

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 15, 2020

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblywomen Carter, Tucker and Reynolds-Jackson

SYNOPSIS

Provides for certain criminal and civil justice reforms, particularly with respect to legal consequences associated with certain marijuana and hashish offenses as well as broadening awareness of available expungement relief.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Community Development and Affairs Committee.



1 AN ACT concerning certain criminal and civil justice reforms,
2 particularly with respect to the legal consequences associated
3 with certain marijuana and hashish offenses as well as
4 broadening awareness of available expungement relief, and
5 amending and supplementing various parts of the statutory law.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. N.J.S.2C:35-5 is amended to read as follows:

11 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
12 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
13 unlawful for any person knowingly or purposely:

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

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

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

21 (1) Heroin, or its analog, or coca leaves and any salt, compound,
22 derivative, or preparation of coca leaves, and any salt, compound,
23 derivative, or preparation thereof which is chemically equivalent or
24 identical with any of these substances, or analogs, except that the
25 substances shall not include decocainized coca leaves or extractions
26 which do not contain cocaine or ecogine, or 3,4-
27 methylenedioxyamphetamine or 3,4-
28 methylenedioxyamphetamine, in a quantity of five ounces or more
29 including any adulterants or dilutants is guilty of a crime of the first
30 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
31 be sentenced to a term of imprisonment by the court. The term of
32 imprisonment shall include the imposition of a minimum term
33 which shall be fixed at, or between, one-third and one-half of the
34 sentence imposed, during which the defendant shall be ineligible for
35 parole. Notwithstanding the provisions of subsection a. of
36 N.J.S.2C:43-3, a fine of up to **[\$500,000.00]** \$500,000 may be
37 imposed;

38 (2) A substance referred to in paragraph (1) of this subsection,
39 in a quantity of one-half ounce or more but less than five ounces,
40 including any adulterants or dilutants is guilty of a crime of the
41 second degree;

42 (3) A substance referred to paragraph (1) of this subsection in a
43 quantity less than one-half ounce including any adulterants or
44 dilutants is guilty of a crime of the third degree except that,
45 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a

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 fine of up to **【\$75,000.00】** \$75,000 may be imposed;

2 (4) A substance classified as a narcotic drug in Schedule I or II
3 other than those specifically covered in this section, or the analog of
4 any such substance, in a quantity of one ounce or more including
5 any adulterants or dilutants is guilty of a crime of the second
6 degree;

7 (5) A substance classified as a narcotic drug in Schedule I or II
8 other than those specifically covered in this section, or the analog of
9 any such substance, in a quantity of less than one ounce including
10 any adulterants or dilutants is guilty of a crime of the third degree
11 except that, notwithstanding the provisions of subsection b. of
12 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
13 imposed;

14 (6) Lysergic acid diethylamide, or its analog, in a quantity of
15 100 milligrams or more including any adulterants or dilutants, or
16 phencyclidine, or its analog, in a quantity of 10 grams or more
17 including any adulterants or dilutants, is guilty of a crime of the
18 first degree. Except as provided in N.J.S.2C:35-12, the court shall
19 impose a term of imprisonment which shall include the imposition
20 of a minimum term, fixed at, or between, one-third and one-half of
21 the sentence imposed by the court, during which the defendant shall
22 be ineligible for parole. Notwithstanding the provisions of
23 subsection a. of N.J.S.2C:43-3, a fine of up to **【\$500,000.00】**
24 \$500,000 may be imposed;

25 (7) Lysergic acid diethylamide, or its analog, in a quantity of
26 less than 100 milligrams including any adulterants or dilutants, or
27 where the amount is undetermined, or phencyclidine, or its analog,
28 in a quantity of less than 10 grams including any adulterants or
29 dilutants, or where the amount is undetermined, is guilty of a crime
30 of the second degree;

31 (8) Methamphetamine, or its analog, or phenyl-2-propanone
32 (P2P), in a quantity of five ounces or more including any
33 adulterants or dilutants is guilty of a crime of the first degree.
34 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
35 fine of up to **【\$300,000.00】** \$300,000 may be imposed;

36 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
37 (P2P), in a quantity of one-half ounce or more but less than five
38 ounces including any adulterants or dilutants is guilty of a crime of
39 the second degree;

40 (b) Methamphetamine, or its analog, or phenyl-2-propanone
41 (P2P), in a quantity of less than one-half ounce including any
42 adulterants or dilutants is guilty of a crime of the third degree
43 except that notwithstanding the provisions of subsection b. of
44 N.J.S.2C:43-3, a fine of up to **【\$75,000.00】** \$75,000 may be
45 imposed;

46 (10) (a) Marijuana in a quantity of 25 pounds or more
47 including any adulterants or dilutants, or 50 or more marijuana

1 plants, regardless of weight, or hashish in a quantity of five pounds
2 or more including any adulterants or dilutants, is guilty of a crime
3 of the first degree. Notwithstanding the provisions of subsection a.
4 of N.J.S.2C:43-3, a fine of up to **[\$300,000.00]** \$300,000 may be
5 imposed;

