

ASSEMBLY, No. 5435

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 8, 2021

Sponsored by:

Assemblyman ROBERT AUTH

District 39 (Bergen and Passaic)

SYNOPSIS

Legalizes possession of six or fewer marijuana plants, subject to enactment of legislation legalizing marijuana or cannabis for personal use.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning marijuana and amending N.J.S.2C:35-10.

2

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

5

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

7 2C:35-10. Possession, Use or Being Under the Influence, or
8 Failure to Make Lawful Disposition.

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

17 (1) A controlled dangerous substance, or its analog, classified in
18 Schedule I, II, III or IV other than those specifically covered in this
19 section, is guilty of a crime of the third degree except that,
20 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
21 fine of up to **[\$35,000.00]** \$35,000 may be imposed;

22 (2) Any controlled dangerous substance, or its analog, classified
23 in Schedule V, is guilty of a crime of the fourth degree except that,
24 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
25 fine of up to **[\$15,000.00]** \$15,000 may be imposed;

26 (3) **【Possession】** (a) Prior to the effective date of P.L. _____,
27 c. (C. _____) (pending before the Legislature as Assembly, No.
28 21(2R) of 2020-2021), possession of more than 50 grams of
29 marijuana, including any adulterants or dilutants, or more than five
30 grams of hashish is guilty of a crime of the fourth degree, except
31 that, notwithstanding the provisions of subsection b. of
32 N.J.S.2C:43-3, a fine of up to **[\$25,000.00]** \$25,000 may be
33 imposed; **【or】**

34 (b) On and after to the effective date of P.L. _____, c. (C. _____)
35 (pending before the Legislature as Assembly, No. 21(2R) of 2020-
36 2021), possession of more than six ounces of marijuana, including
37 any adulterants or dilutants, or more than 17 grams of hashish is
38 guilty of a crime of the fourth degree, except that, notwithstanding
39 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
40 \$25,000 may be imposed;

41 (i) The odor of marijuana or hashish, or burnt marijuana or
42 hashish, shall not constitute reasonable articulable suspicion to
43 initiate a search of a person to determine a violation of
44 subparagraph (b) of paragraph (3) of this subsection. A person
45 who violates this paragraph shall not be subject to arrest, detention,

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

5 (ii) A person shall not be deprived of any legal or civil right,
6 privilege, benefit, or opportunity provided pursuant to any law
7 solely by reason of committing a violation of subparagraph (b) of
8 paragraph (3) of this subsection, nor shall committing one or more
9 violations modify any legal or civil right, privilege, benefit, or
10 opportunity provided pursuant to any law, including, but not limited
11 to, the granting, renewal, forfeiture, or denial of a license, permit,
12 or certification, qualification for and the receipt, alteration,
13 continuation, or denial of any form of financial assistance, housing
14 assistance, or other social services, rights of or custody by a
15 biological parent, or adoptive or foster parent, or other legal
16 guardian of a child or newborn infant, or pregnant woman, in any
17 action or proceeding by the Division of Child Protection and
18 Permanency in the Department of Children and Families, or
19 qualification, approval, or disapproval to serve as a foster parent or
20 other legal guardian;

21 (iii) All local and county law enforcement authorities shall,
22 following the submission process used for the uniform crime
23 reporting system established by P.L.1966, c.37 (C.52:17B-
24 5.1 et seq.), submit a quarterly report to the Uniform Crime
25 Reporting Unit, within the Division of State Police in the
26 Department of Law and Public Safety, or to another designated
27 recipient determined by the Attorney General, containing the
28 number of violations of subparagraph (b) of paragraph (3) of this
29 subsection committed within their respective jurisdictions, plus the
30 race, ethnicity, gender, and age of each person committing a
31 violation, and the disposition of each person's violation. These
32 violations and associated information, along with a quarterly
33 summary of violations investigated, and associated information
34 collected, by the Division of State Police for the same period shall
35 be summarized by county and municipality in an annual report, and
36 both quarterly summaries and annual reports shall be made
37 available at no cost to the public on the Division of State Police's
38 Internet website; or

