

P.L. 1997, CHAPTER 186, *approved August 4, 1997*
Assembly, No. 2957

1 **AN ACT** concerning controlled dangerous substances and amending
2 N.J.S.2C:35-2, N.J.S.2C:35-4 and N.J.S.2C:35-5.

3

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

6

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

8 2C:35-2. Definitions.

9 As used in this chapter:

10 "Administer" means the direct application of a controlled dangerous
11 substance or controlled substance analog, whether by injection,
12 inhalation, ingestion, or any other means, to the body of a patient or
13 research subject by: (1) a practitioner (or, in his presence, by his
14 lawfully authorized agent), or (2) the patient or research subject at the
15 lawful direction and in the presence of the practitioner.

16 "Agent" means an authorized person who acts on behalf of or at the
17 direction of a manufacturer, distributor, or dispenser but does not
18 include a common or contract carrier, public warehouseman, or
19 employee thereof.

20 "Controlled dangerous substance" means a drug, substance, or
21 immediate precursor in Schedules I through V. The term shall not
22 include distilled spirits, wine, malt beverages, as those terms are
23 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
24 products. The term, wherever it appears in any law or administrative
25 regulation of this State, shall include controlled substance analogs.

26 "Controlled substance analog" means a substance that has a
27 chemical structure substantially similar to that of a controlled
28 dangerous substance and that was specifically designed to produce an
29 effect substantially similar to that of a controlled dangerous substance.
30 The term shall not include a substance manufactured or distributed in
31 conformance with the provisions of an approved new drug application

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 or an exemption for investigational use within the meaning of section
2 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21
3 U.S.C. s. 355).

4 "Counterfeit substance" means a controlled dangerous substance or
5 controlled substance analog which, or the container or labeling of
6 which, without authorization, bears the trademark, trade name, or
7 other identifying mark, imprint, number or device, or any likeness
8 thereof, of a manufacturer, distributor, or dispenser other than the
9 person or persons who in fact manufactured, distributed or dispensed
10 such substance and which thereby falsely purports or is represented to
11 be the product of, or to have been distributed by, such other
12 manufacturer, distributor, or dispenser.

13 "Deliver" or "delivery" means the actual, constructive, or attempted
14 transfer from one person to another of a controlled dangerous
15 substance or controlled substance analog, whether or not there is an
16 agency relationship.

17 "Dispense" means to deliver a controlled dangerous substance or
18 controlled substance analog to an ultimate user or research subject by
19 or pursuant to the lawful order of a practitioner, including the
20 prescribing, administering, packaging, labeling, or compounding
21 necessary to prepare the substance for that delivery. "Dispenser"
22 means a practitioner who dispenses.

23 "Distribute" means to deliver other than by administering or
24 dispensing a controlled dangerous substance or controlled substance
25 analog. "Distributor" means a person who distributes.

26 "Drugs" means (a) substances recognized in the official United
27 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
28 United States, or official National Formulary, or any supplement to
29 any of them; and (b) substances intended for use in the diagnosis, cure,
30 mitigation, treatment, or prevention of disease in man or other animals;
31 and (c) substances (other than food) intended to affect the structure or
32 any function of the body of man or other animals; and (d) substances
33 intended for use as a component of any article specified in subsections
34 (a), (b) and (c) of this section; but does not include devices or their
35 components, parts or accessories.

36 "Drug dependent person" means a person who is using a controlled
37 dangerous substance or controlled substance analog and who is in a
38 state of psychic or physical dependence, or both, arising from the use
39 of that controlled dangerous substance or controlled substance analog
40 on a continuous basis. Drug dependence is characterized by behavioral
41 and other responses, including but not limited to a strong compulsion
42 to take the substance on a recurring basis in order to experience its
43 psychic effects, or to avoid the discomfort of its absence.

44 "Hashish" means the resin extracted from any part of the plant
45 Genus Cannabis L. and any compound, manufacture, salt, derivative,
46 mixture, or preparation of such resin.

