

[Second Reprint]
ASSEMBLY, No. 5472

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 15, 2021

Sponsored by:

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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 Homeland Security and State Preparedness Committee on March 17, 2021, with amendments.

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

1 AN ACT concerning parental notification of minors' alcohol
 2 ¹**[and],¹ cannabis¹, marijuana, and hashish¹ use ¹**[under certain**
 3 **circumstances]**¹ and amending P.L.1979, c.264 ²**and P.L.1991,**
 4 **c.169**².**

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

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

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

18 (a) for a first violation, a written warning issued by a law
 19 enforcement officer to the underage person ²**[and, if the underage**
 20 **person is under 18 years of age, a written warning issued by a law**
 21 **enforcement officer to the parent, guardian, or other person having**
 22 **legal custody of the underage person]**². The written warning shall
 23 include the person's name, address, and date of birth, and a copy of
 24 the warning containing this information, plus a sworn statement that
 25 includes a description of the relevant facts and circumstances that
 26 support the officer's determination that the person committed the
 27 violation, shall be temporarily maintained in accordance with this
 28 section only for the purposes of determining a second or subsequent
 29 violation subject to the consequences set forth in subparagraph (b)
 30 or (c) of this paragraph. **[Notwithstanding the provisions of]**
 31 ²**[Pursuant to section 3 of P.L.1991, c.169 (C.33:1-81.1a)]**²
 32 **[concerning]** ²**[, a written notification of a]** **If the**² violation of this
 33 section ²**is committed**² by a person under 18 years of age ²**, a written**
 34 **notification concerning the violation shall be provided**² to the parent,
 35 guardian or other person having legal custody of the underage
 36 person **[, a written notification]** ²**[shall]**² **[not]** ²**[be provided]**²
 37 **[pursuant to that section]** ²**[for]**² **[a first]** ²**[any violation of this**
 38 **paragraph]** **in accordance with section 3 of P.L.1991, c.169 (C.33:1-**
 39 **81.1a)**².

40 (b) for a second violation, a written warning issued by a law
 41 enforcement officer to the underage person indicating that a second
 42 violation has occurred, which includes the person's name, address,
 43 and date of birth. If the violation is by a person 18 years of age or

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.

²Assembly AHS committee amendments adopted March 17, 2021.

1 older, the officer shall provide the person with informational
2 materials about how to access community services provided by
3 public or private agencies and organizations that shall assist the
4 person with opportunities to access further social services,
5 including but not limited to counseling, tutoring programs,
6 mentoring services, and faith-based or other community initiatives.
7 If the violation is by a person under 18 years of age, a written
8 notification concerning the second violation ²[, along with a copy
9 of the written warning for the person's first violation,]² shall be
10 provided to the parent, guardian or other person having legal
11 custody of the underage person in accordance with section 3 of
12 P.L.1991, c.169 (C.33:1-81.1a). The written notification shall
13 include the same or similar informational materials about how to
14 access community services provided by public or private agencies
15 and organizations as those provided directly by a law enforcement
16 officer to a person 18 years of age or older who commits a second
17 violation of this paragraph. A copy of the second written warning
18 to the underage person, and, if applicable, the written notification to
19 the parent, guardian or other person having legal custody of the
20 underage person concerning the second warning, plus a sworn
21 statement that includes a description of the relevant facts and
22 circumstances that support the officer's determination that the
23 person committed the second violation, shall be temporarily
24 maintained in accordance with this section only for the purposes of
25 determining a subsequent violation subject to the consequences set
26 forth in subparagraph (c) of this paragraph.

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

1 both persons, and the agency or organization shall offer assistance
2 to both with opportunities to access further social services,
3 including counseling, tutoring programs, mentoring services, and
4 faith-based or other community initiatives. A copy of a write-up for
5 a third or subsequent violation, the written notification to the
6 parent, guardian or other person having legal custody of the
7 underage person, if applicable, and accompanying referrals, plus a
8 sworn statement that includes a description of the relevant facts and
9 circumstances that support the officer's determination that the
10 person committed the third or subsequent violation, shall be
11 temporarily maintained in accordance with this section only to the
12 extent necessary to track referrals to agencies and organizations, as
13 well as for the purposes of determining a subsequent violation
14 subject to the consequences set forth in this subparagraph.

