

ASSEMBLY, No. 4952

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 9, 2020

Sponsored by:
Assemblyman JAMEL C. HOLLEY
District 20 (Union)

SYNOPSIS

Decriminalizes small-amount possession of marijuana and hashish, punishable only by fine, or for certain subsequent offenses, community service; dismisses currently pending disorderly persons small-amount possession charges.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** addressing the legal consequences associated with certain
2 marijuana and hashish possession offenses, amending
3 N.J.S.2C:35-2 and N.J.S.2C:35-10, and supplementing chapter
4 35 of Title 2C of the New Jersey Statutes.

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

8
9 1. N.J.S.2C:35-2 is amended to read as follows:
10 2C:35-2. As used in this chapter:

11 "Administer" means the direct application of a controlled
12 dangerous substance or controlled substance analog, whether by
13 injection, inhalation, ingestion, or any other means, to the body of a
14 patient or research subject by: (1) a practitioner (or, in his
15 presence, by his lawfully authorized agent), or (2) the patient or
16 research subject at the lawful direction and in the presence of the
17 practitioner.

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

22 "Controlled dangerous substance" means a drug, substance, or
23 immediate precursor in Schedules I through V, any substance the
24 distribution of which is specifically prohibited in N.J.S.2C:35-3, in
25 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of
26 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120
27 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),
28 and any drug or substance which, when ingested, is metabolized or
29 otherwise becomes a controlled dangerous substance in the human
30 body. When any statute refers to controlled dangerous substances,
31 or to a specific controlled dangerous substance, it shall also be
32 deemed to refer to any drug or substance which, when ingested, is
33 metabolized or otherwise becomes a controlled dangerous substance
34 or the specific controlled dangerous substance, and to any substance
35 that is an immediate precursor of a controlled dangerous substance
36 or the specific controlled dangerous substance. The term shall not
37 include distilled spirits, wine, malt beverages, as those terms are
38 defined or used in R.S.33:1-1 et seq., **[or]** tobacco and tobacco
39 products, or cannabis or cannabis resin as defined in section 3 of
40 P.L. , c. (C.) (pending before the Legislature as Assembly
41 Bill No.). The term, wherever it appears in any law or
42 administrative regulation of this State, shall include controlled
43 substance analogs.

44 "Controlled substance analog" means a substance that has a
45 chemical structure substantially similar to that of a controlled

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 dangerous substance and that was specifically designed to produce
2 an effect substantially similar to that of a controlled dangerous
3 substance. The term shall not include a substance manufactured or
4 distributed in conformance with the provisions of an approved new
5 drug application or an exemption for investigational use within the
6 meaning of section 505 of the "Federal Food, Drug and Cosmetic
7 Act," 52 Stat. 1052 (21 U.S.C. s.355).

8 "Counterfeit substance" means a controlled dangerous substance
9 or controlled substance analog which, or the container or labeling of
10 which, without authorization, bears the trademark, trade name, or
11 other identifying mark, imprint, number, or device, or any likeness
12 thereof, of a manufacturer, distributor, or dispenser other than the
13 person or persons who in fact manufactured, distributed, or
14 dispensed the substance and which thereby falsely purports or is
15 represented to be the product of, or to have been distributed by,
16 such other manufacturer, distributor, or dispenser.

17 "Deliver" or "delivery" means the actual, constructive, or
18 attempted transfer from one person to another of a controlled
19 dangerous substance or controlled substance analog, whether or not
20 there is an agency relationship.

21 "Dispense" means to deliver a controlled dangerous substance or
22 controlled substance analog to an ultimate user or research subject
23 by or pursuant to the lawful order of a practitioner, including the
24 prescribing, administering, packaging, labeling, or compounding
25 necessary to prepare the substance for that delivery. "Dispenser"
26 means a practitioner who dispenses.

27 "Distribute" means to deliver other than by administering or
28 dispensing a controlled dangerous substance or controlled substance
29 analog. "Distributor" means a person who distributes.

30 "Drugs" means (a) substances recognized in the official United
31 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
32 United States, or official National Formulary, or any supplement to
33 any of them; and (b) substances intended for use in the diagnosis,
34 cure, mitigation, treatment, or prevention of disease in man or other
35 animals; and (c) substances (other than food) intended to affect the
36 structure or any function of the body of man or other animals; and
37 (d) substances intended for use as a component of any article
38 specified in subsections (a), (b), and (c) of this section; but does not
39 include devices or their components, parts, or accessories.

