

2C:35-10
LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

LAWS OF: 2021 **CHAPTER:** 9

NJSA: 2C:35-10 (Reclassifies possession of psilocybin as disorderly persons offense.)

BILL NO: S3256 (Substituted for A5084)

SPONSOR(S) Scutari, Nicholas P. and others

DATE INTRODUCED: 12/7/2020

COMMITTEE: **ASSEMBLY:** ---

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** 12/17/2020

SENATE: 12/17/2020

DATE OF APPROVAL: 2/4/2021

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Introduced bill enacted) Yes

S3256

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A5084

INTRODUCED BILL (INCLUDES SPONSOR'S STATEMENT): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No
LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No
GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No
HEARINGS: No
NEWSPAPER ARTICLES: Yes

Hoover, Amanda. "Murphy signs bill easing penalties for 'magic' mushrooms." Hunterdon County Democrat (Flemington, NJ), February 7, 2021

RH/CL

P.L. 2021, CHAPTER 9, *approved February 4, 2021*

Senate, No. 3256

1 AN ACT concerning psilocybin and amending N.J.S.2C:35-10.

2

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

5

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

7 2C:35-10. Possession, Use or Being Under the Influence, or
8 Failure to Make Lawful Disposition.

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

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

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

26 (3) Possession of more than 50 grams of marijuana, including
27 any adulterants or dilutants, or more than five grams of hashish is
28 guilty of a crime of the fourth degree, except that, notwithstanding
29 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
30 \$25,000.00 may be imposed; **[or]**

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

34 (5) Possession of one ounce or less of psilocybin is a disorderly
35 persons offense.

36 Any person who commits any offense defined in this section
37 while on any property used for school purposes which is owned by
38 or leased to any elementary or secondary school or school board, or
39 within 1,000 feet of any such school property or a school bus, or
40 while on any school bus, and who is not sentenced to a term of
41 imprisonment, shall, in addition to any other sentence which the

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 court may impose, be required to perform not less than 100 hours of
2 community service.

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

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

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

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

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 Currently, pursuant to paragraph (1) of subsection a. of
32 N.J.S.2C:35-10, possession of any amount of psilocybin, a Schedule
33 I controlled dangerous substance, is a crime of the third degree.
34 This bill would reclassify possession of psilocybin as a disorderly
35 persons offense, punishable by up to up to six months
36 imprisonment, a fine of up to \$1,000, or both.

37

38

39

40

41 _____
42 Reclassifies possession of psilocybin as disorderly persons
offense.

SENATE, No. 3256

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator M. TERESA RUIZ

District 29 (Essex)

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

SYNOPSIS

Reclassifies possession of psilocybin as disorderly persons offense.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2020)

S3256 SCUTARI, RUIZ

2

1 AN ACT concerning psilocybin and amending N.J.S.2C:35-10.

2

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

5

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

7 2C:35-10. Possession, Use or Being Under the Influence, or
8 Failure to Make Lawful Disposition.

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

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

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

26 (3) Possession of more than 50 grams of marijuana, including
27 any adulterants or dilutants, or more than five grams of hashish is
28 guilty of a crime of the fourth degree, except that, notwithstanding
29 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
30 \$25,000.00 may be imposed; **[or]**

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

34 (5) Possession of one ounce or less of psilocybin is a disorderly
35 persons offense.

36 Any person who commits any offense defined in this section
37 while on any property used for school purposes which is owned by
38 or leased to any elementary or secondary school or school board, or
39 within 1,000 feet of any such school property or a school bus, or
40 while on any school bus, and who is not sentenced to a term of
41 imprisonment, shall, in addition to any other sentence which the
42 court may impose, be required to perform not less than 100 hours of
43 community service.

44 b. Any person who uses or who is under the influence of any
45 controlled dangerous substance, or its analog, for a purpose other

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 than the treatment of sickness or injury as lawfully prescribed or
2 administered by a physician is a disorderly person.

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

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

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

21

22 2. This act shall take effect immediately.

23

24

25

STATEMENT

26

27 Currently, pursuant to paragraph (1) of subsection a. of
28 N.J.S.2C:35-10, possession of any amount of psilocybin, a Schedule
29 I controlled dangerous substance, is a crime of the third degree.
30 This bill would reclassify possession of psilocybin as a disorderly
31 persons offense, punishable by up to up to six months
32 imprisonment, a fine of up to \$1,000, or both.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3256

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2020

The Senate Judiciary Committee reports favorably Senate Bill No. 3256.

