

SENATE, No. 3325

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED NOVEMBER 14, 2022

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Co-Sponsored by:

Senators Stack and A.M.Bucco

SYNOPSIS

Enhances penalties for possession, distribution, and manufacture of certain amounts of fentanyl.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/12/2023)

1 AN ACT concerning certain controlled dangerous substance and
2 amending N.J.S.2C:35-2, N.J.S.2C:35-5, and N.J.S.2C:35-10.

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

15 “Adulterants or dilutants” means substances which are mixed or
16 combined with a controlled dangerous substance and any medium
17 which is used to carry a controlled dangerous substance, if the
18 controlled dangerous substance is not readily removable from the
19 medium. The terms include, but are not limited to, blotter paper,
20 stamps or cigarettes.

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

25 “Controlled dangerous substance” means a drug, substance, or
26 immediate precursor in Schedules I through V, marijuana and
27 hashish as defined in this section, any substance the distribution of
28 which is specifically prohibited in N.J.S.2C:35-3, in section 3 of
29 P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194
30 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in
31 section 2 of P.L.2013, c.35 (C.2C:35-5.3b), and any drug or
32 substance which, when ingested, is metabolized or otherwise
33 becomes a controlled dangerous substance in the human body.
34 When any statute refers to controlled dangerous substances, or to a
35 specific controlled dangerous substance, it shall also be deemed to
36 refer to any drug or substance which, when ingested, is metabolized
37 or otherwise becomes a controlled dangerous substance or the
38 specific controlled dangerous substance, and to any substance that
39 is an immediate precursor of a controlled dangerous substance or
40 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., tobacco and tobacco products,
43 or cannabis and cannabis as defined in section 3 of P.L.2021, c.16
44 (C.24:6I-33). The term, wherever it appears in any law or
45 administrative regulation of this State, shall include controlled

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 analogs.

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

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

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

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

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

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

1 Regulatory, Enforcement Assistance, and Marketplace
2 Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.); and
3 cannabis resin as defined in that section 3 (C.24:6I-33) which is
4 extracted for use in a cannabis item, as defined in that section, in
5 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 a
37 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
48 Jersey Hemp Farming Act,” P.L.2019, c.238 (C.4:28-6 et al.); or

1 cannabis as defined in section 3 of P.L.2021, c.16 (C.24:6I-33)
2 which is cultivated and produced for use in a cannabis item, as
3 defined in that section, in accordance with the “New Jersey
4 Cannabis 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. a. Except as authorized by P.L.1970, c.226 (C.24:21-
10 1 et seq.), it shall be unlawful for any person knowingly or
11 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. with respect to:

19 (1) Heroin, or its analog, or coca leaves and any salt, compound,
20 derivative, or preparation of coca leaves, and any salt, compound,
21 derivative, or preparation thereof which is chemically equivalent or
22 identical with any of these substances, or analogs, except that the
23 substances shall not include decocainized coca leaves or extractions
24 which do not contain cocaine or ecogine, or 3,4-
25 methylenedioxyamphetamine or 3,4-
26 methylenedioxyamphetamine, in a quantity of five ounces or more
27 including any adulterants or dilutants is guilty of a crime of the first
28 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
29 be sentenced to a term of imprisonment by the court. The term of
30 imprisonment shall include the imposition of a minimum term
31 which shall be fixed at, or between, one-third and one-half of the
32 sentence imposed, during which the defendant shall be ineligible for
33 parole. Notwithstanding the provisions of subsection a. of
34 N.J.S.2C:43-3, a fine of up to \$500,000 may be imposed;

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

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

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

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

7 (6) Lysergic acid diethylamide, or its analog, in a quantity of
8 100 milligrams or more including any adulterants or dilutants, or
9 phencyclidine, or its analog, in a quantity of 10 grams or more
10 including any adulterants or dilutants, is guilty of a crime of the
11 first degree. Except as provided in N.J.S.2C:35-12, the court shall
12 impose a term of imprisonment which shall include the imposition
13 of a minimum term, fixed at, or between, one-third and one-half of
14 the sentence imposed by the court, during which the defendant shall
15 be ineligible for parole. Notwithstanding the provisions of
16 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000 may be
17 imposed;

