

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3454

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 2021

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3454.

This bill, as amended, addresses matters related to certain regulated substances, with a particular emphasis on the underage possession or consumption of illegal marijuana or hashish, or legalized cannabis items which may only be lawfully possessed by persons 21 years of age or older pursuant to Article IV, Section VII, paragraph 13 of the New Jersey Constitution and the enabling legislation to establish a legal, regulated cannabis marketplace, the Second Reprint of Assembly Bill No. 21, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” which passed both Houses of the Legislature on December 17, 2020. Additionally, it addresses: penalties for underage possession or consumption of alcoholic beverages; modifies penalties for persons who wrongfully supply legalized cannabis items to underage persons; establishes funding for programs and services to help deter and prevent underage possession and consumption of cannabis items, or illegal marijuana or hashish; applies the existing crime of official deprivation of civil rights, section 2 of P.L.2003, c.31 (C.2C:30-6), to unlawful law enforcement interactions with underage persons for alcohol, marijuana, and cannabis item possession or consumption; and provides revised training for law enforcement officers concerning interactions with underage persons regarding such activities.

Underage Possession or Consumption

The bill would make the underage possession or consumption of an alcoholic beverage, marijuana, hashish, or any cannabis item subject to the following consequences:

- for a first violation, a written warning issued by a law enforcement officer to the underage person. The written warning would 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, would be temporarily maintained in accordance with the bill only for the purposes of determining a second or subsequent violation;

- 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 was by a person 18 years of age or older, the officer would provide the person with informational materials about how to access community services provided by public or private agencies and organizations that would assist 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 was 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, would 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 would include the same or similar informational materials as directly supplied to a person 18 years of age or older about how to access community services. A copy of the second written warning, and if applicable, the written notification to a parent, guardian, or other person with legal custody, 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, would be temporarily maintained in accordance with the bill only for the purposes of determining a third or subsequent violation;

- 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 was by a person 18 years of age or older, the officer would 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 would 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 was by a person under 18 years of age, a written notification concerning the third or subsequent violation would be provided to the parent, guardian or other person having legal custody of the underage person, and the notice would include a referral for accessing community services for both persons. 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, would 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.

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.

A person under the legal age to purchase alcoholic beverages or cannabis items would not be capable, under the provisions of the bill, of giving lawful consent to a search to determine an underage possession or consumption violation, and a law enforcement officer would not be permitted to request that a person consent to a search for that purpose.

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

A person under the legal age to purchase alcoholic beverages or cannabis items who commits a violation for possessing or consuming an alcoholic beverage, marijuana, hashish, or cannabis item would not be subject to arrest, and would 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, or make community service referrals 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.

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, would be required to be activated whenever the law enforcement officer is responding to a call for service related to an

underage possession or consumption violation or suspected violation, 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, and would be required to remain activated until the encounter has fully concluded and the officer leaves the scene of the encounter.

As part of the process for the issuance of a written warning or write-up (with referral for a third or subsequent violation) for an underage possession or consumption violation, the law enforcement officer would take possession of any alcoholic beverage, marijuana, hashish, or cannabis item from the person, and any drug or cannabis paraphernalia for use with marijuana, hashish, or cannabis item. The existence and description of the alcoholic beverage, marijuana, hashish, or cannabis item, and any drug or cannabis paraphernalia would be included in the sworn statement that includes the relevant facts and circumstances that support the determination that a person committed a violation. Any alcoholic beverage, marijuana, hashish, cannabis item, or drug or cannabis paraphernalia obtained by the law enforcement officer would 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.

With respect to any violation concerning underage possession or consumption:

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

- 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, sworn statements describing the relevant facts and circumstances supporting an officer's determination that a violation occurred, or referrals for accessing community services provided by a public or private agency or organization would 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 could 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 would only be used, as previously described, to the extent necessary to determine a subsequent underage possession or consumption violation or track referrals to agencies and organizations.

Such records, and any other records pertaining to a person's acceptance of assistance from an agency or organization, would 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 would be deemed confidential and 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 would 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 could use the law enforcement records to generate the number of occurrences and other statistics concerning first, second, third and subsequent violations, 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 would to be compiled and made publicly available by the Attorney General in biannual reports, with the first such report scheduled to be issued by June 30, 2021, the second one issued by January 30, 2022, and then the next report issued every six months thereafter. The identity of any person named in a record would not be revealed or included in the information to be compiled and made available.

All of the records maintained by a law enforcement agency and reported to the Attorney General would 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; provided, that a record would 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.

