

11 (cf: P.L.1997, c.181, s.6)

12

13 3. N.J.S.2C:36-2 is amended to read as follows:

14 2C:36-2. a. Use or possession with intent to use, disorderly
15 persons offense. It shall be unlawful for any person to use, or to
16 possess with intent to use, drug paraphernalia to plant, propagate,
17 cultivate, grow, harvest, manufacture, compound, convert, produce,
18 process, prepare, test, analyze, pack, repack, store, contain, conceal,
19 ingest, inhale, or otherwise introduce into the human body a
20 controlled dangerous substance, controlled substance analog or
21 toxic chemical in violation of the provisions of chapter 35 of this
22 title, other than when used, or possessed with intent to use, for
23 ingesting, inhaling, or otherwise introducing marijuana or hashish
24 into the human body. Any person who violates this section is guilty
25 of a disorderly persons offense.

26 b. Notwithstanding that using or possessing with intent to use
27 drug paraphernalia to ingest, inhale, or otherwise introduce
28 marijuana or hashish into the human body is not a punishable
29 offense pursuant to this section, the use of drug paraphernalia for
30 that purpose may be prohibited or otherwise regulated on or in any
31 property by the person or entity that owns or controls that property,
32 including multifamily housing that is a multiple dwelling as defined
33 in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a
34 condominium, as those terms are defined by section 3 of P.L.1969,
35 c.257 (C.46:8B-3), or a site in a mobile home park as defined in
36 section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to
37 the owner of a manufactured home, as defined in that section, that is
38 installed thereon.

39 (cf: P.L.2007, c.31, s.3)

40

41 4. (New section) a. Except to the extent required to dismiss,
42 withdraw, or terminate the charge, no court shall have jurisdiction
43 over any charge, including any charge of delinquency, based on
44 manufacturing, distributing, or dispensing, or possessing or having
45 under control with intent to manufacture, distribute, or dispense,
46 marijuana or hashish in violation of paragraph (12) of subsection b.
47 of N.J.S.2C:35-5, or obtaining or possessing marijuana or hashish in
48 violation of paragraph (4) of subsection a. of N.J.S.2C:35-10, that

1 occurred prior to the effective date of P.L. , c. (C.) (pending
2 before the Legislature as this bill), unless a final judgment of
3 conviction or adjudication of delinquency has been entered on or
4 before that effective date. These non-prosecutable charges and
5 cases shall be expeditiously dismissed, which may be accomplished
6 by appropriate action by a law enforcement agency, or on a motion
7 to the court which would otherwise have jurisdiction over a case, or
8 the court's own motion, based upon guidelines, administrative
9 directives, and court orders issued by the Attorney General, the
10 Administrative Director of the Courts, and the Supreme Court, as
11 appropriate.

12 b. (1) Regarding a conviction or adjudication of delinquency
13 entered prior to the effective date of P.L. , c. (C.) (pending
14 before the Legislature as this bill), it shall be grounds for post-
15 conviction relief that the conviction or adjudication of delinquency
16 involved manufacturing, distributing, or dispensing, or possessing
17 or having under control with intent to manufacture, distribute, or
18 dispense, marijuana or hashish in violation of paragraph (11) of
19 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
20 hashish in violation of paragraph (12) of subsection b. of that section,
21 or a violation of either of those paragraphs and a violation of
22 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
23 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing,
24 dispensing, or possessing with intent to distribute or dispense, on or
25 within 1,000 feet of any school property, or on or within 500 feet of
26 the real property comprising a public housing facility, public park, or
27 public building, or obtaining, possessing, using, being under the
28 influence of, or failing to make lawful disposition of marijuana or
29 hashish in violation of paragraph (3) or (4) of subsection a., or
30 subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
31 involving marijuana or hashish as described herein and a violation of
32 N.J.S.2C:36-2 for using or possessing with intent to use drug
33 paraphernalia with that marijuana or hashish, alone or in combination
34 with each other, if a final judgment of conviction or adjudication of
35 delinquency had not been entered on or before that effective date.

36 (2) Notwithstanding any court rule limiting the time period
37 within which a motion to reduce or change a sentence may be filed,
38 any person who, on the effective date of P.L. , c. (C.)
39 (pending before the Legislature as this bill), is serving a sentence of
40 incarceration, probation, parole or other form of community
41 supervision solely as a result of the person's conviction or
42 adjudication of delinquency for one or more crimes or offenses
43 enumerated in paragraph (1) of this subsection may move to have
44 the person's sentence reviewed by the court. If the court finds that
45 the sentence under review is based solely upon a conviction or
46 adjudication of delinquency for one or more crimes or offenses
47 enumerated in paragraph (1) of this subsection, the court shall order
48 appropriate relief.

1 (3) No fee shall be charged to a person seeking post-conviction
2 relief pursuant to this subsection.

3
4 5. (New section) Other than the consequences of any sentence
5 set forth in a judgment of conviction, including a term of
6 imprisonment and any court-ordered financial assessment, unless
7 otherwise provided by law, any arrest, charge, conviction, and
8 adjudication of delinquency that occurred prior to the effective date
9 of P.L. , c. (C.) (pending before the Legislature as this bill),
10 and any proceedings related thereto, for manufacturing, distributing,
11 or dispensing, or possessing or having under control with intent to
12 manufacture, distribute, or dispense, marijuana or hashish in
13 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
14 lesser amount of marijuana or hashish in violation of paragraph (12) of
15 subsection b. of that section, or a violation of either of those
16 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
17 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
18 (C.2C:35-7.1) for distributing, dispensing, or possessing with intent to
19 distribute or dispense, on or within 1,000 feet of any school property,
20 or on or within 500 feet of the real property comprising a public
21 housing facility, public park, or public building, or obtaining,
22 possessing, using, being under the influence of, or failing to make
23 lawful disposition of marijuana or hashish in violation of paragraph
24 (3) or (4) of subsection a., or subsection b., or subsection c. of
25 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
26 described herein and a violation of N.J.S.2C:36-2 for using or
27 possessing with intent to use drug paraphernalia with that marijuana or
28 hashish, shall be deemed not to have occurred, and the person
29 involved in that violation may answer any questions relating to their
30 occurrence accordingly, except that such information shall be
31 revealed by that person if seeking employment within the judicial
32 branch or with a law enforcement or corrections agency and such
33 information shall continue to provide a disability as otherwise
34 provided by law.

35
36 6. Section 6 of P.L.2019, c.269 (C.2C:52-5.2) is amended to
37 read as follows:

38 6. a. (1) No later than three months after the effective date of
39 this section, the Administrative Office of the Courts shall develop
40 and maintain a system for sealing records from the public, upon
41 order of a court, pertaining to offenses **【or】** , delinquent acts, or
42 unlawful acts subject to a civil penalty, or community service in
43 lieu of payment of a penalty, involving marijuana or hashish as
44 described in this section. Once the system is developed, unless
45 otherwise provided by law, a court shall order the nondisclosure to
46 the public of the records of the court and probation services, and
47 records of law enforcement agencies with respect to any arrest,
48 conviction, **【or】** adjudication of delinquency, or imposition of a

1 civil penalty or community service, and any proceedings related
2 thereto, upon disposition of any case occurring on or after the
3 development of the system for sealing records that solely includes
4 the following convictions **[or]** , adjudications of delinquency, or
5 imposition of civil penalties or community service:

6 (a) any number of offenses for, **[or]** delinquent acts which if
7 committed by an adult would constitute, **[unlawful distribution of]**
8 or unlawful acts subject to a civil penalty, or community service in
9 lieu of payment of a penalty for, manufacturing, distributing, or
10 dispensing, or possessing or having under control with intent to
11 manufacture, distribute, or dispense, marijuana or hashish in
12 violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or a
13 violation of that paragraph and a violation of subsection a. of
14 section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section
15 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or
16 having under control with intent to distribute, on or within 1,000
17 feet of any school property, or on or within 500 feet of the real
18 property comprising a public housing facility, public park, or public
19 building; or

20 (b) any number of offenses for, **[or]** delinquent acts which if
21 committed by an adult would constitute, or unlawful acts subject to
22 a civil penalty, or community service in lieu of payment of a
23 penalty for, obtaining [.] or possessing [, using, being under the
24 influence of, or failing to make lawful disposition of **]** marijuana or
25 hashish in violation of paragraph (3) or (4) of subsection a. **[**, or
26 subsection b., or subsection c. **]** of N.J.S.2C:35-10 **;** or] .

27 (c) **[**any number of offenses for, or delinquent acts which if
28 committed by an adult would constitute, a violation involving
29 marijuana or hashish as described in subparagraph (a) or (b) of this
30 paragraph and using or possessing with intent to use drug
31 paraphernalia with that marijuana or hashish in violation of
32 N.J.S.2C:36-2. **]** (Deleted by amendment, P.L. , c.) (pending
33 before the Legislature as this bill)

34 (2) If the disposition of the case includes a court-ordered
35 financial assessment subject to collection under the comprehensive
36 enforcement program established pursuant to P.L.1995, c.9
37 (C.2B:19-1 et al.), then at the time of issuing the sealing order, the
38 court shall also enter a civil judgment for the unpaid portion of the
39 court-ordered financial assessment in the name of the Treasurer,
40 State of New Jersey and transfer collections and disbursement
41 responsibility to the State Treasurer for the outstanding amount in
42 accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The
43 term "court-ordered financial assessment" as used herein means and
44 includes any fine, fee, penalty, restitution, and other form of
45 financial assessment imposed by the court as part of the sentence
46 for the conviction or convictions that are the subject of the sealing
47 order, for which payment of restitution takes precedence in

1 accordance with chapter 46 of Title 2C of the New Jersey Statutes.
2 The Treasurer may specify, and the Administrative Office of the
3 Courts shall collaborate with, the technical and informational
4 standards required to effectuate the transfer of the collection and
5 disbursement responsibilities. Notwithstanding any provision in this
6 law or any other law to the contrary, the court shall have sole
7 discretion to amend the judgment.

8 b. Notice of the sealing order issued pursuant to subsection a.
9 of this section shall be provided to:

10 (1) The Attorney General, county prosecutor, or municipal
11 prosecutor handling the case; and

12 (2) The State Police and any local law enforcement agency
13 having custody of the files and records.

14 c. Upon the entry of a sealing order issued pursuant to
15 subsection a. of this section, the proceedings in the case shall be
16 sealed and all index references shall be marked "not available" or
17 "no record." Law enforcement agencies shall reply to requests for
18 information or records of a person subject to a sealing order that
19 there is no information or records. The person may also reply to
20 any inquiry that there is no information or record, except that
21 information subject to a sealing order shall be revealed by that
22 person if seeking employment within the judicial branch or with a
23 law enforcement or corrections agency, and the information shall
24 continue to provide a disability to the extent provided by law.

25 d. Records subject to a sealing order issued pursuant to
26 subsection a. of this section may be maintained for purposes of
27 prior offender status, identification, and law enforcement purposes,
28 provided that the records shall not be **【**considered whenever the
29 Pretrial Services Program established by the Administrative Office
30 of the Courts pursuant to section 11 of P.L.2014, c.31 (C.2A:162-
31 25) conducts a risk assessment on an eligible defendant for the
32 purpose of making recommendations to the court concerning an
33 appropriate pretrial release decision in accordance with sections 1
34 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.) or**】** used for
35 sentencing purposes in any other case.

36 (cf: P.L.2019, c.269, s.6)

37
38 7. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to
39 read as follows:

40 3. Except as otherwise provided under sections 4 and 5 of
41 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a
42 hearing on pretrial detention, a court shall make, pursuant to this
43 section, a pretrial release decision for an eligible defendant without
44 unnecessary delay, but in no case later than 48 hours after the
45 eligible defendant's commitment to jail.

46 a. The court shall order the pretrial release of the eligible
47 defendant on personal recognizance or on the execution of an
48 unsecured appearance bond when, after considering all the

1 circumstances, the Pretrial Services Program's risk assessment and
2 recommendations on conditions of release prepared pursuant to
3 section 11 of P.L.2014, c.31 (C.2A:162-25), and any information
4 that may be provided by a prosecutor or the eligible defendant, the
5 court finds that the release would reasonably assure the eligible
6 defendant's appearance in court when required, the protection of the
7 safety of any other person or the community, and that the eligible
8 defendant will not obstruct or attempt to obstruct the criminal
9 justice process.

10 b. (1) If the court does not find, after consideration, that the
11 release described in subsection a. of this section will reasonably
12 assure the eligible defendant's appearance in court when required,
13 the protection of the safety of any other person or the community,
14 and that the eligible defendant will not obstruct or attempt to
15 obstruct the criminal justice process, the court may order the
16 pretrial release of the eligible defendant subject to the following:

17 (a) the eligible defendant shall not commit any offense during
18 the period of release;

19 (b) the eligible defendant shall avoid all contact with an alleged
20 victim of the crime;

21 (c) the eligible defendant shall avoid all contact with all
22 witnesses who may testify concerning the offense that are named in
23 the document authorizing the eligible defendant's release or in a
24 subsequent court order; and

25 (d) any one or more non-monetary conditions as set forth in
26 paragraph (2) of this subsection.

27 (2) The non-monetary condition or conditions of a pretrial
28 release ordered by the court pursuant to this paragraph shall be the
29 least restrictive condition, or combination of conditions, that the
30 court determines will reasonably assure the eligible defendant's
31 appearance in court when required, the protection of the safety of
32 any other person or the community, and that the eligible defendant
33 will not obstruct or attempt to obstruct the criminal justice process,
34 which may include that the eligible defendant:

35 (a) remain in the custody of a designated person, who agrees to
36 assume supervision and to report any violation of a release
37 condition to the court, if the designated person is able to reasonably
38 assure the court that the eligible defendant will appear in court
39 when required, will not pose a danger to the safety of any other
40 person or the community, and will not obstruct or attempt to
41 obstruct the criminal justice process;

42 (b) maintain employment, or, if unemployed, actively seek
43 employment;

44 (c) maintain or commence an educational program;

45 (d) abide by specified restrictions on personal associations,
46 place of abode, or travel;

47 (e) report on a regular basis to a designated law enforcement
48 agency, or other agency, or pretrial services program;

1 (f) comply with a specified curfew;

2 (g) refrain from possessing a firearm, destructive device, or
3 other dangerous weapon;

4 (h) refrain from excessive use of alcohol, or any use of a
5 narcotic drug or other controlled substance without a prescription
6 by a licensed medical practitioner, except that, the court's order
7 shall not refrain the eligible defendant from using marijuana or
8 hashish;

9 (i) undergo available medical, psychological, or psychiatric
10 treatment, including treatment for drug or alcohol dependency, and
11 remain in a specified institution if required for that purpose;

12 (j) return to custody for specified hours following release for
13 employment, schooling, or other limited purposes;

14 (k) be placed in a pretrial home supervision capacity with or
15 without the use of an approved electronic monitoring device. The
16 court may order the eligible defendant to pay all or a portion of the
17 costs of the electronic monitoring, but the court may waive the
18 payment for an eligible defendant who is indigent and who has
19 demonstrated to the court an inability to pay all or a portion of the
20 costs; or

21 (l) satisfy any other condition that is necessary to reasonably
22 assure the eligible defendant's appearance in court when required,
23 the protection of the safety of any other person or the community,
24 and that the eligible defendant will not obstruct or attempt to
25 obstruct the criminal justice process, which shall not include any
26 prohibition or restriction concerning:

27 (a) manufacturing, distributing, or dispensing, or possessing or
28 having under control with intent to manufacture, distribute, or
29 dispense, marijuana or hashish in violation of paragraph (12) of
30 subsection b. of N.J.S.2C:35-5, or possessing marijuana or hashish
31 in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10; or

32 (b) the presence of any cannabinoid metabolites in any bodily
33 fluids of the eligible defendant.

