

SENATE, No. 212

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

SYNOPSIS

Increases penalties for certain heroin offenses by revising threshold amounts for first, second, and third degree crimes of manufacturing, distributing, and dispensing heroin.

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:35-5.

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:35-5 is amended to read as follows:

8 2C:35-5. Manufacturing, Distributing or Dispensing. a.
9 Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall
10 be unlawful for any person knowingly or purposely:

11 (1) To manufacture, distribute or dispense, or to possess or have
12 under his control with intent to manufacture, distribute or dispense,
13 a controlled dangerous substance or controlled substance analog; or

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

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

18 (1) (a) Heroin, or its analog, in a quantity of 2.5 ounces or more
19 including any adulterants or dilutants; or

20 (b) coca leaves and any salt, compound, derivative, or
21 preparation of coca leaves, and any salt, compound, derivative, or
22 preparation thereof which is chemically equivalent or identical with
23 any of these substances, or analogs, except that the substances shall
24 not include decocainized coca leaves or extractions which do not
25 contain cocaine or ecogine, or 3,4-
26 methylenedioxymethamphetamine or 3,4-
27 methylenedioxyamphetamine, in a quantity of five ounces or more
28 including any adulterants or dilutants is guilty of a crime of the first
29 degree.

30 **【The】** (c) Upon conviction for an offense described in
31 subparagraph (a) or (b) of this paragraph, the defendant shall,
32 except as provided in N.J.S.2C:35-12, be sentenced to a term of
33 imprisonment by the court. The term of imprisonment shall include
34 the imposition of a minimum term which shall be fixed at, or
35 between, one-third and one-half of the sentence imposed, during
36 which the defendant shall be ineligible for parole. Notwithstanding
37 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to
38 \$500,000.00 may be imposed;

39 (2) **【A】** (a) Heroin or its analog, in a quantity of 0.17 ounces or
40 more but less than 2.5 ounces including any adulterants or dilutants;
41 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 is guilty of a crime of the second degree;

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 (3) **【A】** (a) Heroin or its analog, in a quantity of less than 0.17
2 ounces 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 is guilty of a crime of
6 the third degree **【except that, notwithstanding】**;
7 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-
8 3, upon conviction for an offense described in subparagraph (a) or
9 (b) of this paragraph, a fine of up to \$75,000.00 may be imposed;
10 (4) A substance classified as a narcotic drug in Schedule I or II
11 other than those specifically covered in this section, or the analog of
12 any such substance, in a quantity of one ounce or more including
13 any adulterants or dilutants is guilty of a crime of the second
14 degree;
15 (5) A substance classified as a narcotic drug in Schedule I or II
16 other than those specifically covered in this section, or the analog of
17 any such substance, in a quantity of less than one ounce including
18 any adulterants or dilutants is guilty of a crime of the third degree
19 except that, notwithstanding the provisions of subsection b. of
20 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;
21 (6) Lysergic acid diethylamide, or its analog, in a quantity of
22 100 milligrams or more including any adulterants or dilutants, or
23 phencyclidine, or its analog, in a quantity of 10 grams or more
24 including any adulterants or dilutants, is guilty of a crime of the
25 first degree. Except as provided in N.J.S.2C:35-12, the court shall
26 impose a term of imprisonment which shall include the imposition
27 of a minimum term, fixed at, or between, one-third and one-half of
28 the sentence imposed by the court, during which the defendant shall
29 be ineligible for parole. Notwithstanding the provisions of
30 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
31 imposed;
32 (7) Lysergic acid diethylamide, or its analog, in a quantity of
33 less than 100 milligrams including any adulterants or dilutants, or
34 where the amount is undetermined, or phencyclidine, or its analog,
35 in a quantity of less than 10 grams including any adulterants or
36 dilutants, or where the amount is undetermined, is guilty of a crime
37 of the second degree;
38 (8) Methamphetamine, or its analog, or phenyl-2-propanone
39 (P2P), in a quantity of five ounces or more including any
40 adulterants or dilutants is guilty of a crime of the first degree.
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 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
44 (P2P), in a quantity of one-half ounce or more but less than five
45 ounces including any adulterants or dilutants is guilty of a crime of
46 the second degree;
47 (b) Methamphetamine, or its analog, or phenyl-2-propanone
48 (P2P), in a quantity of less than one-half ounce including any

