SENATE, No. 472

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
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SYNOPSIS
Decriminalizes possession of 15 grams or less of marijuana, imposes civil penalties, and establishes fund for drug education.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning marijuana, amending various parts of the statutory law, and supplementing Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:35-10 is amended to read as follows:

   2C:35-10. Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition.
   a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to:
       (1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $35,000.00 may be imposed;
       (2) Any controlled dangerous substance, or its analog, classified in Schedule V, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $15,000.00 may be imposed;
       (3) Possession of more than 50 grams of marijuana, including any adulterants or dilutants, or more than five grams of hashish is guilty of a crime of the fourth degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000.00 may be imposed; [or]
       (4) Possession of more than 15 grams but less than 50 grams [or less] of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person; or
       (5) Possession of 15 grams or less of marijuana is not a violation of this title, but shall be subject to the penalties set forth in section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

   Any person who commits any offense defined in this section while on any property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of any such school property or a school bus, or while on any school bus, and who is not sentenced to a term of imprisonment, shall, in addition to any other sentence which the

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.
court may impose, be required to perform not less than 100 hours of
community service.

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

Notwithstanding the provisions of this subsection, it shall not be a
violation of this section for a person to be under the influence of
marijuana.

In a prosecution under this subsection, it shall not be necessary
for the State to prove that the accused did use or was under the
influence of any specific drug, but it shall be sufficient for a
conviction under this subsection for the State to prove that the
accused did use or was under the influence of some controlled
dangerous substance, counterfeit controlled dangerous substance, or
controlled substance analog, other than marijuana, by proving that
the accused did manifest physical and physiological symptoms or
reactions caused by the use of any controlled dangerous substance
or controlled substance analog.

c. Any person who knowingly obtains or possesses a controlled
dangerous substance or controlled substance analog in violation of
subsection a. of this section and who fails to voluntarily deliver the
substance to the nearest law enforcement officer is guilty of a
disorderly persons offense. Nothing in this subsection shall be
construed to preclude a prosecution or conviction for any other
offense defined in this title or any other statute. This subsection
shall not apply to possession of 15 grams or less of marijuana.

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

2. N.J.S.2C:36-2 is amended to read as follows:

2C:36-2. Use or possession with intent to use, disorderly persons
offense.

It shall be unlawful for any person to use, or to possess with
intent to use, drug paraphernalia to plant, propagate, cultivate,
grow, harvest, manufacture, compound, convert, produce, process,
prepare, test, analyze, pack, repack, store, contain, conceal, ingest,
inhale, or otherwise introduce into the human body a controlled
dangerous substance, controlled substance analog or toxic chemical
in violation of the provisions of chapter 35 of this title. Any person
who violates this section is guilty of a disorderly persons offense.

Use, or possession with intent to use, drug paraphernalia for
personal use of 15 grams or less of marijuana is not a violation of
this title but shall be subject to the penalties set forth in section 6 of
P.L. . c. (C. ) (pending before the Legislature as this bill).

(cf: P.L.2007, c.31, s.3)

3. N.J.S.2B:12-17 is amended to read as follows:
2B:12-17. Jurisdiction of specified offenses. A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

a. Violations of county or municipal ordinances;

b. Violations of the motor vehicle and traffic laws;

c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;

d. Violations of the fish and game laws;

e. Proceedings to collect a penalty where jurisdiction is granted by statute;

f. Violations of laws regulating boating; and

g. Violations of section 5 and 6 of P.L., c. (pending before the Legislature as this bill); and

h. Any other proceedings where jurisdiction is granted by statute.

(cf: P.L.1996, c.95, s.12)

4. Section 1 of P.L.1964, c.289 (C.39:4-49.1) is amended to read as follows:

1. No person shall operate a motor vehicle on any highway while knowingly having in his possession or in the motor vehicle any controlled dangerous substance as classified in Schedules I, II, III, IV and V of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.) or any prescription legend drug, unless the person has obtained the substance or drug from, or on a valid written prescription of, a duly licensed physician, veterinarian, dentist or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals or unless the person possesses a controlled dangerous substance pursuant to a lawful order of a practitioner or lawfully possesses a Schedule V substance.

