

# ASSEMBLY, No. 1897

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblywomen Carter, Tucker and Timberlake**

**SYNOPSIS**

Decriminalizes possession of 10 grams or less of marijuana and personal-use amount of regulated marijuana-infused products; requires substance abuse treatment under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 6/15/2020)**

A1897 WIMBERLY, HOLLEY

2

1 AN ACT concerning marijuana, amending various parts of the  
2 statutory law, and supplementing Title 2C of the New Jersey  
3 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.2B:12-17 is amended to read as follows:

9 2B:12-17. Jurisdiction of specified offenses. A municipal court  
10 has jurisdiction over the following cases within the territorial  
11 jurisdiction of the court:

12 a. Violations of county or municipal ordinances;

13 b. Violations of the motor vehicle and traffic laws;

14 c. Disorderly persons offenses, petty disorderly persons  
15 offenses and other non-indictable offenses except where exclusive  
16 jurisdiction is given to the Superior Court;

17 d. Violations of the fish and game laws;

18 e. Proceedings to collect a penalty where jurisdiction is granted  
19 by statute;

20 f. Violations of laws regulating boating; **[and]**

21 g. Violations of sections 10 and 11 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill); and

23 h. Any other proceedings where jurisdiction is granted by  
24 statute.

25 (cf: P.L.1996, c.95, s.12)

26

27 2. N.J.S.2C:35-2 is amended to read as follows:

28 2C:35-2. As used in this chapter:

29 "Administer" means the direct application of a controlled  
30 dangerous substance or controlled substance analog, whether by  
31 injection, inhalation, ingestion, or any other means, to the body of a  
32 patient or research subject by: (1) a practitioner (or, in his  
33 presence, by his lawfully authorized agent), or (2) the patient or  
34 research subject at the lawful direction and in the presence of the  
35 practitioner.

36 "Agent" means an authorized person who acts on behalf of or at  
37 the direction of a manufacturer, distributor, or dispenser but does  
38 not include a common or contract carrier, public warehouseman, or  
39 employee thereof.

40 "Controlled dangerous substance" means a drug, substance, or  
41 immediate precursor in Schedules I through V, any substance the  
42 distribution of which is specifically prohibited in N.J.S.2C:35-3, in  
43 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of  
44 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120  
45 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),

**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 and any drug or substance which, when ingested, is metabolized or  
2 otherwise becomes a controlled dangerous substance in the human  
3 body. When any statute refers to controlled dangerous substances,  
4 or to a specific controlled dangerous substance, it shall also be  
5 deemed to refer to any drug or substance which, when ingested, is  
6 metabolized or otherwise becomes a controlled dangerous substance  
7 or the specific controlled dangerous substance, and to any substance  
8 that is an immediate precursor of a controlled dangerous substance  
9 or the specific controlled dangerous substance. The term shall not  
10 include distilled spirits, wine, malt beverages, as those terms are  
11 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco  
12 products. The term, wherever it appears in any law or  
13 administrative regulation of this State, shall include controlled  
14 substance analogs.

15 "Controlled substance analog" means a substance that has a  
16 chemical structure substantially similar to that of a controlled  
17 dangerous substance and that was specifically designed to produce  
18 an effect substantially similar to that of a controlled dangerous  
19 substance. The term shall not include a substance manufactured or  
20 distributed in conformance with the provisions of an approved new  
21 drug application or an exemption for investigational use within the  
22 meaning of section 505 of the "Federal Food, Drug and Cosmetic  
23 Act," 52 Stat. 1052 (21 U.S.C. s.355).

24 "Counterfeit substance" means a controlled dangerous substance  
25 or controlled substance analog which, or the container or labeling of  
26 which, without authorization, bears the trademark, trade name, or  
27 other identifying mark, imprint, number, or device, or any likeness  
28 thereof, of a manufacturer, distributor, or dispenser other than the  
29 person or persons who in fact manufactured, distributed, or  
30 dispensed the substance and which thereby falsely purports or is  
31 represented to be the product of, or to have been distributed by,  
32 such other manufacturer, distributor, or dispenser.

33 "Deliver" or "delivery" means the actual, constructive, or  
34 attempted transfer from one person to another of a controlled  
35 dangerous substance or controlled substance analog, whether or not  
36 there is an agency relationship.

37 "Dispense" means to deliver a controlled dangerous substance or  
38 controlled substance analog to an ultimate user or research subject  
39 by or pursuant to the lawful order of a practitioner, including the  
40 prescribing, administering, packaging, labeling, or compounding  
41 necessary to prepare the substance for that delivery. "Dispenser"  
42 means a practitioner who dispenses.

43 "Distribute" means to deliver other than by administering or  
44 dispensing a controlled dangerous substance or controlled substance  
45 analog. "Distributor" means a person who distributes.

46 "Drugs" means (a) substances recognized in the official United  
47 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
48 United States, or official National Formulary, or any supplement to

1 any of them; and (b) substances intended for use in the diagnosis,  
2 cure, mitigation, treatment, or prevention of disease in man or other  
3 animals; and (c) substances (other than food) intended to affect the  
4 structure or any function of the body of man or other animals; and  
5 (d) substances intended for use as a component of any article  
6 specified in subsections (a), (b), and (c) of this section; but does not  
7 include devices or their components, parts, or accessories.

8 "Drug or alcohol dependent person" means a person who as a  
9 result of using a controlled dangerous substance or controlled  
10 substance analog or alcohol has been in a state of psychic or  
11 physical dependence, or both, arising from the use of that controlled  
12 dangerous substance or controlled substance analog or alcohol on a  
13 continuous or repetitive basis. Drug or alcohol dependence is  
14 characterized by behavioral and other responses, including but not  
15 limited to a strong compulsion to take the substance on a recurring  
16 basis in order to experience its psychic effects, or to avoid the  
17 discomfort of its absence.

18 "Hashish" means the resin extracted from any part of the plant  
19 Genus Cannabis L. and any compound, manufacture, salt,  
20 derivative, mixture, or preparation of such resin.

21 "Manufacture" means the production, preparation, propagation,  
22 compounding, conversion, or processing of a controlled dangerous  
23 substance or controlled substance analog, either directly or by  
24 extraction from substances of natural origin, or independently by  
25 means of chemical synthesis, or by a combination of extraction and  
26 chemical synthesis, and includes any packaging or repackaging of  
27 the substance or labeling or relabeling of its container, except that  
28 this term does not include the preparation or compounding of a  
29 controlled dangerous substance or controlled substance analog by  
30 an individual for his own use or the preparation, compounding,  
31 packaging, or labeling of a controlled dangerous substance: (1) by  
32 a practitioner as an incident to his administering or dispensing of a  
33 controlled dangerous substance or controlled substance analog in  
34 the course of his professional practice, or (2) by a practitioner (or  
35 under his supervision) for the purpose of, or as an incident to,  
36 research, teaching, or chemical analysis and not for sale.

37 "Marijuana" means all parts of the plant Genus Cannabis L.,  
38 whether growing or not; the seeds thereof, and every compound,  
39 manufacture, salt, derivative, mixture, or preparation of the plant or  
40 its seeds, except those containing resin extracted from the plant; but  
41 shall not include the mature stalks of the plant, fiber produced from  
42 the stalks, oil, or cake made from the seeds of the plant, any other  
43 compound, manufacture, salt, derivative, mixture, or preparation of  
44 mature stalks, fiber, oil, or cake, or the sterilized seed of the plant  
45 which is incapable of germination.

46 "Marijuana concentrate" means a product consisting wholly or in  
47 part of the resin extracted from any part of the plant Genus

1 Cannabis L. and having a tetrahydrocannabinol concentration  
2 greater than 2.5 percent.

3 "Narcotic drug" means any of the following, whether produced  
4 directly or indirectly by extraction from substances of vegetable  
5 origin, or independently by means of chemical synthesis, or by a  
6 combination of extraction and chemical synthesis:

7 (a) Opium, coca leaves, and opiates;

8 (b) A compound, manufacture, salt, derivative, or preparation of  
9 opium, coca leaves, or opiates;

10 (c) A substance (and any compound, manufacture, salt,  
11 derivative, or preparation thereof) which is chemically identical  
12 with any of the substances referred to in subsections (a) and (b),  
13 except that the words "narcotic drug" as used in this act shall not  
14 include decocainized coca leaves or extracts of coca leaves, which  
15 extracts do not contain cocaine or ecogine.

