



Garden State CLE
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Garden State CLE presents:

**Remember when marijuana was
actually illegal?**



Decriminalizing the use, sale and possession of marijuana

John Menzel, Esquire, Instructor



New Jersey Constitution of 1947

Article IV, section 7, paragraph 13

13. The growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis, by persons 21 years of age or older, and not by persons under 21 years of age, shall be lawful and subject to regulation by the Cannabis Regulatory Commission created by P.L.2019, c.153 (C.24:6I-5.1 et al.), or any successor to that commission.

(1) The commission's or successor's regulatory authority concerning legalized cannabis shall be authorized by law enacted by the Legislature.

(2) The receipts from retail purchases of cannabis or products created from or which include cannabis shall only be subject to the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et. seq.), as amended and supplemented, or any other subsequent law of similar effect; provided, however, that a municipality, subject to authorization by law enacted by the Legislature, may adopt an ordinance to impose an additional municipal tax on the sale, or any other form of transfer, of cannabis or products created from or which include cannabis by an authorized party located in a municipality. The municipal tax rate shall not exceed two percent of the receipts from each sale of cannabis or products created from or which include cannabis by an authorized party or the equivalent value from any other form of transfer by an authorized party.

As used in this paragraph:

"Cannabis" means all parts of the plant Genus Cannabis L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. "Cannabis" does not include: cannabis dispensed and consumed for medical purposes pursuant to any law enacted by the Legislature; hemp or hemp products subject to regulation under the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.), or any successor enactment thereto; or unregulated cannabis, referred to as **marijuana**, and products created from or which include **marijuana**.

Article IV, Section VII, paragraph 13 added effective January 1, 2021.

Introduction

(By Amanda Hoover | NJ Advance Media For NJ.com)

Q: When will the dispensaries — the places where you can buy legal weed — open?

A: That's not in the bill, but marijuana industry insiders estimate it could take at least a year before legal sales begin. Some say early 2022 is likely.

The current medical marijuana dispensaries can begin selling to the public once they certify they have enough marijuana for the state's nearly 100,000 patients. But even that could take months, those in the industry say.

Q: How many dispensaries will there be?

The Cannabis Regulatory Commission will license future dispensaries. While there's no limit on the number of storefronts, the law does state the commission can only give out 37 new licenses to grow marijuana during the first two years of legalization.

That could limit the amount of marijuana first available to customers and dictate the needed number of dispensaries.

Q: How much weed can I have? Can I be arrested still?

A: There are two bills headed to Murphy's desk: one to establish the marijuana industry and another to [decriminalize its possession](#). The second bill will not take effect until 120 days after Murphy signs it, but many pieces of the legalization bill take immediate effect.

The legalization makes it legal to possess up to six ounces of marijuana. Further reforms will come with the decriminalization bill, but neither make it legal to grow your own marijuana at home.

Q: Can I buy edibles?

A: Yes, the bill allows for the sale of certain edible products, but bans companies from making them into shapes of characters, people, animals, or as trademarked products that children may mistake for regular candy.

It also dictates how products should be packaged and labeled to show their THC content.

Q: Could I lose my job for smoking weed?

A: Employees will have far greater protections under the new bill, but they aren't absolute.

The bill prohibits an employer from firing or refusing to hire a person who uses marijuana in their free time. But it does allow employers who have "reasonable suspicion" a worker has gotten high during work to drug test them and ultimately fire or discipline them if tests show they were high.

No widely-used and accepted physical drug tests for marijuana can detect real time intoxication. Instead, they highlight the presence of marijuana in the body, sometimes days or weeks after a person last consumed.

The bill also allows an employer to do random, regular or pre-employment screening, but it must include a "scientifically reliable" test of blood, urine or saliva paired with a physical evaluation to determine if the employee is currently impaired, as well as a physical examination by an employee who undergoes training to spot marijuana impairment.

Q: What will I have to pay in taxes?

A: Customers will see a 7% sales tax and a up to a 2% municipal tax when sales begin.

The bill includes a sliding tax to be paid by cannabis growers. It will rise from \$10 an ounce to up to \$60 an ounce as the price of marijuana falls overtime.

While customers won't see this at the checkout line, prices will ultimately be passed onto them in the cost per ounce.

Q: Where do those taxes go?

A: All of the tax on marijuana growers, also called the [Social Equity Excise Fee](#), is earmarked for restorative healthcare, education and legal aid programs in minority communities affected by the drug war. They include some of the state's largest cities, like Newark, New Brunswick and Jersey City as well as smaller ones like Salem City and Bridgeton in South Jersey.

Of the sales tax, 70% of revenue will also go to such programs. The other 30% will fund the Cannabis Regulatory Commission and reimburse police department for training drug recognition experts, or officers certified to spot impaired driving.

Q: Can I come from New York or Pennsylvania to buy marijuana?

A: Yes, anyone over 21 who visits the Garden State can purchase it. That's what many hope will happen, generating more tax revenue for New Jersey but also driving business to local restaurants, shops and gas stations.

