ASSEMBLY, No. 5371



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED MAY 8, 2023

Sponsored by:

Assemblywoman CLAIRE S. SWIFT

District 2 (Atlantic)

Assemblyman DONALD A. GUARDIAN

District 2 (Atlantic)

Co-Sponsored by:

Assemblywoman Matsikoudis, Assemblyman McClellan and Assemblywoman Sawyer

SYNOPSIS

 Requires grading of offenses involving manufacturing, distributing, and dispensing heroin based on dosage units in addition to weight.

CURRENT VERSION OF TEXT

 As introduced.



An Act concerning controlled dangerous substances and amending N.J.S.2C:35-2 and N.J.S.2C:35-5.

 Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

 2C:35-2. As used in this chapter:

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

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

 "Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, marijuana and hashish as defined in this section, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b), and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., tobacco and tobacco products, or cannabis and cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33). The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

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

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

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

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

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

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

 "Drugs" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) substances, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) substances intended for use as a component of any substance specified in (1), (2), and (3) of this definition; but does not include devices or their components, parts, or accessories. The term "drug" also does not include: hemp and hemp products cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-31 et al.) which is cultivated and produced for use in a cannabis item, as defined in that section, in accordance with the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.); and cannabis resin as defined in that section 3 (C.24:6I-33) which is extracted for use in a cannabis item, as defined in that section, in accordance with that act.

 "Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

 "Hashish" means the resin extracted from any part of the plant Cannabis sativa L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin. "Hashish" shall not mean: hemp and hemp products cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis resin as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is extracted for use in a cannabis item, as defined in that section, in accordance with the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

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

 "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant. "Marijuana" shall not mean: hemp and hemp products cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is cultivated and produced for use in a cannabis item, as defined in that section, in accordance with the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

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

 (1) Opium, coca leaves, and opiates;

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

 (3) A substance, and any compound, manufacture, salt, derivative, or preparation thereof, which is chemically identical with any of the substances referred to in (1) and (3) of this definition, except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 "State" means the State of New Jersey.

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

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

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

 "Stramonium plant" means the plant Datura Stramonium Linne, including Datura Tatula Linne.

(cf: P.L.2021, c.16, s.54)

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

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

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

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

 b. Any person who violates subsection a. of this section with respect to:

 (1) (a) Heroin, or its analog, in a quantity of 50 grams or more, or 2,500 dosage units or more is guilty of a crime of the first degree; or

 **[**coca**]** (b) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, or 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxyamphetamine, in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree.

 **[**The**]** A defendant convicted of a crime of the first degree pursuant to this paragraph shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $500,000 may be imposed;

 (2) (a) Heroin, or its analog, in a quantity greater than two grams but less than 50 grams, or greater than 100 dosage units but fewer than 2,500 dosage units, is guilty of a crime of the second degree;

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

 (3) Any person who violates subsection a. of this section with respect to:

 (a) Heroin, or its analog, in a quantity of two grams or less, or 100 or fewer dosage units, is guilty of a crime of the third degree;

 (b) A substance referred to in subparagraph (b) of paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000 may be imposed;

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

 (5) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000 may be imposed;

 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine, or its analog, in a quantity of 10 grams or more including any adulterants or dilutants, is guilty of a crime of the first degree. Except as provided in N.J.S.2C:35-12, the court shall impose a term of imprisonment which shall include the imposition of a minimum term, fixed at, or between, one-third and one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $500,000 may be imposed;

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

 (8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000 may be imposed;

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

 (b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000 may be imposed;

 (10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000 may be imposed;

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

 (11) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-23.1 et al.), marijuana in a quantity of one ounce or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000 may be imposed;

 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-23.1 et al.), marijuana in a quantity of more than one ounce but less than five pounds including any adulterants or dilutants, or hashish in a quantity of more than five grams but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000 may be imposed;

 (12) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-23.1 et al.), marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than five grams including any adulterants or dilutants, is guilty of a crime of the fourth degree;

 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-23.1 et al.), marijuana in a quantity of one ounce or less including any adulterants or dilutants, or hashish in a quantity of five grams or less including any adulterants or dilutants, is, for a first offense, subject to a written warning, which also indicates that any subsequent violation is a crime punishable by a term of imprisonment, a fine, or both, and for a second or subsequent offense, is guilty of a crime of the fourth degree;

