

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2535

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2535 (1R), with committee amendments.

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, and other possession offenses for other controlled dangerous substances, 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, and Psilocybin Mushroom Possession

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 result in 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 result in 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 act subject to a written

warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both; and

- a second or subsequent offense involving the same amount of marijuana or hashish would remain a crime of the fourth degree and be subject to the same penalties, including an enhanced fine, as described above.

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 months 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.

Regarding the above described small amount unlawful distribution 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 small amount unlawful distribution and unlawful possession with associated criminal penalties, neither 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.

The bill would also make possession of one ounce or less of psilocybin mushroom a disorderly persons offense (up to six months imprisonment; up to \$1,000 fine; or both). This act is a crime of the third degree under current law because psilocybin is a Schedule I drug, punishable under paragraph (1) of subsection a. of N.J.S.2C:35-10.

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 the following violations:

- unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

- 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;

- 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;

- possession of any controlled dangerous substance while operating a motor vehicle in violation of section 1 of P.L.1964, c.289 (C.39:4-49.1); and

- any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

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 any of the following array of marijuana and hashish offenses 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.):

- 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; and

- 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.

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 array 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.

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 above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia 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 several civil protections against discrimination targeting persons with an arrest, charge, conviction, or adjudication of delinquency involving any of the above described broad array of marijuana and hashish distribution, possession, and drug paraphernalia offenses. 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.

As reported by the committee, Senate Bill No. 2535 (2R) is identical to Assembly Bill No. 1897/4269 (ACS/2R), which also was reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- revise the amount thresholds for the lowest and next lowest levels of marijuana and hashish distribution offenses, making the lowest level distribution offense of one ounce or less of marijuana, or five grams or less of hashish, with the next lowest offense starting at distribution of more than one ounce of marijuana or more than five grams of hashish, further described in the statement above;

- eliminate civil penalties for the unlawful act of distribution of small amounts of marijuana and hashish, and re-establish such acts to be crimes, except that a first offense for distribution of one ounce or less of marijuana, or five grams or less of hashish is subject only to a written warning;

- distinguish between the grading and penalties under current law for the distribution or possession of marijuana or hashish as amended by the bill and the new grading and penalties by separating the relevant parts of the statutory law into subparagraphs;

- make the possession of one ounce or less of psilocybin mushroom, a Schedule I controlled dangerous substance, a disorderly persons offense;
- reduce the types of distribution offenses for which currently pending charges would have been dismissed, including distribution of just under five pounds of marijuana or just under one pound of hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or distribution on or near school property, public housing, or other public properties;
- add possession of a controlled dangerous substance while operating a motor vehicle to the types of possession offenses for which currently pending charges would be dismissed;
- add disorderly persons or petty disorderly persons offenses subject to conditional discharge under N.J.S.2C:36A-1, as described in the statement above, to the types of offense for which currently pending charges would be dismissed;
- re-establish that all marijuana and hashish offenses involving distribution, possession, and drug paraphernalia subject to the Judiciary's record sealing system would not be considered as part of a pretrial risk assessment for making determinations for a defendant's pretrial release or detention;
- provide that the lowest level distribution offense involving marijuana or hashish, and possession of marijuana or hashish, could not 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, and would not be considered a violation of the terms of pretrial release, probation, or parole;
- clarify that anti-discrimination protections against an employer's actions on the basis of an employee's marijuana or hashish offense or offenses involving distribution, possession, and drug paraphernalia, as described in the statement above, would take into consideration whether an employer "relied solely" on such offenses when making an employment decision, allowing some consideration of such offenses by employers; and
- remove the section of the bill which would have increased the penalties and permitted civil actions against persons or entities regularly engaged in the business collecting, assembling, evaluating or disseminating records on individuals, for knowingly distributing records that are expunged or sealed.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill