

ASSEMBLY, No. 780

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 9 (Atlantic, Burlington and Ocean)

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SYNOPSIS

Allows certain drug dealing offenses to be graded by "units," rather than weight, of controlled dangerous substances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning controlled dangerous substances, and amending
2 N.J.S.2C:35-2 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. As used in this chapter:

9 "Adulterants or dilutants" means substances which are mixed or
10 combined with a controlled dangerous substance and any medium
11 which is used to carry a controlled dangerous substance, if the
12 controlled dangerous substance is not readily removable from the
13 medium. The terms shall include, but not be limited to blotter
14 paper, stamps or cigarettes.

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

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

26 "Controlled dangerous substance" means a drug, substance, or
27 immediate precursor in Schedules I through V, any substance the
28 distribution of which is specifically prohibited in N.J.S.2C:35-3, in
29 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of
30 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120
31 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),
32 and any drug or substance which, when ingested, is metabolized or
33 otherwise becomes a controlled dangerous substance in the human
34 body. When any statute refers to controlled dangerous substances,
35 or to a specific controlled dangerous substance, it shall also be
36 deemed to refer to any drug or substance which, when ingested, is
37 metabolized or otherwise becomes a controlled dangerous substance
38 or the specific controlled dangerous substance, and to any substance
39 that is an immediate precursor of a controlled dangerous substance
40 or the specific controlled dangerous substance. The term shall not
41 include distilled spirits, wine, malt beverages, as those terms are
42 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
43 products. The term, wherever it appears in any law or
44 administrative regulation of this State, shall include controlled
45 substance analogs.

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.

1 "Controlled substance analog" means a substance that has a
2 chemical structure substantially similar to that of a controlled
3 dangerous substance and that was specifically designed to produce
4 an effect substantially similar to that of a controlled dangerous
5 substance. The term shall not include a substance manufactured or
6 distributed in conformance with the provisions of an approved new
7 drug application or an exemption for investigational use within the
8 meaning of section 505 of the ["Federal Food, Drug and Cosmetic
9 Act[" 52 Stat. 1052] (21 U.S.C. s.355).

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

19 "Deliver" or "delivery" means the actual, constructive, or
20 attempted transfer from one person to another of a controlled
21 dangerous substance or controlled substance analog, whether or not
22 there is an agency relationship.

23 "Dispense" means to deliver a controlled dangerous substance or
24 controlled substance analog to an ultimate user or research subject
25 by or pursuant to the lawful order of a practitioner, including the
26 prescribing, administering, packaging, labeling, or compounding
27 necessary to prepare the substance for that delivery. "Dispenser"
28 means a practitioner who dispenses.

29 "Distribute" means to deliver other than by administering or
30 dispensing a controlled dangerous substance or controlled substance
31 analog. "Distributor" means a person who distributes.

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

42 "Drug or alcohol dependent person" means a person who as a
43 result of using a controlled dangerous substance or controlled
44 substance analog or alcohol has been in a state of psychic or
45 physical dependence, or both, arising from the use of that controlled
46 dangerous substance or controlled substance analog or alcohol on a
47 continuous or repetitive basis. Drug or alcohol dependence is
48 characterized by behavioral and other responses, including but not

1 limited to a strong compulsion to take the substance on a recurring
2 basis in order to experience its psychic effects, or to avoid the
3 discomfort of its absence.

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

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

23 "Marijuana" means all parts of the plant Genus Cannabis L.,
24 whether growing or not; the seeds thereof, and every compound,
25 manufacture, salt, derivative, mixture, or preparation of the plant or
26 its seeds, except those containing resin extracted from the plant; but
27 shall not include the mature stalks of the plant, fiber produced from
28 the stalks, oil, or cake made from the seeds of the plant, any other
29 compound, manufacture, salt, derivative, mixture, or preparation of
30 mature stalks, fiber, oil, or cake, or the sterilized seed of the plant
31 which is incapable of germination.

32 "Narcotic drug" means any of the following, whether produced
33 directly or indirectly by extraction from substances of vegetable
34 origin, or independently by means of chemical synthesis, or by a
35 combination of extraction and chemical synthesis:

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

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

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

45 "Opiate" means any dangerous substance having an addiction-
46 forming or addiction-sustaining liability similar to morphine or
47 being capable of conversion into a drug having such addiction-
48 forming or addiction-sustaining liability. It does not include, unless

1 specifically designated as controlled pursuant to the provisions of
2 section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
3 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
4 It does include its racemic and levorotatory forms.