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

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

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

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

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

44 (b) Marijuana in a quantity of five pounds or more but less than
45 25 pounds including any adulterants or dilutants, or 10 or more but
46 fewer than 50 marijuana plants, regardless of weight, or hashish in a
47 quantity of one pound or more but less than five pounds, including

1 any adulterants and dilutants, is guilty of a crime of the second
2 degree;

3 (11) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
4 23.1 et al.), marijuana in a quantity of one ounce or more but less
5 than five pounds including any adulterants or dilutants, or hashish
6 in a quantity of five grams or more but less than one pound
7 including any adulterants or dilutants, is guilty of a crime of the
8 third degree except that, notwithstanding the provisions of
9 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
10 imposed;

11 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
12 23.1 et al.), marijuana in a quantity of more than one ounce but less
13 than five pounds including any adulterants or dilutants, or hashish
14 in a quantity of more than five grams but less than one pound
15 including any adulterants or dilutants, is guilty of a crime of the
16 third degree except that, notwithstanding the provisions of
17 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
18 imposed;

19 (12) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
20 23.1 et al.), marijuana in a quantity of less than one ounce including
21 any adulterants or dilutants, or hashish in a quantity of less than five
22 grams including any adulterants or dilutants, is guilty of a crime of
23 the fourth degree;

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 one ounce or less including
26 any adulterants or dilutants, or hashish in a quantity of five grams
27 or less including any adulterants or dilutants, is, for a first offense,
28 subject to a written warning, which also indicates that any
29 subsequent violation is a crime punishable by a term of
30 imprisonment, a fine, or both, and for a second or subsequent
31 offense, is guilty of a crime of the fourth degree;

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

41 (ii) A person shall not be deprived of any legal or civil right,
42 privilege, benefit, or opportunity provided pursuant to any law
43 solely by reason of committing a violation of subparagraph (b) of
44 paragraph (12) of this subsection, nor shall committing one or more
45 violations modify any legal or civil right, privilege, benefit, or
46 opportunity provided pursuant to any law, including, but not limited
47 to, the granting, renewal, forfeiture, or denial of a license, permit,
48 or certification, qualification for and the receipt, alteration,

1 continuation, or denial of any form of financial assistance, housing
2 assistance, or other social services, rights of or custody by a
3 biological parent, or adoptive or foster parent, or other legal
4 guardian of a child or newborn infant, or pregnant woman, in any
5 action or proceeding by the Division of Child Protection and
6 Permanency in the Department of Children and Families, or
7 qualification, approval, or disapproval to serve as a foster parent or
8 other legal guardian;

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

26 (13) Any other controlled dangerous substance classified in
27 Schedule I, II, III or IV, or its analog, other than those specifically
28 covered in this section, 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 may be 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 may be imposed;

35 (15) Fentanyl, or its analog, in a quantity of 10 grams or more
36 including any adulterants or dilutants, or a fentanyl mixture, in a
37 quantity of 100 grams or more including any adulterants or
38 dilutants, is guilty of a crime of the first degree. Notwithstanding
39 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to
40 \$500,000.00 may be imposed;

41 (16) Fentanyl, or its analog, in a quantity of five grams or more
42 but less than 10 grams including any adulterants or dilutants, or a
43 fentanyl mixture, in a quantity of 50 grams or more but less than
44 100 grams including any adulterants or dilutants, is guilty of a
45 crime of the second degree; or

46 (17) Fentanyl, or its analog, in a quantity of less than five grams
47 including any adulterants or dilutants, or a fentanyl mixture, in a
48 quantity of less than 50 grams including any adulterants or

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

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

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

18

19 3. N.J.S.2C:35-10 is amended to read as follows:

20 2C:35-10. Possession, Use, or Being Under the Influence, or
21 Failure to Make Lawful Disposition.

