

2C:35-1 to 23

LEGISLATIVE HISTORY CHECKLIST  
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2C:35-1 to 2C:35-23, "Comprehensive Drug Reform Act  
2C:36-1 to 2C:36-9; of 1986"  
24:21-22 et al

LAWS OF: 1987 CHAPTER: 106

BILL NO: A3270

SPONSOR(S): Kern and others

DATE INTRODUCED: October 20, 1986

COMMITTEE: ASSEMBLY: Judiciary  
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage  
denoted by astrisks

DATE OF PASSAGE: ASSEMBLY: February 19, 1987  
SENATE: February 26, 1987

DATE OF APPROVAL: April 23, 1987

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Attached: Assembly amendments  
adopted 2-5-87 (with statement)

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Report, mentioned in Assembly statement:

974.90 New Jersey. Legislature. Assembly. Judiciary Committee.  
N222 Commentary to the Comprehensive Drug Reform Act...November 23,  
1987d 1987. Trenton, 1987.

974.90 New Jersey. Governor Kean (1982-)  
N222 Blueprint for a drug-free New Jersey. October, 1986.  
1986b Trenton, 1986.

See newspaper clipping file, "N.J.-Narcotics-1987" in New Jersey Reference  
Department.

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ASSEMBLY, No. 3270

STATE OF NEW JERSEY

INTRODUCED OCTOBER 20, 1986

By Assemblymen KERN, LITTELL, Assemblywoman Randall, Assemblymen Felice, Koseo, Assemblywoman Donovan, Assemblymen DiGaetano, Rodney, Miller, Catrillo and Singer

AN Act revising parts of and supplementing Title 2C of the New Jersey Statutes, enacting additional chapter 35, Controlled Dangerous Substances, chapter 36, Drug Paraphernalia, chapter 36A, Conditional Discharge for Certain First Offenders, revising parts of Title 2A of the New Jersey Statutes and Title 24 of the Revised Statutes and repealing sections 19, 20, 26, 27 and 30 of P. L. 1970, c. 226, sections 1 to 5 of P. L. 1980, c. 133, P. L. 1982, c. 38, P. L. 1952, c. 121 and P. L. 1966, c. 12.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. An additional chapter, chapter 35, is added to Title 2C as  
2 follows:

CHAPTER 35. CONTROLLED DANGEROUS SUBSTANCES

- 3 N. J. S. 2C:35-1. Short Title.  
4 N. J. S. 2C:35-1.1. Declaration of Policy and Legislative Find-  
5 ings.  
6 N. J. S. 2C:35-2. Definitions.  
7 N. J. S. 2C:35-3. Leader of Narcotics Trafficking Network.  
8 N. J. S. 2C:35-4. Maintaining or Operating a Controlled Dan-  
9 gerous Substance \***[Laboratory]**\* \**Produc-*  
10 *tion Facility*\*.  
11 N. J. S. 2C:35-5. Manufacturing, Distributing or Dispensing.  
12 N. J. S. 2C:35-6. Employing a Juvenile in a Drug Distribution  
13 Scheme.  
14 N. J. S. 2C:35-7. Reserved.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendments adopted December 18, 1986.

\*\*—Assembly amendments adopted February 5, 1987.

- 15 N. J. S. 2C:35-8. Distribution to Persons Under Age 18; En-  
 16 hanced Punishment.
- 17 N. J. S. 2C:35-9. Strict Liability for Drug-Induced Deaths.
- 18 N. J. S. 2C:35-10. Possession, Use or Being Under the Influence.
- 19 N. J. S. 2C:35-11. Imitation Controlled Dangerous Substances:  
 20 Distribution, Possession, Manufacture, etc.:  
 21 Penalties.
- 22 N. J. S. 2C:35-12. Waiver of Mandatory Minimum and Extended  
 23 Terms.
- 24 N. J. S. 2C:35-13. Obtaining by Fraud.
- 25 N. J. S. 2C:35-14. Rehabilitation Program for Drug Dependent  
 26 Persons; Mandatory Commitment to Resi-  
 27 dential Treatment Facilities; Revocation.
- 28 \***[N. J. E.]** \*N. J. S.\* 2C:35-15. Mandatory Drug Enforcement  
 29 and Demand Reduction Penalties; Collec-  
 30 tion; Disposition.
- 31 N. J. S. 2C:35-16. Mandatory Forfeiture or Postponement of  
 32 Driving Privileges.
- 33 N. J. S. 2C:35-17. Exception to Physician-Patient Privilege.
- 34 N. J. S. 2C:35-18. Exemption; Burden of Proof.
- 35 N. J. S. 2C:35-19. Laboratory Certificates; Use; Admission into  
 36 Evidence; Objections.
- 37 N. J. S. 2C:35-20. Forensic Laboratory Fees.
- 38 N. J. S. 2C:35-21. Seizure in Violation of Chapter; Pretrial  
 39 Destruction of Bulk Seizures of Controlled  
 40 Dangerous Substances.
- 41 N. J. S. 2C:35-22. Severability.
- 42 N. J. S. 2C:35-23. Pending Cases.

1 2C:35-1. Short Title.

2 This act shall be known and may be cited as the "Comprehensive  
 3 Drug Reform Act of 1986."

1 2C:35-1.1. Declaration of policy and legislative findings.

2 The Legislature hereby finds and declares to be the public policy  
 3 of this State, the following:

4 a. By enactment of the "New Jersey Code of Criminal Justice,"

5 N. J. S. 2C:1-1 et seq., the Legislature recognized the need for the  
 6 comprehensive reevaluation, revision, consolidation and codifica-  
 7 tion of our criminal laws, and the need to ensure a uniform, con-  
 8 sistent and predictable system for the sentencing of convicted  
 9 offenders, focusing principally on the seriousness and degree of  
 10 dangerousness inherent in a particular offense. In enacting the  
 11 sentencing provisions of the penal code, the Legislature recognized  
 12 that the imposition of a uniform, consistent and predictable

13 sentence for a given offense is an essential prerequisite to any  
14 rational deterrent scheme designed ultimately to reduce the in-  
15 cidence of crime.

16 b. Despite the impressive efforts and gains of our law enforce-  
17 ment agencies, the unlawful use, manufacture and distribution of  
18 controlled dangerous substances continues to pose a serious and  
19 pervasive threat to the health, safety and welfare of the citizens  
20 of this State. New Jersey continues to experience an unacceptably  
21 high rate of drug-related crime, and continues to serve as a conduit  
22 for the illegal trafficking of drugs to and from other jurisdictions.  
23 In addition to the harm suffered by the victims of drug abuse and  
24 drug-related crime, the incidence of such offenses is directly  
25 related to the rate of other violent and non-violent crimes, includ-  
26 ing murder, assault, robbery, theft, burglary and organized crim-  
27 inal activities. For this reason, enhanced and coordinated efforts  
28 designed specifically to curtail drug-related offenses will lead  
29 inexorably to a reduction in the rate of crime generally, and is  
30 therefore decidedly in the public interest.

31 c. In order to be effective, the battle against drug abuse and  
32 drug-related crime must be waged aggressively at every level along  
33 the drug distribution chain, but in particular, our criminal laws  
34 must target for expedited prosecution and enhanced punishment  
35 those repeat drug offenders and upper echelon members of orga-  
36 nized narcotics trafficking networks who pose the greatest danger  
37 to society. In order to ensure the most efficient and effective  
38 dedication of limited investigative, prosecutorial, judicial and  
39 correctional resources, it is the policy of this State to distinguish  
40 between drug offenders based on the seriousness of the offense.  
41 considering principally the nature, quantity and purity of the con-  
42 trolled substance involved, and the role of the actor in the overal  
43 drug distribution network. It is the intention of the Legislature  
44 to provide for the strict punishment, deterrence and incapacitation  
45 of the most culpable and dangerous drug offenders, and to facili-  
46 tate where feasible the rehabilitation of drug dependent persons so  
47 as ultimately to reduce the demand for illegal controlled dangerous  
48 substances and the incidence of drug-related crime. It is also the  
49 policy of this State to afford special protection to children from  
50 the perils of drug trafficking, to ensure that all schools and areas  
51 adjacent to schools are kept free from drug distribution activities,  
52 and to provide especially stern punishment for those drug offenders  
53 who operate on or near schools and school buses, who distribute  
54 to juveniles, or who employ juveniles in a drug distribution scheme.  
55 In addition, our criminal laws and sentencing practices must be

56 reexamined and amended so as to minimize pretrial delay, thereby  
 57 to ensure the prompt disposition of all drug-related criminal  
 58 charges and the prompt imposition of fair and certain punishment.

59 d. Under the current drug laws, there are inadequate sentencing  
 60 guidelines with which consistently to identify the most serious  
 61 offenders and offenses and to guard against sentencing disparity  
 62 and the resulting depreciation of the deterrent thrust of the crim-  
 63 inal law. In order to protect the public interest, and so as to deter,  
 64 disrupt and eliminate the operation of organized drug trafficking  
 65 networks, it is necessary to undertake a comprehensive reexamina-  
 66 tion of our controlled dangerous substances laws, procedures and  
 67 sentencing practices. The transfer of the provisions of the "New  
 68 Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226  
 69 (C. 24:21-1 et seq.) into the penal code which is accomplished  
 70 herein, along with the amendments and supplements thereto, will  
 71 better ensure that the most culpable drug offenders will be subject  
 72 to swift prosecutions and strict, consistently imposed criminal  
 73 sanctions.

1 2C:35-2. Definitions.

2 As used in this chapter:

3 "Administer" means the direct application of a controlled dan-  
 4 gerous substance or controlled substance analog, whether by in-  
 5 jection, inhalation, ingestion, or any other means, to the body of  
 6 a patient or research subject by: (1) a practitioner (or, in his  
 7 presence, by his lawfully authorized agent), or (2) the patient  
 8 or research subject at the lawful direction and in the presence  
 9 of the practitioner.

10 "Agent" means an authorized person who acts on behalf of or  
 11 at the direction of a manufacturer, distributor, or dispenser but  
 12 does not include a common or contract carrier, public warehouse-  
 13 man, or employee thereof.

14 "Controlled dangerous substance" means a drug, substance, or  
 15 immediate precursor in Schedules I through V. The term shall  
 16 not include distilled spirits, wine, malt beverages, as those terms  
 17 are defined or used in R. S. 33:1-1 et seq., or tobacco and tobacco  
 18 products. The term, wherever it appears in any law or administra-  
 19 tive regulation of this State, shall include controlled substance  
 20 analogs.

21 "Controlled substance analog" means a substance that has a  
 22 chemical structure substantially similar to that of a controlled  
 23 dangerous substance \***[or]**\* \*and\* that was specifically designed  
 24 to produce an effect substantially similar to that of a controlled  
 25 dangerous substance. The term shall not include a substance manu-

26 factored or distributed in conformance with the provisions of an  
27 approved new drug application or an exemption for investiga-  
28 tional use within the meaning of section 505 of the "Federal Food,  
29 Drug and Cosmetic Act," 52 Stat. 1052 (21 U. S. C. 355).

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

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

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

48 "Dispenser" means a practitioner who dispenses.

49 "Distribute" means to deliver other than by administering or  
50 dispensing a controlled dangerous substance or **\*[controlled]\***  
51 **\*controlled\*** substance analog. "Distributor" means a person who  
52 distributes.

53 "Drugs" means (a) substances recognized in the official United  
54 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
55 United States, or official National Formulary, or any supplement to  
56 any of them; and (b) substances intended for use in the diagnosis,  
57 cure, mitigation, treatment, or prevention of disease in man or other  
58 animals; and (c) substances (other than food) intended to affect  
59 the structure or any function of the body of man or other animals;  
60 and (d) substances intended for use as a component of any article  
61 specified in subsections (a), (b) and (c) of this section; but does  
62 not include devices or their components, parts or accessories.

63 "Drug dependent person" means a person who is using a con-  
64 trolled dangerous substance or controlled substance analog and  
65 who is in a state of psychic or physical dependence, or both, arising  
66 from the use of that controlled dangerous substance or controlled  
67 substance analog on a continuous basis. Drug dependence is char-  
68 acterized by behavioral and other responses, including but not

69 limited to a strong compulsion to take the substance on a re-  
70 curring basis in order to experience its psychic effects, or to avoid  
71 the discomfort of its absence.

72 "Hashish" means the resin extracted from any part of the plant  
73 Genus Cannabis L. and any compound, manufacture, salt, deriva-  
74 tive, mixture, or preparation of such resin.

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

91 "Marihuana" means all parts of the plant Genus Cannabis L.,  
92 whether growing or not; the seeds thereof, and every compound,  
93 manufacture, salt, derivative, mixture, or preparation of such plant  
94 or its seeds, except those containing resin extracted from such  
95 plant; but shall not include the mature stalks of such plant, fiber  
96 produced from such stalks, oil or cake made from the seeds of such  
97 plant, any other compound, manufacture, salt, derivative, mixture,  
98 or preparation of such mature stalks, fiber, oil, or cake, or the  
99 sterilized seed of such plant which is incapable of germination.

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

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

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

107 (c) A substance (and any compound, manufacture, salt, deriv-  
108 ative, or preparation thereof) which is chemically identical with  
109 any of the substances referred to in subsections (a) and (b),  
110 except that the words "narcotic drug" as used in this act shall

111 not include decocainized coca leaves or extracts of coca leaves,  
112 which extracts do not contain cocaine or ecogine.

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

121 "Opium poppy" means the plant of the species *Papaver somni-*  
122 *ferum* L., except the seeds thereof.

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

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

127 "Practitioner" means a physician, dentist, veterinarian, scien-  
128 tific investigator, laboratory, pharmacy, hospital or other person  
129 licensed, registered, or otherwise permitted to distribute, dispense,  
130 conduct research with respect to, or administer a controlled dan-  
131 gerous substance or controlled substance analog in the course of  
132 professional practice or research in this State.

133 (a) "Physician" means a physician authorized by law to prac-  
134 tice medicine in this or any other state and any other person  
135 authorized by law to treat sick and injured human beings in this  
136 or any other state and

137 (b) "Veterinarian" means a veterinarian authorized by law to  
138 practice veterinary medicine in his State.

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

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

146 (e) "Laboratory" means a laboratory to be entrusted with the  
147 custody of narcotic drugs and the use of controlled dangerous  
148 substances or controlled substance analogs for scientific, experi-  
149 mental and medical purposes and for purposes of instruction  
150 approved by the State Department of Health.

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



154 "Immediate precursor" means a substance which the State  
 155 Department of Health has found to be and by regulation desig-  
 156 nates as being the principal compound commonly used or produced  
 157 primarily for use, and which is an immediate chemical intermediary  
 158 used or likely to be used in the manufacture of a controlled  
 159 dangerous substance or controlled substance analog, the control of  
 160 which is necessary to prevent, curtail, or limit such manufacture.

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

164 "Schedules I, II, III, IV, and V" are the schedules set forth in  
 165 sections 5 through 8 of P. L. 1970, c. 226 (C. 24:21-5 through  
 166 24:21-6) and in section 4 of P. L. 1971, c. 3 (C. 24:21-8.1) and as  
 167 modified by any regulations issued by the Commissioner of Health  
 168 pursuant to his authority as provided in section 3 of P. L. 1970,  
 169 c. 226 (C. 24:21-3).

170 "State" means the State of New Jersey.

171 "Ultimate user" means a person who lawfully possesses a con-  
 172 trolled dangerous substance or controlled substance analog for his  
 173 own use or for the use of a member of his household or for ad-  
 174 ministration to an animal owned by him or by a member of his  
 175 household.

1 2C:35-3. Leader of Narcotics Trafficking Network.

2 A person is a leader of a narcotics trafficking network if he  
 3 \***[purposely]**\* conspires with others as an organizer, supervisor,  
 4 financier or manager, to engage for profit in a scheme or course  
 5 of conduct to unlawfully manufacture, distribute, dispense, bring  
 6 into or transport in this State methamphetamine, lysergic acid  
 7 diethylamide, phencyclidine or any controlled dangerous substance  
 8 classified in Schedule I or II, or any controlled substance analog  
 9 thereof. Leader of narcotics trafficking network is a crime of the  
 10 first degree and upon conviction thereof, except as may be pro-  
 11 vided by N. J. S. 2C:35-12, a person shall be sentenced to an ordi-  
 12 nary term of life imprisonment during which the person must serve  
 13 25 years before being eligible for parole. Notwithstanding the pro-  
 14 visions of subsection a. of N. J. S. 2C:43-3, the court may also  
 15 impose a fine not to exceed \$500,000.00 or five times the street  
 16 value of the controlled dangerous substance or controlled sub-  
 17 stance analog involved, whichever is greater.

18 Notwithstanding \***[paragraph (2) of subsection a. of N. J. S.**  
 19 **2C:1-8a. (2)]**\* *the provisions of N. J. S. 2C:1-8\**, a conviction of  
 20 leader of narcotics trafficking network shall not merge with the

21 conviction for any offense which is the object of the conspiracy.  
 22 Nothing contained in this section shall prohibit the court from  
 23 imposing an extended term pursuant to N. J. S. 2C:43-7; nor shall  
 24 this section be construed in any way to preclude or limit the  
 25 prosecution or conviction of any person for conspiracy under  
 26 N. J. S. 2C:5-2, or any prosecution or conviction under N. J. S.  
 27 2C:35-4 (maintaining or operating a CDS **\*[laboratory]\*** *\*pro-*  
 28 *duction facility\**, N. J. S. 2C:35-5 (manufacturing, distributing or  
 29 dispensing), N. J. S. 2C:35-6 (employing a juvenile in a drug  
 30 distribution scheme), N. J. S. 2C:35-9 (strict liability for drug  
 31 induced death), N. J. S. 2C:41-2 (racketeering activities) or sub-  
 32 section g. of **\*[ N. J. S. 2C:5-2g]\*** *\*N. J. S. 2C:5-2\** (leader of  
 33 organized crime).

34 It shall not be necessary in any prosecution under this section  
 35 for the State to prove that any intended profit was actually  
 36 realized. The trier of fact may infer that a particular scheme or  
 37 course of conduct was undertaken for profit from all of the  
 38 attending circumstances, including but not limited to the number  
 39 of persons involved in the scheme or course of conduct, the actor's  
 40 net worth and his expenditures in relation to his legitimate sources  
 41 of income, the amount or purity of the specified controlled dan-  
 42 gerous substance or controlled substance analog involved, or the  
 43 amount of cash or currency involved.

44 It shall not be a defense to a prosecution under this section  
 45 that such controlled dangerous substance or controlled substance  
 46 analog was brought into or transported in this State solely for  
 47 ultimate distribution or dispensing in another jurisdiction; nor  
 48 shall it be a defense that any profit was intended to be made in  
 49 another jurisdiction.

1 2C:35-4. Maintaining or Operating a Controlled Dangerous  
 2 Substance **\*[Laboratory]\*** *\*Production Facility\**.

3 Except as authorized by P. L. 1970, c. 226 (C. 24:21-1 et seq.),  
 4 any person who knowingly maintains or operates any premises,  
 5 place or facility used for the manufacture of methamphetamine,  
 6 lysergic acid diethylamide, phenethylamine or any substance classi-  
 7 fied as a narcotic drug in Schedule I or II, or the analog of any  
 8 such substance, or any person who knowingly aids, promotes,  
 9 finances or otherwise participates in the maintenance or opera-  
 10 tions of such premises, place or facility, is guilty of a crime of the  
 11 first degree and shall, except as provided in N. J. S. 2C:35-12, be  
 12 sentenced to a term of imprisonment which shall include the  
 13 imposition of a minimum term which shall be fixed at, or between,

14 one-third and one-half of the sentence imposed, during which the  
15 defendant shall be ineligible for parole. Notwithstanding the  
16 provisions of subsection a. of N. J. S. 2C:43-3, the court may also  
17 impose a fine not to exceed \$500,000.00 or five times the street  
18 value of all controlled dangerous substances or controlled sub-  
19 stance analogs at any time manufactured or stored at such  
20 premises, place or facility.

1 2C:35-5. Manufacturing, Distributing or Dispensing.

2 a. Except as authorized by P. L. 1970, c. 225 (C. 24:21-1 et seq.),  
3 it shall be unlawful for any person knowingly or purposely:

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

8 (2) To create, distribute, or possess or have under his control  
9 with intent to distribute, a counterfeit controlled dangerous sub-  
10 stance.

