

SENATE, No. 3565

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 18, 2021

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Senator JOSEPH A. LAGANA

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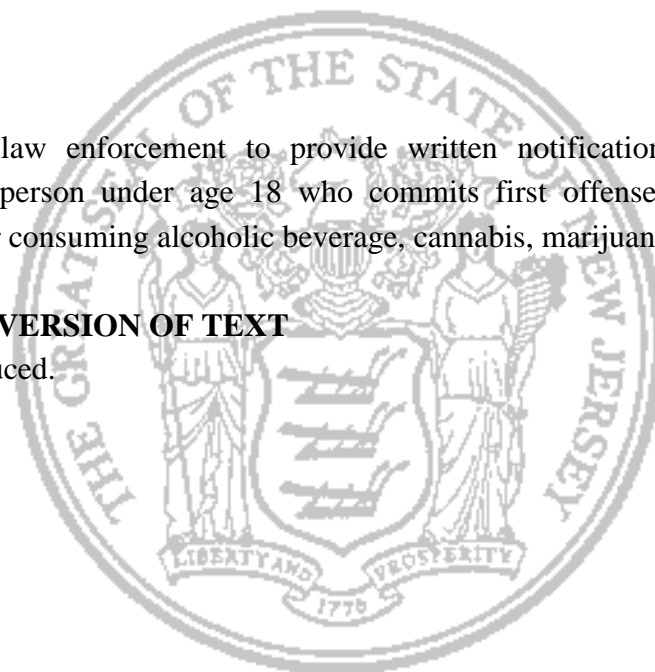
**Senators Brown, Codey, Diegnan, Stack, Bateman, Corrado, Holzapfel,
Thompson and Turner**

SYNOPSIS

Requires law enforcement to provide written notification to parent or guardian of person under age 18 who commits first offense of unlawfully possessing or consuming alcoholic beverage, cannabis, marijuana, or hashish.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/25/2021)

1 AN ACT concerning parental notification of minors' alcohol,
2 marijuana, hashish, and cannabis use under certain circumstances
3 and amending P.L.1979, c.264.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

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

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

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

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

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

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

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

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

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

34 (3) A person under the legal age to purchase alcoholic beverages
35 or cannabis items who violates paragraph (1) of this subsection for
36 possessing or consuming an alcoholic beverage, marijuana, hashish,
37 or a cannabis item shall not be subject to arrest, shall not be
38 transported to a police station, police headquarters, or other place of
39 law enforcement operations, and shall not otherwise be subject to
40 detention or **【otherwise】** be taken into custody by a law
41 enforcement officer at or near the location where the violation
42 occurred, except to the extent that detention or custody at or near
43 the location is required to issue a written warning or write-up,
44 collect the information necessary to provide notice of a violation to
45 a parent, guardian or other person having legal custody of the
46 underage person in accordance with section 3 of P.L.1991, c.169
47 (C.33:1-81a), or make referrals for accessing community services
48 provided by a public or private agency or organization due to a third

1 or subsequent violation , unless the person is being arrested,
2 detained, or otherwise taken into custody for also committing
3 another violation of law for which that action is legally permitted or
4 required.

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

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

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

47 (a) a person under the legal age to purchase alcoholic beverages
48 or cannabis items shall not be photographed or fingerprinted,

1 notwithstanding any provisions of section 2 of P.L.1982, c.79
2 (C.2A:4A-61) to the contrary;

3 (b) (i) any copy of any written warning or write-up issued to a
4 person under the legal age to purchase alcoholic beverages or
5 cannabis items, written notification provided to the person's parent,
6 guardian or other person having legal custody in accordance with
7 section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement
8 describing the relevant facts and circumstances that support an
9 officer's determination that a person committed a violation, or
10 referrals for accessing community services provided by a public or
11 private agency or organization pertaining to a third or subsequent
12 violation shall be segregated and maintained in a separate physical
13 location or electronic repository or database from any other records
14 maintained by a law enforcement agency, and reported to the
15 Attorney General in a manner so that they are similarly segregated
16 and maintained in a separate physical location or electronic
17 repository or database from other law enforcement records
18 accessible to the Attorney General and State and local law
19 enforcement agencies, and shall not be transferred to or copied and
20 placed in any other physical location or electronic repository or
21 database containing any other law enforcement records. These
22 records shall only be used to the extent necessary to determine a
23 subsequent violation of paragraph (1) of this subsection or to track
24 referrals to agencies and organizations, and shall not be revealed,
25 reviewed, or considered in any manner with respect to any current
26 or subsequent juvenile delinquency matter, including but not limited
27 to, a charge, filing, eligibility or decision for diversion or discharge,
28 or sentencing, other disposition, or related decision affecting the
29 juvenile, or with respect to any current or subsequent prosecution
30 for committing an offense or other violation of law, including but
31 not limited to, a charge, filing, eligibility or decision for diversion
32 or discharge, or sentencing, other disposition, or related decision
33 affecting an adult under 21 years of age. Also, these records shall
34 be deemed confidential and shall not be subject to public inspection
35 or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1
36 et seq.), and their existence shall not be acknowledged based upon
37 any inquiry in the same manner as if the records were expunged
38 records pursuant to the provisions of subsection a. of N.J.S.2C:52-
39 15.