34 c. (1) If the court does not find, after consideration, that the
35 release described in subsection a. or b. of this section will
36 reasonably assure the eligible defendant's appearance in court when
37 required, the court may order the pretrial release of the eligible
38 defendant on monetary bail, other than an unsecured appearance
39 bond. The court may only impose monetary bail pursuant to this
40 subsection to reasonably assure the eligible defendant's appearance.
41 The court shall not impose the monetary bail to reasonably assure
42 the protection of the safety of any other person or the community or
43 that the eligible defendant will not obstruct or attempt to obstruct
44 the criminal justice process, or for the purpose of preventing the
45 release of the eligible defendant.

46 (2) If the eligible defendant is unable to post the monetary bail
47 imposed by the court pursuant to this subsection, and for that reason

1 remains detained in jail, the provisions of section 8 of P.L.2014,
2 c.31 (C.2A:162-22) shall apply to the eligible defendant.

3 d. (1) If the court does not find, after consideration, that the
4 release described in subsection a., b., or c. will reasonably assure
5 the eligible defendant's appearance in court when required, the
6 protection of the safety of any other person or the community, and
7 that the eligible defendant will not obstruct or attempt to obstruct
8 the criminal justice process, the court may order the pretrial release
9 of the eligible defendant using a combination of non-monetary
10 conditions as set forth in subsection b. of this section, and monetary
11 bail as set forth in subsection c. of this section.

12 (2) If the eligible defendant is unable to post the monetary bail
13 imposed by the court in combination with non-monetary conditions
14 pursuant to this subsection, and for that reason remains detained in
15 jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22)
16 shall apply to the eligible defendant.

17 e. For purposes of the court's consideration for pretrial release
18 described in this section, with respect to whether the particular
19 method of release will reasonably assure that the eligible defendant
20 will not obstruct or attempt to obstruct the criminal justice process,
21 this reasonable assurance may be deemed to exist if the prosecutor
22 does not provide the court with information relevant to the risk of
23 whether the eligible defendant will obstruct or attempt to obstruct
24 the criminal justice process.

25 (cf: P.L.2014, c.31, s.3)

26

27 8. Section 6 of P.L.2014, c.31 (C.2A:162-20) is amended to
28 read as follows:

29 6. In determining in a pretrial detention hearing whether no
30 amount of monetary bail, non-monetary conditions or combination
31 of monetary bail and conditions would reasonably assure the
32 eligible defendant's appearance in court when required, the
33 protection of the safety of any other person or the community, or
34 that the eligible defendant will not obstruct or attempt to obstruct
35 the criminal justice process, the court may take into account
36 information concerning:

37 a. The nature and circumstances of the offense charged;

38 b. The weight of the evidence against the eligible defendant,
39 except that the court may consider the admissibility of any evidence
40 sought to be excluded;

41 c. The history and characteristics of the eligible defendant,
42 including:

43 (1) the eligible defendant's character, physical and mental
44 condition, family ties, employment, financial resources, length of
45 residence in the community, community ties, past conduct, history
46 relating to drug or alcohol abuse, criminal history, and record
47 concerning **[appearance]** appearances at court proceedings, except
48 with respect to these factors, the court shall not consider an

1 unlawful act of manufacturing, distributing, or dispensing, or
2 possessing or having under control with intent to manufacture,
3 distribute, or dispense, marijuana or hashish in violation of
4 paragraph (12) of subsection b. of N.J.S.2C:35-5, or possessing
5 marijuana or hashish in violation of paragraph (4) of subsection a. of
6 N.J.S.2C:35-10, committed on or after the effective date of
7 P.L. , c. (C.) (pending before the Legislature as this bill), for
8 which a written warning was issued, or a civil penalty or community
9 service in lieu of payment of a penalty was imposed; and

10 (2) whether, at the time of the current offense or arrest, the
11 eligible defendant was on probation, parole, or on other release
12 pending trial, sentencing, appeal, or completion of sentence for an
13 offense under federal law, or the law of this or any other state;

14 d. The nature and seriousness of the danger to any other person
15 or the community that would be posed by the eligible defendant's
16 release, if applicable;

17 e. The nature and seriousness of the risk of obstructing or
18 attempting to obstruct the criminal justice process that would be
19 posed by the eligible defendant's release, if applicable; and

20 f. The release recommendation of the pretrial services program
21 obtained using a risk assessment instrument under section 11 of
22 P.L.2014, c.31 (C.2A:162-25).

23 (cf: P.L.2014, c.31, s.6)

24

25 9. Section 10 of P.L.2014, c.31 (C.2A:162-24) is amended to
26 read as follows:

27 10. a. Upon motion of a prosecutor, when an eligible defendant
28 is released from custody before trial pursuant to section 3 or 8 of
29 P.L.2014, c.31 (C.2A:162-17 or C.2A:162-22), the court, upon a
30 finding that the eligible defendant while on release has violated a
31 restraining order or condition of release, or upon a finding of
32 probable cause to believe that the eligible defendant has committed
33 a new crime while on release, may not revoke the eligible
34 defendant's release and order that the eligible defendant be detained
35 pending trial unless the court, after considering all relevant
36 circumstances including but not limited to the nature and
37 seriousness of the violation or criminal act committed, finds clear
38 and convincing evidence that no monetary bail, non-monetary
39 conditions of release or combination of monetary bail and
40 conditions would reasonably assure the eligible defendant's
41 appearance in court when required, the protection of the safety of
42 any other person or the community, or that the eligible defendant
43 will not obstruct or attempt to obstruct the criminal justice process.

44 b. A court shall not revoke an eligible defendant's release and
45 order that the eligible defendant be detained pending trial based on:

46 (1) Manufacturing, distributing, or dispensing, or possessing or
47 having under control with intent to manufacture, distribute, or
48 dispense, marijuana or hashish in violation of paragraph (12) of

1 subsection b. of N.J.S.2C:35-5, or possessing marijuana or hashish
2 in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10; or

3 (2) The presence of any cannabinoid metabolites in any bodily
4 fluids of the eligible defendant, detected as a result of the
5 administration of a drug test or any other means.

6 (cf: P.L.2014, c.31, s.10)

7

8 10. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to
9 read as follows:

10 11. a. The Administrative Director of the Courts shall establish
11 and maintain a Statewide Pretrial Services Program which shall
12 provide pretrial services to effectuate the purposes of sections 1
13 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

14 b. The Pretrial Services Program shall, after an eligible
15 defendant is temporarily detained pursuant to subsection a. of
16 section 2 of P.L.2014, c.31 (C.2A:162-16) following the issuance of
17 a complaint-warrant, conduct a risk assessment on that eligible
18 defendant for the purpose of making recommendations to the court
19 concerning an appropriate pretrial release decision, including
20 whether the eligible defendant shall be: released on the eligible
21 defendant's own personal recognizance or on execution of an
22 unsecured appearance bond; released on a non-monetary condition
23 or conditions as set forth under subsection b. of section 3 of
24 P.L.2014, c.31 (C.2A:162-17); released on monetary bail, other than
25 an unsecured appearance bond; released on a combination of
26 monetary bail and non-monetary conditions set forth under section
27 3 of P.L.2014, c.31 (C.2A:162-17); or any other conditions
28 necessary to effectuate the purposes of sections 1 through 11 of
29 P.L.2014, c.31 (C.2A:162-15 et seq.). The risk assessment shall be
30 completed and presented to the court so that the court can, without
31 unnecessary delay, but in no case later than 48 hours after the
32 eligible defendant's commitment to jail, make a pretrial release
33 decision on the eligible defendant pursuant to section 3 of P.L.2014,
34 c.31 (C.2A:162-17).

35 c. The pretrial risk assessment shall be conducted using a risk
36 assessment instrument approved by the Administrative Director of
37 the Courts that meets the requirements of this subsection.

38 (1) (a) The approved risk assessment instrument shall be
39 objective, standardized, and developed based on analysis of
40 empirical data and risk factors relevant to the risk of failure to
41 appear in court when required and the danger to the community
42 while on pretrial release. The risk assessment instrument shall not
43 be required to include factors specifically pertaining to the risk for
44 obstructing or attempting to obstruct the criminal justice process.

45 (b) The approved risk assessment instrument shall not consider a
46 charge, including any charge of delinquency, conviction, or
47 adjudication of delinquency, or civil penalty or community service
48 imposed in lieu of a civil penalty if the act was an unlawful act and not

1 a crime or offense, based on a violation of any of the following, as
2 risk factors relevant to the risk of failure to appear in court when
3 required and the danger to the community while on pretrial release:
4 manufacturing, distributing, or dispensing, or possessing or having
5 under control with intent to manufacture, distribute, or dispense,
6 marijuana or hashish in violation of paragraph (11) of subsection b. of
7 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
8 of paragraph (12) of subsection b. of that section; or a violation of
9 either of those paragraphs and a violation of subsection a. of section 1
10 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
11 P.L.1997, c.327 (C.2C:35-7.1) for distributing, dispensing, or
12 possessing with intent to distribute or dispense, on or within 1,000 feet
13 of any school property, or on or within 500 feet of the real property
14 comprising a public housing facility, public park, or public building;
15 or obtaining, possessing, using, being under the influence of, or
16 failing to make lawful disposition of marijuana or hashish in
17 violation of paragraph (3) or (4) of subsection a., or subsection b., or
18 subsection c. of N.J.S.2C:35-10; or a violation involving marijuana or
19 hashish as described herein and a violation of N.J.S.2C:36-2 for using
20 or possessing with intent to use drug paraphernalia with that marijuana
21 or hashish.

22 (2) The approved risk assessment instrument shall gather
23 demographic information about the eligible defendant including, but
24 not limited to, race, ethnicity, gender, financial resources, and
25 socio-economic status. Recommendations for pretrial release shall
26 not be discriminatory based on race, ethnicity, gender, or socio-
27 economic status.

28 d. In addition to the pretrial risk assessments made pursuant to
29 this section, the Pretrial Services Program shall monitor appropriate
30 eligible defendants released on conditions as ordered by the court.
31 (cf: P.L.2014, c.31, s.11)

32

33 11. N.J.S.2C:45-1 is amended to read as follows:

34 2C:45-1. Conditions of Suspension or Probation.

35 a. (1) When the court suspends the imposition of sentence on a
36 person who has been convicted of an offense or sentences him to be
37 placed on probation, it shall attach such reasonable conditions,
38 authorized by this section, as it deems necessary to insure that he
39 will lead a law-abiding life or is likely to assist him to do so. These
40 conditions may be set forth in a set of standardized conditions
41 promulgated by the county probation department and approved by
42 the court.

43 (2) The following shall not be prohibited or restricted based on
44 any conditions imposed pursuant to this section:

45 (a) Manufacturing, distributing, or dispensing, or possessing or
46 having under control with intent to manufacture, distribute, or
47 dispense, marijuana or hashish in violation of paragraph (12) of
48 subsection b. of N.J.S.2C:35-5, or possession of marijuana or

1 hashish in violation of paragraph (4) of subsection a. of
2 N.J.S.2C:35-10; or

3 (b) The presence of any cannabinoid metabolites in any bodily
4 fluids of the person.

5 b. The court, as a condition of its order, may require the
6 defendant:

7 (1) To support his dependents and meet his family
8 responsibilities;

9 (2) To find and continue in gainful employment;

10 (3) To undergo available medical or psychiatric treatment and to
11 enter and remain in a specified institution, when required for that
12 purpose;

13 (4) To pursue a prescribed secular course of study or vocational
14 training;

15 (5) To attend or reside in a facility established for the
16 instruction, recreation or residence of persons on probation;

17 (6) To refrain from frequenting unlawful or disreputable places
18 or consorting with disreputable persons;

19 (7) Not to have in his possession any firearm or other dangerous
20 weapon unless granted written permission;

21 (8) (Deleted by amendment, P.L.1991, c.329);

22 (9) To remain within the jurisdiction of the court and to notify
23 the court or the probation officer of any change in his address or his
24 employment;

25 (10) To report as directed to the court or the probation officer,
26 to permit the officer to visit his home, and to answer all reasonable
27 inquiries by the probation officer;

28 (11) To pay a fine;

29 (12) To satisfy any other conditions reasonably related to the
30 rehabilitation of the defendant and not unduly restrictive of his
31 liberty or incompatible with his freedom of conscience;

32 (13) To require the performance of community-related service;
33 and

34 (14) To be subject to Internet access conditions pursuant to
35 paragraph (2) of subsection d. of this section.

36 In addition to any condition of probation, the court may enter an
37 order prohibiting a defendant who is convicted of a sex offense
38 from having any contact with the victim including, but not limited
39 to, entering the victim's residence, place of employment or business,
40 or school, and from harassing or stalking the victim or victim's
41 relatives in any way, and may order other protective relief as
42 provided in section 2 of P.L.2007, c.133 (C.2C:14-12).

43 c. The court, as a condition of its order, shall require the
44 defendant to pay any assessments required by section 2 of P.L.1979,
45 c.396 (C.2C:43-3.1) and shall, consistent with the applicable
46 provisions of N.J.S.2C:43-3, N.J.S.2C:43-4 and N.J.S.2C:44-2 or
47 section 1 of P.L.1983, c.411 (C.2C:43-2.1) require the defendant to
48 make restitution.

1 d. (1) In addition to any condition imposed pursuant to
2 subsection b. or c., the court shall order a person placed on
3 probation to pay a fee, not exceeding \$25.00 per month for the
4 probationary term, to probation services for use by the State, except
5 as provided in subsection g. of this section. This fee may be waived
6 in cases of indigency upon application by the chief probation officer
7 to the sentencing court.