39 (4) **【Possession】** (a) Prior to the effective date of P.L. _____,
40 c. (C. _____) (pending before the Legislature as Assembly, No.
41 21(2R) of 2020-2021), possession of 50 grams or less of marijuana,
42 including any adulterants or dilutants, or five grams or less of
43 hashish is a disorderly person;

44 (b) On and after the effective date of P.L. _____, c. (C. _____)
45 (pending before the Legislature as Assembly, No. 21(2R) of 2020-
46 2021), possession of six ounces or less of marijuana, including any
47 adulterants or dilutants, six or fewer marijuana plants, or 17 grams
48 or less of hashish is not subject to any punishment, as this

1 possession is not a crime, offense, act of delinquency, or civil
2 violation of law;

3 Any person who commits any offense **【defined in】** set forth in
4 paragraphs (1) through (3) of this 【section】 subsection while on any
5 property used for school purposes which is owned by or leased to
6 any elementary or secondary school or school board, or within
7 1,000 feet of any such school property or a school bus, or while on
8 any school bus, and who is not sentenced to a term of
9 imprisonment, shall, in addition to any other sentence which the
10 court may impose, be required to perform not less than 100 hours of
11 community service.

12 b. (1) Any person who uses or who is under the influence of
13 any controlled dangerous substance, or its analog, not including
14 marijuana or hashish, for a purpose other than the treatment of
15 sickness or injury as lawfully prescribed or administered by a
16 physician is a disorderly person.

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

27 (2) Notwithstanding that using or being under the influence of
28 marijuana or hashish is not a punishable crime, offense, act of
29 delinquency, or civil violation pursuant to this subsection, the
30 smoking, vaping, or aerosolizing of marijuana or hashish may be
31 prohibited or otherwise regulated on or in any property by the
32 person or entity that owns or controls that property, including
33 multifamily housing that is a multiple dwelling as defined in section
34 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of
35 the structure of a cooperative as defined in section 3 of P.L.1987,
36 c.381 (C.46:8D-3), the units of a condominium, as those terms are
37 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
38 mobile home park as defined in section 3 of P.L.1983, c.386
39 (C.40:55D-102), which site is leased to the owner of a
40 manufactured home, as defined in that section, that is installed
41 thereon.

42 c. Any person who knowingly obtains or possesses a controlled
43 dangerous substance or controlled substance analog in violation of
44 paragraph (1) or (2) of subsection a. of this section and who fails to
45 voluntarily deliver the substance to the nearest law enforcement
46 officer is guilty of a disorderly persons offense. Nothing in this
47 subsection shall be construed to preclude a prosecution or

1 conviction for any other offense defined in this title or any other
2 statute.

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

4

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

6 2C:36-1. Drug paraphernalia, defined; determination.

7 a. As used in this act, "drug paraphernalia" means all
8 equipment, products and materials of any kind which are used or
9 intended for use in planting, propagating, cultivating, growing,
10 harvesting, manufacturing, compounding, converting, producing,
11 processing, preparing, testing, analyzing, packaging, repackaging,
12 storing, containing, concealing, ingesting, inhaling, or otherwise
13 introducing into the human body a controlled dangerous substance,
14 controlled substance analog or toxic chemical, other than marijuana
15 or hashish, in violation of the provisions of chapter 35 of this title.
16 It shall include, but not be limited to:

17 **【a.】** (1) kits used or intended for use in planting, propagating,
18 cultivating, growing or harvesting of any species of plant, other
19 than the plant Cannabis sativa L., which is a controlled dangerous
20 substance or from which a controlled dangerous substance can be
21 derived;

22 **【b.】** (2) kits used or intended for use in manufacturing,
23 compounding, converting, producing, processing, or preparing
24 controlled dangerous substances or controlled substance analogs;

25 **【c.】** (3) isomerization devices used or intended for use in
26 increasing the potency of any species of plant, other than the plant
27 Cannabis sativa L., which is a controlled dangerous substance;