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

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

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

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

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

20 (a) "Physician" means a physician authorized by law to practice
21 medicine in this or any other state and any other person authorized
22 by law to treat sick and injured human beings in this or any other
23 state.

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

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

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

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

38 "Production" includes the manufacture, planting, cultivation,
39 growing, or harvesting of a controlled dangerous substance or
40 controlled substance analog.

41 "Immediate precursor" means a substance which the Division of
42 Consumer Affairs in the Department of Law and Public Safety has
43 found to be and by regulation designates as being the principal
44 compound commonly used or produced primarily for use, and
45 which is an immediate chemical intermediary used or likely to be
46 used in the manufacture of a controlled dangerous substance or
47 controlled substance analog, the control of which is necessary to
48 prevent, curtail, or limit such manufacture.

1 "Residential treatment facility" means any facility licensed and
2 approved by the Department of Human Services and which is
3 approved by any county probation department for the inpatient
4 treatment and rehabilitation of drug or alcohol dependent persons.

5 "Schedules I, II, III, IV, and V" are the schedules set forth in
6 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-
7 8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified
8 by any regulations issued by the Director of the Division of
9 Consumer Affairs in the Department of Law and Public Safety
10 pursuant to the director's authority as provided in section 3 of
11 P.L.1970, c.226 (C.24:21-3).

12 "State" means the State of New Jersey.

13 "Ultimate user" means a person who lawfully possesses a
14 controlled dangerous substance or controlled substance analog for
15 his own use or for the use of a member of his household or for
16 administration to an animal owned by him or by a member of his
17 household.

18 "Prescription legend drug" means any drug which under federal
19 or State law requires dispensing by prescription or order of a
20 licensed physician, veterinarian, or dentist and is required to bear
21 the statement "Rx only" or similar wording indicating that such
22 drug may be sold or dispensed only upon the prescription of a
23 licensed medical practitioner and is not a controlled dangerous
24 substance or stramonium preparation.

25 "Stramonium preparation" means a substance prepared from any
26 part of the stramonium plant in the form of a powder, pipe mixture,
27 cigarette, or any other form with or without other ingredients.

28 "Stramonium plant" means the plant *Datura Stramonium* Linne,
29 including *Datura Tatula* Linne.

30 "Unit" means either the smallest discrete pill, tablet, capsule,
31 vial, packet, fold or other unit of distribution or packaging of the
32 controlled dangerous substance, or the amount which is commonly
33 distributed for consumption at one time by an individual to achieve
34 the desired effect, whichever method of measurement results in the
35 greater number of units.

36 (cf: P.L.2013, c.35, s.1)

37

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

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

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

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

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

1 (1) (a) Heroin, or its analog, in a quantity of one ounce or more
2 including any adulterants or dilutants; or

3 (b) coca leaves and any salt, compound, derivative, or
4 preparation of coca leaves, and any salt, compound, derivative, or
5 preparation thereof which is chemically equivalent or identical with
6 any of these substances, or analogs, except that the substances shall
7 not include decocainized coca leaves or extractions which do not
8 contain cocaine or ecogine, or 3,4-
9 methylenedioxymethamphetamine or 3,4-
10 methylenedioxyamphetamine, in a quantity of five ounces or more
11 including any adulterants or dilutants; or

12 (c) 500 or more units of any of the substances referred to in
13 subparagraph (a) or (b) of this paragraph is guilty of a crime of the
14 first degree.

15 The defendant shall, except as provided in N.J.S.2C:35-12, be
16 sentenced to a term of imprisonment by the court. The term of
17 imprisonment shall include the imposition of a minimum term
18 which shall be fixed at, or between, one-third and one-half of the
19 sentence imposed, during which the defendant shall be ineligible for
20 parole. Notwithstanding the provisions of subsection a. of
21 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

22 Where a person is convicted of a crime of the first degree under
23 subparagraph (a) or (c) of this paragraph (1) involving heroin or its
24 analog and the aggregate amount of heroin or its analog, whether
25 determined by weight or by the number of units, is comprised of 70
26 percent or more of actual heroin or analog and 30 percent or less of
27 adulterants or dilutants, the court shall, except as provided in
28 N.J.S.2C:35-12, impose a term of imprisonment of 10 years during
29 which the defendant shall be ineligible for parole, or 15 years of
30 parole ineligibility if the defendant is subject to an extended term
31 under subsection f. of N.J.S.2C:43-6. For purposes of imposing the
32 enhanced sentence pursuant to this paragraph (1), the purity of the
33 heroin or its analog shall be determined by the trier of fact. The
34 enhanced sentence set forth in this paragraph (1) shall not be
35 imposed unless the indictment or accusation provides that the
36 aggregate amount of heroin or its analog is comprised of 70 percent
37 or more of actual heroin or analog and 30 percent or less of
38 adulterants or dilutants.