40 "Drug or alcohol dependent person" means a person who as a
41 result of using a controlled dangerous substance or controlled
42 substance analog or alcohol has been in a state of psychic or
43 physical dependence, or both, arising from the use of that controlled
44 dangerous substance or controlled substance analog or alcohol on a
45 continuous or repetitive basis. Drug or alcohol dependence is
46 characterized by behavioral and other responses, including but not
47 limited to a strong compulsion to take the substance on a recurring

1 basis in order to experience its psychic effects, or to avoid the
2 discomfort of its absence.

3 "Hashish" means the resin extracted from any part of the plant
4 Genus Cannabis L. and any compound, manufacture, salt,
5 derivative, mixture, or preparation of such resin. "Hashish" shall
6 not mean: hemp or a hemp product cultivated, handled, processed,
7 transported, or sold pursuant to the "New Jersey Hemp Farming
8 Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis resin as defined
9 in section 3 of P.L. , c. (C.) (pending before the Legislature as
10 Assembly Bill No.) which is extracted for use in a cannabis item,
11 as defined in that section, in accordance with the "New Jersey
12 Cannabis Regulatory, Enforcement Assistance, and Marketplace
13 Modernization Act," P.L. , c. (C.) (pending before the
14 Legislature as Assembly Bill No.).

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

31 "Marijuana" means all parts of the plant Genus Cannabis L.,
32 whether growing or not; the seeds thereof, and every compound,
33 manufacture, salt, derivative, mixture, or preparation of the plant or
34 its seeds, except those containing resin extracted from the plant **】**;
35 but shall not include the mature stalks of the plant, fiber produced
36 from the stalks, oil, or cake made from the seeds of the plant, any
37 other compound, manufacture, salt, derivative, mixture, or
38 preparation of mature stalks, fiber, oil, or cake, or the sterilized
39 seed of the plant which is incapable of germination**】**. "Marijuana"
40 shall not mean: hemp or a hemp product cultivated, handled,
41 processed, transported, or sold pursuant to the "New Jersey Hemp
42 Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis as
43 defined in section 3 of P.L. , c. (C.) (pending before the
44 Legislature as this bill) which is cultivated and processed for use in
45 a cannabis item, as defined in that section, in accordance with the
46 "New Jersey Cannabis Regulatory, Enforcement Assistance, and
47 Marketplace Modernization Act," P.L. , c. (C.) (pending
48 before the Legislature as Assembly Bill No.).

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

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

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

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

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

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

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

31 "Practitioner" means a physician, dentist, veterinarian, scientific
32 investigator, laboratory, pharmacy, hospital, or other person
33 licensed, registered, or otherwise permitted to distribute, dispense,
34 conduct research with respect to, or administer a controlled
35 dangerous substance or controlled substance analog in the course of
36 professional practice or research in this State.

37 (a) "Physician" means a physician authorized by law to practice
38 medicine in this or any other state and any other person authorized
39 by law to treat sick and injured human beings in this or any other
40 state.

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

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

45 (d) "Hospital" means any federal institution, or any institution
46 for the care and treatment of the sick and injured, operated or
47 approved by the appropriate State department as proper to be

1 entrusted with the custody and professional use of controlled
2 dangerous substances or controlled substance analogs.

3 (e) "Laboratory" means a laboratory to be entrusted with the
4 custody of narcotic drugs and the use of controlled dangerous
5 substances or controlled substance analogs for scientific,
6 experimental, and medical purposes and for purposes of instruction
7 approved by the Department of Health.

8 "Production" includes the manufacture, planting, cultivation,
9 growing, or harvesting of a controlled dangerous substance or
10 controlled substance analog.

11 "Immediate precursor" means a substance which the Division of
12 Consumer Affairs in the Department of Law and Public Safety has
13 found to be and by regulation designates as being the principal
14 compound commonly used or produced primarily for use, and
15 which is an immediate chemical intermediary used or likely to be
16 used in the manufacture of a controlled dangerous substance or
17 controlled substance analog, the control of which is necessary to
18 prevent, curtail, or limit such manufacture.

19 "Residential treatment facility" means any facility licensed and
20 approved by the Department of Human Services and which is
21 approved by any county probation department for the inpatient
22 treatment and rehabilitation of drug or alcohol dependent persons.

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

30 "State" means the State of New Jersey.

31 "Ultimate user" means a person who lawfully possesses a
32 controlled dangerous substance or controlled substance analog for
33 his own use or for the use of a member of his household or for
34 administration to an animal owned by him or by a member of his
35 household.