1 "Manufacture" means the production, preparation, propagation,
2 compounding, conversion or processing of a controlled dangerous
3 substance or controlled substance analog, either directly or by
4 extraction from substances of natural origin, or independently by
5 means of chemical synthesis, or by a combination of extraction and
6 chemical synthesis, and includes any packaging or repackaging of the
7 substance or labeling or relabeling of its container, except that this
8 term does not include the preparation or compounding of a controlled
9 dangerous substance or controlled substance analog by an individual
10 for his own use or the preparation, compounding, packaging, or
11 labeling of a controlled dangerous substance: (1) by a practitioner as
12 an incident to his administering or dispensing of a controlled
13 dangerous substance or controlled substance analog in the course of
14 his professional practice, or (2) by a practitioner (or under his
15 supervision) for the purpose of, or as an incident to, research,
16 teaching, or chemical analysis and not for sale.

17 ["Marihuana"] "Marijuana" means all parts of the plant Genus
18 Cannabis L., whether growing or not; the seeds thereof, and every
19 compound, manufacture, salt, derivative, mixture, or preparation of
20 such plant or its seeds, except those containing resin extracted from
21 such plant; but shall not include the mature stalks of such plant, fiber
22 produced from such stalks, oil or cake made from the seeds of such
23 plant, any other compound, manufacture, salt, derivative, mixture, or
24 preparation of such mature stalks, fiber, oil, or cake, or the sterilized
25 seed of such plant which is incapable of germination.

26 "Narcotic drug" means any of the following, whether produced
27 directly or indirectly by extraction from substances of vegetable origin,
28 or independently by means of chemical synthesis, or by a combination
29 of extraction and chemical synthesis:

30 (a) Opium, coca leaves, and opiates;

31 (b) A compound, manufacture, salt, derivative, or preparation of
32 opium, coca leaves, or opiates;

33 (c) A substance (and any compound, manufacture, salt, derivative,
34 or preparation thereof) which is chemically identical with any of the
35 substances referred to in subsections (a) and (b), except that the words
36 "narcotic drug" as used in this act shall not include decocainized coca
37 leaves or extracts of coca leaves, which extracts do not contain
38 cocaine or ecogine.

39 "Opiate" means any dangerous substance having an
40 addiction-forming or addiction-sustaining liability similar to morphine
41 or being capable of conversion into a drug having such
42 addiction-forming or addiction-sustaining liability. It does not include,
43 unless specifically designated as controlled pursuant to the provisions
44 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
45 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
46 It does include its racemic and levorotatory forms.

1 "Opium poppy" means the plant of the species *Papaver somniferum*
2 L., except the seeds thereof.

3 "Person" means any corporation, association, partnership, trust,
4 other institution or entity or one or more individuals.

5 "Plant" means an organism having leaves and a readily observable
6 root formation, including, but not limited to, a cutting having roots, a
7 rootball or root hairs.

8 "Poppy straw" means all parts, except the seeds, of the opium
9 poppy, after mowing.

10 "Practitioner" means a physician, dentist, veterinarian, scientific
11 investigator, laboratory, pharmacy, hospital or other person licensed,
12 registered, or otherwise permitted to distribute, dispense, conduct
13 research with respect to, or administer a controlled dangerous
14 substance or controlled substance analog in the course of professional
15 practice or research in this State.

16 (a) "Physician" means a physician authorized by law to practice
17 medicine in this or any other state and any other person authorized by
18 law to treat sick and injured human beings in this or any other state
19 and

20 (b) "Veterinarian" means a veterinarian authorized by law to
21 practice veterinary medicine in this State.

22 (c) "Dentist" means a dentist authorized by law to practice
23 dentistry in this State.

24 (d) "Hospital" means any federal institution, or any institution for
25 the care and treatment of the sick and injured, operated or approved
26 by the appropriate State department as proper to be entrusted with the
27 custody and professional use of controlled dangerous substances or
28 controlled substance analogs.

29 (e) "Laboratory" means a laboratory to be entrusted with the
30 custody of narcotic drugs and the use of controlled dangerous
31 substances or controlled substance analogs for scientific, experimental
32 and medical purposes and for purposes of instruction approved by the
33 State Department of Health.

34 "Production" includes the manufacture, planting, cultivation,
35 growing, or harvesting of a controlled dangerous substance or
36 controlled substance analog.

37 "Immediate precursor" means a substance which the State
38 Department of Health has found to be and by regulation designates as
39 being the principal compound commonly used or produced primarily
40 for use, and which is an immediate chemical intermediary used or
41 likely to be used in the manufacture of a controlled dangerous
42 substance or controlled substance analog, the control of which is
43 necessary to prevent, curtail, or limit such manufacture.