6 (b) Marijuana in a quantity of five pounds or more but less than
7 25 pounds including any adulterants or dilutants, or 10 or more but
8 fewer than 50 marijuana plants, regardless of weight, or hashish in a
9 quantity of one pound or more but less than five pounds, including
10 any adulterants and dilutants, is guilty of a crime of the second
11 degree;

12 (11) Marijuana in a quantity of one **[ounce]** pound or more but
13 less than five pounds including any adulterants or dilutants, or
14 hashish in a quantity of **[five grams]** one-half pound or more but
15 less than one pound including any adulterants or dilutants, is guilty
16 of a crime of the third degree except that, notwithstanding the
17 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
18 **[\$25,000.00]** \$25,000 may be imposed;

19 (12) (a) Marijuana in a quantity of two ounces or more but
20 less than one pound including any adulterants or dilutants, or
21 hashish in a quantity of five grams or more but less than one-half
22 pound including any adulterants or dilutants, is guilty of a
23 disorderly persons offense for a first offense, and guilty of a crime
24 of the fourth degree for a second or subsequent offense;

25 (b) Marijuana in a quantity of less than **[one ounce]** two
26 ounces including any adulterants or dilutants, or hashish in a
27 quantity of less than five grams including any adulterants or
28 dilutants, is **[guilty of a crime of the fourth degree]** an unlawful act
29 subject to a civil penalty of \$50. The civil penalty provided for in
30 this subparagraph shall be collected pursuant to the "Penalty
31 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
32 in a summary proceeding before the municipal court having
33 jurisdiction. A penalty recovered under the provisions of this
34 paragraph shall be recovered by and in the name of the State by the
35 local municipality. The penalty shall be paid into the treasury of
36 the municipality in which the violation occurred for the general use
37 of the municipality;

38 (13) Any other controlled dangerous substance classified in
39 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
40 third degree, except that, notwithstanding the provisions of
41 subsection b. of N.J.S.2C:43-3, a fine of up to **[\$25,000.00]**
42 \$25,000 may be imposed; or

43 (14) Any Schedule V substance, or its analog, is guilty of a
44 crime of the fourth degree except that, notwithstanding the
45 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
46 **[\$25,000.00]** \$25,000 may be imposed.

1 c. Where the degree of the offense for violation of this section
2 depends on the quantity of the substance, the quantity involved
3 shall be determined by the trier of fact. Where the indictment or
4 accusation so provides, the quantity involved in individual acts of
5 manufacturing, distribution, dispensing or possessing with intent to
6 distribute may be aggregated in determining the grade of the
7 offense, whether distribution or dispensing is to the same person or
8 several persons, provided that each individual act of manufacturing,
9 distribution, dispensing or possession with intent to distribute was
10 committed within the applicable statute of limitations.

11 (cf: P.L.2000, c.136, s.1)

12

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

14 2C:35-10. Possession, Use or Being Under the Influence, or
15 Failure to Make Lawful Disposition.

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

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

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

33 (3) Possession of more than **[50 grams]** two ounces of
34 marijuana, including any adulterants or dilutants, or more than five
35 grams of hashish is guilty of a crime of the fourth degree, except
36 that, notwithstanding the provisions of subsection b. of
37 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed; or

38 (4) Possession of **[50 grams]** two ounces or less of marijuana,
39 including any adulterants or dilutants, or five grams or less of
40 hashish is an unlawful act subject to a [disorderly person] civil
41 penalty of \$50, but this amount of marijuana or hashish is presumed
42 to be the lawful possession of medical cannabis or a medical
43 cannabis product in accordance with the "Jake Honig Compassionate
44 Use Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.) or
45 P.L.2015, c.158 (C.18A:40-12.22 et al.), and the State shall establish
46 by a preponderance of evidence that the substance possessed was
47 not medical cannabis or a medical cannabis product in order to

1 impose the \$50 civil penalty for possession of marijuana or hashish
2 pursuant to this paragraph. The civil penalty provided for in this
3 paragraph shall be collected pursuant to the “Penalty Enforcement
4 Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
5 proceeding before the municipal court having jurisdiction. A
6 penalty recovered under the provisions of this paragraph shall be
7 recovered by and in the name of the State by the local municipality.
8 The penalty shall be paid into the treasury of the municipality in
9 which the violation occurred for the general use of the municipality.

10 Any person who commits any offense **【defined in】** set forth in
11 paragraphs (1) through (3) of this 【section】 subsection while on any
12 property used for school purposes which is owned by or leased to
13 any elementary or secondary school or school board, or within
14 1,000 feet of any such school property or a school bus, or while on
15 any school bus, and who is not sentenced to a term of
16 imprisonment, shall, in addition to any other sentence which the
17 court may impose, be required to perform not less than 100 hours of
18 community service.

19 b. Any person who uses or who is under the influence of any
20 controlled dangerous substance, or its analog, for a purpose other
21 than the treatment of sickness or injury as lawfully prescribed or
22 administered by a physician is a disorderly person.