22 a. It is unlawful for any person, knowingly or purposely, to
23 obtain, or to possess, actually or constructively, a controlled
24 dangerous substance or controlled substance analog, unless the
25 substance was obtained directly, or pursuant to a valid prescription
26 or order from a practitioner, while acting in the course of his
27 professional practice, or except as otherwise authorized by
28 P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this
29 section with respect to:

30 (1) A controlled dangerous substance, or its analog, classified in
31 Schedule I, II, III or IV other than those specifically covered in this
32 section, is guilty of a crime of the third degree except that,
33 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
34 fine of up to \$35,000 may be imposed;

35 (2) Any controlled dangerous substance, or its analog, classified
36 in Schedule V, is guilty of a crime of the fourth degree except that,
37 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
38 fine of up to \$15,000 may be imposed;

39 (3) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
40 23.1 et al.), possession of more than 50 grams of marijuana,
41 including any adulterants or dilutants, or more than five grams of
42 hashish is guilty of a crime of the fourth degree, except that,
43 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
44 fine of up to \$25,000 may be imposed;

45 (b) On and after to the effective date of P.L.2021, c.19
46 (C.2C:35-23.1 et al.), possession of more than six ounces of
47 marijuana, including any adulterants or dilutants, or more than 17
48 grams of hashish is guilty of a crime of the fourth degree, except

1 that, notwithstanding the provisions of subsection b. of
2 N.J.S.2C:43-3, a fine of up to \$25,000 may be imposed;

3 (i) The odor of marijuana or hashish, or burnt marijuana or
4 hashish, shall not constitute reasonable articulable suspicion to
5 initiate a search of a person to determine a violation of
6 subparagraph (b) of paragraph (3) of this subsection. A person who
7 violates this paragraph shall not be subject to arrest, detention, or
8 otherwise be taken into custody, unless the person is being arrested,
9 detained, or otherwise taken into custody for also committing
10 another violation of law for which that action is legally permitted or
11 required;

12 (ii) A person shall not be deprived of any legal or civil right,
13 privilege, benefit, or opportunity provided pursuant to any law
14 solely by reason of committing a violation of subparagraph (b) of
15 paragraph (3) of this subsection, nor shall committing one or more
16 violations modify any legal or civil right, privilege, benefit, or
17 opportunity provided pursuant to any law, including, but not limited
18 to, the granting, renewal, forfeiture, or denial of a license, permit,
19 or certification, qualification for and the receipt, alteration,
20 continuation, or denial of any form of financial assistance, housing
21 assistance, or other social services, rights of or custody by a
22 biological parent, or adoptive or foster parent, or other legal
23 guardian of a child or newborn infant, or pregnant woman, in any
24 action or proceeding by the Division of Child Protection and
25 Permanency in the Department of Children and Families, or
26 qualification, approval, or disapproval to serve as a foster parent or
27 other legal guardian;

28 (iii) All local and county law enforcement authorities shall,
29 following the submission process used for the uniform crime
30 reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et
31 seq.), submit a quarterly report to the Uniform Crime Reporting
32 Unit, within the Division of State Police in the Department of Law
33 and Public Safety, or to another designated recipient determined by
34 the Attorney General, containing the number of violations of
35 subparagraph (b) of paragraph (3) of this subsection committed
36 within their respective jurisdictions, plus the race, ethnicity, gender,
37 and age of each person committing a violation, and the disposition
38 of each person's violation. These violations and associated
39 information, along with a quarterly summary of violations
40 investigated, and associated information collected, by the Division
41 of State Police for the same period shall be summarized by county
42 and municipality in an annual report, and both quarterly summaries
43 and annual reports shall be made available at no cost to the public
44 on the Division of State Police's Internet website;

45 (4) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
46 23.1 et al.), possession of 50 grams or less of marijuana, including
47 any adulterants or dilutants, or five grams or less of hashish is a
48 disorderly person;

1 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
2 23.1 et al.), possession of six ounces or less of marijuana, including
3 any adulterants or dilutants, or 17 grams or less of hashish is not
4 subject to any punishment, as this possession is not a crime,
5 offense, act of delinquency, or civil violation of law; or

6 (5) Possession of one ounce or less of psilocybin is a disorderly
7 persons offense.

8 (6) Possession of less than 10 grams of fentanyl shall be a crime
9 of the third degree and possession of 10 grams or more of fentanyl
10 shall be a crime of the first degree.

11 Any person who commits any offense set forth in paragraphs (1)
12 through (3) of this subsection while on any property used for school
13 purposes which is owned by or leased to any elementary or
14 secondary school or school board, or within 1,000 feet of any such
15 school property or a school bus, or while on any school bus, and
16 who is not sentenced to a term of imprisonment, shall, in addition to
17 any other sentence which the court may impose, be required to
18 perform not less than 100 hours of community service.