11 b. Any person who **\*[vioaltes]\*** *\*violates\** subsection a. with  
12 respect to:

13 (1) Heroin, or its analog, or coca leaves and any salt, com-  
14 pound, derivative, or preparation of coca leaves, and any salt, com-  
15 pound, derivative, or preparation thereof which is chemically  
16 equivalent or identical with any of these substances, or analogs,  
17 except that the substances shall not include decoainized coca  
18 leaves or extractions which do not contain cocaine or ecogine, in  
19 a quantity of five ounces or more including any adulterants or  
20 dilutants, provided there are included at least 3.5 grams of the  
21 pure free base drug, is guilty of a crime of the first degree. The  
22 defendant shall, except as provided in N. J. S. 2C:35-12, be sen-  
23 tenced to a term of imprisonment by the court. The term of im-  
24 prisonment shall include the imposition of a minimum term which  
25 shall be fixed at, or between, one-third and one-half of the sentence  
26 imposed, during which the defendant shall be ineligible for parole.  
27 Notwithstanding the provisions of subsection a. of N. J. S. 2C:43-3,  
28 a fine of up to \$300,000.00 may be imposed;

29 (2) A substance referred to in paragraph (1) of this subsection,  
30 in a quantity of one-half ounce or more but less than five ounces,  
31 including any adulterants or dilutants, provided there are in-  
32 cluded at least 3.5 grams of the pure free base drug, is guilty of  
33 a crime of the second degree;

34 (3) A substance referred to in paragraph (1) of this subsection  
35 in a quantity less than one-half ounce including any adulterants or

36 dilutants, or in a quantity of one-half ounce or more with there  
37 being included less than 3.5 grams of the pure free base drug or  
38 where the amount of the pure free base is undetermined, is guilty  
39 of a crime of the third degree except that, notwithstanding the  
40 provisions of subsection b. of N. J. S. 2C:43-3, a fine of up to  
41 \$50,000.00 may be imposed;

42 (4) A substance classified as a narcotic drug in Schedule I or II  
43 other than those specifically covered in this section, or the analog  
44 of any such substance, in a quantity of one ounce or more includ-  
45 ing any adulterant or dilutants, provided there are included at  
46 least 3.5 grams of the pure free base drug, is guilty of a crime  
47 of the second degree;

48 (5) A substance classified as a narcotic drug in Schedule I or  
49 II other than those specifically covered in this section, or the  
50 analog of any such substance, in a quantity of less than one ounce  
51 including any adulterants or dilutants, or in a quantity of one  
52 ounce or more with there being included less than 3.5 grams of  
53 the pure free base drug or where the amount of the pure free  
54 base drug is undetermined, is guilty of a crime of the third degree  
55 except that, notwithstanding the provisions of subsection b. of  
56 N. J. S. 2C:43-3, a fine of up to \$50,000.00 may be imposed;

57 (6) Lysergie acid diethylamide, or its analog, in a quantity of  
58 100 milligrams or more including any adulterants or dilutants,  
59 or phencyclidine, or its analog, in a quantity of 10 grams or more  
60 including any adulterants or dilutants, is guilty of a crime of the  
61 first degree. Except as provided in 2C:35-12, the court shall im-  
62 pose a term of imprisonment which shall include the imposition  
63 of a minimum term, fixed at, or between, one-third and one-half  
64 of the sentence imposed by the court, during which the defendant  
65 shall be ineligible for parole. Notwithstanding the provisions of  
66 subsection a. of N. J. S. 2C:43-3, a fine of up to \$300,000.00 may  
67 be imposed;

68 (7) Lysergie acid diethylamide, or its analog, in a quantity of  
69 less than 100 milligrams including any adulterants or dilutants,  
70 or where the amount is undetermined, or phencyclidine, or its  
71 analog, in a quantity of less than 10 grams including any adulter-  
72 ants or dilutants, or where the amount is undetermined, is guilty  
73 of a crime of the second degree;

74 (8) Methamphetamine, or its analog, in a quantity of one ounce  
75 or more including any adulterants or dilutants, provided there  
76 are included at least 3.5 grams of the pure free base drug, is  
77 guilty of a crime of the second degree;

78 (9) Methamphetamine, or its analog, in a quantity of less than  
 79 one ounce including any adulterants or dilutants, or in a quantity  
 80 of one ounce or more with there being included less than 3.5 grams  
 81 of the pure free base drug or where the amount of the pure free  
 82 base drug is undetermined, is guilty of a crime of the third degree  
 83 except that, notwithstanding the provisions of subsection b. of  
 84 N. J. S. 2C:43-3, a fine of up to \$50,000.00 may be imposed;

85 (10) Marijuana in a quantity of five pounds or more including  
 86 any adulterants and dilutants, or hashish in a quantity of one  
 87 pound or more including any adulterants and dilutants, is guilty  
 88 of a crime of the second degree;

89 (11) Marijuana in a quantity of one ounce or more but less  
 90 than five pounds including any adulterants and dilutants, or  
 91 hashish in a quantity of five grams or more but less than one  
 92 pound including any adulterants and dilutants, is guilty of a  
 93 crime of the third degree except that, notwithstanding the pro-  
 94 visions of subsection b. of \*N. J. S.\* 2C:43-3, a fine of up to  
 95 \$15,000.00 may be imposed;

96 (12) Marijuana in a quantity of less than one ounce including  
 97 any adulterants and dilutants, or hashish in a quantity of less  
 98 than five grams including any adulterants and dilutants, is guilty  
 99 of a crime of the fourth degree;

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

105 (14) Any Schedule V substance, or its analog, is guilty of a  
 106 crime of the fourth degree except that, notwithstanding the pro-  
 107 visions of subsection b. of N. J. S. 2C:43-3, a fine of up to  
 108 \*~~[\$10,000.00]~~\* \*\$15,000.00\* may be imposed.

109 c. Where the degree of the offense for violation of this section  
 110 depends on the quantity of the substance, the quantity involved  
 111 shall be determined by the trier of fact. The quantity involved  
 112 in individual acts of *\*manufacturing,\* distribution\*, dispensing or*  
 113 *possessing with intent to distribute\** may be aggregated in deter-  
 114 mining the grade of the offense, whether distribution *\*or dis-*  
 115 *persing\** is to the same person or several persons\*. *provided that*  
 116 *each individual act of distribution was committed within the*  
 117 *applicable statute of limitations\*.*

1 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

2 Any person being at least 18 years of age who knowingly uses.

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

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

19 Nothing in this section shall be construed to preclude or limit  
 20 a prosecution or conviction for a violation of any offense defined  
 21 in this chapter pursuant to N. J. S. 2C:2-6 or any other provision  
 22 of law governing an actor's liability for the conduct of another,  
 23 and, notwithstanding the provisions of N. J. S. 2C:1-8 or any  
 24 other provision of law, a conviction arising under this section shall  
 25 not merge with a conviction for a violation of N. J. S. 2C:35-3  
 26 (leader of narcotics trafficking network), N. J. S. 2C:35-4 (main-  
 27 taining or operating a CDS \***laboratory**)\* \**production facility*\*),  
 28 N. J. S. 2C:35-5 (manufacturing, distributing or dispensing), or  
 29 N. J. S. 2C:35-9 (strict liability for drug induced death).

1 2C:35-8. Distribution to Persons Under Age 18; Enhanced  
 2 Punishment.

3 Upon the application of the prosecuting attorney, any person  
 4 being at least 18 years of age who has been convicted for violating  
 5 subsection a. of N. J. S. 2C:35-5 \*or N. J. S. 2C:35-7 (now pending  
 6 before the Legislature as Senate Bill No. 2449 or Assembly Bill No.  
 7 3072 of 1986)\* by distributing a controlled dangerous substance or  
 8 controlled substance analog to a \**pregnant female or a*\* person 17  
 9 years of age or younger \***who is at least three years his junior**)\*  
 10 shall, except as provided in N. J. S. 2C:35-12, be subject to twice  
 11 the term of imprisonment, fine and penalty, including twice the  
 12 term of parole ineligibility, if any, authorized or required to be  
 13 imposed by subsection b. of N. J. S. 2C:35-5 \*N. J. S. 2C:35-7 (now  
 14 pending before the Legislature as Senate Bill No. 2449 or Assembly  
 15 Bill No. 3072 of 1986)\* or any other provision of this title.

16 The court shall not impose more than one enhanced sentence pur-  
 17 suant to this section. If the defendant is convicted of more than  
 18 one offense which is otherwise subject to enhanced punishment pur-  
 19 suant to this section, the court shall impose enhanced punishment  
 20 based upon the most serious such offense for which the defendant  
 21 was convicted, or, where applicable, the offense which mandates  
 22 the imposition of the longest term of parole ineligibility. Not-  
 23 withstanding the provisions of paragraph (2) of subsection a. of  
 24 2C:44-5, nothing herein shall prevent the court from also imposing  
 25 an extended term pursuant to subsection e. of N. J. S. 2C:43-6.  
 26 **\*[In imposing sentence]** *\*The court shall not impose an enhanced*  
 27 *sentence pursuant to this section unless the prosecutor has estab-*  
 28 *lished the ground therefor by a preponderance of the evidence at a*  
 29 *hearing, which may occur at the time of sentencing. In making its*  
 30 *finding\**, the court shall take judicial notice of any evidence, testi-  
 31 mony or information adduced at the trial, plea hearing or other  
 32 court proceedings, and shall also consider the presentence report  
 33 and any other relevant information. It shall be no defense to the  
 34 imposition of enhanced punishment pursuant to this section that  
 35 the defendant mistakenly believed that the recipient of the sub-  
 36 stance was 18 years of age or older, **\*[or less than three years his**  
 37 **junior,]** even if **\*[such]** *\*the\** mistaken belief was reasonable.  
 38 *\*It shall not be a defense to the imposition of enhanced punish-*  
 39 *ment pursuant to this section that the defendant did not know that*  
 40 *the recipient was pregnant.\**

1 2C:35-9. Strict Liability for Drug-Induced Deaths.

2 **\*a.\*** Any person who manufactures, distributes or dispenses meth-  
 3 amphetamine, lysergic acid diethylamide, phencyclidine or any  
 4 other controlled dangerous substance classified in Schedules I or  
 5 II, or any controlled substance analog thereof, in violation of sub-  
 6 section a. of N. J. S. 2C:35-5, **\*[and which results in the death of**  
 7 **another human being, is strictly liable for such death, and is guilty**  
 8 **of a crime of the first degree.** For the purposes of this section, a  
 9 death is the result of the defendant's act of manufacturing, dis-  
 10 tributing or dispensing when such conduct is an antecedent but for  
 11 which the death would not have occurred, the death occurred after  
 12 the injection, inhalation or ingestion of the substance manufac-  
 13 tured, distributed or dispensed by the defendant, and the result is  
 14 not to remote or dependent on the volitional act of a person other  
 15 than the decedent as to have a just bearing on the defendant's lia-  
 16 bility or the gravity of his offense. Notwithstanding the provisions  
 17 of subsection e. of N. J. S. 2C:2-3, it shall not be necessary for the  
 18 State to establish that the death was a probable consequence of

19 the defendant's conduct. Similarly, it shall not be a defense to a  
 20 prosecution under this section that the death was accidental in its  
 21 occurrence, that it was the result of negligence or recklessness, or  
 22 that it was the result of a volitional act of the decedent or the  
 23 volitional act of another to which the decedent consented. The  
 24 length of time which has elapsed between the initial act of manu-  
 25 facturing, distributing or dispensing, the subsequent act of injec-  
 26 tion, inhalation or ingestion of the substance, and the death of the  
 27 decedent, shall not be a bar to prosecution for a violation of this  
 28 section.]\* *\*is strictly liable for a death which results from the*  
 29 *injection, inhalation or ingestion of that substance, and is guilty of*  
 30 *a crime of the first degree.\**

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

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

38 (2) *The death was not:*

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

41 (b) *too dependent upon conduct of another person which was*  
 42 *unrelated to the injection, inhalation or ingestion of the substance*  
 43 *or its effect as to have a just bearing on the defendant's liability.*

44 c. *It shall not be a defense to a prosecution under this section*  
 45 *that the decedent contributed to his own death by his purposeful,*  
 46 *knowing, reckless or negligent injection, inhalation or ingestion of*  
 47 *the substance, or by his consenting to the administration of the*  
 48 *substance by another.\**

49 *\*d.\* Nothing in this section shall be construed to preclude or*  
 50 *limit any prosecution for \***[murder or aggravated manslaughter]**\**  
 51 *\*homicide\*. Notwithstanding the provisions of N. J. S. 2C:1-8 or*  
 52 *any other provision of law, a conviction arising under this section*  
 53 *shall not merge with a conviction for leader of narcotics trafficking*  
 54 *network, maintaining or operating a controlled dangerous substance*  
 55 *\***[laboratory]**\* *production facility\*, or for unlawfully manufac-*  
 56 *turing, distributing, dispensing or possessing with intent to manu-*  
 57 *facture, distribute or dispense the controlled dangerous substance*  
 58 *or controlled substance analog which resulted in the death.**

1 2C:35-10. Possession, Use or Being Under the Influence.

2 a. It is unlawful for any person, knowingly or purposely, to  
 3 obtain, or to possess, actually or constructively, a controlled  
 4 dangerous substance or controlled substance analog, unless the



5 substance was obtained directly, or pursuant to a valid prescrip-  
6 tion or order form from a practitioner, while acting in the course  
7 of his professional practice, or except as otherwise authorized by  
8 P. L. 1970, c. 226 (C. 24:21-1 et seq.). Any person who violates  
9 this section with respect to:

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

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

19 (3) Possession of more than **\*[25]\*** *\*50\** grams of marijuana,  
20 including any adulterants or dilutants, or more than five grams of  
21 hashish is guilty of a crime of the fourth degree, except that,  
22 notwithstanding the provisions of subsection b. of N. J. S. 2C:43-3,  
23 a fine of up to \$15,000.00 may be imposed; or

24 (4) Possession of **\*[25]\*** *\*50\** grams or less of marijuana, in-  
25 cluding any adulterants or dilutants, or five grams or less of  
26 hashish is a disorderly person.

27 Any person who violates this subsection or the offense defined in  
28 subsection b. of this section while on any property used for school  
29 purposes which is owned by any elementary or secondary school  
30 or school board, or within 1,000 feet of any school property or  
31 school bus, or while on any school bus, and who is not sentenced  
32 to a term of imprisonment, shall, in addition to any other sentence  
33 which the court may impose, be required to perform not less than  
34 100 hours of community service.

35 b. Any person who uses or who is under the influence of any  
36 controlled dangerous substance, or its analog, for a purpose other  
37 than the treatment of sickness or injury as *\*lawfully\** prescribed  
38 or administered by a physician is a disorderly person.

39 In a prosecution under this subsection, it shall not be necessary  
40 for the State to prove that the accused did use or was under the  
41 influence of any specific drug, but it shall be sufficient for a con-  
42 viction under this subsection for the State to prove that the accused  
43 did use or was under the influence of some controlled dangerous  
44 substance, counterfeit controlled dangerous substance, or con-  
45 trolled substance analog, by proving that the accused did mani-  
46 fest physical and physiological symptoms or reactions caused by  
47 the use of any controlled dangerous substance or controlled sub-  
48 stance analog.

1 2C:35-11. \***[Limitation]**\* *imitation*\* controlled dangerous sub-  
2 stances; distribution, possession, manufacture, etc.; penalties.

3 a. It is unlawful for any person to distribute or to possess or  
4 have under his control with intent to distribute any substance  
5 which is not a controlled dangerous substance or controlled sub-  
6 stance analog:

7 (1) Upon the express or implied representation to the recipient  
8 that the substance is a controlled dangerous substance or con-  
9 trolled substance analog; or

10 (2) Upon the express or implied representation to the recipient  
11 that the substance is of such nature, appearance or effect that the  
12 recipient will be able to distribute or use the substance as a con-  
13 trolled dangerous substance or controlled substance analog; or

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

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

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

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

26 (c) The physical appearance of the substance is substantially the  
27 same as that of a specific controlled dangerous substance or con-  
28 trolled substance analog.

29 b. It is unlawful for any person to manufacture, compound,  
30 encapsulate, package or imprint any substance which is not a con-  
31 trolled dangerous substance, controlled substance analog or any  
32 combination of such substances, other than a prescription drug,  
33 with the purpose that it resemble or duplicate the physical ap-  
34 pearance of the finished form, package, label or imprint of a  
35 controlled dangerous substance or controlled substance analog.

36 c. In any prosecution under this section, it shall not be a defense  
37 that the defendant mistakenly believed a substance to be a con-  
38 trolled dangerous substance or controlled substance analog.

39 d. A violation of this section is a crime of the third degree,  
40 except that, notwithstanding the provisions of subsection b. of  
41 N. J. S. 2C:43-3, a fine of up to \$100,000.00 may be imposed.

42 e. The provisions of this section shall not be applicable to (1)

43 practitioners or agents, servants and employees of practitioners  
 44 dispensing or administering noncontrolled substances to patients  
 45 on behalf of practitioners in the normal course of their business or  
 46 professional practice; and (2) persons who manufacture, process,  
 47 package, distribute or sell noncontrolled substances to practitioners  
 48 for use as placebos in the normal course of their business, pro-  
 49 fessional practice or research or for use in Federal Food and Drug  
 50 Administration investigational new drug trials.

1 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

2 Whenever an offense defined in this chapter specifies a manda-  
 3 tory sentence of imprisonment which includes a minimum term  
 4 during which the defendant shall be ineligible for parole, or a man-  
 5 datory extended term which includes a period of parole ineligibility,  
 6 the court upon conviction shall impose the mandatory sentence un-  
 7 less the defendant has pleaded guilty pursuant to a negotiated  
 8 agreement or, in cases resulting in trial, the defendant and the  
 9 prosecution have entered into a post-conviction agreement, which  
 10 provides for a lesser sentence or period of parole ineligibility. The  
 11 negotiated plea on post-conviction agreement may provide for a  
 12 specified term of imprisonment within the range of ordinary or  
 13 extended sentences authorized by law, a specified period of parole  
 14 ineligibility, a specified fine, or other disposition. In that event,  
 15 the court at sentencing shall not impose a lesser term of im-  
 16 prisonment, period of parole ineligibility or fine than that ex-  
 17 pressly provided for under the terms of the plea or post-convic-  
 18 tion agreement.

1 2C:35-13. Obtaining by Fraud.

2 It shall be unlawful for any person to acquire or obtain posses-  
 3 sion of a controlled dangerous substance or controlled substance  
 4 analog by misrepresentation, fraud, forgery, deception or subter-  
 5 fuge. It shall be unlawful for any person to acquire or obtain  
 6 possession of a forged or fraudulent certificate of destruction  
 7 required pursuant to N. J. S. 2C:35-21. A violation of this section  
 8 shall be a crime of the third degree except that, notwithstanding  
 9 the provisions of subsection b. of N. J. S. 2C:43-3, a fine of up to  
 10 \$30,000.00 may be imposed. Nothing in this section shall be deemed  
 11 to preclude or limit a prosecution for theft as defined in chapter  
 12 20 of this title.

1 2C:35-14. Rehabilitation Program for Drug Dependent Persons;  
 2 Mandatory Commitment to Residential Treatment Facilities;  
 3 Revocation.

4 a. Notwithstanding the presumption of incarceration pursuant  
 5 to the provisions of subsection d. of N. J. S. 2C:44-1, and except  
 6 as provided in subsection b. of this section, whenever a drug de-

7 pendent person is convicted of an offense under N. J. S. 2C:35-5,  
8 N. J. S. 2C:35-6, \***[or]**\* *N. J. S. 2C:35-7 (now pending before the*  
9 *Legislature as Senate Bill No. 2119 or Assembly Bill No. 3072 of*  
10 *1986)*,\* N. J. S. 2C:35-10, \**N. J. S. 2C:35-11. or N. J. S. 2C:35-13.\**  
11 other than a crime of the first degree, the court, upon notice to the  
12 prosecutor, may, on motion of the defendant and where the court  
13 finds that no danger to the community will result and that the  
14 placement will serve to benefit the defendant by serving to correct  
15 his or her dependency on controlled substances, place the defendant  
16 on probation, which shall be for a term of five years. As a condition  
17 of that probation, the court shall order the defendant to enter a  
18 drug rehabilitation program, subject to such other reasonable  
19 terms and conditions as may be required by the court and by law,  
20 pursuant to N. J. S. 2C:45-1, and which shall include periodic  
21 urine testing for drug usage throughout the period of probation.

22 b. Except upon the joint application of the defendant and the  
23 prosecuting attorney, no person convicted of an offense under  
24 N. J. S. 2C:35-6 \*or N. J. S. 2C:35-7 (now pending before the  
25 *Legislature as Senate Bill No. 2119 or Assembly Bill No. 3072 of*  
26 *1986)*\*, or who has been previously convicted of an offense under  
27 subsection a. of N. J. S. 2C:35-5 or a similar offense under any  
28 other law of this State, any other state or the United States, shall  
29 be eligible for sentence in accordance with this section.

30 e. A person convicted of a crime of the second degree \*or of a  
31 *violation of N. J. S. 2C:35-7 (now pending before the Legislature*  
32 *as Senate Bili No. 2119 or Assembly Bill No. 3072 of 1986)*\* who is  
33 placed in a drug rehabilitation program under this section shall  
34 be committed to the custody of a residential treatment facility.  
35 The term of such commitment shall be for a minimum of six  
36 months, or until the defendant successfully completes the resi-  
37 dential treatment program, whichever is later, except that no per-  
38 son shall remain in the custody of a residential treatment facility  
39 for a period in excess of five years. Upon successful completion  
40 of the required residential treatment program, the defendant shall  
41 complete the period of probation, as authorized by subsection a.  
42 of this section, with credit for time served in the residential treat-  
43 ment facility and for any imprisonment served as a condiiton of  
44 probation. A person placed into a residential treatment facility  
45 under this subsection shall be deemed to be subject to official  
46 detention for the purposes of N. J. S. 2C:29-5 (escape).