16 "Opiate" means any dangerous substance having an addiction-  
17 forming or addiction-sustaining liability similar to morphine or  
18 being capable of conversion into a drug having such addiction-  
19 forming or addiction-sustaining liability. It does not include, unless  
20 specifically designated as controlled pursuant to the provisions of  
21 section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer  
22 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).  
23 It does include its racemic and levorotatory forms.

24 "Opium poppy" means the plant of the species *Papaver*  
25 *somniferum* L., except the seeds thereof.

26 "Person" means any corporation, association, partnership, trust,  
27 other institution or entity, or one or more individuals.

28 "Personal-use amount of a regulated marijuana-infused product"  
29 means one or more products, containing a total of no more than 100  
30 milligrams of tetrahydrocannabinol, comprised of marijuana,  
31 marijuana extracts, or marijuana resins and other ingredients and  
32 intended for personal use or consumption, including but not limited  
33 to edible products, ointments, and tinctures, lawfully obtained from  
34 a jurisdiction where marijuana sales to adults are authorized under  
35 the law of the jurisdiction, in its original, child-resistant, labeled  
36 packaging when stored.

37 "Plant" means an organism having leaves and a readily  
38 observable root formation, including, but not limited to, a cutting  
39 having roots, a rootball or root hairs.

40 "Poppy straw" means all parts, except the seeds, of the opium  
41 poppy, after mowing.

42 "Practitioner" means a physician, dentist, veterinarian, scientific  
43 investigator, laboratory, pharmacy, hospital, or other person  
44 licensed, registered, or otherwise permitted to distribute, dispense,  
45 conduct research with respect to, or administer a controlled  
46 dangerous substance or controlled substance analog in the course of  
47 professional practice or research in this State.

1 (a) "Physician" means a physician authorized by law to practice  
2 medicine in this or any other state and any other person authorized  
3 by law to treat sick and injured human beings in this or any other  
4 state.

5 (b) "Veterinarian" means a veterinarian authorized by law to  
6 practice veterinary medicine in this State.

7 (c) "Dentist" means a dentist authorized by law to practice  
8 dentistry in this State.

9 (d) "Hospital" means any federal institution, or any institution  
10 for the care and treatment of the sick and injured, operated or  
11 approved by the appropriate State department as proper to be  
12 entrusted with the custody and professional use of controlled  
13 dangerous substances or controlled substance analogs.

14 (e) "Laboratory" means a laboratory to be entrusted with the  
15 custody of narcotic drugs and the use of controlled dangerous  
16 substances or controlled substance analogs for scientific,  
17 experimental, and medical purposes and for purposes of instruction  
18 approved by the Department of Health.

19 "Production" includes the manufacture, planting, cultivation,  
20 growing, or harvesting of a controlled dangerous substance or  
21 controlled substance analog.

22 "Immediate precursor" means a substance which the Division of  
23 Consumer Affairs in the Department of Law and Public Safety has  
24 found to be and by regulation designates as being the principal  
25 compound commonly used or produced primarily for use, and  
26 which is an immediate chemical intermediary used or likely to be  
27 used in the manufacture of a controlled dangerous substance or  
28 controlled substance analog, the control of which is necessary to  
29 prevent, curtail, or limit such manufacture.

30 "Residential treatment facility" means any facility licensed and  
31 approved by the Department of Human Services and which is  
32 approved by any county probation department for the inpatient  
33 treatment and rehabilitation of drug or alcohol dependent persons.

34 "Schedules I, II, III, IV, and V" are the schedules set forth in  
35 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-  
36 8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified  
37 by any regulations issued by the Director of the Division of  
38 Consumer Affairs in the Department of Law and Public Safety  
39 pursuant to the director's authority as provided in section 3 of  
40 P.L.1970, c.226 (C.24:21-3).

41 "State" means the State of New Jersey.

42 "Ultimate user" means a person who lawfully possesses a  
43 controlled dangerous substance or controlled substance analog for  
44 his own use or for the use of a member of his household or for  
45 administration to an animal owned by him or by a member of his  
46 household.

47 "Prescription legend drug" means any drug which under federal  
48 or State law requires dispensing by prescription or order of a

1 licensed physician, veterinarian, or dentist and is required to bear  
2 the statement "Rx only" or similar wording indicating that such  
3 drug may be sold or dispensed only upon the prescription of a  
4 licensed medical practitioner and is not a controlled dangerous  
5 substance or stramonium preparation.

6 "Stramonium preparation" means a substance prepared from any  
7 part of the stramonium plant in the form of a powder, pipe mixture,  
8 cigarette, or any other form with or without other ingredients.

9 "Stramonium plant" means the plant *Datura Stramonium* Linne,  
10 including *Datura Tatula* Linne.

11 (cf: P.L.2013, c.35, s.1)

12

13 3. N.J.S.2C:35-10 is amended to read as follows:

14 2C:35-10. Possession, Use or Being Under the Influence, or  
15 Failure to Make Lawful Disposition.

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

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

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

33 (3) Possession of: (a) more than 50 grams of marijuana,  
34 including any adulterants or dilutants **[, or]**; (b) more than five  
35 grams of hashish or marijuana concentrate; or (c) more than two  
36 times a personal-use amount of a regulated marijuana-infused  
37 product as defined in N.J.S.2C:35-2, is guilty of a crime of the  
38 fourth degree, except that, notwithstanding the provisions of  
39 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be  
40 imposed; **[or]**

41 (4) Possession of : (a) more than 10 grams but less than 50  
42 grams of marijuana, including any adulterants or dilutants; (b) more  
43 than a personal-use amount of a regulated marijuana-infused  
44 product but less than two times a personal-use amount of a  
45 regulated marijuana-infused product; or (c) more than one gram but  
46 less than five grams of hashish or marijuana concentrate **[or less of**  
47 **marijuana, including any adulterants or dilutants]**, or five grams or  
48 less of hashish is a disorderly person; or

1       (5) Possession of: (a) 10 grams or less of marijuana, including  
2 any adulterants or dilutants; (b) a personal-use amount of a  
3 regulated marijuana-infused product; or (c) one gram or less of  
4 hashish or marijuana concentrate is not a violation of this title, but  
5 shall be subject to the penalties set forth in section 10 of P.L. \_\_\_\_\_,  
6 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

7       Any person who commits any offense defined in this section  
8 while on any property used for school purposes which is owned by  
9 or leased to any elementary or secondary school or school board, or  
10 within 1,000 feet of any such school property or a school bus, or  
11 while on any school bus, and who is not sentenced to a term of  
12 imprisonment, shall, in addition to any other sentence which the  
13 court may impose, be required to perform not less than 100 hours of  
14 community service.

15       b. Any person who uses or who is under the influence of any  
16 controlled dangerous substance, or its analog, for a purpose other  
17 than the treatment of sickness or injury as lawfully prescribed or  
18 administered by a physician is a disorderly person. It is not a  
19 violation of this subsection if a person is under the influence of  
20 marijuana.

21       In a prosecution under this subsection, it shall not be necessary  
22 for the State to prove that the accused did use or was under the  
23 influence of any specific drug, but it shall be sufficient for a  
24 conviction under this subsection for the State to prove that the  
25 accused did use or was under the influence of some controlled  
26 dangerous substance, counterfeit controlled dangerous substance, or  
27 controlled substance analog, other than marijuana, by proving that  
28 the accused did manifest physical and physiological symptoms or  
29 reactions caused by the use of any controlled dangerous substance  
30 or controlled substance analog.

