

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.



A5371 SWIFT, GUARDIAN

2

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

16 "Agent" means an authorized person who acts on behalf of or at
17 the direction of a manufacturer, distributor, or dispenser but does
18 not 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, marijuana and
22 hashish as defined in this section, any substance the distribution of
23 which is specifically prohibited in N.J.S.2C:35-3, in section 3 of
24 P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194
25 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in
26 section 2 of P.L.2013, c.35 (C.2C:35-5.3b), and any drug or
27 substance which, when ingested, is metabolized or otherwise
28 becomes a controlled dangerous substance in the human body.
29 When any statute refers to controlled dangerous substances, or to a
30 specific controlled dangerous substance, it shall also be deemed to
31 refer to any drug or substance which, when ingested, is metabolized
32 or otherwise becomes a controlled dangerous substance or the
33 specific controlled dangerous substance, and to any substance that
34 is an immediate precursor of a controlled dangerous substance or
35 the specific controlled dangerous substance. The term shall not
36 include distilled spirits, wine, malt beverages, as those terms are
37 defined or used in R.S.33:1-1 et seq., tobacco and tobacco products,
38 or cannabis and cannabis as defined in section 3 of P.L.2021, c.16
39 (C.24:6I-33). The term, wherever it appears in any law or
40 administrative regulation of this State, shall include controlled
41 substance analogs.

42 "Controlled substance analog" means a substance that has a
43 chemical structure substantially similar to that of a controlled
44 dangerous substance and that was specifically designed to produce
45 an effect substantially similar to that of a controlled dangerous

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 substance. The term shall not include a substance manufactured or
2 distributed in conformance with the provisions of an approved new
3 drug application or an exemption for investigational use within the
4 meaning of section 505 of the "Federal Food, Drug and Cosmetic
5 Act," 52 Stat. 1052 (21 U.S.C. s.355).

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

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

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

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

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

34 "Drugs" means (1) substances recognized in the official United
35 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
36 United States, or official National Formulary, or any supplement to
37 any of them; and (2) substances intended for use in the diagnosis,
38 cure, mitigation, treatment, or prevention of disease in man or other
39 animals; and (3) substances, other than food, intended to affect the
40 structure or any function of the body of man or other animals; and
41 (4) substances intended for use as a component of any substance
42 specified in (1), (2), and (3) of this definition; but does not include
43 devices or their components, parts, or accessories. The term "drug"
44 also does not include: hemp and hemp products cultivated, handled,
45 processed, transported, or sold pursuant to the "New Jersey Hemp
46 Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); cannabis as defined
47 in section 3 of P.L.2021, c.16 (C.24:6I-31 et al.) which is cultivated
48 and produced for use in a cannabis item, as defined in that section,

1 in accordance with the "New Jersey Cannabis Regulatory,
2 Enforcement Assistance, and Marketplace Modernization Act,"
3 P.L.2021, c.16 (C.24:6I-31 et al.); and cannabis resin as defined in
4 that section 3 (C.24:6I-33) which is extracted for use in a cannabis
5 item, as defined in that section, in accordance with that act.

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

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

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

42 "Marijuana" means all parts of the plant Cannabis sativa L.,
43 whether growing or not; the seeds thereof, and every compound,
44 manufacture, salt, derivative, mixture, or preparation of the plant or
45 its seeds, except those containing resin extracted from the plant.
46 "Marijuana" shall not mean: hemp and hemp products cultivated,
47 handled, processed, transported, or sold pursuant to the "New Jersey
48 Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis

1 as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is
2 cultivated and produced for use in a cannabis item, as defined in
3 that section, in accordance with the "New Jersey Cannabis
4 Regulatory, Enforcement Assistance, and Marketplace
5 Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

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

10 (1) Opium, coca leaves, and opiates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 "State" means the State of New Jersey.

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

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

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

4 "Stramonium plant" means the plant *Datura Stramonium* Linne,
5 including *Datura Tatula* Linne.

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

7
8 2. N.J.S.2C:35-5 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

3 (a) Heroin, or its analog, in a quantity of two grams or less, or
4 100 or fewer dosage units, is guilty of a crime of the third degree;

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

4 (10) (a) Marijuana in a quantity of 25 pounds or more including
5 any adulterants or dilutants, or 50 or more marijuana plants,
6 regardless of weight, or hashish in a quantity of five pounds or
7 more including any adulterants or dilutants, is guilty of a crime of
8 the first degree. Notwithstanding the provisions of subsection a. of
9 N.J.S.2C:43-3, a fine of up to \$300,000 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) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
17 23.1 et al.), marijuana in a quantity of one ounce or more but less
18 than five pounds including any adulterants or dilutants, or hashish
19 in a quantity of five grams or more but less than one pound
20 including any adulterants or dilutants, 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 may be
23 imposed;

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

32 (12) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
33 23.1 et al.), marijuana in a quantity of less than one ounce including
34 any adulterants or dilutants, or hashish in a quantity of less than five
35 grams including any adulterants or dilutants, is guilty of a crime of
36 the fourth degree;

37 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
38 23.1 et al.), marijuana in a quantity of one ounce or less including
39 any adulterants or dilutants, or hashish in a quantity of five grams
40 or less including any adulterants or dilutants, is, for a first offense,
41 subject to a written warning, which also indicates that any
42 subsequent violation is a crime punishable by a term of
43 imprisonment, a fine, or both, and for a second or subsequent
44 offense, is guilty of a crime of the fourth degree;

45 (i) The odor of marijuana or hashish, or burnt marijuana or
46 hashish, shall not constitute reasonable articulable suspicion to
47 initiate a search of a person to determine a violation of
48 subparagraph (b) of paragraph (12) of this subsection. A person

1 who violates this subparagraph shall not be subject to arrest,
2 detention, or otherwise be taken into custody, unless the person is
3 being arrested, detained, or otherwise taken into custody for also
4 committing another violation of law for which that action is legally
5 permitted or required;

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

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

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

44 (14) Any Schedule V substance, or its analog, is guilty of a
45 crime of the fourth degree except that, notwithstanding the
46 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
47 \$25,000 may be imposed.

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

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

15
16 3. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill requires offenses involving manufacturing, distributing,
22 and dispensing heroin to be graded based on the number of dosage
23 units of heroin, in addition to the weight.

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

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

- 42 • A person would be guilty of a crime of the first degree for
43 manufacturing, distributing, or possessing with intent to
44 distribute heroin, or its analog, in a quantity of 50 grams or
45 more, or 2,500 dosage units or greater;
- 46 • A person would be guilty of a crime of the second degree for
47 manufacturing, distributing, or possessing with intent to
48 distribute heroin or its analog, in a quantity greater than two

1 grams but less than 50 grams, or greater than 100 dosage
2 units but fewer than 2,500 dosage units.

- 3 • A person would be guilty of a crime of the third degree for
4 manufacturing, distributing, or possessing with intent to
5 distribute heroin or its analog, in a quantity of two grams or
6 less or 100 or fewer dosage units.

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