47 d. Upon a first violation of any term or condition of the proba-  
48 tion authorized by this section or of any term or condition of the  
49 applicable drug rehabilitation program, the court in its discretion

50 may, and upon a subsequent violation shall, revoke the defendant's  
 51 probation and impose on the defendant any sentence that might  
 52 have been imposed originally for the offense of which he was  
 53 convicted. In that event, the defendant shall receive credit for any  
 54 time served pursuant to N. J. S. 2C:45-1, and any time spent  
 55 by the defendant in a residential treatment facility. An action  
 56 for a violation under this subsection may be brought by a proba-  
 57 tion officer or prosecutor. Notwithstanding any other provision of  
 58 this subsection, if a defendant at any time refuses to undergo urine  
 59 testing for drug usage as provided in subsection a. of this section,  
 60 the court shall, upon the application of the probation officer  
 61 or prosecutor, revoke the defendant's probation. Failure to suc-  
 62 cessfully complete the required drug rehabilitation program shall  
 63 constitute a violation of the defendant's probation. A defendant  
 64 who fails to comply with the terms of his probation pursuant to  
 65 this section and is thereafter sentenced to imprisonment in accor-  
 66 dance with this subsection shall be ineligible for entry into the  
 67 Intensive Supervision Program.

68 e. The court, as a condition of its order, and after considering  
 69 the defendant's financial resources, may at any time require the  
 70 defendant to pay for all or some portion of the costs associated  
 71 with his or her participation in any rehabilitation program or  
 72 period of residential treatment authorized by this section.

1 2C:35-15. Mandatory Drug Enforcement and Demand Reduc-  
 2 tion Penalties; Collection; Disposition \*; *Suspension*.\*

3 a. In addition to any disposition authorized by this title, the  
 4 provisions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43), or any  
 5 other statute indicating the dispositions that can be ordered for  
 6 an adjudication of delinquency, every person convicted of or adju-  
 7 dicated delinquent for a violation of any offense defined in this  
 8 chapter or chapter 36 of this title, and every person placed in  
 9 supervisory treatment pursuant to N. J. S. 2C:43-12 who was  
 10 charged with any offense defined in this chapter or chapter 36 of  
 11 this title, shall be assessed for each such offense a penalty fixed at:

- 12 (1) \$3,000.00 in the case of a crime of the first degree;  
 13 (2) \$2,000.00 in the case of a crime of the second degree;  
 14 (3) \$1,000.00 in the case of a crime of the third degree;  
 15 (4) \$750.00 in the case of a crime of the fourth degree;  
 16 (5) \$500.00 in the case of a disorderly persons or petty disor-  
 17 derly persons offense.

18 All penalties provided for in this section shall be in addition  
 19 to and not in lieu of any fine authorized by law or required to be  
 20 imposed pursuant to the provisions of N. J. S. 2C:35-12.

21 b. All penalties provided for in this section shall be collected as  
 22 provided for collection of fines and restitutions in section 3 of  
 23 1979, c. 396 (C. 2C:46-4), and shall be forwarded to the Depart-  
 24 ment of Law and Public Safety as provided in subsection c. of  
 25 this section.

26 c. All moneys collected pursuant to this section shall be for-  
 27 warded to the Department of Law and Public Safety to be de-  
 28 posited in a nonlapsing revolving fund to be known as the "Drug  
 29 Enforcement and Demand Reduction Fund."

30 d. All moneys, including fines and restitution, collected from a  
 31 person convicted of or adjudicated delinquent for an offense or  
 32 placed in supervisory treatment pursuant to N. J. S. 2C:43-12  
 33 shall be applied first to any Violent Crimes Compensation Board  
 34 penalty imposed pursuant to section 2 of P. L. 1979, c. 396 (C.  
 35 2C:43-3.1), and shall next be applied to any forensic laboratory  
 36 fee assessed pursuant to N. J. S. 2C:35-20, and shall next be  
 37 applied to any penalty imposed pursuant to this section.

38 *\*e. The court may suspend the collection of a penalty imposed*  
 39 *pursuant to this section provided the defendant agrees to enter a*  
 40 *residential drug rehabilitation program approved by the court and*  
 41 *further provided that the defendant agrees to pay for all or some*  
 42 *portion of the costs associated with the rehabilitation program. In*  
 43 *this case, the collection of a penalty imposed pursuant to this*  
 44 *section shall be suspended during the defendant's participation in*  
 45 *the approved rehabilitation program. Upon successful completion*  
 46 *of the program, the defendant may apply to the court to reduce the*  
 47 *penalty imposed pursuant to this section by any amount actually*  
 48 *paid by the defendant for his participation in the program. The*  
 49 *court shall not reduce the penalty pursuant to this subsection*  
 50 *unless the defendant establishes to the satisfaction of the court*  
 51 *that he has successfully completed the rehabilitation program. If*  
 52 *the defendant's participation is for any reason terminated before*  
 53 *his successful completion of the rehabilitation program, collection*  
 54 *of the entire penalty imposed pursuant to this section shall be*  
 55 *enforced. Nothing in this section shall be deemed to affect or*  
 56 *suspend any other criminal sanctions imposed pursuant to this*  
 57 *chapter or chapter 36 of this title.\**

1 2C:35-16. Mandatory Forfeiture or Postponement of Driving  
 2 Privileges.

3 In addition to any disposition authorized by this title, the pro-  
 4 visions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43), or any  
 5 other statute indicating the dispositions that can be ordered for an  
 6 adjudication of delinquency, and notwithstanding the provisions of

7 subsection c. of N. J. S. 2C:43-2 every person convicted of or  
 8 adjudicated delinquent for a violation of any offense defined in this  
 9 chapter or chapter 36 of this title shall forthwith forfeit his right  
 10 to operate a motor vehicle over the highways of this State for a  
 11 period to be fixed by the court at not less than six months or more  
 12 than two years, or, after the expiration of six months, until the  
 13 privilege shall be restored to him in the discretion of the Director  
 14 of the Division of Motor Vehicles upon application to and after  
 15 certification by a physician to the director that the person is not a  
 16 drug dependent person within the meaning of this chapter. In the  
 17 case of any person who at the time of the imposition of sentence  
 18 is less than 17 years of age, the period of the suspension of driving  
 19 privileges authorized herein shall not commence to run until the  
 20 defendant reaches the age of 17. The court before whom any per-  
 21 son is convicted of or adjudicated delinquent for a violation of any  
 22 offense defined in this chapter or chapter 36 of this title shall cause  
 23 a report of \***[such]**\* *\*the\** conviction or adjudication to be filed  
 24 with the Director of the Division of Motor Vehicles.

1 2C:35-17. Exception to physician-patient privilege.

2 Information communicated to a practitioner in an effort un-  
 3 lawfully to obtain or procure the administration of a controlled  
 4 dangerous substance or controlled substance analog shall not be a  
 5 privileged communication.

1 2C:35-18. Exemption: Burden of Proof.

2 a. It is an affirmative defense to any criminal action arising  
 3 under this chapter or chapter 36 that the defendant is the autho-  
 4 rized holder of an appropriate registration or order form or is  
 5 otherwise exempted or excepted from criminal liability by virtue  
 6 of any provision of P. L. 1970, c. 226 (C. 24:21-1 et seq.). The  
 7 affirmative defense established herein shall be proved by the de-  
 8 fendant by a preponderance of the evidence. *\*It shall not be neces-  
 9 sary for the State to negate any exemption set forth in this act  
 10 or in any provision of Title 24 of the Revised Statutes in any  
 11 complaint, information, indictment or other pleading or in any  
 12 trial, hearing or other proceeding under this act.\**

13 b. No liability shall be imposed by virtue of this chapter upon  
 14 any duly authorized State officer, engaged in the enforcement  
 15 of any law or municipal ordinance relating to controlled dangerous  
 16 substances *\*or controlled substance analogs\**.

1 2C:35-19. Laboratory Certificates: Use; Admission into Evi-  
 2 dence; Objections.

3 a. The Attorney General of New Jersey may designate State  
 4 Forensic Laboratories. These laboratories shall be staffed by em-

5 ployees of this State or any of the State's political subdivisions.  
6 **\*[A]** *\*In a proceeding for a violation of the provisions of chap-*  
7 *ters 35 and 36 of this title, a* law enforcement agency may submit  
8 to one of these laboratories any substance, including, but not  
9 limited to, any substance believed to be a controlled dangerous  
10 substance or controlled substance analog thereof, or any poisons,  
11 drugs or medicines or human body tissues or fluids. The laboratory  
12 shall chemically analyze these substances.

13 b. Upon the request of any law enforcement agency, the labora-  
14 tory employee performing the chemical analysis shall prepare a  
15 certificate. This employee shall sign the certificate under oath and  
16 shall include in the certificate an attestation as to the result of the  
17 analysis. The presentation of this certificate to a court by any  
18 party to a proceeding shall be evidence that all of the require-  
19 ments and provisions of this section have been complied with. This  
20 certificate shall be sworn to before a notary public or other person  
21 empowered by law to take oaths and shall contain a statement  
22 establishing the following: the type of analysis performed; the  
23 result achieved; any conclusions reached based upon that result;  
24 that the subscriber is the person who performed the analysis  
25 and made the conclusions; the subscriber's training or experience  
26 to perform the analysis; and the nature and condition of the  
27 equipment used. When properly executed, the certificate shall,  
28 subject to subsection c. of this section and notwithstanding any  
29 other provision of law, be admissible evidence of the composition,  
30 quality, and quantity of the substance submitted to the laboratory  
31 for analysis, and the court shall take judicial notice of the signa-  
32 ture of the person performing the analysis and of the fact that  
33 he is that person.

34 c. Whenever a party intends to proffer in a criminal or quasi-  
35 criminal proceeding, a certificate executed pursuant to this section,  
36 notice of an intent to proffer that certificate and all reports relating  
37 to the analysis in question, including a copy of the certificate, shall  
38 be conveyed to the opposing party or parties at least 20 days  
39 before the proceeding begins. An opposing party who intends to  
40 object to the admission into evidence of a certificate shall give  
41 notice of objection and the grounds for the objection within 10  
42 days upon receiving the adversary's notice of intent to proffer the  
43 certificate. Whenever a notice of objection is filed, admissibility  
44 of the certificate shall be determined not later than two days before  
45 the beginning of the trial. A proffered certificate shall be admitted  
46 in evidence unless it appears from the notice of objection and  
47 specific grounds for that objection that the composition, quality,  
48 or quantity of the substance submitted to the laboratory for



49 analysis will be contested at trial. A failure to comply with the  
50 time limitations regarding the notice of objection required by this  
51 section shall constitute a waiver of any objections to the admission  
52 of the certificate. The time limitations set forth in this section  
53 \***[may be relaxed, in the discretion of the court, only upon a**  
54 **showing of good cause]**\* *shall not be relaxed except upon a show-*  
55 *ing of good cause\*.*

1 2C:35-20. Forensic Laboratory Fees.

2 a. In addition to any disposition made pursuant to the provi-  
3 sions of N. J. S. 2C:43-2, any person convicted of an offense  
4 under this chapter shall be assessed a criminal laboratory analysis  
5 fee of \$50.00 for each **\*[such]\*** offense for which he was convicted.  
6 Any person who is placed in supervisory treatment pursuant to  
7 N. J. S. 2C:43-12 shall be assessed a criminal laboratory analysis  
8 fee of \$50.00 for each such offense for which he was charged.

9 b. In addition to any other disposition made pursuant to the  
10 provisions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43) or  
11 any other statute indicating the dispositions that can be ordered  
12 for adjudications of delinquency, any juvenile adjudicated de-  
13 linquent for a violation of this chapter, shall be assessed a labora-  
14 tory analysis fee of \$25.00 for each **\*[such]\*** adjudication.

15 c. All criminal laboratory analysis fees provided for in this  
16 section shall be collected as provided for the collection of fines  
17 and restitutions in N. J. S. 2C:46-4, and shall be forwarded to  
18 the appropriate forensic laboratory fund as provided in subsec-  
19 tion d. of this section.

20 d. Forensic laboratory funds shall be established as follows:

21 (1) Any county which maintains a publicly funded forensic  
22 laboratory that regularly employs at least one forensic chemist  
23 engaged in the analysis of controlled dangerous substances may  
24 establish a county forensic laboratory fund within the office of  
25 the county treasurer.

26 (2) A separate account shall be established in the State Treasury  
27 and shall be designated the "State Forensic Laboratory Fund."

28 e. The \$50.00 analysis fee provided for in subsection a. of this  
29 section shall be forwarded to the office of the county treasurer  
30 of the county that performed the laboratory analysis if that  
31 county has established a county forensic laboratory fund or,  
32 where appropriate, to the State forensic laboratory that per-  
33 formed the analysis. If the county has not established a forensic  
34 laboratory fund, then the \$50.00 analysis fee shall be forwarded  
35 to the State forensic laboratory fund with the State Treasury.  
36 The county treasurer and State Treasurer may retain an amount

37 of this money equal to the administrative costs incurred pursuant  
38 to carrying out their respective responsibilities under this section.

39 f. Moneys deposited in the county forensic laboratory fund  
40 created pursuant to paragraph (1) of subsection c. of this section  
41 shall be in addition to any allocations pursuant to existing law  
42 and shall be designated for the exclusive use of the county  
43 forensic laboratory. These uses may include, but are not limited  
44 to, the following:

45 (1) costs incurred in providing microscopic and chemical  
46 analyses for controlled substances in connection with criminal  
47 investigations conducted within this State;

48 (2) purchase and maintenance of equipment for use in per-  
49 forming analyses; and

50 (3) continuing education, training and scientific development  
51 of forensic scientists regularly employed by these laboratories.

52 g. Moneys deposited in the State forensic laboratory fund  
53 created pursuant to paragraph (2) of subsection c. of this section  
54 shall be used by State forensic laboratories that the Attorney  
55 General designates pursuant to N. J. S. 2C:35-19, and the Divi-  
56 sion of State Police in the Department of Law and Public Safety.  
57 These moneys shall be in addition to any allocations pursuant  
58 to existing law and shall be designated for the exclusive use of  
59 State forensic facilities. These uses may include those enumerated  
60 in subsection e. of this section.

1 2C:35-21. Seizure in Violation of Chapter; Pretrial Destruction  
2 of Bulk Seizures of Controlled Dangerous Substances.

3 Any controlled dangerous substance or controlled substance  
4 analog seized in violation of this chapter shall be subject to the  
5 forfeiture provisions of chapter 64 of this title. In any case in-  
6 volving a bulk seizure of \*a\* controlled dangerous substance or \*a\*  
7 controlled substance analog, a prosecuting authority, upon notice  
8 to defense counsel, may apply to the trial court for an order to  
9 destroy all or some portion of the seized substance. The State  
10 or county forensic laboratory that analyzes the substance shall  
11 make a photographic record thereof.

12 In the event that the defendant objects to the application to  
13 destroy all or some portion of the controlled dangerous substance  
14 or controlled substance analog, defense counsel shall within 20  
15 days of receiving notice from the prosecuting authority serve  
16 notice of objection upon the trial judge and the prosecuting  
17 authority. The notice of objection shall include the reasons there-  
18 for. Failure to comply with the time limitations regarding the

19 notice of objection required by this section shall constitute a  
 20 waiver of any objections to the destruction of all or some portion  
 21 of the substance.

22 The decision to order the destruction of "[such]" "the" substance  
 23 shall be vested in the sound discretion of the trial court. Prior to  
 24 the issuance of any order authorizing the destruction of all or some  
 25 portion of the controlled dangerous substance or controlled sub-  
 26 stance analog, and subject to reasonable supervision by laboratory  
 27 or agency personnel, defense counsel shall be afforded an oppor-  
 28 tunity to inspect or test the substance.

29 The State or county forensic laboratory authorized to destroy  
 30 all or some portion of the controlled dangerous substance or con-  
 31 trolled substance analog shall file with the court a certificate  
 32 under oath attesting to the date on which the substance was  
 33 destroyed, the quantity of the substance destroyed, and the method  
 34 used to destroy the substance.

35 Notwithstanding any other provision of law, the photographic  
 36 record made in accordance with the provisions of this section,  
 37 upon proper authentication, may be introduced as evidence in  
 38 any court.

1 2C:35-22. Severability.

2 If any one or more sections, clauses, sentences or parts of this  
 3 chapter shall for any reason be questioned in any court, and shall  
 4 be adjudged unconstitutional or invalid, the judgment shall not  
 5 affect, impair or invalidate the remaining provisions thereof, but  
 6 shall be confined in its operation to the specific provisions so  
 7 held unconstitutional or invalid.

1 2C:35-23. Pending Cases.

2 a. Except as provided in subsections b. and c. of this section,  
 3 any violation of a provision of P. L. 1970, c. 226 (C. 24:21-1 et  
 4 seq.) which is amended or deleted by this act, and which violation  
 5 was committed prior to the effective date of this chapter, shall  
 6 be governed by the prior law, which is continued in effect for  
 7 that purpose, as if this act were not in force.

8 b. Any offense defined in this act and committed on or after  
 9 the effective date shall be governed by the provisions of this act.  
 10 For the purposes of this section, an offense was committed after  
 11 the effective date of this act if any of the elements of the offense  
 12 occurred subsequent thereto.

13 c. In any case pending on or initiated after the effective date  
 14 of this act involving an offense defined herein and committed  
 15 prior to such date:

16 (1) N. J. S. 2C:35-19 and N. J. S. 2C:35-21 shall govern,  
17 insofar as they are justly applicable and their application does  
18 not introduce confusion or delay;

19 (2) The court, with the consent of the defendant, may impose  
20 sentence under the provisions of this chapter applicable to the  
21 offense and the offender;

22 (3) A defendant who, on the effective date of this act, has not  
23 made application for supervisory treatment under section 27 of  
24 P. L. 1970, c. 226 (C. 24:21-27) shall not be eligible for super-  
25 visory treatment except pursuant to the provisions of 2C:43-12  
26 and as provided in Chapter 36A of this title.

1 2. An additional chapter, chapter 36, is added to Title 2C as  
2 follow:

#### CHAPTER 36 DRUG PARAPHERNALIA

- 3 N. J. S. 2C:36-1. Drug Paraphernalia, Defined; Determination.  
4 N. J. S. 2C:36-2. Use or Possession with Intent to Use, Disorderly  
5 Persons Offense.  
6 N. J. S. 2C:36-3. Distribute, Dispense or Possession with Intent  
7 to Distribute or Manufacture, Crime of Fourth  
8 Degree.  
9 N. J. S. 2C:36-4. Advertising to Promote Sale, Crime of Fourth  
10 Degree.  
11 N. J. S. 2C:36-5. Delivering Drug Paraphernalia to Person Under  
12 18 Years of Age, Crime of Third Degree.  
13 N. J. S. 2C:36-6. Possession or Distribution of Hypodermic Sy-  
14 ringe or Needle.  
15 N. J. S. 2C:36-7. Seizure in Violation of Act.  
16 N. J. S. 2C:36-8. Severability.  
17 N. J. S. 2C:36-9. Pending Cases.

1 2C:36-1. Drug paraphernalia, defined; determination.

2 As used in this act, "drug paraphernalia" means all equipment,  
3 products and materials of any kind which are used or intended for  
4 use in planting, propagating, cultivating, growing, harvesting,  
5 manufacturing, compounding, converting, producing, processing,  
6 preparing, testing, analyzing, packaging, repackaging, storing, con-  
7 taining, concealing, ingesting, inhaling, or otherwise introducing  
8 into the human body a controlled dangerous substance or con-  
9 trolled substance analogs in violation of the provisions of chapter  
10 35 of this title. It shall include, but not be limited to: a. kits used  
11 or intended for use in planting, propagating, cultivating, growing  
12 or harvesting of any species of plant which is a controlled danger-  
13 ous substance or from which a controlled dangerous substance can

14 be derived; b. kits used or intended for use in manufacturing,  
15 compounding, converting, producing, processing, or preparing  
16 controlled dangerous substances or controlled substance analogs;  
17 c. isomerization devices used or intended for use in increasing the  
18 potency of any species of plant which is a controlled dangerous  
19 substance; d. testing equipment used or intended for use identify-  
20 ing, or in analyzing the strength, effectiveness or purity of con-  
21 trolled dangerous substances or controlled substance analogs; e.  
22 scales and balances used or intended for use in weighing or mea-  
23 suring controlled dangerous substances or controlled substance  
24 analogs; f. \***[dilutants]**\* \**dilutants*\* and adulterants, such as qui-  
25 nine hydrochloride, mannitol, mannite, dextrose and lactose, used  
26 or intended for use in cutting controlled dangerous substances or  
27 controlled substance analogs; g. separation gins and sifters used or  
28 intended for use in removing twigs and seeds from, or in otherwise  
29 cleaning or refining, marihuana; h. blenders, bowls, containers,  
30 spoons and mixing devices used or intended for use in compounding  
31 controlled dangerous substances or controlled substance analogs;  
32 i. capsules, balloons, envelopes and other containers used or in-  
33 tended for use in packaging small quantities of controlled dangerous  
34 substances or controlled substance analogs; j. containers and other  
35 objects used or intended for use in storing or concealing controlled  
36 dangerous substances or controlled substance analogs; k. objects  
37 used or intended for use in ingesting, inhaling, or otherwise intro-  
38 ducing marihuana, cocaine, hashish, or hashish oil into the human  
39 body, such as (1) metal, wooden, acrylic, glass, stone, plastic, or  
40 ceramic pipes with or without screens, permanent screens, hashish  
41 heads, or punctured metal bowls; (2) water pipes; (3) carburetion  
42 tubes and devices; (4) smoking and carburetion masks; (5) roach  
43 clips, meaning objects used to hold burning material, such as a mari-  
44 huana cigarette, that has become too small or too short to be held  
45 in the hand; (6) miniature cocaine spoons, and cocaine vials; (7)  
46 chamber pipes; (8) carburetor pipes; (9) electric pipes; (10) air-  
47 driven pipes; (11) chillums; (12) bongs; and (13) ice pipes or  
48 chillers.