A person who violates this section shall be fined not less than $50.00 and shall forthwith forfeit his right to operate a motor vehicle for a period of two years from the date of his conviction. This section shall not apply to possession of 15 grams or less of marijuana.

(cf: P.L.1985, c.239, s.1)

5. (New section) a. Any person who possesses 15 grams or less of marijuana, as defined in N.J.S.2C:35-2, except as authorized by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to the following civil penalties:

(1) $150 for a first violation;

(2) $200 for a second violation;

(3) $500 for a third or subsequent violation.
No additional fines, penalties, or fees shall be imposed by the court, except court costs.

The penalty shall be collected pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. A penalty recovered under the provisions of this section shall be recovered by and in the name of the State by the local municipality. The penalty shall be paid into the treasury of the municipality in which the violation occurred. Of each penalty imposed pursuant to this section, $50 shall be forwarded by the municipality to the State to be deposited in the “Drug Education Program Fund” established pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill). The remainder of the penalty monies collected pursuant to this section shall be retained by the municipality for the general uses of the municipality.

The court may waive the penalties in cases of extreme financial hardship.

b. In addition to any civil penalty imposed, a person who is 21 years of age or older who commits a third or subsequent violation shall be referred to a drug education program approved by the Division of Mental Health and Addiction Services in the Department of Human Services. The person who committed the violation shall pay any costs associated with his participation in a drug education program consistent with the nature and extent of his assets and his ability to pay. The court may also order a person who is 21 years of age or older who commits a third or subsequent violation to undergo a professional diagnostic assessment to determine whether and to what extent the person would benefit from drug treatment. If the assessment shows that the person would benefit from drug treatment the person shall be referred for such treatment. The person shall pay any costs associated with the assessment and if applicable his participation in drug treatment.

c. In addition to any civil penalty imposed, a person who commits a violation who is less than 21 years of age at the time of the violation shall be referred to a drug education program approved by the Division of Mental Health and Addiction Services in the Department of Human Services. The person who committed the violation shall pay any costs associated with his participation in a drug education program consistent with the nature and extent of his assets and his ability to pay. A person who is less than 21 years of age at the time of the violation who commits a third or subsequent violation may be ordered by the court to undergo a professional diagnostic assessment to determine whether and to what extent the person would benefit from drug treatment. If the assessment shows that the person would benefit from drug treatment the person shall be referred for such treatment. The person shall pay any costs associated with the assessment and if applicable his participation in drug treatment.
d. Any person who is under the age of 18 who commits a violation of this section shall be referred to the Superior Court, Chancery Division, Family Part for an appropriate disposition.

e. A violation of this section shall be proved by a preponderance of the evidence.

6. (New section) Any person who possesses drug paraphernalia, as defined in N.J.S.2C:36-1, for personal use of 15 grams or less of marijuana, as defined in N.J.S.2C:35-2, except as authorized by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to a $100 civil penalty. No additional fines, penalties, or fees shall be imposed by the court, except court costs. The penalty shall be collected pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. A penalty recovered under the provisions of this section shall be recovered by and in the name of the State by the local municipality. The penalty shall be paid into the treasury of the municipality in which the violation occurred. Of each penalty imposed pursuant to this section, $50 shall be forwarded by the municipality to the State to be deposited in the “Drug Education Program Fund” established pursuant to section 7 of P.L. , c. C. (pending before the Legislature as this bill). The remainder of the penalty monies collected pursuant to this section shall be retained by the municipality for the general uses of the municipality.

A violation of this section shall be proved by a preponderance of the evidence.

7. (New section) The “Drug Education Program Fund” is established as a dedicated, nonlapsing, revolving fund in the Department of the Treasury. Monies deposited in the fund shall be appropriated to the Department of Human Services, Division of Mental Health and Addiction Services for drug education programs.

8. (New section) The Commissioner of Human Services shall adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill).