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

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

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

41

42 3. (New section) a. Except to the extent required to dismiss,
43 withdraw, or terminate the charge, no court shall have jurisdiction
44 over any charge, including any charge of delinquency, based on the
45 distribution of marijuana or hashish in violation of paragraph (12)
46 of subsection b. of N.J.S.2C:35-5, or the possession of marijuana or
47 hashish in violation of paragraph (4) of subsection a. of
48 N.J.S.2C:35-10, that occurred prior to the effective date of P.L. ,

1 c. (C.) (pending before the Legislature as this bill), unless a
2 final judgment of conviction or adjudication of delinquency has
3 been entered on or before that effective date. These non-
4 prosecutable charges and cases shall be expeditiously dismissed,
5 which may be accomplished by appropriate action by a law
6 enforcement agency, or on a motion to the court which would
7 otherwise have jurisdiction over a case, or the court's own motion,
8 based upon guidelines or directives issued by the Attorney General,
9 the Administrative Director of the Courts, and the Supreme Court.

10 b. A charge, including any charge of delinquency, conviction,
11 or adjudication of delinquency, based on a violation of any of the
12 following laws that occurred prior to, on, or after the effective date
13 of P.L. , c. (C.) (pending before the Legislature as this bill),
14 shall not be considered whenever the Pretrial Services Program
15 established by the Administrative Office of the Courts pursuant to
16 section 11 of P.L.2014, c.31 (C.2A:162-25) conducts a risk
17 assessment on an eligible defendant for the purpose of making
18 recommendations to the court concerning an appropriate pretrial
19 release decision in accordance with sections 1 through 11 of
20 P.L.2014, c.31 (C.2A:162-15 et seq.): a violation of paragraph (11)
21 of subsection b. of N.J.S.2C:35-5; or a lesser amount of marijuana or
22 hashish in violation of paragraph (12) of subsection b. of that section;
23 or a violation of either of those paragraphs and a violation of
24 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
25 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
26 possessing or having under control with intent to distribute, on or
27 within 1,000 feet of any school property, or on or within 500 feet of
28 the real property comprising a public housing facility, public park, or
29 public building; or for obtaining, possessing, using, being under the
30 influence of, or failing to make lawful disposition of marijuana or
31 hashish in violation of paragraph (3) or (4) of subsection a., or
32 subsection b., or subsection c. of N.J.S.2C:35-10; or for a violation of
33 any of those provisions and a violation of N.J.S.2C:36-2 for using or
34 possessing with intent to use drug paraphernalia with the marijuana or
35 hashish.

36 c. (1) Regarding a conviction or adjudication of delinquency
37 entered prior to the effective date of P.L. , c. (C.) (pending
38 before the Legislature as this bill), it shall be grounds for post-
39 conviction relief that the conviction or adjudication of delinquency
40 involved unlawful distribution of, or possessing or having under
41 control with intent to distribute, marijuana or hashish in violation of
42 paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of
43 marijuana or hashish in violation of paragraph (12) of subsection b. of
44 that section, or a violation of either of those paragraphs and a violation
45 of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or
46 subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for
47 distributing, or possessing or having under control with intent to
48 distribute, on or within 1,000 feet of any school property, or on or

1 within 500 feet of the real property comprising a public housing
2 facility, public park, or public building, or obtaining, possessing,
3 using, being under the influence of, or failing to make lawful
4 disposition of marijuana or hashish in violation of paragraph (3) or
5 (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-
6 10, or a violation involving marijuana or hashish as described herein
7 and using or possessing with intent to use drug paraphernalia with
8 that marijuana or hashish in violation of N.J.S.2C:36-2, alone or in
9 combination with each other, if a final judgment of conviction or
10 adjudication of delinquency had not been entered on or before that
11 effective date.

12 (2) Notwithstanding any court rule limiting the time period
13 within which a motion to reduce or change a sentence may be filed,
14 any person who, on the effective date of P.L. , c. (C.)
15 (pending before the Legislature as this bill), is serving a sentence of
16 incarceration, probation, parole or other form of community
17 supervision solely as a result of the person's conviction or
18 adjudication of delinquency for one or more crimes or offenses
19 enumerated in paragraph (1) of this subsection may move to have
20 the person's sentence reviewed by the court. If the court finds that
21 the sentence under review is based solely upon a conviction or
22 adjudication of delinquency for one or more crimes or offenses
23 enumerated in paragraph (1) of this subsection, the court shall order
24 appropriate relief.

25 (3) No fee shall be charged to a person seeking post-conviction
26 relief pursuant to this subsection.