For underage violations, the bill would also establish an immunity from prosecution for: any underage person in need of medical

assistance due to the consumption of marijuana or hashish; the underage person who called 9-1-1 to get that person assistance; and up to two other persons acting in concert with the underage person who made the call. This immunity is the same immunity already provided for situations involving the underage consumption of alcohol, and expanded to the underage consumption of cannabis items by the recently passed “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

The \$50 civil penalty created by that act for using another person’s driver’s license or other government-issued identification card, or using a false identity, to obtain cannabis items would be eliminated. The current law does not provide for any form of punishment when another’s identity or a false identity is used to obtain tobacco products or alcoholic beverages, so this would be an approach consistent with the existing State’s approach on such uses of identification cards or false identities.

Additionally, the bill removes municipal authority either granted under existing law or as established under the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” to enact ordinances with civil penalties or fines concerning underage possession or consumption violations, as well as the authority to enact any ordinance with a civil penalty for the non-smoking consumption of a cannabis item in public by a person who is of legal age to purchase and consume that item.

To assist with efforts to deter and prevent persons under the legal age to purchase cannabis items from engaging in activities associated with underage use of cannabis items, or illegal marijuana or hashish, the bill would revise provisions in the recently passed bill creating the “Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Fund,” and establish an account within that fund to be known as the “Underage Deterrence and Prevention Account.” From all of the monies from retail sales of cannabis items and various other cannabis-related sources that are deposited in the fund, 15 percent of such would be placed in the internal account. These monies would be used by the Cannabis Regulatory Commission to fund private for-profit and non-profit organizations, and county and municipal programs and services that offer social services, educational, recreational, and employment opportunities, and local economic development designed to encourage, improve, and support youthful community activities to divert and prevent persons under 18 years of age from engaging in activities associated with underage use of cannabis items, or illegal marijuana or hashish.

Taskforce Concerning Underage Possession or Consumption

A taskforce would be established in the Department of Law and Public Safety, comprised of 26 ex-official members and members appointed by the Governor representing law enforcement, juvenile justice interests, and community and non-profit groups to review each

Attorney General biannual report on underage violations described above as well as examine reports by the Attorney General concerning his periodic review of body worn camera recordings mandated by the bill concerning interactions on underage possession and consumption violations or potential violations, and make recommendations thereon to the Governor and Legislature related to law enforcement activities to address the enforcement of underage possession or consumption of alcoholic beverages, marijuana, hashish, or cannabis items, as well as the broader issue of underage possession or consumption of these substances.

Suppliers of Cannabis Items to Underage Persons

The bill would establish the following consequences for persons who sell or otherwise provide cannabis items to underage persons: a civil penalty of not less than \$250 for a first violation; a civil penalty of not less than \$500 for a second violation; and it would be a petty disorderly persons offense for a third and each subsequent violation (up to 30 days imprisonment; up to \$500 fine, or both). The “Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” specifically in section 64, as amended by this bill, would also establish the same liability for licensed businesses, and their agents and employees, who commit such acts; so, to prevent a doubling up of the penalty provisions, the bill specifies that its penalties would only apply to any person who is not otherwise subject to the penalties under that act.

Any official authorized by the Cannabis Regulatory Commission, or, like with tobacco product enforcement, any official authorized by statute or ordinance to enforce the State or local health codes, or a law enforcement officer, could issue a summons for violations. Additionally, like tobacco product enforcement, any civil penalty would be recovered by the local health agency for the jurisdiction in which a violation occurred, and the money collected would be paid into the treasury of the corresponding municipality for the municipality’s own general uses. The commission, along with the Commissioner of Health, would be authorized to coordinate efforts to enforce the bill’s provisions for punishing violators, as well as delegate enforcement authority to local health agencies, just as the Commissioner of Health may do so currently with respect to enforcement efforts concerning tobacco products. The commission would report on enforcement efforts concerning underage sales or other transfers of cannabis items in its annual report on personal use cannabis activities that would be prepared pursuant to the “Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act.”

In addition to imposition of a civil penalty for a first or second violation, a fine for selling or otherwise providing a cannabis item to an underage person could be imposed, which would be the same fine that may currently be imposed when the action involves a tobacco

product. See P.L.1999, c.90, s.3 (C.2C:33-13.1). The fine for a first or second violation would be based on the fine of up to \$500 imposed for committing a petty disorderly persons offense (with a third or subsequent violation being an actual petty disorderly persons offense), and this fine could be doubled for second or subsequent violations.

Further, a person 21 years of age or older who purchased a cannabis item as a “straw man” on behalf of a person who is under 21 years of age could be adjudged a petty disorderly person.

