



**REPORT TO THE GOVERNOR
BY THE ATTORNEY GENERAL
ON THE NEED TO UPDATE
THE COMPREHENSIVE
DRUG REFORM ACT OF 1987**



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Christine Todd Whitman, Governor

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December 9, 1996



State of New Jersey

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December 9, 1996

Honorable Christine Todd Whitman, Governor
State House
Trenton, New Jersey 08625

Dear Governor Whitman:

As part of the Drug Enforcement, Education and Awareness Program that you released on October 8, 1996, you asked me to consult with drug enforcement and prosecution experts and to recommend how best to update and revise the Comprehensive Drug Reform Act of 1987. The following report reflects those efforts.

I want to acknowledge the assistance of the County Prosecutors, County Task Force Commanders, New Jersey Narcotic Enforcement Officers Association and other drug enforcement experts throughout the State in identifying issues related to New Jersey's drug laws.

Thank you for providing me, as the State's chief law enforcement officer, with this opportunity to report on how we can provide police and prosecutors with the best legal tools to address these issues.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter Verniero".

Peter Verniero
Attorney General

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**REPORT TO THE GOVERNOR BY THE ATTORNEY GENERAL ON THE NEED TO
UPDATE THE COMPREHENSIVE DRUG REFORM ACT OF 1987**

EXECUTIVE SUMMARY

This Report is comprised of four parts. Section 1, an Introduction and Overview, discusses the historical origins of the Comprehensive Drug Reform Act of 1987 and explains how New Jersey's drug problem has evolved since that statute was enacted. Section 2 discusses the recommendations for amending New Jersey's drug laws that were first suggested in Governor Whitman's Drug Enforcement, Education and Awareness Program ("Governor's Program"). Section 3 discusses additional recommendations that may be considered as part of a comprehensive effort to update and revise New Jersey's criminal drug laws. The fourth part, the Appendix, includes the specific revisions which are recommended to Title 2C and Title 24 of the Revised Statutes.

Specific Recommendations Suggested in the Governor's Program

1. Large-scale distributors of marijuana and methamphetamine should be appropriately punished. New first degree crimes should be established for persons who distribute or possess with intent to distribute more than five ounces of methamphetamine, 25 pounds or more of marijuana, or 50 or more marijuana plants.

2. The differences between heroin and cocaine should be reflected in the statutory scheme for grading the seriousness of drug distribution offenses. The distribution or possession with intent to distribute one ounce or more of heroin (rather than the current five or more ounces) should be graded as a crime of the first degree. The distribution or possession with intent to distribute one-quarter ounce (rather than the current one-half ounce) should suffice for guilt of a second degree crime.

3. We must deter attempts by those engaged in the illicit drug trade to endanger and impede law enforcement officers. Accordingly, a new second degree crime should be created for persons who place booby traps. The offense should be upgraded to a first degree crime if the device inflicts bodily injury. Fortifying a structure in which drugs are manufactured or distributed should be made a crime of the third degree. Sentences imposed upon conviction of these new offenses should be served consecutively to the sentences imposed for violating any other drug offense.

4. We must address the use of firearms by drug dealers and users. A new offense should be created for possessing a firearm while one unlawfully possesses a controlled dangerous substance. Where a person is convicted of a firearms violation, the sentence should be made consecutive to the sentence imposed on a drug offense committed at the same time. Furthermore, the exemption in current law for firearms possessed in a residence or place of business should not apply if a controlled dangerous substance is knowingly and unlawfully manufactured, distributed or possessed in the premises.

5. It is necessary to increase the punishment for conspiring to commit a first degree crime. Conspiracy to commit a first degree drug crime should be upgraded to a crime of the first degree.

6. The statute that proscribes maintaining a drug production facility should be amended to include large-scale marijuana growing and packaging operations, as well as facilities that produce other Schedule I or Schedule II illegal substances. This provision should no longer be limited to Schedule I and Schedule II substances that are defined as "narcotics."

7. It is necessary to give prosecutors the option to grade the seriousness of a drug distribution offense by calculating the number of dosage "units" that were possessed or distributed. This new gradation scheme, which would be used only at the election of the prosecutor, would allow the seriousness of the drug distribution offense to reflect how many people might have been injured by a drug dealer's illicit conduct.

8. A technical amendment should be made to the offense of employing a juvenile. "Conspiring" with a juvenile to commit a drug offense should be a crime of the second degree. It should not be an defense to a prosecution for N.J.S.A. 2C:35-6 that the juvenile was not an employee or underlying, but rather was a co-equal within the drug trafficking network.

9. Smuggling a controlled dangerous substance into a prison, jail, half-way house or drug treatment facility should be specifically punished as a separate crime. In order to keep these institutions drug-free, N.J.S.A. 2C:29-6 should be amended to make it a crime of the second degree to unlawfully bring a controlled substance into such a facility.

10. Persons who illegally possess a controlled dangerous substance in a penal institution should be subject to enhanced punishment. Accordingly, a person convicted of illegal possession of a drug in a prison, jail or treatment facility should be subject to a sentence appropriate to a crime graded one degree higher than would otherwise apply. Further, the sentence for this new crime should be

imposed consecutively to any sentence the defendant may have been serving at the time of the offense.

11. Prosecutors should be provided with new tools to take the profit out of illegally dealing drugs. A new "anti-drug profiteering penalty" should be imposed by the court at the time of sentencing upon the application of the prosecutor if the drug trafficking offense was committed for profit. This penalty, which could be satisfied by executing judgment against any asset of the defendant, would be based upon either the value of illicit drugs involved in the drug trafficking scheme, or the degree of crime for which the defendant was convicted.

12. The use of court-ordered treatment as a sentencing alternative should be increased and enhanced in appropriate cases. N.J.S.A. 2C:35-14, which currently authorizes a court to impose a term of residential treatment instead of a prison term, should be amended to give courts greater authority to "leverage" addicted offenders into treatment. These amendments must be designed, first and foremost, to protect public safety.

Additional Recommendations

1. Law enforcement officers should be given access to telephone subscriber information that is commonly available to non-law enforcement persons. The wiretap law should be revised to allow law enforcement access to subscriber information by means of a subpoena, than by a court order.

2. Persons who distribute or possess with intent to distribute illicit drugs in public parks should be subject to enhanced punishment. Therefore, the drug-free school zone law should be amended to include drug distribution activities occurring on the grounds of a public park, because these areas, like schools, are designed to attract children.

3. Persons convicted of distributing or possessing with intent to distribute illicit drugs should not be entitled to a presumption of nonimprisonment. A drug dealer convicted of a third degree crime should face a realistic possibility that he or she will be sentenced to a term of imprisonment.

4. We should prohibit the modification of vehicles intended to be used for smuggling controlled dangerous substances and other contraband. A new offense should be added to Chapter 5 of the penal code that would prohibit modifying a vehicle, or knowingly driving a vehicle that has been modified, when the purpose for the modification was to facilitate the transportation of a controlled dangerous substance or other contraband.

5. The definition of "adulterant" and "dilutant" should be clarified to include any medium used to carry a controlled substance where the substance is not readily removable from the medium, such as blotter paper and stamps.

6. Every defendant charged with illegal possession of a controlled dangerous substance on or near a school who receives supervisory treatment should be required to perform community service.

7. The law should be clarified to make clear that an attempt to purchase a controlled dangerous substance is a crime. Accordingly, a new fourth degree crime should be created where a person purchases or attempts to purchase a substance believing it to be a controlled dangerous substance, even though the substance is, in fact, an imitation. (If the substance is believed to be marijuana, the new offense should be graded as a disorderly persons offense.)

8. Regardless of where the actual drug distribution or ingestion took place, if a death occurs in New Jersey, the State should be able to prosecute for the crime of drug-induced death. We should clarify the original intention of the Legislature that it is not necessary that the act of distribution or ingestion occur in this State.

9. The statute providing for an extended term for second-time drug offenders should be amended to make clear that it applies to a prior attempt or conspiracy to violate the law. This unintended "loophole" in the Comprehensive Drug Reform Act should be closed. Persons who have been convicted of a drug trafficking conspiracy who thereafter commit yet another drug distribution offense should be treated as repeat offenders.

10. The purely ministerial burden of republishing the drug schedules should be eliminated.

**REPORT TO THE GOVERNOR BY THE ATTORNEY GENERAL ON THE NEED TO
UPDATE THE COMPREHENSIVE DRUG REFORM ACT OF 1987**

I. INTRODUCTION AND OVERVIEW

As part of Governor Whitman's Drug Enforcement, Education and Awareness Program (the "Governor's Program"), which was issued on October 8, 1996, this report details the recommendations of the Attorney General, who consulted with the New Jersey law enforcement community, as to how best to update and revise our criminal drug laws. Our goal is to make certain that police and prosecutors in New Jersey have state-of-the-art legal tools to address the drug issue described in the Governor's Program.

In 1987, shortly after the stunning emergence and proliferation of "crack" cocaine in the New York metropolitan area, the New Jersey Legislature unanimously adopted the Comprehensive Drug Reform Act. That law made sweeping changes to New Jersey's criminal drug laws and is regarded, then as now, as one of the toughest and most comprehensive criminal narcotics statutes in the nation.

The Comprehensive Drug Reform Act included many innovative features. It is not surprising, therefore, that this law has been used as a model by other States. By way of example, New Jersey was the first State to adopt a comprehensive drug-free school zone law to provide enhanced punishment for drug dealers who operate on or within 1,000 feet of school property. Today, virtually every state has adopted a drug-free school zone provision patterned after the New Jersey model.

In addition to providing stiff punishment for the most culpable drug traffickers, the Comprehensive Drug Reform Act included a number of innovative features designed to reduce the demand for drugs by authorizing stern nonincarcerative sanctions for drug users. Notably, New Jersey was the first State to require the loss or postponement of driving privileges of every person convicted of a drug offense. Today, all states are required to have and enforce a law patterned after the New Jersey statute as a condition of receiving full federal highway funds.

New Jersey's Comprehensive Drug Reform Act was last revised in 1988, at which time several technical amendments were made to correct drafting problems. Since then, there have been no significant new legal tools created to help drug enforcement efforts, with the notable exception of the adoption of a comprehensive money laundering statute, N.J.S.A. 2C:21-23, et. seq., which Governor Whitman signed into law on October 26, 1994.

Although New Jersey's drug laws have remained virtually unchanged throughout the last decade, the drug problem has not remained static. Rather, it has evolved in many significant respects. In part, this is because drug dealers have adapted their criminal operations and enterprises in an effort to maximize profits and to avoid detection and stern punishment. Notably, we have witnessed in recent years an increased willingness by drug dealers to resort to the use of firearms to protect their "turf" and the proceeds of their lucrative trade. (To some extent, high-powered weapons have become a status symbol within the illicit drug culture.) By the same token, drug dealers today too often use booby traps and fortifications, which are

designed to injure law enforcement officers and to make it more difficult for police to enforce the law.

Drug distributors have also found creative ways to exploit new markets and expand their destructive influence. Drug dealers in recent years, for example, have made available highly concentrated forms of heroin that do not have to be injected intravenously, but rather can be smoked or snorted.

This recent adaptation is essentially a devious marketing strategy -- one which is designed to ensnare young people who might otherwise be reluctant to use a hypodermic syringe to ingest this seductive narcotic drug. It should be noted that according to the latest drug and alcohol survey of New Jersey high school students, the proportion of students who reported having used heroin at some time in their lifetime has increased significantly. Although the absolute number of students who report having ever used heroin remains small, the proportion of students in the 1995 survey who report having used heroin is almost triple the percentage of those reporting such use in 1989.

It also bears noting that since the Comprehensive Drug Reform Act was adopted, much has been learned about the nature of substance abuse and addiction, and its relationship to crime. New empirical research, described in the Governor's Program, demonstrates clearly the efficacy of drug rehabilitation treatment and the need to use the criminal justice system to mandate or "leverage" nonviolent offenders into treatment so that we can address their needs before they find it necessary to resort to violence.

Pursuant to the Governor's Program, the Attorney General brought together drug enforcement experts from the State, county and local levels of government to identify problems, ambiguities, gaps and "loopholes" in our current drug laws. These experts have hands-on experience in enforcing our laws out on the streets, and in prosecuting drug offenders in court.

Based upon the recommendations of these experts, this report includes a list of specific proposed revisions to Title 2C and Title 24. The Attorney General believes the proposals will allow law enforcement to keep pace with drug traffickers. Most of the recommendations respond directly to the proposals set forth in the Governor's Program. These recommendations can be found in Part II of this report and are discussed in the same order as they appear in the Governor's Program. Also included are several additional proposed amendments that are based upon information learned during and as a result of the Law Enforcement Summit, which was convened on the same day that the Governor released the Program. These additional recommendations can be found in Part III.

We also note that the Governor's Program refers to model drug treatment and community mobilization statutes developed by the National Alliance for Model State Drug Laws. Pursuant to the Governor's directive, a conference will be convened early next year to consider these legislative initiatives in greater detail. Accordingly, this report does not address the need to amend New Jersey's laws concerning the abatement of drug nuisances, the eviction of drug traffickers, the authority of courts

to issue "stay out of drug area" restraining orders to bar defendants from returning to open air drug markets, and provisions designed to ensure that substance-abusing offenders are identified and compelled to participate in treatment programs. Those issues will be addressed at a later date. It should be noted, however, that this report does recommend specific amendments to N.J.S.A. 2C:35-14, which authorizes judges in certain cases to impose a term of residential drug treatment in lieu of traditional imprisonment (*i.e.*, "drug courts").

In sum, the following report succinctly describes the practical and legal issues that the New Jersey law enforcement community has encountered in enforcing our criminal drug laws. Importantly, it also includes as an appendix specific statutory language that the Attorney General believes would best address the issues identified. These new statutory tools are related to our goal of making our streets and neighborhoods safer and protecting our law-abiding citizens, especially our children, from the destructive influence of controlled dangerous substances and the violence spawned by this sordid trade.

II. SPECIFIC RECOMMENDATIONS SUGGESTED IN THE GOVERNOR'S DRUG ENFORCEMENT, EDUCATION AND AWARENESS PROGRAM.

1. Large-scale distributors of marijuana and methamphetamine should be appropriately punished.

Under current law, the most serious offense involving distribution and possession with intent to distribute methamphetamine ("speed") or marijuana is a crime of the second degree, regardless of the quantity involved. Large-scale marijuana and methamphetamine producers and traffickers know that no matter how prolific their illicit activities, they can never be prosecuted for a first degree crime, even though their conduct is at least as dangerous and harmful as that involving the distribution of five ounces of cocaine (which is currently graded as a first degree crime). At present, it simply does not matter for prosecution purposes whether a trafficker is selling six pounds or six tons of methamphetamine or marijuana.

Methamphetamine is a drug that is manufactured in clandestine laboratories that often use chemical processes that pose extreme environmental hazards. For this reason, it is further recommended that P2P, an immediate precursor used in the manufacture of methamphetamine, be included in the new gradation scheme.

Additionally, because marijuana cultivation is becoming more common in New Jersey, it is important to establish gradations for marijuana based upon the number of plants possessed (regardless of weight). Law enforcement tries hard to interdict at an early stage such efforts to produce large quantities of marijuana. There is no sound

reason to encourage police to wait to seize growing plants until they are mature enough to produce a large mass of usable marijuana. Indeed, public safety demands that these plants be destroyed as soon as they are discovered, before there is any chance that they can be harvested and marketed. To adequately address the seriousness of the contemplated criminal activity, it is necessary to create a gradation scheme, such as the one presently used in federal law, which counts plants as an alternative to weighing the marijuana. This approach is similar to the recommended new "unit" approach for other substances. (See discussion in II, sec. 7 at p. 14.)

Thus, the following amendments are recommended:

a. Distribution or possession with intent to distribute more than five ounces of methamphetamine would be a crime of the first degree. Currently, any amount over one ounce is only a second degree crime.

b. The amount of methamphetamine required for a second degree crime should be lowered to one-half ounce.

c. Distribution or possession with intent to distribute 25 pounds or 50 marijuana plants, or 5 pounds of hashish, would be a first degree crime. Currently, any amount over 5 pounds of marijuana, or one pound of hashish, is only a second degree crime.

2. The differences between heroin and cocaine should be reflected in the statutory scheme for grading the seriousness of drug distribution offenses.

Under current law, heroin and cocaine are treated as if they were exactly the same substance. A person convicted of distributing one ounce of heroin would be punished the same as if he or she had instead distributed one ounce of cocaine, even though that one ounce of heroin could have produced more dosage units and thus injured more consumers. Our gradation scheme should more accurately reflect the stark realities of drug distribution and consumption on the streets. Because heroin provides more pharmacological effect from a given weight than does cocaine, the current statutes effectively allow those who distribute heroin to be treated more leniently than those who distribute cocaine. Heroin should therefore be re-graded to make the weights required to be distributed for first and second degree crimes comparable, in terms of amounts commonly consumed, to the weights required for cocaine. Specifically, the following amendments to N.J.S.A. 2C:35-5 are recommended:

d. A first degree crime would be committed if one ounce of heroin, rather than the current five ounces, were distributed or possessed with intent to distribute in violation of 2C:35-5.

e. one-quarter ounce, rather than the current one-half ounce, would suffice for guilt of a second degree crime.

3. We must deter attempts by those engaged in the illicit drug trade to endanger and impede law enforcement officers.

Police officers in New Jersey are confronted by devices that are intended to impede and harm the officers as they attempt to execute search warrants and arrest drug dealers. An ordered society simply cannot tolerate activity that amounts to the waging of a war against those who are sworn to enforce the law.

It is, therefore, recommended that the Legislature create new offenses to deal specifically with booby traps and fortifications. The offense of placing a booby trap should be graded as a second degree crime, with an upgrade to a first degree crime if the device inflicts bodily injury upon any person. Fortifying a structure in which drugs are manufactured or distributed would be a crime of the third degree.

Included in the report is a provision, modeled after N.J.S.A. 2C:44-5b (consecutive sentence for offense committed while released pending disposition of another offense), which would require that the sentence imposed for booby trapping or fortifying be served consecutively to any sentence for violating any other provision of Chapter 35, unless imposing a consecutive sentence would be a serious injustice outweighing the need to deter such conduct. This provision is necessary because we must ensure that there is additional stern punishment for those who pose so much danger to law enforcement officers.

4. We must address the use of firearms by drug dealers and users.

Firearms have become ubiquitous in the world of illegal drug activity. Dealers are armed to protect themselves from law enforcement officers, from other dealers and from their customers. Some drug users are armed because they must commit crimes to support their habits. The combination of illegal drug use and firearm possession is intolerable, because drugs impair judgment and, in some instances, cause paranoia and incite mindless violence.

In recent years, State, county and local authorities have worked with federal prosecutors to take advantage of tough federal laws, which severely punish drug dealers who use firearms. While programs such as "Operation Triggerlock" have been useful, New Jersey police and prosecutors should have their own legal tools to respond to these vexing problems. A series of statutory amendments and supplements would make it clear under State law that those who illegally use and deal drugs must never possess firearms, and that those who choose to arm themselves will be subject to enhanced punishment.

Specifically, it is proposed that a consecutive sentence be imposed upon a violation of various provisions of chapter 39 of Title 2C (dealing with illegally possessing a firearm), if the weapons offense occurred during the course of committing a violation of 2C:35-3, -4, -5, -6, -7 or -11. The court would not be required to impose a consecutive term if the defendant demonstrates that the firearm was not accessible during the commission of the drug distribution offense.

In order to give this proposal effect when the illegal drug business is carried on in the defendant's home, it is further suggested that the exemption presently contained in N.J.S.A. 2C:39-6e, for firearms possessed in a residence or place of business, be made inapplicable if a controlled dangerous substance is knowingly and unlawfully manufactured, distributed or possessed in the premises. Without this provision, the requirement of separate and consecutive punishment for the illegal possession of a firearm will be applicable only in cases involving weapons that are per se illegal (i.e., assault weapons or machine guns), or when weapons are possessed by persons previously convicted of crimes.

Perhaps most importantly, it is proposed that a new offense be created for possessing a firearm while one unlawfully possesses a controlled dangerous substance. In effect, this would make those who illegally use and possess drugs subject to the same disability as those who have been convicted of a crime: they simply may not possess a firearm at any time, in any place. These two amendments to chapter 39, coupled with the new chapter 35 section discussed above, will give police and prosecutors powerful new tools to take firearms out of the hands of those engaged in the drug trade.

5. It is necessary to increase the punishment for conspiring to commit a first degree drug crime.

It is recommended that conspiracy to commit a crime of the first degree defined in chapter 35 of this title be upgraded to a crime of the first degree. It is currently only a second degree crime.

Drug trafficking, by its very nature, often involves a conspiracy to import, manufacture and distribute illicit substances. Too often, the most culpable, highest ranking members of a drug trafficking conspiracy are well insulated within their criminal network. These profit-minded predators are rarely found near large quantities of drugs. "Mules" and street-level dealers, in contrast, are more visible and more vulnerable to police intervention, and are therefore more likely to be caught in actual possession of drugs in a quantity which would warrant a first-degree conviction.

This amendment would be especially helpful in cases where police interdict a large shipment of controlled dangerous substances during a routine motor vehicle stop. The next investigatory step following a large-scale seizure often is to arrange for a "controlled delivery" in order to apprehend those who arranged or "conspired" to distribute the substance. As a general principle of drug enforcement, police try to work their way up a drug distribution network, until they have reached the most culpable individuals -- those who are capable of buying or selling very large quantities of controlled dangerous substances. Interdiction cases, however, often result in an arrest before the actual exchange or final distribution of illicit drugs is accomplished.

One of the effects of a successful interdiction, ironically, is to downgrade the severity of the crime to a second degree conspiracy case. This confers an unwarranted benefit to the most culpable defendants (who were never caught in actual possession of the seized drugs) only because we fortuitously defeated the scheme and apprehended the conspirators before the substantive crime was completed.

Given the potential harm which can be inflicted on society by the quantities of controlled dangerous substances involved in a first degree crime, it is appropriate to impose stern penalties upon these large-scale drug traffickers even though they have been apprehended before completing the underlying crime. Those who conspire to commit so serious an offense should not receive a windfall simply because their scheme was thwarted by effective law enforcement.

6. The statute that proscribes maintaining a drug production facility should be amended to include large scale marijuana growing and packaging operations, as well as facilities that produce other Schedule I or Schedule II illegal substances.

N.J.S.A. 2C:35-4 currently applies only to facilities that are used to manufacture methamphetamine, LSD, phencyclidine, and "narcotic drugs" listed in Schedules I and II. (Heroin and cocaine are considered by law to fall into this category). Marijuana and other controlled dangerous substances in Schedule I and Schedule II do not technically come within the definition of a "narcotic." It is inappropriate to limit this offense to narcotic drugs, thereby excluding stimulants, hallucinogens and other Schedule I and Schedule II substances. After all, a drug's

classification as a Schedule I or II substance means precisely that it is highly addictive and dangerous, with little or no medical value.

The offense of maintaining or operating a controlled dangerous substance production facility should therefore be amended to include facilities involved in the production of marijuana and other Schedule I or Schedule II substances. This is especially necessary in light of the fact that in recent years, an increasing quantity of marijuana has been produced in New Jersey, sometimes in indoor facilities using "grow lights" and hydroponics. Last year alone, police in New Jersey seized and destroyed more than 4,000 live marijuana plants that could have produced more than four tons of high quality pot. To trigger the production-facility law, there should be a minimum amount of marijuana that must be "manufactured," so as not to reach conduct involving the rolling of a single joint or the growing of a single plant.

7. It is necessary to give prosecutors the option to grade the seriousness of a drug distribution offense by calculating the number of dosage "units" that were possessed or distributed.

In New Jersey as in every other jurisdiction, the seriousness of a drug distribution offense is measured principally by reference to the amount (*i.e.*, weight) of drugs involved. The unstated assumption is that the most dangerous and prolific dealers will be in possession of large quantities of controlled substances. There are some controlled substances, however, which are not sold by weight, and which do not readily lend themselves to that measurement. LSD is a notable example. Therefore, prosecutors should have the option for certain illicit drugs to determine the seriousness

of the offense by reference to the number of dosage units involved, reflecting how many people might have been injured by a drug dealer's illicit conduct.

Under this proposal, a "unit" would be defined as either the smallest discrete pill, tablet, capsule, vial, packet, fold or other unit of distribution or packaging of the controlled substance, or the amount that is commonly distributed for consumption at one time by an individual to achieve the desired effect. This definition would be especially helpful in properly grading the crime of distributing substances such as LSD and methamphetamine, but would also be useful in certain other cases, where, for example, an illicit substance has been packaged for street level distribution. This new grading scheme would only be used at the prosecutor's election, and should only apply to persons who distribute or possess illicit drugs with the intent to distribute. It would not be used to determine the seriousness of a "simple possession" drug offense.

8. A technical amendment should be made to the offense of employing a juvenile.

N.J.S.A. 2C:35-6 should be amended to provide that, in addition to using, soliciting, directing, hiring, or employing a juvenile, conspiring with a juvenile would be a crime of the second degree. In some cases, adult defendants have prevailed by arguing that the juveniles with whom they were engaged in a drug trafficking conspiracy were not employees or underlings, but rather were co-equals within the trafficking network. This "defense" should be eliminated. The law should be clear: adults should not be involved with minors in distributing illicit drugs.

9. Smuggling a controlled dangerous substance into a prison, jail, half-way house or drug treatment facility should be specifically punished as a separate crime.

Given the new emphasis on affording substance abuse treatment in the prison setting, we must do everything possible to prevent the smuggling of illicit substance into these facilities. These institutions must be kept drug free. Such dangerous conduct sabotages our efforts to rehabilitate offenders and compromises the security of our penal institutions. Therefore, N.J.S.A. 2C:29-6 should be amended to make it a crime of the second degree to unlawfully bring a controlled dangerous substance into a correction facility, which would include juvenile detention facilities and half-way houses. Private residential treatment facilities to which persons have been sentenced under 2C:35-14 should also be included.

A violation of this section should not merge with official misconduct or a violation of 2C:35-5 or -7. In order to make absolutely certain that this conduct is adequately punished, 2C:30-2 (official misconduct) should also be amended to make clear that a violation of that section will not merge with a violation of the proposed 2C:29-6. Cf. State v. Dillahay, 127 N.J. 42 (1992).

It should not be necessary for the prosecution to establish that the defendant intended to distribute the substance within the correctional facility. The offense, rather, should be complete at the moment the person (i.e., an employee, vendor or visitor) illegally brings a controlled substance into the institution.

10. Persons who illegally possess a controlled dangerous substance in a penal institution should be subject to enhanced punishment.

Related to the proposal noted above, a person who illegally possesses a controlled dangerous substance in a prison, detention facility or residential treatment facility should be subject to a sentence enhancement of having the crime upgraded by one degree. Prisoners frequently do not fear the impact of a third or fourth degree charge of simple possession of a controlled dangerous substance because the punishment that may be imposed is relatively insubstantial in comparison to the sentences that they are already serving. Further, the sentence for the new offense of possession should be presumptively imposed consecutively to any sentence the defendant may have been serving at the time of the new offense. Whether the offender is an inmate, employee, contract service provider or visitor, the penal setting is a manifestly inappropriate place in which to violate the law.

11. Prosecutors should be provided with new tools to take the profit out of illegally dealing drugs.

Although some street-level dealers sell drugs to support their own habits, more often than not, drug distribution is motivated by greed. It has become a lucrative trade, generating billions of dollars. All too frequently, drug traffickers are sophisticated in concealing and relocating their ill-gotten profits. When those profits are converted into other assets or transferred to others who hold the assets for the use

and enjoyment of the drug dealer, the State is prevented from recovering the fines, fees, penalties and property which should be forfeited.

Therefore, there should be a new in personam penalty, imposed by the court at the time of sentencing upon the application of the prosecutor, when the drug trafficking offense was committed for profit. The "anti-drug profiteering penalty" would be based upon either a multiple of the value of drugs involved, or the degree of offense for which the defendant was convicted. The in personam penalty could be satisfied by executing judgment against any asset of the defendant, even if it cannot be "traced" to the drug trade. Thus, were the defendant to find his or her hidden assets after release from prison, or to reap new profits, those assets could be seized to pay off the previously imposed penalty.

12. The use of court-ordered treatment as a sentencing alternative should be increased and enhanced in appropriate cases.

The Governor's Program calls for new ways to support drug court programs. One way is to provide judges with new legal tools with which to "leverage" addicts into treatment. N.J.S.A. 2C:35-14, which authorizes a court in certain cases to impose a term of residential drug treatment in lieu of an otherwise mandatory term of imprisonment, may have been well-intentioned and even enlightened by the standards of 1987, was drafted at a time when there was comparatively little information about the efficacy of treatment and about how to improve the chances for rehabilitation. (See, "A Prosecutor's Guide to Treatment," (1996) developed by the American

Prosecutors Research Institute, the research arm of the National District Attorneys Association.)

This rehabilitation sentencing feature is only rarely used, in part because the statute imposes barriers for courts, prosecutors and addicts. Therefore, this report proposes a series of specific amendments to 2C:35-14 in order to facilitate the work of new drug courts, while at all times paying special attention to the overriding goal of protecting the public.

For one thing, a court should be allowed to use this rehabilitative sentencing option even if the defendant does not make the initial application. Because addicts cannot be expected to make rational choices about their own need for treatment, courts should have the authority, on their own motion, to order a defendant to submit to the rigors of a rehabilitation program. Few addicts "volunteer" for treatment, because most are in denial and would prefer to go on using drugs. Studies show that mandatory treatment is as effective, if not more effective, than voluntary treatment. The key is to match treatment services to the specific needs of the offender, and to ensure that the treatment is of sufficient duration. The length of time in treatment is one of the best predictors of the success of treatment.

The circumstances that the court must find in order to avail itself of this section's provisions should be specifically enumerated. Notably, the court should be required to make a finding that the present drug offense was directly related to the offender's addiction. (Many addicts deal drugs to support their own habits.) Moreover, a professional diagnostic assessment should be done to determine that the

defendant is, in fact, drug or alcohol dependent and in need of treatment. Finally, and of special importance given the emphasis to protect public safety, the court must find that (1) the defendant was not engaged in conduct involving violence or threat of violence, (2) did not carry a firearm, (3) did not distribute drugs to children or while actually on school grounds, and (4) does not have a history of violence. As aptly noted in the Governor's Program, as to those kinds of predatory offenders, treatment should only be given during an appropriate term of imprisonment in a secure correctional institution.

Prosecutors should continue to be able to veto treatment in lieu of prison in drug-free school zone and employing a juvenile cases, and when the defendant has a prior 2C:35-5 conviction. In addition, it is recommend that the Legislature retain the current requirement that such offenders be subject to a minimum, nonwaivable term of six months in a residential treatment facility. This is necessary to protect public safety and to ensure that the difficult process of recovery begins in an appropriate environment.

Probation officers would be required to make periodic reports to the courts, and treatment providers would be required to report all significant failures of the defendant in complying with the terms of probation and the treatment program, as well as to report positive drug tests. The rigid requirement under current law that a court must automatically revoke the defendant's probation in the event of a second failure or violation (*i.e.*, a positive drug test) should be replaced with a presumption of revocation that would give the court the option not to revoke special probation in

certain carefully defined circumstances. Recent studies show in this regard that relapse is not uncommon during the difficult process of recovery. The court should also be given the option, as an alternative to automatic revocation, to impose a period of incarceration between 30 days and 6 months, followed by returning the defendant to the treatment program. This feature will give the court a new way to “leverage” offenders to make progress in treatment and to cooperate with the treatment provider.

III. ADDITIONAL RECOMMENDATIONS

1. Law enforcement officers should be given access to telephone subscriber information that is commonly available to non-law enforcement persons.

Under current state law, law enforcement officers may not, without prior judicial authorization, obtain even the most basic information concerning who subscribes to particular telephone numbers, or where those numbers are installed. If read literally, this provision, which goes beyond the restrictions imposed by the equivalent federal statute, could have negative consequences when, for example, a law enforcement agency receives an emergency phone call but loses contact with the caller before a location can be provided. It is recommended that the wiretap law be revised to allow law enforcement access to subscriber information pursuant to a subpoena, as opposed to a court order. This information is important in the early stages of a criminal investigation.

In the context of the war on drugs, the current law unnecessarily inhibits investigations, especially at the earliest stages. Cooperating witnesses frequently provide only sketchy information concerning the identity of persons who are illegally distributing drugs. An informant may know, for example, that a person with a particular first name can be reached at a particular telephone number in order to arrange a purchase. Under such circumstances, the ability to quickly obtain the identity of the person who is the subscriber to that telephone number can greatly enhance an investigation at its outset.

Because subscriber information is generally available to everyone (except law enforcement agencies) from service providers as well as other sources, there is no reason to hamper the bona fide acquisition of such information by a law enforcement agency pursuant to subpoena or other process.

2. Persons who distribute or possess with intent to distribute illicit drugs in public parks should be subject to enhanced punishment.

The Governor's Program asks the Attorney General and the prosecutors to identify and close down open-air drug markets. As noted in the Governor's Program, these drug "hot spots" quickly develop a reputation as being convenient and readily accessible sources of controlled substances. One thing is certain. The illegal activities that occur in these areas adversely affect the lives and well-being of the law abiding residents in surrounding neighborhoods.

Accordingly, it is recommended that N.J.S.A. 2C:35-7, the Drug-Free School Zone law, be amended to include the distribution or possession with intent to distribute an illicit drug while actually on the grounds of a public park. Like schools, these parks are designed to attract children (and senior citizens as well). Law abiding citizens, especially children, should not be discouraged from using these parks because of the violence that is directly associated with the illicit drug trade, and especially open-air drug trafficking activities. These proposed revisions are consistent with federal law, which treats public parks and recreational facilities as if they were located in drug-free school zones.

3. Persons convicted of distributing or possessing with intent to distribute illicit drugs should not be entitled to a presumption of nonimprisonment.

Under present law, persons convicted of third and fourth degree crimes who have never previously been convicted of an offense are entitled to a "presumption" of nonimprisonment. (See, N.J.S.A. 2C:44-1e.) Under our present gradation scheme, persons who distribute or possess with intent to distribute a small amount of heroin or cocaine, even if done for profit, are guilty of only a third degree crime. These dealers are therefore entitled to a presumption of nonimprisonment if they had never before been convicted of an offense. (In contrast, if the offense occurs in a drug-free school zone, the presumption of nonimprisonment would not apply and, in fact, the person would be subject to a mandatory term of imprisonment.)

Accordingly, it is recommended that persons convicted of third degree drug distribution crimes under the Comprehensive Drug Reform Act, who are not otherwise required under current law to serve a term of imprisonment, should not be entitled to the presumption of nonimprisonment. Note that we are not recommending that these offenders should be subject to a presumption of imprisonment. Rather, a court should have the discretion to impose an appropriate sentence based on a careful consideration of the aggravating and mitigating circumstances relevant to the offense and the offender. It is important, however, that street-level drug dealers understand that there is a realistic possibility that they will be sentenced to term of imprisonment if they are apprehended.

4. We should prohibit the modification of vehicles intended to be used for smuggling controlled dangerous substances and other contraband.

On occasion, police during a lawful motor vehicle stop will discover a hidden compartment or trap door. When drugs are found, the driver and any passengers, usually referred to as "mules," will be arrested, and police will try to obtain information about the offenders' superiors in the illicit drug hierarchy. Sometimes, however, these hidden compartments are empty, or, more often, are filled with cash, which will be used to purchase drugs or which represents the proceeds of a drug transaction that has already been completed. When that happens, police at present have no viable charge with which to detain the "mules," at least until a drug detector dog can be brought to the scene to confirm that the hidden compartment had at one time contained a cache of illicit drugs.

To address this gap in current law, a new offense, smuggling conveyances, should be added to chapter 5 of the penal code. Such an offense would prohibit the modification of a vehicle, or knowingly driving a vehicle that has been modified, to contain a hidden compartment or a compartment opened with controls intended by the vehicle manufacturer to operate other devices, when the purpose is to use the compartment to facilitate the transportation of a controlled dangerous substance or other contraband.

Typically, the compartments are concealed behind dashboards, under seats and floorboards and in the roofs, fenders and behind the bumpers of vehicles. The containers commonly are opened electronically by manipulating some combination of light, radio, heater, defroster and other controls. These compartments have little or no legitimate purpose; they may be used to conceal drugs, cash tied to illegal activities, weapons and

contraband, such as the cash proceeds of a drug transaction or money intended to purchase illicit drugs. These compartments not only help traffickers evade detection; they also pose a substantial threat to the safety of police officers, because they frequently are used to conceal weapons accessible to the occupants of the vehicle but not readily discoverable by a police officer who has come into contact with the vehicle and its occupants.

In order to be charged with this offense, the defendant would be required to have the purpose to transport a controlled dangerous substance, forfeitable property or other contraband. This element will ensure that the statute does not reach too far and proscribe innocent conduct such as a desire to have a secure place to transport valuables or store a spare vehicle key or the vehicle documents.

To ensure that this attempt to narrow the application of the statute does not render it unenforceable, a person or business who installs such a compartment should be required to obtain a major motor vehicle component part identification number for the compartment. This is, at worst, a minor inconvenience for those with an innocent purpose; it is a requirement few engaged in illegal conduct will want to satisfy. In this manner, it will be readily apparent to an investigating officer whether the vehicle owner or operator, or the person installing the compartment, has an unlawful purpose for building or having such a compartment.

The law should list several other factors that may be relevant to an evaluation of the actor's criminal purpose. This approach is similar to the factors set out in current law which help police and prosecutors to determine whether a given item is drug "paraphernalia."

5. The definition of “adulterant” and “dilutant” should be clarified.

The terms “adulterant” and “dilutant” should be clarified to include any medium that is used to carry a controlled substance, if the substance is not readily removable from the medium. Blotter paper and stamps, which are often laced with LSD, and cigarettes, which are sometimes dipped in PCP (“charm sticks”) would be examples of adulterants and dilutants. This clarification will resolve an open question of whether LSD should include the weight of the paper bearing the drug. This approach reflects the original intent of the Legislature in adopting the Comprehensive Drug Reform Act, and is consistent with current federal law.

6. Every defendant charged with the illegal possession of a controlled dangerous substance on or near a school who receives supervisory treatment should be required to perform community service.

The illegal use of controlled substances imposes tremendous burdens upon society, especially when the offense occurs on or near school property. Although supervisory treatment remains a useful tool as an alternative to conviction and imprisonment for first offenders charged with simple possession, it does not in all cases adequately redress the costs society bears in bringing offenders to justice. N.J.S.A. 2C:35-10 should therefore be amended to provide that a person charged with a simple possession offense committed on or near school property, or on a school bus, or in a public park, and who is admitted to supervisory treatment, will be required to perform not less than 100 hours of community service.

7. The law should be clarified to make clear that an attempt to purchase a controlled dangerous substance is a crime.

The war on drugs cannot be won solely by trying to cut off the supply of illicit substances. We must also work to reduce the demand. Law enforcement contributes to this vital goal in part by holding drug users accountable for their conduct and by making them wary to purchase drugs. One particularly effective technique is sometimes called a "reverse sting," where a police officer poses as a drug dealer and arrests those who would try to purchase an illicit drug. Present law, however, does not always provide an appropriate charge to deal with this enforcement technique, especially if the substance the buyer thinks he or she is getting is a small amount of marijuana. (At present, one cannot be convicted of attempting to commit a disorderly persons offense.)

It is therefore recommended that a new subsection to N.J.S.A. 2C:35-10 be added, making it a crime of the fourth degree to purchase or attempt to purchase a substance believing it to be a controlled dangerous substance. (If the substance is believed to be a small amount of marijuana, the new offense would be graded as a disorderly persons offense.)

This amendment will also address the situation where an individual buys a "beat bag" (i.e., imitation drug) from an undercover officer. Although the purchaser's conduct is clearly an "attempt" in violation of N.J.S.A. 2C: 5-1, some courts have occasionally resisted efforts by prosecutors to use this charge unless the prosecutor can show that real drugs were involved in the transaction. As a result, law enforcement officers in several counties are required to add some actual controlled dangerous substance to the material that the

undercover officer is offering to the suspect. Rather than engage in such an artificial exercise, it would be better simply to amend the possession statute to make clear that an attempt to purchase a controlled dangerous substance is unlawful, even if the attempt is utterly unsuccessful because, for example, the seller is offering a counterfeit.

In a related vein, N.J.S.A. 2C:35-11 should be amended to grade distribution of a counterfeit controlled dangerous substance as though it was the actual substance. This is consistent with the general rule of law that when a would-be offender makes a "mistake of fact," he should be treated as if the situation were as he or she supposed it to be. This revision is especially important in light of the fact that when drug dealers sell "beat bags" to unsuspecting buyers, a form of "rip off," violence and retaliation often follows.

8. Regardless of where the actual drug distribution took place, if a death occurs in New Jersey, the State should be able to prosecute for the crime of drug-induced death.

N.J.S.A. 2C:35-9, strict liability for drug-induced death, should be amended to make clear that a person could be prosecuted in New Jersey for distributing a drug which causes a death in this State if the act of distribution was in violation of the laws of the United States or any other state. The statute as currently written could be construed to require that the act of distribution occur only in this State. Given our common borders with New York, Pennsylvania and Delaware, and the ease with which drug dealers and users cross those borders to make a connection, it is appropriate to make certain that no unlawful distributor of a controlled dangerous substance is immunized from responsibility for the consequence of the illegal distribution when the consequence -- a death -- occurs in this State.

The point is simply that it should not be a defense that the drugs were distributed or consumed in another state. As a practical matter, it is difficult for the prosecution to establish precisely where the transaction and ingestion occurred. This recommendation follows existing law with respect to other forms of homicide. Homicide law generally provides, for example, that we may prosecute the case in New Jersey if the death occurs here, even though the conduct causing the death took place in another state. Although this proposal does not reflect a change in the law, but rather merely codifies the Legislature's original intent in adopting N.J.S.A. 2C:35-9, we believe it is appropriate to clarify any ambiguities and thus avoid needless litigation on this point.

9. The statute providing for an extended term for second offenders should be amended to make clear that it applies to a prior attempt or conspiracy to violate the law.

N.J.S.A. 2C:43-6 currently requires repeat drug distributors (those who have previously been convicted of drug distribution) to be sentenced to an extended term of imprisonment. This statute should be amended to clarify that a person who conspires or attempts to violate 2C:35-4, -5 -6 or -7 stands in the same position as a person convicted of completing those crimes. Some first offenders agree to plead guilty to conspiracy, rather than the underlying drug distribution offense, in order to avoid the mandatory DEDR penalty. They then gain the unintended benefit of not being eligible for sentencing as a repeat offender if they recidivate. This loophole should be closed.

10. The purely ministerial burden of republishing the drug schedules should be eliminated.

Present law requires the Commissioner of Health and Senior Services to republish the controlled dangerous substance schedules every year. This is an unnecessary administrative burden, particularly when the schedules have not been amended in the preceding 12 months, but also when the schedules have been amended by acquiescence in amendments made and published by the federal government. Therefore, N.J.S.A. 24:21-3 should be amended to relieve the Commissioner of the duty of annually republishing the controlled dangerous substance schedules.

**APPENDIX TO THE REPORT
TO THE GOVERNOR BY THE
ATTORNEY GENERAL ON THE
NEED TO UPDATE THE
COMPREHENSIVE DRUG
REFORM ACT OF 1987**

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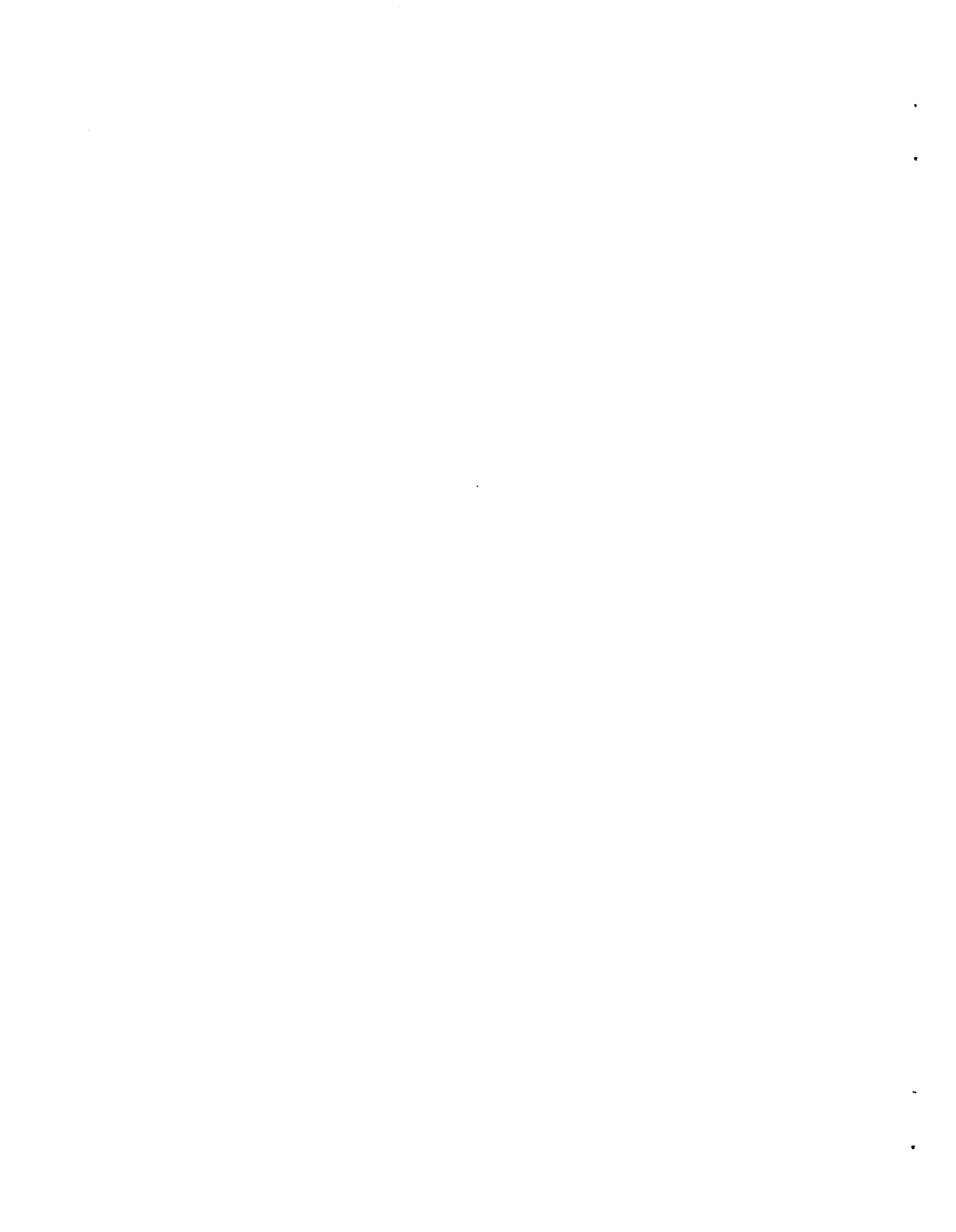
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STATE OF NEW JERSEY

1 ***AN ACT*** concerning the unlawful distribution and possession of controlled dangerous
2 substances, and supplementing Titles 2A, 2C, 24 and 39 of the New Jersey Statutes.
3

4 BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*
5

6 1. This act shall be known and may be cited as the "Drug Enforcement and Penalty Act
7 of 1997."
8

9 2. N.J.S. 2C:5-4 is amended to read as follows:

10 2C:5-4. Grading of Criminal Attempt and Conspiracy; Mitigation in Cases of Lesser
11 Danger.

12 a. Grading. An attempt or conspiracy to commit a crime of the first degree is a
13 crime of the second degree; except that an attempt or conspiracy to commit murder or a
14 crime of the first degree defined in chapter 35 of this title is a crime of the first degree.

15 Otherwise an attempt is a crime of the same degree as the most serious crime which is
16 attempted, and conspiracy is a crime of the same degree as the most serious crime which
17 is the object of the conspiracy; provided that, leader of organized crime is a crime of the
18 second degree. An attempt or conspiracy to commit an offense defined by a statute
19 outside the code shall be graded as a crime of the same degree as the offense is graded
20 pursuant to sections 2C:1-4 and 2C:43-1.
•

1 b. Mitigation. The court may impose sentence for a crime of a lower grade or
2 degree if neither the particular conduct charged nor the defendant presents a public danger
3 warranting the grading provided for such crime under subsection a. because:

4 (1) The criminal attempt or conspiracy charged is so inherently unlikely to result or
5 culminate in the commission of a crime; or

6 (2) The conspiracy, as to the particular defendant charged, is so peripherally related
7 to the main unlawful enterprise.

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

10 2C:35-2. Definitions

11 As used in this chapter:

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

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

20 "Controlled dangerous substance" means a drug, substance, or immediate precursor in
21 Schedules I through V. The term shall not include distilled spirits, wine, malt beverages,
22 as those terms are defined or used in R.S. 33:1-1 et seq., or tobacco and tobacco

1 products. The term, wherever it appears in any law or administrative regulation of this
2 State, shall include controlled substance analogs.

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

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

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

20 "Dispense" means to deliver a controlled dangerous substance or controlled substance
21 analog to an ultimate user or research subject by or pursuant to the lawful order of a
22 practitioner, including the prescribing, administering, packaging, labeling, or compounding

1 necessary to prepare the substance for that delivery. "Dispenser" means a practitioner
2 who dispenses.

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

6 "Drugs" means (a) substances recognized in the official United States Pharmacopoeia,
7 official Homeopathic Pharmacopoeia of the United States, or official National Formulary,
8 or any supplement to any of them; and (b) substances intended for use in the diagnosis,
9 cure, mitigation, treatment, or prevention of disease in man or other animals; and ©
10 substances (other than food) intended to affect the structure or any function of the body
11 of man or other animals; and (d) substances intended for use as a component of any
12 article specified in subsections (a), (b) and © of this section; but does not include devices
13 or their components, parts or accessories.

14 "Drug or alcohol dependent person" means a person who is using a controlled dangerous
15 substance, [or] controlled substance analog or alcohol and who is in a state of psychic or
16 physical dependence, or both, arising from the use of that controlled dangerous substance,
17 [or] controlled substance analog or alcohol on a continuous basis. Drug or alcohol
18 dependence is characterized by behavioral and other responses, including but not limited
19 to a strong compulsion to take the substance on a recurring basis in order to experience
20 its psychic effects, or to avoid the discomfort of its absence.

21 "Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and
22 any compound, manufacture, salt, derivative, mixture, or preparation of such resin.

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

13 "**Marijuana** [Marihuana]" means all parts of the plant Genus Cannabis L., whether
14 growing or not; the seeds thereof, and every compound, manufacture, salt, derivative,
15 mixture, or preparation of such plant or its seeds, except those containing resin extracted
16 from such plant; but shall not include the mature stalks of such plant, fiber produced from
17 such stalks, oil or cake made from the seeds of such plant, any other compound,
18 manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or
19 cake, or the sterilized seed of such plant which is incapable of germination.

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

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

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

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

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

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

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

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

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

21 "Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory,
22 pharmacy, hospital or other person licensed, registered, or otherwise permitted to

1 distribute, dispense, conduct research with respect to, or administer a controlled
2 dangerous substance or controlled substance analog in the course of professional practice
3 or research in this State.

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

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

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

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

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

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

20 "Immediate precursor" means a substance which the State Department of Health has
21 found to be and by regulation designates as being the principal compound commonly used
22 or produced primarily for use, and which is an immediate chemical intermediary used or

1 likely to be used in the manufacture of a controlled dangerous substance or controlled
2 substance analog, the control of which is necessary to prevent, curtail, or limit such
3 manufacture.

4 "Residential treatment facility" means any facility approved by any county probation
5 department for the inpatient treatment and rehabilitation of drug dependent persons.

6 "Schedules I, II, III, IV, and V" are the schedules set forth in sections 5 through 8 of
7 P.L. 1970, c. 226 (C. 24:21-5 through 24:21-8) and in section 4 of P.L.1971, c. 3 (C.
8 24:21-8.1) and as modified by any regulations issued by the Commissioner of Health
9 pursuant to his authority as provided in section 3 of P.L. 1970, c. 226 (C. 24:21-3).

10 "State" means the State of New Jersey.

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

15 "Unit" means either the smallest discrete pill, tablet, capsule, vial, packet, fold or other
16 unit of distribution or packaging of the controlled dangerous substance or controlled
17 substance analog, or the amount which is commonly distributed for consumption at one
18 time by an individual to achieve the desired effect, whichever method of measurement is
19 less.

20
21 4. (New section)

22 2C:35-2.2 Degree of offense based upon quantity of substance; weight and units;

1 **charging.**

2 **a. The number of units or plants of a substance manufactured, distributed,**
3 **dispensed or possessed or controlled with intent to manufacture, distribute or dispense**
4 **shall not be used to determine whether an offense has been committed or the degree of**
5 **the offense unless the indictment so provides. If the amount of a controlled dangerous**
6 **substance or controlled substance analog, by avoirdupois weight, which is manufactured,**
7 **distributed, dispensed or possessed or controlled with intent to manufacture, distribute or**
8 **dispense, is sufficient to establish guilt of a crime or falls within one degree of a crime, but**
9 **the number of units of the substance would not be sufficient to establish guilt or falls**
10 **within a different degree of crime, the actor shall be guilty of the crime or the greater**
11 **degree of crime.**

12 **b. The terms "adulterant" and "dilutant" shall include, in addition to substances**
13 **which are mixed or combined with the controlled substance, any medium which is used**
14 **to carry a controlled substance, if the controlled substance is not readily removable from**
15 **the medium. It shall include, but not be limited to, blotter paper, stamps and cigarettes.**

16
17 5. N.J.S. 2C:35-4 is amended to read as follows:

18 2C:35-4. Maintaining or Operating a Controlled Dangerous Substance Production
19 Facility.

20 Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), any person who
21 knowingly maintains or operates any premises, place or facility used for the manufacture
22 of methamphetamine, lysergic acid diethylamide, phencyclidine, **marijuana in an amount**

1 **greater than five pounds or ten plants,** or any substance [classified as a narcotic drug]
2 **listed** in Schedule I or II, or the analog of any such substance, or any person who
3 knowingly aids, promotes, finances or otherwise participates in the maintenance or
4 operations of such premises, place or facility, is guilty of a crime of the first degree and
5 shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of imprisonment
6 which shall include the imposition of a minimum term which shall be fixed at, or between,
7 one-third and one-half of the sentence imposed, during which the defendant shall be
8 ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3,
9 the court may also impose a fine not to exceed \$500,000.00 or five times the street value
10 of all controlled dangerous substances or controlled substance analogs at any time
11 manufactured or stored at such premises, place or facility, whichever is greater.

12
13 6. N.J.S. 2C:35-5 is amended to read as follows:

14 2C:35-5. Manufacturing, Distributing or Dispensing.

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

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

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

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

1 (1) Heroin, or its analog, in a quantity of one ounce or more, or coca leaves and any
2 salt, compound, derivative, or preparation of coca leaves, and any salt, compound,
3 derivative, or preparation thereof which is chemically equivalent or identical with any of
4 these substances, or analogs, except that the substances shall not include decocainized
5 coca leaves or extractions which do not contain cocaine or ecogine, in a quantity of five
6 ounces or more including any adulterants or dilutants, or 500 or more units of any of the
7 substances referred to in this paragraph, is guilty of a crime of the first degree. The
8 defendant shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of
9 imprisonment by the court. The term of imprisonment shall include the imposition of a
10 minimum term which shall be fixed at, or between, one-third and one-half of the sentence
11 imposed, during which the defendant shall be ineligible for parole. Notwithstanding the
12 provisions of subsection a. of N.J.S. 2C:43-3, a fine of up to \$300,000.00 may be
13 imposed;

14 (2) Heroin or its analog, in a quantity of one-quarter ounce or more, but less than one
15 ounce, or any other [A] substance referred to in paragraph (1) of this subsection, in a
16 quantity of or one-half ounce or more but less than five ounces, including any adulterants
17 or dilutants, or 100 or more units but fewer than 500 units of any of the substances
18 referred to in paragraph (1) of this subsection, is guilty of a crime of the second degree;

19 (3) Heroin or its analog, in a quantity of less than one-quarter ounce, or any other [A]
20 substance referred to in paragraph (1) of this subsection in a quantity less than one-half
21 ounce including any adulterants or dilutants, or fewer than 100 units of any of the
22 substances referred to in paragraph (1) of this subsection, is guilty of a crime of the third

1 degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
2 fine of up to \$50,000.00 may be imposed;

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

7 (5) A substance classified as a narcotic drug in Schedule I or II other than those
8 specifically covered in this section, or the analog of any such substance, in a quantity of
9 less than one ounce including any adulterants or dilutants is guilty of a crime of the third
10 degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
11 fine of up to \$50,000.00 may be imposed;

12 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more,
13 or 500 or more units, including any adulterants or dilutants, or phencyclidine, or its analog,
14 in a quantity of 10 grams or more, or 500 or more units, including any adulterants or
15 dilutants, is guilty of a crime of the first degree. Except as provided in 2C:35-12, the court
16 shall impose a term of imprisonment which shall include the imposition of a minimum term,
17 fixed at, or between, one-third and one-half of the sentence imposed by the court, during
18 which the defendant shall be ineligible for parole. Notwithstanding the provisions of
19 subsection a. of N.J.S. 2C:43-3, a fine of up to \$300,000.00 may be imposed;

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

1 or dilutants, or where the amount is undetermined, is guilty of a crime of the second
2 degree;

3 (8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of
4 [one ounce] five ounces or more including any adulterants or dilutants is guilty of a crime
5 of the [second] first degree[;]. Notwithstanding the provisions of subsection a. of N.J.S.
6 2C:43-3, a fine of up to \$300,000.00 may be imposed;

7 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of
8 [less than one ounce] one-half ounce or more but less than five ounces including any
9 adulterants or dilutants is guilty of a crime of the [third] second degree [except that,
10 notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to
11 \$50,000.00 may be imposed];

12 (b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity
13 of less than one-half ounce including any adulterants or dilutants is guilty of a crime of the
14 third degree except that notwithstanding the provisions of subsection b. of N.J.S.
15 2C:43-3, a fine of up to \$50,000.00 may be imposed;

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

21 (b) Marijuana in a quantity of five pounds or more but less than 25 pounds including
22 any adulterants [and] or dilutants, or 10 or more but fewer than 50 marijuana plants,

1 **regardless of weight,** or hashish in a quantity of one pound or more **but less than five**
2 **pounds,** including any adulterants [and] **or** dilutants, is guilty of a crime of the second
3 degree;

4 (11) Marijuana in a quantity of one ounce or more but less than five pounds including
5 any adulterants [and] **or** dilutants, or hashish in a quantity of five grams or more but less
6 than one pound including any adulterants [and] **or** dilutants, is guilty of a crime of the third
7 degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
8 fine of
9 up to \$15,000.00 may be imposed;

10 (12) Marijuana in a quantity of less than one ounce including any adulterants [and] **or**
11 dilutants, or hashish in a quantity of less than five grams including any adulterants [and]
12 **or** dilutants, is guilty of a crime of the fourth degree;

13 (13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or
14 its analog, is guilty of a crime of the third degree, except that, notwithstanding the
15 provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to \$15,000.00 may be
16 imposed; or

17 (14) Any Schedule V substance, or its analog, is guilty of a crime of the fourth degree
18 except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of
19 up to \$15,000.00 may be imposed.

20 c. Where the degree of the offense for violation of this section depends on the
21 quantity of the substance, the quantity involved shall be determined by the trier of fact.
22 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.

7. N.J.S. 2C:35-6 is amended to read as follows:

2C:35-6. Employing a Juvenile in a Drug Distribution Scheme

Any person being at least 18 years of age who knowingly uses, solicits, directs, hires, [or] employs or conspires with a person 17 years of age or younger to violate N.J.S. 2C:35-4 or subsection a. of N.J.S. 2C:35-5, is guilty of a crime of the second degree and shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of imprisonment which shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or five years, whichever is greater, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, the court may also impose a fine not to exceed \$300,000.00 or five times the street value of the controlled dangerous substance or controlled substance analog involved, whichever is greater.

