

Suggested allocation: s.3: C.2C:35-10a; s.4: C.2C:52-6.1;
ss.5 and 6: C.2B:1-14 and -15; s.7: C.34:6B-21; s.8: C.17:16F-7.1;
and s.9: C.10:5-50 to 2020/35

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1897 and 4269

STATE OF NEW JERSEY

Sponsored by Assemblyman WIMBERLY, Assemblywoman QUIJANO, Assemblyman
HOLLEY, and Assemblywomen MCKNIGHT and TIMBERLAKE, and
Co-Sponsored by Assemblywomen Tucker, Renolds-Jackson, and Carter

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

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

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:

(1) Heroin, or its analog, or coca leaves and any salt, compound,
derivative, or preparation of coca leaves, and any salt, compound,
derivative, or preparation thereof which is chemically equivalent or
identical with any of these substances, or analogs, except that the
substances shall not include decocainized coca leaves or extractions
which do not contain cocaine or ecogine, or 3,4-
methylenedioxyamphetamine or 3,4-

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.

P
R
O
P
O
S
E
D

methylenedioxyamphetamine, in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to ~~[\$500,000.00]~~ \$500,000 may be imposed;

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

(3) A substance referred to paragraph (1) of this subsection in a quantity less than one-half ounce 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 ~~[\$75,000.00]~~ \$75,000 may be imposed;

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

(5) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce 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 ~~[\$75,000.00]~~ \$75,000 may be imposed;

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

(7) Lysergic acid diethylamide, or its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where the amount is undetermined, or phencyclidine, or its analog, in a quantity of less than 10 grams including any adulterants or

P

R

O

P

O

S

E

D

dilutants, or where the amount is undetermined, is guilty of a crime of the second degree;

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

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

(b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of less than one-half ounce 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 ~~[\$75,000.00]~~ \$75,000 may be imposed;

(10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to ~~[\$300,000.00]~~ \$300,000 may be imposed;

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

(11) Marijuana in a quantity of one [ounce] pound or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of [five grams] one-half pound or more 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 ~~[\$25,000.00]~~ \$25,000 may be imposed;

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

(b) Marijuana in a quantity of less than [one ounce] two ounces including any adulterants or dilutants, or hashish in a quantity of less than five grams including any adulterants or dilutants, is [guilty of a crime of the fourth degree] an unlawful act subject to a civil

P

R

O

P

O

S

E

D

penalty of \$50. The civil penalty provided for in this subparagraph shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. A penalty recovered under the provisions of this paragraph shall be recovered by and in the name of the State by the local municipality. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general use of the municipality;

(13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or its analog, 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 ~~[\$25,000.00]~~ \$25,000 may be imposed; or

(14) Any Schedule V substance, or its analog, 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 ~~[\$25,000.00]~~ \$25,000 may be imposed.

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

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

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

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

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 P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to:

(1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III or IV other than those specifically covered in this section, 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 ~~[\$35,000.00]~~ \$35,000 may be imposed;

(2) Any controlled dangerous substance, or its analog, classified in Schedule V, 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 ~~[\$15,000.00]~~ \$15,000 may be imposed;

(3) Possession of more than [50 grams] two ounces of marijuana, including any adulterants or dilutants, or more than five 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 \$25,000.00 may be imposed; or

(4) Possession of [50 grams] two ounces or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is an unlawful act subject to a [disorderly person] civil penalty of \$50, but this amount of marijuana or hashish is presumed to be the lawful possession of medical cannabis or a medical cannabis product in accordance with the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.) or P.L.2015, c.158 (C.18A:40-12.22 et al.), and the State shall establish by a preponderance of evidence that the substance possessed was not medical cannabis or a medical cannabis product in order to impose the \$50 civil penalty for possession of marijuana or hashish pursuant to this paragraph. The civil penalty provided for in this paragraph shall be collected pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. A penalty recovered under the provisions of this paragraph shall be recovered by and in the name of the State by the local municipality. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general use of the municipality.

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

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

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

P

R

O

P

O

S

E

D

by the use of any controlled dangerous substance or controlled substance analog.

c. Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation 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.

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

3. (New section) a. Except to the extent required to dismiss, withdraw, or terminate the charge, no court shall have jurisdiction over any charge, including any charge of delinquency, based on the distribution of marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or the possession of marijuana or hashish in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10, that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), unless a final judgment of conviction or adjudication of delinquency has been entered on or before that effective date. These non-prosecutable charges and cases shall be expeditiously dismissed, which may be accomplished by appropriate action by a law enforcement agency, or on a motion to the court which would otherwise have jurisdiction over a case, or the court's own motion, based upon guidelines or directives issued by the Attorney General, the Administrative Director of the Courts, and the Supreme Court.

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

c. (1) Regarding a conviction or adjudication of delinquency entered prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), it shall be grounds for post-conviction relief that the conviction or adjudication of delinquency involved unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, 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 using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, alone or in combination with each other, if a final judgment of conviction or adjudication of delinquency had not been entered on or before that effective date.