40 The Attorney General may use the records described herein to
41 generate the number of occurrences and other statistics concerning
42 first, second, third and subsequent violations of paragraph (1) of
43 this subsection, the municipal, county or other geographic areas
44 within which first, second, third and subsequent violations occur,
45 and the law enforcement agencies involved in first, second, third
46 and subsequent violations, which are to be compiled and made
47 available by the Attorney General in accordance with section 4 of
48 P.L.2021, c.25 (C.). The identity of any person named in a

1 record shall not be revealed or included in the information to be
2 compiled and made available in accordance with that section.

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

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

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

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

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

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

3 d. Nothing in this act shall apply to possession of alcoholic
4 beverages by any such person while actually engaged in the
5 performance of employment pursuant to an employment permit
6 issued by the Director of the Division of Alcoholic Beverage
7 Control, or for a bona fide hotel or restaurant, in accordance with
8 the provisions of R.S.33:1-26, or while actively engaged in the
9 preparation of food while enrolled in a culinary arts or hotel
10 management program at a county vocational school or post-
11 secondary educational institution; and nothing in this section shall
12 apply to possession of cannabis items by any such person while
13 actually engaged in the performance of employment by a cannabis
14 establishment, distributor, or delivery service as permitted pursuant
15 to the “New Jersey Cannabis Regulatory, Enforcement Assistance,
16 and Marketplace Modernization Act,” P.L.2021, c.16 (C. 24:6I-
17 31 et al).

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

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

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

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

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

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

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

42 g. For purposes of this section, an alcoholic beverage includes
43 powdered alcohol as defined by R.S.33:1-1, a cannabis item
44 includes any item available for lawful consumption pursuant to the
45 “New Jersey Cannabis Regulatory, Enforcement Assistance, and
46 Marketplace Modernization Act,” P.L.2021, c.16 (C. 24:6I-31 et al),
47 and the terms “marijuana” and “hashish” have the same meaning as
48 set forth in N.J.S.2C:35-2, and the terms “drug paraphernalia” and

1 “cannabis paraphernalia” have the same meaning as set forth in
2 N.J.S.2C:36-1 and section 3 of P.L.2021, c.16 (C.24:6I-33),
3 respectively.
4 (cf: P.L.2021, c.25, s.2)

5
6 2. This act shall take effect immediately.
7

8
9 STATEMENT
10

11 This bill provides that if a person under the age of 18 violates the
12 law by possessing or consuming an alcoholic beverage, cannabis
13 item, marijuana, or hashish and receives a written warning from a
14 law enforcement officer, the law enforcement officer would also be
15 required to provide a written notice to the parent, guardian, or other
16 person having legal custody of the minor.

17 P.L.2021, c.25 established certain consequences for persons
18 under the legal age to purchase alcoholic beverages, or under the
19 legal age to purchase cannabis items, who possess or consume an
20 alcoholic beverage, cannabis item, marijuana, or hashish. These
21 consequences include, for a second or third violation where the
22 person is under age 18, a notification to the minor’s parent,
23 guardian, or other person having legal custody of the minor.
24 However, P.L.2021, c.25 does not provide that a parent, guardian,
25 or other person having custody would be notified about the minor’s
26 first violation. This bill would require such notice.

27 The bill also makes amendments to paragraph (3) of subsection
28 a. to provide that a person under the legal age to purchase alcoholic
29 beverages or cannabis items who is in violation for possessing or
30 consuming an alcoholic beverage, marijuana, hashish, or a cannabis
31 item shall not be transported to a police station, police headquarters,
32 or other place of law enforcement operations, and shall not
33 otherwise be subject to detention or be taken into custody by a law
34 enforcement officer at or near the location where the violation
35 occurred, except to the extent that detention or custody at or near
36 the location is required to issue a written warning or write-up,
37 collect the information necessary to provide notice of a violation to
38 a parent, guardian or other person having legal custody of the
39 underage or make referrals for accessing community services.