ASSEMBLY, No. 5535

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 25, 2021

Sponsored by:
Assemblyman SEAN T. KEAN
District 30 (Monmouth and Ocean)
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District 12 (Burlington, Middlesex, Monmouth and Ocean)
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District 28 (Essex)

SYNOPSIS

Requires written notification to parent or guardian of underage person who unlawfully purchases or possesses alcoholic beverages or cannabis; repeals police liability for law enforcement encounters with underage persons under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/25/2021)

AN ACT concerning enforcement of minors' alcohol and cannabis use under certain circumstances, amending P.L.1979, c.264, and repealing P.L.2021 c.25.

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

1. Section 1 of P.L.1979, c.264 (C.2C:33-15) is amended to read as follows:

1. a. (1) Any person under the legal age to purchase alcoholic beverages, or under the legal age to purchase cannabis items, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public assembly, or motor vehicle shall be subject to the following consequences:

(a) for a first violation, a written warning issued by a law enforcement officer to the underage person and, if the underage person is under 18 years of age, a written warning issued by a law enforcement officer to the parent, guardian, or other person having legal custody of the underage person. The written warning shall include the person's name, address, and date of birth, and a copy of the warning containing this information, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a second or subsequent violation subject to the consequences set forth in subparagraph (b) or (c) of this paragraph. **[**Notwithstanding the provisions of section 3 of P.L.1991, c.169 (C.33:1-81.1a) concerning written notification of a**]** If the violation of this section is committed by a person under 18 years of age , a written notification concerning the violation shall be provided to the parent, guardian or other person having legal custody of the underage person **[**, a written notification shall not be provided pursuant to that section for a first violation of this paragraph**]** in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a).

(b) for a second violation, a written warning issued by a law enforcement officer to the underage person indicating that a second violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall provide the person with informational materials about how to access community services provided by public or private agencies and organizations that shall assist the person with opportunities to access further social services,

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.

including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. If the violation is by a person under 18 years of age, a written notification concerning the second violation [, along with a copy of the written warning for the person's first violation,] shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a). The written notification shall include the same or similar informational materials about how to access community services provided by public or private agencies and organizations as those provided directly by a law enforcement officer to a person 18 years of age or older who commits a second violation of this paragraph. A copy of the second written warning to the underage person, and, if applicable, the written notification to the parent, guardian or other person having legal custody of the underage person concerning the second warning, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the second violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a subsequent violation subject to the consequences set forth in subparagraph (c) of this paragraph.

(c) for a third or subsequent violation, a write-up issued by a law enforcement officer to the underage person indicating that a third or subsequent violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall include with the write-up a referral for accessing community services provided by a public or private agency or organization, and provide notice to that agency or organization of the referral which may also be used to initiate contact with the person, and the agency or organization shall offer assistance to the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. If the violation is by a person under 18 years of age, a written notification concerning the third or subsequent violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a). The written notification shall include a referral for the person and the parent, guardian or other person having legal custody of the underage person for accessing community services provided by a public or private agency or organization, and provide notice to that agency or organization of the referral which may also then be used to initiate contact with both persons, and the agency or organization shall offer assistance to both with opportunities to access further social services, including counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. A copy of a write-up for a third or subsequent violation, the written notification to the

parent, guardian or other person having legal custody of the underage person, if applicable, and accompanying referrals, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the third or subsequent violation, shall be temporarily maintained in accordance with this section only to the extent necessary to track referrals to agencies and organizations, as well as for the purposes of determining a subsequent violation subject to the consequences set forth in this subparagraph.

The failure of a person under the legal age to purchase alcoholic beverages or cannabis items, or the failure of a parent, guardian or other person having legal custody of the underage person, to accept assistance from an agency or organization to which a law enforcement referral was made, or to access any community services provided by that agency or organization shall not result in any summons, initiation of a complaint, or other legal action to be adjudicated and enforced in any court.

(2) (a) A person under the legal age to purchase alcoholic beverages or cannabis items is not capable of giving lawful consent to a search to determine a violation of this section, and a law enforcement officer shall not request that a person consent to a search for that purpose.

(b) The odor of an alcoholic beverage, marijuana, hashish, cannabis, or cannabis item, or burnt marijuana, hashish, cannabis, or cannabis item, shall not constitute reasonable articulable suspicion to initiate an investigatory stop of a person, nor shall it constitute probable cause to initiate a search of a person or that person's personal property to determine a violation of paragraph (1) of this subsection. Additionally, the unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of paragraph (1) of this subsection, observed in plain sight by a law enforcement officer, shall not constitute probable cause to initiate a search of a person or that person's personal property to determine any further violation of that paragraph or any other violation of law.

