

New Law and Attorney General Directive Serve to Vacate Prior NJ State Court Marijuana Possession Verdicts, Pleas, and Diversionary Programs



Client Alert

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On February 22, 2021, New Jersey Governor Phil Murphy signed into law sweeping legislation that not only decriminalizes state marijuana-related offenses, but also serves to vacate prior guilty verdicts and pleas, as well as diversionary programs such as pretrial interventions (PTI) and conditional discharge (CD) resolutions.

As a result of the new law, the New Jersey Attorney General issued Law Enforcement Directive No. 2021-1, which instructs prosecutors to dismiss most pending marijuana-related charges in the state court and explains that any cases that had already been resolved will be vacated by operation of law. The directive instructs that this will apply to "any guilty verdict, plea, placement in a diversionary program, or other entry of guilt on a matter where the conduct occurred prior to February 22, 2021." Also vacated will be any "conviction, remaining sentence, ongoing supervision, or unpaid court-ordered financial assessment of any person who is or will be serving a sentence of incarceration, probation, parole or other form of community supervision as of February 22, 2021 as a result of the person's conviction or adjudication of delinquency solely for the [marijuana-related offense]."

The following marijuana-related offenses are directly impacted by the law and directive:

| Provision | Description of Statute |
|----------------|------------------------------------|
| 2C:35-10(a)(3) | Possession of marijuana or hashish |

| Provision | Description of Statute |
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| 2C:35-10(a)(4) | Possession of marijuana or hashish |
| 2C:35-10(b) | Under the influence – only when the individual was under the influence of marijuana or hashish |
| 2C:35-10(c) | Failure to properly dispose CDS – only when the individual fails to dispose of marijuana or hashish |
| 2C:36-2 | Possession of drug paraphernalia when the paraphernalia was used, or was possessed with intent to be used, to ingest, inhale or otherwise introduce marijuana or hashish into the body |
| 2C:36A-1 | Any disorderly persons offense or petty disorderly persons offense subject to conditional discharge pursuant to this section |
| 39:4-49.1 | Possession of CDS in a vehicle – but only when the individual is in possession of marijuana or hashish in the vehicle |

The decriminalization of these state offenses impacts those presently charged with a crime. However, the legislation and directive make clear that persons with prior convictions for any of these enumerated statutes are vacated by operation of law, which could have a far-reaching effect on an individual's criminal history, ability to obtain diversionary relief, driving record and more.