9. This act shall take effect on the first day of the fourth month following enactment.

STATEMENT

This bill would decriminalize possession of 15 grams or less of marijuana.
This bill amends N.J.S.2C:35-10, possession, use or being under
the influence, to provide that a person who is found to possess 15
grams or less of marijuana would be subject to a civil penalty: $150
fine for a first violation, a $200 fine for a second violation, and a
$500 fine for a third or subsequent violation. The bill allows the
court to waive the penalties in case of extreme financial hardship.

Under the current law, possession of more than 15 grams but less
than 50 grams (a disorderly persons offense) and possession of 50
grams or more (which is a crime of the fourth degree) would remain
unchanged.

Under current law, it is a disorderly persons offense to use or be
under the influence of any controlled dangerous substance, or its
analog, for a purpose other than the treatment of sickness or injury
as lawfully prescribed or administered by a physician. This bill
provides that it would not be violation to be under the influence of
marijuana. Under current law, it is also a disorderly person offense
to unlawfully obtain or possess a controlled dangerous substance, or
its analog, and to fail to voluntarily deliver it to the nearest law
enforcement officer. The bill provides that this statute would not
apply to possession of 15 grams or less of marijuana.

Currently, use or possessing with intent to use drug
paraphernalia is a disorderly persons offense. The bill provides that
a person who possesses drug paraphernalia for the personal use of
15 grams or less of marijuana would not be guilty of a criminal
violation but instead would be subject to a $100 civil penalty.

The bill would amend N.J.S.2B:12-17 which sets out the
jurisdiction of the municipal court to add jurisdiction for the new
civil penalties created by the bill.

Under section 1 of P.L.1964, c.289 (C.39:4-49.1) a person who
operates a motor vehicle while in possession with a controlled
dangerous substance or prescription drugs without a valid
prescription is subject to a fine of not less $50 and forfeits his right
to operate a motor vehicle for two years. The bill provides that
these penalties would not apply to possession of 15 grams or less of
marijuana.

The bill provides that all fines would be recovered by and in the
name of the State by the local municipality and would be paid into
the treasury of the municipality in which the violation occurred for
the general uses of the municipality.

In addition, the bill provides that any person who is 21 years of
age or older who commits a third or subsequent violation would be
referred to a drug education program approved by the Division of
Mental Health and Addiction Services in the Department of Human
Services.

A person who is less than 21 years of age at the time of the
violation would be referred to an approved drug education program
following any violation. The person who committed the violation
would be responsible for paying any costs associated with his
participation in the program, consistent with his ability to pay.
If the violation is committed by a person under the age of 18, the
person would be referred to the Family Part of the Chancery
Division of the Superior Court for an appropriate disposition.
The Commissioner of Human Services would adopt any rules
and regulations necessary to effectuate the purposes the bill.
The civil penalties under the bill would not apply to any person
who is in compliance with the “New Jersey Compassionate Use
The bill also provides that $50 of each penalty imposed pursuant
to the bill would be forwarded by the municipality to the State to be
deposited in the “Drug Education Program Fund” which would be
established by the bill. The remainder of the penalty monies
collected would be retained by the municipality for the general uses
of the municipality. The court may waive the penalties in cases of
extreme financial hardship. The “Drug Education Program Fund”
would be a dedicated, nonlapsing, revolving fund in the Department
of the Treasury. Monies deposited in the fund would be
appropriated to the Department of Human Services, Division of
Mental Health and Addiction Services for drug education programs.
The bill authorizes the court to order professional diagnostic
assessments of adults who have committed a third or subsequent
offense to determine whether they would benefit from drug
treatment. The person would pay for the assessment. If the
assessment shows that the person would benefit from drug
treatment the person would be referred for such treatment, and
would be responsible for paying any treatment costs. The bill
would not change the disposition of offenders under the age of 18.
Under the bill, these offenders would be referred to the Superior
Court, Chancery Division, Family Part for an appropriate
disposition.
The bill also specifies that, other than the civil penalties imposed
by the bill, the court would not impose additional fines, penalties,
or fees, except court costs.