

SENATE, No. 472

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

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SYNOPSIS

Decriminalizes possession of 15 grams or less of marijuana, imposes civil penalties, and establishes fund for drug education.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/17/2018)

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.2C:35-10 is amended to read as follows:

9 2C:35-10. Possession, Use or Being Under the Influence, or
10 Failure to Make Lawful Disposition.

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

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

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

28 (3) Possession of more than 50 grams of marijuana, including
29 any adulterants or dilutants, or more than five grams of hashish is
30 guilty of a crime of the fourth degree, except that, notwithstanding
31 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
32 \$25,000.00 may be imposed; **[or]**

33 (4) Possession of more than 15 grams but less than 50 grams **[or**
34 **less]** of marijuana, including any adulterants or dilutants, or five
35 grams or less of hashish is a disorderly person; or

36 (5) Possession of 15 grams or less of marijuana is not a
37 violation of this title, but shall be subject to the penalties set forth in
38 section 5 of P.L. , c. (C.) (pending before the Legislature as
39 this bill).

40 Any person who commits any offense defined in this section
41 while on any property used for school purposes which is owned by
42 or leased to any elementary or secondary school or school board, or
43 within 1,000 feet of any such school property or a school bus, or
44 while on any school bus, and who is not sentenced to a term of
45 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 Notwithstanding the provisions of this subsection, it shall not be a
8 violation of this section for a person to be under the influence of
9 marijuana.

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

20 c. Any person who knowingly obtains or possesses a controlled
21 dangerous substance or controlled substance analog in violation of
22 subsection a. of this section and who fails to voluntarily deliver the
23 substance to the nearest law enforcement officer is guilty of a
24 disorderly persons offense. Nothing in this subsection shall be
25 construed to preclude a prosecution or conviction for any other
26 offense defined in this title or any other statute. This subsection
27 shall not apply to possession of 15 grams or less of marijuana.

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

29

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

31 2C:36-2. Use or possession with intent to use, disorderly persons
32 offense.

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

41 Use, or possession with intent to use, drug paraphernalia for
42 personal use of 15 grams or less of marijuana is not a violation of
43 this title but shall be subject to the penalties set forth in section 6 of
44 P.L. , c. (C.) (pending before the Legislature as this bill).

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

46

47 3. N.J.S.2B:12-17 is amended to read as follows:

1 2B:12-17. Jurisdiction of specified offenses. A municipal court
2 has jurisdiction over the following cases within the territorial
3 jurisdiction of the court:

- 4 a. Violations of county or municipal ordinances;
- 5 b. Violations of the motor vehicle and traffic laws;
- 6 c. Disorderly persons offenses, petty disorderly persons
7 offenses and other non-indictable offenses except where exclusive
8 jurisdiction is given to the Superior Court;
- 9 d. Violations of the fish and game laws;
- 10 e. Proceedings to collect a penalty where jurisdiction is granted
11 by statute;
- 12 f. Violations of laws regulating boating; **[and]**
- 13 g. Violations of section 5 and 6 of P.L. _____, c. _____ (C. _____)
14 (pending before the Legislature as this bill); and
- 15 h. Any other proceedings where jurisdiction is granted by
16 statute.

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

18

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

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

34 A person who violates this section shall be fined not less than
35 \$50.00 and shall forthwith forfeit his right to operate a motor
36 vehicle for a period of two years from the date of his conviction.
37 This section shall not apply to possession of 15 grams or less of
38 marijuana.

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

40

41 5. (New section) a. Any person who possesses 15 grams or
42 less of marijuana, as defined in N.J.S.2C:35-2, except as authorized
43 by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to the
44 following civil penalties:

- 45 (1) \$150 for a first violation;
- 46 (2) \$200 for a second violation;
- 47 (3) \$500 for a third or subsequent violation.

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

3 The penalty shall be collected pursuant to the “Penalty
4 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
5 in a summary proceeding before the municipal court having
6 jurisdiction. A penalty recovered under the provisions of this
7 section shall be recovered by and in the name of the State by the
8 local municipality. The penalty shall be paid into the treasury of
9 the municipality in which the violation occurred. Of each penalty
10 imposed pursuant to this section, \$50 shall be forwarded by the
11 municipality to the State to be deposited in the “Drug Education
12 Program Fund” established pursuant to section 7 of P.L. , c. (C.)
13 (pending before the Legislature as this bill). The remainder of the
14 penalty monies collected pursuant to this section shall be retained
15 by the municipality for the general uses of the municipality.