28 **【d.】** (4) testing equipment used or intended for use identifying,
29 or in analyzing the strength, effectiveness or purity of controlled
30 dangerous substances or controlled substance analogs;

31 **【e.】** (5) scales and balances used or intended for use in
32 weighing or measuring controlled dangerous substances or
33 controlled substance analogs;

34 **【f.】** (6) dilutants and adulterants, such as quinine hydrochloride,
35 mannitol, mannite, dextrose and lactose, used or intended for use in
36 cutting controlled dangerous substances or controlled substance
37 analogs;

38 **【g.** separation gins and sifters used or intended for use in
39 removing twigs and seeds from, or in otherwise cleaning or
40 refining, marihuana;

41 **【h.】** (7) blenders, bowls, containers, spoons and mixing devices
42 used or intended for use in compounding controlled dangerous
43 substances or controlled substance analogs;

44 **【i.】** (8) capsules, balloons, envelopes and other containers used
45 or intended for use in packaging small quantities of controlled
46 dangerous substances or controlled substance analogs;

- 1 **【j.】** (9) containers and other objects used or intended for use in
2 storing or concealing controlled dangerous substances, controlled
3 substance analogs or toxic chemicals;
- 4 **【k.】** (10) objects used or intended for use in ingesting, inhaling,
5 or otherwise introducing **【marihuana,】** cocaine, **【hashish, hashish**
6 **oil,】** nitrous oxide or the fumes of a toxic chemical into the human
7 body, such as **【(1)】** (a) metal, wooden, acrylic, glass, stone, plastic,
8 or ceramic pipes with or without screens, permanent screens,
9 **【hashish heads,】** or punctured metal bowls; **【(2)】** (b) water pipes;
10 **【(3)】** (c) carburetion tubes and devices; **【(4)】** (d) smoking and
11 carburetion masks; **【(5)】** (e) roach clips, meaning objects used to
12 hold burning material **【, such as a marihuana cigarette,】** that has
13 become too small or too short to be held in the hand; **【(6)】** (f)
14 miniature cocaine spoons, and cocaine vials; **【(7)】** (g) chamber
15 pipes; **【(8)】** (h) carburetor pipes; **【(9)】** (i) electric pipes; **【(10)】** (j)
16 air-driven pipes; **【(11)】** (k) chillums; **【(12)】** (l) bongs; **【(13)】** (m)
17 ice pipes or chillers; **【(14)】** (n) compressed gas containers, such as
18 tanks, cartridges or canisters, that contain food grade or
19 pharmaceutical grade nitrous oxide as a principal ingredient; **【(15)】**
20 (o) chargers or charging bottles, meaning metal, ceramic or plastic
21 devices that contain an interior pin that may be used to expel
22 compressed gas from a cartridge or canister; and **【(16)】** (p) tubes,
23 balloons, bags, fabrics, bottles or other containers used to
24 concentrate or hold in suspension a toxic chemical or the fumes of a
25 toxic chemical.
- 26 b. In determining whether or not an object is drug
27 paraphernalia, the trier of fact, in addition to or as part of the
28 proofs, may consider the following factors:
- 29 **【a.】** (1) (a) statements by an owner or by anyone in control of
30 the object concerning its use;
- 31 **【b.】** (b) the proximity of the object **【of】** to illegally possessed
32 controlled dangerous substances, controlled substance analogs or
33 toxic chemicals;
- 34 **【c.】** (c) the existence of any residue of illegally possessed
35 controlled dangerous substances, controlled substance analogs or
36 toxic chemicals on the object;
- 37 **【d.】** (d) direct or circumstantial evidence of the intent of an
38 owner, or of anyone in control of the object, to deliver it to persons
39 whom he knows intend to use the object to facilitate a violation of
40 this act; the innocence of an owner, or of anyone in control of the
41 object, as to a direct violation of this act shall not prevent a finding
42 that the object is intended for use as drug paraphernalia;
- 43 **【e.】** (e) instructions, oral or written, provided with the object
44 concerning its use;
- 45 **【f.】** (f) descriptive materials accompanying the object which
46 explain or depict its use;

1 **[g.]** (g) national or local advertising whose purpose the person
2 knows or should know is to promote the sale of objects intended for
3 use as drug paraphernalia;

4 **[h.]** (h) the manner in which the object is displayed for sale;

5 **[i.]** (i) the existence and scope of legitimate uses for the object
6 in the community; and

7 **[j.]** (j) expert testimony concerning its use.