It shall be no defense to a prosecution under this section that the actor mistakenly believed that the person which the actor used, solicited, directed, hired, [or] employed or conspired with was 18 years of age or older, even if such mistaken belief was reasonable.

Nothing in this section shall be construed to preclude or limit a prosecution or conviction

1 for a violation of any offense defined in this chapter pursuant to N.J.S. 2C:2-6, **N.J.S.**
2 **2C:5-2** or any other provision of law governing an actor's liability for the conduct of
3 another, and, notwithstanding the provisions of N.J.S. 2C:1-8 or any other provision of
4 law, a conviction arising under this section shall not merge with a conviction for a violation
5 of N.J.S. 2C:35-3 (leader of narcotics trafficking network), N.J.S. 2C:35-4 (maintaining
6 or operating a CDS production facility), N.J.S. 2C:35-5 (manufacturing, distributing or
7 dispensing), or N.J.S. 2C:35-9 (strict liability for drug induced death).

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

10 2C:35-7. Distributing, dispensing or possessing controlled dangerous substance or
11 controlled substance analog on or within 1,000 feet of school property or bus **or in a public**
12 **park**; penalty; defenses; approved or revised map; prima facie evidence; official record

13 Any person who violates subsection a. of N.J.S. 2C:35-5 by distributing, dispensing
14 or possessing with intent to distribute a controlled dangerous substance or controlled
15 substance analog while on any school property used for school purposes which is owned
16 by or leased to any elementary or secondary school or school board, or within 1,000 feet
17 of such school property or a school bus, or while on any school bus, **or in a public park.**
18 is guilty of a crime of the third degree and shall, except as provided in N.J.S. 2C:35-12,
19 be sentenced by the court to a term of imprisonment. Where the violation involves less
20 than one ounce of marijuana, the term of imprisonment shall include the imposition of a
21 minimum term which shall be fixed at, or between, one-third and one-half of the sentence
22 imposed, or one year, whichever is greater, during which the defendant shall be ineligible

1 for parole. In all other cases, the term of imprisonment shall include the imposition of a
2 minimum term which shall be fixed at, or between, one-third and one-half of the sentence
3 imposed, or three years, whichever is greater, during which the defendant shall be
4 ineligible for parole. Notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3,
5 a fine of up to \$100,000.00 may also be imposed upon any conviction for a violation of
6 this section.

7 Notwithstanding the provisions of N.J.S. 2C:1-8 or any other provisions of law, a
8 conviction arising under this section shall not merge with a conviction for a violation of
9 subsection a. of N.J.S. 2C:35-5 (manufacturing, distributing or dispensing) or N.J.S.
10 2C:35-6 (employing a juvenile in a drug distribution scheme). It shall be no defense to a
11 prosecution for a violation of this section that the actor was unaware that the prohibited
12 conduct took place while on or within 1,000 feet of any school property or in a public
13 park. Nor shall it be a defense to a prosecution under this section, or under any other
14 provision of this title, that no juveniles were present on the school property at the time of
15 the offense or that the school was not in session.

16 It is an affirmative defense to prosecution for a violation of this section that the
17 prohibited conduct took place entirely within a private residence, that no person 17 years
18 of age or younger was present in such private residence at any time during the commission
19 of the offense, and that the prohibited conduct did not involve distributing, dispensing or
20 possessing with the intent to distribute or dispense any controlled dangerous substance
21 or controlled substance analog for profit. The affirmative defense established in this
22 section shall be proved by the defendant by a preponderance of the evidence. Nothing

1 herein shall be construed to establish an affirmative defense with respect to a prosecution
2 for an offense defined in any other section of this chapter.

3 In a prosecution under this section, a map produced or reproduced by any **State,**
4 municipal or county engineer for the purpose of depicting the location and boundaries of
5 the area on or within 1,000 feet of any property used for school purposes which is owned
6 by or leased to any elementary or secondary school or school board, **or depicting the**
7 **location and boundaries of a public park,** or a true copy of such a map, shall, upon proper
8 authentication, be admissible and shall constitute prima facie evidence of the location and
9 boundaries of those areas, provided that the governing body of the municipality or county
10 has adopted a resolution or ordinance approving the map as official finding and record of
11 the location and boundaries of the area or areas on or within 1,000 feet of the school
12 property **or public park.** Any map approved pursuant to this section may be changed from
13 time to time by the governing body of the municipality or county. The original of every
14 map approved or revised pursuant to this section, or a true copy thereof, shall be filed with
15 the clerk of the municipality or county, and shall be maintained as an official record of the
16 municipality or county. Nothing in this section shall be construed to preclude the
17 prosecution from introducing or relying upon any other evidence or testimony to establish
18 any element of this offense; nor shall this section be construed to preclude the use or
19 admissibility of any map or diagram other than one which has been approved by the
20 governing body of a municipality or county, provided that the map or diagram is otherwise
21 admissible pursuant to the Rules of Evidence.

22 **As used in this section, "public park" means a park or playground owned or**

1 **controlled by a State, county or local government unit.**

2
3 9. N.J.S. 2C:35-9 is amended to read as follows:

4 2C:35-9. Strict Liability for Drug-Induced Deaths

5 a. Any person who manufactures, distributes or dispenses
6 methamphetamine, lysergic acid diethylamide, phencyclidine or any other controlled
7 dangerous substance classified in Schedules I or II, or any controlled substance analog
8 thereof, in violation of subsection a. of N.J.S. 2C:35-5, **or any similar statute of the United**
9 **States, or any other state, which is substantially equivalent,** is strictly liable for a death
10 which results from the injection, inhalation or ingestion of that substance, and is guilty of
11 a crime of the first degree.

12 b. The provisions of N.J.S. 2C:2-3 (governing the causal relationship between conduct
13 and result) shall not apply in a prosecution under this section. For purposes of this
14 offense, the defendant's act of manufacturing, distributing or dispensing a substance is
15 the cause of a death when:

16 (1) The injection, inhalation or ingestion of the substance is an antecedent but for
17 which the death would not have occurred; and

18 (2) The death was not:

19 (a) too remote in its occurrence as to have a just bearing on the defendant's liability;

20 or

21 (b) too dependent upon conduct of another person which was unrelated to the
22 injection, inhalation or ingestion of the substance or its effect as to have a just bearing on

1 the defendant's liability.

2 c. It shall not be a defense to a prosecution under this section that the decedent
3 contributed to his own death by his purposeful, knowing, reckless or negligent injection,
4 inhalation or ingestion of the substance, or by his consenting to the administration of the
5 substance by another.

6 d. Nothing in this section shall be construed to preclude or limit any prosecution for
7 homicide. Notwithstanding the provisions of N.J.S. 2C:1-8 or any other provision of law,
8 a conviction arising under this section shall not merge with a conviction for leader of
9 narcotics trafficking network, maintaining or operating a controlled dangerous substance
10 production facility, or for unlawfully manufacturing, distributing, dispensing or possessing
11 with intent to manufacture, distribute or dispense the controlled dangerous substance or
12 controlled substance analog which resulted in the death.

13
14 10. N.J.S. 2C:35-10 is amended to read as follows:

15 2C:35-10. Possession, Use or Being Under the Influence, or Failure to Make Lawful
16 Disposition.

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

1 (1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III
2 or IV other than those specifically covered in this section, is guilty of a crime of the third
3 degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a
4 fine of up to \$25,000.00 may be imposed;

5 (2) Any controlled dangerous substance, or its analog, classified in Schedule V, is
6 guilty of a crime of the fourth degree except that, notwithstanding the provisions of
7 subsection b. of N.J.S. 2C:43-3, a fine of up to \$15,000.00 may be imposed;

8 (3) Possession of more than 50 grams of marijuana, including any adulterants or
9 dilutants, or more than five grams of hashish is guilty of a crime of the fourth degree,
10 except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of
11 up to \$15,000.00 may be imposed; or

12 (4) Possession of 50 grams or less of marijuana, including any adulterants or
13 dilutants, or five grams or less of hashish is a disorderly person.

14 Any person who commits any offense defined in this section while on any property
15 used for school purposes which is owned by or leased to any elementary or secondary
16 school or school board, or within 1,000 feet of any such school property or a school bus,
17 or while on any school bus, or in a public park, and who is not sentenced to a term of
18 imprisonment, shall, in addition to any other sentence which the court may impose, be
19 required to perform not less than 100 hours of community service. Every person placed
20 in supervisory treatment pursuant to the provisions of N.J.S. 2C:36A-1 or N.J.S.
21 2C:43-12 for any offense defined in this section and subject to this paragraph shall be
22 required to perform the community service prescribed herein.

1 b. Any person who uses or who is under the influence of any controlled dangerous
2 substance, or its analog, for a purpose other than the treatment of sickness or injury as
3 lawfully prescribed or administered by a physician is a disorderly person. In a prosecution
4 under this subsection, it shall not be necessary for the State to prove that the accused did
5 use or was under the influence of any specific drug, but it shall be sufficient for a
6 conviction under this subsection for the State to prove that the accused did use or was
7 under the influence of some controlled dangerous substance, counterfeit controlled
8 dangerous substance, or controlled substance analog, by proving that the accused did
9 manifest physical and physiological symptoms or reactions caused by the use of any
10 controlled dangerous substance or controlled substance analog.

11 c. Any person who knowingly obtains or possesses a controlled dangerous
12 substance or controlled substance analog in violation of subsection a. of this section and
13 who fails to voluntarily deliver the substance to the nearest law enforcement officer is
14 guilty of a disorderly persons offense. Nothing in this subsection shall be construed to
15 preclude a prosecution or conviction for any other offense defined in this title or any other
16 statute.

17 **d. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), a person**
18 **commits a crime of the fourth degree if he purchases or solicits, requests, agrees, or**
19 **attempts to purchase for money, services or other thing of value, any substance believing**
20 **it to be, or represented by the seller to be, a controlled dangerous substance or controlled**
21 **substance analog, except that, if the substance is believed by the defendant to be, or is**
22 **represented by the seller to be, marijuana and weighs less than 50 grams, the defendant**

1 shall be guilty of a disorderly persons offense. For the purposes of this subsection, a seller
2 represents that a substance is a controlled dangerous substance or controlled substance
3 analog, if the seller makes any reference to or description of the substance, including but
4 not limited to, use of a trade name, term, phrase, slang term or gesture generally accepted
5 or commonly understood in the relevant community to mean or describe a controlled
6 dangerous substance or controlled substance analog. When a prosecution depends upon
7 establishing that a defendant believed a substance was a controlled dangerous substance
8 or controlled substance analog, any of the following circumstances, as may be relevant to
9 the case, may considered by the trier of fact and shall constitute prima facie evidence of
10 such belief:

11 (1) The defendant at any time referred to the substance as a controlled dangerous
12 substance or controlled substance analog, including but not limited to a reference or
13 description which used a trade name, term, phrase, slang term or gesture generally
14 accepted or commonly understood in the relevant community to mean or describe a
15 controlled dangerous substance or controlled substance analog.

16 (2) The physical appearance of any substance provided to or shown to the
17 defendant was substantially similar to that of a controlled dangerous substance or
18 controlled substance analog.

19 (3) A substance provided to or shown to the defendant was packaged in a manner
20 commonly used for the unlawful distribution of a controlled dangerous substance or
21 controlled substance analog, or bore the trademark, trade name or identifying mark, or a
22 likeness thereof, of a controlled dangerous substance or controlled substance analog.

1 (4) The purchase price paid, offered or agreed to be paid for the substance was
2 equivalent to or consistent with the street value of a controlled dangerous substance or
3 controlled substance analog, considering the type, amount and purity of the controlled
4 dangerous substance or controlled substance analog purportedly involved.

5 Nothing herein shall be construed to preclude the trier of fact from considering,
6 either alone or in combination with any other fact, any relevant circumstances, or any
7 expert opinion or testimony, concerning the defendant's belief that the substance was a
8 controlled dangerous substance or controlled substance analog.

9 Except as may be expressly provided in N.J.S. 2C:2-12, it shall not be a defense to
10 a prosecution under this subsection that the person from whom the defendant purchased
11 or solicited, requested, agreed or attempted to purchase a substance was a law
12 enforcement officer or was acting as an agent of a law enforcement officer, or that the
13 substance was not a controlled dangerous substance or controlled substance analog, but
14 rather was an imitation or counterfeit controlled dangerous substance or controlled
15 substance analog, nor shall it be a defense that the substance involved was a genuine
16 controlled dangerous substance or controlled substance analog. Nothing in this subsection
17 shall be construed to preclude or limit a prosecution or conviction for a violation of any
18 other offense defined in this section or in this title or in any other law, or for any attempt
19 or conspiracy to commit any such offense.

20 e. Any person who commits any offense defined in this section while in an
21 institution or detention facility as defined in N.J.S. 2C:29-6a(1) or a residential treatment
22 facility referred to in section 14 of this chapter (N.J.S. 2C:35-14), shall be sentenced to

1 **a term appropriate to a crime of one degree higher than that of the crime for which he was**
2 **convicted. The court shall not impose an enhanced sentence pursuant to this section**
3 **unless the prosecutor has established the ground therefore by a preponderance of the**
4 **evidence at a hearing, which may occur at the time of sentencing. In making its finding,**
5 **the court shall take judicial notice of any evidence, testimony or information adduced at**
6 **the trial, plea hearing or other court proceedings, and shall also consider the presentence**
7 **report and other relevant information. It shall not be relevant to the imposition of**
8 **enhanced punishment pursuant to this paragraph that the defendant was unaware that the**
9 **prohibited conduct took place within an institution, detention facility or residential**
10 **treatment facility.**

11
12 11. N.J.S. 2C:35-11 is amended to read as follows:

13 2C:35-11. Imitation controlled dangerous substances; distribution,
14 possession, manufacture, etc.; penalties

15 a. It is unlawful for any person to distribute or to possess or have under his control
16 with intent to distribute any substance which is not a controlled dangerous substance or
17 controlled substance analog:

18 (1) Upon the express or implied representation to the recipient that the substance
19 is a controlled dangerous substance or controlled substance analog; or

20 (2) Upon the express or implied representation to the recipient that the substance
21 is of such nature, appearance or effect that the recipient will be able to distribute or use
22 the substance as a controlled dangerous substance or controlled substance analog; or

1 (3) Under circumstances which would lead a reasonable person to believe that the
2 substance is a controlled dangerous substance or controlled substance analog.

3 Any of the following shall constitute prima facie evidence of such circumstances:

4 (a) The substance was packaged in a manner normally used for the unlawful
5 distribution of controlled dangerous substances or controlled substance analogs.

6 (b) The distribution or attempted distribution of the substance was accompanied by
7 an exchange of or demand for money or other thing as consideration for the substance,
8 and the value of the consideration exceeded the reasonable value of the substance.

9 (c) The physical appearance of the substance is substantially the same as that of
10 a specific controlled dangerous substance or controlled substance analog.

11 b. It is unlawful for any person to manufacture, compound, encapsulate, package
12 or imprint any substance which is not a controlled dangerous substance, controlled
13 substance analog or any combination of such substances, other than a prescription drug,
14 with the purpose that it resemble or duplicate the physical appearance of the finished form,
15 package, label or imprint of a controlled dangerous substance or controlled substance
16 analog.

17 c. In any prosecution under this section, it shall not be a defense that the defendant
18 mistakenly believed a substance to be a controlled dangerous substance or controlled
19 substance analog.

20 d. A violation of this section is a crime of the **same degree, and shall be sentenced**
21 **pursuant to the provisions of sections 5, 7 and 10 of this chapter, as though the**
22 **substance were actually the controlled dangerous substance or controlled substance analog**

1 which it was represented or appeared to be. A person who violates this section while on
2 any school property used for school purposes which is owned by or leased to any
3 elementary or secondary school or school board, or within 1,000 feet of such school
4 property or a school bus, or in a public park, or while on any school bus, shall be
5 sentenced pursuant to the provisions of section 7 of this chapter (N.J.S. 2C:35-7) [third
6 degree, except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3,
7 a fine of up to \$100,000.00 may be imposed].

8 e. The provisions of this section shall not be applicable to (1) practitioners or agents,
9 servants and employees of practitioners dispensing or administering noncontrolled
10 substances to patients on behalf of practitioners in the normal course of their business or
11 professional practice; and (2) persons who manufacture, process, package, distribute or
12 sell noncontrolled substances to practitioners for use as placebos in the normal course of
13 their business, professional practice or research or for use in Federal Food and Drug
14 Administration investigational new drug trials.

15
16 12. N.J.S. 2C:35-12 is amended to read as follows:

17 2C:35-12. Waiver of Mandatory Minimum and Extended Terms
18 Whenever an offense defined in this chapter specifies a mandatory sentence of
19 imprisonment which includes a minimum term during which the defendant shall be
20 ineligible for parole, or a mandatory extended term which includes a period of parole
21 ineligibility, or when the court imposes an anti-drug profiteering penalty pursuant to section
22 16 of P.L. , c. (N.J.S. 2C:35A-1 et seq.) (now pending before the Legislature as this

1 **bill**, the court upon conviction shall impose the mandatory sentence **or anti-drug**
2 **profiteering penalty** unless the defendant has pleaded guilty pursuant to a negotiated
3 agreement or, in cases resulting in trial, the defendant and the prosecution have entered
4 into a post-conviction agreement, which provides for a lesser sentence or period of parole
5 ineligibility **or anti-drug profiteering penalty**. The negotiated plea or post-conviction
6 agreement may provide for a specified term of imprisonment within the range of ordinary
7 or extended sentences authorized by law, a specified period of parole ineligibility, a
8 specified fine, **a specified anti-drug profiteering penalty**, or other disposition. In that event,
9 the court at sentencing shall not impose a lesser term of imprisonment, period of parole
10 ineligibility, **a lesser anti-drug profiteering penalty** or **lesser** fine than that expressly
11 provided for under the terms of the plea or post-conviction agreement.

12
13 13. N.J.S. 2C:35-14 is amended to read as follows:

14 2C:35-14. Rehabilitation Program For Drug Dependent Persons; Mandatory
15 Commitment to Residential Treatment Facilities; Revocation; **Brief Incarceration In Lieu of**
16 **Permanent Revocation**.

17 a. Notwithstanding the presumption of incarceration pursuant to the provisions of
18 subsection d. of N.J.S. 2C:44-1, and except as provided in subsection b. of this Section,
19 whenever a drug **or alcohol** dependent person is convicted of **or adjudicated delinquent for**
20 an offense under N.J.S. 2C:35-5, N.J.S. 2C:35-6, Section 1 of P.L. 1987, c. 101 (C.
21 2C:35-7), N.J.S. 2C:35-10, N.J.S. 2C:35-11, or N.J.S. 2C:35-13, other than a crime of
22 the first degree, the court, upon notice to the prosecutor, may, on motion of the

[defendant and where the court finds no danger to the community will result and that the placement will serve to benefit the defendant by serving to correct his or her dependency on controlled substances] person, or on the court's own motion, place [the defendant] the person on special probation, which shall be for a term of five years, provided that the court finds that:

1. the defendant is a drug or alcohol dependent person within the meaning of section 2 of this chapter, and was drug or alcohol dependent at the time of the commission of the present offense; and

2. the present offense was committed while the defendant was under the influence of a controlled substance or alcohol or was committed to acquire property or monies in order to support his or her drug or alcohol dependency; and

3. substance abuse treatment and monitoring will serve to benefit the defendant by addressing his or her drug or alcohol dependency and will thereby reduce the likelihood that he or she will thereafter commit another offense; and

4. the defendant did not possess a firearm at the time of the offense and did not possess a firearm at the time of any pending criminal charge; and

5. the offense did not involve the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile, and did not occur on school property; and

6. the defendant has not been previously convicted of a crime on two or more separate occasions; and

7. the defendant has not been previously convicted of, and does not have a pending

1 charge of, murder, aggravated manslaughter, manslaughter, robbery, kidnapping,
2 aggravated assault or aggravated sexual assault or sexual assault; and

3 8. no danger to the community will result from the person being placed on special
4 probation pursuant to this section.

