SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2535

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2535.

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

Regrading Marijuana and Hashish Offenses

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

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

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

- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and

subject to the same penalties, including an enhanced fine, as described above.

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

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

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

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

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

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

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

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

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

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

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

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

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

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

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

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

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

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

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

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

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

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

Reforms Applicable to All Expungements and Sealed Records

Penalties for Wrongful Dissemination of Expunged Records or Information

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

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

Promoting Awareness of the Expungement Process

The Administrative Director of the Courts would develop and maintain:

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

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

Civil Justice Reforms

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

mortgage lending activities, as well as a private cause of action for discrimination in public or private housing, real property, or any place of public accommodation.

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

The bill, as amended and reported, is identical to the First Reprint of Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269, also amended and reported by the committee today.

The committee amendments to the bill:

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

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

- remove provisions that would have created an unlawful act of possession for small amounts of marijuana or hashish, as well as provisions that would have provided a written warning for a first offense, for this and an unlawful act of small amount distribution, followed by a civil penalty or community service for a second or subsequent unlawful act;

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

- expand the list of marijuana and hashish offenses for which pending charges awaiting further proceedings on the effective date of the bill would be expeditiously dismissed, as described above;

- clarify potential legal relief for persons with a guilty verdict, plea, or other entry of guilt, as well as post-conviction relief for persons serving or who will be serving a sentence for any of the marijuana and hashish offenses appearing on that same list;

- provide that acts involving an unlawful act of distribution subject to a civil penalty or decriminalized possession of up to six ounces of marijuana or 170 grams of hashish could not be prohibited or restricted as conditions imposed with respect to court-ordered pretrial release or probation, or certified parole release, or considered a violation of the terms of pretrial release, probation, or parole;

- similarly provide that those same acts would not be considered as part of a court's risk assessment for making appropriate pretrial release or pretrial detention decisions; and

- change the bill's effective date so that it takes effect immediately, instead of the 90th day following enactment.