8 (2) In addition to any conditions imposed pursuant to subsection
9 b. or c., the court may order a person who has been convicted or
10 adjudicated delinquent of a sex offense as defined in subsection b.
11 of section 2 of P.L.1994, c.133 (C.2C:7-2), and who is required to
12 register as provided in subsections c. and d. of section 2 of
13 P.L.1994, c.133 (C.2C:7-2), or who has been convicted or
14 adjudicated delinquent for a violation of N.J.S.2C:34-3 to be
15 subject to any of the following Internet access conditions:

16 (a) Prohibit the person from accessing or using a computer or
17 any other device with Internet capability without the prior written
18 approval of the court, except the person may use a computer or any
19 other device with Internet capability in connection with that
20 person's employment or search for employment with the prior
21 approval of the person's probation officer;

22 (b) Require the person to submit to periodic unannounced
23 examinations of the person's computer or any other device with
24 Internet capability by a probation officer, law enforcement officer
25 or assigned computer or information technology specialist,
26 including the retrieval and copying of all data from the computer or
27 device and any internal or external peripherals and removal of such
28 information, equipment or device to conduct a more thorough
29 inspection;

30 (c) Require the person to submit to the installation on the
31 person's computer or device with Internet capability, at the person's
32 expense, one or more hardware or software systems to monitor the
33 Internet use; and

34 (d) Require the person to submit to any other appropriate
35 restrictions concerning the person's use or access of a computer or
36 any other device with Internet capability.

37 e. When the court sentences a person who has been convicted
38 of a crime to be placed on probation, it may require him to serve a
39 term of imprisonment not exceeding 364 days as an additional
40 condition of its order. When the court sentences a person convicted
41 of a disorderly persons offense to be placed on probation, it may
42 require him to serve a term of imprisonment not exceeding 90 days
43 as an additional condition of its order. In imposing a term of
44 imprisonment pursuant to this subsection, the sentencing court shall
45 specifically place on the record the reasons which justify the
46 sentence imposed. The term of imprisonment imposed hereunder
47 shall be treated as part of the sentence, and in the event of a
48 sentence of imprisonment upon the revocation of probation, the

1 term of imprisonment served hereunder shall be credited toward
2 service of such subsequent sentence. A term of imprisonment
3 imposed under this section shall be governed by the "Parole Act of
4 1979," P.L.1979, c.441 (C.30:4-123.45 et al.).

5 Whenever a person is serving a term of parole as a result of a
6 sentence of incarceration imposed as a condition of probation,
7 supervision over that person shall be maintained pursuant to the
8 provisions of the law governing parole. Upon termination of the
9 period of parole supervision provided by law, the county probation
10 department shall assume responsibility for supervision of the person
11 under sentence of probation. Nothing contained in this section shall
12 prevent the sentencing court from at any time proceeding under the
13 provisions of this chapter against any person for a violation of
14 probation.

15 f. The defendant shall be given a copy of the terms of his
16 probation or suspension of sentence and any requirements imposed
17 pursuant to this section, stated with sufficient specificity to enable
18 him to guide himself accordingly. The defendant shall
19 acknowledge, in writing, his receipt of these documents and his
20 consent to their terms.

21 g. Of the moneys collected under the provisions of subsection
22 d. of this section, \$15.00 of each monthly fee collected before
23 January 1, 1995 shall be deposited in the temporary reserve fund
24 created by section 25 of P.L.1993, c.275, and \$10.00 of each shall
25 be deposited into a "Community Service Supervision Fund" which
26 shall be established by each county. The moneys in the
27 "Community Service Supervision Fund" shall be expended only in
28 accordance with the provisions of State law as shall be enacted to
29 provide for expenditures from this fund for the purpose of
30 supervising and monitoring probationers performing community
31 service to ensure, by whatever means necessary and appropriate,
32 that probationers are performing the community service ordered by
33 the court and that the performance is in the manner and under the
34 terms ordered by the court.

35 (cf: P.L.2007, c.219, s.4)

36

37 12. N.J.S.2C:45-3 is amended to read as follows:

38 2C:45-3. a. At any time before the discharge of the defendant or
39 the termination of the period of suspension or probation:

40 (1) The court may summon the defendant to appear before it or
41 may issue a warrant for his arrest;

42 (2) A probation officer or peace officer, upon request of the
43 chief probation officer or otherwise having probable cause to
44 believe that the defendant has failed to comply with a requirement
45 imposed as a condition of the order or that he has committed
46 another offense, may arrest him without a warrant;

47 (3) The court, if there is probable cause to believe that the
48 defendant has committed another offense or if he has been held to

1 answer therefor, may commit him without bail, pending a
2 determination of the charge by the court having jurisdiction
3 thereof;

4 (4) The court, if satisfied that the defendant has inexcusably
5 failed to comply with a substantial requirement imposed as a
6 condition of the order or if he has been convicted of another
7 offense, may revoke the suspension or probation and sentence or
8 resentence the defendant, as provided in this section. No revocation
9 of suspension or probation shall be based on: (a) failure to pay a
10 fine or make restitution, unless the failure was willful; (b)
11 manufacturing, distributing, or dispensing, or possessing or having
12 under control with intent to manufacture, distribute, or dispense,
13 marijuana or hashish in violation of paragraph (12) of subsection b.
14 of N.J.S.2C:35-5, or possessing marijuana or hashish in violation of
15 paragraph (4) of subsection a. of N.J.S.2C:35-10; or (c) the
16 presence of any cannabinoid metabolites in any bodily fluids,
17 detected as a result of the administration of a drug test or any other
18 means.

19 b. When the court revokes a suspension or probation, it may
20 impose on the defendant any sentence that might have been
21 imposed originally for the offense of which he was convicted.

22 c. The commencement of a probation revocation proceeding
23 shall toll the probationary period until termination of such
24 proceedings. In the event that the court does not find a violation of
25 probation, this subsection shall not operate to toll the probationary
26 period.

27 (cf: P.L.1981, c.290, s.41)

28

29 13. Section 15 of P.L.1979, c.441 (C.30:4-123.59) is amended to
30 read as follows:

31 15. a. Each adult parolee shall at all times remain in the legal
32 custody of the Commissioner of Corrections and under the
33 supervision of the State Parole Board, except that the Commissioner
34 of Corrections, after providing notice to the Attorney General, may
35 consent to the supervision of a parolee by the federal government
36 pursuant to the Witness Security Reform Act, Pub.L.98-473 (18
37 U.S.C. s.3521 et seq.). An adult parolee, except those under the
38 Witness Security Reform Act, shall remain under the supervision of
39 the State Parole Board and in the legal custody of the Department of
40 Corrections in accordance with the policies and rules of the board.

41 b. (1) (a) Each parolee shall agree, as evidenced by his
42 signature to abide by specific conditions of parole established by
43 the appropriate board panel which shall be enumerated in writing in
44 a certificate of parole and shall be given to the parolee upon release.
45 Such conditions shall include, among other things, a requirement
46 that the parolee conduct himself in society in compliance with all
47 laws and refrain from committing any crime, a requirement that the
48 parolee will not own or possess any firearm as defined in subsection

1 f. of N.J.S.2C:39-1 or any other weapon enumerated in subsection r.
2 of N.J.S.2C:39-1, a requirement that the parolee refrain from the
3 use, possession or distribution of a controlled dangerous substance,
4 controlled substance analog or imitation controlled dangerous
5 substance as defined in N.J.S.2C:35-2 and N.J.S.2C:35-11, other
6 than the use of marijuana or hashish, and the possession or
7 distribution of marijuana or hashish in an amount that constitutes no
8 more than an unlawful act in violation of paragraph (12) of
9 subsection b. of N.J.S.2C:35-5, or paragraph (4) of subsection a. of
10 N.J.S.2C:35-10, for which a written warning may be issued, or a civil
11 penalty or community service in lieu of payment of a penalty imposed,
12 a requirement that the parolee obtain permission from his parole
13 officer for any change in his residence, and a requirement that the
14 parolee report at reasonable intervals to an assigned parole officer.
15 In addition, based on prior history of the parolee or information
16 provided by a victim or a member of the family of a murder victim,
17 the member or board panel certifying parole release pursuant to
18 section 11 of P.L.1979, c.441 (C.30:4-123.55) may impose any
19 other specific conditions of parole deemed reasonable in order to
20 reduce the likelihood of recurrence of criminal or delinquent
21 behavior, including a requirement that the parolee comply with the
22 Internet access conditions set forth in paragraph (2) of this
23 subsection. Such special conditions may include, among other
24 things, a requirement that the parolee make full or partial
25 restitution, the amount of which restitution shall be set by the
26 sentencing court upon request of the board. In addition, the member
27 or board panel certifying parole release may, giving due regard to a
28 victim's request, impose a special condition that the parolee have no
29 contact with the victim, which special condition may include, but
30 need not be limited to, restraining the parolee from entering the
31 victim's residence, place of employment, business or school, and
32 from harassing or stalking the victim or victim's relatives in any
33 way. Further, the member, board panel or board certifying parole
34 release may impose a special condition that the person shall not
35 own or possess an animal for an unlawful purpose or to interfere in
36 the performance of duties by a parole officer.

37 (b) The member or board panel certifying parole release shall
38 not impose on any parolee any condition that would prohibit or
39 restrict: (i) manufacturing, distributing, or dispensing, or possessing
40 or having under control with intent to manufacture, distribute, or
41 dispense, marijuana or hashish in violation of paragraph (12) of
42 subsection b. of N.J.S.2C:35-5, or possessing marijuana or hashish
43 in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10; or
44 (ii) the presence of any cannabinoid metabolites in any bodily fluids
45 of the person.

46 (2) In addition, the member or board panel certifying parole
47 release may impose on any person who has been convicted for the
48 commission of a sex offense as defined in subsection b. of section 2

1 of P.L.1994, c.133 (C.2C:7-2), and who is required to register as
2 provided in subsections c. and d. of section 2 of P.L.1994, c.133
3 (C.2C:7-2), or who has been convicted for a violation of
4 N.J.S.2C:34-3 any of the following Internet access conditions:

5 (a) Prohibit the person from accessing or using a computer or
6 any other device with Internet capability without the prior written
7 approval of the court, except the person may use a computer or any
8 other device with Internet capability in connection with that
9 person's employment or search for employment with the prior
10 approval of the person's parole officer;

11 (b) Require the person to submit to periodic unannounced
12 examinations of the person's computer or any other device with
13 Internet capability by a parole officer, law enforcement officer or
14 assigned computer or information technology specialist, including
15 the retrieval and copying of all data from the computer or device
16 and any internal or external peripherals and removal of such
17 information, equipment or device to conduct a more thorough
18 inspection;

19 (c) Require the person to submit to the installation on the
20 person's computer or device with Internet capability, at the person's
21 expense, one or more hardware or software systems to monitor the
22 Internet use; and

23 (d) Require the person to submit to any other appropriate
24 restrictions concerning the person's use or access of a computer or
25 any other device with Internet capability.

26 c. The appropriate board panel may in writing relieve a parolee
27 of any parole conditions, and may permit a parolee to reside outside
28 the State pursuant to the provisions of the Uniform Act for Out-of-
29 State Parolee Supervision (N.J.S.2A:168-14 et seq.) and, with the
30 consent of the Commissioner of the Department of Corrections after
31 providing notice to the Attorney General, the federal Witness
32 Security Reform Act, if satisfied that the change will not result in a
33 substantial likelihood that the parolee will commit an offense which
34 would be a crime under the laws of this State. The appropriate
35 board panel may revoke permission, except in the case of a parolee
36 under the Witness Security Reform Act, or reinstate relieved parole
37 conditions for any period of time during which a parolee is under its
38 jurisdiction.

39 d. The appropriate board panel may parole an inmate to any
40 residential facility funded in whole or in part by the State if the
41 inmate would not otherwise be released pursuant to section 9 of
42 P.L.1979, c.441 (C.30:4-123.53) without such placement. But if the
43 residential facility provides treatment for mental illness or mental
44 retardation, the board panel only may parole the inmate to the
45 facility pursuant to the laws and admissions policies that otherwise
46 govern the admission of persons to that facility, and the facility
47 shall have the authority to discharge the inmate according to the
48 laws and policies that otherwise govern the discharge of persons

1 from the facility, on 10 days' prior notice to the board panel. The
2 board panel shall acknowledge receipt of this notice in writing prior
3 to the discharge. Upon receipt of the notice the board panel shall
4 resume jurisdiction over the inmate.

5 e. Parole officers shall provide assistance to the parolee in
6 obtaining employment, education, or vocational training or in
7 meeting other obligations to assure the parolee's compliance with
8 meeting legal requirements related to sex offender notification,
9 address changes and participation in rehabilitation programs as
10 directed by the assigned parole officer.

11 f. (Deleted by amendment, P.L.2019, c.363)

12 g. If the board has granted parole to any inmate from a State
13 correctional facility and the court has imposed a fine on the inmate,
14 the appropriate board panel shall release the inmate on condition
15 that the parolee make specified fine payments to the State Parole
16 Board. For violation of these conditions, or for violation of a
17 special condition requiring restitution, parole may be revoked only
18 for refusal or failure to make a good faith effort to make the
19 payment.

20 h. Upon collection of the fine the Department of Corrections
21 shall forward it to the State Treasury.

22 (cf: P.L.2019, c.363, s.12)

23

24 14. Section 16 of P.L.1979, c.441 (C.30:4-123.60) is amended to
25 read as follows:

26 16. a. Any parolee who violates a condition of parole may be
27 subject to an order pursuant to section 17 of P.L.1979, c.441
28 (C.30:4-123.61) providing for one or more of the following:

29 (1) **【That】** that he be required to conform to one or more
30 additional conditions of parole;

31 (2) **【That】** that he forfeit all or a part of commutation time
32 credits granted pursuant to R.S.30:4-140.

33 An order as described in this subsection shall not be based on:

34 (3) manufacturing, distributing, or dispensing, or possessing or
35 having under control with intent to manufacture, distribute, or
36 dispense, marijuana or hashish in violation of paragraph (12) of
37 subsection b. of N.J.S.2C:35-5, or possessing marijuana or hashish
38 in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10; or

39 (4) the presence of any cannabinoid metabolites in any bodily
40 fluids, detected as a result of the administration of a drug test or any
41 other means.

42 b. (1) Any parolee who has seriously or persistently violated
43 the conditions of his parole, may have his parole revoked and may
44 be returned to custody pursuant to sections 18 and 19 of P.L.1979,
45 c.441 (C.30:4-123.62 and 30:4-123.63). The board shall be notified
46 immediately upon the arrest or indictment of a parolee or upon the
47 filing of charges that the parolee committed an act which, if
48 committed by an adult, would constitute a crime. The board shall

1 not revoke parole on the basis of new charges which have not
2 resulted in a disposition at the trial level except that upon
3 application by the prosecuting authority or the Director of the State
4 Parole Board's Division of Parole or his designee, the chairman of
5 the board or his designee may at any time detain the parolee and
6 commence revocation proceedings pursuant to sections 18 and 19 of
7 P.L.1979, c.441 (C.30:4-123.62 and 30:4-123.63) when the
8 chairman determines that the new charges against the parolee are of
9 a serious nature and it appears that the parolee otherwise poses a
10 danger to the public safety. In such cases, a parolee shall be
11 informed that, if he testifies at the revocation proceedings, his
12 testimony and the evidence derived therefrom shall not be used
13 against him in a subsequent criminal prosecution.

