

ASSEMBLY, No. 5450

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 15, 2021

Sponsored by:

Assemblyman JON M. BRAMNICK
District 21 (Morris, Somerset and Union)
Assemblywoman JEAN STANFIELD
District 8 (Atlantic, Burlington and Camden)
Assemblywoman SERENA DIMASO
District 13 (Monmouth)

Co-Sponsored by:

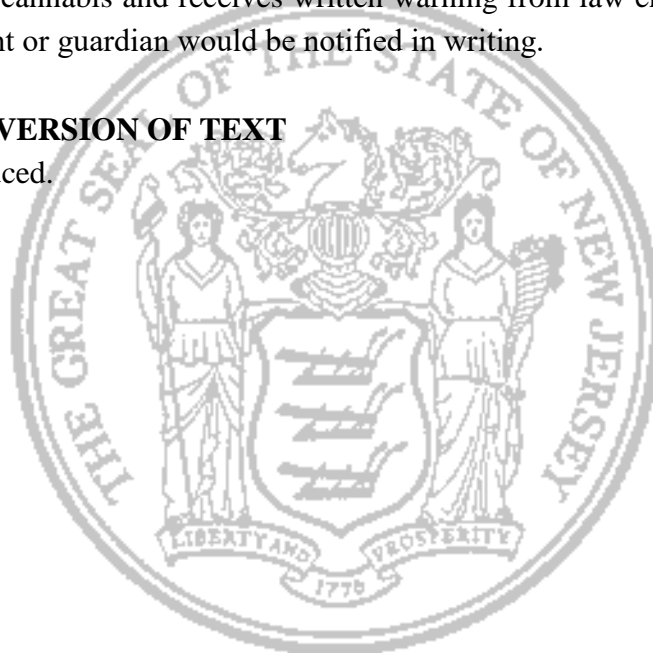
Assemblyman McGuckin, Assemblywoman N.Munoz, Assemblymen Catalano, S.Kean, Thomson, DePhillips, Rooney, Dancer, Rumpf, Webber, Assemblywoman Gove, Assemblymen McClellan, Simonsen, DiMaio and Assemblywoman Dunn

SYNOPSIS

Provides that if minor under age 18 unlawfully buys or possesses alcoholic beverages or cannabis and receives written warning from law enforcement, the minor's parent or guardian would be notified in writing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2021)

1 AN ACT concerning alcohol and cannabis use by minors and
2 amending P.L.1979, c.264.

3

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

6

7 1. Section 1 of P.L.1979, c.264 (C.2C:33-15) is amended to
8 read as follows:

9 1. a. (1) Any person under the legal age to purchase alcoholic
10 beverages, or under the legal age to purchase cannabis items, who
11 knowingly possesses without legal authority or who knowingly
12 consumes any alcoholic beverage, cannabis item, marijuana, or
13 hashish in any school, public conveyance, public place, or place of
14 public assembly, or motor vehicle shall be subject to the following
15 consequences:

16 (a) for a first violation, a written warning issued by a law
17 enforcement officer to the underage person and, if the underage
18 person is under 18 years of age, a written notification of a violation
19 of this section issued by a law enforcement officer to the parent,
20 guardian, or other person having legal custody of the underage
21 person. The written warning shall include the person's name,
22 address, and date of birth, and a copy of the warning containing this
23 information, plus a sworn statement that includes a description of
24 the relevant facts and circumstances that support the officer's
25 determination that the person committed the violation, shall be
26 temporarily maintained in accordance with this section only for the
27 purposes of determining a second or subsequent violation subject to
28 the consequences set forth in subparagraph (b) or (c) of this
29 paragraph. **【Notwithstanding the provisions of】 Pursuant to section**
30 **3 of P.L.1991, c.169 (C.33:1-81.1a) 【concerning】 , a** written
31 notification of a violation of this section by a person under 18 years
32 of age to the parent, guardian or other person having legal custody
33 of the underage person**【, a written notification】** shall **【not】** be
34 provided **【pursuant to that section】** for **【a first】** any violation of
35 this paragraph.