5 In determining whether to sentence the person pursuant to this section, the court
6 shall consider all relevant circumstances, including but not limited to the results of a
7 professional diagnostic assessment. As a condition of that special probation, the court
8 shall order the defendant to enter a [drug rehabilitation] treatment program, subject to such
9 other reasonable terms and conditions as may be required by the court and by law,
10 pursuant to N.J.S. 2C:45-1, and which shall include periodic urine testing for drug usage
11 throughout the period of probation. Subject to the requirements of subsection c. of this
12 Section, the conditions of special probation may include different methods and levels of
13 community-based or residential supervision.

14 b. [Except upon the joint application of the defendant and the prosecuting attorney,
15 no] No person convicted of or adjudicated delinquent for an offense under N.J.S. 2C:35-6,
16 [or] Section 1 of P.L. 1987, c. 101 (C. 2C:35-7), subsection a. of section 14 of P.L. c.
17 (N.J.S. 2C:35-24) (now pending before the Legislature as this bill), or who has been
18 convicted of or adjudicated delinquent for a violation of section 11 of this chapter
19 occurring on or within 1000 feet of school property or a school bus, or in a public park,
20 or who has been previously convicted of or adjudicated delinquent for an offense under
21 subsection a. of N.J.S. 2C:35-5 or a similar offense under any other law of this State, any
22 other state or the United States, shall be eligible for a sentence in accordance with this

1 Section where the prosecutor objects to such special probation. The prosecutor's decision
2 to object to the person's application shall not be subject to judicial review except upon a
3 finding by the court of a gross and patent abuse of prosecutorial discretion. Upon a
4 finding of a gross and patent abuse of prosecutorial discretion, the sentence of special
5 probation imposed pursuant to this section shall not become final for 10 days in order to
6 permit the appeal of such sentence by the prosecution.

7 c. A person convicted of or adjudicated delinquent for a crime of the second degree
8 or of a violation of Section 1 of P.L. 1987, c. 101 (C. 2C:35-7), or who previously has
9 been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.
10 2C:35-5 or a similar offense under any other law of this State, any other state or the
11 United States, who is placed in a [drug rehabilitation] treatment program under this Section
12 shall be committed to the custody of a residential treatment facility, whether or not
13 residential treatment was recommended by the person conducting the diagnostic
14 assessment. The term of such commitment shall be for a minimum of six months, or until
15 the defendant successfully completes the residential treatment program, whichever is later,
16 except that no person shall remain in the custody of a residential treatment facility
17 pursuant to this Section for a period in excess of five years. Upon successful completion
18 of the required residential treatment program, the [defendant] person shall complete the
19 period of special probation, as authorized by subsection a. of this Section, with credit for
20 time served [in the residential treatment facility and] for any imprisonment served as a
21 condition of probation and credit for each day during which the person satisfactorily
22 complied with the terms and conditions of special probation while committed pursuant to

1 this Section to a residential treatment facility. The court in determining the number of
2 credits for time spent in residential treatment shall consider the recommendations of the
3 treatment provider. A person placed into a residential treatment facility under this
4 subsection shall be deemed to be subject to official detention for the purposes of N.J.S.
5 2C:29-5 (escape).

6 d. The probation department or other appropriate agency designated to monitor
7 or supervise the person's special probation shall report periodically to the court as to the
8 person's progress in treatment and compliance with court-imposed terms and conditions.
9 The treatment provider shall promptly report to the probation department or other
10 appropriate agency all significant failures by the defendant or juvenile to comply with any
11 court imposed term or condition of special probation or any requirements of the course of
12 treatment, including but not limited to a positive drug test or the unexcused failure to
13 attend any session or activity. The probation department or other appropriate agency shall
14 immediately notify the court and the prosecutor in the event that the person refuses to
15 submit to a periodic drug test or for any reason terminates his or her participation in the
16 course of treatment ordered pursuant to this Section.

17 [d.]e. Upon a first violation of any term or condition of the special probation
18 authorized by this Section or of any term or condition of the applicable [drug rehabilitation]
19 treatment program, the court in its discretion may, and upon a subsequent violation shall,
20 revoke the [defendant's] person's special probation and impose on [the defendant] him or
21 her any sentence that might have been imposed originally for the offense of which he or
22 she was convicted or adjudicated delinquent, unless the court finds that there is a

1 substantial likelihood that the person will not commit another violation. Upon such a
2 finding, the court may permit the person to complete the period of special probation
3 pursuant to this section, but shall order the person to comply with such additional terms
4 and conditions, including but not limited to more frequent drug testing, as are necessary
5 to deter and promptly detect any further violation. Any such finding by the court not to
6 revoke the special probation upon a second or subsequent violation may be appealed by
7 the prosecution. In making its determination whether to revoke special probation, the
8 court shall consider the nature and seriousness of the infraction in relation to the person's
9 overall progress in the course of treatment, and the recommendations of the treatment
10 provider. In [that] the event that the court revokes the special probation, the court shall
11 conduct a de novo review of any aggravating and mitigating factors present at the time
12 of both original sentencing and resentencing on revocation of probation. In the event that
13 the court imposes a term of imprisonment, the [defendant] person shall receive credit for
14 any time served pursuant to N.J.S. 2C:45-1, and [any time spent by the defendant in] for
15 each day during which the person satisfactorily complied with the terms and conditions
16 of special probation while committed pursuant to this Section to a residential treatment
17 facility. The court, in determining the number of credits for time spent in residential
18 treatment, shall consider the recommendations of the treatment provider. An action for
19 violation under this subsection may be brought by a probation officer or prosecutor.
20 Notwithstanding any other provision of this subsection, if the defendant at any time
21 refuses to undergo urine testing for drug usage as provided in subsection a. of this
22 Section, the court shall, upon the application of the probation officer or prosecutor, or on

1 its own motion, revoke the [defendant's] person's special probation. Failure to
2 successfully complete the required [drug rehabilitation] treatment program shall constitute
3 a violation of the [defendant's] person's special probation. A [defendant] person who fails
4 to comply with the terms of his or her special probation pursuant to this Section and is
5 thereafter sentenced to imprisonment in accordance with this subsection shall be ineligible
6 for entry into the Intensive Supervision Program.

7 f. Where the court is authorized or required to revoke the person's special probation
8 pursuant to subsection e., the court may impose a term of incarceration for a period of not
9 less than 30 days nor more than 6 months, after which the person's term of special
10 probation pursuant to this Section may be reinstated. In determining whether to order a
11 period of incarceration pursuant to this subsection, the court shall consider the
12 recommendations of the treatment provider with respect to the likelihood that such
13 confinement would serve to motivate the defendant or juvenile to make satisfactory
14 progress in treatment once special probation is reinstated. This option may occur only
15 once with respect to any person unless the court is clearly convinced that there are
16 compelling and extraordinary reasons to justify allowing this option to be repeated with
17 respect to the defendant or juvenile. Any such determination by the court to repeat this
18 option may be appealed by the prosecution.

19 [e.g. The court, as a condition of its order, and after considering the [defendant's]
20 person's financial resources, [may at any time] shall require the [defendant] person to pay
21 [for all or some] that portion of the costs associated with his or her participation in any
22 rehabilitation program or period of residential treatment [authorized by] imposed pursuant

1 to this Section which, in the opinion of the court, is consistent with the person's ability
2 to pay, taking into account the court's authority to order payment or reimbursement to be
3 made over time and in installments.

4
5 14. (New section).

6 **2C:35-24. Booby traps in Manufacturing or Distribution Facilities; Fortified Premises.**

7 a. Any person who knowingly assembles, maintains, places or causes to be placed
8 a booby trap on property used for the manufacture, distribution, dispensing, or possession
9 of controlled dangerous substances in violation of this chapter shall be guilty of a crime
10 of the second degree. If the booby trap causes bodily injury to any person, the defendant
11 shall be guilty of a crime of the first degree.

12 For the purposes of this section, the term "booby trap" means any concealed or
13 camouflaged device designed or reasonably likely to cause bodily injury when triggered by
14 the action of a person entering a property or building or any portion thereof, or moving on
15 the property or in the building, or by the action of another person. The term includes, but
16 is not limited to, firearms, ammunition or destructive devices activated by a trip wire or
17 other triggering mechanism, sharpened stakes, traps, and lines or wires with hooks,
18 weights or other objects attached. It shall not be a defense that the device was inoperable
19 or was not actually triggered, or that its existence or location was known to a law
20 enforcement officer or another person.

21 b. Any person who fortifies or maintains in a fortified condition a structure for the
22 manufacture, distribution, dispensing or possession of controlled dangerous substances,

1 or who violates sections 3, 4, 5, 6 or 7 of this chapter in a structure which he owns,
2 leases, occupies or controls, and which has been fortified, is guilty of a crime of the third
3 degree. A structure has been fortified if steel doors, wooden planking, cross bars, alarm
4 systems, dogs, lookouts or any other means are employed to prevent, impede, delay or
5 provide warning of the entry into a structure or any part of a structure by law enforcement
6 officers.

7 c. A booby trap or fortification is maintained if it remains on property or in a
8 structure while the property or structure is owned, occupied, controlled or used by the
9 defendant.

10 d. Nothing herein shall be deemed to preclude, if the evidence so warrants, an
11 indictment and conviction for a violation of chapters 11, 12, 17, and 39 of this title, or
12 any other law. Notwithstanding the provisions of N.J.S. 2C:1-8, N.J.S. 2C:44-5 or any
13 other provisions of law, a conviction arising under subsection a. or b. of this section shall
14 not merge with a conviction for a violation of any other section of this chapter, or for
15 conspiring or attempting to violate any section of this chapter, and the sentence imposed
16 upon a violation of this section shall be ordered to be served consecutively to that imposed
17 for any other conviction arising under any other sections of this chapter or for conspiracy
18 or attempt to violate any of the sections of this chapter, unless the court, in consideration
19 of the character and circumstances of the defendant, finds that imposition of consecutive
20 sentences would be a serious injustice which overrides the need to deter such conduct by
21 others. If the court does not impose a consecutive sentence, the sentence shall not
22 become final for 10 days in order to permit the appeal of such sentence by the

1 prosecution.

2
3 15. (New section)

4 **2C:35-25. Possession of a Firearm While Committing Certain Offenses**

5 A person who has been convicted of a crime under N.J.S. 2C:35-3, 2C:35-4,
6 2C:35-5, 2C:35-7, 2C:35-11, or section 29 of P.L. c. (now pending before the
7 Legislature as this bill) (N.J.S. 2C:5-8, smuggling conveyances) or an attempt or
8 conspiracy to commit such crime, who, while in the course of committing the crime,
9 including the immediate flight therefrom, used or was in possession of a firearm as defined
10 in N.J.S. 2C:39-1f., in violation of section 3, 4, 5 or 7 of chapter 39 of this title, shall be
11 ordered to be serve the sentence imposed upon the firearm violation consecutively to that
12 imposed for any conviction arising under any sections of this chapter or for conspiracy or
13 attempt to violate any of the sections of this chapter, unless the court, in consideration
14 of the character and conditions of the defendant, finds that the imposition of a consecutive
15 sentence would be a serious injustice which overrides the need to deter such conduct by
16 others. The court need not impose a consecutive sentence pursuant to this section if the
17 defendant demonstrates by clear and convincing evidence that the firearm was not
18 accessible to the defendant at any time during the course of committing the crime. If the
19 court, for any reason, does not impose a consecutive sentence, the sentence shall not
20 become final for 10 days in order to permit the appeal of such sentence by the
21 prosecution.

22 The court shall not impose more than one consecutive sentence pursuant to this

1 section. If the defendant is convicted of more than one offense which is otherwise subject
2 to punishment pursuant to this section, the court shall impose a consecutive sentence
3 based upon the most serious offense for which the defendant was convicted.
4 Notwithstanding any other provision of law, nothing herein shall prevent the court from
5 also imposing an extended term pursuant to subsection f. of N.J.S. 2C:43-6 or any other
6 law other than N.J.S. 2C:43-6c, or from also imposing enhanced punishment pursuant to
7 N.J.S. 2C:35-8.

8
9 16. An additional chapter, chapter 35A, is added to Title 2C as follows:

10 **N.J.S. 2C:35A-1. Short Title.**

11 This act shall be known and may be cited as the "Anti-Drug Profiteering Act."

12 **N.J.S. 2C:35A-2. Declaration of Policy and Legislative Findings.**

13 The Legislature hereby finds and declares the following:

14 a. Persons who engage in drug trafficking activities for profit are a form of
15 professional criminal, and deserve enhanced punishment which is specially adapted to
16 remove the economic incentives inherent in such criminal activities.

17 b. It shall be the overriding objective of the provisions of this chapter to eliminate
18 to the greatest extent possible the economic incentives inherent in commercial drug
19 distribution activities at all levels within the drug distribution chain. In order to accomplish
20 this objective, it is appropriate to impose stern economic sanctions in the form of monetary
21 penalties against certain convicted drug offenders. So as to ensure that such economic
22 sanctions are specially adapted and proportionate to the true nature, extent and

1 profitability of the specific criminal activities involved, such monetary penalties should in
2 appropriate cases be based upon a multiple of the street level value of all the illicit
3 substances involved. The use of such a mechanism for calculating an appropriate
4 monetary penalty will help to offset and overcome the perception of some drug offenders,
5 and especially those who are well insulated within a drug trafficking network, that they
6 face only a comparatively low risk of immediate detection and punishment. The
7 Legislature, by adoption of the Comprehensive Drug Reform Act of 1986 (L. 1987, c. 106;
8 C. 2C:35-1 et seq.), recognized the utility of such a mechanism by providing for the
9 imposition of discretionary cash fines which may be based upon three, or in some cases
10 five, times the street value of the illicit drugs involved.

11 c. The imposition of monetary penalties pursuant to this act is intended to serve
12 as an adjunct to forfeiture actions, which are designed to deprive offenders of the
13 proceeds of their criminal activities and of all property used in furtherance of or to facilitate
14 such illegal activities. While the seizure and forfeiture of property in accordance with the
15 provisions of chapters 41 and 64 of this title and P.L. 1994, c. 121 (money laundering)
16 remain a critically important means by which to reduce the economic incentives inherent
17 in drug trafficking activities, in many instances, given the efforts undertaken by offenders
18 to conceal and disguise assets and to resort to complex financial transactions and money
19 laundering schemes, it has become increasingly difficult for law enforcement agencies to
20 establish to the required degree of certainty that a given asset or interest in property is
21 subject to forfeiture. Accordingly, it is necessary and appropriate to impose an in
22 personam debt against the defendant which may be satisfied by proceeding against any

1 **asset or interest in property belonging to the defendant, whether or not such property can**
2 **be directly or indirectly linked to criminal activity.**

3 **d. In order to ensure the maximum deterrent effect of imposing such specially**
4 **adapted economic sanctions as are required pursuant to the provisions of this act, it shall**
5 **be the policy of this State to enforce the judgment and to collect the entire debt, or the**
6 **greatest possible portion thereof, as soon as is feasible following the imposition of the**
7 **penalty, taking full advantage, where necessary, of this State's long arm jurisdiction and**
8 **the full faith and credit clause of the Constitution of the United States.**

9
10 **N.J.S. 2C:35A-3. Criteria for Imposition of Anti-Drug Profiteering Penalty.**

11 **a. In addition to any disposition authorized by this title, including but not limited to**
12 **any fines which may be imposed pursuant to the provisions of N.J.S. 2C:43-3 and N.J.S.**
13 **2C:44-2, and except as may be provided by section 5 of this chapter, where a person has**
14 **been convicted of a crime defined in chapter 35 or 36 of this title or an attempt or**
15 **conspiracy to commit such a crime, the court shall, upon the application of the prosecutor,**
16 **sentence the person to pay a monetary penalty in an amount determined pursuant to**
17 **section 4 of this chapter, provided the court finds at a hearing, which may occur at the**
18 **time of sentencing, that the prosecutor has established by a preponderance of the**
19 **evidence one or more of the grounds specified in this section. The findings of the court**
20 **shall be incorporated in the record, and in making its findings, the court shall take judicial**
21 **notice of any evidence, testimony or information adduced at the trial, plea hearing or other**
22 **court proceedings and shall also consider the presentence report and any other relevant**

1 information.

2 Any of the following shall constitute grounds for imposing an Anti-Drug Profiteering

3 **Penalty:**

4 1. The defendant was convicted of

5 a) a violation of N.J.S. 2C:35-3 (Leader of narcotics Trafficking Network), or

6 b) a violation of subsection g. of N.J.S. 2C:5-2 (Leader of Organized Crime), or

7 c) an offense defined in chapter 41 of this title (racketeering) which involved the
8 manufacture, distribution, possession with intent to distribute or transportation of any
9 controlled dangerous substance or controlled substance analog.

10 2. The defendant is a drug profiteer. A defendant is a drug profiteer when the
11 conduct constituting the crime shows that the person has knowingly engaged in the illegal
12 manufacture, distribution or transportation of any controlled dangerous substance,
13 controlled substance analog or drug paraphernalia as a substantial source of livelihood. In
14 making its determination, the court may consider all of the attending circumstances,
15 including but not limited to the defendant's role in the criminal activity, the nature, amount
16 and purity of the substance involved, the amount of cash or currency involved, the extent
17 and accumulation of the defendant's assets during the course of the criminal activity and
18 the defendant's net worth and his expenditures in relation to his legitimate sources of
19 income.

20 3. The defendant is a wholesale drug distributor. A defendant is a wholesale drug
21 distributor when the conduct constituting the crime involves the manufacture, distribution
22 or intended or attempted distribution of a controlled dangerous substance or controlled

1 substance analog to any other person for pecuniary gain, knowing, believing, or under
2 circumstances where it reasonably could be assumed that such other person would in turn
3 distribute the substance to another or others for pecuniary gain. It shall not be necessary
4 for the State to establish to whom the substance was distributed or intended or attempted
5 to be distributed, and the court may draw all reasonable inferences from the nature of the
6 defendant's conduct and the substance involved that such other person, while not
7 specifically identified, would in turn distribute the substance to another or others for
8 pecuniary gain. In making its determination, the court shall consider all of the attending
9 circumstances, including but not limited to the defendant's role in the criminal activity, the
10 nature, amount and purity of the substance involved, and the likelihood that a substance
11 of such purity would be intended to be distributed directly to the ultimate consumer of the
12 substance. Notwithstanding that the prosecutor has established that the defendant is a
13 wholesale drug distributor within the meaning of this subsection, the court shall not
14 impose an anti-drug profiteering penalty on that ground if the defendant establishes by a
15 preponderance of the evidence at the hearing that his participation in the conduct
16 constituting the crime was limited solely to operating a conveyance used to transport a
17 controlled dangerous substance or controlled substance analog, or loading or unloading the
18 substance into such a conveyance or storage facility. Nothing in this paragraph shall be
19 construed to establish a basis for not imposing a penalty where the prosecutor has
20 established any other ground or grounds specified in this section for the imposition of an
21 anti-drug profiteering penalty.

22 4. The defendant is a professional drug distributor. A professional drug distributor

1 is a person who has at any time, for pecuniary gain, unlawfully distributed a controlled
2 dangerous substance, controlled substance analog or drug paraphernalia to three or more
3 different persons, or on five or more separate occasions regardless of the number of
4 persons to whom the substance or paraphernalia was distributed.

5 b. In making its determination, the court may rely upon expert opinion in the form
6 of live testimony or by affidavit, or by such other means as the court deems appropriate.
7 For the purposes of this chapter, an act is undertaken for pecuniary gain if it involves or
8 contemplates the transfer of anything of value in exchange for a controlled dangerous
9 substance, controlled substance analog or drug paraphernalia, provided that the thing of
10 value received or intended to be received in exchange for the substance or paraphernalia
11 is or was reasonably believed to be of a higher value than that expended by the defendant
12 or by any other person with whom the actor is acting in concert, to acquire or manufacture
13 the substance or paraphernalia. It shall also include any act which would constitute a
14 violation of subsection a. of N.J.S. 2C:35-5, N.J.S. 2C:35-11 or N.J.S. 2C:36-3 for which
15 the actor was paid or expected to be paid in return for performing such act. There shall
16 be a rebuttable presumption at the hearing that any manufacturing, distribution or
17 possession with intent to distribute which contemplates or involves the payment or
18 exchange of anything of value constitutes an act undertaken for pecuniary gain. It shall
19 not be necessary for the State to establish that any intended profit or payment was
20 actually received; nor shall it be relevant that the act, payment in return for such act or the
21 transfer of anything of value in exchange for the substance or paraphernalia, occurred or
22 was intended to occur in another jurisdiction.