36 "Prescription legend drug" means any drug which under federal
37 or State law requires dispensing by prescription or order of a
38 licensed physician, veterinarian, or dentist and is required to bear
39 the statement "Rx only" or similar wording indicating that such
40 drug may be sold or dispensed only upon the prescription of a
41 licensed medical practitioner and is not a controlled dangerous
42 substance or stramonium preparation.

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

46 "Stramonium plant" means the plant *Datura Stramonium* Linne,
47 including *Datura Tatula* Linne.

48 (cf: P.L.2019, c.238, s.10)

1 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;

21 (3) Possession of more than 50 grams of marijuana, including
22 any adulterants or dilutants, or possession of more than two ounces
23 of marijuana, including any adulterants or dilutants, on and after the
24 date determined by the Cannabis Regulatory Commission pursuant to
25 paragraph (2) of subsection d. of section 5 of P.L. , c. (C.)
26 (pending before the Legislature as Assembly Bill No.) to be the
27 first date on which cannabis retailers issued licenses and conditional
28 licenses begin retail sales of personal use cannabis items, as defined
29 in that act, or possession of 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】** \$25,000 may be imposed; or

33 (4) Possession of 50 grams or less of marijuana, including any
34 adulterants or dilutants, or possession of two ounces or less of
35 marijuana, including any adulterants or dilutants, on and after the
36 date determined by the Cannabis Regulatory Commission pursuant to
37 paragraph (2) of subsection d. of section 5 of P.L. , c. (C.)
38 (pending before the Legislature as Assembly Bill No.) to be the
39 first date on which cannabis retailers issued licenses and conditional
40 licenses begin retail sales of personal use cannabis items, as defined
41 in that act, or possession of five grams or less of hashish is **【a**
42 **disorderly person】** guilty of a non-criminal violation, and shall be
43 liable;

44 (a) for a fine of not less than \$200 or more than \$500 for a first
45 offense;

46 (b) for a fine of not less than \$500 or more than \$1,000 for a
47 second offense; and

1 (c) for a fine of not less than \$1,000 or more than \$1,500 for a
2 third or subsequent offense, and additionally for the performance of
3 community service for a period of not less than 30 days or more
4 than 90 days.

5 Any person who commits any offense defined in paragraphs (1)
6 through (3) of this [section] subsection while on any property used
7 for school purposes which is owned by or leased to any elementary
8 or secondary school or school board, or within 1,000 feet of any
9 such school property or a school bus, or while on any school bus,
10 and who is not sentenced to a term of imprisonment, shall, in
11 addition to any other sentence which the court may impose, be
12 required to perform not less than 100 hours of community service.

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

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

27 c. Any person who knowingly obtains or possesses a controlled
28 dangerous substance or controlled substance analog in violation of
29 paragraph (1) through (3) of subsection a. of this section and who
30 fails to voluntarily deliver the substance to the nearest law
31 enforcement officer is guilty of a disorderly persons offense. Any
32 person who knowingly obtains or possesses marijuana or hashish in
33 violation of paragraph (4) of subsection a. of this section and who
34 fails to voluntarily deliver the marijuana or hashish to the nearest
35 law enforcement officer is guilty of a non-criminal violation, and
36 shall be liable in the same manner for first and subsequent
37 violations as set forth in that paragraph (4). Nothing in this
38 subsection shall be construed to preclude a prosecution or
39 conviction for any other offense defined in this title or any other
40 statute.

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

42
43 3. (New section) Except to the extent required to dismiss,
44 withdraw, or terminate the charge, no court shall have jurisdiction
45 over any charge, including any charge of delinquency, based on
46 obtaining or possessing marijuana or hashish in violation of
47 paragraph (4) of subsection a. of N.J.S.2C:35-10 that occurred prior
48 to the effective date of P.L. , c. (C.) (pending before the

1 Legislature as this bill), unless a guilty verdict, plea, or other entry
2 of guilt, or final judgment of conviction or adjudication of
3 delinquency, has been entered on or before that effective date.
4 These non-prosecutable charges and cases shall be expeditiously
5 dismissed, which may be accomplished by appropriate action by a
6 law enforcement agency, or on a motion to the court which would
7 otherwise have jurisdiction over a case, or the court's own motion,
8 based upon guidelines, administrative directives, and court orders
9 issued by the Attorney General, the Administrative Director of the
10 Courts, and the Supreme Court, as appropriate.

11
12 4. This act shall take effect on January 1, 2021, except that the
13 Attorney General, Administrative Director of the Courts, and
14 Supreme Court may take any anticipatory administrative action in
15 advance thereof as may be necessary to effectuate the provisions of
16 this act.