27

28 4. (New section) Other than the consequences of any sentence
29 set forth in a judgment of conviction, including a term of
30 imprisonment and any court-ordered financial assessment, unless
31 otherwise provided by law, any arrest, charge, conviction, and
32 adjudication of delinquency that occurred prior to the effective date
33 of P.L. , c. (C.) (pending before the Legislature as this bill),
34 and any proceedings related thereto, for unlawful distribution of, or
35 possessing or having under control with intent to distribute,
36 marijuana or hashish in violation of paragraph (11) of subsection b. of
37 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
38 of paragraph (12) of subsection b. of that section, or a violation of
39 either of those paragraphs and a violation of subsection a. of section 1
40 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
41 P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or
42 having under control with intent to distribute, on or within 1,000 feet
43 of any school property, or on or within 500 feet of the real property
44 comprising a public housing facility, public park, or public building,
45 or obtaining, possessing, using, being under the influence of, or
46 failing to make lawful disposition of marijuana or hashish in
47 violation of paragraph (3) or (4) of subsection a., or subsection b., or
48 subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or

1 hashish as described herein and using or possessing with intent to use
2 drug paraphernalia with that marijuana or hashish in violation of
3 N.J.S.2C:36-2 shall be deemed not to have occurred, and the person
4 involved in that violation may answer any questions relating to their
5 occurrence accordingly, except that such information shall be
6 revealed by that person if seeking employment within the judicial
7 branch or with a law enforcement or corrections agency and such
8 information shall continue to provide a disability as otherwise
9 provided by law.

10
11 5. (New section) The Administrative Director of the Courts
12 shall maintain and provide information to any person upon request
13 about the expungement process and legal services programs
14 Statewide and in each county which may be available to assist the
15 person with an expedited expungement pursuant to section 5 of
16 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
17 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3).

18
19 6. (New section) a. (1) The Administrative Director of the
20 Courts shall develop and maintain a multilingual public awareness
21 campaign to promote awareness of the expungement process,
22 including an expedited expungement pursuant to section 5 of
23 P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement
24 pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), and the
25 expungement e-filing system established pursuant to section 11 of
26 P.L.2019, c.269 (C.2C:52-10.1), as well as information on State,
27 local, non-profit and other private job training programs in
28 consultation with the Department of Labor and Workforce
29 Development, with a focus on assisting those persons eligible for
30 the expedited expungement or “clean slate” expungement of their
31 records pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1) or a
32 “clean slate” expungement pursuant to section 7 of P.L.2019, c.269
33 (C.2C:52-5.3), respectively.

34 (2) The public awareness campaign shall, at a minimum, utilize
35 electronic and print media, and shall make available electronically
36 on an Internet website a petition form and a list of the supporting
37 information necessary for an expungement, including an expedited
38 or “clean slate” expungement pursuant to section 5 of
39 P.L.2019, c.269 (C.2C:52-5.1) or section 7 of P.L.2019, c.269
40 (C.2C:52-5.3), respectively, using the expungement e-filing system
41 once established pursuant to section 11 of P.L.2019, c.269 (C.2C:52-
42 10.1).

43 (3) The petition and supporting information shall, at a minimum,
44 be made available in English and Spanish.

45 b. The Administrative Director of the Courts shall include in the
46 annual report on the activities of the Administrative Office of the
47 Courts, prepared pursuant to N.J.S.2A:12-5, information about the
48 activities and accomplishments of the public awareness campaign

1 developed and maintained pursuant to subsection a. of this section,
2 beginning no later than one year after the effective date of
3 P.L. , c. (C.) (pending before the Legislature as this
4 bill).

5
6 7. (New section) a. An employer shall not be permitted to
7 consider when making an employment decision, require any
8 applicant to disclose or reveal, or take any adverse action against
9 any applicant for employment on the basis of, any arrest, charge,
10 conviction, or adjudication of delinquency, or civil penalty if the act
11 was an unlawful act and not a crime or offense, for manufacturing,
12 distributing, or dispensing, or possessing or having under control with
13 intent to manufacture, distribute, or dispense, marijuana or hashish in
14 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
15 lesser amount of marijuana or hashish in violation of paragraph (12) of
16 subsection b. of that section, or a violation of either of those
17 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
18 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
19 (C.2C:35-7.1) for distributing, or possessing or having under control
20 with intent to distribute, on or within 1,000 feet of any school
21 property, or on or within 500 feet of the real property comprising a
22 public housing facility, public park, or public building, or for
23 obtaining, possessing, using, being under the influence of, or failing
24 to make lawful disposition of marijuana or hashish in violation of
25 paragraph (3) or (4) of subsection a., or subsection b., or subsection c.
26 of N.J.S.2C:35-10, or for a violation of any of those provisions and a
27 violation of N.J.S.2C:36-2 for using or possessing with intent to use
28 drug paraphernalia with the marijuana or hashish, or an arrest, charge,
29 conviction, or adjudication of delinquency under the laws of another
30 state or of the United States of a crime, offense, or other unlawful
31 act, which, if committed in this State, would be a violation of any of
32 the aforementioned crimes, offenses, or unlawful acts, regardless of
33 when any such arrest, charge, conviction, or adjudication of
34 delinquency, or imposition of a civil penalty occurred, unless the
35 employment sought or being considered is for a position in law
36 enforcement, corrections, the judiciary, homeland security, or
37 emergency management.

