

[Second Reprint]

ASSEMBLY, No. 1465

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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Assemblywoman Casagrande, Assemblyman Eustace, Assemblywomen
Sumter and Quijano**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the General Assembly on May 24, 2012.

(Sponsorship Updated As Of: 6/15/2012)

1 AN ACT concerning marijuana, amending various parts of the
2 statutory law, and supplementing Title ²**[24 of the Revised]** 2C
3 of the New Jersey² Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:35-10 is amended to read as follows:

9 2C:35-10. Possession, Use or Being Under the Influence, or
10 Failure to Make Lawful Disposition.

11 a. It is unlawful for any person, knowingly or purposely, to
12 obtain, or to possess, actually or constructively, a controlled
13 dangerous substance or controlled substance analog, unless the
14 substance was obtained directly, or pursuant to a valid prescription
15 or order form from a practitioner, while acting in the course of his
16 professional practice, or except as otherwise authorized by
17 P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this
18 section with respect to:

19 (1) A controlled dangerous substance, or its analog, classified in
20 Schedule I, II, III or IV other than those specifically covered in this
21 section, is guilty of a crime of the third degree except that,
22 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
23 fine of up to \$35,000.00 may be imposed;

24 (2) Any controlled dangerous substance, or its analog, classified
25 in Schedule V, is guilty of a crime of the fourth degree except that,
26 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
27 fine of up to \$15,000.00 may be imposed;

28 (3) Possession of more than 50 grams of marijuana, including
29 any adulterants or dilutants, or more than five grams of hashish is
30 guilty of a crime of the fourth degree, except that, notwithstanding
31 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
32 \$25,000.00 may be imposed; **[or]**

33 (4) Possession of more than 15 grams but less than 50 grams **[or**
34 **less]** of marijuana, including any adulterants or dilutants, or five
35 grams or less of hashish is a disorderly person; or

36 (5) Possession of 15 grams or less of marijuana is not a
37 violation of this title, but shall be subject to the penalties set forth in
38 section 5 of P.L. , c. (C.) (pending before the Legislature as
39 this bill).

40 Any person who commits any offense defined in this section
41 while on any property used for school purposes which is owned by
42 or leased to any elementary or secondary school or school board, or
43 within 1,000 feet of any such school property or a school bus, or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted May 21, 2012.

²Assembly floor amendments adopted May 24, 2012.

1 while on any school bus, and who is not sentenced to a term of
2 imprisonment, shall, in addition to any other sentence which the
3 court may impose, be required to perform not less than 100 hours of
4 community service.

5 b. Any person who uses or who is under the influence of any
6 controlled dangerous substance, or its analog, for a purpose other
7 than the treatment of sickness or injury as lawfully prescribed or
8 administered by a physician is a disorderly person.
9 Notwithstanding the provisions of this subsection, it shall not be a
10 violation of this section for a person to be under the influence of
11 marijuana.

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

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

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

31

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

33 2C:36-2. Use or possession with intent to use, disorderly persons
34 offense.

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

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

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

1 3. N.J.S.2B:12-17 is amended to read as follows:
2 2B:12-17. Jurisdiction of specified offenses. A municipal court
3 has jurisdiction over the following cases within the territorial
4 jurisdiction of the court:
5 a. Violations of county or municipal ordinances;
6 b. Violations of the motor vehicle and traffic laws;
7 c. Disorderly persons offenses, petty disorderly persons
8 offenses and other non-indictable offenses except where exclusive
9 jurisdiction is given to the Superior Court;
10 d. Violations of the fish and game laws;
11 e. Proceedings to collect a penalty where jurisdiction is granted
12 by statute;
13 f. Violations of laws regulating boating; **[and]**
14 g. Violations of section 5 and 6 of P.L. , c. (C.) (pending
15 before the Legislature as this bill); and
16 h. Any other proceedings where jurisdiction is granted by
17 statute.
18 (cf: P.L.1996, c.95, s.12)

19
20 4. Section 1 of P.L.1964, c.289 (C.39:4-49.1) is amended to
21 read as follows:

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

35 A person who violates this section shall be fined not less than
36 \$50.00 and shall forthwith forfeit his right to operate a motor
37 vehicle for a period of two years from the date of his conviction.
38 This section shall not apply to possession of 15 grams or less of
39 marijuana.
40 (cf: P.L.1985, c.239, s.1)

41
42 5. (New section) a. Any person who possesses 15 grams or
43 less of marijuana, as defined in N.J.S.2C:35-2, except as authorized
44 by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to the
45 following civil penalties:

- 46 (1) \$150 for a first violation;
47 (2) \$200 for a second violation;

1 (3) \$500 for a third or subsequent violation.