36 (b) for a second violation, a written warning issued by a law
37 enforcement officer to the underage person indicating that a second
38 violation has occurred, which includes the person's name, address,
39 and date of birth. If the violation is by a person 18 years of age or
40 older, the officer shall provide the person with informational
41 materials about how to access community services provided by
42 public or private agencies and organizations that shall assist the
43 person with opportunities to access further social services,
44 including but not limited to counseling, tutoring programs,
45 mentoring services, and faith-based or other community initiatives.

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.

1 If the violation is by a person under 18 years of age, a written
2 notification concerning the second violation, along with a copy of
3 the written warning for the person's first violation, shall be
4 provided to the parent, guardian or other person having legal
5 custody of the underage person in accordance with section 3 of
6 P.L.1991, c.169 (C.33:1-81.1a). The written notification shall
7 include the same or similar informational materials about how to
8 access community services provided by public or private agencies
9 and organizations as those provided directly by a law enforcement
10 officer to a person 18 years of age or older who commits a second
11 violation of this paragraph. A copy of the second written warning
12 to the underage person, and, if applicable, the written notification to
13 the parent, guardian or other person having legal custody of the
14 underage person concerning the second warning, plus a sworn
15 statement that includes a description of the relevant facts and
16 circumstances that support the officer's determination that the
17 person committed the second violation, shall be temporarily
18 maintained in accordance with this section only for the purposes of
19 determining a subsequent violation subject to the consequences set
20 forth in subparagraph (c) of this paragraph.

21 (c) for a third or subsequent violation, a write-up issued by a
22 law enforcement officer to the underage person indicating that a
23 third or subsequent violation has occurred, which includes the
24 person's name, address, and date of birth. If the violation is by a
25 person 18 years of age or older, the officer shall include with the
26 write-up a referral for accessing community services provided by a
27 public or private agency or organization, and provide notice to that
28 agency or organization of the referral which may also be used to
29 initiate contact with the person, and the agency or organization shall
30 offer assistance to the person with opportunities to access further
31 social services, including but not limited to counseling, tutoring
32 programs, mentoring services, and faith-based or other community
33 initiatives. If the violation is by a person under 18 years of age, a
34 written notification concerning the third or subsequent violation
35 shall be provided to the parent, guardian or other person having
36 legal custody of the underage person in accordance with section 3
37 of P.L.1991, c.169 (C.33:1-81.1a). The written notification shall
38 include a referral for the person and the parent, guardian or other
39 person having legal custody of the underage person for accessing
40 community services provided by a public or private agency or
41 organization, and provide notice to that agency or organization of
42 the referral which may also then be used to initiate contact with
43 both persons, and the agency or organization shall offer assistance
44 to both with opportunities to access further social services,
45 including counseling, tutoring programs, mentoring services, and
46 faith-based or other community initiatives. A copy of a write-up for
47 a third or subsequent violation, the written notification to the
48 parent, guardian or other person having legal custody of the

1 underage person, if applicable, and accompanying referrals, plus a
2 sworn statement that includes a description of the relevant facts and
3 circumstances that support the officer's determination that the
4 person committed the third or subsequent violation, shall be
5 temporarily maintained in accordance with this section only to the
6 extent necessary to track referrals to agencies and organizations, as
7 well as for the purposes of determining a subsequent violation
8 subject to the consequences set forth in this subparagraph.

9 The failure of a person under the legal age to purchase alcoholic
10 beverages or cannabis items, or the failure of a parent, guardian or
11 other person having legal custody of the underage person, to accept
12 assistance from an agency or organization to which a law
13 enforcement referral was made, or to access any community
14 services provided by that agency or organization shall not result in
15 any summons, initiation of a complaint, or other legal action to be
16 adjudicated and enforced in any court.

17 (2) (a) A person under the legal age to purchase alcoholic
18 beverages or cannabis items is not capable of giving lawful consent
19 to a search to determine a violation of this section, and a law
20 enforcement officer shall not request that a person consent to a
21 search for that purpose.