1 **N.J.S. 2C:35A-4. Calculation of Anti-Drug Profiteering Penalty.**

2 **a. Where the prosecutor has established one or more grounds for imposing an Anti-**
3 **Drug Profiteering Penalty pursuant to section 3 of this chapter, the court shall assess a**
4 **monetary penalty as follows:**

5 **1) \$200,000.00 in the case of a crime of the first degree; \$100,000.00 in the case**
6 **of a crime of the second degree; \$50,000.00 in the case of a crime of the third degree;**
7 **\$25,000.00 in the case of a crime of the fourth degree; or**

8 **2) an amount equal to three times the street value of all controlled dangerous**
9 **substances or controlled substance analog involved, or three times the market value of all**
10 **drug paraphernalia involved, if this amount is greater than that provided in subsection a.**
11 **(1) of this section.**

12 **When the court is for any reason unable to determine the amount of the penalty**
13 **pursuant to subsection a(2) of this section, the court shall assess a penalty in the amount**
14 **appropriate to the degree of the offense as provided in subsection a(1) of this section.**

15 **b. In determining the street value of the substance involved or the market value of**
16 **drug paraphernalia involved, the court shall take into account all amounts of the substance**
17 **or paraphernalia reasonably believed to have been involved in the course of the criminal**
18 **activity in which the defendant knowingly participated, and it shall not be relevant for the**
19 **purposes of this section that some of those amounts or paraphernalia were involved in acts**
20 **or transactions which occurred, or which were intended to occur, in another jurisdiction.**

21 **c. Where the State requests that the court assess a penalty in an amount calculated**
22 **pursuant to subsection a.(2) of this section, the prosecutor shall have the burden of**

1 **establishing by a preponderance of the evidence the appropriate amount of the penalty to**
2 **be assessed pursuant to that subsection. In making its finding, the court shall take judicial**
3 **notice of any evidence, testimony or information adduced at trial, plea hearing or other**
4 **court proceedings and shall also consider the presentence report and other relevant**
5 **information, including expert opinion in the form of live testimony or by affidavit. The**
6 **court's findings shall be incorporated in the record, and such findings shall not be subject**
7 **to modification by an appellate court except upon a showing that the finding was totally**
8 **lacking support in the record or was arbitrary and capricious.**

9
10 **N.J.S. 2C:35A-5. Revocation or Reduction of Penalty Assessment.**

11 **The court shall not revoke or reduce a penalty imposed pursuant to this chapter**
12 **except in accordance with the provisions of N.J.S. 2C:35-12. An anti-drug profiteering**
13 **penalty imposed pursuant to this chapter shall not be deemed a fine for purposes of N.J.S.**
14 **46-3.**

15
16 **N.J.S. 2C:35A-6. Payment Schedule.**

17 **The court may, for good cause shown, and subject to the provisions of this**
18 **section, grant permission for the payment of a penalty assessed pursuant to this chapter**
19 **to be made within a specified period of time or in specified installments, provided however**
20 **that the payment schedule fixed by the court shall require the defendant to pay the penalty**
21 **in the shortest period of time consistent with the nature and extent of his assets and his**
22 **ability to pay, and further provided that the prosecutor shall be afforded the opportunity**

1 to present evidence or information concerning the nature, extent and location of the
2 defendant's assets or interests in property which are or might be subject to levy and
3 execution. In such event, the court may only grant permission for the payment to be made
4 within a specified period of time or installments with respect to that portion of the
5 assessed penalty which would not be satisfied by the liquidation of property which is or
6 may be subject to levy and execution, unless the court finds that the immediate liquidation
7 of such property would result in undue hardship to innocent persons. If no permission to
8 make payment within a specified period of time or in installments is embodied in the
9 sentence, the entire penalty shall be payable forthwith.

10
11 **N.J.S. 2C:35A-7. Relation to Other Dispositions.**

12 **a. An anti-drug profiteering penalty assessed pursuant to this chapter shall be**
13 **imposed and paid in addition to any penalty required to be imposed pursuant to N.J.S.**
14 **2C:35-15 and N.J.S. 2C:43-3.1, any fee required to be imposed pursuant to N.J.S. 2C:35-**
15 **20, and any other fine, penalty, fee or order for restitution which may be imposed.**

16 **b. An anti-drug profiteering penalty imposed pursuant to this chapter shall be in**
17 **addition to and not in lieu of any forfeiture or other cause of action instituted pursuant to**
18 **chapter 41 or 64 of this title, and nothing in this chapter shall be construed in any way to**
19 **preclude, preempt or limit any such cause of action. A defendant shall not be entitled to**
20 **receive credit toward the payment of a penalty imposed pursuant to this chapter for the**
21 **value of property forfeited, or subject to forfeiture, pursuant to the provision of chapter**
22 **41 and 64 of this title.**

1 **N.J.S. 2C:35A-8. Collection and Distribution.**

2 **All penalties assessed pursuant to this chapter shall be docketed and collected as**
3 **provided for collection of fines, penalties and restitution in chapter 46 of this title. The**
4 **Attorney General or prosecutor may prosecute an action to collect penalties imposed**
5 **pursuant to this chapter. All penalties assessed pursuant to this chapter shall be disposed**
6 **of, distributed, appropriated and used in accordance with the provisions of section 10 of**
7 **P.L. 1986, c. 135 (C. 2C:64-6) as if the collected penalties were the proceeds of property**
8 **forfeited pursuant to chapter 64 of this title.**

9
10 17. N.J.S. 2C:29-6 is amended to read as follows:

11 2C:29-6. Implements for escape; controlled dangerous substances and other
12 contraband

13 a. Escape implements.

14 (1) A person commits an offense if he knowingly and unlawfully introduces within an
15 institution for commitment of persons under N.J.S. 2C:4-8 or a detention facility, or
16 knowingly and unlawfully provides an inmate with any weapon, tool, instrument,
17 document or other thing which may be useful for escape. The offense is a crime of the
18 second degree and shall be punished by a minimum term of imprisonment, which shall be
19 fixed at no less than three years if the item is a weapon as defined by N.J.S. 2C:39-1(r).
20 Otherwise it is a crime of the third degree.

21 (2) An inmate of an institution or facility defined by paragraph (1) of subsection a.
22 of this section commits an offense if he knowingly and unlawfully procures, makes, or

1 otherwise provides himself with, or has in his possession, any such implement of escape.
2 The offense is a crime of the second degree and shall be punished by a minimum term of
3 imprisonment, which shall be fixed at no less than three years if the item is a weapon as
4 defined by N.J.S. 2C:39-1(r). Otherwise it is a crime of the third degree.

5 "Unlawfully" means surreptitiously or contrary to law, regulation or order of the
6 detaining authority.

7 **b. A person commits a crime of the second degree if he unlawfully brings a**
8 **controlled dangerous substance or controlled substance analog into an institution or facility**
9 **referred to in paragraph (1) of subsection a. of this section or a residential treatment**
10 **facility referred to in N.J.S. 2C:35-14. Notwithstanding the provisions of N.J.S. 2C:1-8**
11 **or any provision of law, a conviction arising under this subsection shall not merge with a**
12 **conviction for a violation of N.J.S. 2C:30-2 (official misconduct) or sections 5 or 7 of**
13 **chapter 35 of this title (N.J.S. 2C:35-5, N.J.S. 2C:35-7), and a separate sentence shall**
14 **be imposed upon each such conviction.**

15 [b]c. Other contraband. A person commits a petty disorderly persons offense if he
16 provides an inmate with any other thing which the actor knows or should know it is
17 unlawful for the inmate to possess.

18
19 18. N.J.S. 2C:30-2 is amended to read as follows:

20 2C:30-2. Official misconduct

21 A public servant is guilty of official misconduct when, with purpose to obtain a
22 benefit for himself or another or to injure or to deprive another of a benefit:

1 a. He commits an act relating to his office but constituting an unauthorized exercise
2 of his official functions, knowing that such act is unauthorized or he is committing such
3 act in an unauthorized manner; or

4 b. He knowingly refrains from performing a duty which is imposed upon him by law
5 or is clearly inherent in the nature of his office.

6 Official misconduct is a crime of the second degree. If the benefit obtained or
7 sought to be obtained, or of which another is deprived or sought to be deprived, is of a
8 value of \$200.00 or less, the offense of official misconduct is a crime of the third degree.

9 **Notwithstanding the provisions of N.J.S. 2C:1-8 or any other provisions of law, a**
10 **conviction arising under this section shall not merge with a conviction for a violation of**
11 **section 17 of P.L. , c. (now pending before the Legislature as this bill) (N.J.S. 2C:29-6b)**
12 **(bringing a controlled dangerous substance into an institution or facility), and a separate**
13 **sentence shall be imposed upon each such conviction.**

14
15 19. 2C:39-7. Certain persons not to have weapons

16 a. Except as provided in subsection b. of this section, any person, having been
17 convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary,
18 escape, extortion, homicide, kidnaping, robbery, aggravated sexual assault, sexual assault
19 or endangering the welfare of a child pursuant to N.J.S. 2C:24-4, whether or not armed
20 with or having in his possession any weapon enumerated in subsection r. of N.J.S.
21 2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S. 2C:39-3,
22 N.J.S. 2C:39-4 or N.J.S. 2C:39-9, or any person who has ever been committed for a

1 mental disorder to any hospital, mental institution or sanitarium unless he possesses a
2 certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other
3 satisfactory proof that he is no longer suffering from a mental disorder which interferes
4 with or handicaps him in the handling of a firearm, or any person who has been convicted
5 of other than a disorderly persons or petty disorderly persons offense for the unlawful use,
6 possession or sale of a controlled dangerous substance as defined in N.J.S. 2C:35-2 who
7 purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the
8 fourth degree.

9 b. A person having been convicted in this State or elsewhere of the crime of
10 aggravated assault, arson, burglary, escape, extortion, homicide, kidnaping, robbery,
11 aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant
12 to N.J.S. 2C:24-4, whether or not armed with or having in his possession a weapon
13 enumerated in subsection r. of N.J.S. 2C:39-1, or a person having been convicted of a
14 crime pursuant to the provisions of N.J.S. 2C:35-3 through N.J.S. 2C:35-6, inclusive;
15 section 1 of P.L.1987, c. 101 (C. 2C:35-7); N.J.S. 2C:35-11; N.J.S. 2C:39-3; N.J.S.
16 2C:39- 4; or N.J.S. 2C:39-9 who purchases, owns, possesses or controls a firearm is
17 guilty of a crime of the second degree.

18 c. Whenever any person shall have been convicted in another state, territory,
19 commonwealth or other jurisdiction of the United States, or any country in the world, in
20 a court of competent jurisdiction, of a crime which in said other jurisdiction or country is
21 comparable to one of the crimes enumerated in subsection a. or b. of this section, then
22 that person shall be subject to the provisions of this section.

1 **d. Any person who knowingly has in his possession a firearm while engaged in the**
2 **unlawful manufacture, distribution, possession with intent to distribute, or possession of**
3 **a controlled dangerous substance or controlled substance analog commits a crime of the**
4 **second degree.**

5
6 20. N.J.S. 2C:39-6 is amended to read as follows:

7 2C:39-6. Exemptions

8 a. Provided a person complies with the requirements of subsection j. of this section,
9 N.J.S.2C:39-5 does not apply to:

10 (1) Members of the Armed Forces of the United States or of the National Guard
11 while actually on duty, or while traveling between places of duty and carrying authorized
12 weapons in the manner prescribed by the appropriate military authorities;

13 (2) Federal law enforcement officers, and any other federal officers and employees
14 required to carry firearms in the performance of their official duties;

15 (3) Members of the State Police and, under conditions prescribed by the
16 superintendent, members of the Marine Law Enforcement Bureau of the Division of State
17 Police;

18 (4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor,
19 prosecutor's detective or investigator, deputy attorney general or State investigator
20 employed by the Division of Criminal Justice of the Department of Law and Public Safety,
21 investigator employed by the State Commission of Investigation, inspector of the
22 Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the

1 Department of Law and Public Safety authorized to carry such weapons by the
2 Superintendent of State Police, State park ranger, or State conservation officer;

3 (5) A prison or jail warden of any penal institution in this State or his deputies, or
4 an employee of the Department of Corrections engaged in the interstate transportation of
5 convicted offenders, while in the performance of his duties, and when required to possess
6 the weapon by his superior officer, or a correction officer or keeper of a penal institution
7 in this State at all times while in the State of New Jersey, provided he annually passes
8 an examination approved by the superintendent testing his proficiency in the handling of
9 firearms; (6) A civilian employee of the United States Government under the supervision
10 of the commanding officer of any post, camp, station, base or other military or naval
11 installation located in this State who is required, in the performance of his official duties,
12 to carry firearms, and who is authorized to carry such firearms by said commanding
13 officer, while in the actual performance of his official duties;

14 (7) (a) A regularly employed member, including a detective, of the police
15 department of any county or municipality, or of any State, interstate, municipal or county
16 park police force or boulevard police force, at all times while in the State of New Jersey;

17 (b) A special law enforcement officer authorized to carry a weapon as provided in
18 subsection b. of section 7 of P.L. 1985, c.439 (C.40A:14-146.14);

19 (c) An airport security officer or a special law enforcement officer appointed by the
20 governing body of any county or municipality, except as provided in subsection b. of this
21 section, or by the commission, board or other body having control of a county park or
22 airport or boulevard police force, while engaged in the actual performance of his official

1 duties and when specifically authorized by the governing body to carry weapons;

2 (8) A full-time, paid member of a paid or part-paid fire department or force of any
3 municipality who is assigned full-time or part-time to an arson investigation unit created
4 pursuant to section 1 of P.L. 1981, c.409 (C.40A:14-7.1) or to the county arson
5 investigation unit in the county prosecutor's office, while either engaged in the actual
6 performance of arson investigation duties or while actually on call to perform arson
7 investigation duties and when specifically authorized by the governing body or the county
8 prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a
9 firearm, such a member shall take and successfully complete a firearms training course
10 administered by the Police Training Commission pursuant to P.L. 1961, c.56
11 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon
12 prior to being permitted to carry a firearm;

13 (9) A juvenile corrections officer in the employment of the Juvenile Justice
14 Commission established pursuant to section 2 of P.L. 1995, c.284 (C.52:17B-170)
15 subject to the regulations promulgated by the commission.

16 b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

17 (1) A law enforcement officer employed by a governmental agency outside of the
18 State of New Jersey while actually engaged in his official duties, provided, however, that
19 he has first notified the superintendent or the chief law enforcement officer of the
20 municipality or the prosecutor of the county in which he is engaged; or

21 (2) A licensed dealer in firearms and his registered employees during the course of
22 their normal business while traveling to and from their place of business and other places

1 for the purpose of demonstration, exhibition or delivery in connection with a sale,
2 provided, however, that the weapon is carried in the manner specified in subsection g. of
3 this section.

4 c. Provided a person complies with the requirements of subsection j. of this section,
5 subsections b. and c. of N.J.S.2C:39-5 do not apply to:

6 (1) A special agent of the Division of Taxation who has passed an examination in
7 an approved police training program testing proficiency in the handling of any firearm
8 which he may be required to carry, while in the actual performance of his official duties
9 and while going to or from his place of duty, or any other police officer, while in the
10 actual performance of his official duties;

11 (2) A State deputy conservation officer or a full-time employee of the Division of
12 Parks and Forestry having the power of arrest and authorized to carry weapons, while in
13 the actual performance of his official duties;

14 (3) (Deleted by amendment, P.L. 1986, c.150.)

15 (4) A court attendant serving as such under appointment by the sheriff of the
16 county or by the judge of any municipal court or other court of this State, while in the
17 actual performance of his official duties;

18 (5) A guard in the employ of any railway express company, banking or building and
19 loan or savings and loan institution of this State, while in the actual performance of his
20 official duties;

21 (6) A member of a legally recognized military organization while actually under
22 orders or while going to or from the prescribed place of meeting and carrying the weapons

1 prescribed for drill, exercise or parade;

2 (7) An officer of the Society for the Prevention of Cruelty to Animals, while in the
3 actual performance of his duties;

4 (8) An employee of a public utilities corporation actually engaged in the
5 transportation of explosives;

6 (9) A railway policeman, except a transit police officer of the New Jersey Transit
7 Police Department, at all times while in the State of New Jersey, provided that he has
8 passed an approved police academy training program consisting of at least 280 hours. The
9 training program shall include, but need not be limited to, the handling of firearms,
10 community relations, and juvenile relations;

11 (10) A campus police officer appointed under P.L. 1970, c.211 (C.18A:6-4.2 et
12 seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall
13 take and successfully complete a firearms training course administered by the Police
14 Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall
15 annually qualify in the use of a revolver or similar weapon prior to being permitted to
16 carry a firearm;

17 (11) A person who has not been convicted of a crime under the laws of this State
18 or under the laws of another state or the United States, and who is employed as a
19 full-time security guard for a nuclear power plant under the license of the Nuclear
20 Regulatory Commission, while in the actual performance of his official duties;

21 (12) A transit police officer of the New Jersey Transit Police Department, at all
22 times while in the State of New Jersey, provided the officer has satisfied the training

1 requirements of the Police Training Commission, pursuant to subsection c. of section 2
2 of P.L. 1989, c.291 (C.27:25-15.1);

3 (13) A parole officer employed by the Bureau of Parole in the Department of
4 Corrections at all times. Prior to being permitted to carry a firearm, a parole officer shall
5 take and successfully complete a basic course for regular police officer training
6 administered by the Police Training Commission, pursuant to P.L.1961, c.56
7 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon
8 prior to being permitted to carry a firearm;

9 (14) A Human Services police officer at all times while in the State of New Jersey,
10 as authorized by the Commissioner of Human Services; or (15) A person or employee of
11 any person who, pursuant to and as required by a contract with a governmental entity,
12 supervises or transports persons charged with or convicted of an offense.

13 d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms,
14 provided that such antique firearms are unloaded or are being fired for the purposes of
15 exhibition or demonstration at an authorized target range or in such other manner as has
16 been approved in writing by the chief law enforcement officer of the municipality in which
17 the exhibition or demonstration is held, or if not held on property under the control of a
18 particular municipality, the superintendent.

19 (2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not
20 apply to an antique cannon that is capable of being fired but that is unloaded and
21 immobile, provided that the antique cannon is possessed by (a) a scholastic institution,
22 a museum, a municipality, a county or the State, or (b) a person who obtained a firearms

1 purchaser identification card as specified in N.J.S. 2C:58-3.

2 (3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not
3 apply to an unloaded antique cannon that is being transported by one eligible to possess
4 it, in compliance with regulations the superintendent may promulgate, between its
5 permanent location and place of purchase or repair.

6 (4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not
7 apply to antique cannons that are being loaded or fired by one eligible to possess an
8 antique cannon, for purposes of exhibition or demonstration at an authorized target range
9 or in the manner as has been approved in writing by the chief law enforcement officer of
10 the municipality in which the exhibition or demonstration is held, or if not held on
11 property under the control of a particular municipality, the superintendent, provided that
12 performer has given at least 30 days' notice to the superintendent.

13 (5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not
14 apply to the transportation of unloaded antique cannons directly to or from exhibitions or
15 demonstrations authorized under paragraph (4) of subsection d. of this section, provided
16 that the transportation is in compliance with safety regulations the superintendent may
17 promulgate. Nor do those subsections apply to transportation directly to or from
18 exhibitions or demonstrations authorized under the law of another jurisdiction, provided
19 that the superintendent has been given 30 days' notice and that the transportation is in
20 compliance with safety regulations the superintendent may promulgate.

21 e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to
22 prevent a person keeping or carrying about his place of business, residence, premises or

1 other land owned or possessed by him, any firearm, or from carrying the same, in the
2 manner specified in subsection g. of this section, from any place of purchase to his
3 residence or place of business, between his dwelling and his place of business, between
4 one place of business or residence and another when moving, or between his dwelling or
5 place of business and place where such firearms are repaired, for the purpose of repair,
6 provided, however, that this paragraph shall not apply if a controlled dangerous substance
7 or controlled substance analog is unlawfully manufactured, distributed, possessed with the
8 intent to distribute, or possessed in the place of business, residence, vehicle, premises or
9 other land owned or possessed by the person. For the purposes of this section, a place
10 of business shall be deemed to be a fixed location.