19 b. (1) Any person who uses or who is under the influence of any
20 controlled dangerous substance, or its analog, not including
21 marijuana or hashish, for a purpose other than the treatment of
22 sickness or injury as lawfully prescribed or administered by a
23 physician is a disorderly person.

24 In a prosecution under this subsection, it shall not be necessary
25 for the State to prove that the accused did use or was under the
26 influence of any specific, prohibited drug, but it shall be sufficient
27 for a conviction under this subsection for the State to prove that the
28 accused did use or was under the influence of some prohibited
29 controlled dangerous substance, counterfeit controlled dangerous
30 substance, or controlled substance analog, by proving that the
31 accused did manifest physical and physiological symptoms or
32 reactions caused by the use of any prohibited controlled dangerous
33 substance or controlled substance analog.

34 (2) Notwithstanding that using or being under the influence of
35 marijuana or hashish is not a punishable crime, offense, act of
36 delinquency, or civil violation pursuant to this subsection, the
37 smoking, vaping, or aerosolizing of marijuana or hashish may be
38 prohibited or otherwise regulated on or in any property by the
39 person or entity that owns or controls that property, including
40 multifamily housing that is a multiple dwelling as defined in section
41 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of
42 the structure of a cooperative as defined in section 3 of P.L.1987,
43 c.381 (C.46:8D-3), the units of a condominium, as those terms are
44 defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a
45 mobile home park as defined in section 3 of P.L.1983, c.386
46 (C.40:55D-102), which site is leased to the owner of a
47 manufactured home, as defined in that section, that is installed
48 thereon.

1 c. Any person who knowingly obtains or possesses a controlled
2 dangerous substance or controlled substance analog in violation of
3 paragraph (1) or (2) of subsection a. of this section and who fails to
4 voluntarily deliver the substance to the nearest law enforcement
5 officer is guilty of a disorderly persons offense. Nothing in this
6 subsection shall be construed to preclude a prosecution or
7 conviction for any other offense defined in this title or any other
8 statute.

9 (cf: P.L.2021, c.19, s.2)

10
11 4. This act shall take effect immediately.

12
13
14 STATEMENT

15
16 This bill enhances penalties for possession, distribution, and
17 manufacture of fentanyl based on the amount of fentanyl involved.

18 Under current law, it is a crime of the second degree distribute or
19 manufacture fentanyl in a quantity of one ounce or more. It is a
20 crime of the third degree to manufacture or distribute fentanyl in a
21 quantity of less than one ounce.

22 This bill changes the law to make the manufacture and
23 distribution of:(1)10 grams or more of fentanyl, or its analog,
24 including any adulterants or dilutants, or 100 grams or more of a
25 fentanyl mixture, including any adulterants or dilutants, a crime of
26 the first degree; (2) five grams or more, but less than 10 grams, of
27 fentanyl, or its analog, including any adulterants or dilutants, or 50
28 grams or more, but less than 100 grams, of a fentanyl mixture,
29 including any adulterants or dilutants, a crime of the second degree;
30 and (3) less than five grams of fentanyl or its analog, including any
31 adulterants or dilutants, or less than 50 grams of a fentanyl mixture,
32 including any adulterants or dilutants a crime of the third degree.

33 This bill also specifies that possession of less than 10 grams of
34 fentanyl is a crime of the third degree, similar to possession of other
35 controlled dangerous substances. However, this bill specifies that
36 possession of 10 grams or more of fentanyl is a first degree crime.

37 First degree crimes are punishable by 10 to 20 years
38 imprisonment, a fine of up to \$200,000, or both. Second degree
39 crimes are punishable by up to five to 10 years imprisonment, a fine
40 of up to \$150,000, or both. Third crime crimes are punishable by
41 three to five years imprisonment, a fine of up to \$15,000, or both.

42 The sponsor's intent is not to target or punish fentanyl users who
43 could benefit from drug rehabilitation. Rather, the sponsor's express
44 intent is to target drug distributors. Many people are dying due to
45 fentanyl overdoses. Further, other illicit drugs are being combined
46 with fentanyl, which is dangerous because users do not know they
47 are ingesting lethal doses of fentanyl. New Jersey, along with many
48 other areas, is being negatively impacted by the fentanyl crisis.