49 In determining whether or not an object is drug paraphernalia,  
50 the trier of fact, in addition to or as part of the proofs, may con-  
51 sider the following factors: a. statements by an owner or by any-  
52 one in control of the object concerning its use; b. the proximity  
53 of the object of illegally possessed controlled dangerous substances  
54 or controlled substance analogs; c. the existence of any residue of  
55 illegally possessed controlled dangerous substances or controlled  
56 substance analogs on the object; d. direct or circumstantial

57 evidence of the intent of an owner, or of anyone in control of the  
 58 object, to deliver it to persons whom he knows intend to use the  
 59 object to facilitate a violation of this act; the innocence of an  
 60 owner, or of anyone in control of the object, as to a direct violation  
 61 of this act shall not prevent a finding that the object is intended  
 62 for use as drug paraphernalia; e. instructions, oral or written, pro-  
 63 vided with the object concerning its use; f. descriptive materials  
 64 accompanying the object which explain or depict its use; g. na-  
 65 tional or local advertising whose purpose the person knows or  
 66 should know is to promote the sale of objects intended for use as  
 67 drug paraphernalia; h. the manner in which the object is displayed  
 68 for sale; i. the existence and scope of legitimate uses for the object  
 69 in the community; and j. expert testimony concerning its use.

1 2C:36-2. Use or possession with intent to use, disorderly per-  
 2 sons offense.

3 It shall be unlawful for any person to use, or to possess with  
 4 intent to use, drug paraphernalia to plant, propagate, cultivate,  
 5 grow, harvest, manufacture, compound, convert, produce, process,  
 6 prepare, test, analyze, pack, repack, store, contain, conceal, ingest,  
 7 inhale, or otherwise introduce into the human body a controlled  
 8 dangerous substance or controlled substance analog in violation  
 9 of the provisions of chapter 35 of this title. Any person who vio-  
 10 lates this section is guilty of a disorderly persons offense.

1 2C:36-3. Distribute, dispense or possession with intent to dis-  
 2 tribute or manufacture, crime or fourth degree.

3 It shall be unlawful for any person to distribute or dispense, or  
 4 possess with intent to distribute or dispense, or manufacture with  
 5 intent to distribute or dispense, drug paraphernalia, knowing that  
 6 it will be used to plant, propagate, cultivate, grow, harvest, manu-  
 7 facture, compound, convert, produce, process, prepare, test,  
 8 analyze, pack, repack, store, contain, conceal, ingest, inhale or  
 9 otherwise introduce into the human body a controlled dangerous  
 10 substance or controlled substance analog in violation of the pro-  
 11 visions of chapter 35 of this title. Any person who violates this  
 12 section commits a crime of the fourth degree.

1 2C:36-4. Advertising to promote sale, crime of fourth degree.

2 It shall be unlawful for any person to place in any newspaper,  
 3 magazine, handbill, or other publication any advertisement,  
 4 \***[know-]**\* \*know. g\* that the purpose of the advertisement in  
 5 whole or in part, is to promote the sale of objects intended for use  
 6 as drug paraphernalia. Any person who violates this section  
 7 commits a crime of the fourth degree.

1 2C:36-5. Delivering drug paraphernalia to person under 18  
2 years of age, crime of third degree.

3 Any person 18 years of age or over who violates N. J. S. 2C:36-3  
4 by delivering drug paraphernalia to a person under 18 years of  
5 age "[who is at least three years his junior]" commits a crime of  
6 the third degree.

1 2C:36-6. Possession or distribution of hypodermic syringe or  
2 needle.

3 Except as otherwise authorized by law, it shall be unlawful for  
4 a person to have under his control or possess with intent to use a  
5 hypodermic syringe, hypodermic needle or any other instrument  
6 adapted for the use of "a" controlled dangerous substance or "a"  
7 controlled substance analog as defined in chapter 35 of this title or  
8 to sell, furnish or give to any person such syringe, needle or in-  
9 strument. Any person who violates this section is guilty of a dis-  
10 orderly persons offense.

1 2C:36-7. Seizure in violation of Chapter.

2 Any drug paraphernalia, hypodermic syringe or needle seized  
3 in violation of this chapter shall be subject to the forfeiture pro-  
4 visions of Chapter 64 of this title.

1 2C:36-8. Severability.

2 If any provision of this chapter or the application thereof to any  
3 person or circumstance are held invalid, the invalidity shall not  
4 affect other provisions or applications of the sections which can  
5 be given effect without the invalid provision or application, and  
6 to this end the provisions of this chapter are severable.

1 2C:36-9. Pending Cases.

2 Notwithstanding any other provision of this act, the provisions  
3 of P. L. 1970, c. 226 (C. 24:21-1 et seq.) shall remain in full force  
4 and effect as to any offense committed prior to the effective date  
5 of this act.

1 3. An additional chapter, chapter 36A is added to Title 2C as  
2 follows:

#### CHAPTER 36A CONDITIONAL DISCHARGE FOR CERTAIN FIRST OFFENDERS

3 N. J. S. 2C:36A-1. Conditional discharge for certain first of-  
4 fenses; expunging of records. a. Whenever any person who has  
5 not previously been convicted of any offense under section 20 of  
6 P. L. 1970, c. 226 (C. 24:21-20), or a disorderly persons or petty  
7 disorderly persons offense defined in chapter 35 or 36 of this title  
8 or, subsequent to the effective date of this title, under any law of  
9 the United States, this State or any other state relating to mari-  
10 huana, or stimulant, depressant, or hallucinogenic drugs, is

11 charged with or convicted of any disorderly persons offense or  
12 petty disorderly persons offense under chapter 35 or 36 of this  
13 title, the court upon notice to the prosecutor and subject to sub-  
14 section c. of this section, may on motion of the defendant of the  
15 court;

16 (1) Suspend further proceedings and with the consent of the  
17 person after reference to the State Bureau of Identification crim-  
18 inal history record information files, place him under supervisory  
19 treatment upon such reasonable terms and conditions as it may  
20 require; \***[of]**\* \*or\*

21 (2) After plea of guilty or finding of guilty, and without enter-  
22 ing a judgment of conviction, and with the consent of the person  
23 after proper reference to the State Bureau of Identification crim-  
24 inal history record information files, place him on supervisory  
25 treatment upon reasonable terms and conditions as it may require,  
26 or as otherwise provided by law.

27 b. In no event shall the court require as a term or condition of  
28 supervisory treatment under this section, referral to any resi-  
29 dential treatment facility for a period exceeding the maximum  
30 period of confinement prescribed by law for the offense for which  
31 the individual has been charged or convicted, nor shall any term  
32 of supervisory treatment imposed under this subsection exceed a  
33 period of three years. Upon violation of a term or condition of  
34 supervisory treatment the court may enter a judgment of convic-  
35 tion and proceed as otherwise provided, or where there has been  
36 no plea of guilty or finding of guilty, resume proceedings. Upon  
37 fulfillment of the terms and conditions of supervisory treatment  
38 the court shall terminate the supervisory treatment and dismiss  
39 the proceedings against him. Termination of supervisory treat-  
40 ment and dismissal under this section shall be without court  
41 adjudication of guilt and shall not be deemed a conviction for pur-  
42 poses of disqualifications or disabilities, if any, imposed by law  
43 upon conviction of a crime or disorderly persons offense but shall  
44 be reported by the clerk of the court to the State Bureau of Identi-  
45 fication criminal history record information files. Termination of  
46 supervisory treatment and dismissal under this section may occur  
47 only once with respect to any person. Imposition of supervisory  
48 treatment under this section shall not be deemed a conviction for  
49 the purposes of determining whether a second or subsequent of-  
50 fense has occurred under section 29 of P. L. 1970, c. 226 (C.  
51 24:21-29), chapter 35 or 36 of this title or any law of this State.

52 c. Proceedings under this section shall not be available to any  
53 defendant unless the court in its discretion concludes that:



54 (1) The defendant's continued presence in the community, or  
 55 in a civil treatment center or program, will not pose a danger to  
 56 the community; or

57 (2) That the terms and conditions of supervisory treatment will  
 58 be adequate to protect the public and will benefit the defendant  
 59 by serving to correct any dependence on or use of controlled sub-  
 60 stances which he may manifest; and

61 (3) The person has not previously received supervisory treat-  
 62 ment under section 27 of P. L. 1970, c. 226 (C. 24:21-27)\*, *N. J. S.*  
 63 *2C:43-12,\** or the provisions of this chapter.

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

2 2C:5-2. Conspiracy. a. Definition of conspiracy. A person is  
 3 guilty of conspiracy with another person or persons to commit a  
 4 crime if with the purpose of promoting or facilitating its commis-  
 5 sion he:

6 (1) Agrees with such other person or persons that they or one  
 7 or more of them will engage in conduct which constitutes such  
 8 crime or an attempt or solicitation to commit such crime; or

9 (2) Agrees to aid such other person or persons in the planning  
 10 or commission of such crime or of an attempt or solicitation to  
 11 commit such crime.

12 b. Scope of conspiratorial relationship. If a person guilty of  
 13 conspiracy, as defined by subsection a. of this section, knows that  
 14 a person with whom he conspires to commit a crime has conspired  
 15 with another person or persons to commit the same crime, he is  
 16 guilty of conspiring with such other person or persons, whether  
 17 or not he knows their identity, to commit such crime.

18 c. Conspiracy with multiple objectives. If a person conspires  
 19 to commit a number of crimes, he is guilty of only one conspiracy  
 20 so long as such multiple crimes are the object of the same agree-  
 21 ment or continuous conspiratorial relationship. It shall not be a  
 22 defense to a charge under this section that one or more of the  
 23 objectives of the conspiracy was not criminal; provided that one  
 24 or more of its objectives or the means of promoting or facilitating  
 25 an objective of the conspiracy is criminal.

26 d. Overt act. No person may be convicted of conspiracy to commit  
 27 a crime other than a crime of the first or second degree or distribu-  
 28 tion or possession with intent to distribute a controlled dangerous  
 29 substance [as defined under the "New Jersey Controlled Dan-  
 30 gerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.),]  
 31 or controlled substance analog as defined in chapter 35 of this title,  
 32 unless an overt act in pursuance of such conspiracy is proved to  
 33 have been done by him or by a person with whom he conspired.

34 e. Renunciation of purpose . It is an affirmative defense which the  
35 actor must prove by a preponderance of the evidence that he, after  
36 conspiring to commit a crime, informed the authority of the  
37 existence of the conspiracy and his participation therein, and  
38 thwarted or caused to be thwarted the commission of any offense  
39 in furtherance of the conspiracy, under circumstances manifesting  
40 a complete and voluntary renunciation of criminal purpose as  
41 defined in 2C:5-1d.; provided, however, that an attempt as defined  
42 in 2C:5-1 shall not be considered an offense for purposes of  
43 renunciation under this subsection.

44 f. Duration of conspiracy. For the purpose of section 2C:1-6d.:

45 (1) Conspiracy is a continuing course of conduct which termi-  
46 nates when the crime or crimes which are its object are committed  
47 or the agreement that they be committed is abandoned by the  
48 defendant and by those with whom he conspired; and

49 (2) Such abandonment is presumed with respect to a crime other  
50 than one of the first or second degree if neither the defendant nor  
51 anyone with whom he conspired does any overt act in pursuance  
52 of the conspiracy during the applicable period of limitation; and

53 (3) If an individual abandons the agreement, the conspiracy is  
54 terminated as to him only if and when he advises those with whom  
55 he conspired of his abandonment or he informs the law enforce-  
56 ment authorities of the existence of the conspiracy and of his  
57 participation therein.

58 g. Leader of organized crime. A person is a leader of organized  
59 crime if he purposefully conspires with others as an organizer,  
60 supervisor or manager, to commit a continuing series of crimes  
61 which constitute a pattern of racketeering activity under the pro-  
62 visions of N. J. S. 2C:41-1, provided, however, that notwithstand-  
63 ing 2C:1-8a. (2), a conviction of leader of organized crime shall  
64 not merge with the conviction of any other crime which consti-  
65 tutes racketeering activity under 2C:41-1.

1 5. N. J. S. 2C:20-2 is amended as follows:

2 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
3 Applicable to Theft Generally. a. Consolidation of Theft Offenses.  
4 Conduct denominated theft in this chapter constitutes a single  
5 offense, but each episode or transaction may be the subject of a  
6 separate prosecution and conviction. A charge of theft may be  
7 supported by evidence that it was committed in any manner that  
8 would be theft under this chapter, notwithstanding the specification  
9 of a different manner in the indictment, or accusation, subject only  
10 to the power of the court to ensure fair trial by granting a bill of  
11 particulars, discovery, a continuance, or other appropriate relief

12 where the conduct of the defense would be prejudiced by lack of  
13 fair notice or by surprise.

14 b. Grading of theft offenses.

15 (1) Theft constitutes a crime of the second degree if:

16 (a) The ~~the~~ amount involved is \$75,000.00 or more ~~or~~;

17 (b) The ~~if the~~ property is taken by extortion; or

18 (c) *The property stolen is a controlled dangerous substance*  
19 *or controlled substance analog as defined in N. J. S. 2C:35-2*  
20 *and the quantity is in excess of one kilogram.*

21 (2) Theft constitutes a crime of the third degree if:

22 (a) The amount involved exceeds \$500.00 but is less than  
23 \$75,000.00;

24 (b) The property stolen is a firearm, automobile, boat, horse  
25 or airplane;

26 (c) The property stolen is a controlled dangerous substance  
27 *or controlled substance analog as defined in [P. L. 1970, c. 226*  
28 *(C. 24:21-1 et seq.);] N. J. S. 2C:35-2 and the amount involved*  
29 *is less than \$75,000.00 or is undetermined \*and the quantity is*  
29A *one kilogram or less\*;*

30 (d) It is from the person of the victim;

31 (e) It is in breach of an obligation by a person in his capacity  
32 as a fiduciary;

33 (f) It is by threat not amounting to extortion; or

34 (g) It is of a public record, writing or instrument kept, filed  
35 or deposited according to law with or in the keeping of any  
36 public office or public servant.

37 (3) Theft constitutes a crime of the fourth degree if the amount  
38 involved is at least \$200.00 but does not exceed \$500.00. If the  
39 amount involved was less than \$200.00 the offense constitutes a  
40 disorderly persons offense.

41 (4) The amount involved in a theft shall be determined by the  
42 trier of fact. Amounts involved in thefts committed pursuant to  
43 one scheme or course of conduct, whether from the same person or  
44 several persons, may be aggregated in determining the grade of  
45 the offense.

46 c. Claim of right. It is an affirmative defense to prosecution for  
47 theft that the actor:

48 (1) Was unaware that the property or service was that of an-  
49 other;

50 (2) Acted under an honest claim of right to the property or  
51 service involved or that he had a right to acquire or dispose of it  
52 as he did: or

53 (3) Took property exposed for sale, intending to purchase and  
 54 pay for it promptly, or reasonably believing that the owner, if  
 55 present, would have consented.

56 d. Theft from spouse. It is no defense that theft was from the  
 57 actor's spouse, except that misappropriation of household and  
 58 personal effects, or other property normally accessible to both  
 59 spouses, is theft only if it occurs after the parties have ceased  
 60 living together.

1 6. Section 6 of P. L. 1979, c. 179 (C. 2C:39-7) is amended to read  
 2 as follows:

3 Certain Persons Not to Have Weapons. Any person, having been  
 4 convicted in this State or elsewhere of the crime of aggravated  
 5 assault, arson, burglary, escape, extortion, homicide, kidnapping,  
 6 robbery, aggravated sexual assault, or sexual assault, whether or  
 7 not armed with or having in his possession any weapon enumerated  
 8 in section 2C:39-1r., or any person who has ever been committed  
 9 for a mental disorder to any hospital, mental institution or sani-  
 10 tarium unless he possesses a certificate of a medical doctor or  
 11 psychiatrist licensed to practice in New Jersey or other satisfactory  
 12 proof that he is no longer suffering from a mental disorder which  
 13 interferes with or handicaps him in the handling of a firearm, or  
 14 any person who has been convicted of *other than a disorderly per-*  
 15 *sons or petty disorderly persons offense* for the unlawful use, pos-  
 16 session or sale of a controlled dangerous substance as defined in  
 17 [article 2 of P. L. 1970, c. 226 (C. 24:21-3 et seq.),] *N. J. S. 2C:35-2*  
 18 who purchases, owns, possesses or controls any of the said weapons  
 19 is guilty of a crime of the fourth degree.

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

1 7. N. J. S. 2C:41-1 is amended to read as follows:

2 2C:41-1. Definitions. For purposes of this section and N. J. S.  
 3 2C:41-2 through N. J. S. 2C:41-6: a. "Racketeering activity"  
 4 means (1) any of the following crimes which are crimes under the  
 5 laws of New Jersey or are equivalent crimes under the laws of  
 6 any other jurisdiction:

- 7 (a) murder
- 8 (b) kidnapping
- 9 (c) gambling

- 10 (d) promoting prostitution  
11 (e) obscenity  
12 (f) robbery  
13 (g) bribery  
14 (h) extortion  
15 (i) criminal usury  
16 (j) violations of Title 33 of the Revised Statutes  
17 (k) violations of Title 54A of the New Jersey Statutes and  
18 Title 54 of the Revised Statutes  
19 (l) arson  
20 (m) burglary  
21 (n) theft and related crimes  
22 (o) forgery and fraudulent practices  
23 (p) fraud in the offering, sale or purchase of securities  
24 (q) alteration of motor vehicle identification numbers  
25 (r) unlawful manufacture, purchase, use or transfer of firearms  
26 (s) unlawful possession or use of destructive devices or ex-  
27 plosives  
28 (t) violation of sections 112 through 116 inclusive of the "Casino  
29 Control Act," P. L. 1977, c. 110 (C. 5:12-112 through 116)  
30 (u) violation of [section 19 of the "New Jersey Controlled  
31 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-19)]  
32 *N. J. S. 2C:35-5* except possession of 84 grams or less of mari-  
33 juana or of *N. J. S. 2C:35-4* or *N. J. S. 2C:35-6*.  
34 (2) any conduct defined as "racketeering activity" under Title  
35 18, United States Code, § 1961 (1) (A), (B) and (D).  
36 b. "Person" includes any individual or entity or enterprise as  
37 defined herein holding or capable of holding a legal or beneficial  
38 interest in property.  
39 c. "Enterprise" includes any individual, sole proprietorship,  
40 partnership, corporation, business or charitable trust, association,  
41 or other legal entity, any union or group of individuals asso-  
42 ciated in fact although not a legal entity, and it includes illicit as  
43 well as licit enterprises and governmental as well as other entities.  
44 d. "Pattern of racketeering activity" requires  
45 (1) Engaging in at least two incidents of racketeering conduct  
46 one of which shall have occurred after the effective date of this  
47 act and the last of which shall have occurred within 10 years  
48 (excluding any period of imprisonment) after a prior incident  
49 of racketeering activity; and  
50 (2) A showing that the incidents of racketeering activity em-  
51 brace criminal conduct that has either the same or similar pur-

52 poses, results, participants or victims or methods of commission  
 53 or are otherwise interrelated by distinguishing characteristics  
 54 and are not isolated incidents.

55 e. "Unlawful debt" means a debt

56 (1) Which was incurred or contracted in gambling activity  
 57 which was in violation of the law of the United States, a state or  
 58 political subdivision thereof; or

59 (2) Which is unenforceable under State or federal law in whole  
 60 or in part as to principal or interest because of the laws relating  
 61 to usury.

62 f. "Documentary material" includes any book, paper, docu-  
 63 ment, writing, drawing, graph, chart, photograph, phonorecord,  
 64 magnetic or recording or video tape, computer printout, other  
 65 data compilation from which information can be obtained or from  
 66 which information can be translated into useable form or other  
 67 tangible item.

68 g. "Attorney General" includes the Attorney General of New  
 69 Jersey, his assistants and deputies. The term shall also include  
 70 a county prosecutor or his designated assistant prosecutor if a  
 71 county prosecutor is expressly authorized in writing by the  
 72 Attorney General to carry out the powers conferred on the  
 73 Attorney General by this chapter.

74 h. "Trade or commerce" shall include all economic activity in-  
 75 volving or relating to any commodity or service.

1 8. N. J. S. 2C:43-1 is amended to read as follows:

2 2C:43-1. Degrees of Crimes. a. Crimes defined by this code are  
 3 classified, for the purpose of sentence, into four degrees, as follows:

4 (1) Crimes of the first degree;

5 (2) Crimes of the second degree;

6 (3) Crimes of the third degree; and

7 (4) Crimes of the fourth degree.

8 A crime is of the first, second, third or fourth degree when it is  
 9 so designated by the code. An offense, declared to be a crime,  
 10 without specification of degree, is of the fourth degree.