 (i) The odor of marijuana or hashish, or burnt marijuana or hashish, shall not constitute reasonable articulable suspicion to initiate a search of a person to determine a violation of subparagraph (b) of paragraph (12) of this subsection. A person who violates this subparagraph shall not be subject to arrest, detention, or otherwise be taken into custody, unless the person is being arrested, detained, or otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required;

 (ii) A person shall not be deprived of any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law solely by reason of committing a violation of subparagraph (b) of paragraph (12) of this subsection, nor shall committing one or more violations modify any legal or civil right, privilege, benefit, or opportunity provided pursuant to any law, including, but not limited to, the granting, renewal, forfeiture, or denial of a license, permit, or certification, qualification for and the receipt, alteration, continuation, or denial of any form of financial assistance, housing assistance, or other social services, rights of or custody by a biological parent, or adoptive or foster parent, or other legal guardian of a child or newborn infant, or pregnant woman, in any action or proceeding by the Division of Child Protection and Permanency in the Department of Children and Families, or qualification, approval, or disapproval to serve as a foster parent or other legal guardian;

 (iii) All local and county law enforcement authorities shall, following the submission process used for the uniform crime reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et seq.), submit a quarterly report to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number of violations of subparagraph (b) of paragraph (12) of this subsection committed within their respective jurisdictions, plus the race, ethnicity, gender, and age of each person committing a violation, and the disposition of each person's violation. These violations and associated information, along with a quarterly summary of violations investigated, and associated information collected, by the Division of State Police for the same period shall be summarized by county and municipality in an annual report, and both quarterly summaries and annual reports shall be made available at no cost to the public on the Division of State Police's Internet website;

 (13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or its analog, is guilty of a crime of the third degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000 may be imposed; or

 (14) Any Schedule V substance, or its analog, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000 may be imposed.

 c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact, other than with respect to a first violation of subparagraph (b) of paragraph (12) of subsection b. of this section which is subject to a written warning as set forth in that subparagraph. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

(cf: P.L.2021, c.19, s.1)

 3. This act shall take effect immediately.

STATEMENT

 This bill requires offenses involving manufacturing, distributing, and dispensing heroin to be graded based on the number of dosage units of heroin, in addition to the weight.

 Under current law, the distribution of heroin and cocaine are punishable as if they were the same substance. However, heroin provides more pharmacological effect from a given weight than does cocaine. A dosage unit of heroin typically weighs approximately 0.02 grams. It is not uncommon for a dosage unit of cocaine to weigh approximately 14 grams, or 0.49 ounces.

 Under current law, manufacturing, distributing, or possessing with intent to distribute a dosage unit of cocaine in the amount of up to 0.5 ounces would be punishable as crimes of the third degree. Accordingly, a single dosage unit of cocaine that weighs 0.49 ounces would be would be punishable as a crime of the third degree. A person who manufactures, distributes, or possesses approximately 700 dosage units of heroin would also only be guilty of a crime of the third degree. Thus, in effect, the current statutes allow those who distribute heroin to be treated far more leniently than those who distribute cocaine. The new classification scheme established under the bill for the crime of distribution of heroin would be as follows:

* A person would be guilty of a crime of the first degree for manufacturing, distributing, or possessing with intent to distribute heroin, or its analog, in a quantity of 50 grams or more, or 2,500 dosage units or greater;
* A person would be guilty of a crime of the second degree for manufacturing, distributing, or possessing with intent to distribute heroin or its analog, in a quantity greater than two grams but less than 50 grams, or greater than 100 dosage units but fewer than 2,500 dosage units.
* A person would be guilty of a crime of the third degree for manufacturing, distributing, or possessing with intent to distribute heroin or its analog, in a quantity of two grams or less or 100 or fewer dosage units.

 Under the bill, “dosage unit” is defined as either the smallest discrete pill, tablet, capsule, vial, packet, fold or other unit of distribution or packaging of the controlled dangerous substance, or the amount which is commonly distributed for consumption at one time by an individual to achieve the desired effect, whichever method of measurement results in the greater number of dosage units.