31       c. Any person who knowingly obtains or possesses a controlled  
32 dangerous substance or controlled substance analog in violation of  
33 subsection a. of this section and who fails to voluntarily deliver the  
34 substance to the nearest law enforcement officer is guilty of a  
35 disorderly persons offense. Nothing in this subsection shall be  
36 construed to preclude a prosecution or conviction for any other  
37 offense defined in this title or any other statute. It is not a violation  
38 of this subsection if the substance is 10 grams or less of marijuana,  
39 including any adulterants or dilutants; a personal-use amount of a  
40 regulated marijuana-infused product; or one gram or less of hashish  
41 or marijuana concentrate.

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

43  
44       4. N.J.S.2C:35-18 is amended to read as follows:

45       2C:35-18. Exemption; Burden of Proof. a. If conduct is  
46 authorized by the provisions of P.L.1970, c.226 (C.24:21-1 et seq.),  
47 P.L.2009, c.307 (C.24:6I-1 et al.), **【or】** P.L.2015, c.158 (C.18A:40-  
48 12.22 et al.), or if conduct is not subject to a criminal penalty

1 pursuant to the provisions of paragraph (5) of subsection a. of  
2 N.J.S.2C:35-10, that authorization or decriminalization shall,  
3 subject to the provisions of this section, constitute an exemption  
4 from criminal liability under this chapter or chapter 36, and the  
5 absence of such authorization or decriminalization shall not be  
6 construed to be an element of any offense in this chapter or chapter  
7 36. It is an affirmative defense to any criminal action arising under  
8 this chapter or chapter 36 that the defendant is the authorized holder  
9 of an appropriate registration, permit or order form or is otherwise  
10 exempted or excepted from criminal liability by virtue of any  
11 provision of P.L.1970, c.226 (C.24:21-1 et seq.), P.L.2009, c.307  
12 (C.24:6I-1 et al.), [or] P.L.2015, c.158 (C.18A:40-12.22 et al.) , or  
13 the provisions of paragraph (5) of subsection a. of N.J.S.2C:35-10.  
14 The affirmative defense established herein shall be proved by the  
15 defendant by a preponderance of the evidence. It shall not be  
16 necessary for the State to negate any exemption set forth in this act  
17 or in any provision of Title 24 of the Revised Statutes in any  
18 complaint, information, indictment or other pleading or in any trial,  
19 hearing or other proceeding under this act.

20 b. No liability shall be imposed by virtue of this chapter or  
21 chapter 36 upon any duly authorized State officer, engaged in the  
22 enforcement of any law or municipal ordinance relating to  
23 controlled dangerous substances or controlled substance analogs.  
24 (cf: P.L.2015, c.158, s.3)

25

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

27 2C:36-2. Use or possession with intent to use drug paraphernalia,  
28 disorderly persons offense.

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

37 Use, or possession with intent to use, drug paraphernalia to plant,  
38 propagate, cultivate, grow, harvest, manufacture, compound,  
39 convert, produce, process, prepare, test, analyze, pack, repack,  
40 store, contain, conceal, ingest, inhale, or otherwise introduce into  
41 the human body 10 grams or less of marijuana, including any  
42 adulterants or dilutants; a personal-use amount of a regulated  
43 marijuana-infused product; or one gram or less of hashish or  
44 marijuana concentrate is not a violation of this section but shall be  
45 subject to the penalties set forth in section 11 of P.L. \_\_\_\_\_,  
46 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill).

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

1       6. N.J.S.2C:36A-1 is amended to read as follows:

2       2C:36A-1. Conditional discharge for certain first offenses.

3       a. Whenever any person who has not previously been convicted  
4 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or  
5 a disorderly persons or petty disorderly persons offense defined in  
6 chapter 35 or 36 of this title or, subsequent to the effective date of  
7 this title, under any law of the United States, this State or any other  
8 state relating to marijuana, or stimulant, depressant, or  
9 hallucinogenic drugs, and who has not previously participated in a  
10 program of supervisory treatment pursuant to N.J.S.2C:43-12 or  
11 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et  
12 al.), or a Veterans Diversion Program pursuant to P.L.2017, c.42  
13 (C.2C:43-23 et al.), is charged with or convicted of any disorderly  
14 persons offense or petty disorderly persons offense under chapter 35  
15 or 36 of this title, the court **【upon notice to the prosecutor and】**,  
16 subject to subsection c. of this section, **【may on motion of the**  
17 **defendant or the court】 shall:**

18       (1) Suspend further proceedings and with the consent of the  
19 person after reference to the State Bureau of Identification criminal  
20 history record information files, place him under supervisory  
21 treatment upon such reasonable terms and conditions as it may  
22 require, including the terms and conditions set forth in subsection b.  
23 of this section; or

24       (2) After a plea of guilty or finding of guilty, and without  
25 entering a judgment of conviction, and with the consent of the  
26 person after proper reference to the State Bureau of Identification  
27 criminal history record information files, place him on supervisory  
28 treatment upon reasonable terms and conditions as it may require,  
29 including the terms and conditions set forth in subsection b. of this  
30 section, or as otherwise provided by law.

31       b. The court shall order the person to undergo a diagnostic  
32 assessment by a professional licensed or certified by the Division of  
33 Mental Health and Addiction Services in the Department of Health  
34 to perform such assessments to determine if and to what extent the  
35 person is drug dependent and would benefit from treatment.

36       (1) If the person is determined to not be drug dependent he shall  
37 complete a two-hour education program on marijuana and other  
38 controlled dangerous substances, according to a curriculum  
39 developed by the Division of Mental Health and Addiction Services  
40 in the Department of Health. The curriculum shall include written  
41 materials. If the professional determines that the person is not drug  
42 dependent, the professional shall report to the court that no further  
43 action is needed, and the records of the violation shall be expunged  
44 as set forth in subparagraph (b) of paragraph (2) of this subsection.

45       (2) If the person is determined to be drug dependent within the  
46 meaning of N.J.S.2C:35-2 and substance abuse treatment and  
47 monitoring will serve to benefit the person by addressing his drug  
48 dependency, the court shall order the person to undergo treatment

1 for drug dependency at a suitable treatment facility licensed and  
2 approved by the Department of Health and to comply with the  
3 requirements of the course of treatment. The person shall be  
4 required to submit to periodic testing to determine compliance with  
5 treatment program goals. The treatment provider shall promptly  
6 report to the court any significant failures by the person to comply  
7 with any court-imposed term or condition of treatment or any  
8 requirements of the course of treatment, including but not limited to  
9 a positive drug or alcohol test or the unexcused failure to attend any  
10 session or activity.

11 A person may apply for a waiver of the cost of the substance  
12 abuse assessment and substance abuse treatment by reason of  
13 extreme financial hardship. Costs of the substance abuse assessment  
14 may be reimbursed from the Drug Education Program Fund  
15 established in section 13 of P.L. , c. (C. ) (pending before  
16 the Legislature as this bill).

17 (a) Upon completion of treatment, the agency designated by the  
18 court to monitor or supervise the person's treatment shall report to  
19 the court as to the person's progress in treatment and compliance  
20 with court-imposed terms and conditions.

21 (b) After the expiration of a period six months following the  
22 court's entry of the order of dismissal, the records of the person's  
23 arrest shall be expunged pursuant to N.J.S.2C:52-6. Expungement  
24 shall not require any action by the person or the payment of any fee.

25 In no event shall the court require as a term or condition of  
26 supervisory treatment under this section, referral to any residential  
27 treatment facility for a period exceeding the maximum period of  
28 confinement prescribed by law for the offense for which the  
29 individual has been charged or convicted, nor shall any term of  
30 supervisory treatment imposed under this subsection exceed a  
31 period of three years. **■** If a person is placed under supervisory  
32 treatment under this section after a plea of guilty or finding of guilt,  
33 the court as a term and condition of supervisory treatment shall  
34 suspend the person's driving privileges for a period to be fixed by  
35 the court at not less than six months or more than two years unless  
36 the court finds compelling circumstances warranting an exception.  
37 For the purposes of this subsection, compelling circumstances  
38 warranting an exception exist if the suspension of the person's  
39 driving privileges will result in extreme hardship and alternative  
40 means of transportation are not available. In the case of a person  
41 who at the time of placement under supervisory treatment under this  
42 section is less than 17 years of age, the period of suspension of  
43 driving privileges authorized herein, including a suspension of the  
44 privilege of operating a motorized bicycle, shall commence on the  
45 day the person is placed on supervisory treatment and shall run for a  
46 period as fixed by the court of not less than six months or more than  
47 two years after the day the person reaches the age of 17 years.