39 (2) **【A】** (a) Heroin or its analog, in a quantity of one-quarter
40 ounce or more, but less than one ounce including any adulterants or
41 dilutants; or

42 (b) any other substance referred to in subparagraph (b) of
43 paragraph (1) of this subsection, in a quantity of one-half ounce or
44 more but less than five ounces, including any adulterants or
45 dilutants; or

46 (c) 100 or more units but fewer than 500 units of any of the
47 substances referred to in subparagraph (a) or (b) of paragraph (1) of
48 this subsection, is guilty of a crime of the second degree;

- 1 (3) **【A】** (a) Heroin or its analog, in a quantity of less than one-
2 quarter ounce including any adulterants or dilutants; or
3 (b) any other substance referred to in subparagraph (b) of
4 paragraph (1) of this subsection in a quantity less than one-half
5 ounce including any adulterants or dilutants; or
6 (c) fewer than 100 units of any of the substances referred to in
7 subparagraph (a) or (b) of paragraph (1) of this subsection, is guilty
8 of a crime of the third degree except that, notwithstanding the
9 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
10 \$75,000.00 may be imposed;
- 11 (4) (a) A substance classified as a narcotic drug in Schedule I or
12 II other than those specifically covered in this section, or the analog
13 of any such substance, in a quantity of one ounce or more including
14 any adulterants or dilutants, or 500 or more units, is guilty of a
15 crime of the first degree.
- 16 (b) A substance classified as a narcotic drug in Schedule I or II
17 other than those specifically covered in this section, or the analog of
18 any such substance, in a quantity of **【one】 one-half** ounce or more
19 but less than one ounce including any adulterants or dilutants, or
20 100 or more units but fewer than 500 units, is guilty of a crime of
21 the second degree;
- 22 (5) A substance classified as a narcotic drug in Schedule I or II
23 other than those specifically covered in this section, or the analog of
24 any such substance, in a quantity of less than **【one】 one-half** ounce
25 including any adulterants or dilutants, or fewer than 100 units, is
26 guilty of a crime of the third degree except that, notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
28 \$75,000.00 may be imposed;
- 29 (6) Lysergic acid diethylamide, or its analog, in a quantity of
30 100 milligrams or including any adulterants or dilutants, or 500 or
31 more units, or phencyclidine, or its analog, in a quantity of 10
32 grams or more including any adulterants or dilutants, or 500 or
33 more units, is guilty of a crime of the first degree. Except as
34 provided in N.J.S.2C:35-12, the court shall impose a term of
35 imprisonment which shall include the imposition of a minimum
36 term, fixed at, or between, one-third and one-half of the sentence
37 imposed by the court, during which the defendant shall be ineligible
38 for parole. Notwithstanding the provisions of subsection a. of
39 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;
- 40 (7) Lysergic acid diethylamide, or its analog, in a quantity of
41 less than 100 including any adulterants or dilutants, or 100 or more
42 units but fewer than 500 units, or where the amount is
43 undetermined, or phencyclidine, or its analog, in a quantity of less
44 than 10 grams including any adulterants or dilutants, or 100 or
45 more units but fewer than 500 units, or where the amount is
46 undetermined, is guilty of a crime of the second degree;
- 47 (8) Methamphetamine, or its analog, or phenyl-2-propanone
48 (P2P), in a quantity of five ounces or more including any

1 adulterants or dilutants, or 500 or more units, is guilty of a crime of
2 the first degree. Notwithstanding the provisions of subsection a. of
3 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

4 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
5 (P2P), in a quantity of one-half ounce or more but less than five
6 ounces including any adulterants or dilutants, or 100 or more units
7 but fewer than 500 units, is guilty of a crime of the second degree;

8 (b) Methamphetamine, or its analog, or phenyl-2-propanone
9 (P2P), in a quantity of less than one-half ounce including any
10 adulterants or dilutants is guilty of a crime of the third degree
11 except that notwithstanding the provisions of subsection b. of
12 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

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

19 (b) Marijuana in a quantity of five pounds or more but less than
20 25 pounds including any adulterants or dilutants, or 10 or more but
21 fewer than 50 marijuana plants, regardless of weight, or hashish in a
22 quantity of one pound or more but less than five pounds, including
23 any adulterants **and** or dilutants, is guilty of a crime of the second
24 degree;