38 b. Any employer who commits an act in violation of this
39 section shall be liable for a civil penalty in an amount not to exceed
40 \$1,000 for the first violation, \$5,000 for the second violation, and
41 \$10,000 for each subsequent violation, which shall be collectible by
42 the Commissioner of Labor and Workforce Development in a
43 summary proceeding pursuant to the "Penalty Enforcement Law of
44 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The penalties set
45 forth in this subsection shall be the sole remedy provided for
46 violations of this section.

47 c. Nothing set forth in this section shall be construed as
48 creating or establishing a standard of care or duty for employers

1 with respect to any other law. Evidence that an employer has
2 violated, or is alleged to have violated, the provisions of this
3 section, shall not be admissible in any legal proceeding with respect
4 to any law or claim other than a proceeding to enforce the
5 provisions of this section. Nothing set forth in this section shall be
6 construed as creating, establishing, or authorizing a private cause of
7 action by an aggrieved person against an employer who has
8 violated, or is alleged to have violated, the provisions of this
9 section.

10
11 8. (New section) a. A person that makes a mortgage loan in
12 this State shall not discriminate against an applicant in accepting an
13 application, granting, withholding, extending, modifying or
14 renewing, or in the fixing of the rates, terms, conditions, or
15 provisions of any mortgage loan based on an applicant's arrest,
16 charge, conviction, or adjudication of delinquency, or civil penalty if
17 the act was an unlawful act and not a crime or offense, for
18 manufacturing, distributing, or dispensing, or possessing or having
19 under control with intent to manufacture, distribute, or dispense,
20 marijuana or hashish in violation of paragraph (11) of subsection b. of
21 N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation
22 of paragraph (12) of subsection b. of that section, or a violation of
23 either of those paragraphs and a violation of subsection a. of section 1
24 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
25 P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having
26 under control with intent to distribute, on or within 1,000 feet of any
27 school property, or on or within 500 feet of the real property
28 comprising a public housing facility, public park, or public building,
29 or for obtaining, possessing, using, being under the influence of, or
30 failing to make lawful disposition of marijuana or hashish in
31 violation of paragraph (3) or (4) of subsection a., or subsection b., or
32 subsection c. of N.J.S.2C:35-10, or for a violation of any of those
33 provisions and a violation of N.J.S.2C:36-2 for using or possessing
34 with intent to use drug paraphernalia with the marijuana or hashish, or
35 an arrest, charge, conviction, or adjudication of delinquency under the
36 laws of another state or of the United States of a crime, offense, or
37 other unlawful act, which, if committed in this State, would be a
38 violation of any of the aforementioned crimes, offenses, or unlawful
39 acts, regardless of when any such arrest, charge, conviction, or
40 adjudication of delinquency, or imposition of a civil penalty occurred.

41 b. Any applicant who has been discriminated against as a result
42 of a violation of this section may bring an action in New Jersey in a
43 court of competent jurisdiction. Upon finding that a person is in
44 violation of this section, the court may award actual damages,
45 reasonable attorneys' fees, and court costs.

46 c. The Commissioner of Banking and Insurance shall have the
47 power to:

1 (1) Make such investigations into any matter pertaining to this
2 section, including the power to hold hearings and issue subpoenas
3 to compel the attendance of witnesses and the production of
4 evidence. In case of a failure of any person to comply with any
5 subpoena, the Superior Court may issue an order requiring the
6 attendance of such person and the giving of testimony or production
7 of evidence. Any person failing to obey the court's order may be
8 punished for contempt.

9 (2) Order a person found to be in violation of this section to
10 cease its unlawful practices, subject to review, hearing, and relief in
11 the Superior Court. A person that continues to violate the
12 provisions of this act after having been ordered by the
13 commissioner to cease such practices shall be liable to a penalty of
14 \$10,000 for each offense instead of the penalty for a continuous
15 violation set forth in section 10 of P.L.1977, c.1 (C.17:16F-
16 10). This penalty may be collected in a summary proceeding
17 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
18 c.274 (C.2A:58-10 et seq.). Except as set forth herein, the penalty
19 provided by this section shall be in addition to and not in lieu of any
20 other provision of law applicable upon a person's failure to comply
21 with an order of the commissioner.