1 If the driving privilege of a person is under revocation,  
2 suspension, or postponement for a violation of this title or Title 39  
3 of the Revised Statutes at the time of the person's placement on  
4 supervisory treatment under this section, the revocation, suspension  
5 or postponement period imposed herein shall commence as of the  
6 date of the termination of the existing revocation, suspension or  
7 postponement. The court which places a person on supervisory  
8 treatment under this section shall collect and forward the person's  
9 driver's license to the New Jersey Motor Vehicle Commission and  
10 file an appropriate report with the commission in accordance with  
11 the procedure set forth in N.J.S.2C:35-16. The court shall also  
12 inform the person of the penalties for operating a motor vehicle  
13 during the period of license suspension or postponement as required  
14 in N.J.S.2C:35-16.】

15 Upon violation of a term or condition of supervisory treatment  
16 the court may enter a judgment of conviction and proceed as  
17 otherwise provided, or where there has been no plea of guilty or  
18 finding of guilty, resume proceedings. Upon fulfillment of the terms  
19 and conditions of supervisory treatment the court shall terminate the  
20 supervisory treatment and dismiss the proceedings against him.  
21 Termination of supervisory treatment and dismissal under this  
22 section shall be without court adjudication of guilt and shall not be  
23 deemed a conviction for purposes of disqualifications or  
24 disabilities, if any, imposed by law upon conviction of a crime or  
25 disorderly persons offense but shall be reported by the clerk of the  
26 court to the State Bureau of Identification criminal history record  
27 information files. Termination of supervisory treatment and  
28 dismissal under this section may occur only once with respect to  
29 any person. Imposition of supervisory treatment under this section  
30 shall not be deemed a conviction for the purposes of determining  
31 whether a second or subsequent offense has occurred under section  
32 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or  
33 any law of this State.

34 c. Proceedings under this section shall **【not】** be available to  
35 **【any】** every defendant unless the court in its discretion concludes  
36 that:

37 (1) The defendant's continued presence (1) in the community, or in  
38 a civil treatment center or program, will **【not】** pose a danger to the  
39 community; or

40 (2) **【That the】** The terms and conditions of supervisory  
41 treatment will be **【adequate】** inadequate to protect the public and  
42 will not benefit the defendant by serving to correct any dependence  
43 on or use of controlled substances which he may manifest; **【and】** or

44 (3) The person has **【not】** previously received supervisory  
45 treatment under section 27 of P.L.1970, c.226 (C.24:21-27),  
46 N.J.S.2C:43-12, or the provisions of this chapter.

1 d. A person seeking conditional discharge pursuant to this  
2 section shall pay to the court a fee of \$75 which shall be paid to the  
3 Treasurer of the State of New Jersey for deposit in the General  
4 Fund. The defendant shall also be required to pay restitution, costs  
5 and other assessments as provided by law. A person may apply for a  
6 waiver of this fee, by reason of poverty, pursuant to the Rules  
7 Governing the Courts of the State of New Jersey, or the court may  
8 permit the defendant to pay the conditional discharge fee and other  
9 assessments in installments or may order other alternatives pursuant  
10 to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

11 (cf: P.L.2017, c.42, s.9)

12

13 7. N.J.S.2C:52-1 is amended to read as follows:

14 2C:52-1. Definition of Expungement.

15 a. Except as otherwise provided in this chapter, expungement  
16 shall mean the extraction and isolation of all records on file within  
17 any court, detention or correctional facility, law enforcement or  
18 criminal justice agency concerning a person's detection,  
19 apprehension, arrest, detention, trial or disposition of: an offense  
20 within the criminal justice system, or a violation of section 10 or 11  
21 of P.L. , c. (C. ) (pending before the Legislature as this  
22 bill).

23 b. Expunged records shall include complaints, warrants,  
24 arrests, commitments, processing records, fingerprints,  
25 photographs, index cards, "rap sheets" and judicial docket records.  
26 (cf: P.L.1979, c.178, s.108)

27

28 8. N.J.S.2C:52-3 is amended to read as follows:

29 2C:52-3. Disorderly persons offenses and petty disorderly  
30 persons offenses.

31 a. Any person who has been convicted of one or more  
32 disorderly persons or petty disorderly persons offenses under the  
33 laws of this State who has not been convicted of any crime, whether  
34 within this State or any other jurisdiction, may present an  
35 expungement application to the Superior Court pursuant to this  
36 section. Any person who has been convicted of one or more  
37 disorderly persons or petty disorderly persons offenses under the  
38 laws of this State who has also been convicted of one or more  
39 crimes shall not be eligible to apply for an expungement pursuant to  
40 this section, but may present an expungement application to the  
41 Superior Court pursuant to N.J.S.2C:52-2.

42 b. Any person who has been convicted of one or more  
43 disorderly persons or petty disorderly persons offenses under the  
44 laws of this State who has not been convicted of any crime, whether  
45 within this State or any other jurisdiction, may present an  
46 expungement application to the Superior Court pursuant to this  
47 section if:

1 the person has been convicted, under the laws of this State, on  
2 the same or separate occasions of no more than four disorderly  
3 persons offenses, no more than four petty disorderly persons  
4 offenses, or a combination of no more than four disorderly persons  
5 and petty disorderly persons offenses, and the person does not  
6 otherwise have any prior or subsequent conviction for a disorderly  
7 persons or petty disorderly persons offense, whether within this  
8 State or any other jurisdiction, such that the total number of  
9 convictions for disorderly persons and petty disorderly persons  
10 offenses would exceed four; or

11 the person has been convicted of multiple disorderly persons  
12 offenses or multiple petty disorderly persons offenses under the  
13 laws of this State, or a combination of multiple disorderly persons  
14 and petty disorderly persons offenses under the laws of this State,  
15 which convictions were entered on the same day, and does not  
16 otherwise have any prior or subsequent conviction for another  
17 offense in addition to those convictions included in the  
18 expungement application, whether any such conviction was within  
19 this State or any other jurisdiction; or

20 the person has been convicted of multiple disorderly persons  
21 offenses or multiple petty disorderly persons offenses under the  
22 laws of this State, or a combination of multiple disorderly persons  
23 and petty disorderly persons offenses under the laws of this State,  
24 which offenses or combination of offenses were interdependent or  
25 closely related in circumstances and were committed as part of a  
26 sequence of events that took place within a comparatively short  
27 period of time, regardless of the date of conviction or sentencing for  
28 each individual offense, and the person does not otherwise have any  
29 prior or subsequent conviction for another offense in addition to  
30 those convictions included in the expungement application, whether  
31 within this State or any other jurisdiction.

32 The person, if eligible, may present the expungement application  
33 after the expiration of a period of five years from the date of his  
34 most recent conviction, payment of fine, satisfactory completion of  
35 probation or release from incarceration, whichever is later. The  
36 term "fine" as used herein and throughout this section means and  
37 includes any fine, restitution, and other court-ordered financial  
38 assessment imposed by the court as part of the sentence for the  
39 conviction, for which payment of restitution takes precedence in  
40 accordance with chapter 46 of Title 2C of the New Jersey Statutes.  
41 The person shall submit the expungement application to the  
42 Superior Court in the county in which the most recent conviction  
43 for a disorderly persons or petty disorderly persons offense was  
44 adjudged, which contains a separate, duly verified petition as  
45 provided in N.J.S.2C:52-7 for each conviction sought to be  
46 expunged, praying that the conviction, or convictions if applicable,  
47 and all records and information pertaining thereto be expunged.

1 The petition for each conviction appended to an application shall  
2 comply with the requirements of N.J.S.2C:52-1 et seq.