25 (11) Marijuana in a quantity of one ounce or more but less than
26 five pounds including any adulterants or dilutants, or hashish in a
27 quantity of five grams or more but less than one pound including
28 any adulterants or dilutants, is guilty of a crime of the third degree
29 except that, notwithstanding the provisions of subsection b. of
30 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

31 (12) Marijuana in a quantity of less than one ounce including
32 any adulterants or dilutants, or hashish in a quantity of less than five
33 grams including any adulterants or dilutants, is guilty of a crime of
34 the fourth degree;

35 (13) Any other controlled dangerous substance classified in
36 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
37 third degree, except that, notwithstanding the provisions of
38 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
39 imposed; or

40 (14) Any Schedule V substance, or its analog, is guilty of a
41 crime of the fourth degree except that, notwithstanding the
42 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
43 \$25,000.00 may be imposed.

44 c. (1) The number of units or plants of a substance
45 manufactured, distributed, dispensed, or possessed or controlled
46 with intent to manufacture, distribute, or dispense shall not be used
47 to determine whether an offense has been committed or the degree
48 of the offense unless the indictment or accusation so provides, and

1 the indictment or accusation shall specify whether the degree of the
2 offense is based on the quantity of the substance or the number of
3 units or plants of the substance, or both methods of measurement.
4 Where the indictment or accusation provides that the degree of the
5 offense is based on the number of units of the substance, the
6 indictment or accusation shall further specify whether the number
7 of units involved is based on the number of discrete pills, tablets,
8 capsules, vials, packets, folds or other units of distribution or
9 packaging of the controlled dangerous substance, or based on the
10 amount which is commonly distributed for consumption at one time
11 by an individual to achieve the desired effect, or based on both
12 methods of measurement to determine the number of units involved.

13 (2) Where the degree of the offense for violation of this section
14 depends on the quantity of the substance or the number of units or
15 plants, the quantity or number of units or plants involved shall be
16 determined by the trier of fact. Where the indictment or accusation
17 so provides, the quantity or number of units or plants involved in
18 individual acts of manufacturing, distribution, dispensing or
19 possessing with intent to distribute may be aggregated in
20 determining the grade of the offense, whether distribution or
21 dispensing is to the same person or several persons, provided that
22 each individual act of manufacturing, distribution, dispensing or
23 possession with intent to distribute was committed within the
24 applicable statute of limitations.

25 (cf: P.L.2000, c.136, s.1)

26

27 3. This act shall take effect immediately and shall apply to
28 offenses committed on or after the effective date.

29

30

31

STATEMENT

32

33 This bill would establish new classification schemes for certain
34 controlled dangerous substances.

35 Currently, the seriousness of a drug distribution offense is
36 measured by reference to the amount, or weight, of controlled
37 dangerous substances involved. However, some controlled
38 dangerous substances, such as LSD and methamphetamine, are not
39 sold by weight and may therefore be difficult to measure in terms of
40 the seriousness of the offense committed. This bill would give
41 prosecutors the option to instead grade the seriousness of a drug
42 distribution offense by reference to the number of units involved,
43 rather than the weight of the drugs.

44 Under this bill, a unit would be defined as either the smallest
45 discrete pill, tablet, capsule, vial, packet, fold or other unit of
46 distribution or packaging of the controlled dangerous substance, or
47 the amount which is commonly distributed for consumption at one
48 time by an individual to achieve the desired effect, whichever

1 method of measurement results in the greater number of units.

2 The charge by "units" would apply only to persons who
3 manufacture, distribute, or possess illicit drugs with the intent to
4 distribute. It would not apply to determine the seriousness of
5 "simple possession" drug offenses.

6 The bill provides that the number of units or plants of a
7 substance manufactured, distributed, dispensed, or possessed or
8 controlled with intent to manufacture, distribute, or dispense shall
9 not be used to determine whether an offense has been committed or
10 the degree of the offense unless the indictment or accusation so
11 provides, and the indictment or accusation shall specify whether the
12 degree of the offense is based on the quantity of the substance or
13 the number of units or plants of the substance, or both methods of
14 measurement. Where the indictment or accusation provides that the
15 degree of the offense is based on the number of units of the
16 substance, the indictment or accusation shall further specify
17 whether the number of units involved is based on the number of
18 discrete pills, tablets, capsules, vials, packets, folds or other units of
19 distribution or packaging of the controlled dangerous substance, or
20 based on the amount which is commonly distributed for
21 consumption at one time by an individual to achieve the desired
22 effect, or based on both methods of measurement to determine the
23 number of units involved.