But it is still illegal to take marijuana across state lines. This will likely be difficult to enforce with the high traffic between New Jersey and its neighbors.

Public policy

The new legislative scheme for marijuana recognizes that certain aspects of the Comprehensive Drug Reform Act of 1987 (CDRA) (N.J.S.A. 2C:35-1, *et seq.*) have failed. Initially, among the many public policy goals sought by the Legislature under the CDRA was the following:

It is the intention of the Legislature to provide for the strict punishment, deterrence and incapacitation of the most culpable and dangerous drug offenders, and to facilitate where feasible the rehabilitation of drug dependent persons so as ultimately to reduce the demand for illegal controlled dangerous substances and the incidence of drug-related crime. It is also the policy of this State to afford special protection to children from the perils of drug trafficking, to ensure that all schools and areas adjacent to schools are kept free from drug distribution activities, and to provide especially stern punishment for those drug offenders who operate on or near schools and school buses, who distribute to juveniles, or who employ juveniles in a drug distribution scheme. In addition, our criminal laws and sentencing practices must be reexamined and amended so as to minimize pretrial delay, thereby to ensure the prompt disposition of all drug-related criminal charges and the prompt imposition of fair and certain punishment. (NJSA 2C:35-2(c)).

Thirty-three years of experience under the CDRA has caused the Legislature to recognize how the enforcement of marijuana laws fell most heavily on minority communities, ruined the futures of untold thousands of young people, and did little or nothing to deter marijuana distribution and use.

The new Legislative approach largely decriminalizes possession and distribution of small amounts of marijuana, regulates its sale and imposes various sales and excise taxes on its legal distribution for recreational use. The newly amended statutes provide for the following:

Distribution of marijuana

Instructor's notes and comments:

The amended statute speaks simultaneously in terms of pounds, ounces and grams. One ounce equals 28.3495 grams. One pound equals 453.5920 grams.

N.J.S.A. 2C:35-5 was amended based upon a Legislative recognition that many users of marijuana sell part of their inventory to purchase additional marijuana for their own use. The amended statute decriminalizes the distribution of small amounts of marijuana for a first time offender and does not place any age restrictions on the practice for the buyer or seller. On the other hand, larger amount of unlicensed marijuana distribution will constitute a financial threat to the State of New Jersey in terms of lost tax revenues. As a result, a second offender is subject to prosecution for a crime of the 4th degree. How the first offender warning system will work is an open question for the courts and law enforcement at this point.

Amended statute

2C:35-5. Manufacturing, Distributing or Dispensing.

a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

(11)(b) marijuana in a quantity of more than one ounce but less than five pounds including any adulterants or dilutants, or hashish in a quantity of more than five grams but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be imposed;

(12)(b) marijuana in a quantity of one ounce or less including any adulterants or dilutants, or hashish in a quantity of five grams or less including any adulterants or dilutants, is, for a first offense, subject to a written warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both, and for a second or subsequent offense, is guilty of a crime of the fourth degree;

Odor of marijuana as the basis for a search of a person

Instructor's notes and comments:

The new section of N.J.S.A. 2C:35-12(b)(i) eliminates the smell of marijuana as the basis for initiating a search for small amounts of marijuana. There are multiple problems associated with this statute, not the least of which is that a search of the person for evidence requires probable cause, consent, or exigent circumstances as opposed to reasonable suspicion. Moreover, the law provides a statutory immunity from arrest based upon possession with intent to distribute less than one ounce of marijuana. The problem for law enforcement will be to determine if the amount possessed with intent to distribute exceeds more than one ounce, in which case it constitutes a crime of the third degree.

Amended statute

12(b)(i) The odor of marijuana or hashish, or burnt marijuana or hashish, shall not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of subparagraph (b) of paragraph (12) of this subsection. A person who violates this subparagraph shall not be subject to arrest, detention, or otherwise be taken into custody, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required;

Statutory immunity to protect legal and civil rights for small amounts of marijuana distributions

Instructor's notes and comments:

The amendment is internally inconsistent in that it seeks to preserve legal and civil rights, even in those instances where the defendant will be subject to prosecution for a crime of the 4th degree. This issue will have to be resolved through the case law.

Amended statute

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

Mandatory recordkeeping by law enforcement

Instructor's notes and comments:

Note that the recordkeeping mandate placed on law enforcement is concerned with race, ethnicity, gender and age. These data will determine whether law enforcement efforts continue to focus on the minority communities in New Jersey.

Amended statute

12(b)(iii) All local and county law enforcement authorities shall, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of violations of subparagraph (b) of paragraph (12) of this subsection committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated, and associated information collected, by the Division of State Police for the same period shall be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports shall be made available at no cost to the public on the Division of State Police's Internet website;

Use, U/I and failure to make a lawful disposition

Instructor's notes and comments:

The Legislature has drawn the line of lawful possession of marijuana at 6 ounces (170 grams), regardless of the age of the possessor. The same statutory immunity for the odor of marijuana exists for simple possession cases as does the immunity protecting civil rights and the law enforcement recordkeeping functions. Note that the amended U/I provision under N.J.S.A. 2C:35-10(b)(1) does not have any impact on driving a motor vehicle while under the influence of marijuana under NJSA 39:4-50(a). Finally, please note that the ingestion of marijuana can be prohibited in certain commonly occupied locations by the owners of such facilities.

