

SENATE, No. 3407

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 4, 2021

Sponsored by:

Senator GERALD CARDINALE

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
27 P.L. , c. (C.) (pending before the Legislature as Assembly,
28 No. 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 who
45 violates this paragraph shall not be subject to arrest, detention, 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.

1 otherwise be taken into custody, unless the person is being arrested,
2 detained, or otherwise taken into custody for also committing
3 another violation of law for which that action is legally permitted or
4 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
40 P.L. , c. (C.) (pending before the Legislature as Assembly,
41 No. 21(2R) of 2020-2021), possession of 50 grams or less of
42 marijuana, including any adulterants or dilutants, or five grams or
43 less of 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

1 or less of hashish is not subject to any punishment, as this
2 possession is not a crime, offense, act of delinquency, or civil
3 violation of law;

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

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

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

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

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

1 subsection shall be construed to preclude a prosecution or
2 conviction for any other offense defined in this title or any other
3 statute.

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

5

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

7 2C:36-1. Drug paraphernalia, defined; determination.

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

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

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

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

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

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

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

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

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

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

4 **【j.】** (9) containers and other objects used or intended for use in
5 storing or concealing controlled dangerous substances, controlled
6 substance analogs or toxic chemicals;

7 **【k.】** (10) objects used or intended for use in ingesting, inhaling,
8 or otherwise introducing **【marihuana,】** cocaine, **【hashish, hashish**
9 **oil,】** nitrous oxide or the fumes of a toxic chemical into the human
10 body, such as **【(1)】** (a) metal, wooden, acrylic, glass, stone, plastic,
11 or ceramic pipes with or without screens, permanent screens,
12 **【hashish heads,】** or punctured metal bowls; **【(2)】** (b) water pipes;
13 **【(3)】** (c) carburetion tubes and devices; **【(4)】** (d) smoking and
14 carburetion masks; **【(5)】** (e) roach clips, meaning objects used to
15 hold burning material **【, such as a marihuana cigarette,】** that has
16 become too small or too short to be held in the hand; **【(6)】** (f)
17 miniature cocaine spoons, and cocaine vials; **【(7)】** (g) chamber
18 pipes; **【(8)】** (h) carburetor pipes; **【(9)】** (i) electric pipes; **【(10)】** (j)
19 air-driven pipes; **【(11)】** (k) chillums; **【(12)】** (l) bongs; **【(13)】** (m)
20 ice pipes or chillers; **【(14)】** (n) compressed gas containers, such as
21 tanks, cartridges or canisters, that contain food grade or
22 pharmaceutical grade nitrous oxide as a principal ingredient; **【(15)】**
23 (o) chargers or charging bottles, meaning metal, ceramic or plastic
24 devices that contain an interior pin that may be used to expel
25 compressed gas from a cartridge or canister; and **【(16)】** (p) tubes,
26 balloons, bags, fabrics, bottles or other containers used to
27 concentrate or hold in suspension a toxic chemical or the fumes of a
28 toxic chemical.

29 **b.** In determining whether or not an object is drug
30 paraphernalia, the trier of fact, in addition to or as part of the
31 proofs, may consider the following factors:

32 **【a.】** (1) (a) statements by an owner or by anyone in control of
33 the object concerning its use;

34 **【b.】** (b) the proximity of the object **【of】** to illegally possessed
35 controlled dangerous substances, controlled substance analogs or
36 toxic chemicals;

37 **【c.】** (c) the existence of any residue of illegally possessed
38 controlled dangerous substances, controlled substance analogs or
39 toxic chemicals on the object;

40 **【d.】** (d) direct or circumstantial evidence of the intent of an
41 owner, or of anyone in control of the object, to deliver it to persons
42 whom he knows intend to use the object to facilitate a violation of
43 this act; the innocence of an owner, or of anyone in control of the
44 object, as to a direct violation of this act shall not prevent a finding
45 that the object is intended for use as drug paraphernalia;

1 **【e.】** (e) instructions, oral or written, provided with the object
2 concerning its use;

3 **【f.】** (f) descriptive materials accompanying the object which
4 explain or depict its use;

5 **【g.】** (g) national or local advertising whose purpose the person
6 knows or should know is to promote the sale of objects intended for
7 use as drug paraphernalia;

8 **【h.】** (h) the manner in which the object is displayed for sale;

9 **【i.】** (i) the existence and scope of legitimate uses for the object
10 in the community; and

11 **【j.】** (j) expert testimony concerning its use.

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

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

30

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

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

44 b. Notwithstanding that using or possessing with intent to use
45 drug paraphernalia to ingest, inhale, or otherwise introduce
46 marijuana or hashish into the human body is not a punishable crime,
47 offense, act of delinquency, or civil violation pursuant to this

1 section, the use of drug paraphernalia for that purpose may be
2 prohibited or otherwise regulated on or in any property by the
3 person or entity that owns or controls that property, including
4 multifamily housing that is a multiple dwelling as defined in section
5 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of
6 the structure of a cooperative as defined in section 3 of P.L.1987,
7 c.381 (C.46:8D-3), the units of a condominium, as those terms are
8 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
9 mobile home park as defined in section 3 of P.L.1983, c.386
10 (C.40:55D-102), which site is leased to the owner of a
11 manufactured home, as defined in that section, that is installed
12 thereon.

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

14
15 4. This act shall take effect upon the enactment of Assembly,
16 No. 21(2R) of 2020-2021.

17 18 19 STATEMENT

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

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