17 18 19 STATEMENT

20
21 This bill would address the legal consequences associated with
22 small-amount marijuana and hashish possession offenses by
23 decriminalizing such offenses and providing for the dismissal,
24 withdrawal, or termination of pending charges based on past
25 offenses which are awaiting further legal proceedings at the time
26 the bill takes effect. In order to distinguish between
27 decriminalizing marijuana and hashish, which would remain
28 products of an unregulated black market and not any form of
29 legalized cannabis or cannabis resin lawfully obtained from a State
30 licensed establishment in accordance with the "New Jersey
31 Cannabis Regulatory, Enforcement Assistance, and Marketplace
32 Modernization Act," introduced as Assembly Bill No. , this bill
33 updates the definitions of both marijuana and hashish to expressly
34 exclude them from being considered legal cannabis and cannabis
35 resin.

36 Decriminalizing Small-Amount Marijuana and Hashish 37 Possession Offenses

38 The bill would regrade the disorderly persons offense for
39 obtaining or possessing 50 grams or less of marijuana, or five grams
40 or less of hashish, currently punishable by a term of imprisonment
41 of up to six months, a fine of up to \$1,000, or both. See
42 N.J.S.2C:35-10, subsection a., paragraph (4). That offense would
43 instead be considered a non-criminal violation, punishable as
44 follows:

45 - for a first offense, a fine of not less than \$200 or more than
46 \$500;

47 - for a second offense, a fine of not less than \$500 or more than
48 \$1,000; and

1 - for a third or subsequent violation, a fine of not less than
2 \$1,000 or more than \$1,5000, and the performance of community
3 service for a period of not less than 30 days or more than 90 days.

4 Beginning on the first date that retail sales of legalized cannabis
5 occur, as determined by the Cannabis Regulatory Commission
6 pursuant to the “New Jersey Cannabis Regulatory, Enforcement
7 Assistance, and Marketplace Modernization Act,” the new non-
8 criminal violation would apply to obtaining or possessing two
9 ounces or less of marijuana (approximately 56 grams), with the
10 same above described penalties applying.

11 The current law’s additional, mandated performance of 100
12 hours of community service for possession on or within 1,000 feet
13 of school property or a school bus would not apply to the new non-
14 criminal violation. Further, the affirmative duty to deliver any
15 small amount of marijuana or hashish to a law enforcement officer
16 as currently required by subsection c. of N.J.S.2C:35-10, punishable
17 as a disorderly persons offense, would also be decriminalized to
18 being a non-criminal offense, subject to the same penalties set forth
19 above.

20 Unlawful possession of more than 50 grams of marijuana, or
21 more than five grams of hashish, would remain a crime of the fourth
22 degree, punishable by a term of imprisonment of up to 18 months, a
23 fine of up to \$25,000, or both. See N.J.S.2C:35-10, subsection a.,
24 paragraph (3). The amount threshold for this crime would increase
25 to more than two ounces of marijuana beginning on the first date
26 that retail sales of legalized cannabis occur.

27 Dismissal, Withdrawal, or Termination of Small-Amount
28 Marijuana and Hashish Possession Charges and Cases

29 Secondly, no court would have jurisdiction over any charge
30 awaiting further proceedings on the effective date of the bill,
31 including any charge of delinquency, except to the extent required
32 to dismiss, withdraw, or terminate the charge, unless a guilty
33 verdict, plea, or other entry of guilt, or final judgment of conviction
34 or adjudication of delinquency had been entered on or before that
35 effective date, for obtaining or possessing 50 grams or less of
36 marijuana, or five grams or less of hashish, in violation of paragraph
37 (4) of subsection a. of N.J.S.2C:35-10, which prior to the bill’s
38 enactment, as described above, is considered a disorderly persons
39 offenses, and following enactment would be decriminalized to be a
40 non-criminal violation. These existing non-prosecutable charges and
41 cases would be expeditiously dismissed, which could be
42 accomplished by appropriate action by a law enforcement agency,
43 or on a motion to the court with jurisdiction over a case, or the
44 court’s own motion, based upon guidelines, administrative
45 directives, and court orders issued by the Attorney General, the
46 Administrative Director of the Courts, and the Supreme Court.

1 Effective Date

2 The bill would take effect on January 1, 2021, providing the
3 Attorney General, Administrative Director of the Courts, and
4 Supreme Court time to take any anticipatory administrative action
5 in advance thereof as may be necessary to effectuate the provisions
6 of the bill.