11 f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to
12 prevent:

13 (1) A member of any rifle or pistol club organized in accordance with the rules
14 prescribed by the National Board for the Promotion of Rifle Practice, in going to or from
15 a place of target practice, carrying such firearms as are necessary for said target practice,
16 provided that the club has filed a copy of its charter with the superintendent and annually
17 submits a list of its members to the superintendent and provided further that the firearms
18 are carried in the manner specified in subsection g. of this section;

19 (2) A person carrying a firearm or knife in the woods or fields or upon the waters
20 of this State for the purpose of hunting, target practice or fishing, provided that the
21 firearm or knife is legal and appropriate for hunting or fishing purposes in this State and
22 he has in his possession a valid hunting license, or, with respect to fresh water fishing,

1 a valid fishing license;

2 (3) A person transporting any firearm or knife while traveling:

3 (a) Directly to or from any place for the purpose of hunting or fishing, provided the
4 person has in his possession a valid hunting or fishing license; or

5 (b) Directly to or from any target range, or other authorized place for the purpose
6 of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that
7 during the course of the travel all firearms are carried in the manner specified in
8 subsection g. of this section and the person has complied with all the provisions and
9 requirements of Title 23 of the Revised Statutes and any amendments thereto and all
10 rules and regulations promulgated thereunder; or

11 (c) In the case of a firearm, directly to or from any exhibition or display of firearms
12 which is sponsored by any law enforcement agency, any rifle or pistol club, or any
13 firearms collectors club, for the purpose of displaying the firearms to the public or to the
14 members of the organization or club, provided, however, that not less than 30 days prior
15 to the exhibition or display, notice of the exhibition or display shall be given to the
16 Superintendent of the State Police by the sponsoring organization or club, and the sponsor
17 has complied with such reasonable safety regulations as the superintendent may
18 promulgate. Any firearms transported pursuant to this section shall be transported in the
19 manner specified in subsection g. of this section;

20 (4) A person from keeping or carrying about a private or commercial aircraft or any
21 boat, or from transporting to or from such vessel for the purpose of installation or repair
22 a visual distress signaling [signalling] device approved by the United States Coast Guard.

1 g. All weapons being transported under paragraph (2) of subsection b., subsection
2 e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and
3 contained in a closed and fastened case, gunbox, securely tied package, or locked in the
4 trunk of the automobile in which it is being transported, and in the course of travel shall
5 include only such deviations as are reasonably necessary under the circumstances.

6 h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any
7 employee of a public utility, as defined in R.S. 48:2-13, doing business in this State or
8 any United States Postal Service employee, while in the actual performance of duties
9 which specifically require regular and frequent visits to private premises, from possessing,
10 carrying or using any device which projects, releases or emits any substance specified as
11 being noninjurious to canines or other animals by the Commissioner of Health and which
12 immobilizes only on a temporary basis and produces only temporary physical discomfort
13 through being vaporized or otherwise dispensed in the air for the sole purpose of repelling
14 canine or other animal attacks.

15 The device shall be used solely to repel only those canine or other animal attacks
16 when the canines or other animals are not restrained in a fashion sufficient to allow the
17 employee to properly perform his duties.

18 Any device used pursuant to this act shall be selected from a list of products,
19 which consist of active and inert ingredients, permitted by the Commissioner of Health.

20 I. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18
21 years of age or older and who has not been convicted of a felony, from possession for the
22 purpose of personal self-defense of one pocket-sized device which contains and releases

1 not more than three-quarters of an ounce of chemical substance not ordinarily capable
2 of lethal use or of inflicting serious bodily injury, but rather, is intended to produce
3 temporary physical discomfort or disability through being vaporized or otherwise
4 dispensed in the air. Any person in possession of any device in violation of this subsection
5 shall be deemed and adjudged to be a disorderly person, and upon conviction thereof,
6 shall be punished by a fine of not less than \$100.00.

7 j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as
8 specified under subsections a. and c. of this section, if the person has satisfactorily
9 completed a firearms training course approved by the Police Training Commission.

10 Such exempt person shall not possess or carry a firearm until the person has
11 satisfactorily completed a firearms training course and shall annually qualify in the use of
12 a revolver or similar weapon. For purposes of this subsection, a "firearms training course"
13 means a course of instruction in the safe use, maintenance and storage of firearms which
14 is approved by the Police Training Commission. The commission shall approve a firearms
15 training course if the requirements of the course are substantially equivalent to the
16 requirements for firearms training provided by police training courses which are certified
17 under section 6 of P.L. 1961, c.56 (C.52:17B-71). A person who is specified in paragraph
18 (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements
19 of this subsection.

20 k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any
21 financial institution, or any duly authorized personnel of the institution, from possessing,
22 carrying or using for the protection of money or property, any device which projects,

1 releases or emits tear gas or other substances intended to produce temporary physical
2 discomfort or temporary identification.

3
4 21. N.J.S. 2C:43-6 is amended to read as follows:

5 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms; Mandatory Terms.

6 a. Except as otherwise provided, a person who has been convicted of a crime may
7 be sentenced to imprisonment, as follows:

8 (1) In the case of a crime of the first degree, for a specific term of years which shall
9 be fixed by the court and shall be between 10 years and 20 years;

10 (2) In the case of a crime of the second degree, for a specific term of years which
11 shall be fixed by the court and shall be between five years and 10 years;

12 (3) In the case of a crime of the third degree, for a specific term of years which
13 shall be fixed by the court and shall be between three years and five years;

14 (4) In the case of a crime of the fourth degree, for a specific term which shall be
15 fixed by the court and shall not exceed 18 months.

16 b. As part of a sentence for any crime, where the court is clearly convinced that
17 the aggravating factors substantially outweigh the mitigating factors, as set forth in
18 subsections a. and b. of 2C:44-1, the court may fix a minimum term not to exceed
19 one-half of the term set pursuant to subsection a., or one-half of the term set pursuant to
20 a maximum period of incarceration for

21 a crime set forth in any statute other than this code, during which the defendant shall not
22 be eligible for parole; provided that no defendant shall be eligible for parole at a date earlier

1 than otherwise provided by the law governing parole.

2 c. A person who has been convicted under 2C:39-4a. of possession of a firearm
3 with intent to use it against the person of another, or of a crime under any of the following
4 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1,
5 2C:18-2, 2C:29-5, who, while in the course of committing or attempting to commit the
6 crime, including the immediate flight therefrom, used or was in possession of a firearm as
7 defined in 2C:39-1f., shall be sentenced to a term of imprisonment by the court. The term
8 of imprisonment shall include the imposition of a minimum term. The minimum term shall
9 be fixed at, or between, one-third and one-half of the sentence imposed by the court or
10 three years, whichever is greater, or 18 months in the case of a fourth degree crime,
11 during which the defendant shall be ineligible for parole.

12 The minimum terms established by this section shall not prevent the court from
13 imposing presumptive terms of imprisonment pursuant to 2C:44-1f. (1) except in cases
14 of crimes of the fourth degree.

15 A person who has been convicted of an offense enumerated by this subsection and
16 who used or possessed a firearm during its commission, attempted commission or flight
17 therefrom and who has been previously convicted of an offense involving the use or
18 possession of a firearm as defined in 2C:44-3d., shall be sentenced by the court to an
19 extended term as authorized by 2C:43-7c., notwithstanding that extended terms are
20 ordinarily discretionary with the court.

21 d. The court shall not impose a mandatory sentence pursuant to subsection c. of
22 this section, 2C:43-7c. or 2C:44-3d., unless the ground therefor has been established at

1 a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall
2 establish by a preponderance of the evidence that the weapon used or possessed was a
3 firearm. In making its finding, the court shall take judicial notice of any evidence,
4 testimony or information adduced at the trial, plea hearing, or other court proceedings and
5 shall also consider the presentence report and any other relevant information.

6 e. A person convicted of a third or subsequent offense involving State taxes under
7 N.J.S. 2C:20-9, N.J.S.2C:21-15, any other provision of this code, or under any of the
8 provisions of Title 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,
9 as amended and supplemented, shall be sentenced to a term of imprisonment by the court.
10 This shall not preclude an application for and imposition of an extended term of
11 imprisonment under N.J.S.2C:44-3 if the provisions of that section are applicable to the
12 offender.

13 f. A person convicted of manufacturing, distributing, dispensing or possessing with
14 intent to distribute any dangerous substance or controlled substance analog under N.J.S.
15 2C:35-5, of maintaining or operating a controlled dangerous substance production facility
16 under N.J.S. 2C:35-4, of employing a juvenile in a drug distribution scheme under N.J.S.
17 2C:35-6, leader of a narcotics trafficking network under N.J.S. 2C:35-3, or of distributing,
18 dispensing or possessing with intent to distribute on or near school property or buses
19 under section 1 of P.L. 1987, c.101 (C.2C:35-7), or of conspiring or attempting to commit
20 any of those offenses, who has been previously convicted of manufacturing, distributing,
21 dispensing or possessing with intent to distribute a controlled dangerous substance or
22 controlled substance analog, or of conspiring or attempting to commit any of those

1 **offenses.** shall upon application of the prosecuting attorney be sentenced by the court to
2 an extended term as authorized by subsection c. of N.J.S. 2C:43-7, notwithstanding that
3 extended terms are ordinarily discretionary with the court. The term of imprisonment shall,
4 except as may be provided in N.J.S. 2C:35-12, include the imposition of a minimum term.
5 The minimum term shall be fixed at, or between, one-third and one-half of the sentence
6 imposed by the court or three years, whichever is greater, not less than seven years if the
7 person is convicted of a violation of N.J.S. 2C:35-6, or 18 months in the case of a fourth
8 degree crime, during which the defendant shall be ineligible for parole.

9 The court shall not impose an extended term pursuant to this subsection unless the
10 ground therefor has been established at a hearing. At the hearing, which may occur at the
11 time of sentencing, the prosecutor shall establish the ground therefor by a preponderance
12 of the evidence. In making its finding, the court shall take judicial notice of any evidence,
13 testimony or information adduced at the trial, plea hearing, or other court proceedings and
14 shall also consider the presentence report and any other relevant information.

15 For the purpose of this subsection, a previous conviction exists where the actor has
16 at any time been convicted under chapter 35 of this title or Title 24 of the Revised
17 Statutes or under any similar statute of the United States, this State, or any other state
18 for an offense that is substantially equivalent to N.J.S. 2C:35-3, N.J.S. 2C:35-4, N.J.S.
19 2C:35-5, N.J.S. 2C:35-6 or section 1 of P.L. 1987, c.101 (C.2C:35-7).

20 g. Any person who has been convicted under subsection a. of N.J.S.2C:39-4 of
21 possessing a machine gun or assault firearm with intent to use it against the person of
22 another, or of a crime under any of the following sections: N.J.S. 2C:11-3, N.J.S.

1 2C:11-4, N.J.S. 2C:12-1b., N.J.S. 2C:13-1, N.J.S. 2C:14-2a., N.J.S. 2C:14-3a., N.J.S.
2 2C:15-1, N.J.S. 2C:18-2, N.J.S. 2C:29-5, N.J.S. 2C:35-5, who, while in the course of
3 committing or attempting to commit the crime, including the immediate flight therefrom,
4 used or was in possession of a machine gun or assault firearm shall be sentenced to a term
5 of imprisonment by the court. The term of imprisonment shall include the imposition of
6 a minimum term. The minimum term shall be fixed at 10 years for a crime of the first or
7 second degree, five years for a crime of the third degree, or 18 months in the case of a
8 fourth degree crime, during which the defendant shall be ineligible for parole. The
9 minimum terms established by this section shall not prevent the court from imposing
10 presumptive terms of imprisonment pursuant to paragraph (1) of subsection f. of
11 N.J.S.2C:44-1 for crimes of the first degree.

12 A person who has been convicted of an offense enumerated in this subsection and
13 who used or possessed a machine gun or assault firearm during its commission, attempted
14 commission or flight therefrom and who has been previously convicted of an offense
15 involving the use or possession of any firearm as defined in subsection d. of
16 N.J.S.2C:44-3, shall be sentenced by the court to an extended term as authorized by
17 subsection d. of N.J.S. 2C:43-7, notwithstanding that extended terms are ordinarily
18 discretionary with the court.

19 h. The court shall not impose a mandatory sentence pursuant to subsection g. of
20 this section, subsections d. of N.J.S. 2C:43-7 or N.J.S.2C:44-3, unless the ground
21 therefor has been established at a hearing. At the hearing, which may occur at the time
22 of sentencing, the prosecutor shall establish by a preponderance of the evidence that the

1 weapon used or possessed was a machine gun or assault firearm. In making its finding,
2 the court shall take judicial notice of any evidence, testimony or information adduced at
3 the trial, plea hearing, or other court proceedings and shall also consider the presentence
4 report and any other relevant information.

5 I. A person who has been convicted under paragraph (6) of subsection b. of
6 2C:12-1 of causing bodily injury while eluding shall be sentenced to a term of
7 imprisonment by the court. The term of imprisonment shall include the imposition of a
8 minimum term. The minimum term shall be fixed at, or between one-third and one-half of
9 the sentence imposed by the court. The minimum term established by this subsection
10 shall not prevent the court from imposing a presumptive term of imprisonment pursuant
11 to paragraph (1) of subsection f. of 2C:44-1.

12
13 22. N.J.S. 2C:44-1 is amended to read as follows:

14 2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment.

15 a. In determining the appropriate sentence to be imposed on a person who has been
16 convicted of an offense, the court shall consider the following aggravating circumstances:

17 (1) The nature and circumstances of the offense, and the role of the actor therein,
18 including whether or not it was committed in an especially heinous, cruel, or depraved
19 manner;

20 (2) The gravity and seriousness of harm inflicted on the victim, including whether
21 or not the defendant knew or reasonably should have known that the victim of the offense
22 was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or

1 extreme youth, or was for any other reason substantially incapable of exercising normal
2 physical or mental power of resistance;

3 (3) The risk that the defendant will commit another offense;

4 (4) A lesser sentence will depreciate the seriousness of the defendant's offense
5 because it involved a breach of the public trust under chapters 27 and 30, or the
6 defendant took advantage of a position of trust or confidence to commit the offense;

7 (5) There is a substantial likelihood that the defendant is involved in organized
8 criminal activity;

9 (6) The extent of the defendant's prior criminal record and the seriousness of the
10 offenses of which he has been convicted;

11 (7) The defendant committed the offense pursuant to an agreement that he either
12 pay or be paid for the commission of the offense and the pecuniary incentive was beyond
13 that inherent in the offense itself;

14 (8) The defendant committed the offense against a police or other law enforcement
15 officer, correctional employee or fireman, acting in the performance of his duties while in
16 uniform or exhibiting evidence of his authority; the defendant committed the offense
17 because of the status of
18 the victim as a public servant; or the defendant committed the offense against a sports
19 official, athletic coach or manager, acting in or immediately following the performance of
20 his duties or because of the person's status as a sports official, coach or manager;

21 (9) The need for deterring the defendant and others from violating the law;

22 (10) The offense involved fraudulent or deceptive practices committed against any

department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the

initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled;

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that his conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of his conduct

1 for the damage or injury that he sustained, or will participate in a program of community
2 service;

3 (7) The defendant has no history of prior delinquency or criminal activity or has led
4 a law-abiding life for a substantial period of time before the commission of the present
5 offense;

6 (8) The defendant's conduct was the result of circumstances unlikely to recur;

7 (9) The character and attitude of the defendant indicate that he is unlikely to commit
8 another offense;

9 (10) The defendant is particularly likely to respond affirmatively to probationary
10 treatment;

11 (11) The imprisonment of the defendant would entail excessive hardship to himself
12 or his dependents;

13 (12) The willingness of the defendant to cooperate with law enforcement
14 authorities;

15 (13) The conduct of a youthful defendant was substantially influenced by another
16 person more mature than the defendant.

17 c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered
18 in withholding or imposing a sentence of imprisonment.

19 (2) When imposing a sentence of imprisonment the court shall consider the
20 defendant's eligibility for release under the law governing parole, including time credits
21 awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term
22 of imprisonment.

1 d. Presumption of imprisonment. The court shall deal with a person who has been
2 convicted of a crime of the first or second degree by imposing a sentence of imprisonment
3 unless, having regard to the character and condition of the defendant, it is of the opinion
4 that his imprisonment would be a serious injustice which overrides the need to deter such
5 conduct by others. Notwithstanding the provisions of subsection e. of this section, the
6 court shall deal with a person who has been convicted of theft of a motor vehicle or of the
7 unlawful taking of a motor vehicle and who has previously been convicted of either offense
8 by imposing a sentence of imprisonment unless, having regard to the character and
9 condition of the defendant, it is of the opinion that his imprisonment would be a serious
10 injustice which overrides the need to deter such
11 conduct by others.

12 e. The court shall deal with a person convicted of an offense other than a crime of
13 the first or second degree, who has not previously been convicted of an offense, without
14 imposing sentence of imprisonment unless, having regard to the nature and circumstances
15 of the offense and the history, character and condition of the defendant, it is of the opinion
16 that his imprisonment is necessary for the protection of the public under the criteria set
17 forth in subsection a., except that this subsection shall not apply if the person is convicted
18 of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking
19 of a motor vehicle; [or] eluding, a violation of N.J.S. 2C:35-5, or a violation of N.J.S.
20 2C:35-11.

21 f. Presumptive Sentences. (1) Except for the crime of murder, unless the
22 preponderance of aggravating or mitigating factors, as set forth in subsections a. and b.,

1 weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6,
2 when a court determines that a sentence of imprisonment is warranted, it shall impose
3 sentence as follows:

4 (a) To a term of 20 years for aggravated manslaughter or kidnapping pursuant to
5 paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of
6 the first degree;

7 (b) Except as provided in paragraph (a) of this subsection to a term of 15 years for
8 a crime of the first degree;

9 (c) To a term of seven years for a crime of the second degree;

10 (d) To a term of four years for a crime of the third degree; and

11 (e) To a term of nine months for a crime of the fourth degree.

12 In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall
13 specifically place on the record the aggravating factors set forth in this section which
14 justify the imposition of a minimum term.

15 Unless the preponderance of mitigating factors set forth in subsection b. weighs in
16 favor of a lower term within the limits authorized, sentences imposed pursuant to
17 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the
18 preponderance of aggravating and mitigating factors set forth in subsections a. and b.
19 weighs in favor of a higher or lower term within the limits authorized, sentences imposed
20 pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment;
21 sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
22 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive

1 term of seven years' imprisonment.

2 In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall
3 specifically place on the record the aggravating factors set forth in this section which
4 justify the imposition of a minimum term.

5 (2) In cases of convictions for crimes of the first or second degree where the court
6 is clearly convinced that the mitigating factors substantially outweigh the aggravating
7 factors and where the interest of justice demands, the court may sentence the defendant
8 to a term appropriate to a crime of one degree lower than that of the crime for which he
9 was convicted. If the court does impose sentence pursuant to this paragraph, or if the
10 court imposes a noncustodial or probationary sentence upon conviction for a crime of the
11 first or second degree, such sentence shall not become final for 10 days in order to permit
12 the appeal of such sentence by the prosecution.

13 g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in
14 considering the aggravating factors set forth in subsection a., finds the aggravating factor
15 in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall
16 specifically place on the record the mitigating factors which justify the imposition of a
17 noncustodial sentence.

18 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the
19 presumption of imprisonment as provided in subsection d. of this section shall not preclude
20 the admission of a person to the Intensive Supervision Program, established pursuant to
21 the Rules Governing the Courts of the State of New Jersey.