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

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

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

41 (3) A person under the legal age to purchase alcoholic
42 beverages or cannabis items who violates paragraph (1) of this
43 subsection for possessing or consuming an alcoholic beverage,
44 marijuana, hashish, or a cannabis item shall not be subject to arrest,
45 'shall not be transported to a police station, police headquarters, or
46 other place of law enforcement operations,' and shall not 'otherwise'
47 be subject to detention or '[otherwise]' be taken into custody by a
48 law enforcement officer 'at or near the location where the violation

1 occurred.¹ except to the extent ¹that detention or custody at or near
2 the location is¹ required to issue a written warning or write-up,
3 ¹collect the information necessary to¹ provide notice of a violation to
4 a parent, guardian or other person having legal custody of the
5 underage person in accordance with section 3 of P.L.1991, c.169
6 (C.33:1-81a), or make referrals for accessing community services
7 provided by a public or private agency or organization due to a third
8 or subsequent violation, unless the person is being arrested,
9 detained, or otherwise taken into custody for also committing
10 another violation of law for which that action is legally permitted or
11 required.

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

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

1 training or educational programs in accordance with applicable law
2 and directives issued by the Attorney General.

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

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

10 (b) (i) any copy of any written warning or write-up issued to a
11 person under the legal age to purchase alcoholic beverages or
12 cannabis items, written notification provided to the person's parent,
13 guardian or other person having legal custody in accordance with
14 section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement
15 describing the relevant facts and circumstances that support an
16 officer's determination that a person committed a violation, or
17 referrals for accessing community services provided by a public or
18 private agency or organization pertaining to a third or subsequent
19 violation shall be segregated and maintained in a separate physical
20 location or electronic repository or database from any other records
21 maintained by a law enforcement agency, and reported to the
22 Attorney General in a manner so that they are similarly segregated
23 and maintained in a separate physical location or electronic
24 repository or database from other law enforcement records
25 accessible to the Attorney General and State and local law
26 enforcement agencies, and shall not be transferred to or copied and
27 placed in any other physical location or electronic repository or
28 database containing any other law enforcement records. These
29 records shall only be used to the extent necessary to determine a
30 subsequent violation of paragraph (1) of this subsection or to track
31 referrals to agencies and organizations, and shall not be revealed,
32 reviewed, or considered in any manner with respect to any current
33 or subsequent juvenile delinquency matter, including but not limited
34 to, a charge, filing, eligibility or decision for diversion or discharge,
35 or sentencing, other disposition, or related decision affecting the
36 juvenile, or with respect to any current or subsequent prosecution
37 for committing an offense or other violation of law, including but
38 not limited to, a charge, filing, eligibility or decision for diversion
39 or discharge, or sentencing, other disposition, or related decision
40 affecting an adult under 21 years of age. Also, these records shall
41 be deemed confidential and shall not be subject to public inspection
42 or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1
43 et seq.), and their existence shall not be acknowledged based upon
44 any inquiry in the same manner as if the records were expunged
45 records pursuant to the provisions of subsection a. of N.J.S.2C:52-
46 15.

47 The Attorney General may use the records described herein to
48 generate the number of occurrences and other statistics concerning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 g. For purposes of this section, an alcoholic beverage includes
48 powdered alcohol as defined by R.S.33:1-1, a cannabis item

1 includes any item available for lawful consumption pursuant to the
2 “New Jersey Cannabis Regulatory, Enforcement Assistance, and
3 Marketplace Modernization Act,” P.L.2021, c.16 (C. ²2C:30-6.1²),
4 and the terms “marijuana” and “hashish” have the same meaning as
5 set forth in N.J.S.2C:35-2, and the terms “drug paraphernalia” and
6 “cannabis paraphernalia” have the same meaning as set forth in
7 N.J.S.2C:36-1 and section 3 of P.L.2021, c.16 (C. ²2C:30-6.1²),
8 respectively.

9 (cf: P.L. 2021, c.25, s.2)

10
11 ²2. Section 3 of P.L.1991, c.169 (C.33:1-81.1a) is amended to
12 read as follows:

13 3. A parent, guardian or other person having legal custody of a
14 person under 18 years of age found in violation of R.S.33:1-81 or
15 section 1 of P.L.1979, c.264 (C.2C:33-15) with respect to purchasing,
16 possessing, or consuming any alcoholic beverage, marijuana, hashish,
17 or cannabis item available for lawful consumption pursuant to the
18 "New Jersey Cannabis Regulatory, Enforcement Assistance, and
19 Marketplace Modernization Act," P.L.2021, c.21 (C.24:6I-31 et al.)
20 shall be notified of the violation in writing. The parent, guardian or
21 other person having legal custody of a person under 18 years of age
22 shall be subject to a fine in the amount of \$500.00 upon any
23 subsequent violation of R.S.33:1-81 or section 1 of P.L.1979, c.264
24 (C.2C:33-15) on the part of such person if it is shown that the parent,
25 guardian or other person having legal custody failed or neglected to
26 exercise reasonable supervision or control over the conduct of the
27 person under 18 years of age.²

28 (cf: P.L.2021, c.16, s.71)

29
30 ²[2.] 3.² This act shall take effect on the 60th day following
31 enactment.