

Marijuana Decriminalization and Legalized Cannabis

This presentation has been amended from its original to reflect an update to the law on March 26, 2021. This change is on Slide 17

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Legalization & Decriminalization

- **Legalization:** is the process of removing all legal prohibitions against it.
- **Decriminalization:** is the act of removing criminal sanctions against an act, article, or behavior.

Decriminalization of cannabis means it would remain illegal, but the legal system would not prosecute a person for possession under a specified amount.

Legalization & Decriminalization

- **Cannabis legalization (P.L.2021, c.16)** Titled as the New Jersey Cannabis Regulatory, Enforcement, Assistance and Marketplace Modernization Act, this law legalizes regulatory cannabis.
- **Marijuana decriminalization (P.L.2021, c.19)** This law decriminalizes possession of small amounts of marijuana and hashish and establishes new, more lenient penalties for the distribution of these substances.

Legalization & Decriminalization

Marijuana Decriminalization

The following statutes are no longer crimes in NJ when they relate to Marijuana or Hashish:

- POSSESSION of MARIJUANA 2C:35-10(a)(4)(b)
6 oz. or less is NOT an offense
- DISTRIBUTION of MARIJUANA 2C:35-5(b) 12(b)
1 oz. or less written warning for the first offense
- POSSESSION of HASHISH 2C:35-10(a)(4)(b)
17 g. or less is NOT an offense
- DISTRIBUTION of HASHISH 2C:35-5(b)12(b)
5 g. or less - Written warning for the first offense

Legalization & Decriminalization

Marijuana decriminalization

The following statutes are no longer crimes in NJ when they relate to Marijuana or Hashish:

- 2C:35-10(b) Under the Influence of marijuana or hashish
- 2C:35-10(c) Failure to Properly Dispose of marijuana or hashish
- 2C:36-2 Possession of Drug Paraphernalia if used, or intended to be used, for marijuana or hashish
- 39:4-49.1 Possession of marijuana or hashish by a Motor Vehicle Operator

Regulated Cannabis vs. Marijuana and Hashish

- **Regulated cannabis.** When the substance is bought, sold, and used under certain conditions, it is treated as “regulated cannabis” and fully legal in New Jersey. As a practical matter, however, regulated cannabis will not be available in the State for several months until a new government body, the Cannabis Regulatory Commission, issues rules governing its use.
- **Marijuana and hashish.** All forms of the substance that are not regulated cannabis or medical cannabis are treated as “marijuana” or “hashish.” Under the new laws, marijuana and hashish are still defined as “controlled dangerous substances” under N.J.S.A. 2C:35-2 but are largely decriminalized for non-distribution offenses. The laws eliminate existing prohibitions and create new, more lenient penalties for possession and distribution that remain tiered based on weight.

Regulated Cannabis vs. Marijuana and Hashish

What is the difference between marijuana and cannabis?

Despite the different names, there is no difference in substance, as the two terms both describe parts of the plant *Cannabis sativa* L..

However, the law now creates a distinction between:

- **Legal “cannabis,”** which is parts of the plant cultivated and produced for use in a cannabis item regulated by the Cannabis Regulatory Commission in accordance with the provisions of P.L.2021, c.16 (the cannabis legalization act), and
- **Illegal “marijuana,”** which is parts of the same plant that have not been subject to Cannabis Regulatory Commission regulation.

Regulated Cannabis vs. Marijuana and Hashish

Bottom Line:

Until the Cannabis Regulatory Commission implements regulations governing the cultivation, production, processing, distribution and consumption of cannabis in accordance with P.L.2021, c.16, legal cannabis does not exist, and (except for regulated medical cannabis) any Cannabis sativa L. cultivated and produced until that time is to be considered illegal marijuana and remains illegal and subject to seizure.

Frequently Asked Questions

- **May an officer initiate or continue a pedestrian stop of an individual based on the officer detecting the odor of marijuana?**
 - **No**, the new laws are clear that the odor of marijuana, either burned or raw, by itself does not establish reasonable suspicion to justify or continue a pedestrian stop.

Frequently Asked Questions

- **Can I be arrested for smoking marijuana?**
 - No, unless you are in possession of more than six ounces.

Frequently Asked Questions

- **Can a police officer seize my marijuana?**
 - Yes. Because marijuana is still a controlled dangerous substance, it can be seized, even if there is no arrest.

Frequently Asked Questions

- **Where can I smoke marijuana?**
 - In private, or anywhere that allows the smoking of tobacco products.
 - The new law states that “the smoking, vaping, or aerosolizing of marijuana or hashish may be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property.”
 - Landlords and employers may still prohibit the smoking, vaping, or aerosolizing of marijuana or hashish on their property

Frequently Asked Questions

- **Can I grow my own marijuana for medicinal or recreational use?**
 - No. Cannabis may only be grown for commercial purposes, and such “cultivation” requires a license from the state.

Frequently Asked Questions

- **Where can I buy Regulated Cannabis?**
 - You still cannot buy Regulated Cannabis or Legal Marijuana in New Jersey, unless you have a medical marijuana card. Currently locations for dispensaries are not yet known.

FAQs - Under the Age of 21

- **What happens when a law enforcement officer encounters an individual under the age of 21 who is in possession of marijuana, hashish, cannabis, or alcohol?**
 - The officer can seize the marijuana, hashish, cannabis, and alcohol and issue the appropriate written warning.
 - All seizure of items and written warnings will be documented.

FAQs - Under the Age of 21 (continued)

- The new law also sets forth the following prohibitions on officers when investigating possession or consumption of marijuana, hashish, cannabis, or alcohol by an underage individual to determine a violation of N.J.S.A. 2C:33-15:
 - Officers **may not** request consent from an individual who is under the age of 21;
 - Officers **may not** use odor of marijuana to stop an individual who is under the age of 21 or to search the individual's personal property or vehicle;
 - Officers who observe marijuana in plain view **will not** be able to search the individual or the individual's personal property or vehicle
 - Officers **may not** arrest, detain, or otherwise take an individual under the age of 21 into custody for a violation of N.J.S.A. 2C:33-15 except to the extent required to issue a written warning or provide notice of a violation to a parent/guardian.

Special Rules for Those Under the Age of 21

- The law also establishes a new framework for individuals under the age of 21 who possess or consume any amount of marijuana, hashish, cannabis, or alcohol in any public place, including a school:
 - **First offense.** Officers shall issue a written warning, which must include the person's name, address, and date of birth
 - **The law was amended on March 26, 2021:**
Officers are ***REQUIRED*** to provide written notification of the violation to the individual's parent/guardian, if the individual is under the age of 18

Medical Treatment

The new marijuana laws have not changed the community caretaking duties of law enforcement officers to protect individuals, either under or over 21 years of age, who may be highly intoxicated because of alcohol, marijuana, or any other substance.

- If an officer believes an individual is under the influence of drugs or alcohol and may require medical treatment, they shall request medical personnel to the scene to evaluate the individual.

Medical Treatment

In situations involving juveniles, an officer may take a juvenile into short term custody if the officer has reasonable grounds to believe the juvenile's health and safety is in serious danger. This would include situations where the law enforcement officer reasonably believes that the juvenile is under the influence. Notice to the juvenile's parent or guardian is required in these circumstances and would not violate the notice restriction because the officer is not investigating underage consumption or possession, but rather ensuring the safety of the juvenile.

Resources

For more information please see the following link to the Marijuana Decriminalization & Cannabis Legalization page of the Office of the NJ Attorney General:

<https://www.njoag.gov/marijuana/>