1 23. N.J.S. 2C:44-6.1 is amended to read as follows:

2 2C:46-4.1. Application of moneys collected; priority

3 Moneys that are collected in satisfaction of any assessment imposed pursuant to
4 section 2 of P.L. 1979, c.396 (C.2C:43-3.1), or in satisfaction of restitution or fines
5 imposed in accordance with the provisions of Title 2C of the New Jersey Statutes or with
6 the provisions of section 24 of P.L. 1982, c.77 (C.2A:4A-43), shall be applied in the
7 following order:

8 a. first, in satisfaction of all assessments imposed pursuant to section 2 of P.L.
9 1979, c.396 (C.2C:43-3.1);

10 b. second, in satisfaction of any restitution ordered;

11 c. third, in satisfaction of all assessments imposed pursuant to section 11 of P.L.
12 1993, c.220 (C.2C:43-3.2);

13 d. fourth, in satisfaction of any forensic laboratory fee assessed pursuant to N.J.S.
14 2C:35-20;

15 e. fifth, in satisfaction of any mandatory Drug Enforcement and Demand Reduction
16 penalty assessed pursuant to N.J.S. 2C:35-15; [and]

17 f. sixth, in satisfaction of any anti-drug profiteering penalty imposed pursuant to
18 section 16 of P.L. , c. (C. 2C:36A-1 et seq.) now pending before the Legislature as this
19 bill); and

20 g. seventh, in satisfaction of any fine.

21
22 24. Section 3 of P.L.1970, c.226 (C.24:21-3) is amended to read as follows:

1 3. a. The commissioner shall administer the provisions of this act and may add
2 substances to or delete or reschedule all substances enumerated in the schedules in
3 sections 5 through 8 of this act. In determining whether to control a substance, the
4 commissioner shall consider the following:

- 5 (1) Its actual or relative potential for abuse;
- 6 (2) Scientific evidence of its pharmacological effect, if known;
- 7 (3) State of current scientific knowledge regarding the substance;
- 8 (4) Its history and current pattern of abuse;
- 9 (5) The scope, duration, and significance of abuse;
- 10 (6) What, if any, risk there is to the public health;
- 11 (7) Its psychic or physiological dependence liability; and
- 12 (8) Whether the substance is an immediate precursor of a substance already
13 controlled under this article.

14 After considering the above factors, the commissioner shall make findings with
15 respect thereto and shall issue an order controlling the substance if he finds that the
16 substance has a potential for abuse.

17 b. If the commissioner designates a substance as an immediate precursor,
18 substances which are precursors of the controlled precursor shall not be subject to control
19 solely because they are precursors of the controlled precursor.

20 c. If any substance is designated, rescheduled or deleted as a controlled dangerous
21 substance under Federal law and notice thereof is given to the commissioner, the
22 commissioner shall similarly control the substance under this act after the expiration of 30

1 days from publication in the Federal Register of a final order designating a substance as
2 a controlled dangerous substance or rescheduling or deleting a substance, unless within
3 that 30-day period, the commissioner objects to inclusion, rescheduling, or deletion. In
4 that case, the commissioner shall cause to be published in the New Jersey Register and
5 made public the reasons for his objection and shall afford all interested parties an
6 opportunity to be heard. At the conclusion of any such hearing, the commissioner shall
7 publish and make public his decision, which shall be final unless the substance is
8 specifically otherwise dealt with by an act of the Legislature. Upon publication of
9 objection to inclusion or rescheduling under this act by the commissioner, control of such
10 substance under this section shall automatically be stayed until such time as the
11 commissioner makes public his final decision.

12 The Commissioner of Health may by regulation exclude any nonnarcotic substance
13 from a schedule if such substance may, under the provisions of Federal or State law, be
14 lawfully sold over the counter without a prescription, unless otherwise controlled pursuant
15 to rules and regulations promulgated by the department.

16 d. [The State Department of Health shall update and republish the schedules in
17 sections 5 through 8 on a semiannual basis for 2 years from the effective date of this act
18 and thereafter on an annual basis.] **(Deleted by amendment, P.L. , c.)(now pending**
19 **before the Legislature as this bill)**

20 (cf: P.L. 1970, c.226, s.3)

21
22 25. Section 5 of P.L. 1970, c.226 (C.24:21-5) is amended to read as follows:

5. a. Tests. The commissioner shall place a substance in Schedule I if he finds that the substance: (1) has high potential for abuse; and (2) has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

b. The controlled dangerous substances listed in this section are included in Schedule I, subject to any revision and republishing by the commissioner pursuant to section [3d] 3, and except to the extent provided in any other schedule.

c. Any of the following opiates, including their isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol
- (2) Allylprodine
- (3) Alphacetylmethadol
- (4) Alphameprodine
- (5) Alphamethadol
- (6) Benzethidine
- (7) Betacetylmethadol
- (8) Betameprodine
- (9) Betamethadol
- (10) Betaprodine
- (11) Clonitazene
- (12) Dextromoramide

- 1 (13) Dextrorphan
- 2 (14) Diampromide
- 3 (15) Diethylthiambutene
- 4 (16) Dimenoxadol
- 5 (17) Dimepheptanol
- 6 (18) Dimethylthiambutene
- 7 (19) Dioxaphetyl butyrate
- 8 (20) Dipipanone
- 9 (21) Ethylmethylthiambutene
- 10 (22) Etonitazene
- 11 (23) Etoxeridine
- 12 (24) Furethidine
- 13 (25) Hydroxypethidine
- 14 (26) Ketobemidone
- 15 (27) Levomoramide
- 16 (28) Levophenacymorphan
- 17 (29) Morpheridine
- 18 (30) Noracymethadol
- 19 (31) Norlevorphanol
- 20 (32) Normethadone
- 21 (33) Norpipanone
- 22 (34) Phenadoxone

-
- 1 (35) Phenampromide
-
- 2 (36) Phenomorphan
- 3 (37) Phenoperidine
- 4 (38) Piritramide
- 5 (39) Proheptazine
- 6 (40) Properidine
- 7 (41) Racemoramide
- 8 (42) Trimeperidine.

9 d. Any of the following narcotic substances, their salts, isomers and salts of
10 isomers, unless specifically excepted, whenever the existence of such salts, isomers and
11 salts of isomers is possible within the specific chemical designation:

- 12 (1) Acetorphine
- 13 (2) Acetylcodone
- 14 (3) Acetyldihydrocodeine
- 15 (4) Benzylmorphine
- 16 (5) Codeine methylbromide
- 17 (6) Codeine-N-Oxide
- 18 (7) Cyprenorphine
- 19 (8) Desomorphine
- 20 (9) Dihydromorphine
- 21 (10) Etorphine
- 22 (11) Heroin

- 1 (12) Hydromorphenol
- 2 (13) Methyldesorphine
- 3 (14) Methylhydromorphine
- 4 (15) Morphine methylbromide
- 5 (16) Morphine methylsulfonate
- 6 (17) Morphine-N-Oxide
- 7 (18) Myrophine
- 8 (19) Nicocodeine
- 9 (20) Nicomorphine
- 10 (21) Normorphine
- 11 (22) Phoclodine
- 12 (23) Thebacon.

13 e. Any material, compound, mixture or preparation which contains any quantity of
14 the following hallucinogenic substances, their salts, isomers and salts of isomers, unless
15 specifically excepted, whenever the existence of such salts, isomers, and salts of isomers
16 is possible within the specific chemical designation:

- 17 (1) 3,4-methylenedioxy amphetamine
- 18 (2) 5-methoxy-3,4-methylenedioxy amphetamine
- 19 (3) 3,4,5-trimethoxy amphetamine
- 20 (4) Bufotenine
- 21 (5) Diethyltryptamine
- 22 (6) Dimethyltryptamine

•
1 (7) 4-methyl-2,5-dimethoxylamphetamine

2 (8) Ibogaine

3 (9) Lysergic acid diethylamide

4 (10) Marihuana

5 (11) Mescaline

6 (12) Peyote

7 (13) N-ethyl-3-piperidyl benzilate

8 (14) N-methyl-3-piperidyl benzilate

9 (15) Psilocybin

10 (16) Psilocyn

11 (17) Tetrahydrocannabinols.

12 (cf: P.L. 1970, c.226, s.5)

13
14 26. Section 6 of P.L. 1970, c.226 (C.24:21-6) is amended to read as follows:

15 6. a. Tests. The commissioner shall place a substance in Schedule II if he finds
16 that the substance: (1) has high potential abuse; (2) has currently accepted medical use
17 in treatment in the United States, or currently accepted medical use with severe
18 restrictions; and (3) abuse may lead to severe psychic or physical dependence.

19 b. The controlled dangerous substances listed in this section are included in
20 Schedule II, subject to any revision and republishing by the commissioner pursuant to
21 section [3d] 3, and except to the extent provided in any other schedule.

22 c. Any of the following substances except those narcotic drugs listed in other

1 schedules whether produced directly or indirectly by extraction from substances of
2 vegetable origin, or independently by means of chemical synthesis, or by combination of
3 extraction and chemical synthesis:

4 (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium
5 or opiate.

6 (2) Any salt, compound, derivative, or preparation thereof which is chemically
7 equivalent or identical with any of the substances referred to in clause 1, except that these
8 substances shall not include the isoquinoline alkaloids of opium.

9 (3) Opium poppy and poppy straw.

10 (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves,
11 and any salt, compound, derivative, or preparation thereof which is chemically equivalent
12 or identical with any of these substances, except that the substances shall not include
13 decocainized coca leaves or extractions which do not contain cocaine or ecogine.

14 d. Any of the following opiates, including their isomers, esters, ethers, salts, and
15 salts of isomers, esters and ethers, unless specifically excepted, whenever the existence
16 of such isomers, esters, ethers, and salts is possible within the specific chemical
17 designation:

18 (1) Alphaprodine

19 (2) Anileridine

20 (3) Bezitramide

21 (4) Dihydrocodeine

22 (5) Diphenoxylate

- 1 (6) Fentanyl
- 2 (7) Isomethadone
- 3 (8) Levomethorphan
- 4 (9) Levorphanol
- 5 (10) Metazocine
- 6 (11) Methadone
- 7 (12) Methadone--Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
- 8 (13) Moramide--Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-
- 9 carboxylic acid
- 10 (14) Pethidine
- 11 (15) Pethidine--Intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine
- 12 (16) Pethidine--Intermediate--B, ethyl-4-phenylpiperidine-4-carboxylate
- 13 (17) Pethidine--Intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
- 14 (18) Phenazocine
- 15 (19) Piminodine
- 16 (20) Racemethorphan
- 17 (21) Racemorphan.

18 (cf: P.L. 1970, c.226, s.6)

20 27. Section 7 of P.L. 1970, c.226 (C.24:21-7) is amended to read as follows:

21 7. a. Tests. The commissioner shall place a substance in Schedule III if he finds
22 that the substance: (1) has a potential for abuse less than the substances listed in

1 Schedules I and II; (2) has currently accepted medical use in treatment in the United
2 States; and (3) abuse may lead to moderate or low physical dependence or high
3 psychological dependence.

4 b. The controlled dangerous substances listed in this section are included in
5 Schedule III, subject to any revision and republishing by the commissioner pursuant to
6 section [3d.] **3**, and except to the extent provided in any other schedule.

7 c. Any material, compound, mixture, or preparation which contains any quantity of
8 the following substances associated with a stimulant effect on the central nervous
9 system:

10 (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

11 (2) Phenmetrazine and its salts.

12 (3) Any substance which contains any quantity of methamphetamine, including its
13 salts, isomers, and salts of isomers.

14 (4) Methylphenidate.

15 d. Any material, compound, mixture, or preparation which contains any quantity of
16 the following substances having a potential for abuse associated with a depressant effect
17 on the central nervous system:

18 (1) Any substance which contains any quantity of a derivative of barbituric acid, or
19 any salt of a derivative of barbituric acid, except those substances which are specifically
20 listed in other schedules

21 (2) Chlorhexadol

22 (3) Glutethimide

-
- 1 (4) Lysergic acid
- ✓
- 2 (5) Lysergic acid amide
- 3 (6) Methyprylon
- 4 (7) Phencyclidine
- 5 (8) Sulfondiethylmethane
- 6 (9) Sulfonethylmethane
- 7 (10) Sulfonmethane.

8 e. Nalorphine.

9 f. Any material, compound, mixture, or preparation containing limited quantities of
10 any of the following narcotic drugs, or any salts thereof:

11 (1) Not more than 1.80 grams of codeine or any of its salts per 100 milliliters or not
12 more than 90 milligrams per dosage unit, with an equal or greater quantity of an
13 isoquinoline alkaloid of opium.

14 (2) Not more than 1.80 grams of codeine or any of its salts per 100 milliliters or not
15 more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients
16 in recognized therapeutic amount.

17 (3) Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100
18 milliliters or not more than 15 milligrams per dosage unit, with a four- fold or greater
19 quantity of an isoquinoline alkaloid of opium.

20 (4) Not more than 300 milligrams of dihydrocodeinone or any of its salts per 100
21 milliliters or not more than 15 milligrams per dosage unit, with one or more active,
22 nonnarcotic ingredients in recognized therapeutic amounts.

1 (5) Not more than 1.80 grams of dihydrocodeine or any of its salts per 100 milliliters
2 or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic
3 ingredients in recognized therapeutic amounts.

4 (6) Not more than 300 milligrams of ethylmorphine or any of its salts per 100
5 milliliters or not more than 15 milligrams per dosage unit, with one or more active,
6 nonnarcotic ingredients in recognized therapeutic amounts.

7 (7) Not more than 500 milligrams of opium or any of its salts per 100 milliliters or
8 per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active,
9 nonnarcotic ingredients in recognized therapeutic amounts.

10 (8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters
11 or per 100 grams with one or more active, nonnarcotic ingredients in recognized
12 therapeutic amounts.

13 g. The commissioner may by regulation except any compound, mixture, or
14 preparation containing any stimulant or depressant substance listed in subsections a. and
15 b. of this schedule from the application of all or any part of this act if the compound,
16 mixture, or preparation contains one or more active medicinal ingredients not having a
17 stimulant or depressant effect on the central nervous system; provided, that such
18 admixtures shall be included therein in such combinations, quantity, proportion, or
19 concentration as to vitiate the potential for abuse of the substances which do have a
20 stimulant or depressant effect on the central nervous system.

21 (cf: P.L.1971, c.367, s.2)

28. N.J.S. 2A:156A-29 is amended to read as follows:

2A:156A-29. Requirements for access

a. A law enforcement agency, but no other governmental entity, may require the disclosure by a provider of wire or electronic communication service **or remote computing service** of the contents of an electronic communication without notice to the subscriber or the customer if the law enforcement agency obtains a warrant.

b. Except as provided in subsection c. of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of the service to any person other than a governmental entity. This subsection shall not apply to the contents covered by subsection a. of this section.

c. A provider of wire or electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber or customer of the service, other than contents covered by subsection a. of this section, to a law enforcement agency under the following circumstances:

(1) the law enforcement agency has obtained a warrant; or

(2) **the law enforcement agency has obtained a subpoena for such disclosure under subsection (e) of this section; or**

(3) the law enforcement agency has obtained the consent of the subscriber or customer to the disclosure.

A law enforcement agency receiving records or information pursuant to this subsection is not required to provide notice to the customer or subscriber.

1 d. Notwithstanding any other provision of law to the contrary, no service provider,
2 its officers, employees, agents or other specified persons shall be liable in any civil action
3 for damages as a result of providing information, facilities or assistance in accordance with
4 the terms of a court order, [or] warrant, or a grand jury or trial subpoena under this
5 section.

6 e. A provider of wire or electronic service or remote computing service shall
7 disclose to a law enforcement agency the name, address, telephone number or other
8 subscriber number or identity, and length of service and the types of services the
9 subscriber or customer utilized, when the law enforcement agency uses a grand jury or
10 trial subpoena or any means available under subsection c. A law enforcement agency
11 receiving records or information under this subsection is not required to provide notice to
12 a subscriber or customer.

13
14 29. (new section)

15 **2C:5-8. Smuggling conveyances.**

16 a. Any person who, with the purpose of facilitating the transportation of a
17 controlled dangerous substance or controlled substance analog, property which would be
18 subject to forfeiture pursuant to chapter 64 of this title (N.J.S. 2C:64-1 et seq.), or any
19 other contraband, alters, modifies or constructs a motor vehicle so that it contains a false
20 compartment as defined in subsection c. of this section, is guilty of a crime of the third
21 degree.

22 b. Any person who, with the purpose to store, conceal, smuggle or transport a

1 controlled substance or controlled substance analog, property which would be subject to
2 forfeiture pursuant to chapter 64 of this title (N.J.S. 2C:64-1 et seq.), or any other
3 contraband, knowingly operates, exercises control over, or rides in a motor vehicle which
4 has been altered or modified or constructed to contain a false compartment as defined in
5 subsection c. of this section, is guilty of a crime of the fourth degree. It shall not be
6 necessary in any prosecution under this section for the State to prove that any controlled
7 dangerous substance, controlled substance analog, property which would be subject to
8 forfeiture pursuant to chapter 64 of this title (N.J.S. 2C:64-1 et seq.), or other contraband
9 was actually concealed within the false compartment or the motor vehicle.

10 c. The term "false compartment" means any box, container, space, or enclosure
11 that is intended for use or designed for use to conceal, hide, or otherwise prevent
12 discovery of any controlled substance, controlled substance analog, property which would
13 be subject to forfeiture pursuant to chapter 64 of this title (N.J.S. 2C:64-1 et seq.), or
14 other contraband within or attached to a vehicle, including, but not limited to, any of the
15 following:

16 (1) false, altered, or modified fuel tanks.

17 (2) original factory equipment of a vehicle that is modified, altered, or changed.

18 (3) a compartment, space, or box that is added to, or fabricated, made, or created
19 from, existing compartments, spaces, or boxes within a vehicle.

20 (4) a compartment which can be opened only by the use of controls intended by
21 the vehicle manufacturer to operate other equipment in the vehicle or by the use of hidden
22 controls or devices.

1 d. In determining whether the defendant had the purpose required in subsection a.
2 or b. of this section, the trier of fact, in addition to or as part of the proofs, may consider
3 the following factors: whether the compartment has an identification number, as required
4 by N.J.S. 10B-1 et seq.; statements by an owner or by anyone in control of or riding in
5 the vehicle concerning the use of the compartment; whether of the compartment has, at
6 any time, contained controlled dangerous substances, controlled substance analogs,
7 property which would be subject to forfeiture pursuant to chapter 64 of this title (N.J.S.
8 2C:64-1 et seq.), or other contraband; the existence of any residue of controlled
9 dangerous substances, controlled substance analogs or other contraband within the
10 compartment; direct or circumstantial evidence of the intent of an owner, or of anyone in
11 control of the vehicle, to deliver it to persons whom he knows intend to use the vehicle
12 to facilitate a violation of the criminal laws; the existence and scope of legitimate uses for
13 the compartment; and expert testimony concerning the use of the compartment. The fact
14 that the compartment does not have an identification number, as required by N.J.S. 10B-1
15 et seq., shall constitute prima facie evidence that the defendant had the purpose to
16 facilitate the transportation of, or to store, conceal, smuggle or transport, a controlled
17 dangerous substance, controlled substance analog or any other contraband. The fact that
18 an owner, or anyone in control of or riding in the vehicle has not been charged with or
19 convicted of a violation of chapter 35 of this title or any other offense, shall not be
20 relevant to a determination of whether a compartment is a false compartment.

21
22 30. N.J.S. 39:10B-1 is amended to read as follows:

1 39:10B-1. Definitions

2 As used in this act:

3 a. "Director" means the Director of the Division of Motor Vehicles in the Department of
4 Law and Public Safety.

5 b. "Major motor vehicle component part" or "component part" means the following parts
6 of any motor vehicle:

7 (1) engine;

8 (2) cowl;

9 (3) transmission;

10 (4) frame;

11 (5) each door;

12 (6) third member or rear end assembly;

13 (7) each front fender or each rear fender of a rear panel;

14 (8) front end assembly;

15 (9) rear clip; [and]

16 (10) a false compartment as defined in section 29 of P.L. , c. (now pending before the
17 Legislature as this bill) (N.J.S. 2C:5-8c); and

18 (11) any other parts of a motor vehicle designated by the director.

19 c. "Manufacturer's part number" means the original manufacturer's number located on a
20 major motor vehicle component part.

21 d. "Scrap processor" means a person who, from a fixed location, utilizes machinery and
22 equipment for processing and manufacturing iron, steel, or nonferrous metallic scrap,

1 which is or has been a motor vehicle or component part, into prepared grades for sale for
2 remelting purposes, and who does not sell the materials as motor vehicles or major motor
3 vehicle component parts.

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