16 The court may waive the penalties in cases of extreme financial
17 hardship.

18 b. In addition to any civil penalty imposed, a person who is 21
19 years of age or older who commits a third or subsequent violation
20 shall be referred to a drug education program approved by the
21 Division of Mental Health and Addiction Services in the
22 Department of Human Services. The person who committed the
23 violation shall pay any costs associated with his participation in a
24 drug education program consistent with the nature and extent of his
25 assets and his ability to pay. The court may also order a person
26 who is 21 years of age or older who commits a third or subsequent
27 violation to undergo a professional diagnostic assessment to
28 determine whether and to what extent the person would benefit
29 from drug treatment. If the assessment shows that the person would
30 benefit from drug treatment the person shall be referred for such
31 treatment. The person shall pay any costs associated with the
32 assessment and if applicable his participation in drug treatment.

33 c. In addition to any civil penalty imposed, a person who
34 commits a violation who is less than 21 years of age at the time of
35 the violation shall be referred to a drug education program approved
36 by the Division of Mental Health and Addiction Services in the
37 Department of Human Services. The person who committed the
38 violation shall pay any costs associated with his participation in a
39 drug education program consistent with the nature and extent of his
40 assets and his ability to pay. A person who is less than 21 years of
41 age at the time of the violation who commits a third or subsequent
42 violation may be ordered by the court to undergo a professional
43 diagnostic assessment to determine whether and to what extent the
44 person would benefit from drug treatment. If the assessment shows
45 that the person would benefit from drug treatment the person shall
46 be referred for such treatment. The person shall pay any costs
47 associated with the assessment and if applicable his participation in
48 drug treatment.

1 d. Any person who is under the age of 18 who commits a
2 violation of this section shall be referred to the Superior Court,
3 Chancery Division, Family Part for an appropriate disposition.

4 e. A violation of this section shall be proved by a
5 preponderance of the evidence.

6
7 6. (New section) Any person who possesses drug
8 paraphernalia, as defined in N.J.S.2C:36-1, for personal use of 15
9 grams or less of marijuana, as defined in N.J.S.2C:35-2, except as
10 authorized by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to
11 a \$100 civil penalty. No additional fines, penalties, or fees shall be
12 imposed by the court, except court costs.

13 The penalty shall be collected pursuant to the “Penalty
14 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
15 in a summary proceeding before the municipal court having
16 jurisdiction. A penalty recovered under the provisions of this
17 section shall be recovered by and in the name of the State by the
18 local municipality. The penalty shall be paid into the treasury of
19 the municipality in which the violation occurred. Of each penalty
20 imposed pursuant to this section, \$50 shall be forwarded by the
21 municipality to the State to be deposited in the “Drug Education
22 Program Fund” established pursuant to section 7 of P.L. , c. C.)
23 (pending before the Legislature as this bill). The remainder of the
24 penalty monies collected pursuant to this section shall be retained
25 by the municipality for the general uses of the municipality.

26 A violation of this section shall be proved by a preponderance of
27 the evidence.

28
29 7. (New section) The “Drug Education Program Fund” is
30 established as a dedicated, nonlapsing, revolving fund in the
31 Department of the Treasury. Monies deposited in the fund shall be
32 appropriated to the Department of Human Services, Division of
33 Mental Health and Addiction Services for drug education programs.

34
35 8. (New section) The Commissioner of Human Services shall
36 adopt rules and regulations pursuant to the “Administrative
37 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), in order to
38 effectuate the purposes of section 5 of P.L. , c. (C.)
39 (pending before the Legislature as this bill).

40
41 9. This act shall take effect on the first day of the fourth month
42 following enactment.

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44

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STATEMENT

46

47 This bill would decriminalize possession of 15 grams or less of
48 marijuana.

1 This bill amends N.J.S.2C:35-10, possession, use or being under
2 the influence, to provide that a person who is found to possess 15
3 grams or less of marijuana would be subject to a civil penalty: \$150
4 fine for a first violation, a \$200 fine for a second violation, and a
5 \$500 fine for a third or subsequent violation. The bill allows the
6 court to waive the penalties in case of extreme financial hardship.