3 Notwithstanding the provisions of the five-year time  
4 requirement, an application may be filed and presented, and the  
5 court may grant an expungement pursuant to this section, when the  
6 court finds:

7 (1) the fine is satisfied but less than five years have expired  
8 from the date of satisfaction, and the five-year time requirement is  
9 otherwise satisfied, and the court finds that the person substantially  
10 complied with any payment plan ordered pursuant to N.J.S.2C:46-1  
11 et seq., or could not do so due to compelling circumstances  
12 affecting his ability to satisfy the fine; or

13 (2) at least three but less than five years have expired from the  
14 date of the most recent conviction, payment of fine, satisfactory  
15 completion of probation or parole, or release from incarceration,  
16 whichever is later; and

17 the person has not been otherwise convicted of a crime,  
18 disorderly persons offense, or petty disorderly persons offense since  
19 the time of the most recent conviction; and the court finds in its  
20 discretion that expungement is in the public interest, giving due  
21 consideration to the nature of the offense or offenses, and the  
22 applicant's character and conduct since the conviction or  
23 convictions.

24 In determining whether compelling circumstances exist for the  
25 purposes of paragraph (1) of this subsection, a court may consider  
26 the amount of the fine or fines imposed, the person's age at the time  
27 of the offense or offenses, the person's financial condition and other  
28 relevant circumstances regarding the person's ability to pay.

29 c. The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14  
30 shall not apply to an expungement of a conviction of any of the  
31 following offenses that occurred prior to the enactment of P.L. ,  
32 c. (C. ) (pending before the Legislature as this bill) and no fee  
33 shall be charged to the person making such application:

34 (1) a violation of subsections a., b., or c. of N.J.S.2C:35-10  
35 involving possession of 10 grams or less of marijuana, including  
36 any adulterants or dilutants; a personal-use amount of a regulated  
37 marijuana-infused product as defined in N.J.S.2C:35-2; or one gram  
38 or less of hashish or marijuana concentrate; or

39 (2) a violation of subsection b. of N.J.S.2C:36-2 involving  
40 paraphernalia for the use of 10 grams or less of marijuana,  
41 including any adulterants or dilutants; a personal-use amount of a  
42 regulated marijuana-infused product as defined in N.J.S.2C:35-2; or  
43 one gram or less of hashish or marijuana concentrate.

44 (cf: P.L.2017, c.244, s.2)

45

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

1 1. No person shall operate a motor vehicle on any highway  
2 while knowingly having in his possession or in the motor vehicle  
3 any controlled dangerous substance as classified in Schedules I, II,  
4 III, IV and V of the "New Jersey Controlled Dangerous Substances  
5 Act," P.L.1970, c.226 (C.24:21-1 et seq.) or any prescription  
6 legend drug, unless the person has obtained the substance or drug  
7 from, or on a valid written prescription of, a duly licensed  
8 physician, veterinarian, dentist or other medical practitioner  
9 licensed to write prescriptions intended for the treatment or  
10 prevention of disease in man or animals or unless the person  
11 possesses a controlled dangerous substance pursuant to a lawful  
12 order of a practitioner or lawfully possesses a Schedule V  
13 substance.

14 A person who violates this section shall be fined not less than  
15 \$50.00 and shall forthwith forfeit his right to operate a motor  
16 vehicle for a period of two years from the date of his conviction.  
17 This section shall not apply to possession of 10 grams or less of  
18 marijuana, including any adulterants or dilutants; a personal-use  
19 amount of a regulated marijuana-infused product as defined in  
20 N.J.S.2C:35-2; or one gram or less of hashish or marijuana  
21 concentrate.

22 (cf: P.L.1985, c.239, s.1)

23

24 10. (New section) a. Any person who, in violation of paragraph  
25 (5) of subsection a. of N.J.S.2C:35-10, possesses 10 grams or less  
26 of marijuana, including any adulterants or dilutants; a personal-use  
27 amount of a regulated marijuana-infused product as defined in  
28 N.J.S.2C:35-2; or one gram or less of hashish or marijuana  
29 concentrate, shall be subject to the following civil penalties:

- 30 (1) \$150 for a first violation;  
31 (2) \$200 for a second violation;  
32 (3) \$500 for a third or subsequent violation.

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

35 The penalty shall be collected pursuant to the "Penalty  
36 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),  
37 in a summary proceeding before the municipal court having  
38 jurisdiction. A penalty recovered under the provisions of this  
39 section shall be recovered by and in the name of the State by the  
40 local municipality. The penalty shall be paid into the treasury of  
41 the municipality in which the violation occurred. Of each penalty  
42 imposed pursuant to this section, \$50 shall be forwarded by the  
43 municipality to the State to be deposited in the "Drug Education  
44 Program Fund" established pursuant to section 13 of P.L. ,  
45 c. C. ) (pending before the Legislature as this bill). The  
46 remainder of the penalty monies collected pursuant to this section  
47 shall be retained by the municipality for the general uses of the  
48 municipality.

1 A violation of this section shall be proved by a preponderance of  
2 the evidence.

3 The court may waive the penalties in cases of extreme financial  
4 hardship. The court shall waive the penalties for a single violation  
5 within a three-year period upon proof that, within 60 days of the  
6 violation, the person completed a substance abuse assessment by a  
7 professional licensed by the Division of Mental Health and  
8 Addiction Services in the Department of Health to perform such  
9 assessments. A person who intends to undergo such an assessment  
10 shall notify the court, which shall schedule the matter for review  
11 after 180 days. If proof of completion of the assessment is filed on  
12 or before 180 days, the court shall waive the penalties without a  
13 hearing unless requested by a party.

14 b. The substance abuse assessment shall determine if, and to  
15 what extent, the person is a drug dependent person within the  
16 meaning of N.J.S.2C:35-2 and would benefit from treatment. If the  
17 person is determined to not be drug dependent he shall complete a  
18 two-hour education program on marijuana and other controlled  
19 dangerous substances according to a curriculum developed by the  
20 Division of Mental Health and Addiction Services in the  
21 Department of Health. The curriculum shall include written  
22 materials. If the professional determines that the person is not drug  
23 dependent, the professional shall report to the court that no further  
24 action is needed, and the records of the violation shall be expunged  
25 as set forth in subsection e. of this section.

26 c. If the person is determined to be drug dependent within the  
27 meaning of N.J.S.2C:35-2 and substance abuse treatment and  
28 monitoring will serve to benefit the person by addressing his drug  
29 dependency, the court shall order the person to undergo treatment  
30 for drug dependency at a suitable treatment facility licensed and  
31 approved by the Department of Health and to comply with the  
32 requirements of the course of treatment. The person shall be  
33 required to submit to periodic testing to determine compliance with  
34 treatment program goals. The treatment provider shall promptly  
35 report to the court any significant failures by the person to comply  
36 with any court-imposed term or condition of treatment or any  
37 requirements of the course of treatment, including but not limited to  
38 a positive drug or alcohol test or the unexcused failure to attend  
39 any session or activity.

40 d. Upon completion of treatment, the agency designated by the  
41 court to monitor or supervise the person's treatment shall report to  
42 the court as to the person's progress in treatment and compliance  
43 with court-imposed terms and conditions.

44 e. After the expiration of a period of six months following the  
45 completion of the education program set forth in subsection b. of  
46 this section or following substance abuse treatment as set forth in  
47 subsection c. of this section, the records of the violation shall be  
48 expunged in accordance with the provisions of section 12 of

1 P.L. , c. (C. ) (pending before the Legislature as this bill).  
2 Expungement shall not require any action by the person or the  
3 payment of any fee.

4 f. A person may apply for a waiver of court fees and the cost  
5 of the substance abuse assessment and treatment set forth in this  
6 section by reason of extreme financial hardship. Costs of the  
7 substance abuse assessment may be reimbursed from the Drug  
8 Education Program Fund established in section 13 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).

10

11 11. (New section) a. Any person who possesses drug  
12 paraphernalia, as defined in N.J.S.2C:36-1, for the personal use of  
13 10 grams or less of marijuana, a personal-use amount of a regulated  
14 marijuana-infused product, or one gram or less of hashish or  
15 marijuana concentrate, shall be subject to a civil penalty of \$100.  
16 No additional fines, penalties, or fees shall be imposed by the court,  
17 except court costs.