11 b. Notwithstanding any other provision of law, a crime defined  
 12 by any statute of this State other than this code and designated as  
 13 a high misdemeanor shall constitute for the purpose of sentence  
 14 a crime of the third degree. Except as provided in sections 2C:1-4c  
 15 and 2C:1-5b and notwithstanding any other provision of law, a  
 16 crime defined by any statute of this State other than this code  
 17 and designated as a misdemeanor shall constitute for the purpose  
 18 of sentence a crime of the fourth degree. [The provisions of this

19 subsection shall not, however, apply to the sentences authorized  
20 by the "New Jersey Controlled Dangerous Substances Act,"  
21 P. L. 1970, c. 226 (C. 24:21-1 through 45), which shall be con-  
22 tinued in effect. A sentence imposed upon violation of the "New  
23 Jersey Controlled Dangerous Substances Act," shall be governed  
24 by this subtitle but shall be subject to the maximum sentence  
25 authorized for the relevant offense under said act, or if there is  
26 no specific penalty under that act, by imprisonment for not more  
27 than three years or a fine of not more than \$1,000.00 or both,  
28 in the case of a misdemeanor or other indictable offenses, or by  
29 imprisonment for not more than six months or a fine of not more  
30 than \$500.00 or both, in the case of a nonindictable offense.】

1 9. N. J. S. 2C:43-2 is amended to read as follows:

2 2C:43-2. Sentence in Accordance with Code; Authorized Dis-  
3 positions. a. Except 【as provided in section 2C:43-1b, as to  
4 persons convicted of offenses under the New Jersey Controlled  
5 Dangerous Substances Act, or】 as otherwise provided by this code,  
6 all persons convicted of an offense or offenses shall be sentenced  
7 in accordance with this chapter.

8 b. Except as provided in subsection a. of this section and subject  
9 to the applicable provisions of the code, the court may suspend  
10 the imposition of sentence on a person who has been convicted of  
11 an offense, or may sentence him as follows:

12 (1) To pay a fine or make restitution authorized by section  
13 2C:43-3; or

14 (2) To be placed on probation and, in the case of a person con-  
15 victed of a crime, to imprisonment for a term fixed by the court  
16 not exceeding 180 days to be served as a condition of probation, or  
17 in the case of a person convicted of a disorderly persons offense,  
18 to imprisonment for a term fixed by the court not exceeding 90  
19 days to be served as a condition of probation; or

20 (3) To imprisonment for a term authorized by sections 2C:11-3,  
21 2C:43-5, 6, 7, and 8 or 2C:44-5; or

22 (4) To pay a fine, make restitution and probation, or fine, resti-  
23 tution and imprisonment; or

24 (5) To release under supervision in the community or to require  
25 the performance of community-related service; or

26 (6) To a halfway house or other residential facility in the com-  
27 munity, including agencies which are not operated by the Depart-  
28 ment of Human Services; or

29 (7) To imprisonment at night or on weekends with liberty to  
30 work or to participate in training or educational programs.

31 e. Instead of or in addition to any disposition made according to  
32 this section, the court may postpone, suspend, or revoke for a  
33 period not to exceed two years the driver's license, registration  
34 certificate, or both of any person convicted of a crime, disorderly  
35 persons offense, or petty disorderly persons offense in the course  
36 of which a motor vehicle was used. In imposing this disposition  
37 and in deciding the duration of the postponement, suspension, or  
38 revocation, the court shall consider the severity of the crime or  
39 offense and the potential effect of the loss of driving privileges  
40 on the person's ability to be rehabilitated. Any postponement,  
41 suspension, or revocation shall be imposed consecutively with any  
42 custodial sentence.

43 d. This chapter does not deprive the court of any authority con-  
44 ferred by law to decree a forfeiture of property, suspend or cancel  
45 a license, remove a person from office, or impose any other civil  
46 penalty. Such a judgment or order may be included in the sentence.

47 e. The court shall state on the record the reasons for imposing  
48 the sentence, including its findings pursuant to the criteria for  
49 withholding or imposing imprisonment or fines under sections  
50 2C:44-1 to 2C:44-3, where imprisonment is imposed, considera-  
51 tion of the defendant's eligibility for release under the law gov-  
52 erning parole and the factual basis supporting its findings of  
53 particular aggravating or mitigating factors affecting sentence.

1 10. N. J. S. 2C:43-3 is amended to read as follows:

2 2C:43-3. Fines and Restitutions. A person who has been con-  
3 victed of an offense may be sentenced to pay a fine, to make resti-  
4 tution, or both, such fine not to exceed:

5 a. \$100,000.00, when the conviction is of a crime of the first or  
6 second degree;

7 b. \$7,500.00, when the conviction is of a crime of the third or  
8 fourth degree;

9 c. \$1,000.00, when the conviction is of a disorderly persons  
10 offense;

11 d. \$500.00, when the conviction is of a petty disorderly persons  
12 offense;

13 e. Any higher amount equal to double the pecuniary gain to the  
14 offender or loss to the victim caused by the conduct constituting  
15 the offense by the offender. In such case the court shall make a  
16 finding as to the amount of the gain or loss, and if the record does  
17 not contain sufficient evidence to support such a finding the court  
18 may conduct a hearing upon the issue. For purposes of this sec-  
19 tion the terms "gain" means the amount of money or the value of



20 property derived by the offender and "loss" means the amount of  
21 value separated from the victim;

22 f. Any higher amount specifically authorized by another section  
23 of this code or any other statute\***[.]**\* \*;

24 \***[The restitution ordered paid to the victim shall not exceed his**  
25 **loss. Any restitution imposed on a person shall be in addition to**  
26 **any fine which may be imposed pursuant to this section.]**\*

27 g. *In the case of violations of chapter 35, any higher amount*  
28 *equal to three times **[to]** the street value of the controlled danger-*  
29 *ous substance or controlled substance analog. The street value for*  
30 *purposes of this section shall be determined pursuant to subsection*  
31 *e. of N. J. S. 2C:44-2.*

32 \**The restitution ordered paid to the victim shall not exceed his*  
33 *loss. Any restitution imposed on a person shall be in addition to*  
34 *any fine which may be imposed pursuant to this section.\**

1 11. Section 2 of P. L. 1979, c. 396 (C. 2C:43-3.1) is amended to  
2 read as follows:

3 2. a. (1) In addition to any disposition made pursuant to the  
4 provisions of N. J. S. 2C:43-2, any person convicted of a crime of  
5 violence resulting in the injury or death of another person shall  
6 be assessed a penalty of at least \$30.00, but not to exceed  
7 \$10,000.00 for each such crime for which he was convicted. In im-  
8 posing this penalty, the court shall consider factors such as the  
9 severity of the crime, the defendant's criminal record, defen-  
10 dant's ability to pay and the economic impact of the penalty on the  
11 defendant's dependents.

12 (2) (a) In addition to any other disposition made pursuant to  
13 the provisions of N. J. S. 2C:43-2 or any other statute imposing  
14 sentences for crimes, any person convicted of any disorderly  
15 persons offense, any petty disorderly persons offense, **[violation**  
16 **of the "New Jersey Controlled Dangerous Substances Act," P. L.**  
17 **1970, c. 226 (C. 24:21-1 et seq.),]** or any crime not resulting in the  
18 injury or death of any other person shall be assessed a penalty of  
19 \$30.00 for each such offense or crime for which he was convicted.

20 (b) In addition to any other disposition made pursuant to the  
21 provisions of section 20 of P. L. 1973, c. 305 (C. 2A:4-61) or any  
22 other statute indicating the dispositions that can be ordered for  
23 adjudications of delinquency, any juvenile adjudicated delinquent,  
24 according to the definition of "delinquency" established in section  
25 3 of P. L. 1973, c. 306 (C. 2A:4-44), shall be assessed a penalty of  
26 at least \$15.00 for each such adjudication, but shall not exceed the  
27 amount which could be assessed if the offense was committed by  
28 an adult.

29 (3) All penalties provided for in this section shall be collected  
30 as provided for collection of fines and restitution in section 3 of  
31 P. L. 1979, c. 396 (C. 2C:46--4) and forwarded to the Violent  
32 Crimes Compensation Board for use as provided in subsection  
33 (4) hereof.

34 (4) All moneys collected pursuant to subsections 1 and 2 shall  
35 be forwarded by the Violent Crimes Compensation Board to the  
36 State Treasury to be deposited in a separate account for use by  
37 the Violent Crimes Compensation Board in satisfying claims and  
38 for related administrative costs, pursuant to the provisions of the  
39 "Criminal Injuries Compensation Act of 1971," P. L. 1971, c. 317  
40 (C. 52:4B-1 et seq.) except that after the Violent Crimes Compen-  
41 sation Board shall have received the first \$25.00 of each penalty  
42 assessment per count for an adult offender or the first \$10.00 of  
43 each penalty assessment per count for a juvenile offender, then the  
44 next \$5.00 of each penalty assessment collected shall be forwarded  
45 by the Violent Crimes Compensation Board to the State Treasury  
46 to be deposited in a separate account to be known as the Victim and  
47 Witness Advocacy Fund to be administered by the Department  
48 of Law and Public Safety as provided herein. If the initial penalty  
49 assessment is greater than \$30.00 for an adult offender or \$15.00  
50 for a juvenile offender then any penalty assessment money collected  
51 after the \$5.00 allocated to the Victim and Witness Advocacy Fund  
52 shall be forwarded by the Violent Crimes Compensation Board to  
53 the State Treasury to be deposited in the separate account for use  
54 by the Violent Crimes Compensation Board as provided for in this  
55 subsection. The parties responsible for collection of the penalty  
56 assessment, the municipal court clerks, the county probation de-  
57 partments and the Department of Corrections shall provide the  
58 Violent Crimes Compensation Board with a monthly accounting  
59 of the penalty assessment collections which enables the Violent  
60 Crimes Compensation Board to accurately identify the \$5.00 share  
61 allocatable to the Victim and Witness Advocacy Fund.

62 (5) The Department of Law and Public Safety through the Divi-  
63 sion of Criminal Justice shall be responsible for administering the  
64 Victim and Witness Advocacy Fund. This fund shall be used to  
65 support the development and provision of services to victims and  
66 witnesses of crimes and for related administrative costs. The Di-  
67 rector of the Division of Criminal Justice shall promulgate rules  
68 and regulations in order to effectuate the purposes of this fund.

69 (6) The Division of Criminal Justice shall report annually to  
70 the Governor and the Legislature concerning the implementation  
71 of this fund.

72 b. All moneys, including fines and restitution, collected from a  
 73 person convicted of any disorderly persons offense, any petty dis-  
 74 orderly persons offense, [violation of the "New Jersey Controlled  
 75 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.),]  
 76 from any juvenile adjudicated delinquent or any crime shall be  
 77 applied first to any penalty imposed pursuant to this section upon  
 78 such a person.

1 12. N. J. S. 2C:43-6 is amended to read as follows:

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

4 a. Except as otherwise provided, a person who has been con-  
 5 victed of a crime may be sentenced to imprisonment, as follows:

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

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

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

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

18 b. As part of a sentence for any crime, where the court is clearly  
 19 convinced that the aggravating factors substantially outweigh the  
 20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,  
 21 the court may fix a minimum term not to exceed one-half of the  
 22 term set pursuant to subsection a., or one-half of the term set pur-  
 23 suant to a maximum period of incarceration for a crime set forth  
 24 in any statute other than this code, during which the defendant shall  
 25 not be eligible for parole; provided that no defendant shall be  
 26 eligible for parole at a date earlier than otherwise provided by the  
 27 law governing parole.

28 c. A person who has been convicted under 2C:39-4a. of posses-  
 29 sion of a firearm with intent to use it against the person of an-  
 30 other, or of a crime under any of the following sections: 2C:11-3,  
 31 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1,  
 32 2C:18-2, 2C:29-5, who, while in the course of committing or at-  
 33 tempting to commit the crime, including the immediate flight there-  
 34 from, used or was in possession of a firearm as defined in 2C:39-1f.,  
 35 shall be sentenced to a term of imprisonment by the court. The term

36 of imprisonment shall include the imposition of a minimum term.  
 37 The minimum term shall be fixed at, or between, one-third and  
 38 one-half of the sentence imposed by the court or three years, which-  
 39 ever is greater, or 18 months in the case of a fourth degree crime,  
 40 during which the defendant shall be ineligible for parole.

41 The minimum terms established by this section shall not prevent  
 42 the court from imposing presumptive terms of imprisonment pur-  
 43 suant to 2C:44-1f. (1) except in cases of crimes of the fourth  
 44 degree.

45 A person who has been convicted of an offense enumerated by  
 46 this subsection and who used or possessed a firearm during its com-  
 47 mission, attempted commission or flight therefrom and who has  
 48 been previously convicted of an offense involving the use or  
 49 possession of a firearm as defined in 2C:44-3d., shall be sentenced  
 50 by the court to an extended term as authorized by 2C:43-7c., not-  
 51 withstanding that extended terms are ordinarily discretionary  
 52 with the court.

53 d. The court shall not impose a mandatory sentence pursuant to  
 54 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the  
 55 ground therefor has been established at a hearing. At the hearing,  
 56 which may occur at the time of sentencing, the prosecutor shall  
 57 establish by a preponderance of the evidence that the weapon used  
 58 or possessed was a firearm. In making its finding, the court shall  
 59 take judicial notice of any evidence, testimony or information ad-  
 60 duced at the trial, plea hearing, or other court proceedings and  
 61 shall also consider the presentence report and any other relevant  
 62 information.

63 e. A person convicted of manufacturing, **\*[distribution]\*** *\*distrib-*  
 64 *uting\**, dispensing or **\*[possession]\*** *\*possessing\** with intent to  
 65 distribute any dangerous substance or controlled substance analog  
 66 under N. J. S. 2C:35-5, of maintaining or operating a controlled  
 67 dangerous substance **\*[laboratory]\*** *\*production facility\** under  
 68 **\*[N. J. C.]\*** *\*N. J. S.\** 2C:35-4, of employing a juvenile in a drug  
 69 distribution scheme under N. J. S. 2C:35-6, *\*leader of a narcotics*  
 70 *trafficking network* under N. J. S. 2C:35-3, or of distributing,  
 71 dispensing or possessing with intent to distribute on or near school  
 72 property or buses under N. J. S. 2C:35-7 (now pending before the  
 73 Legislature as Senate Bill No. 2449 or Assembly Bill No. 3072 of  
 74 1986), *\*who has been previously convicted of manufacturing, distri-*  
 75 *buting, dispensing or possessing with intent to distribute a con-*  
 76 *trolled dangerous substance or controlled substance analog, shall*  
 77 *upon application of the prosecuting attorney be sentenced by the*  
 78 *court to an extended term as authorized by subsection c. of N. J. S.*

79 2C:43-7, notwithstanding that extended terms are ordinarily dis-  
 80 cretionary with the court. The term of imprisonment shall, except  
 81 as may be provided in N. J. S. 2C:43-12, include the imposition of  
 82 a minimum term. The minimum term shall be fixed at, or between,  
 83 one-third and one-half of the sentence imposed by the court or three  
 84 years, whichever is greater, or 18 months in the case of a fourth  
 85 degree crime, during which the defendant shall be ineligible for  
 86 parole.

87 \*The court shall not impose an extended term pursuant to this  
 88 subsection unless the ground therefor has been established at a  
 89 hearing. At the hearing, which may occur at the time of sentencing,  
 90 the prosecutor shall establish the ground therefor by a prepon-  
 91 derance of the evidence. In making its finding, the court shall take  
 92 judicial notice of any evidence, testimony or information adduced  
 93 at the trial, plea hearing, or other court proceedings and shall also  
 94 consider the presentence report and any other relevant informa-  
 95 tion.\*

96 For the purpose of this subsection, a previous conviction exists  
 97 where the actor has at any time been convicted under chapter 35  
 98 of this title \***[or under any similar statute of the United States or**  
 99 **any other state]**\* \*or Title 24 of the Revised Statutes or under any  
 100 similar statute of the United States, this State, or any other state  
 101 for an offense that is substantially equivalent to N. J. S. 2C:35-3,  
 102 N. J. S. 2C:35-4, N. J. S. 2C:35-5, N. J. S. 2C:35-6 or N. J. S.  
 103 2C:35-7 (now pending before the Legislature as Senate Bill No.  
 104 2449 or Assembly Bill No. 3072 of 1986)\*.

1 13. N. J. S. 2C:43-7 is amended to read as follows:

2 2C:43-7. Sentence of Imprisonment for Crime: Extended Terms.

3 a. In the cases designated in section 2C:44-3, a person who has  
 4 been convicted of a crime may be sentenced to an extended term  
 5 of imprisonment, as follows:

6 (1) **\*\*[(Deleted by amendment, P. L. 1982, c. 111.)]\*\*** **\*\*In case**  
 7 **of aggravated manslaughter sentenced under subsection c. of**  
 8 **N. J. S. 2C:11-4 or kidnapping when sentenced as a crime of the**  
 9 **first degree under paragraph (1) of subsection c. of 2C:13-1 for a**  
 9A **specific term of years which shall be between 30 years and life**  
 9B **imprisonment;\***

9C (2) **\*\*[In]\*\*** **\*\*Excp t for the crime of murder and except as**  
 9D **provided in paragraph (1) of this subsection, in\*\*** the case of a  
 9E crime of the first degree **\*\*[other than murder]\*\***, for a specific  
 9F term of years which shall be fixed by the court and shall be between  
 9G 20 years and life imprisonment;

10 (3) In the case of a crime of the second degree, for a term which  
11 shall be fixed by the court between 10 and 20 years;

12 (4) In the case of a crime of the third degree, for a term which  
13 shall be fixed by the court between five and 10 years;

14 (5) In the case of a crime of the fourth degree pursuant to  
15 2C:43-6e. and 2C:44-3d. for a term of five years.

16 b. As part of a sentence for an extended term and notwithstand-  
17 ing the provisions of 2C:43-3, the court may fix a minimum term  
18 not to exceed one-half of the term set pursuant to subsection a.  
19 during which the defendant shall not be eligible for parole or a  
20 term of 25 years during which time the defendant shall not be  
21 eligible for parole where the sentence imposed was life imprison-  
22 ment; provided that no defendant shall be eligible for parole at a  
23 date earlier than otherwise provided by the law governing parole.

24 c. In the case of a person sentenced to an extended term pursuant  
25 to 2C:43-6e., 2C:43-6e. and 2C:44-3d., the court shall impose a  
26 sentence within the ranges permitted by 2C:43-7a. (2), (3), (4) or  
27 (5) according to the degree or nature of the crime for which the  
28 defendant is being sentenced, which sentence shall include a mini-  
29 mum term which shall\*, *except as may be specifically provided by*  
30 *N. J. S. 2C:43-6e.*,\* be fixed at, or between one-third and one-half  
31 of the sentence imposed by the court or five years, whichever is  
32 greater, during which the defendant shall not be eligible for parole.  
33 Where the sentence imposed is life imprisonment, the court shall  
34 impose a minimum term of 25 years during which the defendant  
35 shall not be eligible for parole\*, *except that where the term of life*  
36 *imprisonment is imposed on a person convicted for a violation of*  
37 *N. J. S. 2C:35-3, the term of parole ineligibility shall be 30 years\*.*

1 14. N. J. S. 2C:43-12 is amended to read as follows:

2 2C:43-12. Supervisory Treatment—Pretrial Intervention. a.  
3 Public policy. The purpose of sections 2C:43-12 through 2C:43-22  
4 of this chapter is to effectuate a Statewide program of Pretrial  
5 Intervention. It is the policy of the State of New Jersey that  
6 supervisory treatment should ordinarily be limited to persons who  
7 have not previously been convicted of any criminal offense under  
8 the laws of New Jersey, or under any criminal law of the United  
9 States, or any other state when supervisory treatment would:

10 (1) Provide applicants, on an equal basis, with opportunities to  
11 avoid ordinary prosecution by receiving early rehabilitative ser-  
12 vices or supervision, when such services or supervision can reason-  
13 ably be expected to deter future criminal behavior by an applicant,  
14 and when there is apparent causal connection between the offense

15 charged and the rehabilitative or supervisory need, without which  
16 cause both the alleged offense and the need to prosecute might not  
17 have occurred; or

18 (2) Provide an alternative to prosecution for applicants who  
19 might be harmed by the imposition of criminal sanctions as pres-  
20 ently administered, when such an alternative can be expected to  
21 serve as sufficient sanction to deter criminal conduct; or

22 (3) Provide a mechanism for permitting the least burdensome  
23 form of prosecution possible for defendants charged with "victim-  
24 less" offenses; or

25 (4) Provide assistance to criminal calendars in order to focus  
26 expenditure of criminal justice resources on matters involving  
27 serious criminality and severe correctional problems; or

28 (5) Provide deterrence of future criminal or disorderly behavior  
29 by an applicant in a program of supervisory treatment.

30 b. Admission of an applicant into a program of supervisory  
31 treatment shall be measured according to the applicant's amena-  
32 bility to correction, responsiveness to rehabilitation and the nature  
33 of the offense.

34 c. The decision and reasons therefor made by the designated  
35 judges (or assignment judges), prosecutors and program directors  
36 in granting or denying applications for supervisory treatment, in  
37 recommending and ordering termination from the program or dis-  
38 missal of charges, in all cases shall be reduced to writing and  
39 disclosed to the applicant.