7 Under the current law, possession of more than 15 grams but less
8 than 50 grams (a disorderly persons offense) and possession of 50
9 grams or more (which is a crime of the fourth degree) would remain
10 unchanged.

11 Under current law, it is a disorderly persons offense to use or be
12 under the influence of any controlled dangerous substance, or its
13 analog, for a purpose other than the treatment of sickness or injury
14 as lawfully prescribed or administered by a physician. This bill
15 provides that it would not be violation to be under the influence of
16 marijuana. Under current law, it is also a disorderly person offense
17 to unlawfully obtain or possess a controlled dangerous substance, or
18 its analog, and to fail to voluntarily deliver it to the nearest law
19 enforcement officer. The bill provides that this statute would not
20 apply to possession of 15 grams or less of marijuana.

21 Currently, use or possessing with intent to use drug
22 paraphernalia is a disorderly persons offense. The bill provides that
23 a person who possesses drug paraphernalia for the personal use of
24 15 grams or less of marijuana would not be guilty of a criminal
25 violation but instead would be subject to a \$100 civil penalty.

26 The bill would amend N.J.S.2B:12-17 which sets out the
27 jurisdiction of the municipal court to add jurisdiction for the new
28 civil penalties created by the bill.

29 Under section 1 of P.L.1964, c.289 (C.39:4-49.1) a person who
30 operates a motor vehicle while in possession with a controlled
31 dangerous substance or prescription drugs without a valid
32 prescription is subject to a fine of not less \$50 and forfeits his right
33 to operate a motor vehicle for two years. The bill provides that
34 these penalties would not apply to possession of 15 grams or less of
35 marijuana.

36 The bill provides that all fines would be recovered by and in the
37 name of the State by the local municipality and would be paid into
38 the treasury of the municipality in which the violation occurred for
39 the general uses of the municipality.

40 In addition, the bill provides that any person who is 21 years of
41 age or older who commits a third or subsequent violation would be
42 referred to a drug education program approved by the Division of
43 Mental Health and Addition Services in the Department of Human
44 Services.

45 A person who is less than 21 years of age at the time of the
46 violation would be referred to an approved drug education program
47 following any violation. The person who committed the violation

1 would be responsible for paying any costs associated with his
2 participation in the program, consistent with his ability to pay.

3 If the violation is committed by a person under the age of 18, the
4 person would be referred to the Family Part of the Chancery
5 Division of the Superior Court for an appropriate disposition.

6 The Commissioner of Human Services would adopt any rules
7 and regulations necessary to effectuate the purposes the bill.

8 The civil penalties under the bill would not apply to any person
9 who is in compliance with the “New Jersey Compassionate Use
10 Medical Marijuana Act,” N.J.S.A.24:6I-1 et al.

11 The bill also provides that \$50 of each penalty imposed pursuant
12 to the bill would be forwarded by the municipality to the State to be
13 deposited in the “Drug Education Program Fund” which would be
14 established by the bill. The remainder of the penalty monies
15 collected would be retained by the municipality for the general uses
16 of the municipality. The court may waive the penalties in cases of
17 extreme financial hardship. The “Drug Education Program Fund”
18 would be a dedicated, nonlapsing, revolving fund in the Department
19 of the Treasury. Monies deposited in the fund would be
20 appropriated to the Department of Human Services, Division of
21 Mental Health and Addiction Services for drug education programs.

22 The bill authorizes the court to order professional diagnostic
23 assessments of adults who have committed a third or subsequent
24 offense to determine whether they would benefit from drug
25 treatment. The person would pay for the assessment. If the
26 assessment shows that the person would benefit from drug
27 treatment the person would be referred for such treatment, and
28 would be responsible for paying any treatment costs. The bill
29 would not change the disposition of offenders under the age of 18.
30 Under the bill, these offenders would be referred to the Superior
31 Court, Chancery Division, Family Part for an appropriate
32 disposition.

33 The bill also specifies that, other than the civil penalties imposed
34 by the bill, the court would not impose additional fines, penalties,
35 or fees, except court costs.