2 ²No additional fines, penalties, or fees shall be imposed by the
3 court, except court costs.²

4 The penalty shall be collected pursuant to the “Penalty
5 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
6 in a summary proceeding before the municipal court having
7 jurisdiction. A penalty recovered under the provisions of this
8 section shall be recovered by and in the name of the State by the
9 local municipality. The penalty shall be paid into the treasury of
10 the municipality in which the violation occurred ². Of each penalty
11 imposed pursuant to this section, \$50 shall be forwarded by the
12 municipality to the State to be deposited in the “Drug Education
13 Program Fund” established pursuant to section 7 of P.L. _____,
14 c. (C. _____) (pending before the Legislature as this bill). The
15 remainder of the penalty monies collected pursuant to this section
16 shall be retained by the municipality² for the general uses of the
17 municipality.

18 ¹The court may waive the penalties in cases of extreme financial
19 hardship.¹

20 b. In addition to any ²[fine] civil penalty² imposed, a person
21 who is 21 years of age or older who commits a third or subsequent
22 violation shall be referred to a drug education program approved by
23 the Division of Mental Health and Addiction Services in the
24 Department of Human Services. The person who committed the
25 violation shall pay any costs associated with his participation in a
26 drug education program consistent with the nature and extent of his
27 assets and his ability to pay. ²The court may also order a person
28 who is 21 years of age or older who commits a third or subsequent
29 violation to undergo a professional diagnostic assessment to
30 determine whether and to what extent the person would benefit
31 from drug treatment. If the assessment shows that the person would
32 benefit from drug treatment the person shall be referred for such
33 treatment. The person shall pay any costs associated with the
34 assessment and if applicable his participation in drug treatment.²

35 c. In addition to any ²[fine] civil penalty² imposed, a person
36 who commits a violation who is less than 21 years of age at the time
37 of the violation shall be referred to a drug education program
38 approved by the Division of Mental Health and Addiction Services
39 in the Department of Human Services. The person who committed
40 the violation shall pay any costs associated with his participation in
41 a drug education program consistent with the nature and extent of
42 his assets and his ability to pay. ²A person who is less than 21 years
43 of age at the time of the violation who commits a third or
44 subsequent violation may be ordered by the court to undergo a
45 professional diagnostic assessment to determine whether and to
46 what extent the person would benefit from drug treatment. If the

1 assessment shows that the person would benefit from drug
2 treatment the person shall be referred for such treatment. The
3 person shall pay any costs associated with the assessment and if
4 applicable his participation in drug treatment.²

5 d. Any person who is under the age of 18 who commits a
6 violation of this section shall be referred to the Superior Court,
7 Chancery Division, Family Part for an appropriate disposition.

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

10

11 6. (New section) Any person who possesses drug
12 paraphernalia, as defined in N.J.S.2C:36-1, for personal use of 15
13 grams or less of marijuana, as defined in N.J.S.2C:35-2, except as
14 authorized by P.L.2009, c.307 (C.24:6I-1 et al.), shall be subject to
15 a \$100 civil penalty. ²No additional fines, penalties, or fees shall be
16 imposed by the court, except court costs.²

17 The penalty shall be collected pursuant to the “Penalty
18 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
19 in a summary proceeding before the municipal court having
20 jurisdiction. A penalty recovered under the provisions of this
21 section shall be recovered by and in the name of the State by the
22 local municipality. The penalty shall be paid into the treasury of
23 the municipality in which the violation occurred ². Of each penalty
24 imposed pursuant to this section, \$50 shall be forwarded by the
25 municipality to the State to be deposited in the “Drug Education
26 Program Fund” established pursuant to section 7 of P.L. _____,
27 c. (C. _____) (pending before the Legislature as this bill). The
28 remainder of the penalty monies collected pursuant to this section
29 shall be retained by the municipality² for the general uses of the
30 municipality.

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

33

34 ²7. (New section) The “Drug Education Program Fund” is
35 established as a dedicated, nonlapsing, revolving fund in the
36 Department of the Treasury. Monies deposited in the fund shall be
37 appropriated to the Department of Human Services, Division of
38 Mental Health and Addiction Services for drug education
39 programs.²

40

41 ²[7.] ²8. (New section) The Commissioner of Human Services
42 shall adopt rules and regulations pursuant to the “Administrative
43 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), in order to
44 effectuate the purposes of section 5 of P.L. _____, c. (C. _____) (pending
45 before the Legislature as this bill).

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1 ²[8.] 9.² This act shall take effect on the first day of the fourth
2 month following enactment.