22
23 9. (New section) a. A person alleging discrimination in public or
24 private housing, real property, or a place of public accommodation,
25 based on a prior arrest, charge, conviction, or adjudication of
26 delinquency, or civil penalty if the act was an unlawful act and not a
27 crime or offense, for manufacturing, distributing, or dispensing, or
28 possessing or having under control with intent to manufacture,
29 distribute, or dispense, marijuana or hashish in violation of paragraph
30 (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana
31 or hashish in violation of paragraph (12) of subsection b. of that
32 section, or a violation of either of those paragraphs and a violation of
33 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
34 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
35 possessing or having under control with intent to distribute, on or
36 within 1,000 feet of any school property, or on or within 500 feet of
37 the real property comprising a public housing facility, public park, or
38 public building, or for obtaining, possessing, using, being under the
39 influence of, or failing to make lawful disposition of marijuana or
40 hashish in violation of paragraph (3) or (4) of subsection a., or
41 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of
42 any of those provisions and a violation of N.J.S.2C:36-2 for using or
43 possessing with intent to use drug paraphernalia with the marijuana or
44 hashish, or an arrest, charge, conviction, or adjudication of
45 delinquency under the laws of another state or of the United States
46 of a crime, offense, or other unlawful act, which, if committed in
47 this State, would be a violation of any of the aforementioned crimes,
48 offenses, or unlawful acts, regardless of when any such arrest, charge,

1 conviction, or adjudication of delinquency, or imposition of a civil
2 penalty occurred, may institute a civil action in the Superior Court for
3 relief. All remedies available in common law tort actions shall be
4 available to a prevailing plaintiff. The court may also order any or all
5 of the following relief:

6 (1) an assessment of a civil fine of not less than \$1,000 and not
7 more than \$2,000 for the first violation of any of the provisions of this
8 section, and not more than \$5,000 for each subsequent violation;

9 (2) an injunction to restrain the continued violation of subsection
10 a. of this section;

11 (3) if the discrimination impacted the person's employment, and if
12 applicable:

13 (a) reinstatement of the person to the same position of
14 employment or to a position equivalent to that which the person held
15 prior to unlawful discharge or retaliatory action;

16 (b) reinstatement of full fringe benefits and seniority rights; and

17 (c) compensation for any lost wages, benefits and other
18 remuneration; and

19 (4) payment of reasonable costs and attorney's fees.

20 b. An action brought under this section shall be commenced
21 within one year of the date of the alleged violation.

22 c. The private cause of action provided for in this section shall be
23 the sole remedy for a violation of this section.

24

25 10. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read
26 as follows:

27 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and
28 supplemented:

29 "Biotechnology" means any technique that uses living organisms,
30 or parts of living organisms, to make or modify products, to improve
31 plants or animals, or to develop micro-organisms for specific uses;
32 including the industrial use of recombinant DNA, cell fusion, and
33 novel bioprocessing techniques.

34 "Custodian of a government record" or "custodian" means in the
35 case of a municipality, the municipal clerk and in the case of any other
36 public agency, the officer officially designated by formal action of that
37 agency's director or governing body, as the case may be.

38 "Government record" or "record" means any paper, written or
39 printed book, document, drawing, map, plan, photograph, microfilm,
40 data processed or image processed document, information stored or
41 maintained electronically or by sound-recording or in a similar device,
42 or any copy thereof, that has been made, maintained or kept on file in
43 the course of his or its official business by any officer, commission,
44 agency or authority of the State or of any political subdivision thereof,
45 including subordinate boards thereof, or that has been received in the
46 course of his or its official business by any such officer, commission,
47 agency, or authority of the State or of any political subdivision thereof,
48 including subordinate boards thereof. The terms shall not include

1 inter-agency or intra-agency advisory, consultative, or deliberative
2 material.

3 A government record shall not include the following information
4 which is deemed to be confidential for the purposes of P.L.1963, c.73
5 (C.47:1A-1 et seq.) as amended and supplemented:

6 information received by a member of the Legislature from a
7 constituent or information held by a member of the Legislature
8 concerning a constituent, including but not limited to information in
9 written form or contained in any e-mail or computer data base, or in
10 any telephone record whatsoever, unless it is information the
11 constituent is required by law to transmit;

12 any memorandum, correspondence, notes, report or other
13 communication prepared by, or for, the specific use of a member of the
14 Legislature in the course of the member's official duties, except that
15 this provision shall not apply to an otherwise publicly-accessible
16 report which is required by law to be submitted to the Legislature or its
17 members;

18 any copy, reproduction or facsimile of any photograph, negative or
19 print, including instant photographs and videotapes of the body, or any
20 portion of the body, of a deceased person, taken by or for the medical
21 examiner at the scene of death or in the course of a post mortem
22 examination or autopsy made by or caused to be made by the medical
23 examiner except:

24 when used in a criminal action or proceeding in this State which
25 relates to the death of that person,

26 for the use as a court of this State permits, by order after good
27 cause has been shown and after written notification of the request for
28 the court order has been served at least five days before the order is
29 made upon the county prosecutor for the county in which the post
30 mortem examination or autopsy occurred,

31 for use in the field of forensic pathology or for use in medical or
32 scientific education or research, or

33 for use by any law enforcement agency in this State or any other
34 state or federal law enforcement agency;

35 criminal investigatory records;

