ALBBY, No. 774

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:
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SYNOPSIS
Makes it a crime of the fourth degree to unlawfully use a controlled
dangerous substance or prescription drug while pregnant.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 2/5/2016)
AN ACT concerning controlled dangerous substances and certain
prescription drugs, and amending N.J.S.2C:35-10 and P.L.1999,
c.90.

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

1. 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 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 may be imposed;

(3) Possession of more than 50 grams 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 or less of marijuana, including any
adulterants or dilutants, or five grams or less of hashish is a
disorderly person.

Any person who commits any offense defined in this section
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

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.
administered by a physician is a disorderly person unless the person
is pregnant during the commission of the offense, in which case it is
a crime of the fourth degree.

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
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)

2. Section 8 of P.L.1999, c.90 (C.2C:35-10.5) is amended to
read as follows:

8. Prescription legend drugs. a. A person who knowingly:
(1) distributes a prescription legend drug or stramonium
preparation in an amount of four or fewer dosage units unless
lawfully prescribed or administered by a licensed physician,
veterinarian, dentist or other practitioner authorized by law to
prescribe medication is a disorderly person;
(2) distributes for pecuniary gain or possesses or has under his
control with intent to distribute for pecuniary gain a prescription
legend drug or stramonium preparation in an amount of four or
fewer dosage units unless lawfully prescribed or administered by a
licensed physician, veterinarian, dentist or other practitioner
authorized by law to prescribe medication is guilty of a crime of the
fourth degree;
(3) distributes or possesses or has under his control with intent
to distribute a prescription legend drug or stramonium preparation
in an amount of at least five but fewer than 100 dosage units unless
lawfully prescribed or administered by a licensed physician,
veterinarian, dentist or other practitioner authorized by law to
prescribe medication is guilty of a crime of the third degree.
Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
fine of up to $200,000 may be imposed; or
(4) distributes or possesses or has under his control with intent
to distribute a prescription legend drug or stramonium preparation
in an amount of 100 or more dosage units unless lawfully
prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the second degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $300,000 may be imposed.

Notwithstanding the above, a violation of paragraph (1) or (3) of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that the conduct involved no more than six dosage units distributed within a 24-hour period, that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to that person by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication, and that the person intended for the amount he distributed to be solely for the recipient's personal use.

b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person unless the person is pregnant during the commission of the offense, in which case it is a crime of the fourth degree.

c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation the defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is guilty of a crime of the fourth degree. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of Title C of the New Jersey Statutes.

e. A person who knowingly possesses, actually or constructively:

(1) a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person; or

(2) a prescription legend drug or stramonium preparation in an amount of five or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree.

Notwithstanding the above, a violation of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that he unlawfully
received no more than six dosage units within a 24-hour period, that
the prescription legend drug or stramonium preparation was
lawfully prescribed for or administered to the person from whom he
had received it, and that the person possessed the prescription
legend drug or stramonium preparation [for] solely for his personal
use.

f. Where the degree of the offense for violation of this section
depends on the number of dosage units of the prescription legend
drug or stramonium preparation, the number of dosage units
involved shall be determined by the trier of fact. Where the
indictment or accusation so provides, the number of dosage units
involved in individual acts of distribution or possession with intent
to distribute may be aggregated in determining the grade of the
offense, whether distribution is to the same person or several
persons, provided that each individual act of distribution or
possession with intent to distribute was committed within the
applicable statute of limitations.

g. Subsections a. and e. of this section shall not apply to: a
licensed pharmacy, licensed pharmacist, researcher, wholesaler,
distributor, manufacturer, warehouseman or his representative
acting within the line and scope of his employment; a physician,
veternarian, dentist or other practitioner authorized by law to
 prescribe medication; a nurse acting under the direction of a
physician; or a common carrier or messenger when transporting
such prescription legend drug or stramonium preparation in the
same unbroken package in which the prescription legend drug or
stramonium preparation was delivered to him for transportation.
(cf: P.L.2005, c.205, s.2)

3. This act shall take effect immediately.

STATEMENT

This bill would upgrade offenses involving the unlawful use of
controlled substances or certain prescription drugs if the user is
pregnant.

Under current law, set out in subsection b. of N.J.S.2C:35-10, it
is a disorderly persons offense to use or to be 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. Under subsection b. of section 8 of
P.L.1999, c.90 (C.2C:35-10.5) it is also a disorderly persons offense
to use a prescription legend drug or stramonium preparation for a
purpose other than treatment of sickness or injury as lawfully
prescribed or administered by a licensed physician or other
practitioner authorized by law to prescribe medication. This bill
provides that a person who violates any of these statutes while pregnant would be guilty of a crime of the fourth degree.

A crime of the fourth degree is generally punishable by a term of imprisonment of up to 18 months or a fine up to $10,000, or both.

A disorderly persons offense is punishable by a term of imprisonment of up to six months or a fine of up to $1,000 or both.