18 The penalty shall be collected pursuant to the “Penalty  
19 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),  
20 in a summary proceeding before the municipal court having  
21 jurisdiction. A penalty recovered under the provisions of this  
22 section shall be recovered by and in the name of the State by the  
23 local municipality. The penalty shall be paid into the treasury of  
24 the municipality in which the violation occurred. Of each penalty  
25 imposed pursuant to this section, \$50 shall be forwarded by the  
26 municipality to the State to be deposited in the “Drug Education  
27 Program Fund” established pursuant to section 13 of  
28 P.L. , c. C. ) (pending before the Legislature as this bill). The  
29 remainder of the penalty monies collected pursuant to this section  
30 shall be retained by the municipality for the general uses of the  
31 municipality.

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

34 The court may waive the penalty in cases of extreme financial  
35 hardship. The court shall waive the penalty for a single violation  
36 within a three-year period upon proof that, within 60 days of the  
37 violation, the person completed a substance abuse assessment by a  
38 professional licensed by the Division of Mental Health and  
39 Addiction Services in the Department of Health to perform such  
40 assessments. A person who intends to undergo such an assessment  
41 shall notify the court, which shall schedule the matter for review  
42 after 180 days. If proof of completion of the assessment is filed on  
43 or before 180 days, the court shall waive the penalties without a  
44 hearing unless requested by a party.

45 b. The substance abuse assessment shall determine if, and to  
46 what extent, the person is a drug dependent person within the  
47 meaning of N.J.S.2C:35-2 and would benefit from treatment. If the  
48 person is determined to not be drug dependent he shall complete a

1 two-hour education program on marijuana and other controlled  
2 dangerous substances according to a curriculum developed by the  
3 Division of Mental Health and Addiction Services in the  
4 Department of Health. The curriculum shall include written  
5 materials. If the professional determines that the person is not drug  
6 dependent, the professional shall report to the court that no further  
7 action is needed, and the records of the violation shall be expunged  
8 as set forth in subsection e. of this section.

9 c. If the person is determined to be drug dependent within the  
10 meaning of N.J.S.2C:35-2 and substance abuse treatment and  
11 monitoring will serve to benefit the person by addressing his drug  
12 dependency, the court shall order the person to undergo treatment  
13 for drug dependency at a suitable treatment facility licensed and  
14 approved by the Department of Health and to comply with the  
15 requirements of the course of treatment. The person shall be  
16 required to submit to periodic testing to determine compliance with  
17 treatment program goals. The treatment provider shall promptly  
18 report to the court any significant failures by the person to comply  
19 with any court-imposed term or condition of treatment or any  
20 requirements of the course of treatment, including but not limited to  
21 a positive drug or alcohol test or the unexcused failure to attend  
22 any session or activity.

23 d. Upon completion of treatment, the agency designated by the  
24 court to monitor or supervise the person's treatment shall report to  
25 the court as to the person's progress in treatment and compliance  
26 with court-imposed terms and conditions.

27 e. After the expiration of a period of six months following the  
28 completion of the education program set forth in subsection b. of  
29 this section or following substance abuse treatment as set forth in  
30 subsection c. of this section, the records of the violation shall be  
31 expunged in accordance with the provisions of section 12 of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill).  
33 Expungement shall not require any action by the person or the  
34 payment of any fee.

35 f. A person may apply for a waiver of court fees and the cost  
36 of the substance abuse assessment and treatment set forth in this  
37 section by reason of extreme financial hardship. Costs of the  
38 substance abuse assessment may be reimbursed from the Drug  
39 Education Program Fund established in section 13 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill).

41  
42 12. (New section) Pursuant to the provisions of subsection e. of  
43 section 10 of P.L. , c. (C. ) (pending before the Legislature  
44 as this bill) and subsection e. of section 11 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill),  
46 the court shall order the expungement of all records and information  
47 relating to a violation of section 10 or 11 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill). The provisions of

1 N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to the  
2 expungement of such records and no fee shall be charged to the  
3 person.  
4

5 13. (New section) The “Drug Education Program Fund” is  
6 established as a dedicated, nonlapsing, revolving fund in the  
7 Department of the Treasury. Monies deposited in the fund shall be  
8 appropriated to the Department of Health, Division of Mental  
9 Health and Addiction Services for drug education programs.  
10 Monies shall also be used to reimburse the costs of substance abuse  
11 assessment and treatment pursuant to subsection b. of  
12 N.J.S.2C:36A-1 and sections 10 and 11 of P.L. , c. (C. )  
13 (pending before the Legislature as this bill).  
14

15 14. (New section) In addition to the provisions of any other law,  
16 a person who negligently stores a regulated marijuana-infused  
17 product, resulting in a minor under the age of 18 years possessing  
18 such product, shall be guilty of a disorderly persons offense.

19 It shall be prima facie evidence that the person did not act  
20 negligently pursuant to this section if he lawfully obtained the  
21 regulated marijuana-infused product from a jurisdiction where  
22 marijuana sales to adults are authorized under the law of the  
23 jurisdiction, and stored the product in its original, child-resistant,  
24 labeled packaging. Failure to store a regulated marijuana-infused  
25 product in its original, child-resistant, labeled packaging shall be  
26 prima facie evidence of negligence pursuant to this section.  
27

28 15. (New section) Any person who is serving a sentence on the  
29 effective date of P.L. , c. (C. ) (pending before the  
30 Legislature as this bill) for a violation of: (1) subsection a. of  
31 N.J.S.2C:35-10 involving possession of 10 grams or less of  
32 marijuana, including any adulterants or dilutants; a personal-use  
33 amount of a regulated marijuana-infused product as defined in  
34 N.J.S.2C:35-2; or one gram or less of hashish or marijuana  
35 concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or (3)  
36 N.J.S.2C:36-2 may move to have his sentence reviewed by the  
37 sentencing court. The court may impose a civil penalty pursuant to  
38 section 10 or 11 of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill).  
40

41 16. (New section) P.L. , c. (C. ) (pending before the  
42 Legislature as this bill) shall apply to all persons convicted of, but  
43 not yet sentenced as of the effective date of P.L. , c. (C. )  
44 (pending before the Legislature as this bill) for a violation of: (1)  
45 subsection a. of N.J.S.2C:35-10 involving possession of 10 grams  
46 or less of marijuana, including any adulterants or dilutants; a  
47 personal-use amount of a regulated marijuana-infused product as  
48 defined in N.J.S.2C:35-2; or one gram or less of hashish or

1 marijuana concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or  
2 (3) N.J.S.2C:36-2. The defendant may move to have his conviction  
3 overturned by the court. The court may impose a civil penalty  
4 pursuant to section 10 or 11 of P.L. , c. (C. ) (pending  
5 before the Legislature as this bill).

6  
7 17. (New section) P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) shall apply to all criminal charges pending  
9 on the effective date of P.L. , c. (C. ) (pending before the  
10 Legislature as this bill) for a violation of: (1) subsection a. of  
11 N.J.S.2C:35-10 involving possession of 10 grams or less of  
12 marijuana, including any adulterants or dilutants; a personal-use  
13 amount of a regulated marijuana-infused product as defined in  
14 N.J.S.2C:35-2; or one gram or less of hashish or marijuana  
15 concentrate; (2) subsection b. or c. of N.J.S.2C:35-10; or (3)  
16 N.J.S.2C:36-2. On and after the effective date of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill),  
18 the court shall dismiss any such criminal charges but the prosecutor  
19 may charge the defendant with a violation pursuant to section 10 or  
20 11 of P.L. , c. (C. ) (pending before the Legislature as this  
21 bill).

22  
23 18. (New section) The Attorney General shall issue guidelines  
24 for prosecutors and law enforcement to effectuate the provisions of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill).

26  
27 19. (New section) The Commissioner of Health, in consultation  
28 with the Attorney General, shall adopt rules and regulations  
29 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410  
30 (C.52:14B-1 et seq.), in order to effectuate the purposes of  
31 P.L. , c. (C. ) (pending before the Legislature as this bill).