36 the portion of any criminal record concerning a person's detection,
37 apprehension, arrest, detention, trial or disposition for unlawful
38 distribution of, or possessing or having under control with intent to
39 distribute, marijuana or hashish in violation of paragraph (11) of
40 subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or
41 hashish in violation of paragraph (12) of subsection b. of that section,
42 or a violation of either of those paragraphs and a violation of
43 subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection
44 a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or
45 possessing or having under control with intent to distribute, on or
46 within 1,000 feet of any school property, or on or within 500 feet of
47 the real property comprising a public housing facility, public park, or
48 public building, or for obtaining, possessing, using, being under the

1 influence of, or failing to make lawful disposition of marijuana or
2 hashish in violation of paragraph (3) or (4) of subsection a., or
3 subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of
4 any of those provisions and a violation of N.J.S.2C:36-2 for using or
5 possessing with intent to use drug paraphernalia with the marijuana or
6 hashish;

7 on and after the effective date of P.L. , c. (C.) (pending
8 before the Legislature as this bill), any record concerning a person's
9 commission of an unlawful act of manufacturing, distributing, or
10 dispensing, or possessing or having under control with intent to
11 manufacture, distribute, or dispense, marijuana or hashish in
12 violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or
13 possessing marijuana or hashish in violation of paragraph (4) of
14 subsection a. of N.J.S.2C:35-10, for which a civil penalty was
15 imposed;

16 victims' records, except that a victim of a crime shall have access
17 to the victim's own records;

18 any written request by a crime victim for a record to which the
19 victim is entitled to access as provided in this section, including, but
20 not limited to, any law enforcement agency report, domestic violence
21 offense report, and temporary or permanent restraining order;

22 personal firearms records, except for use by any person authorized
23 by law to have access to these records or for use by any government
24 agency, including any court or law enforcement agency, for purposes
25 of the administration of justice;

26 personal identifying information received by the Division of Fish
27 and Wildlife in the Department of Environmental Protection in
28 connection with the issuance of any license authorizing hunting with a
29 firearm. For the purposes of this paragraph, personal identifying
30 information shall include, but not be limited to, identity, name,
31 address, social security number, telephone number, fax number,
32 driver's license number, email address, or social media address of any
33 applicant or licensee;

34 trade secrets and proprietary commercial or financial information
35 obtained from any source. For the purposes of this paragraph, trade
36 secrets shall include data processing software obtained by a public
37 body under a licensing agreement which prohibits its disclosure;

38 any record within the attorney-client privilege. This paragraph
39 shall not be construed as exempting from access attorney or consultant
40 bills or invoices except that such bills or invoices may be redacted to
41 remove any information protected by the attorney-client privilege;

42 administrative or technical information regarding computer
43 hardware, software and networks which, if disclosed, would jeopardize
44 computer security;

45 emergency or security information or procedures for any buildings
46 or facility which, if disclosed, would jeopardize security of the
47 building or facility or persons therein;

1 security measures and surveillance techniques which, if disclosed,
2 would create a risk to the safety of persons, property, electronic data or
3 software;

4 information which, if disclosed, would give an advantage to
5 competitors or bidders;

6 information generated by or on behalf of public employers or
7 public employees in connection with any sexual harassment complaint
8 filed with a public employer or with any grievance filed by or against
9 an individual or in connection with collective negotiations, including
10 documents and statements of strategy or negotiating position;

11 information which is a communication between a public agency
12 and its insurance carrier, administrative service organization or risk
13 management office;

14 information which is to be kept confidential pursuant to court
15 order;

16 any copy of form DD-214, NGB-22, or that form, issued by the
17 United States Government, or any other certificate of honorable
18 discharge, or copy thereof, from active service or the reserves of a
19 branch of the Armed Forces of the United States, or from service in the
20 organized militia of the State, that has been filed by an individual with
21 a public agency, except that a veteran or the veteran's spouse or
22 surviving spouse shall have access to the veteran's own records;

23 any copy of an oath of allegiance, oath of office or any affirmation
24 taken upon assuming the duties of any public office, or that oath or
25 affirmation, taken by a current or former officer or employee in any
26 public office or position in this State or in any county or municipality
27 of this State, including members of the Legislative Branch, Executive
28 Branch, Judicial Branch, and all law enforcement entities, except that
29 the full name, title, and oath date of that person contained therein shall
30 not be deemed confidential;

31 that portion of any document which discloses the social security
32 number, credit card number, unlisted telephone number or driver
33 license number of any person; except for use by any government
34 agency, including any court or law enforcement agency, in carrying
35 out its functions, or any private person or entity acting on behalf
36 thereof, or any private person or entity seeking to enforce payment of
37 court-ordered child support; except with respect to the disclosure of
38 driver information by the New Jersey Motor Vehicle Commission as
39 permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that
40 a social security number contained in a record required by law to be
41 made, maintained or kept on file by a public agency shall be disclosed
42 when access to the document or disclosure of that information is not
43 otherwise prohibited by State or federal law, regulation or order or by
44 State statute, resolution of either or both houses of the Legislature,
45 Executive Order of the Governor, rule of court or regulation
46 promulgated under the authority of any statute or executive order of
47 the Governor;

1 a list of persons identifying themselves as being in need of special
2 assistance in the event of an emergency maintained by a municipality
3 for public safety purposes pursuant to section 1 of P.L.2017, c.266
4 (C.40:48-2.67); and

5 a list of persons identifying themselves as being in need of special
6 assistance in the event of an emergency maintained by a county for
7 public safety purposes pursuant to section 6 of P.L.2011, c.178
8 (C.App.A:9-43.13).