14 (2) An action to revoke parole as described in this subsection
15 shall not be based on:

16 (a) manufacturing, distributing, or dispensing, or possessing or
17 having under control with intent to manufacture, distribute, or
18 dispense, marijuana or hashish in violation of paragraph (12) of
19 subsection b. of N.J.S.2C:35-5, or possessing marijuana or hashish
20 in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10; or

21 (b) the presence of any cannabinoid metabolites in any bodily
22 fluids, detected as a result of the administration of a drug test or any
23 other means.

24 c. The parole of any parolee who is convicted of a crime
25 committed while on parole shall be revoked and the parolee shall be
26 returned to custody unless the parolee demonstrates, by clear and
27 convincing evidence at a hearing pursuant to section 19 of
28 P.L.1979, c.441 (C.30:4-123.63), that good cause exists why the
29 parolee should not be returned to confinement.

30 (cf: P.L.2019, c.363, s.13)

31

32 15. (New section) a. An employer shall not be permitted to
33 consider when making an employment decision, require any
34 applicant to disclose or reveal, or take any adverse action against
35 any applicant for employment on the basis of, any arrest, charge,
36 conviction, or adjudication of delinquency, or civil penalty or
37 community service imposed in lieu of a civil penalty if the act was an
38 unlawful act and not a crime or offense, for manufacturing,
39 distributing, or dispensing, or possessing or having under control
40 with intent to manufacture, distribute, or dispense, marijuana or
41 hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-
42 5, or a lesser amount of marijuana or hashish in violation of paragraph
43 (12) of subsection b. of that section, or a violation of either of those
44 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
45 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
46 (C.2C:35-7.1) for distributing, dispensing, or possessing with intent to
47 distribute or dispense, on or within 1,000 feet of any school property,
48 or on or within 500 feet of the real property comprising a public

1 housing facility, public park, or public building, or obtaining,
2 possessing, using, being under the influence of, or failing to make
3 lawful disposition of marijuana or hashish in violation of paragraph
4 (3) or (4) of subsection a., or subsection b., or subsection c. of
5 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
6 described herein and a violation of N.J.S.2C:36-2 for using or
7 possessing with intent to use drug paraphernalia with that marijuana or
8 hashish, or an arrest, charge, conviction, or adjudication of
9 delinquency under the laws of another state or of the United States
10 of a crime, offense, or other unlawful act, which, if committed in
11 this State, would be a violation of any of the aforementioned crimes,
12 offenses, or unlawful acts, regardless of when any such arrest, charge,
13 conviction, or adjudication of delinquency, or imposition of a civil
14 penalty or community service, occurred, unless the employment
15 sought or being considered is for a position in law enforcement,
16 corrections, the judiciary, homeland security, or emergency
17 management.

18 b. Any employer who commits an act in violation of this
19 section shall be liable for a civil penalty in an amount not to exceed
20 \$1,000 for the first violation, \$5,000 for the second violation, and
21 \$10,000 for each subsequent violation, which shall be collectible by
22 the Commissioner of Labor and Workforce Development in a
23 summary proceeding pursuant to the "Penalty Enforcement Law of
24 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The penalties set
25 forth in this subsection shall be the sole remedy provided for
26 violations of this section.

27 c. Nothing set forth in this section shall be construed as
28 creating or establishing a standard of care or duty for employers
29 with respect to any other law. Evidence that an employer has
30 violated, or is alleged to have violated, the provisions of this
31 section, shall not be admissible in any legal proceeding with respect
32 to any law or claim other than a proceeding to enforce the
33 provisions of this section. Nothing set forth in this section shall be
34 construed as creating, establishing, or authorizing a private cause of
35 action by an aggrieved person against an employer who has
36 violated, or is alleged to have violated, the provisions of this
37 section.

38

39 16. (New section) a. A person that makes a mortgage loan in
40 this State shall not discriminate against an applicant in accepting an
41 application, granting, withholding, extending, modifying or
42 renewing, or in the fixing of the rates, terms, conditions, or
43 provisions of any mortgage loan based on an applicant's arrest,
44 charge, conviction, or adjudication of delinquency, or civil penalty or
45 community service imposed in lieu of a civil penalty if the act was an
46 unlawful act and not a crime or offense, for manufacturing,
47 distributing, or dispensing, or possessing or having under control
48 with intent to manufacture, distribute, or dispense, marijuana or

1 hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-
2 5, or a lesser amount of marijuana or hashish in violation of paragraph
3 (12) of subsection b. of that section, or a violation of either of those
4 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
5 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
6 (C.2C:35-7.1) for distributing, dispensing, or possessing with intent to
7 distribute or dispense, on or within 1,000 feet of any school property,
8 or on or within 500 feet of the real property comprising a public
9 housing facility, public park, or public building, or obtaining,
10 possessing, using, being under the influence of, or failing to make
11 lawful disposition of marijuana or hashish in violation of paragraph
12 (3) or (4) of subsection a., or subsection b., or subsection c. of
13 N.J.S.2C:35-10, or a violation involving marijuana or hashish as
14 described herein and a violation of N.J.S.2C:36-2 for using or
15 possessing with intent to use drug paraphernalia with that marijuana or
16 hashish, or an arrest, charge, conviction, or adjudication of
17 delinquency under the laws of another state or of the United States
18 of a crime, offense, or other unlawful act, which, if committed in
19 this State, would be a violation of any of the aforementioned crimes,
20 offenses, or unlawful acts, regardless of when any such arrest, charge,
21 conviction, or adjudication of delinquency, or imposition of a civil
22 penalty or community service, occurred.

23 b. Any applicant who has been discriminated against as a result
24 of a violation of this section may bring an action in New Jersey in a
25 court of competent jurisdiction. Upon finding that a person is in
26 violation of this section, the court may award actual damages,
27 reasonable attorneys' fees, and court costs.

28 c. The Commissioner of Banking and Insurance shall have the
29 power to:

30 (1) Make such investigations into any matter pertaining to this
31 section, including the power to hold hearings and issue subpoenas
32 to compel the attendance of witnesses and the production of
33 evidence. In case of a failure of any person to comply with any
34 subpoena, the Superior Court may issue an order requiring the
35 attendance of such person and the giving of testimony or production
36 of evidence. Any person failing to obey the court's order may be
37 punished for contempt.

38 (2) Order a person found to be in violation of this section to
39 cease its unlawful practices, subject to review, hearing, and relief in
40 the Superior Court. A person that continues to violate the
41 provisions of this act after having been ordered by the
42 commissioner to cease such practices shall be liable to a penalty of
43 \$10,000 for each offense instead of the penalty for a continuous
44 violation set forth in section 10 of P.L.1977, c.1 (C.17:16F-
45 10). This penalty may be collected in a summary proceeding
46 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
47 c.274 (C.2A:58-10 et seq.). Except as set forth herein, the penalty
48 provided by this section shall be in addition to and not in lieu of any

1 other provision of law applicable upon a person's failure to comply
2 with an order of the commissioner.

3

4 17. (New section) a. A person alleging discrimination in public
5 or private housing, real property, or a place of public accommodation,
6 based on a prior arrest, charge, conviction, or adjudication of
7 delinquency, or civil penalty or community service imposed in lieu of
8 a civil penalty if the act was an unlawful act and not a crime or
9 offense, for manufacturing, distributing, or dispensing, or possessing
10 or having under control with intent to manufacture, distribute, or
11 dispense, marijuana or hashish in violation of paragraph (11) of
12 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
13 hashish in violation of paragraph (12) of subsection b. of that section,
14 or a violation of either of those paragraphs and a violation of
15 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
16 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing,
17 dispensing, or possessing with intent to distribute or dispense, on or
18 within 1,000 feet of any school property, or on or within 500 feet of
19 the real property comprising a public housing facility, public park, or
20 public building, or obtaining, possessing, using, being under the
21 influence of, or failing to make lawful disposition of marijuana or
22 hashish in violation of paragraph (3) or (4) of subsection a., or
23 subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
24 involving marijuana or hashish as described herein and a violation of
25 N.J.S.2C:36-2 for using or possessing with intent to use drug
26 paraphernalia with that marijuana or hashish, or an arrest, charge,
27 conviction, or adjudication of delinquency under the laws of another
28 state or of the United States of a crime, offense, or other unlawful
29 act, which, if committed in this State, would be a violation of any of
30 the aforementioned crimes, offenses, or unlawful acts, regardless of
31 when any such arrest, charge, conviction, or adjudication of
32 delinquency, or imposition of a civil penalty or community service,
33 occurred, may institute a civil action in the Superior Court for relief.
34 All remedies available in common law tort actions shall be available to
35 a prevailing plaintiff. The court may also order any or all of the
36 following relief:

37 (1) an assessment of a civil fine of not less than \$1,000 and not
38 more than \$2,000 for the first violation of any of the provisions of this
39 section, and not more than \$5,000 for each subsequent violation;

40 (2) an injunction to restrain the continued violation of subsection a.
41 of this section;

42 (3) if the discrimination impacted the person's employment, and if
43 applicable:

44 (a) reinstatement of the person to the same position of employment
45 or to a position equivalent to that which the person held prior to
46 unlawful discharge or retaliatory action;

47 (b) reinstatement of full fringe benefits and seniority rights; and

1 (c) compensation for any lost wages, benefits and other
2 remuneration; and

3 (4) payment of reasonable costs and attorney's fees.

4 b. An action brought under this section shall be commenced
5 within one year of the date of the alleged violation.

6 c. The private cause of action provided for in this section shall be
7 the sole remedy for a violation of this section.

8

9 18. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read
10 as follows:

11 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
12 supplemented:

13 "Biotechnology" means any technique that uses living organisms,
14 or parts of living organisms, to make or modify products, to improve
15 plants or animals, or to develop micro-organisms for specific uses;
16 including the industrial use of recombinant DNA, cell fusion, and
17 novel bioprocessing techniques.

18 "Custodian of a government record" or "custodian" means in the
19 case of a municipality, the municipal clerk and in the case of any other
20 public agency, the officer officially designated by formal action of that
21 agency's director or governing body, as the case may be.

22 "Government record" or "record" means any paper, written or
23 printed book, document, drawing, map, plan, photograph, microfilm,
24 data processed or image processed document, information stored or
25 maintained electronically or by sound-recording or in a similar device,
26 or any copy thereof, that has been made, maintained or kept on file in
27 the course of his or its official business by any officer, commission,
28 agency or authority of the State or of any political subdivision thereof,
29 including subordinate boards thereof, or that has been received in the
30 course of his or its official business by any such officer, commission,
31 agency, or authority of the State or of any political subdivision thereof,
32 including subordinate boards thereof. The terms shall not include
33 inter-agency or intra-agency advisory, consultative, or deliberative
34 material.

35 A government record shall not include the following information
36 which is deemed to be confidential for the purposes of P.L.1963, c.73
37 (C.47:1A-1 et seq.) as amended and supplemented:

38 information received by a member of the Legislature from a
39 constituent or information held by a member of the Legislature
40 concerning a constituent, including but not limited to information in
41 written form or contained in any e-mail or computer data base, or in
42 any telephone record whatsoever, unless it is information the
43 constituent is required by law to transmit;

44 any memorandum, correspondence, notes, report or other
45 communication prepared by, or for, the specific use of a member of the
46 Legislature in the course of the member's official duties, except that
47 this provision shall not apply to an otherwise publicly-accessible

1 report which is required by law to be submitted to the Legislature or its
2 members;

3 any copy, reproduction or facsimile of any photograph, negative or
4 print, including instant photographs and videotapes of the body, or any
5 portion of the body, of a deceased person, taken by or for the medical
6 examiner at the scene of death or in the course of a post mortem
7 examination or autopsy made by or caused to be made by the medical
8 examiner except:

9 when used in a criminal action or proceeding in this State which
10 relates to the death of that person,

11 for the use as a court of this State permits, by order after good
12 cause has been shown and after written notification of the request for
13 the court order has been served at least five days before the order is
14 made upon the county prosecutor for the county in which the post
15 mortem examination or autopsy occurred,

16 for use in the field of forensic pathology or for use in medical or
17 scientific education or research, or

18 for use by any law enforcement agency in this State or any other
19 state or federal law enforcement agency;

20 criminal investigatory records;

21 the portion of any criminal record concerning a person's detection,
22 apprehension, arrest, detention, trial or disposition for unlawful
23 manufacturing, distributing, or dispensing, or possessing or having
24 under control with intent to manufacture, distribute, or dispense,
25 marijuana or hashish in violation of paragraph (11) of subsection b. of
26 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
27 of paragraph (12) of subsection b. of that section, or a violation of
28 either of those paragraphs and a violation of subsection a. of section 1
29 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
30 P.L.1997, c.327 (C.2C:35-7.1) for distributing, dispensing, or
31 possessing, or having under control with intent to distribute or
32 dispense, on or within 1,000 feet of any school property, or on or
33 within 500 feet of the real property comprising a public housing
34 facility, public park, or public building, or for obtaining, possessing,
35 using, being under the influence of, or failing to make lawful
36 disposition of marijuana or hashish in violation of paragraph (3) or
37 (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-
38 10, or for a violation of any of those provisions and a violation of
39 N.J.S.2C:36-2 for using or possessing with intent to use drug
40 paraphernalia with the marijuana or hashish;

41 on and after the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill), any record concerning a person's
43 commission of an unlawful act of manufacturing, distributing, or
44 dispensing, or possessing or having under control with intent to
45 manufacture, distribute, or dispense, marijuana or hashish in
46 violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or
47 possessing marijuana or hashish in violation of paragraph (4) of
48 subsection a. of N.J.S.2C:35-10, for which a written warning was

1 issued, or a civil penalty or community service in lieu of payment of a
2 penalty was imposed;
3 victims' records, except that a victim of a crime shall have access
4 to the victim's own records;
5 any written request by a crime victim for a record to which the
6 victim is entitled to access as provided in this section, including, but
7 not limited to, any law enforcement agency report, domestic violence
8 offense report, and temporary or permanent restraining order;
9 personal firearms records, except for use by any person authorized
10 by law to have access to these records or for use by any government
11 agency, including any court or law enforcement agency, for purposes
12 of the administration of justice;
13 personal identifying information received by the Division of Fish
14 and Wildlife in the Department of Environmental Protection in
15 connection with the issuance of any license authorizing hunting with a
16 firearm. For the purposes of this paragraph, personal identifying
17 information shall include, but not be limited to, identity, name,
18 address, social security number, telephone number, fax number,
19 driver's license number, email address, or social media address of any
20 applicant or licensee;
21 trade secrets and proprietary commercial or financial information
22 obtained from any source. For the purposes of this paragraph, trade
23 secrets shall include data processing software obtained by a public
24 body under a licensing agreement which prohibits its disclosure;
25 any record within the attorney-client privilege. This paragraph
26 shall not be construed as exempting from access attorney or consultant
27 bills or invoices except that such bills or invoices may be redacted to
28 remove any information protected by the attorney-client privilege;
29 administrative or technical information regarding computer
30 hardware, software and networks which, if disclosed, would jeopardize
31 computer security;
32 emergency or security information or procedures for any buildings
33 or facility which, if disclosed, would jeopardize security of the
34 building or facility or persons therein;
35 security measures and surveillance techniques which, if disclosed,
36 would create a risk to the safety of persons, property, electronic data or
37 software;
38 information which, if disclosed, would give an advantage to
39 competitors or bidders;
40 information generated by or on behalf of public employers or
41 public employees in connection with any sexual harassment complaint
42 filed with a public employer or with any grievance filed by or against
43 an individual or in connection with collective negotiations, including
44 documents and statements of strategy or negotiating position;
45 information which is a communication between a public agency
46 and its insurance carrier, administrative service organization or risk
47 management office;