This bill would reclassify possession of one ounce or less of psilocybin, a mushroom with hallucinogenic effects when consumed, as a disorderly persons offense, punishable by a term of imprisonment, a fine of up to \$1,000, or both. Currently, pursuant to paragraph (1) of subsection a. of N.J.S.2C:35-10, possession of any amount of psilocybin, a Schedule I controlled dangerous substance, is a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment of three to five years, and this particular crime is subject to an enhanced fine of up to \$35,000 (the standard fine is \$15,000), or both.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3256
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: DECEMBER 22, 2020

SUMMARY

- Synopsis:** Reclassifies possession of psilocybin as disorderly persons offense.
- Type of Impact:** Annual expenditure and revenue decreases to the State. Annual expenditure increases and decreases to counties. Annual expenditure and revenue increases to municipal governments.
- Agencies Affected:** The Judiciary; Department of Law and Public Safety; Office of the Public Defender; Department of Corrections; State Parole Board; County and Municipal Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Decrease	Indeterminate
State Revenue Decrease	Indeterminate
Local Expenditure Increase	Indeterminate
Local Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that downgrading the possession of psilocybin to a disorderly persons offense would reduce annual State expenditures by an indeterminate amount, as the Judiciary would have to adjudicate fewer cases and fewer individuals would be incarcerated in State correctional facilities.
- The OLS lacks sufficient information to accurately forecast the savings that would be realized in State correctional facilities. According to data available on the Department of Corrections (DOC) website, as of January 2020, approximately 13 percent of the offender population was incarcerated for drug offenses. However, the OLS does not have data for exactly how many of these offenders were incarcerated specifically for possession of psilocybin. Furthermore, the DOC points out that “virtually all drug offenses are for sale and distribution rather than for mere possession.”
- An indeterminate decrease in annual State revenues would occur from the downgrading of this psilocybin offense, as collections from court filing fees and penalties would decline by indeterminate amounts.

- Annual county expenditures would increase, as defendants would be sent to county jails for a disorderly persons offense instead of being incarcerated in State prisons for a crime of the third degree. There would also be a decrease in county expenditures, attributable to a reduction in the number of cases county prosecutor's offices would have to prosecute, as the cases would instead be tried in municipal courts.
- Municipalities would incur indeterminate caseload and expenditure increases, as cases would move to the municipal courts. Annual municipal revenue would increase in the form of court filing fees and penalties as more cases enter municipal court.

BILL DESCRIPTION

This bill would reclassify possession of one ounce or less of psilocybin, a mushroom with hallucinogenic effects when consumed, as a disorderly persons offense, punishable by a term of imprisonment, a fine of up to \$1,000, or both. Currently, possession of any amount of psilocybin, a Schedule I controlled dangerous substance, is a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment of three to five years, and this particular crime is subject to an enhanced fine of up to \$35,000 (the standard fine is \$15,000), or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that downgrading the possession of psilocybin to a disorderly persons offense would reduce annual State expenditures by an indeterminate amount, as the Judiciary would have to adjudicate fewer cases and fewer individuals would be incarcerated in State correctional facilities.

The OLS lacks sufficient information to accurately forecast the savings that would be realized in State correctional facilities. According to data available on the Department of Corrections (DOC) website, as of January 2020, approximately 13 percent of the offender population was incarcerated for drug offenses. However, the OLS does not have data for exactly how many of these offenders were incarcerated specifically for possession of psilocybin. Furthermore, the DOC points out that "virtually all drug offenses are for sale and distribution rather than for mere possession."

An indeterminate decrease in annual State revenues would occur from the downgrading of this psilocybin offense, as collections from court filing fees and penalties would decline by indeterminate amounts.

Annual county expenditures would increase, as defendants would be sent to county jails for a disorderly persons offense instead of being incarcerated in State prisons for a crime of the third degree. There would also be a decrease in county expenditures, attributable to a reduction in the number of cases county prosecutor's offices would have to prosecute, as the cases would instead be tried in municipal courts.

Municipalities would incur indeterminate caseload and expenditure increases, as cases would move to the municipal courts. Annual municipal revenue would increase in the form of court filing fees and penalties as more cases 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.).

ASSEMBLY, No. 5084

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 30, 2020

Sponsored by:

Assemblyman JAMES J. KENNEDY

District 22 (Middlesex, Somerset and Union)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

SYNOPSIS

Reclassifies possession of psilocybin as disorderly persons offense.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2020)

A5084 KENNEDY, CALABRESE

2

1 AN ACT concerning psilocybin and amending N.J.S.2C:35-10.

2

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

5

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

7 2C:35-10. Possession, Use or Being Under the Influence, or
8 Failure to Make Lawful Disposition.