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

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

4. (New section) Other than the consequences of any sentence set forth in a judgment of conviction, including a term of imprisonment and any court-ordered financial assessment, unless

P

R

O

P

O

S

E

D

otherwise provided by law, any arrest, charge, conviction, and adjudication of delinquency that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), and any proceedings related thereto, for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, 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 using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2 shall be deemed not to have occurred, and the person involved in that violation may answer any questions relating to their occurrence accordingly, except that such information shall be revealed by that person if seeking employment within the judicial branch or with a law enforcement or corrections agency and such information shall continue to provide a disability as otherwise provided by law.

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

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

P

R

O

P

O

S

E

D

records pursuant to section 5 of P.L.2019, c.269 (C.2C:52-5.1) or a “clean slate” expungement pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), respectively.

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

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

b. The Administrative Director of the Courts shall include in the annual report on the activities of the Administrative Office of the Courts, prepared pursuant to N.J.S.2A:12-5, information about the activities and accomplishments of the public awareness campaign developed and maintained pursuant to subsection a. of this section, beginning no later than one year after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

7. (New section) a. An employer shall not be permitted to consider when making an employment decision, require any applicant to disclose or reveal, or take any adverse action against any applicant for employment on the basis of, any arrest, charge, conviction, or adjudication of delinquency, or civil penalty if the act was an unlawful act and not a crime or offense, for manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for 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 for a violation of any of those provisions and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with the marijuana or hashish, or an arrest, charge, conviction, or adjudication of delinquency under the laws of another state or of the United States of a crime, offense, or other unlawful

P

R

O

P

O

S

E

D

act, which, if committed in this State, would be a violation of any of the aforementioned crimes, offenses, or unlawful acts, regardless of when any such arrest, charge, conviction, or adjudication of delinquency, or imposition of a civil penalty occurred, unless the employment sought or being considered is for a position in law enforcement, corrections, the judiciary, homeland security, or emergency management.

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

c. Nothing set forth in this section shall be construed as creating or establishing a standard of care or duty for employers with respect to any other law. Evidence that an employer has violated, or is alleged to have violated, the provisions of this section, shall not be admissible in any legal proceeding with respect to any law or claim other than a proceeding to enforce the provisions of this section. Nothing set forth in this section shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against an employer who has violated, or is alleged to have violated, the provisions of this section.

8. (New section) a. A person that makes a mortgage loan in this State shall not discriminate against an applicant in accepting an application, granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions, or provisions of any mortgage loan based on an applicant’s arrest, charge, conviction, or adjudication of delinquency, or civil penalty if the act was an unlawful act and not a crime or offense, for manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in

P
R
O
P
O
S
E
D

violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of any of those provisions and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with the marijuana or hashish, or an arrest, charge, conviction, or adjudication of delinquency under the laws of another state or of the United States of a crime, offense, or other unlawful act, which, if committed in this State, would be a violation of any of the aforementioned crimes, offenses, or unlawful acts, regardless of when any such arrest, charge, conviction, or adjudication of delinquency, or imposition of a civil penalty occurred.

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

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

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

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

9. (New section) a. A person alleging discrimination in public or private housing, real property, or a place of public accommodation, based on a prior arrest, charge, conviction, or adjudication of delinquency, or civil penalty if the act was an unlawful act and not a crime or offense, for manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that

P

R

O

P

O

S

E

D

section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for 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 for a violation of any of those provisions and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with the marijuana or hashish, or an arrest, charge, conviction, or adjudication of delinquency under the laws of another state or of the United States of a crime, offense, or other unlawful act, which, if committed in this State, would be a violation of any of the aforementioned crimes, offenses, or unlawful acts, regardless of when any such arrest, charge, conviction, or adjudication of delinquency, or imposition of a civil penalty occurred, may institute a civil action in the Superior Court for relief. All remedies available in common law tort actions shall be available to a prevailing plaintiff. The court may also order any or all of the following relief:

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

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

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

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

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

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

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

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

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

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

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

"Biotechnology" means any technique that uses living organisms, or parts of living organisms, to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses;

P

R

O

P

O

S

E

D

including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.

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

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

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

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

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

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

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

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

P

R

O

P

O

S

E

D

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

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

criminal investigatory records;

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

on and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), any record concerning a person's commission of an unlawful act of 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 possessing marijuana or hashish in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10, for which a civil penalty was imposed;

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

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

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

personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name,

P

R

O

P

O

S

E

D

address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee;

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

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

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

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

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

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

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

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

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

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

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

P

R

O

P

O

S

E

D

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

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

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

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

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

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

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

P

R

O

P

O

S

E

D

valuable or rare collections of books and/or documents obtained by gift, grant, bequest or devise conditioned upon limited public access; information contained on individual admission applications; and information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification, certificate, form of register, or registration statement. For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, phone number, fax number, driver's license number, email address, social media address of any applicant, licensee, registrant or permit holder.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

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

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

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

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

"Victim's record" means an individually-identifiable file or document held by a victims' rights agency which pertains directly to a

P

R

O

P

O

S

E

D

victim of a crime except that a victim of a crime shall have access to the victim's own records.

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

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the Victims of Crime Compensation Office pursuant to P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008. (cf: P.L.2019, c.255, s.4)

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

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.

P

R

O

P

O

S

E

D