1 information which is to be kept confidential pursuant to court
2 order;

3 any copy of form DD-214, NGB-22, or that form, issued by the
4 United States Government, or any other certificate of honorable
5 discharge, or copy thereof, from active service or the reserves of a
6 branch of the Armed Forces of the United States, or from service in the
7 organized militia of the State, that has been filed by an individual with
8 a public agency, except that a veteran or the veteran's spouse or
9 surviving spouse shall have access to the veteran's own records;

10 any copy of an oath of allegiance, oath of office or any affirmation
11 taken upon assuming the duties of any public office, or that oath or
12 affirmation, taken by a current or former officer or employee in any
13 public office or position in this State or in any county or municipality
14 of this State, including members of the Legislative Branch, Executive
15 Branch, Judicial Branch, and all law enforcement entities, except that
16 the full name, title, and oath date of that person contained therein shall
17 not be deemed confidential;

18 that portion of any document which discloses the social security
19 number, credit card number, unlisted telephone number or driver
20 license number of any person; except for use by any government
21 agency, including any court or law enforcement agency, in carrying
22 out its functions, or any private person or entity acting on behalf
23 thereof, or any private person or entity seeking to enforce payment of
24 court-ordered child support; except with respect to the disclosure of
25 driver information by the New Jersey Motor Vehicle Commission as
26 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that
27 a social security number contained in a record required by law to be
28 made, maintained or kept on file by a public agency shall be disclosed
29 when access to the document or disclosure of that information is not
30 otherwise prohibited by State or federal law, regulation or order or by
31 State statute, resolution of either or both houses of the Legislature,
32 Executive Order of the Governor, rule of court or regulation
33 promulgated under the authority of any statute or executive order of
34 the Governor;

35 a list of persons identifying themselves as being in need of special
36 assistance in the event of an emergency maintained by a municipality
37 for public safety purposes pursuant to section 1 of P.L.2017, c.266
38 (C.40:48-2.67); and

39 a list of persons identifying themselves as being in need of special
40 assistance in the event of an emergency maintained by a county for
41 public safety purposes pursuant to section 6 of P.L.2011, c.178
42 (C.App.A:9-43.13).

43 A government record shall not include, with regard to any public
44 institution of higher education, the following information which is
45 deemed to be privileged and confidential:

46 pedagogical, scholarly and/or academic research records and/or the
47 specific details of any research project conducted under the auspices of
48 a public higher education institution in New Jersey, including, but not

1 limited to research, development information, testing procedures, or
2 information regarding test participants, related to the development or
3 testing of any pharmaceutical or pharmaceutical delivery system,
4 except that a custodian may not deny inspection of a government
5 record or part thereof that gives the name, title, expenditures, source
6 and amounts of funding and date when the final project summary of
7 any research will be available;

8 test questions, scoring keys and other examination data pertaining
9 to the administration of an examination for employment or academic
10 examination;

11 records of pursuit of charitable contributions or records containing
12 the identity of a donor of a gift if the donor requires non-disclosure of
13 the donor's identity as a condition of making the gift provided that the
14 donor has not received any benefits of or from the institution of higher
15 education in connection with such gift other than a request for
16 memorialization or dedication;

17 valuable or rare collections of books and/or documents obtained by
18 gift, grant, bequest or devise conditioned upon limited public access;

19 information contained on individual admission applications; and

20 information concerning student records or grievance or
21 disciplinary proceedings against a student to the extent disclosure
22 would reveal the identity of the student.

23 "Personal firearms record" means any information contained in a
24 background investigation conducted by the chief of police, the county
25 prosecutor, or the Superintendent of State Police, of any applicant for a
26 permit to purchase a handgun, firearms identification card license, or
27 firearms registration; any application for a permit to purchase a
28 handgun, firearms identification card license, or firearms registration;
29 any document reflecting the issuance or denial of a permit to purchase
30 a handgun, firearms identification card license, or firearms
31 registration; and any permit to purchase a handgun, firearms
32 identification card license, or any firearms license, certification,
33 certificate, form of register, or registration statement. For the purposes
34 of this paragraph, information contained in a background investigation
35 shall include, but not be limited to, identity, name, address, social
36 security number, phone number, fax number, driver's license number,
37 email address, social media address of any applicant, licensee,
38 registrant or permit holder.

39 "Public agency" or "agency" means any of the principal
40 departments in the Executive Branch of State Government, and any
41 division, board, bureau, office, commission or other instrumentality
42 within or created by such department; the Legislature of the State and
43 any office, board, bureau or commission within or created by the
44 Legislative Branch; and any independent State authority, commission,
45 instrumentality or agency. The terms also mean any political
46 subdivision of the State or combination of political subdivisions, and
47 any division, board, bureau, office, commission or other
48 instrumentality within or created by a political subdivision of the State

1 or combination of political subdivisions, and any independent
2 authority, commission, instrumentality or agency created by a political
3 subdivision or combination of political subdivisions.

4 "Law enforcement agency" means a public agency, or part thereof,
5 determined by the Attorney General to have law enforcement
6 responsibilities.

7 "Constituent" means any State resident or other person
8 communicating with a member of the Legislature.

9 "Member of the Legislature" means any person elected or selected
10 to serve in the New Jersey Senate or General Assembly.

11 "Criminal investigatory record" means a record which is not
12 required by law to be made, maintained or kept on file that is held by a
13 law enforcement agency which pertains to any criminal investigation
14 or related civil enforcement proceeding.

15 "Victim's record" means an individually-identifiable file or
16 document held by a victims' rights agency which pertains directly to a
17 victim of a crime except that a victim of a crime shall have access to
18 the victim's own records.

19 "Victim of a crime" means a person who has suffered personal or
20 psychological injury or death or incurs loss of or injury to personal or
21 real property as a result of a crime, or if such a person is deceased or
22 incapacitated, a member of that person's immediate family.

23 "Victims' rights agency" means a public agency, or part thereof,
24 the primary responsibility of which is providing services, including but
25 not limited to food, shelter, or clothing, medical, psychiatric,
26 psychological or legal services or referrals, information and referral
27 services, counseling and support services, or financial services to
28 victims of crimes, including victims of sexual assault, domestic
29 violence, violent crime, child endangerment, child abuse or child
30 neglect, and the Victims of Crime Compensation Board, established
31 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the
32 Victims of Crime Compensation Office pursuant to P.L.2007, c.95
33 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
34 (cf: P.L.2019, c.255, s.4)

35

36 19. N.J.S.2C:52-30 is amended to read as follows:

37 2C:52-30. Except as otherwise provided in this chapter, **【any】**

38 a. Any person who reveals to another the existence of an arrest,
39 conviction, unlawful act violation, or related legal proceeding with
40 knowledge that the records and information pertaining thereto have
41 been expunged or sealed is a disorderly person. Notwithstanding
42 the provisions of **【section】** N.J.S.2C:43-3, the maximum fine which
43 can be imposed for violation of this section is **【\$200.00】** \$2,000.

44 b. (1) Any person or entity regularly engaged in the business
45 of collecting, assembling, evaluating or disseminating persons'
46 records of occurrences or related legal proceedings described in
47 subsection a. of this section for a fee shall regularly update the
48 records to ensure accuracy, promptly delete a record that has been

1 expunged or sealed, provide clients with the date collected and
2 explain to clients that records are valid only as of the date collected.

3 (2) Any person or entity regularly engaged in the business of
4 collecting, assembling, evaluating or disseminating records of
5 occurrences or related legal proceedings described in subsection a.
6 of this section for a fee, which disseminates a record that has been
7 expunged or sealed and knows or should have known at the time of
8 dissemination that the record has been expunged or sealed is liable
9 to the person who is the subject of the record for damages totaling
10 \$5,000 or the actual damages caused by the violation, whichever is
11 greater, plus costs and attorney fees.

12 (cf: N.J.S.2C:52-30)

13

14 20. (New section) The Administrative Director of the Courts
15 shall maintain and provide information to any person upon request
16 about the expungement process and legal services programs
17 Statewide and in each county which may be available to assist the
18 person with an expedited expungement pursuant to section 5 of
19 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
20 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3).

21

22 21. (New section) a. (1) The Administrative Director of the
23 Courts shall develop and maintain a multilingual public awareness
24 campaign to promote awareness of the expungement process,
25 including an expedited expungement pursuant to section 5 of
26 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
27 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), and the
28 expungement e-filing system established pursuant to section 11 of
29 P.L.2019, c.269 (C.2C:52-10.1), as well as information on State,
30 local, non-profit and other private job training programs in
31 consultation with the Department of Labor and Workforce
32 Development, with a focus on assisting those persons eligible for
33 the expedited expungement or “clean slate” expungement of their
34 records pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1) or a
35 “clean slate” expungement pursuant to section 7 of P.L.2019, c.269
36 (C.2C:52-5.3), respectively.

37 (2) The public awareness campaign shall, at a minimum, utilize
38 electronic and print media, and shall make available electronically
39 on an Internet website a petition form and a list of the supporting
40 information necessary for an expungement, including an expedited
41 or “clean slate” expungement pursuant to section 5 of
42 P.L.2019, c.269 (C.2C:52-5.1) or section 7 of P.L.2019, c.269
43 (C.2C:52-5.3), respectively, using the expungement e-filing system
44 once established pursuant to section 11 of P.L.2019, c.269 (C.2C:52-
45 10.1).

46 (3) The petition and supporting information shall, at a minimum,
47 be made available in English and Spanish.

1 - one pound or less of marijuana, or 80 grams or less of hashish
2 would become an unlawful act. A first violation would be subject
3 to a written warning, and a second or subsequent violation would be
4 subject to a civil penalty of \$25 or the performance of community
5 service in lieu of payment of the penalty. The civil penalty would
6 be recovered in a summary proceeding in accordance with the
7 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-
8 10 et seq.), before the municipal court having jurisdiction.
9 Whenever community service was imposed, the value of each hour
10 of service would be considered to be not less than the State or
11 federal minimum wage, whichever wage is higher, and the total
12 value of community service imposed could not exceed \$25.

13 The bill would also regrade, and change the applicable amounts
14 for, the unlawful possession of marijuana or hashish, which is
15 currently a crime of the fourth degree (up to 18 months
16 imprisonment; up to \$10,000 fine; or both) when the act involves
17 more than 50 grams of marijuana or more than five grams of
18 hashish, and, when the act involves lesser amounts, a disorderly
19 persons offense (up to six month imprisonment; up to \$1,000 fine;
20 or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

21 Under the bill, unlawful possession would be:

22 - a disorderly persons offense (up to six month imprisonment; up
23 to \$1,000 fine; or both) when the act involved more than one pound
24 of marijuana or more than 80 grams of hashish; and

25 - an unlawful act subject first to a written warning, and thereafter
26 subject to a civil penalty of \$25, or the performance of community
27 service in lieu of payment of the penalty, when the act involved one
28 pound or less of marijuana or 80 grams or less of hashish. Similar
29 to distribution when graded as an unlawful act, the civil penalty
30 would be recovered in a summary proceeding in accordance with
31 the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-
32 10 et seq.), before the municipal court having jurisdiction.
33 Whenever community service was imposed, the value of each hour
34 of service would be considered to be not less than the State or
35 federal minimum wage, whichever wage is higher, and the total
36 value of community service imposed could not exceed \$25.

37 Regarding the above described unlawful acts of distribution or
38 possession subject to a written warning, and thereafter a civil
39 penalty or community service in lieu of payment of the penalty, the
40 odor of marijuana or hashish, or burnt marijuana or hashish, would
41 not constitute reasonable articulable suspicion to initiate a search of
42 a person to determine a violation. Additionally, a person would not
43 be subject to arrest, being detained, or otherwise being taken into
44 custody unless the person had committed another violation of the
45 law. Also, a person who committed an unlawful act subject to a
46 written warning, or civil penalty or community service in lieu of
47 payment of the penalty, could not be deprived of any legal or civil
48 right, privilege, benefit, or opportunity provided pursuant to any

1 law solely by reason of committing that act, nor would committing
2 one or more such acts modify any legal or civil right, privilege,
3 benefit, or opportunity provided pursuant to any law.

4 All local and county law enforcement authorities would,
5 following the submission process used for the uniform crime
6 reporting system established by P.L.1966, c.37 (C.52:17B-
7 5.1 et seq.), submit a quarterly report to the Uniform Crime
8 Reporting Unit, within the Division of State Police in the
9 Department of Law and Public Safety, or to another designated
10 recipient determined by the Attorney General, containing the
11 number of unlawful acts of distribution or possession subject to a
12 written warning, or civil penalty or community service in lieu of
13 payment of the penalty, committed within their respective
14 jurisdictions, plus the race, ethnicity, gender, and age of each
15 person committing a violation, and the disposition of each person's
16 violation. These violations and associated information, along with
17 a quarterly summary of violations investigated and associated
18 information collected by the State Police for the same period would
19 be summarized by county and municipality in an annual report, and
20 both quarterly summaries and annual reports would be made
21 available at no cost to the public on the State Police's Internet
22 website.

23 Using or being under the influence of marijuana or hashish, or
24 failing to voluntarily deliver such to a law enforcement officer, both
25 currently disorderly persons offenses (up to six months
26 imprisonment; up to \$1,000 fine; or both), would no longer be
27 illegal acts, and thus there would be no legal consequences flowing
28 from using, being under the influence of, or failing to deliver to law
29 enforcement, marijuana or hashish. Using or possessing with intent
30 to use drug paraphernalia to ingest, inhale, or otherwise introduce
31 marijuana or hashish into the human body would also no longer be
32 considered an illegal act; under current law, it is graded as a
33 disorderly persons offense.