32  
33 20. This act shall take effect on the 60<sup>th</sup> day following  
34 enactment.

#### 35 36 37 STATEMENT

38  
39 This bill would decriminalize possession of 10 grams or less of  
40 marijuana and certain marijuana products and impose civil penalties  
41 for such possession. The bill would also eliminate all penalties for  
42 being under the influence of marijuana.

43 CIVIL PENALTIES. The bill amends N.J.S.2C:35-10, Possession,  
44 Use or Being Under the Influence, to provide that a person who  
45 possesses 10 grams or less of marijuana, including any adulterants  
46 or dilutants; a “personal-use amount of a regulated marijuana-  
47 infused product”; or one gram or less of hashish or marijuana  
48 concentrate would be subject to a civil penalty: a fine of \$150 for a

1 first violation, a \$200 fine for a second violation, and a \$500 fine  
2 for a third or subsequent violation. The bill would allow the court to  
3 waive the penalties in case of extreme financial hardship and under  
4 certain other circumstances.

5 DEFINITIONS. The bill defines “personal-use amount of a  
6 regulated marijuana-infused product” as “one or more products,  
7 containing a total of no more than 100 milligrams of  
8 tetrahydrocannabinol, comprised of marijuana, marijuana extracts,  
9 or marijuana resins and other ingredients and intended for personal  
10 use or consumption, including but not limited to edible products,  
11 ointments, and tinctures, lawfully obtained from a jurisdiction  
12 where marijuana sales to adults are authorized under the law of the  
13 jurisdiction, in its original, child-resistant, labeled packaging when  
14 stored.”

15 The bill defines “marijuana concentrate” as “a product consisting  
16 wholly or in part of the resin extracted from any part of the plant  
17 Genus Cannabis L. and having a tetrahydrocannabinol  
18 concentration greater than 2.5 percent.”

19 CURRENT LAW. Under current law, possession of 50 grams or  
20 less of marijuana or five grams or less of hashish is a disorderly  
21 persons offense. Possession of more than 50 grams of marijuana or  
22 more than five grams of hashish is a crime of the fourth degree,  
23 with an enhanced fine of up to \$25,000. A crime of the fourth  
24 degree is generally punishable by a term of imprisonment of up to  
25 18 months or a fine up to \$10,000, or both; a disorderly persons  
26 offense, by a term of imprisonment of up to six months or a fine of  
27 up to \$1,000 or both.

28 Under subsection b. of N.J.S.2C:35-10, it is a disorderly persons  
29 offense to use or be under the influence of any controlled dangerous  
30 substance, or its analog, for a purpose other than the treatment of  
31 sickness or injury as lawfully prescribed or administered by a  
32 physician. This bill provides that it would not be a violation to be  
33 under the influence of marijuana.

34 Subsection c. of N.J.S.2C:35-10 provides that it is a disorderly  
35 person offense to unlawfully obtain or possess a controlled  
36 dangerous substance, or its analog, and to fail to voluntarily deliver  
37 it to the nearest law enforcement officer. The bill provides that this  
38 statute would not apply to possession of 10 grams or less of  
39 marijuana, a personal-use amount of a regulated marijuana-infused  
40 product, or one gram or less of hashish or marijuana concentrate.

41 N.J.S.2C:36-2 provides that it is a disorderly persons offense to  
42 be in possession of drug paraphernalia. Under the bill, this statute  
43 would not apply to a person who possesses drug paraphernalia for  
44 the use of 10 grams or less of marijuana, a personal-use amount of a  
45 regulated marijuana-infused product, or one gram or less of hashish  
46 or marijuana concentrate. Instead, the person would be subject to a  
47 civil penalty of \$100.

1       SUBSTANCE ABUSE ASSESSMENT. The bill requires the court to  
2 waive the penalties for a single violation within a three-year period  
3 upon proof that, within 60 days of the violation, the person  
4 completed a substance abuse assessment by a professional licensed  
5 by the Division of Mental Health and Addiction Services in the  
6 Department of Health to perform such assessments. Under the bill, a  
7 person who intends to undergo such an assessment would notify the  
8 court, which would schedule the matter for review after 180 days.  
9 If proof of completion of the assessment is filed on or before 180  
10 days, the court would waive the penalties without a hearing unless  
11 requested by a party. The bill provides that the substance abuse  
12 assessment would determine if, and to what extent, the person is a  
13 drug dependent person within the meaning of N.J.S.2C:35-2 and  
14 would benefit from treatment.

15       EDUCATION PROGRAM; EXPUNGEMENT OF RECORDS. If the  
16 person is determined to not be drug dependent the person would be  
17 required to complete a two-hour education program on marijuana  
18 and other controlled dangerous substances according to a  
19 curriculum developed by the Division of Mental Health and  
20 Addiction Services in the Department of Health. The curriculum  
21 would include written materials. If the person is not drug  
22 dependent, the professional would report to the court that no further  
23 action is needed, and the records of the violation would be  
24 expunged after the expiration of six months following completion  
25 of the education program. Expungement would not require any  
26 action by the person or the payment of any fee.

27       SUBSTANCE ABUSE TREATMENT; EXPUNGEMENT OF RECORDS.  
28 The bill provides that if the person is a drug dependent person  
29 within the meaning of N.J.S.2C:35-2 and substance abuse treatment  
30 and monitoring would serve to benefit the person by addressing his  
31 drug dependency, the court would order him to undergo treatment  
32 for drug dependency at a suitable treatment facility licensed and  
33 approved by the Department of Health and to comply with the  
34 requirements of the course of treatment. The person would be  
35 required to submit to periodic testing to determine compliance with  
36 treatment program goals. The treatment provider would promptly  
37 report to the court any significant failures by the person to comply  
38 with any court-imposed term or condition of treatment or any  
39 requirements of the course of treatment, including but not limited to  
40 a positive drug or alcohol test or the unexcused failure to attend  
41 any session or activity.

42       Under the bill, upon completion of treatment, the agency  
43 designated by the court to monitor or supervise the person's  
44 treatment would report to the court as to the person's progress in  
45 treatment and compliance with court-imposed terms and conditions.  
46 Records would be expunged after the expiration of a period of six  
47 months. Expungement would not require any action by the person  
48 or the payment of any fee.

1 WAIVER OF FEES AND COST OF ASSESSMENT. The bill provides  
2 that a person may apply for a waiver of court fees and the cost of  
3 the substance abuse assessment and treatment by reason of extreme  
4 financial hardship. Costs of the substance abuse assessment may be  
5 reimbursed from the Drug Education Program Fund established in  
6 the bill.

7 POSSESSION IN A MOTOR VEHICLE. Under N.J.S.A.39:4-49.1, a  
8 person who operates a motor vehicle while in possession of a  
9 controlled dangerous substance or prescription drug without a valid  
10 prescription is subject to a fine of not less \$50 and forfeits his right  
11 to operate a motor vehicle for two years. The bill provides that  
12 these penalties would not apply to possession of 10 grams or less of  
13 marijuana, including any adulterants or dilutants; a personal-use  
14 amount of a regulated marijuana-infused product as defined in  
15 N.J.S.2C:35-2; or one gram or less of hashish or marijuana  
16 concentrate.

17 DISORDERLY PERSONS OFFENSE: NEGLIGENT STORAGE OF  
18 REGULATED MARIJUANA-INFUSED PRODUCT. The bill also  
19 establishes a new criminal offense. Under the bill, a person who  
20 negligently stores a regulated marijuana-infused product, resulting  
21 in a minor under the age of 18 years possessing such product, would  
22 be guilty of a disorderly persons offense. It would be prima facie  
23 evidence that the person did not act negligently if he lawfully  
24 obtained the regulated marijuana-infused product from a  
25 jurisdiction where marijuana sales to adults are authorized under the  
26 law of the jurisdiction, and stored the product in its original, child-  
27 resistant, labeled packaging. Failure to store a regulated marijuana-  
28 infused product in its original, child-resistant, labeled packaging  
29 would be prima facie evidence of negligence.

