

ASSEMBLY COMMUNITY DEVELOPMENT AND AFFAIRS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5342

STATE OF NEW JERSEY

DATED: JANUARY 29, 2021

The Assembly Community Development and Affairs Committee reports favorably Assembly Bill No. 5342.

This bill would revise the consequences associated with 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, which passed both Houses of the Legislature on December 17, 2020. It also addresses, for persons of any age, the written warning to be issued by law enforcement officers for a small amount marijuana or hashish distribution first offense, as created by that bill.

The bill would make the underage possession of marijuana, hashish, or a cannabis item a civil penalty of \$50 for persons who are between 18 and 20 years of age, if the amount possessed is what a person of legal age could lawfully possess (determined based on the lawful possession of one ounce (28.35 grams) or less of useable cannabis, the equivalent amount in a cannabis product in solid, liquid, or concentrate form, or 5 grams or less of cannabis resin, per section 46 of the Second Reprint of Assembly Bill No. 21). For the underage possession of more than what a person of legal age could lawfully possess, or any consumption of marijuana, hashish, or cannabis item, the civil penalty for persons who are between 18 and 20 years of age would be set at \$100

The civil penalty would be recovered in a summary proceeding in the name of the municipality pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Both the municipal court with territorial jurisdiction over an underage possession violation and the Superior Court would have jurisdiction of proceedings for the enforcement of a civil penalty.

These same courts, for a violation involving alcohol, would also have enforcement jurisdiction, if so ordered by the court, concerning a person's participation in an alcohol or drug abuse education or treatment program as set forth in the bill. Such education or treatment would not exceed 30 days, which is the same

as the maximum period of confinement a person could face for committing an alcohol-related violation, which is graded as a petty disorderly persons offense.

For a person under the age of 18 years who committed a possession or consumption violation, such person would instead be subject to a law enforcement “point-of-violation warning” or “juvenile intervention.” These would be conducted in the same manner as a juvenile interaction referred to as a “curbside warning” or “stationhouse adjustment,” respectively, would be conducted, which are done in accordance with Attorney General Law Enforcement Directive No. 2020-12 as if the violation were to constitute a petty disorderly persons offense, when the amount possessed is what a person of legal age could lawfully possess, and as if the violation were to constitute a disorderly persons offense, when the amount possessed is more than what a person of legal age could lawfully possess or when the violation involved consumption, without the filing of a complaint.

A “point-of-violation warning” is defined in the bill as “a brief, informal interaction between a law enforcement officer and a person under the age of 18 years who the officer observed engage in a violation During the interaction, the officer shall counsel the person to discontinue the conduct, warn the person about the potential consequences of future delinquency, and then conclude the interaction without taking any further action.” This type of warning would also be used for a first offender of any age for violating subparagraph (b) of paragraph (12) of subsection b. of N.J.S.2C:35-5 for manufacturing, distributing, or dispensing, or having under control with intent to manufacture, distribute, or dispense one ounce or less of marijuana or five grams or less of hashish. Such warning would be reported to the Attorney General in the same manner as curbside adjustments pursuant to Attorney General Law Enforcement Directive No. 2020-12, and this reporting could also include information for use in determining whether a person had previously been subjected to a point-of-violation warning to determine a second or subsequent offense, which is a crime of the fourth degree (punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both).

The more involved option for a “juvenile intervention” with a person under the age of 18 years is defined in the bill as “a mechanism that allows law enforcement agencies to resolve a violation . . . without formal court proceedings. A juvenile intervention, which shall be memorialized in a signed agreement, establishes one or more conditions that the person shall meet in exchange for the law enforcement agency declining to pursue a formal delinquency complaint against the person.” Should a person fail to abide by an agreement, the person could be charged with the commission of a delinquent act that was considered to be the

equivalent of a petty disorderly persons offense for possession of an amount that a person of legal age could lawfully possess, or, for violations involving possession of more than what a person of legal age could lawfully possess or for consumption, a disorderly persons offense.

When considering a search of an underage person in order to make a determination as to whether that person committed a possession or consumption violation, the odor of marijuana, hashish, cannabis, or cannabis item, or burnt marijuana, hashish, cannabis, or cannabis item would not constitute reasonable articulable suspicion to initiate the search. Also, unless an underage person's actions involved another violation of law, the underage person who committed a possession or consumption violation would not be subject to arrest, detention, or otherwise taken into custody except to the extent required to interact with the person, if under 18 years of age, for a law enforcement juvenile intervention.

Additionally the bill establishes 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 legislation.

Finally, the bill requires the Attorney General to issue comprehensive reports biannually detailing the statistics for the previous six-month period on all point-of-violation warnings and juvenile interventions described above for violations involving underage possession or consumption of marijuana, hashish, or cannabis items. These statistics would be compiled and made available by the Attorney General in the same manner as curbside adjustments and stationhouse warnings are compiled and made available, both in accordance with the bill and pursuant to Attorney General Law Enforcement Directive No. 2020-12. The initial report would be issued by June 30, 2021, and every six months thereafter. A taskforce would be established in the Department of Law and Public Safety, comprising 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 report, and make recommendations thereon to the Governor and Legislature related to law enforcement activities to address the enforcement of underage possession or consumption of marijuana, hashish, or cannabis items, as well as the broader issue of underage possession or consumption of these substances.