34 Notwithstanding that using or being under the influence of
35 marijuana or hashish, or using or possessing drug paraphernalia to
36 use with marijuana or hashish, would no longer be illegal acts, the
37 smoking of marijuana or hashish, and the use of drug paraphernalia
38 for these substances, could be prohibited or otherwise regulated on
39 or in any property by the person or entity that owns or controls that
40 property, including multifamily housing that is a multiple dwelling
41 as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of
42 a condominium, as those terms are defined by section 3 of
43 P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as
44 defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is
45 leased to the owner of a manufactured home, as defined in that section,
46 that is installed thereon.

47 Lastly concerning the above described unlawful acts of
48 distribution or possession of marijuana or hashish, as well as using

1 or being under the influence of such, none of these acts: (1) could
2 be prohibited or restricted based on any conditions imposed with
3 respect to court-ordered pretrial release or probation, or with
4 respect to certified parole release, or (2) could be considered a
5 violation of the terms of pretrial release, probation, or parole.

6 Reducing the Legal Consequences of Certain Marijuana and
7 Hashish Offenses

8 No court would have jurisdiction over any charge, including any
9 charge of delinquency, except to the extent required to dismiss,
10 withdraw, or terminate the charge, based on a prior small amount
11 distribution offense involving less than one ounce of marijuana or
12 less than five grams of hashish, or a prior possession offense
13 involving 50 grams or less of marijuana or five grams or less of
14 hashish, acts which would now only be punishable as an unlawful
15 act subject to a written warning, or civil penalty or community
16 service in lieu of payment of the penalty, unless a final judgment of
17 conviction or adjudication of delinquency on the past offense had
18 been entered on or before the bill's effective date. These non-
19 prosecutable charges and cases would be expeditiously dismissed,
20 which could be accomplished by appropriate action by a law
21 enforcement agency, or on a motion to the court with jurisdiction
22 over a case, or the court's own motion, based upon guidelines,
23 administrative directives, and court orders issued by the Attorney
24 General, the Administrative Director of the Courts, and the
25 Supreme Court.

26 Any past or future charge, conviction, or adjudication of
27 delinquency for an even broader array of marijuana and hashish
28 offenses, as well as future unlawful acts of distribution and
29 possession, would not be considered whenever the Pretrial Services
30 Program established by the Administrative Office of the Courts
31 conducted a risk assessment on a person for the purpose of making
32 recommendations to a court about an appropriate pretrial release or
33 pretrial detention decision for that individual in accordance with
34 sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).
35 These non-considered offenses would include:

36 - unlawful distribution of, or possessing or having under control
37 with intent to distribute, less than five pounds of marijuana, or less
38 than one pound of hashish, in violation of paragraph (11) of subsection
39 b. of N.J.S.2C:35-5 or, for past violations, paragraph (12) of that
40 subsection b., a past or future violation of either of those paragraphs
41 and a violation of subsection a. of section 1 of P.L.1987, c.101
42 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-
43 7.1), for distributing, or possessing or having under control with intent
44 to distribute, on or within 1,000 feet of any school property, or on or
45 within 500 feet of the real property comprising a public housing
46 facility, public park, or public building;

47 - obtaining or possessing marijuana in violation of paragraph (3) of
48 subsection a. of N.J.S.2C:35-10 (past offenses, more than 50 grams;

1 future offenses under the bill, more than one pound), or, for past
2 offenses, possession of 50 grams or less, or using, being under the
3 influence of, or failing to voluntarily deliver to a law enforcement
4 officer, any amount of marijuana or hashish in violation of paragraph
5 (4) of subsection a., subsection b., or subsection c. of N.J.S.2C:35-10;
6 or

7 - a past violation involving any of the aforementioned offenses
8 and using or possessing with intent to use drug paraphernalia with that
9 marijuana or hashish in violation of N.J.S.2C:36-2.

10 The bill would also establish grounds for post-conviction relief
11 due to a past conviction or adjudication of delinquency for any of
12 the above described marijuana or hashish offenses, which would
13 permit an opportunity to have a sentence reduced or changed as
14 permitted by the court.

15 New Form of “Virtual” Expungement for Certain Marijuana and
16 Hashish Offenses

17 Beginning immediately upon the enactment of the bill, any arrest,
18 charge, conviction, or adjudication of delinquency, and proceedings
19 related thereto, for any of the above described broad list of marijuana
20 or hashish offenses that occurred prior to the bill’s effective date
21 would be deemed not to have occurred (other than, generally, with
22 respect to the consequences of any sentence set forth in a judgment of
23 conviction), providing such legal relief without need to petition a
24 court for an expungement order granting such result. While persons
25 would be able to respond to questions about such past occurrences
26 accordingly, information about such would still need to be revealed if
27 seeking employment within the judicial branch or with a law
28 enforcement or corrections agency, and the record would be subject to
29 review in accordance with N.J.S.2C:52-15 et seq.

30 Sealing of Records Associated With Unlawful Acts of Marijuana
31 and Hashish Distribution or Possession

32 Once the Administrative Office of the Courts develops and
33 maintains its system for sealing records related to various marijuana
34 and hashish distribution, possession, and drug paraphernalia offenses
35 pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), then all
36 records relating to unlawful acts of marijuana or hashish distribution as
37 described above, for which a civil penalty or community service in
38 lieu of payment of the penalty was imposed, would, upon
39 disposition of the case and any proceedings related thereto, be
40 sealed based upon a court order of nondisclosure to the public of
41 such records.

42 Reforms Applicable to All Expungements and Sealed Records
43 Penalties for Wrongful Dissemination of Expunged Records or
44 Information

45 The bill would increase the maximum fine, from \$200 to \$2,000,
46 which could be imposed on a person who reveals to another the
47 existence of an arrest, conviction, unlawful act violation, or related
48 legal proceeding with knowledge that the record or information has

1 been expunged or sealed. A person could also be subject to a term
2 of imprisonment of up to six months because such an act is
3 categorized as a disorderly persons offense. See N.J.S.2C:52-30.

4 In addition, the bill provides that any person or entity regularly
5 engaged in the business of collecting, assembling, evaluating or
6 disseminating records on individuals for a fee is required to
7 regularly update their records to ensure accuracy, promptly delete a
8 record that has been expunged or sealed, provide clients with the
9 date collected and explain to clients that records are valid only as of
10 the date collected. Any such regularly-engaged person or entity
11 who disseminates a record that has been expunged or sealed, and
12 knows or should have known at the time of dissemination that the
13 record has been expunged or sealed, would be liable to the
14 individual who is the subject of the record for damages totaling
15 \$5,000 or the actual damages caused by the violation, whichever is
16 greater, plus costs and attorney fees.

17 Promoting Awareness of the Expungement Process

18 The Administrative Director of the Courts would develop and
19 maintain:

20 - information, to be provided to a person upon request, about the
21 expungement process and legal services programs Statewide and in
22 each county which may be available to assist the person with an
23 expedited expungement, pursuant to section 5 of P.L.2019, c.269
24 (C.2C:52-5.1), for the various marijuana and hashish distribution,
25 possession, and drug paraphernalia offenses described above under the
26 statement subheading for Reducing the Legal Consequences of
27 Certain Marijuana and Hashish Offenses, or a “clean slate”
28 expungement, which generally addresses a person’s entire criminal
29 record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and

30 - develop a multilingual public awareness campaign to promote
31 awareness of the expungement process, as well as information on
32 State, local, nonprofit and other private job training programs in
33 consultation with the Department of Labor and Workforce
34 Development, with a focus on assisting those persons eligible for an
35 expedited expungement or “clean slate” expungement.

36 Civil Justice Reforms

37 In addition to the above described criminal justice relief largely
38 focused on marijuana and hashish offenses and promoting
39 awareness of the expungement process for clearing records, the bill
40 would provide an array of civil protections against discrimination
41 targeting persons with an arrest, charge, conviction, or adjudication
42 of delinquency involving any of the aforementioned marijuana and
43 hashish distribution, possession, and drug paraphernalia offenses
44 described above under the statement subheading for Reducing the
45 Legal Consequences of Certain Marijuana and Hashish Offenses, or
46 targeting persons with a civil penalty or community service
47 imposed in lieu of payment of the penalty for committing an
48 unlawful act of distribution or possession with marijuana or

1 hashish. These protections would include monetary penalties,
2 enforceable by the State, against employers regarding employment
3 actions or persons involved with mortgage lending activities, as
4 well as a private cause of action for discrimination in public or
5 private housing, real property, or any place of public
6 accommodation.

7 Lastly, the bill would make confidential, and no longer a
8 government record subject to public inspection under P.L.1963,
9 c.73 (C.47:1A-1 et seq.), the portion of any criminal record
10 concerning a person's detection, apprehension, arrest, detention,
11 trial or disposition for any of the aforementioned offenses, or any
12 record concerning a person's commission of any of the
13 aforementioned unlawful acts subject to a civil penalty, or
14 community service imposed in lieu of payment of the penalty.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2535

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2535.

This bill, as amended, would provide for various “social justice” reforms, some based on criminal justice and others based on civil justice, which would reduce the legal consequences associated with certain marijuana and hashish offenses as well as raise awareness of the availability of expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses

Under current law, manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense (hereafter shortened to just distributing, which includes possessing or having under control), one ounce or more but less than five pounds of marijuana, or five grams or more but less than one pound of hashish, is punishable as a crime of the third degree; this crime can be punished by a term of imprisonment of three to five years, an enhanced fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can be punished by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-5, subsection b., paragraphs (11) and (12).

The bill would retain as a crime of the third degree the distribution of less than five pounds of marijuana, but slightly raise the minimum amount that falls under this degree to be *more than one ounce* instead of *one ounce or more*, and distribution of less than one pound of hashish would also remain a third degree crime, but the minimum amount for this violation would be *more than five grams* instead of *five grams or more*; it would regrade the distribution of lesser amounts of marijuana and hashish as follows:

- one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an unlawful act, subject to a civil penalty of \$50; and
- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and

subject to the same penalties, including an enhanced fine, as described above.

The civil penalty would be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), before the municipal court having jurisdiction. The enforcement action would be recovered by and in the name of the State by the local municipality, and paid into its treasury for the general use of the municipality.

The bill would also change the applicable amounts that constitute the unlawful possession of marijuana or hashish, which is currently a crime of the fourth degree (up to 18 months imprisonment; up to \$25,000 fine; or both) when the act involves more than 50 grams of marijuana or more than five grams of hashish, and, when the act involves lesser amounts, a disorderly persons offense (up to six month imprisonment; up to \$1,000 fine; or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

Under the bill, unlawful possession would be any amount of marijuana over six ounces, and for hashish, over 170 grams, punishable as a crime of the fourth degree (with the same penalties as the current law). Possession of up to six ounces of marijuana, or up to 170 grams of hashish would be completely decriminalized and have no associated criminal or civil penalties. The bill addresses this point by completely deleting paragraph (4) of subsection a. of N.J.S.2C:35-10, the "small amount" category of marijuana or hashish possession, leaving the only punishable possession offense of having over six ounces of marijuana or over 170 grams of hashish.

Regarding the above described unlawful act of distribution subject to a civil penalty and unlawful possession with associated criminal penalties, the odor of marijuana or hashish, or burnt marijuana or hashish, would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of law. Additionally, a person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person had committed another violation of the law. Also, a person who committed such a violation could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing that act, nor would committing one or more such acts modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law.

All local and county law enforcement authorities would, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated

recipient determined by the Attorney General, containing the number of distribution or possession violations committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated and associated information collected by the State Police for the same period would be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's Internet website.

Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer, both currently disorderly persons offenses (up to six months imprisonment; up to \$1,000 fine; or both), would no longer be illegal acts, and thus there would be no legal consequences flowing from using, being under the influence of, or failing to deliver to law enforcement, marijuana or hashish. Using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body would also no longer be considered an illegal act; under current law, it is graded as a disorderly persons offense.

Notwithstanding that using or being under the influence of marijuana or hashish, or using or possessing drug paraphernalia to use with marijuana or hashish, would no longer be illegal acts, the smoking, vaping, or aerosolizing of marijuana or hashish, and the use of drug paraphernalia to ingest or otherwise introduce these substances into the human body, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

Lastly concerning the above described unlawful act of distribution subject only to a civil penalty, and the decriminalized possession of up to six ounces of marijuana or 170 grams of hashish, as well as using or being under the influence of marijuana or hashish, none of these acts: (1) could be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, or (2) could be considered a violation of the terms of pretrial release, probation, or parole.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge awaiting further proceedings on the effective date of the bill, including any charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, unless a guilty verdict, plea, or other entry of guilt, or final judgment of conviction or adjudication of delinquency, had been entered on or before that effective date, for any of the following violations:

- unlawful distribution of less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; or

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

The non-prosecutable charges and cases for the above violations would be expeditiously dismissed, which could be accomplished by appropriate action by a law enforcement agency, or on a motion to the court with jurisdiction over a case, or the court's own motion, based upon guidelines, administrative directives, and court orders issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Regarding a guilty verdict, plea, or other entry of guilt entered prior to the bill's effective date, the bill would establish grounds for relief if the guilty verdict, plea, or other entry of guilt involved one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated above, if a final judgment of conviction or adjudication of delinquency had not been entered on or before that effective date.

The bill would also establish grounds for post-conviction relief for any person serving a sentence due to a past conviction or adjudication of delinquency for any of the above described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

Additionally, any past or future charge, conviction, or adjudication of delinquency for the same array of marijuana and hashish offenses, as well as future unlawful acts of distribution subject only to a civil penalty, would not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts conducted a risk assessment on a person for the purpose of making recommendations to a court about an appropriate pretrial release or pretrial detention decision for that individual in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

New Form of “Virtual” Expungement for Certain Marijuana and Hashish Offenses

Beginning immediately upon the enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency, and proceedings related thereto, for any of the above described broad list of marijuana or hashish offenses that occurred prior to the bill’s effective date would be deemed not to have occurred (other than, generally, with respect to the consequences of any sentence set forth in a judgment of conviction), providing such legal relief without need to petition a court for an expungement order granting such result. While persons would be able to respond to questions about such past occurrences accordingly, information about such would still need to be revealed if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the record would be subject to review in accordance with N.J.S.2C:52-15 et seq.

Sealing of Records Associated With Unlawful Acts of Marijuana and Hashish Distribution

Once the Administrative Office of the Courts develops and maintains its system for sealing records related to various marijuana and hashish distribution, possession, and drug paraphernalia offenses pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), then all records relating to unlawful acts of marijuana distribution as described above, for which only a civil penalty was imposed, would, upon disposition of the case and any proceedings related thereto, be sealed based upon a court order of nondisclosure to the public of such records.

Reforms Applicable to All Expungements and Sealed Records

Penalties for Wrongful Dissemination of Expunged Records or Information

The bill would increase the maximum fine, from \$200 to \$2,000, which could be imposed on a person who reveals to another the existence of an arrest, conviction, unlawful act violation, or related legal proceeding with knowledge that the record or information has been expunged or sealed. A person could also be subject to a term of imprisonment of up to six months because such an act is categorized as a disorderly persons offense. See N.J.S.2C:52-30.

