

[First Reprint]

ASSEMBLY, No. 5472

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 15, 2021

Sponsored by:

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District 7 (Burlington)

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District 11 (Monmouth)

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Assemblywomen Vainieri Huttie, McKnight, Assemblymen Benson, Bergen, Zwicker, Webber, DeAngelo, Assemblywoman Reynolds-Jackson, Assemblyman Karabinchak, Assemblywoman Carter, Assemblyman Caputo and Assemblywoman DiMaso

SYNOPSIS

Requires notification to parent or guardian of certain underage persons for first offense of possessing or consuming alcohol, cannabis, marijuana, or hashish; bars law enforcement from transporting such persons to police station to deliver warning.

CURRENT VERSION OF TEXT

As reported by the Assembly Community Development and Affairs Committee on March 17, 2021, with amendments.

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

1 AN ACT concerning parental notification of minors' alcohol
2 ¹~~and~~,¹ cannabis¹, marijuana, and hashish¹ use ¹~~under certain~~
3 circumstances¹ and amending P.L.1979, c.264.

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

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

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

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

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

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACD committee amendments adopted March 17, 2021.

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

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

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

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

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

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

36 (3) A person under the legal age to purchase alcoholic
37 beverages or cannabis items who violates paragraph (1) of this
38 subsection for possessing or consuming an alcoholic beverage,
39 marijuana, hashish, or a cannabis item shall not be subject to arrest,
40 'shall not be transported to a police station, police headquarters, or
41 other place of law enforcement operations,' and shall not
42 'otherwise' be subject to detention or '[otherwise]' be taken into
43 custody by a law enforcement officer 'at or near the location where
44 the violation occurred,' except to the extent 'that detention or
45 custody at or near the location is' required to issue a written
46 warning or write-up, 'collect the information necessary to' provide
47 notice of a violation to a parent, guardian or other person having

1 legal custody of the underage person in accordance with section 3
2 of P.L.1991, c.169 (C.33:1-81a), or make referrals for accessing
3 community services provided by a public or private agency or
4 organization due to a third or subsequent violation, unless the
5 person is being arrested, detained, or otherwise taken into custody
6 for also committing another violation of law for which that action is
7 legally permitted or required.

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

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

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

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

8 (b) (i) any copy of any written warning or write-up issued to a
9 person under the legal age to purchase alcoholic beverages or
10 cannabis items, written notification provided to the person's parent,
11 guardian or other person having legal custody in accordance with
12 section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement
13 describing the relevant facts and circumstances that support an
14 officer's determination that a person committed a violation, or
15 referrals for accessing community services provided by a public or
16 private agency or organization pertaining to a third or subsequent
17 violation shall be segregated and maintained in a separate physical
18 location or electronic repository or database from any other records
19 maintained by a law enforcement agency, and reported to the
20 Attorney General in a manner so that they are similarly segregated
21 and maintained in a separate physical location or electronic
22 repository or database from other law enforcement records
23 accessible to the Attorney General and State and local law
24 enforcement agencies, and shall not be transferred to or copied and
25 placed in any other physical location or electronic repository or
26 database containing any other law enforcement records. These
27 records shall only be used to the extent necessary to determine a
28 subsequent violation of paragraph (1) of this subsection or to track
29 referrals to agencies and organizations, and shall not be revealed,
30 reviewed, or considered in any manner with respect to any current
31 or subsequent juvenile delinquency matter, including but not limited
32 to, a charge, filing, eligibility or decision for diversion or discharge,
33 or sentencing, other disposition, or related decision affecting the
34 juvenile, or with respect to any current or subsequent prosecution
35 for committing an offense or other violation of law, including but
36 not limited to, a charge, filing, eligibility or decision for diversion
37 or discharge, or sentencing, other disposition, or related decision
38 affecting an adult under 21 years of age. Also, these records shall
39 be deemed confidential and shall not be subject to public inspection
40 or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1
41 et seq.), and their existence shall not be acknowledged based upon
42 any inquiry in the same manner as if the records were expunged
43 records pursuant to the provisions of subsection a. of N.J.S.2C:52-
44 15.

45 The Attorney General may use the records described herein to
46 generate the number of occurrences and other statistics concerning
47 first, second, third and subsequent violations of paragraph (1) of this
48 subsection, the municipal, county or other geographic areas within

1 which first, second, third and subsequent violations occur, and the
2 law enforcement agencies involved in first, second, third and
3 subsequent violations, which are to be compiled and made available
4 by the Attorney General in accordance with section 4 of P.L.2021,
5 c.25. The identity of any person named in a record shall not be
6 revealed or included in the information to be compiled and made
7 available in accordance with that section.

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

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

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

47 (d) A law enforcement officer shall be guilty of the crime of
48 official deprivation of civil rights as set forth in section 3 of

1 P.L.2021, c.25 (C.) for violating the provisions of paragraph
2 (1) of this subsection that address law enforcement actions
3 involving persons who are under the legal age to purchase alcoholic
4 beverages or cannabis items.

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

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

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

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

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

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

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

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

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

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

45 g. For purposes of this section, an alcoholic beverage includes
46 powdered alcohol as defined by R.S.33:1-1, a cannabis item
47 includes any item available for lawful consumption pursuant to the
48 “New Jersey Cannabis Regulatory, Enforcement Assistance, and

1 Marketplace Modernization Act,” P.L.2021, c.16 (C.), and the
2 terms “marijuana” and “hashish” have the same meaning as set
3 forth in N.J.S.2C:35-2, and the terms “drug paraphernalia” and
4 “cannabis paraphernalia” have the same meaning as set forth in
5 N.J.S.2C:36-1 and section 3 of P.L.2021, c.16 (C.),
6 respectively.
7 (cf: P.L.2021, c.25, s.2)
8
9 2. This act shall take effect on the 60th day following
10 enactment.