

SENATE, No. 2109

STATE OF NEW JERSEY

INTRODUCED MAY 22, 1997

By Senator MATHEUSSEN

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  
32 or an exemption for investigational use within the meaning of section  
33 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21  
34 U.S.C.s.355).

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

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

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

20 "Distribute" means to deliver other than by administering or  
21 dispensing a controlled dangerous substance or controlled substance  
22 analog. "Distributor" means a person who distributes.

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

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

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

44 "Manufacture" means the production, preparation, propagation,  
45 compounding, conversion or processing of a controlled dangerous  
46 substance or controlled substance analog, either directly or by

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

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

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

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

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

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

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

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

46 "Person" means any corporation, association, partnership, trust,

1 other institution or entity or one or more individuals.

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

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

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

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

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

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

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

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

31 "Production" includes the manufacture, planting, cultivation,  
32 growing, or harvesting of a controlled dangerous substance or  
33 controlled substance analog.

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

41 "Residential treatment facility" means any facility approved by any  
42 county probation department for the inpatient treatment and  
43 rehabilitation of drug dependent persons.

44 "Schedules I, II, III, IV, and V" are the schedules set forth in  
45 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8)  
46 and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any

1 regulations issued by the Commissioner of Health pursuant to his  
2 authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

3 "State" means the State of New Jersey.

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

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

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

11 2C:35-4. Maintaining or Operating a Controlled Dangerous  
12 Substance Production Facility.

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

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

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

34 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as  
35 authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful  
36 for any person knowingly or purposely:

37 (1) To manufacture, distribute or dispense, or to possess or have  
38 under his control with intent to manufacture, distribute or dispense, a  
39 controlled dangerous substance or controlled substance analog; or

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

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

43 (1) Heroin, or its analog, or coca leaves and any salt, compound,  
44 derivative, or preparation of coca leaves, and any salt, compound,  
45 derivative, or preparation thereof which is chemically equivalent or  
46 identical with any of these substances, or analogs, except that the

1 substances shall not include decocainized coca leaves or extractions  
2 which do not contain cocaine or ecogine, in a quantity of five ounces  
3 or more including any adulterants or dilutants is guilty of a crime of  
4 the first degree.

5 The defendant shall, except as provided in N.J.S.2C:35-12, be  
6 sentenced to a term of imprisonment by the court. The term of  
7 imprisonment shall include the imposition of a minimum term which  
8 shall be fixed at, or between, one-third and one-half of the sentence  
9 imposed, during which the defendant shall be ineligible for parole.  
10 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a  
11 fine of up to \$300,000.00 may be imposed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 c. Where the degree of the offense for violation of this section

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

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

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12 4. This act shall take effect immediately.

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#### STATEMENT

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

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

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

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

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

4       Specifically the bill provides as follows:

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

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

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

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

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26       Increases penalties for distribution of large quantities of marijuana and  
27 methamphetamine; adds marijuana to "CDS production facility"  
28 statute.