In addition, the bill provides that any person or entity regularly engaged in the business of collecting, assembling, evaluating or disseminating records on individuals for a fee is required to regularly update their records to ensure accuracy, promptly delete a record that has been expunged or sealed, provide clients with the date collected and explain to clients that records are valid only as of the date collected. Any such regularly-engaged person or entity who disseminates a record that has been expunged or sealed, and knows or should have known at the time of dissemination that the record has been expunged or sealed, would be liable to the individual who is the subject of the record for damages totaling \$5,000 or the actual damages caused by the violation, whichever is greater, plus costs and attorney fees.

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would develop and maintain:

- information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist the person with an expedited expungement, pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the various marijuana and hashish distribution, possession, and drug paraphernalia offenses described above under the statement subheading for Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses, or a “clean slate” expungement, which generally addresses a person’s entire criminal record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and
- develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit and other private job training programs in consultation with the Department of Labor and Workforce Development, with a focus on assisting those persons eligible for an expedited expungement or “clean slate” expungement.

Civil Justice Reforms

In addition to the above described criminal justice relief largely focused on marijuana and hashish offenses and promoting awareness of the expungement process for clearing records, the bill would provide an array of civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the aforementioned marijuana and hashish distribution, possession, and drug paraphernalia offenses described above under the statement subheading for Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses, or targeting persons with a civil penalty for committing an unlawful act of distribution with marijuana or hashish. These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with

mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

Lastly, the bill would make confidential, and no longer a government record subject to public inspection under P.L.1963, c.73 (C.47:1A-1 et seq.), the portion of any criminal record concerning a person's detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned offenses, or any record concerning a person's commission of an unlawful act of distribution subject to a civil penalty.

The bill, as amended and reported, is identical to the First Reprint of Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269, also amended and reported by the committee today.

The committee amendments to the bill:

- change the amounts applicable to an unlawful marijuana or hashish distribution offense, when graded as a crime of the third degree or fourth degree, or considered an unlawful act subject only to a civil penalty of \$50, as described above;

- make distribution of one ounce or less of marijuana, or five grams or less of hashish an unlawful act subject only to a civil penalty when it is a first offense, and a fourth degree crime for a second or subsequent offense;

- remove provisions that would have created an unlawful act of possession for small amounts of marijuana or hashish, as well as provisions that would have provided a written warning for a first offense, for this and an unlawful act of small amount distribution, followed by a civil penalty or community service for a second or subsequent unlawful act;

- completely decriminalize, with no civil or criminal penalties, possession of up to six ounces of marijuana or up to 170 grams of hashish;

- expand the list of marijuana and hashish offenses for which pending charges awaiting further proceedings on the effective date of the bill would be expeditiously dismissed, as described above;

- clarify potential legal relief for persons with a guilty verdict, plea, or other entry of guilt, as well as post-conviction relief for persons serving or who will be serving a sentence for any of the marijuana and hashish offenses appearing on that same list;

- provide that acts involving an unlawful act of distribution subject to a civil penalty or decriminalized possession of up to six ounces of marijuana or 170 grams of hashish could not be prohibited or restricted as conditions imposed with respect to court-ordered pretrial release or probation, or certified parole release, or considered a violation of the terms of pretrial release, probation, or parole;

- similarly provide that those same acts would not be considered as part of a court's risk assessment for making appropriate pretrial release or pretrial detention decisions; and

- change the bill's effective date so that it takes effect immediately, instead of the 90th day following enactment.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2535

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2535 (1R), with committee amendments.

This bill, as amended, would provide for various “social justice” reforms, some based on criminal justice and others based on civil justice, which would reduce the legal consequences associated with certain marijuana and hashish, and other possession offenses for other controlled dangerous substances, as well as raise awareness of the availability of expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses, and Psilocybin Mushroom Possession

Under current law, manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense (hereafter shortened to just distributing, which includes possessing or having under control), one ounce or more but less than five pounds of marijuana, or five grams or more but less than one pound of hashish, is punishable as a crime of the third degree; this crime can result in a term of imprisonment of three to five years, an enhanced fine of up to \$25,000, or both. Distribution of any smaller amounts, that is, less than one ounce of marijuana or less than five grams of hashish, is punishable as a crime of the fourth degree; this crime can result in a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both. See N.J.S.2C:35-5, subsection b., paragraphs (11) and (12).

The bill would retain as a crime of the third degree the distribution of less than five pounds of marijuana, but slightly raise the minimum amount that falls under this degree to be *more than one ounce* instead of *one ounce or more*, and distribution of less than one pound of hashish would also remain a third degree crime, but the minimum amount for this violation would be *more than five grams* instead of *five grams or more*; it would regrade the distribution of lesser amounts of marijuana and hashish as follows:

- one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an act subject to a written

warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both; and

- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and be subject to the same penalties, including an enhanced fine, as described above.

The bill would also change the applicable amounts that constitute the unlawful possession of marijuana or hashish, which is currently a crime of the fourth degree (up to 18 months imprisonment; up to \$25,000 fine; or both) when the act involves more than 50 grams of marijuana or more than five grams of hashish, and, when the act involves lesser amounts, a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). See N.J.S.2C:35-10, subsection a., paragraphs (3) and (4).

Under the bill, unlawful possession would be any amount of marijuana over six ounces, and for hashish, over 170 grams, punishable as a crime of the fourth degree (with the same penalties as the current law). Possession of up to six ounces of marijuana, or up to 170 grams of hashish would be completely decriminalized and have no associated criminal or civil penalties.

Regarding the above described small amount unlawful distribution and unlawful possession with associated criminal penalties, the odor of marijuana or hashish, or burnt marijuana or hashish, would not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of law. Additionally, a person would not be subject to arrest, being detained, or otherwise being taken into custody unless the person had committed another violation of the law. Also, a person who committed such a violation could not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing that act, nor would committing one or more such acts modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law.

All local and county law enforcement authorities would, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of distribution or possession violations committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated and associated information collected by the State Police for the same period would be summarized by county and

municipality in an annual report, and both quarterly summaries and annual reports would be made available at no cost to the public on the State Police's Internet website.

Using or being under the influence of marijuana or hashish, or failing to voluntarily deliver such to a law enforcement officer, both currently disorderly persons offenses (up to six months imprisonment; up to \$1,000 fine; or both), would no longer be illegal acts, and thus there would be no legal consequences flowing from using, being under the influence of, or failing to deliver to law enforcement, marijuana or hashish. Using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body would also no longer be considered an illegal act; under current law, it is graded as a disorderly persons offense.

Notwithstanding that using or being under the influence of marijuana or hashish, or using or possessing drug paraphernalia to use with marijuana or hashish, would no longer be illegal acts, the smoking, vaping, or aerosolizing of marijuana or hashish, and the use of drug paraphernalia to ingest or otherwise introduce these substances into the human body, could be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

Lastly concerning the above described small amount unlawful distribution and unlawful possession with associated criminal penalties, neither of these acts: (1) could be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, or (2) could be considered a violation of the terms of pretrial release, probation, or parole.

The bill would also make possession of one ounce or less of psilocybin mushroom a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). This act is a crime of the third degree under current law because psilocybin is a Schedule I drug, punishable under paragraph (1) of subsection a. of N.J.S.2C:35-10.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge awaiting further proceedings on the effective date of the bill, including any charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, unless a guilty verdict, plea, or

other entry of guilt, or final judgment of conviction or adjudication of delinquency, had been entered on or before that effective date, for any the following violations:

- unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10;

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2;

- possession of any controlled dangerous substance while operating a motor vehicle in violation of section 1 of P.L.1964, c.289 (C.39:4-49.1); and

- any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

The non-prosecutable charges and cases for the above violations would be expeditiously dismissed, which could be accomplished by appropriate action by a law enforcement agency, or on a motion to the court with jurisdiction over a case, or the court's own motion, based upon guidelines, administrative directives, and court orders issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Regarding a guilty verdict, plea, or other entry of guilt entered prior to the bill's effective date, the bill would establish grounds for relief if the guilty verdict, plea, or other entry of guilt involved one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated above, if a final judgment of conviction or adjudication of delinquency had not been entered on or before that effective date.

The bill would also establish grounds for post-conviction relief for any person serving a sentence due to a past conviction or adjudication of delinquency for any of the above described marijuana or hashish offenses, which would permit an opportunity to have a sentence reduced or changed as permitted by the court.

Additionally, any past or future charge, conviction, or adjudication of delinquency for any of the following array of marijuana and hashish offenses would not be considered whenever the Pretrial Services Program established by the Administrative Office of the Courts conducted a risk assessment on a person for the purpose of making recommendations to a court about an appropriate pretrial release or

pretrial detention decision for that individual in accordance with sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.):

- unlawful distribution of less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building;

- obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; and

- a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

New Form of “Virtual” Expungement for Certain Marijuana and Hashish Offenses

Beginning immediately upon the enactment of the bill, any arrest, charge, conviction, or adjudication of delinquency, and proceedings related thereto, for any of the above described broad array of marijuana or hashish offenses that occurred prior to the bill’s effective date would be deemed not to have occurred (other than, generally, with respect to the consequences of any sentence set forth in a judgment of conviction), providing such legal relief without need to petition a court for an expungement order granting such result. While persons would be able to respond to questions about such past occurrences accordingly, information about such would still need to be revealed if seeking employment within the judicial branch or with a law enforcement or corrections agency, and the record would be subject to review in accordance with N.J.S.2C:52-15 et seq.

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would develop and maintain:

- information, to be provided to a person upon request, about the expungement process and legal services programs Statewide and in each county which may be available to assist the person with an expedited expungement, pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1), for the above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia offenses or a “clean slate” expungement, which generally addresses a person’s entire criminal record, pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3); and

- develop a multilingual public awareness campaign to promote awareness of the expungement process, as well as information on State, local, nonprofit and other private job training programs in consultation with the Department of Labor and Workforce Development, with a focus on assisting those persons eligible for an expedited expungement or “clean slate” expungement.

Civil Justice Reforms

In addition to the above described criminal justice relief largely focused on marijuana and hashish offenses and promoting awareness of the expungement process for clearing records, the bill would provide several civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia offenses. These protections would include monetary penalties, enforceable by the State, against employers regarding employment actions or persons involved with mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

Lastly, the bill would make confidential, and no longer a government record subject to public inspection under P.L.1963, c.73 (C.47:1A-1 et seq.), the portion of any criminal record concerning a person’s detection, apprehension, arrest, detention, trial or disposition for any of the aforementioned offenses.

As reported by the committee, Senate Bill No. 2535 (2R) is identical to Assembly Bill No. 1897/4269 (ACS/2R), which also was reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- revise the amount thresholds for the lowest and next lowest levels of marijuana and hashish distribution offenses, making the lowest level distribution offense of one ounce or less of marijuana, or five grams or less of hashish, with the next lowest offense starting at distribution of more than one ounce of marijuana or more than five grams of hashish, further described in the statement above;

- eliminate civil penalties for the unlawful act of distribution of small amounts of marijuana and hashish, and re-establish such acts to be crimes, except that a first offense for distribution of one ounce or less of marijuana, or five grams or less of hashish is subject only to a written warning;

- distinguish between the grading and penalties under current law for the distribution or possession of marijuana or hashish as amended by the bill and the new grading and penalties by separating the relevant parts of the statutory law into subparagraphs;

- make the possession of one ounce or less of psilocybin mushroom, a Schedule I controlled dangerous substance, a disorderly persons offense;
- reduce the types of distribution offenses for which currently pending charges would have been dismissed, including distribution of just under five pounds of marijuana or just under one pound of hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or distribution on or near school property, public housing, or other public properties;
- add possession of a controlled dangerous substance while operating a motor vehicle to the types of possession offenses for which currently pending charges would be dismissed;
- add disorderly persons or petty disorderly persons offenses subject to conditional discharge under N.J.S.2C:36A-1, as described in the statement above, to the types of offense for which currently pending charges would be dismissed;
- re-establish that all marijuana and hashish offenses involving distribution, possession, and drug paraphernalia subject to the Judiciary's record sealing system would not be considered as part of a pretrial risk assessment for making determinations for a defendant's pretrial release or detention;
- provide that the lowest level distribution offense involving marijuana or hashish, and possession of marijuana or hashish, could not be prohibited or restricted based on any conditions imposed with respect to court-ordered pretrial release or probation, or with respect to certified parole release, and would not be considered a violation of the terms of pretrial release, probation, or parole;
- clarify that anti-discrimination protections against an employer's actions on the basis of an employee's marijuana or hashish offense or offenses involving distribution, possession, and drug paraphernalia, as described in the statement above, would take into consideration whether an employer "relied solely" on such offenses when making an employment decision, allowing some consideration of such offenses by employers; and
- remove the section of the bill which would have increased the penalties and permitted civil actions against persons or entities regularly engaged in the business collecting, assembling, evaluating or disseminating records on individuals, for knowingly distributing records that are expunged or sealed.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2535

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: NOVEMBER 19, 2020

SUMMARY

- Synopsis:** Provides for certain criminal and civil justice reforms, particularly addressing legal consequences associated with certain marijuana and hashish offenses as well as raising awareness of available expungement relief.
- Type of Impact:** Annual expenditure decreases to the State, counties, and municipal governments. Annual revenue decreases to the State and municipal governments.
- Agencies Affected:** Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board; Department of Labor and Workforce Development; Department of Banking and Insurance; Municipal and County Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Decrease	Indeterminate
State Revenue Decrease	Indeterminate
County and Municipal Expenditure Decreases	Indeterminate
Municipal Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill would reduce annual State expenditures by an indeterminate amount as fewer marijuana- and hashish-related acts would enter the criminal justice system and other marijuana- and hashish-related delinquencies would be downgraded to lower terms of incarceration. The State expenditure decrease would be somewhat offset by additional expenses the Judiciary would incur in developing a multilingual public awareness concerning the expungement process.
- An indeterminate decrease in annual State revenues would occur from the decriminalization and downgrading of certain marijuana- and hashish-related offenses, as collections from court

filing fees and penalties would decline by indeterminate amounts. The annual revenue loss would be somewhat offset by the collection of certain new civil penalties.

- Annual county expenditures would decrease by an indeterminate amount on account of the bill reducing the number of cases county prosecutor's offices would have to prosecute and the number of defendants who would be convicted to county jail terms.
- Annual municipal expenditures would decrease attributable to a reduction in the number of marijuana- and hashish-related disorderly persons offenses that would be tried in municipal courts. Annual municipal revenue in the form of court filing fees would also be reduced as fewer cases would enter municipal court.