8 (2) If an object appears to be for use, intended for use, or
9 designed for use with cannabis or cannabis items in accordance with
10 the “New Jersey Cannabis Regulatory, Enforcement Assistance, and
11 Marketplace Modernization Act,” P.L. , c. (C.) (pending
12 before the Legislature as Assembly, No. 21(2R) of 2020-2021), the
13 object is presumed to be a lawful cannabis paraphernalia as defined
14 in section 3 of Assembly, No. 21(2R) of 2020-2021 (C.), and
15 does not alone constitute reasonable articulable suspicion that the
16 object is a drug paraphernalia, notwithstanding that the object could
17 also be used with an illegal controlled substance or controlled
18 substance analog, unless the owner or any other person in proximity
19 to or in control of the object was in possession of an illegal
20 controlled dangerous substance or controlled substance analog, or
21 the object was in proximity of an illegally possessed controlled
22 dangerous substance or controlled substance analog to indicate its
23 use, intended use, or design for use with that controlled dangerous
24 substance or controlled substance analog.

25 (cf: P.L.2007, c.31, s.2)

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

28 2C:36-2. a. Use or possession with intent to use, disorderly
29 persons offense. It shall be unlawful for any person to use, or to
30 possess with intent to use, drug paraphernalia to plant, propagate,
31 cultivate, grow, harvest, manufacture, compound, convert, produce,
32 process, prepare, test, analyze, pack, repack, store, contain, conceal,
33 ingest, inhale, or otherwise introduce into the human body a
34 controlled dangerous substance, controlled substance analog or
35 toxic chemical in violation of the provisions of chapter 35 of this
36 title, other than when used, or possessed with intent to use, for
37 ingesting, inhaling, or otherwise introducing marijuana or hashish
38 into the human body. Any person who violates this section is guilty
39 of a disorderly persons offense.

40 b. Notwithstanding that using or possessing with intent to use
41 drug paraphernalia to ingest, inhale, or otherwise introduce
42 marijuana or hashish into the human body is not a punishable crime,
43 offense, act of delinquency, or civil violation pursuant to this
44 section, the use of drug paraphernalia for that purpose may be
45 prohibited or otherwise regulated on or in any property by the
46 person or entity that owns or controls that property, including
47 multifamily housing that is a multiple dwelling as defined in section
48 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of

1 the structure of a cooperative as defined in section 3 of P.L.1987,
2 c.381 (C.46:8D-3), the units of a condominium, as those terms are
3 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
4 mobile home park as defined in section 3 of P.L.1983, c.386
5 (C.40:55D-102), which site is leased to the owner of a
6 manufactured home, as defined in that section, that is installed
7 thereon.

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

9
10 4. This act shall take effect upon the enactment of Assembly,
11 No. 21(2R) of 2020-2021.

12
13
14 STATEMENT

15
16 This bill would legalize the possession of six or fewer marijuana
17 plants, subject to the enactment of legislation that legalizes the
18 personal use of marijuana or cannabis. Assembly, No. 21(2R), the
19 “Cannabis Regulatory, Enforcement Assistance, and Marketplace
20 Modernization Act,” would legalize personal use.

21 A-21(2R) was substituted for identical bill Senate, No. 21(2R) on
22 December 17, 2020, and passed both Houses. The bill is currently
23 on the Governor’s desk. However, A-21(2R) would not allow the
24 “home grow” of marijuana for personal use. This bill would allow
25 “home grow” in an amount of up to six marijuana plants.