24 The bill would also establish a new classification scheme for the
25 crime of distribution of heroin to make the weights comparable, in
26 terms of amounts commonly consumed, to the weights required for
27 cocaine. Under current law, the distribution of heroin and cocaine
28 are punishable as if they were the same substance. However, heroin
29 provides more pharmacological effect from a given weight than
30 does cocaine. Thus, in effect, the current statutes allow those who
31 distribute heroin to be treated more leniently than those who
32 distribute cocaine.

33 Consequently, the new classification scheme established under
34 the bill for the crime of distribution of heroin or cocaine would be
35 as follows:

36 A person would be guilty of a *crime of the first degree* for
37 manufacturing, distributing or possessing with intent to distribute:

- 38 • one ounce or more of heroin (instead of the current five
39 ounces or more), or
- 40 • five ounces or more of cocaine (unchanged from current
41 law), or
- 42 • 500 or more units of either cocaine or heroin.

43 A person would be guilty of a *crime of the second degree* for
44 manufacturing, distributing or possessing with intent to distribute:

- 45 • one-quarter ounce or more but less than one ounce of
46 heroin (instead of the current amount of one-half ounce or
47 more but less than five ounces), or
- 48 • one-half ounce or more but less than five ounces of

- 1 cocaine (unchanged from current law), or
2 • 100 or more units, but fewer than 500 units, of cocaine or
3 heroin.

4 A person would be guilty of a *crime of the third degree* for
5 manufacturing, distributing or possessing with intent to distribute
6 the following:

- 7 • less than one-quarter ounce (instead of the current amount
8 of less than one-half ounce) of heroin, or
9 • less than one-half ounce of cocaine (unchanged from
10 current law), or
11 • fewer than 100 units of cocaine or heroin.

12 The mandatory minimum terms of imprisonment under the
13 statute and the mandatory minimum fines remain unchanged except
14 for crimes involving heroin with certain high levels of purity. These
15 crimes would carry mandatory minimum terms of imprisonment.
16 Under the bill, if a person is convicted of the first degree crime of
17 distributing or possessing with intent to distribute heroin or its
18 analog in a quantity of one ounce or more or 500 or more units, and
19 the aggregate amount of drug, whether determined by weight or by
20 the number of units, is comprised of 70 percent or more of actual
21 heroin or analog and 30 percent or less of adulterants or dilutants,
22 the court would be required, except as provided in N.J.S.2C:35-12,
23 to impose a term of imprisonment of 10 years during which the
24 defendant would be ineligible for parole, or 15 years of parole
25 ineligibility if the defendant is subject to an extended term under
26 subsection f. of N.J.S.2C:43-6. The bill provides that for purposes
27 of imposing the enhanced sentence, the purity of the heroin or its
28 analog would be determined by the trier of fact. The enhanced
29 sentence could not be imposed unless the indictment or accusation
30 provides that the aggregate amount of heroin or its analog is
31 comprised of 70 percent or more of actual heroin or analog and 30
32 percent or less of adulterants or dilutants.

33 The bill would also add the “units” measurement scheme for the
34 following:

35 (1) the first degree crimes of distributing or possessing with
36 intent to distribute: (a) lysergic acid diethylamide (LSD), or its
37 analog, in a quantity of 100 milligrams or more *or 500 or more*
38 *units*; or phencyclidine, or its analog, in a quantity of 10 grams or
39 more *or 500 or more units*; or (b) methamphetamine, or its analog,
40 or P2P, in a quantity of five ounces or more *or 500 or more units*.

41 (2) the second degree crimes of distributing or possessing with
42 intent to distribute: (a) lysergic acid diethylamide (LSD), or its
43 analog, in a quantity of less than 100 milligrams *or 100 or more*
44 *units but fewer than 500 units* or phencyclidine, or its analog, in a
45 quantity of less than 10 grams *or 100 or more units but fewer than*
46 *500 units*; or (b) methamphetamine, or its analog, or P2P, in a
47 quantity of one-half ounce or more but less than five ounces or *100*
48 *or more units but fewer than 500 units*. (The third degree crime for

1 distributing or possessing with intent to distribute
2 methamphetamine, or its analog, or P2P, in a quantity of less than
3 one-half ounce remains unchanged.)

4 The gradation scheme for distributing or possessing with intent
5 to distribute marijuana and hashish remain unchanged, as does the
6 gradation scheme for other controlled dangerous substances
7 classified in Schedules I, II, III, IV, and V.