40 d. If an applicant desires to challenge the decision of the prose-  
41 cutor or program director not to recommend enrollment in a pro-  
42 gram of supervisory treatment the proceedings prescribed under  
43 section 14 shall be followed.

44 e. Referral. At any time prior to trial but after the filing of a  
45 criminal complaint, or the filing of an accusation or the return of  
46 an indictment, with the consent of the prosecutor and upon written  
47 recommendation of the program director, the assignment judge  
48 or a judge designated by him may postpone all further proceed-  
49 ings against an applicant and refer said applicant to a program of  
50 supervisory treatment approved by the Supreme Court. Prosecu-  
51 tors and program directors shall consider in formulating their  
52 recommendation of an applicant's participation in a supervisory  
53 treatment program, among others, the following criteria:

54 (1) The nature of the offense;

55 (2) The facts of the case;

56 (3) The motivation and age of the defendant;

57 (4) The desire of the complainant or victim to forego prosecu-  
58 tion;

59 (5) The existence of personal problems and character traits  
60 which may be related to the applicant's crime and for which services  
61 are unavailable within the criminal justice system, or which may  
62 be provided more effectively through supervisory treatment and the  
63 probability that the causes of criminal behavior can be controlled  
64 by proper treatment;

65 (6) The likelihood that the applicant's crime is related to a  
66 condition or situation that would be conducive to change through  
67 his participation in supervisory treatment;

68 (7) The needs and interests of the victim and society;

69 (8) The extent to which the applicant's crime constitutes part  
70 of a continuing pattern of anti-social behavior;

71 (9) The applicant's record of criminal and penal violations and  
72 the extent to which he may present a substantial danger to others;

73 (10) Whether or not the crime is of an assaultive or violent  
74 nature, whether in the criminal act itself or in the possible injurious  
75 consequences of such behavior;

76 (11) Consideration of whether or not prosecution would exacer-  
77 bate the social problem that led to the applicant's criminal act;

78 (12) The history of the use of physical violence toward others;

79 (13) Any involvement of the applicant with organized crime;

80 (14) Whether or not the crime is of such a nature that the  
81 value of supervisory treatment would be outweighed by the public  
82 need for prosecution;

83 (15) Whether or not the applicant's involvement with other  
84 people in the crime charged or in other crime is such that the  
85 interest of the State would be best served by processing his case  
86 through traditional criminal justice system procedures;

87 (16) Whether or not applicant's participation in pretrial inter-  
88 vention will adversely affect the prosecution of codefendants; and

89 (17) Whether or not the harm done to society by abandoning  
90 criminal prosecution would outweigh the benefits to society from  
91 channeling an offender into a supervisory treatment program.

92 f. Review of Supervisory Treatment Applications. Procedure  
93 Upon Denial: Each applicant for supervisory treatment shall be  
94 entitled to full and fair consideration of his application. If an  
95 application is denied, the program director or the prosecutor shall  
96 precisely state his findings and conclusion which shall include the  
97 facts upon which the application is based and the reasons offered  
98 for the denial. If the applicant desires to challenge the decision of  
99 a program director not to recommend, or of a prosecutor not to  
100 consent to, enrollment into a supervisory treatment program, a  
101 motion shall be filed before the designated judge (or assignment



102 judge) authorized pursuant to the rules of court to enter orders.  
103 g. Limitations. Supervisory treatment<sup>1</sup>, whether under this sec-  
104 tion or under section 27 of P. L. 1970, c. 226 (C. 24:21-27),<sup>2</sup> may  
105 occur only once with respect to any defendant<sup>3</sup>, however,<sup>4</sup> and any  
106 person who has previously received supervisory treatment under  
107 section 27 of P. L. 1970, c. 226 (C. 24:21-27), shall not be eligible  
108 for supervisory treatment under this section. However, supervi-  
109 sory treatment, as provided herein, shall be available to a defendant  
110 irrespective of whether the defendant contests his guilt of the  
111 charge or charges against him.

112 h. Termination. Termination of supervisory treatment under  
113 this section shall be immediately reported to the assignment judge  
114 of the county who shall forward such information to the Adminis-  
115 trative Director of the Courts.

116 i. Appointment of Program Directors; Authorized Referrals.  
117 Programs of supervisory treatment and appointment of the pro-  
118 gram directors require approval by the Supreme Court with the  
119 consent of the assignment judge and prosecutor. Referrals of  
120 participants from supervisory treatment programs may be to any  
121 public or private office or agency, including but not limited to pro-  
122 grams within the probation service of the court, offering counseling  
123 or any other social service likely to aid in the rehabilitation of the  
124 participant and to deter the commission of other offenses.

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

2 2C:44-2. Criteria for Imposing Fines and Restitutions. a. The  
3 court may sentence a defendant to pay a fine or make restitution,  
4 or both, in addition to a sentence of imprisonment or probation if:  
5 (1) The defendant has derived a pecuniary gain from the  
6 offense; or

7 (2) The court is of opinion that a fine or restitution, or both,  
8 is specially adapted to deterrence of the type of offense involved  
9 or to the correction of the offender.

10 b. The court may sentence a defendant to pay a fine or make resti-  
11 tution, or both, if the defendant is able, or given a fair opportunity  
12 to do so, will be able to pay the fine or make restitution, or both.  
13 The court may sentence a defendant to pay a fine only if the fine  
14 will not prevent the defendant from making restitution to the  
15 victim of the offense.

16 c. In determining the amount and method of payment of a fine  
17 or restitution, the court shall take into account the financial re-  
18 sources of the defendant and the nature of the burden that its  
19 payment will impose.

20 d. Nonpayment. When a defendant is sentenced to pay a fine or  
 21 make restitution, or both, the court shall not impose at the same  
 22 time an alternative sentence to be served in the event that the  
 23 fine is not paid. The response of the court to nonpayment shall be  
 24 determined only after the fine has not been paid, as provided in  
 25 section 2C:46-2.

26 e. *Whenever the maximum potential fine which may be imposed*  
 27 *on a conviction for an offense defined in chapter 35 (Controlled*  
 28 *Dangerous Substances) depends on the street value of the con-*  
 29 *trolled dangerous substance or controlled substance analog in-*  
 30 *volved and the court intends to impose a fine in excess of the*  
 31 *maximum ordinary fine applicable to the offense for which defen-*  
 32 *dant was convicted, and where the fine has not been agreed to*  
 33 *pursuant to the provisions of \*N. J. S.\* 2C:35-12, the court at the*  
 34 *time of sentence shall determine the street value at the time and*  
 35 *place of the offense based on the amount and purity of the controlled*  
 36 *dangerous substance or controlled substance analog involved. The*  
 37 *sentencing court's finding as to the street value may be based on*  
 38 *expert opinion in the form of live testimony or by affidavit, or by*  
 39 *such other means as the court deems appropriate. The court's find-*  
 40 *ing as to street value shall not be subject to modification by an*  
 41 *appellate court except upon a showing \*of a clear and patent abuse*  
 42 *of the sentencing court's discretion]\* \*that the finding was totally*  
 43 *lacking in support on the record or was arbitrary or capricious\*.*

1 16. N. J. S. 2C:52-5 is amended to read as follows:

2 2C:52-5. Expungement of Records of Young Drug Offenders.  
 3 Notwithstanding the provisions of sections 2C:52-2 and 2C:52-3,  
 4 after a period of not less than one year following conviction,  
 5 termination of probation or parole or discharge from custody,  
 6 whichever is later, any person convicted of an offense under [Title  
 7 24 of the New Jersey Statutes] chapters 35 or 36 of this title for  
 8 the possession or use of a controlled dangerous substance, con-  
 9 victed of violating P. L. 1955, c. 277, § 3 (C. 2A:170-77.5), or con-  
 10 victed of violating P. L. 1962, c. 113, § 1 (C. 2A:170-77.8), and who  
 11 at the time of the offense was 21 years of age or younger, may  
 12 apply to the Superior Court in the county wherein the matter was  
 13 disposed of for the expungement of such person's conviction and  
 14 all records pertaining thereto. The relief of expungement under  
 15 this section shall be granted only if said person has not, prior to the  
 16 time of hearing, violated any of the conditions of his probation or  
 17 parole, albeit subsequent to discharge from probation or parole,  
 18 has not been convicted of any previous or subsequent criminal act  
 19 or any subsequent or previous violation of [Title 24] chapters 35

20 *or 36 of this title or of P. L. 1955, c. 277, § 3 (C. 2A:170-77.5) or of*  
 21 *P. L. 1962, c. 113, § 1 (C. 2A:170-77.8), or who has not had a prior*  
 22 *or subsequent criminal matter dismissed because of acceptance into*  
 23 *a supervisory treatment or other diversion program.*

24 This section shall not apply to any person who has been convicted  
 25 of the sale or distribution of a controlled dangerous substance  
 26 or possession with the intent to sell any controlled dangerous sub-  
 27 stance except:

28 (1) Marihuana, where the total sold, distributed or possessed  
 29 with intent to sell was 25 grams or less, or

30 (2) Hashish, where the total amount sold, distributed or pos-  
 31 sessed with intent to sell was 5 grams or less.

1 17. N. J. S. 2C:64-2 is amended to read as follows:

2 2C:64-2. Forfeiture Procedures; Prima Facie Contraband.

3 **[Prima]** *Except as provided in N. J. S. \***[2C:35-17]**\**  
 4 *\*2C:35-21\**, prima facie contraband shall be retained by the State  
 5 until entry of judgment or dismissal of the criminal proceeding, if  
 6 any, arising out of the seizure. Thereafter, prima facie contraband  
 7 shall be forfeited to the entity funding the prosecuting agency  
 8 involved, subject to the rights of owners and others holding  
 9 interests pursuant to section 2C:64-5.

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

3 22. Prohibited acts D.—Fraud or misrepresentation by regis-  
 4 tered manufacturers or distributors—Penalties.

5 a. It shall be unlawful for any person knowingly or intentionally:

6 (1) Who is a registrant to distribute a controlled dangerous  
 7 substance classified in Schedule I or II, in the course of his legiti-  
 8 mate business, except pursuant to an order form as required by  
 9 section 14 of this act;

10 (2) To use in the course of the manufacture or distribution of a  
 11 controlled dangerous substance a registration number which is  
 12 fictitious, revoked, suspended or issued to another person;

13 (3) **[To acquire or obtain possession of a controlled dangerous**  
 14 **substance by misrepresentation, fraud, forgery, deception or sub-**  
 15 **terfuge:] Deleted by amendment (P. L. 19 , c. (C. ).**

16 (4) To furnish false or fraudulent material information in, or  
 17 omit any material information from, any application, report, or  
 18 other document required to be kept or filed under this act, or any  
 19 record required to be kept by this act: or

20 (5) To make, distribute, or possess any punch, die, plate, stone,  
 21 or other thing designed to print, imprint, or reproduce the trade-  
 22 mark, trade name, or other identifying mark, imprint, or device of

23 another or any likeness of any of the foregoing upon any drug or  
 24 container or labeling thereof so as to render such drug a counterfeit  
 25 controlled dangerous substance.

26 b. Any person who violates this section shall be punished by  
 27 imprisonment for not more than three years, or by a fine of not  
 28 more than \$30,000.00, or both.

1 19. Section 23 of P. L. 1970, c. 226 (C. 24:21-23) is amended to  
 2 read as follows:

3 23. General Penalty. Any person who violates any provision of  
 4 this act for which no specific penalty is provided shall be guilty of a  
 5 **[misdemeanor]** *disorderly persons offense*.

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

3 24. Attempt, Endeavor and Conspiracy. a. Any person who  
 4 attempts, endeavors or conspires to commit any offense defined in  
 5 this act is punishable by imprisonment or fine or both which may  
 6 not exceed the maximum punishment prescribed for the offense,  
 7 the commission of which was the object of the endeavor or con-  
 8 spiracy.

9 b. **[Information communicated to a practitioner in an effort un-**  
 10 **lawfully to obtain or procure the administration of a controlled**  
 11 **dangerous substance shall not be a privileged communication.]**  
 12 *Deleted by amendment (P. L. 19 . c. ).*

1 21. Section 29 of P. L. 1970, c. 226 (C. 24:21-29) is amended to  
 2 read as follows:

3 29. Second or subsequent offenses. a. Any person convicted of  
 4 any offense under this act, if the offense is a second or subsequent  
 5 offense, shall be punished by a term of imprisonment of up to twice  
 6 that otherwise authorized, by up to twice the fine otherwise autho-  
 7 rized, or by both**;** provided, however, that this section shall not  
 8 apply to section 20a. (3) and (4) and b. offenses**].**

9 b. For purposes of this section, an offense shall be considered a  
 10 second or subsequent offense, if, prior to the commission of the  
 11 offense, the offender has at any time been convicted of an offense  
 12 or offenses under this act or under any law of the United States  
 13 or of any state relating to narcotic drugs, marijuana, depressant,  
 14 stimulant, or hallucinogenic drugs.

1 22. Section 36 of P. L. 1970, c. 226 (C. 24:21-36) is amended to  
 2 read as follows:

3 36. Reports of conviction of manufacturers and practitioners.  
 4 Whenever a manufacturer or practitioner is convicted of violating  
 5 any provision of this act or of a rule or regulation issued there-  
 6 under *or of any offense defined in chapters 35 or 36 of Title 20*

7 of the New Jersey Statutes, the court shall cause a copy of the  
8 judgment and sentence and opinion of the court, if any, to be sent  
9 to the State Department or professional board, as the case may be,  
10 by which the defendant was registered or licensed.

1 23. Section 7 of P. L. 1982. c. 77 (C. 2A:4A-26) is amended to  
2 read as follows:

3 7. Referral to another court without juvenile's consent.

4 a. On motion of the prosecutor, the court shall, without the  
5 consent of the juvenile, waive jurisdiction over a case and refer  
6 that case from the family court to the appropriate court and prose-  
7 cuting authority having jurisdiction if it finds, after hearing, that:

8 (1) The juvenile was 14 years of age or older at the time of the  
9 charged delinquent act; and

10 (2) There is probable cause to believe that the juvenile com-  
11 mitted a delinquent act or acts which if committed by an adult  
12 would constitute:

13 (a) Criminal homicide other than death by auto, *strict*  
14 *liability for drug induced deaths, pursuant to N. J. S. 2C:35-9,*  
15 robbery which would constitute a crime of the first degree,  
16 aggravated sexual assault, sexual assault, aggravated assault  
17 which would constitute a crime of the second degree, kidnap-  
18 ping or aggravated arson; or

19 (b) A crime committed at a time when the juvenile had  
20 previously been adjudicated delinquent, or convicted, on the  
21 basis of any of the offenses enumerated in subsection a. (2)  
22 (a); or

23 (c) A crime committed at a time when the juvenile had  
24 previously been sentenced and confined in an adult penal in-  
25 stitution; or

26 (d) An offense against a person committed in an aggressive,  
27 violent and willful manner, other than an offense enumerated  
28 in subsection a. (2) (a) of this section, or the unlawful posses-  
29 sion of a firearm, destructive device or other prohibited  
30 weapon, or arson; or

31 (e) A violation of [section 19 of the "Controlled Dangerous  
32 Substances Act" (P. L. 1970, c. 226; C. 24:21-19)] *N. J. S.*  
33 *2C:35-3, N. J. S. 2C:35-4, or N. J. S. 2C:35-5; or*

34 (f) Crimes which are a part of a continuing criminal activity  
35 in concert with two or more persons and the circumstances of  
36 the crimes show the juvenile has knowingly devoted himself  
37 to criminal activity as a source of livelihood; or

38 (g) An attempt or conspiracy to commit any of the acts  
39 enumerated in paragraph (a), (d) or (e) of this subsection;  
40 and

41 (3) Except with respect to any of the acts enumerated in sub-  
 42 section a. (2) (a) of this section, *or with respect to any acts enumer-*  
 43 *ated in subparagraph (e) of paragraph (2) of \*subsection a. of\**  
 44 *this section which involve the distribution for pecuniary gain of any*  
 45 *controlled dangerous substance or controlled substance analog while*  
 46 *on any property used for school purposes which is owned by any*  
 47 *school or school board, \*or within 1,000 feet of any school property*  
 48 *or while on any school bus,\* or any attempt or conspiracy to*  
 49 commit any of those acts, the State has shown that the nature and  
 50 circumstances of the charge or the prior record of the juvenile are  
 50A sufficiently serious that the interests of the public require waiver.

51 However, if in any case the juvenile can show that the proba-  
 52 bility of his rehabilitation by the use of the procedures, services  
 53 and facilities available to the court prior to the juvenile reaching  
 54 the age of 19 substantially outweighs the reasons for waiver, waiver  
 55 shall not be granted.

56 b. In every case where there is a motion seeking waiver, the  
 57 prosecutor shall within a reasonable time thereafter file a state-  
 58 ment with the Attorney General setting forth the basis for the  
 59 motion. In addition, the court shall, in writing, state its reasons  
 60 for granting or denying the waiver motion. The Attorney General  
 61 shall compile this information and report its findings to the Legis-  
 62 lature 18 months after the effective date of this act with the objec-  
 63 tive of developing, where appropriate, guidelines as to the waiver  
 64 of juveniles from the family court.

65 c. An order referring a case shall incorporate therein not only  
 66 the alleged act or acts upon which the referral is premised, but also  
 67 all other delinquent acts arising out of or related to the same  
 68 transaction.

69 d. A motion seeking waiver shall be filed by the prosecutor within  
 70 30 days of receipt of the complaint. This time limit shall not, except  
 71 for good cause shown, be extended.

1 24. (New section) Whenever in any law, rule or regulation,  
 2 reference is made to the "New Jersey Controlled Dangerous Sub-  
 3 stances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.) or any part  
 4 thereof, the same shall mean and refer to the appropriate chapter,  
 5 section or provision of the "New Jersey Code of Criminal Justice"  
 6 as amended and supplemented herein. Similarly, any reference to  
 7 chapters 35 or 36 in the "New Jersey Code of Criminal Justice"  
 8 shall be deemed to incorporate N. J. S. 24:21-1 et seq. or any other  
 9 predecessor statute.

1 25. The following are repealed:

2 Section 19 of P. L. 1970, c. 226 (C. 24:21-19);

3 Sections 1 and 2 of P. L. 1982, c. 38 (C. 24:21-19.1 and 19.2);

4 Section 20 of P. L. 1970, c. 226 (C. 24:21-20);

5 Section 26 of P. L. 1970, c. 226 (C. 24:21-26);

6 Section 27 of P. L. 1970, c. 226 (C. 24:21-27).

7 except that any person who prior to the effective date of this act  
8 has made application for or is undergoing supervisory treatment  
9 pursuant to this section shall continue to be governed by this  
10 section;

11 Section 30 of P. L. 1970, c. 226 (C. 24:21-30);

12 Sections 1 through 5, inclusive of P. L. 1980, c. 133 (C. 24:21-46  
13 through 24:21-50);

14 P. L. 1952, c. 121 (C. 2A:96-5);

15 P. L. 1966, c. 12 (C. 2A:96-5.1).

1 26. This act shall take effect on the 60th day following enactment  
2 *\*\*but shall remain inoperative until the enactment into law of*  
3 *Assembly Bill No. 3209 of 1986\*\*.*

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CRIME—INVESTIGATION. ARREST, PROSECUTION

Revises the law with respect to controlled dangerous substances.

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**ASSEMBLY, No. 3270**  
**STATE OF NEW JERSEY**

INTRODUCED OCTOBER 20, 1986

By Assemblymen KERN, LITTELL, Assemblywoman Randall, Assemblymen Felice, Koseco, Assemblywoman Donovan, Assemblymen DiGaetano, Rodney, Miller, Catrillo and Singer

AN ACT revising parts of and supplementing Title 2C of the New Jersey Statutes, enacting additional chapter 35, Controlled Dangerous Substances, chapter 36, Drug Paraphernalia, chapter 36A, Conditional Discharge for Certain First Offenders, revising parts of Title 2A of the New Jersey Statutes and Title 24 of the Revised Statutes and repealing sections 19, 20, 26, 27 and 30 of P. L. 1970, c. 226, sections 1 to 5 of P. L. 1980, c. 133, P. L. 1982, c. 38, P. L. 1952, c. 121 and P. L. 1966, c. 12.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. An additional chapter, chapter 35, is added to Title 2C as  
2 follows:

CHAPTER 35. CONTROLLED DANGEROUS SUBSTANCES

- 3 N. J. S. 2C:35-1. Short Title.  
4 N. J. S. 2C:35-1.1. Declaration of Policy and Legislative Find-  
5 ings.  
6 N. J. S. 2C:35-2. Definitions.  
7 N. J. S. 2C:35-3. Leader of Narcotics Trafficking Network.  
8 N. J. S. 2C:35-4. Maintaining or Operating a Controlled Dan-  
9 gerous Substance Laboratory.  
10 N. J. S. 2C:35-5. Manufacturing, Distributing or Dispensing.  
11 N. J. S. 2C:35-6. Employing a Juvenile in a Drug Distribution  
12 Scheme.  
13 N. J. S. 2C:35-7. Reserved.

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.  
Matter printed in italics *thus* is new matter.