(3) A person under the legal age to purchase alcoholic beverages or cannabis items who violates paragraph (1) of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item shall not be subject to arrest, and shall not be subject to detention or otherwise be taken into custody by a law enforcement officer except to the extent required to issue a written warning or write-up, provide notice of a violation to a parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81a), or make referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation , unless the person is being arrested, detained, or otherwise taken into custody for also committing another

violation of law for which that action is legally permitted or required.

(4) Consistent with the provisions of subsection c. of section 1 of P.L.2020, c.129 (C.40A:14-118.5), the video and audio recording functions of a law enforcement officer's body worn camera, as defined in that section, shall be activated whenever the law enforcement officer is responding to a call for service related to a violation or suspected violation of paragraph (1) of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that paragraph, and shall remain activated until the encounter has fully concluded and the officer leaves the scene of the encounter; provided, however, that the video and audio recording functions of a body worn camera shall not be deactivated pursuant to subparagraph (a) of paragraph (2) of subsection c. of P.L.2020, c.129 (C.40A:14-118.5), based on a request to deactivate the camera by a person who is the subject of a responsive call for service or law enforcement or investigative encounter related to a violation or suspected violation of paragraph (1)of this subsection.

(5) As part of the process for the issuance of a written warning or write-up to a person for a violation of paragraph (1)of this subsection, the law enforcement officer shall take possession of any alcoholic beverage, marijuana, hashish, or cannabis item from the person, and any drug or cannabis paraphernalia for use with any marijuana, hashish, or cannabis item. The existence and description of the alcoholic beverage, marijuana, hashish, or cannabis item, and any drug or cannabis paraphernalia shall be included in the sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed a violation, and which record is temporarily maintained in accordance with this section to determine subsequent possession or consumption violations, and track referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation. Any alcoholic beverage, marijuana, hashish, cannabis item, or drug or cannabis paraphernalia obtained by the law enforcement officer shall either be destroyed or secured for use in law enforcement training or educational programs in accordance with applicable law and directives issued by the Attorney General.

(6) With respect to any violation of paragraph (1) of this subsection concerning the possession or consumption of an alcoholic beverage, marijuana, hashish, or any cannabis item:

(a) a person under the legal age to purchase alcoholic beverages or cannabis items shall not be photographed or fingerprinted, notwithstanding any provisions of section 2 of P.L.1982, c.79 (C.2A:4A-61) to the contrary;

(b) (i) any copy of any written warning or write-up issued to a person under the legal age to purchase alcoholic beverages or cannabis items, written notification provided to the person's parent, guardian or other person having legal custody in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement describing the relevant facts and circumstances that support an officer's determination that a person committed a violation, or referrals for accessing community services provided by a public or private agency or organization pertaining to a third or subsequent violation shall be segregated and maintained in a separate physical location or electronic repository or database from any other records maintained by a law enforcement agency, and reported to the Attorney General in a manner so that they are similarly segregated and maintained in a separate physical location or electronic repository or database from other law enforcement records accessible to the Attorney General and State and local law enforcement agencies, and shall not be transferred to or copied and placed in any other physical location or electronic repository or database containing any other law enforcement records. These records shall only be used to the extent necessary to determine a subsequent violation of paragraph (1) of this subsection or to track referrals to agencies and organizations, and shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

The Attorney General may use the records described herein to generate the number of occurrences and other statistics concerning first, second, third and subsequent violations of paragraph (1) of this subsection, the municipal, county or other geographic areas within which first, second, third and subsequent violations occur, and the law enforcement agencies involved in first, second, third and subsequent violations, which are to be compiled and made available by the Attorney General in accordance with section 4 of P.L. P.L.2021, c.25 (C.). The identity of any person named in a record shall not be revealed or included in the information to be compiled and made available in accordance with that section.

The records of violations shall only be maintained temporarily and shall be destroyed or permanently deleted as set forth in subparagraph (c) of this paragraph.

