

ASSEMBLY COMMUNITY DEVELOPMENT AND AFFAIRS
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

The Assembly Community Development and Affairs Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1897 and 4269.

This substitute bill 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 broaden awareness of available expungement relief, concerning both marijuana and hashish offenses and more generally.

Regrading Marijuana and Hashish Offenses

The bill would address the 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) less than five pounds of marijuana or less than one pound of hashish, by either regrading the offense or altering the threshold amounts for grading an offense.

Under current law, distribution of less than five pounds, but at least one ounce or more, of marijuana, or distribution of less than one pound, but at least five grams or more, 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, a 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:35-10, subsection b., paragraphs (11) and (12).

The bill would either regrade or alter the threshold amounts for grading an unlawful distribution offense involving less than five pounds of marijuana or less than one pound of hashish as follows:

- one pound or more but less than five pounds of marijuana, or one-half pound or more but less than one pound of hashish would be a crime of the third degree (three to five years imprisonment; up to \$25,000 fine; or both);

- two ounces or more but less than one pound of marijuana, or five grams or more but less than one-half pound of hashish would be a disorderly persons offense based on a first offense (up to six months imprisonment; up to \$1,000 fine; or both), and would be a crime of the fourth degree for a second or subsequent offense (up to 18 months imprisonment; up to \$10,000 fine; or both); and

- less than two ounces of marijuana, or less than five grams of hashish would be an unlawful act subject only to a civil penalty of \$50. This penalty would be recovered in a summary proceeding before the municipal court having jurisdiction, and would get paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

The bill would also regrade or alter the threshold amounts for grading the unlawful possession of marijuana or hashish. First, the maximum amount constituting a small amount marijuana possession violation under paragraph (4) of subsection a. of N.J.S.2C:35-10 would increase from 50 grams (1.76 ounce) or less to two ounces or less (the amount constituting a small amount hashish possession violation under this paragraph would remain the same, at five grams or less). Second, possession of this amount of marijuana or hashish would be reduced from a fourth degree crime or disorderly persons offense, depending upon the amount possessed in accordance with the pre-reform possession categories, to an unlawful act subject only to a civil penalty of \$50; and the bill would establish a legal presumption that the possession of such amount of marijuana or hashish is the authorized possession of medical cannabis or a medical cannabis product in accordance with the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), or the authorized possession of such amount in accordance with P.L.2015, c.158 (C.18A:40-12.22 et al.). If the presumption can be overcome, by a preponderance of evidence, that a substance possessed was illegal marijuana or hashish, the \$50 civil penalty may be imposed. The civil penalty would be recovered in a summary proceeding before the municipal court having jurisdiction, and would get paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses

No court would have jurisdiction over any charge, including any charge of delinquency, except to the extent required to dismiss, withdraw, or terminate the charge, based on a prior small amount distribution or possession violation that would now only be punishable by a civil penalty, unless a final judgment of conviction or adjudication of delinquency had been entered on or before the bill’s effective date. These non-prosecutable charges and cases 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 or directives issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

Any past, present, or future charge, conviction, or adjudication of delinquency for an even broader 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.). These non-considered offenses would include:

- 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 either of those paragraphs and 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, possessing, using, being under the influence of, or failing to make lawful disposition of any amount of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., 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 bill would also establish grounds for post-conviction relief 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.

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.

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 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 broadening 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 crimes or offenses (see list under statement heading Reducing the Legal Consequences of Certain Marijuana and Hashish Offenses), or targeting persons with a civil penalty for committing an unlawful act of distribution or possession 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 crimes or offenses, or any record concerning a person’s commission of any of the aforementioned unlawful acts subject to a civil penalty.