22 (b) The odor of an alcoholic beverage, marijuana, hashish,
23 cannabis, or cannabis item, or burnt marijuana, hashish, cannabis,
24 or cannabis item, shall not constitute reasonable articulable
25 suspicion to initiate an investigatory stop of a person, nor shall it
26 constitute probable cause to initiate a search of a person or that
27 person's personal property to determine a violation of paragraph (1)
28 of this subsection. Additionally, the unconcealed possession of an
29 alcoholic beverage, marijuana, hashish, or cannabis item in
30 violation of paragraph (1) of this subsection, observed in plain sight
31 by a law enforcement officer, shall not constitute probable cause to
32 initiate a search of a person or that person's personal property to
33 determine any further violation of that paragraph or any other
34 violation of law .

35 (3) A person under the legal age to purchase alcoholic
36 beverages or cannabis items who violates paragraph (1) of this
37 subsection for possessing or consuming an alcoholic beverage,
38 marijuana, hashish, or a cannabis item shall not be subject to arrest,
39 and shall not be subject to detention or otherwise be taken into
40 custody by a law enforcement officer except to the extent required
41 to issue a written warning or write-up, provide notice of a violation
42 to a parent, guardian or other person having legal custody of the
43 underage person in accordance with section 3 of P.L.1991, c.169
44 (C.33:1-81a), or make referrals for accessing community services
45 provided by a public or private agency or organization due to a third
46 or subsequent violation , unless the person is being arrested,
47 detained, or otherwise taken into custody for also committing

1 another violation of law for which that action is legally permitted or
2 required.

3 (4) Consistent with the provisions of subsection c. of section 1
4 of P.L.2020, c.129 (C.40A:14-118.5), the video and audio recording
5 functions of a law enforcement officer's body worn camera, as
6 defined in that section, shall be activated whenever the law
7 enforcement officer is responding to a call for service related to a
8 violation or suspected violation of paragraph (1) of this subsection
9 for possessing or consuming an alcoholic beverage, marijuana,
10 hashish, or a cannabis item, or at the initiation of any other law
11 enforcement or investigative encounter between an officer and a
12 person related to a violation or suspected violation of that
13 paragraph, and shall remain activated until the encounter has fully
14 concluded and the officer leaves the scene of the encounter;
15 provided, however, that the video and audio recording functions of
16 a body worn camera shall not be deactivated pursuant to
17 subparagraph (a) of paragraph (2) of subsection c. of P.L.2020,
18 c.129 (C.40A:14-118.5), based on a request to deactivate the
19 camera by a person who is the subject of a responsive call for
20 service or law enforcement or investigative encounter related to a
21 violation or suspected violation of paragraph (1) of this subsection.

22 (5) As part of the process for the issuance of a written warning
23 or write-up to a person for a violation of paragraph (1) of this
24 subsection, the law enforcement officer shall take possession of any
25 alcoholic beverage, marijuana, hashish, or cannabis item from the
26 person, and any drug or cannabis paraphernalia for use with any
27 marijuana, hashish, or cannabis item. The existence and description
28 of the alcoholic beverage, marijuana, hashish, or cannabis item, and
29 any drug or cannabis paraphernalia shall be included in the sworn
30 statement that includes a description of the relevant facts and
31 circumstances that support the officer's determination that the
32 person committed a violation, and which record is temporarily
33 maintained in accordance with this section to determine subsequent
34 possession or consumption violations, and track referrals for
35 accessing community services provided by a public or private
36 agency or organization due to a third or subsequent violation. Any
37 alcoholic beverage, marijuana, hashish, cannabis item, or drug or
38 cannabis paraphernalia obtained by the law enforcement officer
39 shall either be destroyed or secured for use in law enforcement
40 training or educational programs in accordance with applicable law
41 and directives issued by the Attorney General.