- 14 N. J. S. 2C:35-8. Distribution to Persons Under Age 18; En-  
15 hanced Punishment.
- 16 N. J. S. 2C:35-9. Strict Liability for Drug-Induced Deaths.
- 17 N. J. S. 2C:35-10. Possession, Use or Being Under the Influence.
- 18 N. J. S. 2C:35-11. Imitation Controlled Dangerous Substances:  
19 Distribution, Possession, Manufacture, etc.;  
20 Penalties.
- 21 N. J. S. 2C:35-12. Waiver of Mandatory Minimum and Extended  
22 Terms.
- 23 N. J. S. 2C:35-13. Obtaining by Fraud.
- 24 N. J. S. 2C:35-14 Rehabilitation Program for Drug Dependent  
25 Persons; Mandatory Commitment to Resi-  
26 dential Treatment Facilities; Revocation.
- 27 N. J. E. 2C:35-15. Mandatory Drug Enforcement and Demand  
28 Reduction Penalties; Collection; Disposi-  
29 tion.
- 30 N. J. S. 2C:35-16. Mandatory Forfeiture or Postponement of  
31 Driving Privileges.
- 32 N. J. S. 2C:35-17. Exception to Physician-Patient Privilege.
- 33 N. J. S. 2C:35-18. Exemption; Burden of Proof.
- 34 N. J. S. 2C:35-19. Laboratory Certificates; Use; Admission into  
35 Evidence; Objections.
- 36 N. J. S. 2C:35-20. Forensic Laboratory Fees.
- 37 N. J. S. 2C:35-21. Seizure in Violation of Chapter; Pretrial  
38 Destruction of Bulk Seizures of Controlled  
39 Dangerous Substances.
- 40 N. J. S. 2C:35-22. Severability.
- 41 N. J. S. 2C:35-23. Pending Cases.

1 2C:35-1. Short Title.

2 This act shall be known and may be cited as the "Comprehensive  
3 Drug Reform Act of 1986."

1 2C:35-1.1. Declaration of policy and legislative findings.

2 The Legislature hereby finds and declares to be the public policy  
3 of this State, the following:

4 a. By enactment of the "New Jersey Code of Criminal Justice,"  
5 N. J. S. 2C:1-1 et seq., the Legislature recognized the need for the  
6 comprehensive reevaluation, revision, consolidation and codifica-  
7 tion of our criminal laws, and the need to ensure a uniform, con-  
8 sistent and predictable system for the sentencing of convicted  
9 offenders, focusing principally on the seriousness and degree of  
10 dangerousness inherent in a particular offense. In enacting the  
11 sentencing provisions of the penal code, the Legislature recognized  
12 that the imposition of a uniform, consistent and predictable

13 sentence for a given offense is an essential prerequisite to any  
14 rational deterrent scheme designed ultimately to reduce the in-  
15 cidence of crime.

16 b. Despite the impressive efforts and gains of our law enforce-  
17 ment agencies, the unlawful use, manufacture and distribution of  
18 controlled dangerous substances continues to pose a serious and  
19 pervasive threat to the health, safety and welfare of the citizens  
20 of this State. New Jersey continues to experience an unacceptably  
21 high rate of drug-related crime, and continues to serve as a conduit  
22 for the illegal trafficking of drugs to and from other jurisdictions.  
23 In addition to the harm suffered by the victims of drug abuse and  
24 drug-related crime, the incidence of such offenses is directly  
25 related to the rate of other violent and non-violent crimes, includ-  
26 ing murder, assault, robbery, theft, burglary and organized  
27 criminal activities. For this reason, enhanced and coordinated  
28 efforts designed specifically to curtail drug-related offenses will  
29 lead inexorably to a reduction in the rate of crime generally, and  
30 is therefore decidedly in the public interest.

31 c. In order to be effective, the battle against drug abuse and  
32 drug-related crime must be waged aggressively at every level along  
33 the drug distribution chain, but in particular, our criminal laws  
34 must target for expedited prosecution and enhanced punishment  
35 those repeat drug offenders and upper echelon members of or-  
36 ganized narcotics trafficking networks who pose the greatest danger  
37 to society. In order to ensure the most efficient and effective  
38 dedication of limited investigative, prosecutorial, judicial and  
39 correctional resources, it is the policy of this State to distinguish  
40 between drug offenders based on the seriousness of the offense,  
41 considering principally the nature quantity and purity of the con-  
42 trolled substance involved, and the role of the actor in the overall  
43 drug distribution network. It is the intention of the Legislature  
44 to provide for the strict punishment, deterrence and incapacitation  
45 of the most culpable and dangerous drug offenders, and to facilitate  
46 where feasible the rehabilitation of drug dependent persons so as  
47 ultimately to reduce the demand for illegal controlled dangerous  
48 substances and the incidence of drug-related crime. It is also the  
49 policy of this State to afford special protection to children from the  
50 perils of drug trafficking, to ensure that all schools and areas  
51 adjacent to schools are kept free from drug distribution activities,  
52 and to provide especially stern punishment for those drug offenders  
53 who operate on or near schools and school buses, who distribute  
54 to juveniles, or who employ juveniles in a drug distribution scheme.  
55 In addition, our criminal laws and sentencing practices must be

56 reexamined and amended so as to minimize pretrial delay, thereby  
 57 to ensure the prompt disposition of all drug-related criminal  
 58 charges and the prompt imposition of fair and certain punishment.

59 d. Under the current drug laws, there are inadequate sentencing  
 60 guidelines with which consistently to identify the most serious  
 61 offenders and offenses and to guard against sentencing disparity  
 62 and the resulting depreciation of the deterrent thrust of the crim-  
 63 inal law. In order to protect the public interest, and so as to deter,  
 64 disrupt and eliminate the operation of organized drug trafficking  
 65 networks, it is necessary to undertake a comprehensive reexamina-  
 66 tion of our controlled dangerous substances laws, procedures and  
 67 sentencing practices. The transfer of the provisions of the "New  
 68 Jersey Controlled Dangerous Substances Act," P. L. 1970, c. 226  
 69 (C. 24:21-1 et seq.) into the penal code which is accomplished  
 70 herein, along with the amendments and supplements thereto, will  
 71 better ensure that the most culpable drug offenders will be subject  
 72 to swift prosecutions and strict, consistently imposed criminal  
 73 sanctions.

1 2C:35-2. Definitions.

2 As used in this chapter:

3 "*Administer*" means the direct application of a controlled dan-  
 4 gerous substance or controlled substance analog, whether by in-  
 5 jection, inhalation, ingestion, or any other means, to the body of  
 6 a patient or research subject by: (1) a practitioner (or, in his pres-  
 7 ence, by his lawfully authorized agent), or (2) the patient or re-  
 8 search subject at the lawful direction and in the presence of the  
 9 practitioner.

10 "Agent" means an authorized person who acts on behalf of or  
 11 at the direction of a manufacturer, distributor, or dispenser but  
 12 does not include a common or contract carrier, public warehouse-  
 13 man, or employee thereof.

14 "*Controlled dangerous substance*" means a drug, substance, or  
 15 immediate precursor in Schedules I through V. The term shall  
 16 not include distilled spirits, wine, malt beverages, as those terms  
 17 are defined or used in N. S. 33:1-1 et seq., or tobacco and tobacco  
 18 products. The term, wherever it appears in any law or administra-  
 19 tive regulation of this State, shall include controlled substance  
 20 analogs.

21 "*Controlled substance analog*" means a substance that has a  
 22 chemical structure substantially similar to that of a controlled  
 23 dangerous substance or that was specifically designed to produce  
 24 an effect substantially similar to that of a controlled dangerous  
 25 substance. The term shall not include a substance manufactured

26 or distributed in conformance with the provisions of an approved  
27 new drug application or an exemption for investigational use within  
28 the meaning of section 505 of the "Federal Food, Drug and  
29 Cosmetic Act," 52 Stat. 1052 (21 U.S.C. 355).

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

39 "Deliver" or "delivery" means the actual, constructive, or at-  
40 tempted transfer from one person to another of a controlled dan-  
41 gerous substance or controlled substance analog, whether or not  
42 there is an agency relationship.

43 "Dispense" means to deliver a controlled dangerous substance  
44 or controlled substance analog to an ultimate user or research  
45 subject by or pursuant to the lawful order of a practitioner, in-  
45A cluding the prescribing, administering, packaging, labeling, or  
45B compounding necessary to prepare the substance for that de-  
45C livery. "Dispenser" means a practitioner who dispenses.

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

49 "Drugs" means (a) substances recognized in the official United  
50 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
51 United States, or official National Formulary, or any supplement to  
52 any of them; and (b) substances intended for use in the diagnosis,  
53 cure, mitigation, treatment, or prevention of disease in man or other  
54 animals; and (c) substances (other than food) intended to affect  
55 the structure or any function of the body of man or other animals;  
56 and (d) substances intended for use as a component of any article  
57 specified in subsections (a), (b) and (c) of this section; but does  
58 not include devices or their components, parts or accessories.

59 "Drug dependent person" means a person who is using a con-  
60 trolled dangerous substance or controlled substance analog and  
61 who is in a state of psychic or physical dependence, or both, arising  
62 from the use of that controlled dangerous substance or controlled  
63 substance analog on a continuous basis. Drug dependence is char-  
64 acterized by behavioral and other responses, including but not

65 limited to a strong compulsion to take the substance on a recurring  
66 basis in order to experience its psychic effects, or to avoid the  
67 discomfort of its absence.

68 "Hashish" means the resin extracted from any part of the plant  
69 Genus Cannabis L. and any compound, manufacture, salt, deriva-  
70 tive, mixture, or preparation of such resin.

71 "Manufacture" means the production, preparation, propagation,  
72 compounding, conversion or processing of a controlled dangerous  
73 substance or controlled substance analog, either directly or by ex-  
74 traction from substances of natural origin, or independently by  
75 means of chemical synthesis, or by a combination of extraction and  
76 chemical synthesis, and includes any packaging or repackaging of  
77 the substance or labeling or relabeling of its container, except that  
78 this term does not include the preparation or compounding of a  
79 controlled dangerous substance or controlled substance analog by  
80 an individual for his own use or the preparation, compounding,  
81 packaging, or labeling of a controlled dangerous substance: (1) by  
82 a practitioner as an incident to his administering or dispensing of a  
83 controlled dangerous substance or controlled substance analog in  
84 the course of his professional practice, or (2) by a practitioner (or  
85 under his supervision) for the purpose of, or as an incident to,  
86 research, teaching, or chemical analysis and not for sale.

87 "Marihuana" means all parts of the plant Genus Cannabis L.,  
88 whether growing or not; the seeds thereof; and every compound,  
89 manufacture, salt, derivative, mixture, or preparation of such plant  
90 or its seeds, except those containing resin extracted from such  
91 plant; but shall not include the mature stalks of such plant, fiber  
92 produced from such stalks, oil or cake made from the seeds of such  
93 plant, any other compound, manufacture, salt, derivative, mixture,  
94 or preparation of such mature stalks, fiber, oil, or cake, or the  
95 sterilized seed of such plant which is incapable of germination.

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

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

101 (b) A compound, manufacture, salt, derivative, or preparation  
102 of opium, coca leaves, or opiates:

103 (c) A substance (and any compound, manufacture, salt, deriv-  
104 ative, or preparation thereof) which is chemically identical with  
105 any of the substances referred to in subsections (a) and (b), except  
106 that the words "narcotic drug" as used in this act shall not include

107 decocainized coca leaves or extracts of coca leaves, which extracts  
108 do not contain cocaine or ecogine.

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

117 "Opium poppy" means the plant of the species *Papaver somni-*  
118 *ferum* L., except the seeds thereof.

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

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

123 "Practitioner" means a physician, dentist, veterinarian, scientific  
124 investigator, laboratory, pharmacy, hospital or other person li-  
125 censed, registered, or otherwise permitted to distribute, dispense,  
126 conduct research with respect to, or administer a controlled danger-  
127 ous substance or controlled substance analog in the course of  
128 professional practice or research in this State.

129 (a) "Physician" means a physician authorized by law to prac-  
130 tice medicine in this or any other state and any other person autho-  
131 rized by law to treat sick and injured human beings in this or any  
132 other state and

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

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

137 (d) "Hospital" means any federal institution, or any institution  
138 for the care and treatment of the sick and injured, operated or  
139 approved by the appropriate State department as proper to be  
140 entrusted with the custody and professional use of controlled dan-  
141 gerous substances or controlled substance analogs.

142 (e) "Laboratory" means a laboratory to be entrusted with the  
143 custody of narcotic drugs and the use of controlled dangerous  
144 substances or controlled substance analogs for scientific, experi-  
145 mental and medical purposes and for purposes of instruction ap-  
146 proved by the State Department of Health.

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

150 "Immediate precursor" means a substance which the State  
 151 Department of Health has found to be and by regulation desig-  
 152 nates as being the principal compound commonly used or produced  
 153 primarily for use, and which is an immediate chemical intermediary  
 154 used or likely to be used in the manufacture of a controlled dan-  
 155 gerous substance or controlled substance analog, the control of  
 156 which is necessary to prevent, curtail, or limit such manufacture.

157 "Residential treatment facility" means any facility approved by  
 158 any county probation department for the inpatient treatment and  
 159 rehabilitation of drug dependant persons.

160 "Schedules I, II, III, IV, and V" are the schedules set forth in  
 161 sections 5 through 8 of P. L. 1970, c. 226, (C. 24:21-5 through  
 162 24:21-6) and in section 4 of P. L. 1971, c. 3 (C. 24:21-8.1) and as  
 163 modified by any regulations issued by the Commissioner of Health  
 164 pursuant to his authority as provided in section 3 of P. L. 1970,  
 165 c. 226 (C. 24:21-3).

166 "State" means the State of New Jersey.

167 "Ultimate user" means a person who lawfully possesses a con-  
 168 trolled dangerous substance or controlled substance analog for his  
 169 own use or for the use of a member of his household or for admin-  
 170 istration to an animal owned by him or by a member of his house-  
 171 hold.

1 2C:35-3. Leader of Narcotics Trafficking Network.

2 A person is a leader of a narcotics trafficking network if he  
 3 purposely conspires with others as an organizer, supervisor,  
 4 financier or manager, to engage for profit in a scheme or course  
 5 of conduct to unlawfully manufacture, distribute, dispense, bring  
 6 into or transport in this State methamphetamine, lysergic acid  
 7 diethylamide, phencyclidine or any controlled dangerous substance  
 8 classified in Schedule I or II, or any controlled substance analog  
 9 thereof. Leader of narcotics trafficking network is a crime of the  
 10 first degree and upon conviction thereof, except as may be provided  
 11 by N. J. S. 2C:35-12, a person shall be sentenced to an ordinary  
 12 term of life imprisonment during which the person must serve 25  
 13 years before being eligible for parole. Notwithstanding the provi-  
 14 sions of subsection a. of N. J. S. 2C:43-3, the court may also  
 15 impose a fine not to exceed \$500,000.00 or five times the street value  
 16 of the controlled dangerous substance or controlled substance  
 17 analog involved, whichever is greater.

18 Notwithstanding paragraph (2) of subsection a. of N. J. S.  
 19 2C:1-8a. (2), a conviction of leader of narcotics trafficking network  
 20 shall not merge with the conviction for any offense which is the

21 object of the conspiracy. Nothing contained in this section shall  
22 prohibit the court from imposing an extended term pursuant to  
23 N. J. S. 2C:43-7; nor shall this section be construed in any way to  
24 preclude or limit the prosecution or conviction of any person for  
25 conspiracy under N. J. S. 2C:5-2, or any prosecution or conviction  
26 under N. J. S. 2C:35-4 (maintaining or operating a CDS labora-  
27 tory), N. J. S. 2C:35-5 (manufacturing, distributing or dispensing),  
28 N. J. S. 2C:35-6 (employing a juvenile in a drug distribution  
29 scheme), N. J. S. 2C:35-9 (strict liability for drug induced death),  
30 N. J. S. 2C:41-2 (racketeering activities) or subsection g. of  
31 N. J. S. 2C:5-2g (leader of organized crime).

32 It shall not be necessary in any prosecution under this section  
33 for the State to prove that any intended profit was actually  
34 realized. The trier of fact may infer that a particular scheme or  
35 course of conduct was undertaken for profit from all of the  
36 attending circumstances, including but not limited to the number  
37 of persons involved in the scheme or course of conduct, the actor's  
38 net worth and his expenditures in relation to his legitimate sources  
39 of income, the amount or purity of the specified controlled dan-  
40 gerous substance or controlled substance analog involved, or the  
41 amount of cash or currency involved.

42 It shall not be a defense to a prosecution under this section that  
43 such controlled dangerous substance or controlled substance analog  
44 was brought into or transported in this State solely for ultimate  
45 distribution or dispensing in another jurisdiction; nor shall it be a  
46 defense that any profit was intended to be made in another  
47 jurisdiction.

1 2C:35-4. Maintaining or Operating a Controlled Dangerous  
2 Substance Laboratory.

3 Except as authorized by P. L. 1970, c. 226 (C. 2:21-1 et seq.),  
4 any person who knowingly maintains or operates any premises,  
5 place or facility used for the manufacture of methamphetamine,  
6 lysergic acid diethylamide, phencyclidine or any substance classi-  
7 fied as a narcotic drug in Schedule I or II, or the analog of any  
8 such substance, or any person who knowingly aids, promotes,  
9 finances or otherwise participates in the maintenance or operations  
10 of such premises, place or facility, is guilty of a crime of the first  
11 degree and shall, except as provided in N. J. S. 2C:35-12, be  
12 sentenced to a term of imprisonment which shall include the  
13 imposition of a minimum term which shall be fixed at, or between,  
14 one-third and one-half of the sentence imposed, during which the  
15 defendant shall be ineligible for parole. Notwithstanding the



35  
16 provisions of subsection a. of N. J. S. 2C:43-3, the court may also  
17 impose a fine not to exceed \$500,000.00 or five times the street  
18 value of all controlled dangerous substances or controlled sub-  
19 stance analogs at any time manufactured or stored at such  
20 premises, place or facility.

1 2C:35-5. Manufacturing, Distributing or Dispensing.

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

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

8 (2) To create, distribute, or possess or have under his control  
9 with intent to distribute, a counterfeit controlled dangerous sub-  
10 stance.

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

12 (1) Heroin, or its analog, or coca leaves and any salt, compound,  
13 derivative, or preparation of coca leaves, and any salt, compound,  
14 derivative, or preparation thereof which is chemically equivalent  
15 or identical with any of these substances, or analogs, except that  
16 the substances shall not include decocainized coca leaves or extrac-  
17 tions which do not contain cocaine or ecogine, in a quantity of five  
18 ounces or more including any adulterants or dilutants, provided  
19 there are included at least 3.5 grams of the pure free base drug, is  
20 guilty of a crime of the first degree. The defendant shall, except  
21 as provided in N. J. S. 2C:35-12, be sentenced to a term of  
22 imprisonment by the court. The term of imprisonment shall  
23 include the imposition of a minimum term which shall be fixed at,  
24 or between, one-third and one-half of the sentence imposed, during  
25 which the defendant shall be ineligible for parole. Notwithstanding  
26 the provisions of subsection a. of N. J. S. 2C:43-3, a fine of up to  
27 \$300,000.00 may be imposed;

28 (2) A substance referred to in paragraph (1) of this subsection,  
29 in a quantity of one-half ounce or more but less than five ounces,  
30 including any adulterants or dilutants, provided there are included  
31 at least 3.5 grams of the pure free base drug, is guilty of a crime  
32 of the second degree;

33 (3) A substance referred to in paragraph (1) of this subsection  
34 in a quantity less than one-half ounce including any adulterants or  
35 dilutants, or in a quantity of one-half ounce or more with there  
36 being included less than 3.5 grams of the pure free base drug or  
37 where the amount of the pure free base is undetermined, is guilty

38 of a crime of the third degree except that, notwithstanding the  
39 provisions of subsection b. N. J. S. 2C:43-3, a fine of up to  
40 \$50,000.00 may be imposed;

41 (4) A substance classified as a narcotic drug in Schedule I or II  
42 other than those specifically covered in this section, or the analog  
43 of any such substance, in a quantity of one ounce or more including  
44 any adulterant or dilutants, provided there are included at least  
45 3.5 grams of the pure free base drug, is guilty of a crime of the  
46 second degree;

47 (5) A substance classified as a narcotic drug in Schedule I or  
48 II other than those specifically covered in this section, or the  
49 analog of any such substance, in a quantity of less than one ounce  
50 including any adulterants or dilutants, or in a quantity of one  
51 ounce or more with there being included less than 3.5 grams of  
52 the pure free base drug or where the amount of the pure free  
53 base drug is undetermined, is guilty of a crime of the third degree  
54 except that, notwithstanding the provisions of subsection b. of  
55 N. J. S. 2C:43-3, a fine of up to \$50,000.00 may be imposed;

56 (6) Lysergic acid diethylamide, or its analog, in a quantity of  
57 100 milligrams or more including any adulterants or dilutants,  
58 or phencyclidine, or its analog, in a quantity of 10 grams or more  
59 including any adulterants or dilutants, is guilty of a crime of the  
60 first degree. Except as provided in 2C:35-12, the court shall im-  
61 pose a term of imprisonment which shall include the imposition  
62 of a minimum term, fixed at, or between, one-third and one-half  
63 of the sentence imposed by the court, during which the defendant  
64 shall be ineligible for parole. Notwithstanding the provisions of  
65 subsection a. of N. J. S. 2C:43-3, a fine of up to \$300,000.00 may  
66 be imposed;

67 (7) Lysergic acid diethylamide, or its analog, in a quantity of  
68 less than 100 milligrams including any adulterants or dilutants,  
69 or where the amount is undetermined, or phencyclidine, or its  
70 analog, in a quantity of less than 10 grams including any adulter-  
71 ants or dilutants, or where the amount is undetermined, is guilty  
72 of a crime of the second degree;

73 (8) Methamphetamine, or its analog, in a quantity of one ounce  
74 or more including any adulterants or dilutants, provided there  
75 are included at least 3.5 grams of the pure free base drug, is  
76 guilty of a crime of the second degree;

77 (9) Methamphetamine, or its analog, in a quantity of less than  
78 one ounce including any adulterants or dilutants, or in a quantity  
79 of one ounce or more with there being included less than 3.5 grams

80 of the pure free base drug or where the amount of the pure free  
81 base drug is undetermined, is guilty of a crime of the third degree  
82 except that, notwithstanding the provisions of subsection b. of  
83 N. J. S. 2C:43-3, a fine of up to \$50,000.00 may be imposed;

84 (10) Marijuana in a quantity of five pounds or more including  
85 any adulterants and dilutants, or hashish in a quantity of one  
86 pound or more including any adulterants and dilutants, is guilty  
87 of a crime of the second degree;

88 (11) Marijuana in a quantity of one ounce or more but less  
89 than five pounds including any adulterants and dilutants, or  
90 hashish in a quantity of five grams or more but less than one  
91 pound including any adulterants and dilutants, is guilty of a  
92 crime of the third degree except that, notwithstanding the pro-  
93 visions of subsection b. of 2C:43-3, a fine of up to \$15,000.00 may  
94 be imposed;

95 (12) Marijuana in a quantity of less than one ounce including  
96 any adulterants and dilutants, or hashish in a quantity of less  
97 than five grams including any adulterants and dilutants, is guilty  
98 of a crime of the fourth degree;

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

104 (14) Any Schedule V substance, or its analog, is guilty of a  
105 crime of the fourth degree except that, notwithstanding the pro-  
106 visions of subsection b. of N. J. S. 2C:43-3, a fine of up to  
107 \$10,000.00 may be imposed.