9 A government record shall not include, with regard to any public
10 institution of higher education, the following information which is
11 deemed to be privileged and confidential:

12 pedagogical, scholarly and/or academic research records and/or the
13 specific details of any research project conducted under the auspices of
14 a public higher education institution in New Jersey, including, but not
15 limited to research, development information, testing procedures, or
16 information regarding test participants, related to the development or
17 testing of any pharmaceutical or pharmaceutical delivery system,
18 except that a custodian may not deny inspection of a government
19 record or part thereof that gives the name, title, expenditures, source
20 and amounts of funding and date when the final project summary of
21 any research will be available;

22 test questions, scoring keys and other examination data pertaining
23 to the administration of an examination for employment or academic
24 examination;

25 records of pursuit of charitable contributions or records containing
26 the identity of a donor of a gift if the donor requires non-disclosure of
27 the donor's identity as a condition of making the gift provided that the
28 donor has not received any benefits of or from the institution of higher
29 education in connection with such gift other than a request for
30 memorialization or dedication;

31 valuable or rare collections of books and/or documents obtained by
32 gift, grant, bequest or devise conditioned upon limited public access;

33 information contained on individual admission applications; and

34 information concerning student records or grievance or
35 disciplinary proceedings against a student to the extent disclosure
36 would reveal the identity of the student.

37 "Personal firearms record" means any information contained in a
38 background investigation conducted by the chief of police, the county
39 prosecutor, or the Superintendent of State Police, of any applicant for a
40 permit to purchase a handgun, firearms identification card license, or
41 firearms registration; any application for a permit to purchase a
42 handgun, firearms identification card license, or firearms registration;
43 any document reflecting the issuance or denial of a permit to purchase
44 a handgun, firearms identification card license, or firearms
45 registration; and any permit to purchase a handgun, firearms
46 identification card license, or any firearms license, certification,
47 certificate, form of register, or registration statement. For the purposes
48 of this paragraph, information contained in a background investigation

1 shall include, but not be limited to, identity, name, address, social
2 security number, phone number, fax number, driver's license number,
3 email address, social media address of any applicant, licensee,
4 registrant or permit holder.

5 "Public agency" or "agency" means any of the principal
6 departments in the Executive Branch of State Government, and any
7 division, board, bureau, office, commission or other instrumentality
8 within or created by such department; the Legislature of the State and
9 any office, board, bureau or commission within or created by the
10 Legislative Branch; and any independent State authority, commission,
11 instrumentality or agency. The terms also mean any political
12 subdivision of the State or combination of political subdivisions, and
13 any division, board, bureau, office, commission or other
14 instrumentality within or created by a political subdivision of the State
15 or combination of political subdivisions, and any independent
16 authority, commission, instrumentality or agency created by a political
17 subdivision or combination of political subdivisions.

18 "Law enforcement agency" means a public agency, or part thereof,
19 determined by the Attorney General to have law enforcement
20 responsibilities.

21 "Constituent" means any State resident or other person
22 communicating with a member of the Legislature.

23 "Member of the Legislature" means any person elected or selected
24 to serve in the New Jersey Senate or General Assembly.

25 "Criminal investigatory record" means a record which is not
26 required by law to be made, maintained or kept on file that is held by a
27 law enforcement agency which pertains to any criminal investigation
28 or related civil enforcement proceeding.

29 "Victim's record" means an individually-identifiable file or
30 document held by a victims' rights agency which pertains directly to a
31 victim of a crime except that a victim of a crime shall have access to
32 the victim's own records.

33 "Victim of a crime" means a person who has suffered personal or
34 psychological injury or death or incurs loss of or injury to personal or
35 real property as a result of a crime, or if such a person is deceased or
36 incapacitated, a member of that person's immediate family.

37 "Victims' rights agency" means a public agency, or part thereof,
38 the primary responsibility of which is providing services, including but
39 not limited to food, shelter, or clothing, medical, psychiatric,
40 psychological or legal services or referrals, information and referral
41 services, counseling and support services, or financial services to
42 victims of crimes, including victims of sexual assault, domestic
43 violence, violent crime, child endangerment, child abuse or child
44 neglect, and the Victims of Crime Compensation Board, established
45 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the
46 Victims of Crime Compensation Office pursuant to P.L.2007, c.95
47 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.

48 (cf: P.L.2019, c.255, s.4)

1 11. This act shall take effect on the 90th day following
2 enactment, except that the Attorney General, Administrative
3 Director of the Courts, and the Supreme Court may take any
4 anticipatory action as may be necessary to effectuate the provisions
5 of this act.