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

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

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

26 (3) Possession of more than 50 grams of marijuana, including
27 any adulterants or dilutants, or more than five grams of hashish is
28 guilty of a crime of the fourth degree, except that, notwithstanding
29 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
30 \$25,000.00 may be imposed; **[or]**

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

34 (5) Possession of one ounce or less of psilocybin is a disorderly
35 persons offense.

36 Any person who commits any offense defined in this section
37 while on any property used for school purposes which is owned by
38 or leased to any elementary or secondary school or school board, or
39 within 1,000 feet of any such school property or a school bus, or
40 while on any school bus, and who is not sentenced to a term of
41 imprisonment, shall, in addition to any other sentence which the
42 court may impose, be required to perform not less than 100 hours of
43 community service.

44 b. Any person who uses or who is under the influence of any
45 controlled dangerous substance, or its analog, for a purpose other

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 than the treatment of sickness or injury as lawfully prescribed or
2 administered by a physician is a disorderly person.

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

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

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

21

22 2. This act shall take effect immediately.

23

24

25

STATEMENT

26

27 Currently, pursuant to paragraph (1) of subsection a. of
28 N.J.S.2C:35-10, possession of any amount of psilocybin, a Schedule
29 I controlled dangerous substance, is a crime of the third degree.
30 This bill would reclassify possession of psilocybin as a disorderly
31 persons offense, punishable by up to up to six months
32 imprisonment, a fine of up to \$1,000, or both.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5084

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2020

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5084.

This bill would reclassify possession of psilocybin as a disorderly persons offense. Currently, possession of psilocybin is a crime of the third degree pursuant to paragraph (1) of subsection a. of N.J.S.2C:35-10.

Psilocybin is a Schedule I controlled dangerous substance pursuant to section 5 of P.L.1970, c.226 (C.24:21-5), meaning that it “has high potential for abuse and no accepted medical use in treatment in the United States, or lacks accepted safety for use in treatment under medical supervision.”

A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. A disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

Governor Murphy Takes Action on Legislation

02/4/2021

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

S-2384/A-4129 (Greenstein, Gill/Spearman, Vainieri Huttel, Mukherji) – Requires health care facilities to report certain coronavirus disease 2019 (COVID-19) data related to health care workers and certain first responders

S-2607/A-2785 (Smith, Greenstein/Benson, McKeon) – Requires land use plan element of municipal master plan to include climate change-related hazard vulnerability assessment

[Copy of Statement](#)

S-3220/A-5122 (Sweeney, Turner, Cruz-Perez/Spearman, Dancer, Johnson) – Permits exemption from civil service law enforcement examination requirement for entry level-law enforcement officers

[Copy of Statement](#)

S-3230/A-5115 (Greenstein, Corrado/Moriarty, Conaway, Calabrese, Chiaravalloti) – Appropriates \$30.387 million from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects

S-3256/A-5084 (Scutari, Ruiz/Kennedy, Calabrese) – Reclassifies possession of psilocybin as disorderly persons offense

A-4941/S-3122 (Mejia/Sacco) – Authorizes State Treasurer to sell and convey certain surplus real property located in Town of Secaucus, Hudson County

A-4943/S-3092 (Wirths, Space, Bergen/Oroho) – Authorizes State Treasurer to sell and convey certain surplus real property located in Borough of Franklin, Sussex County

A-5113/S-3235 (Timberlake, Sumter, Caputo/Beach, Pou) – Appropriates \$11,777,499 from constitutionally dedicated CBT revenues to NJ Historic Trust for grants for certain historic preservation projects and associated administrative expenses

A-5114/S-3229 (DeAngelo, Speight, Swain/Codey, Corrado) – Appropriates \$37.16 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development projects

A-5116/S-3196 (Johnson, Auth, Schepisi/Cardinale, Smith) – Authorizes State Treasurer to sell and convey certain surplus real property located in the Township of Mahwah, County of Bergen

Governor Murphy conditionally vetoed the following bill:

S-3252/A-5089 (Vitale) – CONDITIONAL – Clarifies that County Option Hospital Fee Pilot Program expires five years after each participating county has collected fee and that participating counties in program are not liable for fee imposed on hospitals

[Copy of Statement](#)

Governor Murphy absolute vetoed the following bill:

S-3283/A-5151 (Addiego, Lagana, Gopal/Egan, Armato, Downey, Bramnick) – ABSOLUTE – Concerns emergency unemployment benefits and shared work benefits

[Copy of Statement](#)