Amended statute

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

Straight Possession

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by NJSA 24:21-1 et seq. Any person who violates this section with respect to:

a(3)(b) possession of more than six ounces of marijuana, including any adulterants or dilutants, or more than 17 grams of hashish is guilty of a crime of the fourth degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be imposed;

a(3)(b)(i) The odor of marijuana or hashish, or burnt marijuana or hashish, shall not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of subparagraph (b) of paragraph (3) of this subsection. A person who violates this paragraph shall not be subject to arrest, detention, or otherwise be taken into custody, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required;

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

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

a(4)(b) possession of six ounces or less of marijuana, including any adulterants or dilutants, or 17 grams or less of hashish is not subject to any punishment, as this possession is not a crime, offense, act of delinquency, or civil violation of law;

Under the influence of CDS

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

Restrictions on marijuana use

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

Failure to make a lawful disposition

c. Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of paragraph (1) or (2) of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense. Nothing in this subsection shall be construed to preclude a prosecution or conviction for any other offense defined in this title or any other statute.

Drug paraphernalia

Instructor's notes and comments:

All the usual prohibitions on the possession of drug paraphernalia continue under the law except for those devices used or necessary for marijuana. The restrictions permitted for marijuana use by the owners of private residences also applies to marijuana paraphernalia.

Amended statute

2C:36-2. Use or possession with intent to use, disorderly persons offense.

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

b. Notwithstanding that using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body is not a punishable crime, offense, act of delinquency, or civil violation pursuant to this section, the use of drug paraphernalia for that purpose may be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of the structure of a cooperative as defined in section 3 of P.L.1987, c.381 (C.46:8D-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

Dismissal of pending charges

Instructor's notes and comments:

In an effort to make the marijuana statute retroactive, the Legislature has required that prosecutors dismiss pending minor possessory charges.

Amended statute

4. a. Except to the extent required to dismiss, withdraw, or terminate the charge, no prosecutor shall pursue any charge, including any charge of delinquency, based on crimes or offenses pending with a court on the first day of the fifth month next following the effective [of this the amendments to this Act] that occurred prior to that effective date, involving manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with that marijuana or hashish, alone or in combination with each other, or a violation involving marijuana or hashish and a violation of section 1 of P.L.1964, c.289 (C.39:4-49.1) for possession of a controlled dangerous substance while operating a motor vehicle, alone or in combination with each other, or any disorderly persons offense or petty disorderly persons offense subject to conditional discharge pursuant to N.J.S. 2C:36A-1. These non-prosecutable charges and cases shall be expeditiously dismissed, which may be accomplished by appropriate action by the prosecutor based upon guidelines issued by the Attorney General, or the court's own motion based upon administrative directives issued by the Administrative Director of the Courts.

b. (1) On the first day of the fifth month next following the effective date [of this amended Act], any guilty verdict, plea, placement in a diversionary program, or other entry of guilt on a matter that was entered prior to that effective date, but the judgment of conviction or final disposition on the matter was not entered prior to that date, and the guilty verdict, plea, placement in a diversionary program, or other entry of guilt solely involved one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated in subsection a. of this section, that guilty verdict, plea, placement in a diversionary program, or other entry of guilt shall be vacated by operation of law. The Administrative Director of the Courts, in consultation with the Attorney General, may take any administrative action as may be necessary to vacate the guilty verdict, plea, placement in a diversionary program, or other entry of guilt.

(2) On the first day of the fifth month next following the effective [of this amended Act] any conviction, remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment as defined in section 8 of P.L. 2017, c.244 (C.2C:52-23.1) of any person who, on that effective date, is or will be serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the person's conviction or adjudication of delinquency solely for one or more crimes or offenses, or delinquent acts which if committed by an adult would constitute one or more crimes or offenses, enumerated in subsection a. of this section, shall have the conviction, remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment vacated by operation of law. The Administrative Director of the Courts, in consultation with the Attorney General, may take any administrative action as may be necessary to vacate the conviction, remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment.

Automatic expungement of marijuana offenses

Instructor's notes and comments:

In an effort to clear the record of prior marijuana offenders, the Legislature provides for automatic expungement.

Amended statute

5. (New section) On the first day of the fifth month next following the effective date of [this amended Act], any case that, prior to that effective date, includes a conviction or adjudication of delinquency solely for one or more crimes or offenses involving manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with that marijuana or hashish, alone or in combination with each other, or any disorderly persons offense or petty disorderly persons offense subject to conditional discharge pursuant to N.J.S.2C:36A-1, shall be expunged by operation of law, and any remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment as defined in section 8 of P.L. 2017, c.244 (C.2C:52-23.1) shall be vacated by operation of law. The Administrative Director of the Courts, in consultation with the Attorney General, may take any administrative action as may be necessary to expeditiously effectuate the expungement of records associated with any expunged matter.