(ii) any records pertaining to a person's acceptance of assistance from an agency or organization to which a law enforcement referral was made shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

(c) all of the records maintained by a law enforcement agency and reported to the Attorney General as described in subsubparagraph (i) of subparagraph (b) of this paragraph shall be destroyed or permanently deleted by the law enforcement agency and Attorney General on the second anniversary following the creation of the record concerning a violation, or not later than the last day of the month in which that second anniversary date falls, or alternatively not later than the 21st birthday of a person who is the subject of a record, or not later than the last day of the month in which that birthday falls, whichever date occurs sooner, except that a record shall be maintained upon request by the person named in the record or representative thereof, the law enforcement officer who made the record, or the law enforcement agency currently maintaining the record if it involves a lawsuit, disciplinary complaint, or criminal prosecution arising from the violation described in the record, based on an assertion that the record has evidentiary or exculpatory value. Upon final disposition of the matter for which the extended record retention was requested, the record shall be destroyed or permanently deleted.

(d) A law enforcement officer shall be guilty of the crime of official deprivation of civil rights as set forth in section 3 of P.L.2021, c.25 (C.) for violating the provisions of paragraph (1) of this subsection that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items.

b. (Deleted by amendment, P.L.2021, c.25)

c. (Deleted by amendment, P.L.2021, c.25)

d. Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the

performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R.S.33:1-26, or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post-secondary educational institution; and nothing in this section shall apply to possession of cannabis items by any such person while actually engaged in the performance of employment by a cannabis establishment, distributor, or delivery service as permitted pursuant to the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16.

e. Except as otherwise provided in this section, the provisions of section 3 of P.L.1991, c.169 (C.33:1-81.1a) shall apply to a parent, guardian or other person with legal custody of a person under 18 years of age who is found to be in violation of this section.

f. An underage person and one or two other persons shall be immune from prosecution under this section if:

(1) one of the underage persons called 9-1-1 and reported that another underage person was in need of medical assistance due to alcohol consumption , or the consumption of marijuana, hashish, or a cannabis item;

(2) the underage person who called 9-1-1 and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1 provided each of their names to the 9-1-1 operator;

(3) the underage person was the first person to make the 9-1-1 report; and

(4) the underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 9-1-1 call remained on the scene with the person under the legal age in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

The underage person who received medical assistance also shall be immune from prosecution under this section.

g. For purposes of this section, an alcoholic beverage includes powdered alcohol as defined by R.S.33:1-1, a cannabis item includes any item available for lawful consumption pursuant to the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16, and the terms "marijuana" and "hashish" have the same meaning as set forth in N.J.S.2C:35-2, and the terms "drug paraphernalia" and "cannabis paraphernalia" have the same meaning as set forth in N.J.S.2C:36-1 and section 3 of P.L.2021, c.16 (C.), respectively.

(cf: P.L.2021, c.25, s.2)

2. Section 3 of P.L.2021 c.25 (C.2C:30-6.1) is repealed.

3. This act shall take effect immediately.

STATEMENT

This bill provides that if a person under the age of 18 violates the law by purchasing or possessing alcoholic beverages or cannabis and receives a written warning from a law enforcement officer, the law enforcement officer would also be required to provide a written notice to the parent, guardian, or other person having legal custody of the minor. The bill also removes from current law criminal liability imposed on law enforcement officer who has a law enforcement or investigative encounter with a person under 21 years of age who purchases or possesses or has consumed alcoholic beverages or certain cannabis products.

P.L.2021, c.25 established certain consequences for persons who purchase or possess alcoholic beverages or cannabis items when under the legal age to do so. These consequences include, for a second or third violation where the person is under age 18, a notification to the minor's parent, guardian, or other person having legal custody of the minor. However, P.L.2021, c.25 does not provide that a parent, guardian, or other person having custody would be notified about the minor's first violation. This bill would require parental notification for first and subsequent violations.

Section 3 of P.L.2021 c.25 (C.2C:30-6.1) also imposes criminal liability on law enforcement officers who have a law enforcement or investigative encounter with a minor who possesses or consumes alcoholic beverages or certain cannabis products. Under current law, a law enforcement officer, when responding to a call for service or upon the initiation of any other law enforcement or investigative encounter related to unlawful possession or consumption of alcoholic beverages, marijuana, hashish, or any cannabis item by a person under the legal age to purchase alcoholic beverages or cannabis items, may be guilty of a crime of official deprivation of civil rights under certain circumstances. Current law imposes criminal liability regardless of whether the officer's act was done with the purpose to intimidate or discriminate against a person or group of persons because of race, color, religion, gender, handicap, sexual orientation or ethnicity, which motivation is required to be proven for other criminal deprivations of civil rights under section 2 of P.L.2003, c.31 (C.2C:30-6). This bill repeals section 3 of P.L.2021 c.25 (C.2C:30-6.1) and removes criminal liability imposed on law enforcement officers.