30 EXPUNGEMENT OF CERTAIN PRIOR CRIMINAL OFFENSES  
31 INVOLVING MARIJUANA. The bill provides that in the case of  
32 conviction for the possession of 10 grams or less of marijuana, a  
33 personal-use amount of a regulated marijuana-infused product, or  
34 one gram or less of hashish or marijuana concentrate that occurred  
35 prior to the effective date of the bill, an expungement petition may  
36 be filed and presented at any time, without the usual waiting period  
37 for expungement. Upon review of the petition, the court would  
38 immediately grant the expungement.

39 CONDITIONAL DISCHARGE FOR FIRST OFFENDERS. The bill  
40 amends N.J.S.2C:36A-2, which provides conditional discharge for  
41 certain first offenders charged with disorderly persons or petty  
42 disorderly persons drug offenses, to mandate drug treatment in  
43 certain cases. Under the bill, when a first offender is charged with a  
44 disorderly persons or petty disorderly persons drug offense, the  
45 court would suspend further proceedings and place the person on  
46 supervisory treatment. The person would be required to undergo a  
47 diagnostic assessment by a professional licensed or certified to  
48 perform such assessments by the Division of Mental Health and

1   Addiction Services in the Department of Health to determine if and  
2   to what extent the person is drug dependent and would benefit from  
3   treatment. If the person is determined to not be drug dependent he  
4   would complete a two-hour education program on marijuana and  
5   other controlled dangerous substances, according to a curriculum  
6   developed by the Division of Mental Health and Addiction Services  
7   in the Department of Health. The curriculum would include written  
8   materials. If the professional determines that the person is not drug  
9   dependent, the professional would report to the court that no further  
10   action is needed, and the records of the violation would be  
11   expunged.

12     If the person is determined to be drug dependent and substance  
13   abuse treatment and monitoring would serve to benefit the person  
14   by addressing his drug dependency, the court would order the  
15   person to undergo treatment for drug dependency at a suitable  
16   treatment facility licensed and approved by the Department of  
17   Health and to comply with the requirements of the course of  
18   treatment. The person would be required to submit to periodic  
19   testing to determine compliance with treatment program goals.  
20   Upon completion of treatment, the agency designated by the court  
21   to monitor or supervise the person's treatment would report to the  
22   court as to the person's progress in treatment and compliance with  
23   court-imposed terms and conditions. The treatment provider would  
24   promptly report to the court any significant failures by the person to  
25   comply with any court-imposed term or condition of treatment or  
26   any requirements of the course of treatment, including but not  
27   limited to a positive drug or alcohol test or the unexcused failure to  
28   attend any session or activity. The bill provides that a person may  
29   apply for a waiver of court fees and the cost of the substance abuse  
30   assessment and treatment by reason of extreme financial hardship.  
31   Costs of the substance abuse assessment may be reimbursed from  
32   the Drug Education Program Fund established in the bill.

33     After the expiration of a period of six months following the  
34   completion of the education program or following substance abuse  
35   treatment, the records of the violation would be expunged.  
36   Expungement would not require any action by the person or the  
37   payment of any fee. A person may apply for a waiver of court fees  
38   and the cost of the substance abuse assessment by reason of extreme  
39   financial hardship.

40     Under current law, as a term and condition of supervisory  
41   treatment under N.J.S.2C:36A-2 the court must suspend the  
42   person's driving privileges for a period of six months to two years  
43   unless the court finds compelling circumstances warranting an  
44   exception. The bill deletes this provision for all persons  
45   participating in supervisory treatment under the statute.

46     Conditional discharge would be available to every defendant  
47   unless the court in its discretion concludes that:

1 (1) The defendant's continued presence in the community, or in  
2 a civil treatment center or program, will pose a danger to the  
3 community; or

4 (2) The terms and conditions of supervisory treatment will be  
5 inadequate to protect the public and will not benefit the defendant  
6 by serving to correct any dependence on or use of controlled  
7 substances which he may manifest; or

8 (3) The person has previously received supervisory treatment  
9 under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12,  
10 or the conditional discharge program.

11 MUNICIPAL COURT JURISDICTION. The bill would amend  
12 N.J.S.2B:12-17, which sets out the jurisdiction of the municipal  
13 court, to add jurisdiction for the new civil penalties created by the  
14 bill.

15 DRUG EDUCATION PROGRAM FUND. The bill provides that \$50 of  
16 each penalty imposed would be forwarded by the municipality to  
17 the State to be deposited in the "Drug Education Program Fund"  
18 established pursuant to the bill. The remainder of the penalty  
19 monies would be retained by the municipality for the general uses  
20 of the municipality. Monies deposited in the "Drug Education  
21 Program Fund" would be appropriated to the Department of Health,  
22 Division of Mental Health and Addiction Services for drug  
23 education programs. Monies in the fund would also be used to  
24 reimburse the costs of substance abuse assessment and treatment  
25 pursuant to the bill.

26 APPLICABILITY. The bill encompasses persons convicted and  
27 serving sentences for marijuana offenses under current law; persons  
28 convicted but not yet sentenced; and persons charged with offenses  
29 who have not yet gone to trial or otherwise had the charges  
30 resolved, as follows:

31 -- Any person who is serving a sentence on the effective date of  
32 the bill may move to have his sentence reviewed by the sentencing  
33 court, and the court may impose a civil penalty pursuant to the bill,  
34 if the person is serving a sentence for a violation of: (1) subsection  
35 a. of N.J.S.2C:35-10 (possession) for 10 grams or less of marijuana,  
36 including any adulterants or dilutants; a personal-use amount of a  
37 regulated marijuana-infused product; or one gram or less of hashish  
38 or marijuana concentrate; (2) subsection b. or c. of N.J.S.2C:35-10  
39 (being under the influence of marijuana, or failing to deliver  
40 marijuana to law enforcement); or (3) N.J.S.2C:36-2 (paraphernalia  
41 for marijuana use).

42 -- Any person who has been convicted, but is not yet sentenced,  
43 on the effective date of the bill may move to have his conviction  
44 overturned by the court, and the court may impose a civil penalty  
45 pursuant to the bill, if the person has been convicted of a violation  
46 of: (1) subsection a. of N.J.S.2C:35-10 (possession) for 10 grams or  
47 less of marijuana, including any adulterants or dilutants; a personal-  
48 use amount of a regulated marijuana-infused product; or one gram

1 or less of hashish or marijuana concentrate; (2) subsection b. or c.  
2 of N.J.S.2C:35-10 (being under the influence of marijuana, or  
3 failing to deliver marijuana to law enforcement); or (3)  
4 N.J.S.2C:36-2 (paraphernalia for marijuana use).

5 -- Any person who has criminal charges pending on the effective  
6 date of the bill would have those criminal charges dismissed, and  
7 the prosecutor may charge the person with the civil penalty  
8 pursuant to the bill, if the person has been charged with a violation  
9 of: (1) subsection a. of N.J.S.2C:35-10 (possession) for 10 grams or  
10 less of marijuana, including any adulterants or dilutants; a personal-  
11 use amount of a regulated marijuana-infused product; or one gram  
12 or less of hashish or marijuana concentrate; (2) subsection b. or c.  
13 of N.J.S.2C:35-10 (being under the influence of marijuana, or  
14 failing to deliver marijuana to law enforcement); or (3)  
15 N.J.S.2C:36-2 (paraphernalia for marijuana use).

16 ATTORNEY GENERAL GUIDELINES. The bill requires the Attorney  
17 General to issue guidelines for prosecutors and law enforcement to  
18 effectuate the provisions of the bill.

19 COMMISSIONER OF HEALTH GUIDELINES. The Commissioner of  
20 Health, in consultation with the Attorney General, would be  
21 required to adopt rules and regulations pursuant to the  
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
23 seq.), in order to effectuate the purposes of the bill.

24 MEDICAL MARIJUANA NOT AFFECTED. This bill would not be  
25 applicable to any person in compliance with the "New Jersey  
26 Compassionate Use Medical Marijuana Act," P.L.2009, c.307  
27 (C.24:6I-1 et al.).