1 adulterants or dilutants is guilty of a crime of the third degree
2 except that notwithstanding the provisions of subsection b. of
3 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

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

10 (b) Marijuana in a quantity of five pounds or more but less than
11 25 pounds including any adulterants or dilutants, or 10 or more but
12 fewer than 50 marijuana plants, regardless of weight, or hashish in a
13 quantity of one pound or more but less than five pounds, including
14 any adulterants and dilutants, is guilty of a crime of the second
15 degree;

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

22 (12) Marijuana in a quantity of less than one ounce including
23 any adulterants or dilutants, or hashish in a quantity of less than five
24 grams including any adulterants or dilutants, is guilty of a crime of
25 the fourth degree;

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

31 (14) Any Schedule V substance, or its analog, is guilty of a
32 crime of the fourth degree except that, notwithstanding the
33 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
34 \$25,000.00 may be imposed.

35 c. Where the degree of the offense for violation of this section
36 depends on the quantity of the substance, the quantity involved
37 shall be determined by the trier of fact. Where the indictment or
38 accusation so provides, the quantity involved in individual acts of
39 manufacturing, distribution, dispensing or possessing with intent to
40 distribute may be aggregated in determining the grade of the
41 offense, whether distribution or dispensing is to the same person or
42 several persons, provided that each individual act of manufacturing,
43 distribution, dispensing or possession with intent to distribute was
44 committed within the applicable statute of limitations.

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

46
47 2. This act shall take effect immediately.

1 STATEMENT

2
3 This bill would increase the penalties for offenses involving
4 manufacturing, distributing, or dispensing or possessing or having
5 under one’s control with intent to manufacture, distribute, or
6 dispense heroin by lowering the threshold quantities for crimes of
7 the first, second, and third degree. The bill would not affect the
8 threshold quantities for manufacturing, distributing, or dispensing
9 or possessing or having under one’s control with intent to
10 manufacture, distribute, or dispense any other controlled dangerous
11 substance.

12 Currently, the threshold quantity for a first degree offense
13 involving manufacturing, distributing, or dispensing or possessing
14 or having under one’s control with intent to manufacture, distribute,
15 or dispense heroin is five ounces or more; the bill would reduce the
16 threshold quantity to 2.5 ounces or more of heroin. Currently, the
17 threshold quantity for a second degree offense is one-half ounce or
18 more but less than five ounces of heroin; the bill would reduce this
19 threshold quantity to 0.17 ounces or more but less than 2.5 ounces
20 of heroin. Currently, the threshold quantity for a third degree
21 offense is less than one-half ounce of heroin; the bill would reduce
22 the threshold quantity to less than 0.17 ounces of heroin.

23 The first degree crime of manufacturing, distributing, or
24 dispensing or possessing or having under one’s control with intent
25 to manufacture, distribute, or dispense heroin is ordinarily
26 punishable by imprisonment for 10 to 20 years, up to a \$500,000
27 fine, or both. Additionally, the term of imprisonment may include
28 imposition of a mandatory minimum term, fixed at, or between,
29 one-third and one-half of the sentence imposed with no eligibility
30 for parole. The second degree crime of manufacturing, distributing,
31 or dispensing or possessing or having under one’s control with
32 intent to manufacture, distribute, or dispense heroin is ordinarily
33 punishable by imprisonment for five to 10 years, up to a \$150,000
34 fine, or both. The third degree crime of manufacturing, distributing,
35 or dispensing or possessing or having under one’s control with
36 intent to manufacture, distribute, or dispense heroin is ordinarily
37 punishable by imprisonment for three to five years, up to a \$75,000
38 fine, or both.

39 This bill implements Recommendation No. 7 from the July 2013
40 report from the State Commission of Investigation titled “Scenes
41 from an Epidemic: A Report on the SCI’s Investigation of
42 Prescription Pill and Heroin Abuse.”