44 "Residential treatment facility" means any facility approved by any
45 county probation department for the inpatient treatment and
46 rehabilitation of drug dependent persons.

1 "Schedules I, II, III, IV, and V" are the schedules set forth in
2 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8)
3 and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any
4 regulations issued by the Commissioner of Health pursuant to his
5 authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

6 "State" means the State of New Jersey.

7 "Ultimate user" means a person who lawfully possesses a controlled
8 dangerous substance or controlled substance analog for his own use
9 or for the use of a member of his household or for administration to an
10 animal owned by him or by a member of his household.

11 (cf: P.L.1987, c.106, s.1)

12
13 2. N.J.S.2C:35-4 is amended to read as follows:

14 2C:35-4. Maintaining or Operating a Controlled Dangerous
15 Substance Production Facility.

16 Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any
17 person who knowingly maintains or operates any premises, place or
18 facility used for the manufacture of methamphetamine, lysergic acid
19 diethylamide, phencyclidine, marijuana in an amount greater than five
20 pounds or ten plants or any substance [classified as a narcotic drug]
21 listed in Schedule I or II, or the analog of any such substance, or any
22 person who knowingly aids, promotes, finances or otherwise
23 participates in the maintenance or operations of such premises, place
24 or facility, is guilty of a crime of the first degree and shall, except as
25 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
26 which shall include the imposition of a minimum term which shall be
27 fixed at, or between, one-third and one-half of the sentence imposed,
28 during which the defendant shall be ineligible for parole.
29 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
30 court may also impose a fine not to exceed \$500,000.00 or five times
31 the street value of all controlled dangerous substances or controlled
32 substance analogs at any time manufactured or stored at such
33 premises, place or facility, whichever is greater.

34 (cf: P.L.1988, c.44, s.1)

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

37 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as
38 authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful
39 for any person knowingly or purposely:

40 (1) To manufacture, distribute or dispense, or to possess or have
41 under his control with intent to manufacture, distribute or dispense, a
42 controlled dangerous substance or controlled substance analog; or

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

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

46 (1) Heroin, or its analog, or coca leaves and any salt, compound,

1 derivative, or preparation of coca leaves, and any salt, compound,
2 derivative, or preparation thereof which is chemically equivalent or
3 identical with any of these substances, or analogs, except that the
4 substances shall not include decocainized coca leaves or extractions
5 which do not contain cocaine or ecogine, in a quantity of five ounces
6 or more including any adulterants or dilutants is guilty of a crime of
7 the first degree. The defendant shall, except as provided in
8 N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court.
9 The term of imprisonment shall include the imposition of a minimum
10 term which shall be fixed at, or between, one-third and one-half of the
11 sentence imposed, during which the defendant shall be ineligible for
12 parole. Notwithstanding the provisions of subsection a. of
13 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

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

18 (3) A substance referred to paragraph (1) of this subsection in a
19 quantity less than one-half ounce including any adulterants or dilutants
20 is guilty of a crime of the third degree except that, notwithstanding the
21 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
22 \$50,000.00 may be imposed;

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

27 (5) A substance classified as a narcotic drug in Schedule I or II
28 other than those specifically covered in this section, or the analog of
29 any such substance, in a quantity of less than one ounce including any
30 adulterants or dilutants is guilty of a crime of the third degree except
31 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
32 a fine of up to \$50,000.00 may be imposed;

33 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100
34 milligrams or more including any adulterants or dilutants, or
35 phencyclidine, or its analog, in a quantity of 10 grams or more
36 including any adulterants or dilutants, is guilty of a crime of the first
37 degree. Except as provided in 2C:35-12, the court shall impose a term
38 of imprisonment which shall include the imposition of a minimum term,
39 fixed at, or between, one-third and one-half of the sentence imposed
40 by the court, during which the defendant shall be ineligible for parole.
41 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
42 fine of up to \$300,000.00 may be imposed;

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

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

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

8 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
9 (P2P), in a quantity of [less than one ounce] ~~one-half ounce or more~~
10 but less than five ounces including any adulterants or dilutants is guilty
11 of a crime of the [third] ~~second~~ degree [except that, notwithstanding
12 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
13 \$50,000.00 may be imposed];

