

SENATE, No. 1439

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

Co-Sponsored by:

Senator O'Scanlon

SYNOPSIS

Increases penalties for unlawfully manufacturing, distributing, or dispensing fentanyl.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2020)

1 AN ACT concerning certain controlled dangerous substances and
2 amending 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.

9 a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.),
10 it shall 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, [or coca] in a quantity of five
19 ounces or more including any adulterants or dilutants;

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 methylenedioxyamphetamine or 3,4-
27 methylenedioxyamphetamine, in a quantity of five ounces or more
28 including any adulterants or dilutants; or

29 (c) Fentanyl in a quantity of five ounces or more including any
30 adulterants or dilutants,

31 is guilty of a crime of the first degree. 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 substance referred to in paragraph (1) of this subsection,
40 in a quantity of one-half ounce or more but less than five ounces,
41 including any adulterants or dilutants is guilty of a crime of the
42 second degree;

43 (3) A substance referred to in paragraph (1) of this subsection in
44 a quantity less than one-half ounce including any adulterants or
45 dilutants is guilty of a crime of the third degree except that,

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 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
2 fine of up to \$75,000.00 may be imposed;

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

8 (5) A substance classified as a narcotic drug in Schedule I or II
9 other than those specifically covered in this section, or the analog of
10 any such substance, in a quantity of less than one ounce including
11 any adulterants or dilutants is guilty of a crime of the third degree
12 except that, notwithstanding the provisions of subsection b. of
13 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

14 (6) Lysergic acid diethylamide, or its analog, in a quantity of
15 100 milligrams or more including any adulterants or dilutants, or
16 phencyclidine, or its analog, in a quantity of 10 grams or more
17 including any adulterants or dilutants, is guilty of a crime of the
18 first degree. Except as provided in N.J.S.2C:35-12, the court shall
19 impose a term of imprisonment which shall include the imposition
20 of a minimum term, fixed at, or between, one-third and one-half of
21 the sentence imposed by the court, during which the defendant shall
22 be ineligible for parole. Notwithstanding the provisions of
23 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
24 imposed;

25 (7) Lysergic acid diethylamide, or its analog, in a quantity of
26 less than 100 milligrams including any adulterants or dilutants, or
27 where the amount is undetermined, or phencyclidine, or its analog,
28 in a quantity of less than 10 grams including any adulterants or
29 dilutants, or where the amount is undetermined, is guilty of a crime
30 of the second degree;

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

36 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
37 (P2P), in a quantity of one-half ounce or more but less than five
38 ounces including any adulterants or dilutants is guilty of a crime of
39 the second degree;

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

45 (10) (a) Marijuana in a quantity of 25 pounds or more including
46 any adulterants or dilutants, or 50 or more marijuana plants,
47 regardless of weight, or hashish in a quantity of five pounds or
48 more including any adulterants or dilutants, is guilty of a crime of

1 the first degree. Notwithstanding the provisions of subsection a. of
2 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

3 (b) Marijuana in a quantity of five pounds or more but less than
4 25 pounds including any adulterants or dilutants, or 10 or more but
5 fewer than 50 marijuana plants, regardless of weight, or hashish in a
6 quantity of one pound or more but less than five pounds, including
7 any adulterants and dilutants, is guilty of a crime of the second
8 degree;

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

15 (12) Marijuana in a quantity of less than one ounce including any
16 adulterants or dilutants, or hashish in a quantity of less than five
17 grams including any adulterants or dilutants, is guilty of a crime of
18 the fourth degree;

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

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

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

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

39
40 2. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill would increase the penalties for unlawfully
46 manufacturing, distributing, or dispensing fentanyl. Fentanyl is an
47 anesthetic and analgesic, first synthesized in the 1950's, that in
48 recent years has become a drug of abuse. According to the Drug

1 Enforcement Administration, fentanyl is 30 to 50 times more potent
2 than heroin and is potentially lethal even at very low doses.

3 Under current law, set out in paragraphs (4) and (5) of subsection
4 b. of N.J.S.2C:35-5 and section 6 of P.L.1970, c.226 (C.24:21-6),
5 unlawfully manufacturing, distributing, or dispensing fentanyl in a
6 quantity of one ounce or more is a crime of the second degree. A
7 crime of the second degree is generally punishable by a term of
8 imprisonment of five to ten years or a fine up to \$150,000, or both.
9 Unlawfully manufacturing, distributing or dispensing fentanyl in a
10 quantity of less than one ounce is a crime of the third degree. A
11 crime of the third degree is generally punishable by a term of three
12 to five years or a fine up to \$15,000, or both. However, the fine
13 imposed for the third degree offense involving fentanyl is increased
14 to up to \$75,000.

15 Under the bill, the penalties for unlawfully manufacturing,
16 distributing, or dispensing fentanyl would match the penalties for
17 manufacturing, distributing, or dispensing heroin or cocaine under
18 current law. The bill provides that unlawfully manufacturing,
19 distributing, or dispensing fentanyl in a quantity of five ounces or
20 more would be a crime of the first degree. A crime of the first
21 degree is generally punishable by a term of imprisonment of 10 to
22 20 years or a fine of up to \$200,000, or both. Under the bill the
23 defendant would be sentenced to a mandatory minimum term of
24 imprisonment of one-third to one-half of the sentence imposed,
25 during which the defendant would be ineligible for parole. The
26 defendant would also be sentenced to pay an increased fine of up to
27 \$500,000.

28 The bill provides that if the quantity of fentanyl unlawfully
29 manufactured, distributed, or dispensed is one-half ounce or more
30 but less than five ounces, the defendant would be guilty of a crime
31 of the second degree. If the quantity is less than one-half ounce, the
32 defendant would be guilty of a crime of the third degree with an
33 increased fine of up to \$75,000.