42 (6) With respect to any violation of paragraph (1) of this
43 subsection concerning the possession or consumption of an
44 alcoholic beverage, marijuana, hashish, or any cannabis item:

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

1 (b) (i) any copy of any written warning or write-up issued to a
2 person under the legal age to purchase alcoholic beverages or
3 cannabis items, written notification provided to the person's parent,
4 guardian or other person having legal custody in accordance with
5 section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement
6 describing the relevant facts and circumstances that support an
7 officer's determination that a person committed a violation, or
8 referrals for accessing community services provided by a public or
9 private agency or organization pertaining to a third or subsequent
10 violation shall be segregated and maintained in a separate physical
11 location or electronic repository or database from any other records
12 maintained by a law enforcement agency, and reported to the
13 Attorney General in a manner so that they are similarly segregated
14 and maintained in a separate physical location or electronic
15 repository or database from other law enforcement records
16 accessible to the Attorney General and State and local law
17 enforcement agencies, and shall not be transferred to or copied and
18 placed in any other physical location or electronic repository or
19 database containing any other law enforcement records. These
20 records shall only be used to the extent necessary to determine a
21 subsequent violation of paragraph (1) of this subsection or to track
22 referrals to agencies and organizations, and shall not be revealed,
23 reviewed, or considered in any manner with respect to any current
24 or subsequent juvenile delinquency matter, including but not limited
25 to, a charge, filing, eligibility or decision for diversion or discharge,
26 or sentencing, other disposition, or related decision affecting the
27 juvenile, or with respect to any current or subsequent prosecution
28 for committing an offense or other violation of law, including but
29 not limited to, a charge, filing, eligibility or decision for diversion
30 or discharge, or sentencing, other disposition, or related decision
31 affecting an adult under 21 years of age. Also, these records shall
32 be deemed confidential and shall not be subject to public inspection
33 or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1
34 et seq.), and their existence shall not be acknowledged based upon
35 any inquiry in the same manner as if the records were expunged
36 records pursuant to the provisions of subsection a. of N.J.S.2C:52-
37 15.

38 The Attorney General may use the records described herein to
39 generate the number of occurrences and other statistics concerning
40 first, second, third and subsequent violations of paragraph (1) of
41 this subsection, the municipal, county or other geographic areas
42 within which first, second, third and subsequent violations occur,
43 and the law enforcement agencies involved in first, second, third
44 and subsequent violations, which are to be compiled and made
45 available by the Attorney General in accordance with section 4 of
46 P.L.2021, c.25 (C.). The identity of any person named in a
47 record shall not be revealed or included in the information to be
48 compiled and made available in accordance with that section.

1 The records of violations shall only be maintained temporarily
2 and shall be destroyed or permanently deleted as set forth in
3 subparagraph (c) of this paragraph.

4 (ii) any records pertaining to a person's acceptance of assistance
5 from an agency or organization to which a law enforcement referral
6 was made shall not be revealed, reviewed, or considered in any
7 manner with respect to any current or subsequent juvenile
8 delinquency matter, including but not limited to, a charge, filing,
9 eligibility or decision for diversion or discharge, or sentencing,
10 other disposition, or related decision affecting the juvenile, or with
11 respect to any current or subsequent prosecution for committing an
12 offense or other violation of law, including but not limited to, a
13 charge, filing, eligibility or decision for diversion or discharge, or
14 sentencing, other disposition, or related decision affecting an adult
15 under 21 years of age. Also, these records shall be deemed
16 confidential and shall not be subject to public inspection or copying
17 pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.),
18 and their existence shall not be acknowledged based upon any
19 inquiry in the same manner as if the records were expunged records
20 pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

21 (c) all of the records maintained by a law enforcement agency
22 and reported to the Attorney General as described in
23 subparagraph (i) of subparagraph (b) of this paragraph shall be
24 destroyed or permanently deleted by the law enforcement agency
25 and Attorney General on the second anniversary following the
26 creation of the record concerning a violation, or not later than the
27 last day of the month in which that second anniversary date falls, or
28 alternatively not later than the 21st birthday of a person who is the
29 subject of a record, or not later than the last day of the month in
30 which that birthday falls, whichever date occurs sooner, except that
31 a record shall be maintained upon request by the person named in
32 the record or representative thereof, the law enforcement officer
33 who made the record, or the law enforcement agency currently
34 maintaining the record if it involves a lawsuit, disciplinary
35 complaint, or criminal prosecution arising from the violation
36 described in the record, based on an assertion that the record has
37 evidentiary or exculpatory value. Upon final disposition of the
38 matter for which the extended record retention was requested, the
39 record shall be destroyed or permanently deleted.