14 (b) Methamphetamine, or its analog, or phenyl-2-propanone
15 (P2P), in a quantity of less than one-half ounce including any
16 adulterants or dilutants is guilty of a crime of the third degree except
17 than notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
18 a fine of up to \$50,000.00 may be imposed;

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

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

30 (11) Marijuana in a quantity of one ounce or more but less than
31 five pounds including any adulterants [and] or dilutants, or hashish in
32 a quantity of five grams or more but less than one pound including any
33 adulterants [and] or dilutants, is guilty of a crime of the third degree
34 except that, notwithstanding the provisions of subsection b. of
35 N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed;

36 (12) Marijuana in a quantity of less than one ounce including any
37 adulterants [and] or dilutants, or hashish in a quantity of less than five
38 grams including any adulterants [and] or dilutants, is guilty of a crime
39 of the fourth degree;

40 (13) Any other controlled dangerous substance classified in
41 Schedule I, II, III or IV, or its analog, is guilty of a crime of the third
42 degree, except that, notwithstanding the provisions of subsection b. of
43 N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed; or

44 (14) Any Schedule V substance, or its analog, is guilty of a crime
45 of the fourth degree except that, notwithstanding the provisions of
46 subsection b. of N.J.S.2C:43-3, a fine of up to \$15,000.00 may be

1 imposed.

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

12 (cf: P.L.1988, c.44, s.2)

13

14 4. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill would increase the penalties for manufacturing, distributing
20 or dispensing large quantities of marijuana.

21 The bill establishes gradations for marijuana based upon the number
22 of plants possessed (regardless of weight). This gradation scheme,
23 which is similar to the one presently used in federal law, allows law
24 enforcement officials to seize young, growing marijuana plants before
25 they are mature enough to produce large quantities of usable
26 marijuana.

27 The bill adds marijuana to the list of substances which may be used
28 as the basis for a conviction of "maintaining or operating a controlled
29 dangerous substance production facility" under the provisions of
30 N.J.S.A.2C:35-4. Under the bill, a person who maintains or operates
31 any premises for the manufacture of marijuana in an amount greater
32 than five pounds or ten plants would be guilty of a violation of
33 N.J.S.A.2C:35-4, a crime of the first degree. Normally, a crime of the
34 first degree is punishable by a term of imprisonment of up to 10 to 20
35 years, a fine of up to \$100,000, or both. However, a person found
36 guilty of a violation of N.J.S.A.2C:35-4 must be sentenced by the
37 court to a term of imprisonment which includes a mandatory minimum
38 term of between one-third and one-half of the sentence imposed. The
39 person also may be sentenced to pay a fine of up to \$500,000 or five
40 times the street value of all CDS at the facility, whichever is greater.

41 The bill also upgrades the offenses of distribution and possession
42 with intent to distribute methamphetamine ("speed") and marijuana.
43 Currently, this offense is a crime of the second degree, regardless of
44 the quantity involved. By contrast, currently the offenses of
45 distribution and possession with intent to distribute large quantities of
46 heroin and cocaine are both crimes of the first degree. The bill

1 provides that dealers in large quantities of marijuana and
2 methamphetamine would be guilty of first degree crimes as well.

3 The bill also provides that P2P, an immediate precursor used in the
4 manufacture of methamphetamine, would be included in the new
5 gradation scheme.

6 Specifically the bill provides as follows:

7 (1) Distribution or possession with intent to distribute more than
8 five ounces of methamphetamine would be a crime of the first degree.
9 (Currently, committing this offense with any amount of
10 methamphetamine greater than one ounce is a crime of the second
11 degree.)

12 (2) Distribution or possession with intent to distribute one-half
13 ounce to five ounces of methamphetamine would be a crime of the
14 second degree. (Currently, committing this offense with less than one
15 ounce of methamphetamine is a crime of the third degree.)

16 (3) Distribution or possession with intent to distribute 25 pounds
17 of marijuana or 50 marijuana plants, or five pounds of hashish, would
18 be a first degree crime. (Currently, committing this offense with any
19 amount of marijuana greater than five pounds, or any amount of
20 hashish greater than one pound, is a crime of the second degree.)

21 This bill embodies Recommendations #1 and #2 of the Attorney
22 General's "Report to the Governor on the Need to Update the
23 Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

24

25

26

27

28 _____
29 Increases penalties for distribution of large quantities of marijuana and
30 methamphetamine; adds marijuana to "Controlled dangerous substance
production facility" statute.