Law Enforcement Criminal Liability

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 a violation or suspected violation for underage possession or consumption, would be guilty of a crime of official deprivation of civil rights as defined in section 2 of P.L.2003, c.31 (C.2C:30-6) if that officer knowingly violated provisions set forth in the bill addressing law enforcement interactions with underage persons by: requesting that a person consent to a search who is not capable of giving lawful consent or searching a person after wrongfully obtaining that person’s consent; initiating an investigatory stop without reasonable articulable suspicion; initiating a search without probable cause; issuing a warning or write-up for a violation without a proper basis that a person committed the violation; detaining or taking into custody a person in a manner or for a longer period beyond the extent required to issue a warning or write-up; arresting a person for a possession or consumption violation as prohibited by the bill; or if that officer knowingly engaged in any other unlawful act against the person arising out of the call for service or initiation of any other law enforcement or investigative encounter, including but not limited to the unjustified use of force in violation of N.J.S.2C:3-7. There would not be a requirement to establish criminal liability on the basis that the officer’s unlawful 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 must be proven for other criminal deprivations of civil rights under section 2 of P.L.2003, c.31 (C.2C:30-6). The crime would be graded the same as other criminal deprivations of civil rights: it would be crime of the third degree, punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both, but could be upgraded to a crime of the second degree if bodily injury resulted from the deprivation of rights (five to 10 years’ imprisonment; fine of up to \$150,000, or both), or even a crime of the first degree if the violation involved murder, manslaughter, kidnapping, or aggravated sexual assault.

Law Enforcement Training

The Police Training Commission in the Department of Law and Public Safety would adopt a training course regarding law enforcement interactions with persons under the lawful age to

purchase alcoholic beverages or cannabis items based upon the legalization of a personal use cannabis marketplace pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” the decriminalization of marijuana and hashish pursuant to P.L. , c. (C.) (passed both Houses of the Legislature on December 17, 2020 as Third Reprint of Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269), and the enforcement of violations of applicable statutes associated with the underage possession or consumption of alcoholic beverages, marijuana, hashish, or cannabis items pursuant to those enactments and this companion bill. This training would include the recognition of and methods to address and avoid racial disparities and implicit bias, and means for interacting with vulnerable juvenile populations. The training course would be administered by the employing agency as part of the in-service training provided to each local police officer in each law enforcement unit operating in this State. Prior to being appointed to permanent status as a local police officer in a law enforcement unit, an individual would be required to complete the training course. Every local police officer appointed prior to the effective date of the bill would, within 18 months of that effective date, satisfactorily complete a training course on such law enforcement interactions.

Additionally, within 45 days of the bill’s effective date, the Attorney General would prepare a notice explaining the provisions of the aforementioned enactments pertaining to persons under the lawful age to purchase alcoholic beverages or cannabis items and violations of the applicable statutes associated with the underage possession or consumption of alcoholic beverages, marijuana, hashish, or cannabis items, and transmit the notice to the chief or director of every municipal police department, every municipal prosecutor, every county prosecutor, and the Superintendent of the New Jersey State Police. The notice would be disseminated to every law enforcement officer and would be re-enforced at roll calls and academy service training and continuing education programs so as to ensure that all officers and prosecutors are educated of their responsibilities under the relevant enactments.

The committee amendments to the bill:

- modify the consequences for the underage possession or consumption of marijuana, hashish, or cannabis items, so that there is a written warning system, with parental notification in some instances, and the production of informational materials or law enforcement referrals for accessing community services provided by public or private agencies or organizations, as described in the statement above, and these consequences would apply uniformly to all persons under 21 years of age;

- apply the same consequences for underage possession or consumption of marijuana, hashish, or cannabis items to the underage possession or consumption of alcoholic beverages;

- require that the law enforcement record on a violation include a sworn statement that includes a description of the relevant facts and circumstances that support a law enforcement officer's determination that a person committed a violation;

- alter the timeframe for when the temporary law enforcement records on violations would be destroyed or permanently deleted, to include as an alternative to the two-year period in the bill as introduced, that such records be destroyed or deleted 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, if either date is sooner than two years;

- remove municipal authority either granted under existing law or as established by the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act" (passed both Houses on December 17, 2020 as Second Reprint of Assembly Bill No. 21) to enact ordinances with civil penalties or fines concerning underage possession or consumption violations on private property, as well as any ordinance with a civil penalty for the non-smoking consumption of a cannabis item in public by a person who is of legal age to purchase and consume that item;

- increase liability for suppliers of cannabis items to underage persons by making a third or subsequent violation a petty disorderly persons offense, instead of a \$1,000 civil penalty;

- require that the Attorney General conduct periodic reviews of body worn camera recordings, with the resulting reports on such examinations to be reviewed by the task force on underage possession and consumption created by the bill;

- specify criminal liability for law enforcement officers for official deprivations of civil rights concerning unlawful law enforcement interactions with underage persons regarding possession or consumption violations, as described in the statement above; and

- update the bill's title and synopsis to more accurately reflect the amendments incorporated into the bill.