40 (d) A law enforcement officer shall be guilty of the crime of
41 official deprivation of civil rights as set forth in section 3 of
42 P.L.2021, c.25 (C.) for violating the provisions of paragraph
43 (1) of this subsection that address law enforcement actions
44 involving persons who are under the legal age to purchase alcoholic
45 beverages or cannabis items.

46 b. (Deleted by amendment, P.L.2021, c.25)

47 c. (Deleted by amendment, P.L.2021, c.25)

1 d. Nothing in this act shall apply to possession of alcoholic
2 beverages by any such person while actually engaged in the
3 performance of employment pursuant to an employment permit
4 issued by the Director of the Division of Alcoholic Beverage
5 Control, or for a bona fide hotel or restaurant, in accordance with
6 the provisions of R.S.33:1-26, or while actively engaged in the
7 preparation of food while enrolled in a culinary arts or hotel
8 management program at a county vocational school or post-
9 secondary educational institution; and nothing in this section shall
10 apply to possession of cannabis items by any such person while
11 actually engaged in the performance of employment by a cannabis
12 establishment, distributor, or delivery service as permitted pursuant
13 to the “New Jersey Cannabis Regulatory, Enforcement Assistance,
14 and Marketplace Modernization Act,” P.L.2021, c.16.

15 e. Except as otherwise provided in this section, the provisions
16 of section 3 of P.L.1991, c.169 (C.33:1-81.1a) shall apply to a
17 parent, guardian or other person with legal custody of a person
18 under 18 years of age who is found to be in violation of this section.

19 f. An underage person and one or two other persons shall be
20 immune from prosecution under this section if:

21 (1) one of the underage persons called 9-1-1 and reported that
22 another underage person was in need of medical assistance due to
23 alcohol consumption, or the consumption of marijuana, hashish, or
24 a cannabis item;

25 (2) the underage person who called 9-1-1 and, if applicable, one
26 or two other persons acting in concert with the underage person
27 who called 9-1-1 provided each of their names to the 9-1-1
28 operator;

29 (3) the underage person was the first person to make the 9-1-1
30 report; and

31 (4) the underage person and, if applicable, one or two other
32 persons acting in concert with the underage person who made the 9-
33 1-1 call remained on the scene with the person under the legal age
34 in need of medical assistance until assistance arrived and
35 cooperated with medical assistance and law enforcement personnel
36 on the scene.

37 The underage person who received medical assistance also shall
38 be immune from prosecution under this section.

39 g. For purposes of this section, an alcoholic beverage includes
40 powdered alcohol as defined by R.S.33:1-1, a cannabis item
41 includes any item available for lawful consumption pursuant to the
42 “New Jersey Cannabis Regulatory, Enforcement Assistance, and
43 Marketplace Modernization Act,” P.L.2021, c.16, and the terms
44 “marijuana” and “hashish” have the same meaning as set forth in
45 N.J.S.2C:35-2, and the terms “drug paraphernalia” and “cannabis
46 paraphernalia” have the same meaning as set forth in N.J.S.2C:36-1
47 and section 3 of P.L.2021, c.16 (C.), respectively.

48 (cf: P.L.2021, c.25, s.2)

1 2. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 P.L.2021, c.25 established certain consequences for persons who
7 purchase or possess alcoholic beverages or cannabis items when
8 under the legal age to do so. These consequences include, for a first
9 violation, a written warning issued by a law enforcement officer to
10 the underage person. This bill provides that if the underage person
11 is under the age of 18, the law enforcement officer would also
12 provide a written notice to the parent, guardian, or other person
13 having legal custody of the minor.