BILL DESCRIPTION

This bill would eliminate or reduce the legal consequences associated with certain marijuana, hashish and controlled dangerous substances offenses. Among other provisions, the bill would decriminalize the possession of up to 6 ounces (170 grams) of marijuana and hashish, when under current law the act is punishable as either a crime of the fourth degree (up to 18 months of imprisonment and up to \$25,000 fine) or a disorderly persons offense (up to six months imprisonment and up to \$1,000 fine), depending on the amount. In addition, the bill would regrade the distribution of lesser amounts of marijuana and hashish. The distribution of one ounce or less of marijuana, or five grams or less of hashish would become, for a first offense, an act subject to a written warning. A second or subsequent offense would remain a crime of the fourth degree. In addition, the bill would permit anyone to petition a court for a reduction or change in a sentence that person is currently serving due to a past conviction of any delinquency for marijuana or hashish offenses for which this bill eliminates or reduces the legal consequences.

Furthermore, the bill requires the automatic expungement of any arrest or court record related to a delinquency that is the subject of this bill if the delinquency occurred prior to the bill's effective date but is still awaiting final disposition.

The Administrative Office of the Courts would also be required to maintain and provide to any person upon request information about the expungement process and pertinent legal services programs statewide and in each county. In addition, the office would be required to develop a multilingual public awareness campaign to promote awareness of the expungement process existing under current law as well as job training programs available to certain marijuana offenses-related expungees.

Additionally, the bill prohibits employers and mortgage lenders from discriminating against applicants based on an arrest, charge, conviction, or adjudication of delinquency for certain marijuana and hashish offenses. Employers who violate these provisions would be subject to a civil penalty of \$1,000 for the first offense, \$5,000 for the second offense, and \$10,000 for subsequent offenses to be collected by the Department of Labor and Workforce Development. Also, mortgage lenders who continue to violate the bill's provisions after being ordered by the Department of Banking and Insurance to cease the discriminatory practices would be liable for a penalty of \$10,000 for each offense.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would reduce annual State expenditures by an indeterminate amount as fewer marijuana- and hashish-related acts would enter the criminal justice system and other marijuana- and hashish-related delinquencies would be downgraded to lower terms of incarceration. The State expenditure decrease would be somewhat offset by additional expenses the Judiciary would incur in developing a multilingual public awareness concerning the expungement process.

An indeterminate decrease in annual State revenues would occur from the decriminalization and downgrading of certain marijuana- and hashish-related offenses, as collections from court filing fees and penalties would decline by indeterminate amounts. The annual revenue loss would be somewhat offset by the collection of certain new civil penalties.

Annual county expenditures would decrease by an indeterminate amount on account of the bill reducing the number of cases county prosecutor's offices would have to prosecute and the number of defendants who would be convicted to county jail terms.

Annual municipal expenditures would decrease attributable to a reduction in the number of marijuana- and hashish-related disorderly persons offenses that would be tried in municipal courts. Annual municipal revenue in the form of court filing fees would also be reduced as fewer cases would enter municipal court.

Section: Judiciary

Analyst: Anuja Pande Joshi
Assistant Fiscal Analyst

Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Historic Adult-Use Cannabis Reform Bills Into Law

02/22/2021

TRENTON – Governor Phil Murphy today signed historic adult-use cannabis reform bills into law, legalizing and regulating cannabis use and possession for adults 21 years and older (A21 – “The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act”) and decriminalizing marijuana and hashish possession (A1897). The Governor also signed S3454, clarifying marijuana and cannabis use and possession penalties for individuals younger than 21 years old.

“Our current marijuana prohibition laws have failed every test of social justice, which is why for years I’ve strongly supported the legalization of adult-use cannabis. Maintaining a status quo that allows tens of thousands, disproportionately people of color, to be arrested in New Jersey each year for low-level drug offenses is unjust and indefensible,” **said Governor Murphy**. “This November, New Jerseyans voted overwhelmingly in support of creating a well-regulated adult-use cannabis market. Although this process has taken longer than anticipated, I believe it is ending in the right place and will ultimately serve as a national model.

“This legislation will establish an industry that brings equity and economic opportunity to our communities, while establishing minimum standards for safe products and allowing law enforcement to focus their resources on real public safety matters,” **continued Governor Murphy**. “Today, we’re taking a monumental step forward to reduce racial disparities in our criminal justice system, while building a promising new industry and standing on the right side of history. I’d like to thank the Legislature, advocates, faith leaders, and community leaders for their dedicated work and partnership on this critical issue.”

“At long last, New Jersey is turning the page on our previous treatment of marijuana use,” **said Dianna Houenou, incoming Chair of the New Jersey Cannabis Regulatory Commission (CRC)**. “I am excited to get to work building on the successes of the medical program and standing up the adult-use cannabis industry. It’s an honor to be part of this historic movement in New Jersey.”

“Today, Governor Murphy signed legislation into law that reflects the will of New Jerseyans who made their voices loud and clear last November when they voted to legalize recreational cannabis use for adults,” **said U.S. Senator Robert Menendez**. “As always, the needs of our state will guide my work in the U.S. Senate, and I stand ready to advocate for federal policies that respect and protect the ability of local enterprises and law-abiding citizens to do business in a cannabis marketplace that is transparent, equitable, safe and accountable.”

“The failed War on Drugs has systematically targeted people of color and the poor, disproportionately impacting Black and Brown communities and hurting families in New Jersey and across our nation,” **said U.S. Senator Cory Booker**. “Today is a historic day, and I applaud Governor Murphy, the legislature, and the many advocates for racial and social justice whose leadership is ensuring that New Jersey is at the forefront of equitable marijuana legalization policy. I will continue

to work with my colleagues in the Senate to end the federal marijuana prohibition so we can finally begin healing the wounds of decades of injustice.”

“This is a historic reform that will have a real-life impact on social justice, law enforcement and the state’s economy,” **said Senate President Steve Sweeney.** “We can now move forward to correct social injustices at the same time that marijuana is made legal for adults. This will launch a new cannabis industry with the potential to create jobs and generate economic activity at a time when it is desperately needed. The decriminalization law is the most sweeping measure of its kind in the country and is a groundbreaking step in our continued effort to make criminal justice reforms that are fairer and more effective. This will help reduce the racial disparities and social inequities that have long plagued our criminal justice system.”

“For the last fifty years, marijuana criminalization has been used as a tool to propel mass incarceration,” **said Senator Sandra Cunningham.** “It has done immeasurable harm to Black and Brown communities around the country, and today we begin to right the ship here in New Jersey. I look forward to seeing the tangible impact this legislation has on our communities in the years to come.”

“I am proud to have been a driving force behind the most progressive decriminalization law in the country and I am grateful to finally see it enacted,” **said Senator Teresa Ruiz.** “Every day roughly 100 people in New Jersey are arrested for marijuana possession, this law is a move that offers individuals a second chance and ensures they do not become entangled in the criminal justice system. This is yet another step towards bringing justice and equity to our communities. Going forward, we must continue to look for creative solutions to reverse the generational impact the War on Drugs has had.”

“This will usher in a new era of social justice by doing away with the failed policy that criminalized the use of marijuana,” **said Senator Nicholas Scutari, the leading advocate of legalizing adult-use marijuana in New Jersey over the past decade.** “Too many people have been arrested, incarcerated and left with criminal records that disrupt and even destroy their lives. We don’t want the criminal justice system to be an unfair barrier to success. By implementing a regulated system that allows people age 21 and over to purchase limited amounts of marijuana for personal use we will bring marijuana out of the underground market where it can be controlled, regulated and taxed, just as alcohol has been for decades. *New Jersey will now be a leader in legalizing a once stigmatized drug in ways that will help the communities hurt the most by the War on Drugs and realize the economic benefits of the new adult-use cannabis market.*”

“We’re moving closer to the long-overdue need to end cannabis prohibition,” **said Assemblywoman Annette Quijano.** “So much time, effort, and thought have gone into this legislation. We’ve continued conversations, for what I believe, has produced a stronger piece of legislation with a focused eye toward social justice and equity. This is the beginning of a new era of economic opportunity, social justice for marijuana possession, and hope for a better future for thousands of New Jersey residents.”

“With legalization comes an unprecedented opportunity for residents to clean the slate with expungement provisions and for communities to grow their economic base with businesses,” **said Assemblyman Jamel Holley.** “A key component of cannabis legalization is

addressing social justice concerns. The fact that Black New Jerseyans are 3 or 4 times more likely to be arrested on cannabis charges has contributed to the disenfranchisement of black communities. We have the opportunity here to also right the wrongs in our society in regards to past criminal possession of cannabis. No matter where you stand in the legalized marijuana debate, there has been a clear understanding that minorities within our urban communities have been hit hardest in the so-called War on Drugs. During this entire campaign for legalization, there has been one united vocal stance: There was harm done in the past and it must be corrected.”

“This new law includes real, enterprising opportunities for New Jersey communities that have been disproportionately impacted by cannabis prohibition, along with more defined employment opportunities and a commission that requires diversity,” said **Assemblywoman Britnee Timberlake**. “This will be a clear revenue generator for the State, and the social justice and diversity portion in the legislation remains imperative.”

“Undoubtedly, this is the largest regulatory undertaking the state has considered since the Casino Control Commission,” said **Assemblywoman Angela McKnight**. “Remaining at status quo meant continued disparity in arrests for African Americans and teens for amounts now to be considered personal use. We are moving the state in a direction more compassionate for cannabis and in line with what is happening across the country in regards to legalization.”

“This has been a long time coming in our State,” said **Assemblyman Joseph Danielsen**. “who chairs the Assembly Federal Relations and Oversight Reform Committee led the discussion on the bill in today’s hearing. “Social justice for black and brown communities, which have been generationally impacted by cannabis prohibition, and equity in business are priorities in this legislation. We cannot fairly, or effectively provide regulation without ensuring these communities stay at the forefront of the conversation.”

“New Jersey voters on November 3rd issued the Legislature a mandate: to provide the infrastructure for the legalization of cannabis in New Jersey. Today, we move on that directive by presenting legislation for discussion with fellow legislation and statewide stakeholders,” said **Assemblyman Benjie Wimberly**. “The War on Drugs in many ways became a war on particular communities, incarcerating millions of black and brown people and affecting families irreparably for decades. Our work on refining this legislation aims to correct the economic and social justice disparities surrounding cannabis use.”

“With Governor Murphy’s signature, the decades-long practice of racist marijuana enforcement will begin to recede, in a shift that emphasizes the urgency of building the most equitable framework possible for cannabis legalization,” said **Amol Sinha, Executive Director of the American Civil Liberties Union of New Jersey, which is a founding member of New Jersey United for Marijuana Reform**. “With this historic reform, New Jersey also shifts our approach to youth possession and use by moving away from the punitive status quo to a framework that values public health, harm reduction, and the well-being of young people. Our state’s cannabis laws can set a new standard for what justice can look like, with the removal of criminal penalties for possession and an unprecedented portion of tax revenue dedicated to addressing the harms wrought by the drug war. Signing these laws puts in motion the next phase of this effort: to work relentlessly to transform the principles of legalization into greater racial and social justice in New Jersey. This is a new beginning – and the culmination of years of advocacy – and we must keep in mind that it is only the start.”

Under A21, the Cannabis Regulatory Commission (CRC) will promulgate regulations to govern the medical and adult-use industries and oversee the applications for licensing of cannabis businesses. The legislation further provides for the Legislature to reinvest cannabis revenues in designated “impact zones”; directs the CRC to promote diversity and inclusion in business ownership; and contains critical employment protections for people who engage in lawful behavior with respect to cannabis.

A1897 reforms criminal and civil penalties for marijuana and hashish offenses, as well as provides remedies for people currently facing certain marijuana charges. The bill prevents unlawful low-level distribution and possession offenses from being used in pretrial release, probation, and parole decisions and provides certain protections against discrimination in employment, housing, and places of public accommodation. The bill also creates a pathway to vacate active sentences for certain offenses committed before enactment of the enabling legislation.

The Governor today also signed S3454 into law, clarifying penalties for marijuana and cannabis possession and consumption for individuals younger than 21 years old. The legislation corrects inconsistencies in A21 and A1897 concerning marijuana and cannabis penalties for those underage.

“I have been working on decriminalizing adult-use marijuana for well over three years now, and I am happy to finally see it become a reality,” **said Senator Ronald Rice**. “This is a common-sense and just law that gives an equal playing field for folks in communities of color. Many have argued that legalizing adult-use marijuana has been for social, economic and criminal justice, however, decriminalization for me, is equally as important. I will continue to watch closely and fight to ensure communities of color are treated equally.”

“This is only one piece in the many parts of change that must be done in the name of social justice for our communities. The War on Drugs in many ways became a war on particular communities, incarcerating millions of people and affecting families irreparably for decades,” **said Assemblyman Benjie Wimberly**. “The action we take now to help our black and brown communities who have been disproportionately affected by current laws surrounding cannabis use is critical to trauma for future generations.”

“There have been far too many people, especially those from Black and Hispanic communities, who have been negatively impacted by the criminalization of cannabis,” **said Assemblywoman Annette Quijano**. “There have been long-term impacts on the lives of all people in this state, but considerably those of color. This law is the product of taking a hard look at our current laws, listening to the will of the majority of New Jerseyans and taking a common-sense approach to cannabis offenses.”

“Black New Jerseyans are up to four times more likely to be arrested on cannabis charges than White people. It is a sad fact, a further painful reminder that so people in our communities have been disenfranchised for far too long,” **said Assemblyman Jamel Holley**. “There have always been glaring social justice concerns and obvious inequity in the high number of arrests of minority residents. Now, finally, this is the time for it to stop.”

“It’s time for the change we seek,” **said Assemblywoman Angela McKnight**. “New Jersey residents are not happy with the status quo and we need to move in a direction of compassion for the

communities that have long been targeted by current regulatory criteria. The call for action, for social justice reform, is resounding throughout our nation. And it begins in New Jersey today.”

“Decriminalization and expungement for those who have been disproportionately incarcerated for marijuana offenses is well overdue in New Jersey and many other states throughout this nation,” **said Assemblywoman Britnee Timberlake**. “A criminal marijuana charge has a detrimental effect on an individual’s opportunity to access higher education, obtain gainful employment, receive housing support, and address child custody issues. Not all communities are impacted equally by marijuana enforcement, measures to reduce the collateral consequences of criminal records are ones of racial, social, and economic justice. This is about social justice for a people who have endured the inequities in the law for generations.”

In July 2019, Governor Murphy [signed legislation \(“The Jake Honig Compassionate Use Medical Cannabis Act”\) to reform New Jersey’s Medicinal Marijuana Program \(MMP\) and expand patient access to medical marijuana](#), ensuring this life-changing medical treatment is affordable and accessible for those who need it most.

In December 2019, Governor Murphy signed [one of the most progressive expungement reforms in the nation](#), giving individuals entangled in the criminal justice system the opportunity to fully participate in society. S4154 eliminated fees for expungement applications and additionally created a petition process for “clean slate” expungement for residents, as well as required the State to implement an automated clean slate expungement system. Furthermore, the bill required that low-level marijuana convictions be sealed upon the disposition of a case, preventing those convictions from being used against individuals in the future.