

STATEMENT TO
[Second Reprint]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

with Assembly Floor Amendments
(Proposed by Assemblyman WIMBERLY)

ADOPTED: DECEMBER 17, 2020

The sole purpose of these amendments is to ensure that this bill, largely focusing on the re-grading and decriminalization of certain future marijuana and hashish offenses, as well as reducing the legal consequences of past offenses, does so in a unified and consist manner with several sections of Assembly Bill No. 21, titled the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” as amended by the Assembly Appropriations Committee on December 15, 2020, and which amendments also address the above described criminal justice reforms.

New sections 1 and 2 would re-grade and decriminalize the same marijuana and hashish distribution and possession offenses, as well as using or being under the influence of marijuana or hashish, in the same manner (except for a change to the possession amount of hashish that is decriminalized), as well as provide the same legal protections associated with such offenses, as the underlying current versions of sections 1 and 2 of this bill.

In new section 1 (distribution), there is an additional provision to ensure that a person who commits a first offense of distributing one ounce or less of marijuana, or five grams or less of hashish in violation of subparagraph (b) of paragraph (12) of subsection b. of N.J.S.2C:35-5, subject to a written warning, would not have to appear before a trier of fact (in court) to determine the actual amount distributed in order to receive the written warning. This provision is based on language contained in section 55 of Assembly Bill No. 21, as amended on December 15.

New section 2 decriminalizes possession of 17 grams or less of hashish, instead of 170 grams or less as stated in the underlying current version, and clarifies that the decriminalization for possession of this amount of hashish, or six ounces or less of marijuana (same as the current bill) means that any such act is not “an act of delinquency,” in addition to not being a crime, offense, or civil violation of law. Additionally, although using or being under the influence of marijuana or hashish would no longer be unlawful, smoking, vaping, or aerosolizing with either or both could be prohibited or otherwise regulated upon or in various properties, and the new section 2 adds “the structure or specific units of the structure of a cooperative as

defined in section 3 of P.L.1987, s.381 (C.46:8D-3)” to the list of such properties with the authority to do so, which list is copied from the underlying current version of section 2. Also, new section 2 does not contain a re-grading of possession of one ounce or less of psilocybin mushroom to a disorderly persons offense, which appears in the underlying current section. These changes are based upon new provisions contained in, or missing from, section 56 of Assembly Bill No. 21, as amended.

New section 3, which would make it no longer an illegal act to use or possess with intent to use drug paraphernalia with marijuana or hashish is identical to section 3 of the underlying current version, with two additions from section 58 of Assembly Bill No. 21, as amended, both being similar to additions in new section 2: first, expressly stating that such an act involving drug paraphernalia would not be considered “an act of delinquency,” in addition to not otherwise being punishable as a violation of law; and the second addition adding to the list of properties upon or in which the use of drug paraphernalia with marijuana or hashish, although not unlawful, could be prohibited or otherwise regulated – “the structure or specific units of the structure of a cooperative as defined in section 3 of P.L.1987, s.381 (C.46:8D-3).”

New section 4, based entirely on section 59 of Assembly Bill No. 21, as amended, addresses (1) the dismissal of various pending marijuana and hashish charges, (2) vacating, by operation of law, existing entries of guilty or placements in a diversionary program for matters without a judgment of conviction or final disposition, and (3) vacating, by operation by law, existing convictions, remaining sentences, ongoing supervision, and unpaid court-ordered financial assistance; these actions would all occur on the first day of the fifth month next following the effective date of Assembly Bill No. 21, as amended, to ensure consistent timing of the actions as set forth in that bill and now included in this bill. The underlying current section 4 generally addressed the same matters, but for points (2) and (3) it required a person with an entry of guilt, or serving or soon to be serving a sentence of incarceration, probation, parole or other form of community supervision, to make a motion to a court for relief from the entry of guilt or the sentence imposed; unlike the new section, there was no automatic operation under the law for action providing persons relief. The marijuana and hashish crimes and offenses which are addressed by the new section 4 in the above described manner are the same as those addressed in the underlying current section 4.

New section 5, based entirely on section 60 of Assembly Bill No. 21, as amended, would expunge, by operation of law, as of the first day of the fifth month next following the effective date of Assembly Bill No. 21, as amended (for proper timing between the bills), any case that, prior to that bill’s effective date, included a conviction or adjudication of delinquency solely for one or more of the following crimes or offenses, which list includes some, but not all of the crimes or offenses that would have been subject to a “virtual expungement” pursuant to the underlying current section 5:

(1) unlawful distribution of less than one ounce of marijuana, or less than five grams of hashish, in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5;

(2) obtaining or possessing more than 50 grams of marijuana in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or obtaining or possessing 50 grams or less in violation of paragraph (4) of that subsection, or using, being under the influence of, or failing to voluntarily deliver to a law enforcement officer, any amount of marijuana or hashish in violation of subsection b. or subsection c. of N.J.S.2C:35-10; and

(3) a violation involving any of the aforementioned offenses and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

It also adds an additional category for expungement by operation of law:

(4) any disorderly persons offense or petty disorderly persons offense involving a controlled dangerous substance (which only applies to small amount marijuana or hashish offenses) or drug paraphernalia that is subject to conditional discharge pursuant to N.J.S.2C:36A-1.

New section 5 would additionally permit anticipatory administrative action by the Administrative Director of the Courts, in consultation with the Attorney General, necessary to expeditiously effectuate the expungements of records carried out by this operation of law. The “virtual expungement” set forth in the underlying current section 5 would have made the past incidents of marijuana and hashish crimes and offenses “deemed not to have occurred,” thereby providing such relief without the need to petition a court for an expungement order granting such result. The new section 5’s action of expungement by operation of law similarly will not require a person with such an expungement to petition a court.

Lastly, section 21, concerning the effective date of the bill, or more specifically the effective dates of individual sections of the bill, is updated so that the effective date of all of the aforementioned provisions set forth in new sections 1 through 5 (immediately upon enactment) will coincide with the effective date of their counterpart sections in Assembly Bill No. 21, as amended, sections 55 and 56, and 58 through 60 (immediately upon enactment), and link the effective date of the other sections of this bill to the date that actions occur on matters set forth in Assembly Bill No. 21, as amended, based on provisions in that bill that those actions are to occur on the first day of the fifth month next following enactment. This update to the effective date section will ensure a consistent timing for the changes to the law brought about by both bills.