108 c. Where the degree of the offense for violation of this section  
109 depends on the quantity of the substance, the quantity involved  
110 shall be determined by the trier of fact. The quantity involved  
111 in individual acts of distribution may be aggregated in determin-  
112 ing the grade of the offense, whether distribution is to the same  
113 person or several persons.

1 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

2 Any person being at least 18 years of age who knowingly uses,  
3 solicits, directs, hires or employs a person 17 years of age or  
4 younger to violate N. J. S. 2C:35-4 or subsection a. of N. J. S.  
5 2C:35-5, is guilty of a crime of the second degree and shall,  
6 except as provided in N. J. S. 2C:35-12, be sentenced to a term  
7 of imprisonment which shall include the imposition of a minimum  
8 term which shall be fixed at, or between, one-third and one-half

9 of the sentence imposed, or five years, whichever is greater, during  
10 which the defendant shall be ineligible for parole. Notwithstanding  
11 the provisions of subsection a. of N. J. S. 2C:43-3, the court  
12 may also impose a fine not to exceed \$300,000.00 or five times  
13 the street value of the controlled dangerous substance or controlled  
14 substance analog involved, whichever is greater.

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

19 Nothing in this section shall be construed to preclude or limit  
20 a prosecution or conviction for a violation of any offense defined  
21 in this chapter pursuant to N. J. S. 2C:2-6 or any other provision  
22 of law governing an actor's liability for the conduct of another,  
23 and, notwithstanding the provisions of N. J. S. 2C:1-8 or any  
24 other provision of law, a conviction arising under this section  
25 shall not merge with a conviction for a violation of N. J. S. 2C:35-3  
26 (leader of narcotics trafficking network), N. J. S. 2C:35-4 (main-  
27 taining or operating a CDS laboratory), N. J. S. 2C:35-5 (manu-  
28 facturing, distributing or dispensing), or N. J. S. 2C:35-9 (strict  
29 liability for drug induced death).

1 2C:35-8. Distribution to Persons Under Age 18; Enhanced  
2 Punishment.

3 Upon the application of the prosecuting attorney, any person  
4 being at least 18 years of age who has been convicted for violating  
5 subsection a. of N. J. S. 2C:35-5 by distributing a controlled  
6 dangerous substance or controlled substance analog to a person  
7 17 years of age or younger who is at least three years his junior  
8 shall, except as provided in N. J. S. 2C:35-12, be subject to twice  
9 the term of imprisonment, fine and penalty, including twice the  
10 term of parole ineligibility, if any, authorized or required to be  
11 imposed by subsection b. of N. J. S. 2C:35-5 or any other provision  
12 of this title.

13 The court shall not impose more than one enhanced sentence pur-  
14 suant to this section. If the defendant is convicted of more than one  
15 offense which is otherwise subject to enhanced punishment pur-  
16 suant to this section, the court shall impose enhanced punishment  
17 based upon the most serious such offense for which the defendant  
18 was convicted, or, where applicable, the offense which mandates  
19 the imposition of the longest term of parole ineligibility. Not-  
20 withstanding the provisions of paragraph (2) of subsection a. of  
21 2C:44-5, nothing herein shall prevent the court from also imposing

22 an extended term pursuant to subsection c. of N. J. S. 2C:43-6.  
23 In imposing sentence, the court shall take judicial notice of any  
24 evidence, testimony or information adduced at the trial, plea hear-  
25 ing or other court proceedings, and shall also consider the pre-  
26 sentence report and any other relevant information. It shall be no  
27 defense to the imposition of enhanced punishment pursuant to this  
28 section that the defendant mistakenly believed that the recipient  
29 of the substance was 18 years of age or older, or less than three  
30 years his junior, even if such mistaken belief was reasonable.

1 2C:35-9. Strict Liability for Drug-Induced Deaths.

2 Any person who manufactures, distributes or dispenses meth-  
3 amphetamine, lysergic acid diethylamide, phenycyclidine or any  
4 other controlled dangerous substance classified in Schedules I or  
5 II, or any controlled substance analog thereof, in violation of sub-  
6 section a. of N. J. 2C:35-5, and which results in the death of another  
7 human being, is strictly liable for such death, and is guilty of a  
8 crime of the first degree. For the purposes of this section, a death  
9 is the result of the defendant's act of manufacturing, distributing  
10 or dispensing when such conduct is an antecedent but for which the  
11 death would not have occurred, the death occurred after the injec-  
12 tion, inhalation or ingestion of the substance manufactured, dis-  
13 tributed or dispensed by the defendant, and the result is not too  
14 remote or dependent on the volitional act of a person other than  
15 the decedent as to have a just bearing on the defendant's liability  
16 or the gravity of his offense. Notwithstanding the provisions of  
17 subsection c. of N. J. S. 2C:2-3, it shall not be necessary for the  
18 State to establish that the death was a probable consequence of  
19 the defendant's conduct. Similarly, it shall not be a defense to a  
20 prosecution under this section that the death was accidental in its  
21 occurrence, that it was the result of negligence or recklessness, or  
22 that it was the result of a volitional act of the decedent or the  
23 volitional act of another to which the decedent consented. The  
24 length of time which has elapsed between the initial act of manufac-  
25 turing, distributing or dispensing, the subsequent act of injection,  
26 inhalation or ingestion of the substance, and the death of the  
27 decedent, shall not be a bar to prosecution for a violation of this  
28 section.

29 Nothing in this section shall be construed to preclude or limit any  
30 prosecution for murder or aggravated manslaughter. Notwith-  
31 standing the provisions of N. J. S. 2C:1-8 or any other provision  
32 of law, a conviction arising under this section shall not merge with  
33 a conviction for leader of narcotics trafficking network, maintaining  
34 or operating a controlled dangerous substance laboratory, or for

35 unlawfully manufacturing, distributing, dispensing or possessing  
36 with intent to manufacture, distribute or dispense the controlled  
37 dangerous substance or controlled substance analog which resulted  
38 in the death.

1 2C:35-10. Possession, Use or Being Under the Influence.

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

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

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

19 (3) Possession of more than 25 grams of marijuana, including  
20 any adulterants or dilutants, or more than five grams of hashish is  
21 guilty of a crime of the fourth degree, except that, notwithstanding  
22 the provisions of subsection b. of N. J. S. 2C:43-3, a fine of up to  
23 \$15,000.00 may be imposed; or

24 (4) Possession of 25 grams or less of marijuana, including any  
25 adulterants or dilutants, or five grams or less of hashish is a dis-  
26 orderly person.

27 Any person who violates this subsection or the offense defined in  
28 subsection b. of this section while on any property used for school  
29 purposes which is owned by any elementary or secondary school  
30 or school board, or within 1,000 feet of any school property or  
31 school bus, or while on any school bus, and who is not sentenced  
32 to a term of imprisonment, shall, in addition to any other sentence  
33 which the court may impose, be required to perform not less than  
34 100 hours of community service.

35 b. Any person who uses or who is under the influence of any  
36 controlled dangerous substance, or its analog, for a purpose other  
37 than the treatment of sickness or injury as prescribed or admin-  
38 istered by a physician is a disorderly person.

39 In a prosecution under this subsection, it shall not be necessary  
40 for the State to prove that the accused did use or was under the  
41 influence of any specific drug, but it shall be sufficient for a con-  
42 viction under this subsection for the State to prove that the accused  
43 did use or was under the influence of some controlled dangerous  
44 substance, counterfeit controlled dangerous substance, or con-  
45 trolled substance analog, by proving that the accused did mani-  
46 fest physical and physiological symptoms or reactions caused by  
47 the use of any controlled dangerous substance or controlled sub-  
48 stance analog.

1 2C:35-11. Limitation controlled dangerous substances; distribu-  
2 tion, possession, manufacture, etc.; penalties.

3 a. It is unlawful for any person to distribute or to possess or  
4 have under his control with intent to distribute any substance  
5 which is not a controlled dangerous substance or controlled sub-  
6 stance analog:

7 (1) Upon the express or implied representation to the recipient  
8 that the substance is a controlled dangerous substance or controlled  
9 substance analog; or

10 (2) Upon the express or implied representation to the recipient  
11 that the substance is of such nature, appearance or effect that the  
12 recipient will be able to distribute or use the substance as a con-  
13 trolled dangerous substance or controlled substance analog; or

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

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

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

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

26 (c) The physical appearance of the substance is substantially the  
27 same as that of a specific controlled dangerous substance or con-  
28 trolled substance analog.

29 b. It is unlawful for any person to manufacture, compound, en-  
30 capsulate, package or imprint any substance which is not a con-  
31 trolled dangerous substance, controlled substance analog or any  
32 combination of such substances, other than a prescription drug,  
33 with the purpose that it resemble or duplicate the physical ap-

34 pearance of the finished form, package, label or imprint of a con-  
35 trolled dangerous substance or controlled substance analog.

36 c. In any prosecution under this section, it shall not be a defense  
37 that the defendant mistakenly believed a substance to be a con-  
38 trolled dangerous substance or controlled substance analog.

39 d. A violation of this section is a crime of the third degree,  
40 except that, notwithstanding the provisions of subsection b. of  
41 N. J. S. 2C:43-3, a fine of up to \$100,000.00 may be imposed.

42 e. The provisions of this section shall not be applicable to (1)  
43 practitioners or agents, servants and employees of practitioners  
44 dispensing or administering noncontrolled substances to patients  
45 on behalf of practitioners in the normal course of their business or  
46 professional practice; and (2) persons who manufacture, process,  
47 package, distribute or sell noncontrolled substances to practitioners  
48 for use as placebos in the normal course of their business, profes-  
49 sional practice or research or for use in Federal Food and Drug  
50 Administration investigational new drug trials.

1 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

2 Whenever an offense defined in this chapter specifies a mandatory  
3 sentence of imprisonment which includes a minimum term during  
4 which the defendant shall be ineligible for parole, or a mandatory  
5 extended term which includes a period of parole ineligibility, the  
6 court upon conviction shall impose the mandatory sentence unless  
7 the defendant has pleaded guilty pursuant to a negotiated agree-  
8 ment or, in cases resulting in trial, the defendant and the prosecu-  
9 tion have entered into a post-conviction agreement, which provides  
10 for a lesser sentence or period of parole ineligibility. The negoti-  
11 ated plea on post-conviction agreement may provide for a specified  
12 term of imprisonment within the range of ordinary or extended  
13 sentences authorized by law, a specified period of parole ineligibil-  
14 ity, a specified fine, or other disposition. In that event the court  
15 at sentencing shall not impose a lesser term of imprisonment,  
16 period of parole ineligibility or fine than that expressly provided  
17 for under the terms of the plea or post-conviction agreement.

1 2C:35-13. Obtaining by Fraud.

2 It shall be unlawful for any person to acquire or obtain posses-  
3 sion of a controlled dangerous substance or controlled substance  
4 analog by misrepresentation, fraud, forgery, deception or subter-  
5 fuge. It shall be unlawful for any person to acquire or obtain  
6 possession of a forged or fraudulent certificate of destruction re-  
7 quired pursuant to N. J. S. 2C:35-21. A violation of this section  
8 shall be a crime of the third degree except that, notwithstanding  
9 the provisions of subsection b. of N. J. S. 2C:43-3, a fine of up to



10 \$30,000.00 may be imposed. Nothing in this section shall be deemed  
11 to preclude or limit a prosecution for theft as defined in chapter 20  
12 of this title.

1 2C:35-14. Rehabilitation Program for Drug Dependent Persons;  
2 Mandatory Commitment to Residential Treatment Facilities; Revo-  
3 cation.

4 a. Notwithstanding the presumption of incarceration pursuant  
5 to the provisions of subsection d. of N. J. S. 2C:44-1, and except  
6 as provided in subsection b. of this section, whenever a drug de-  
7 pendent person is convicted of an offense under N. J. S. 2C:35-5,  
8 N. J. S. 2C:35-6, or N. J. S. 2C:35-10, other than a crime of the  
9 first degree, the court, upon notice to the prosecutor, may, on  
10 motion of the defendant and where the court finds that no danger  
11 to the community will result and that the placement will serve to  
12 benefit the defendant by serving to correct his or her dependency  
13 on controlled substances, place the defendant on probation, which  
14 shall be for a term of five years. As a condition of that probation,  
15 the court shall order the defendant to enter a drug rehabilitation  
16 program, subject to such other reasonable terms and conditions as  
17 may be required by the court and by law, pursuant to N. J. S.  
18 2C:45-1, and which shall include periodic urine testing for drug  
19 usage throughout the period of probation.

20 b. Except upon the joint application of the defendant and the  
21 prosecuting attorney, no person convicted of an offense under  
22 N. J. S. 2C:35-6, or who has been previously convicted of an  
23 offense under subsection a. of N. J. S. 2C:35-5 or a similar of-  
24 fense under any other law of this State, any other state or the  
25 United States, shall be eligible for sentence in accordance with this  
26 section.

27 c. A person convicted of a crime of the second degree who is  
28 placed in a drug rehabilitation program under this section shall  
29 be committed to the custody of a residential treatment facility.  
30 The term of such commitment shall be for a minimum of six  
31 months, or until the defendant successfully completes the resi-  
32 dential treatment program, whichever is later, except that no per-  
33 son shall remain in the custody of a residential treatment facility  
34 for a period in excess of five years. Upon successful completion of  
35 the required residential treatment program, the defendant shall  
36 complete the period of probation, as authorized by subsection a. of  
37 this section, with credit for time served in the residential treat-  
38 ment facility and for any imprisonment served as a condition of  
39 probation. A person placed into a residential treatment facility  
40 under this subsection shall be deemed to be subject to official de-  
41 tention for the purposes of N. J. S. 2C:29-5 (escape).

42 d. Upon a first violation of any term or condition of the proba-  
43 tion authorized by this section or of any term or condition of the  
44 applicable drug rehabilitation program, the court in its discretion  
45 may, and upon a subsequent violation shall, revoke the defendant's  
46 probation and impose on the defendant any sentence that might  
47 have been imposed originally for the offense of which he was con-  
48 victed. In that event, the defendant shall receive credit for any  
49 time served pursuant to N. J. S. C. 2C:45-1, and any time spent  
50 by the defendant in a residential treatment facility. An action  
51 for a violation under this subsection may be brought by a proba-  
52 tion officer or prosecutor. Notwithstanding any other provision of  
53 this subsection, if a defendant at any time refuses to undergo urine  
54 testing for drug usage as provided in subsection a. of this section,  
55 the court shall, upon the application of the probation officer  
56 or prosecutor, revoke the defendant's probation. Failure to suc-  
57 cessfully complete the required drug rehabilitation program shall  
58 constitute a violation of the defendant's probation. A defendant  
59 who fails to comply with the terms of his probation pursuant to  
60 this section and is thereafter sentenced to imprisonment in accor-  
61 dance with this subsection shall be ineligible for entry into the  
62 Intensive Supervision Program.

63 e. The court, as a condition of its order, and after considering  
64 the defendant's financial resources, may at any time require the  
65 defendant to pay for all or some portion of the costs associated  
66 with his or her participation in any rehabilitation program or  
67 period of residential treatment authorized by this section.

1 2C:35-15. Mandatory Drug Enforcement and Demand Redue-  
2 tion Penalties; Collection; Disposition.

3 a. In addition to any disposition authorized by this title, the  
4 provisions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43), or any  
5 other statute indicating the dispositions that can be ordered for  
6 an adjudication of delinquency, every person convicted of or adju-  
7 dicated delinquent for a violation of any offense defined in this  
8 chapter or chapter 36 of this title, and every person placed in  
9 supervisory treatment pursuant to N. J. S. 2C:43-12 who was  
10 charged with any offense defined in this chapter or chapter 36 of  
11 this title, shall be assessed for each such offense a penalty fixed at:

- 12 (1) \$3,000.00 in the case of a crime of the first degree;
- 13 (2) \$2,000.00 in the case of a crime of the second degree;
- 14 (3) \$1,000.00 in the case of a crime of the third degree;
- 15 (4) \$750.00 in the case of a crime of the fourth degree;
- 16 (5) \$500.00 in the case of a disorderly persons or petty disor-  
17 derly persons offense.

18 All penalties provided for in this section shall be in addition to  
19 and not in lieu of any fine authorized by law or required to be im-  
20 posed pursuant to the provisions of N. J. S. 2C:35-12.

21 b. All penalties provided for in this section shall be collected as  
22 provided for collection of fines and restitutions in section 2 of  
23 1979, c. 396 (C. 2C:46-4), and shall be forwarded to the Depart-  
24 ment of Law and Public Safety as provided in subsection c. of  
25 this section.

26 c. All moneys collected pursuant to this section shall be for-  
27 warded to the Department of Law and Public Safety to be de-  
28 posited in a nonlapsing revolving fund to be known as the "Drug  
29 Enforcement and Demand Reduction Fund."

30 d. All monies, including fines and restitution, collected from a  
31 person convicted of or adjudicated delinquent for an offense or  
32 placed in supervisory treatment pursuant to N. J. S. 2C:43-12  
33 shall be applied first to any Violent Crimes Compensation Board  
34 penalty imposed pursuant to section 2 of P. L. 1979, c. 396 (C.  
35 2C:43-3.1), and shall next be applied to any forensic laboratory  
36 fee assessed pursuant to N. J. S. 2C:35-20, and shall next be  
37 applied to any penalty imposed pursuant to this section.

1 2C:35-16. Mandatory Forfeiture or Postponement of Driving  
2 Privileges.

3 In addition to any disposition authorized by this title, the pro-  
4 visions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43), or any other  
5 statute indicating the dispositions that can be ordered for an ad-  
6 judication of delinquency, and notwithstanding the provisions of  
7 subsection c. of N. J. S. 2C:43-2 every person convicted of or ad-  
8 judicated delinquent for a violation of any offense defined in this  
9 chapter or chapter 36 of this title shall forthwith forfeit his right  
10 to operate a motor vehicle over the highways of this State for a  
11 period to be fixed by the court at not less than six months or more  
12 than two years, or, after the expiration of six months, until the  
13 privilege shall be restored to him in the discretion of the Director  
14 of the Division of Motor Vehicles upon application to and after  
15 certification by a physician to the director that the person is not a  
16 drug dependent person within the meaning of this chapter. In the  
17 case of any person who at the time of the imposition of sentence  
18 is less than 17 years of age, the period of the suspension of driving  
19 privileges authorized herein shall not commence to run until the  
20 defendant reaches the age of 17. The court before whom any per-  
21 son is convicted of or adjudicated delinquent for a violation of any  
22 offense defined in this chapter or chapter 36 of this title shall cause

23 a report of such conviction or adjudication to be filed with the  
24 Director of the Division of Motor Vehicles.

1 2C:35-17. Exception to physician-patient privilege.

2 Information communicated to a practitioner in an effort unlaw-  
3 fully to obtain or procure the administration of a controlled dan-  
4 gerous substance or controlled substance analog shall not be a  
5 privileged communication.

1 2C:35-18. Exemption; Burden of Proof.

2 a. It is an affirmative defense to any criminal action arising under  
3 this chapter or chapter 35 that the defendant is the authorized  
4 holder of an appropriate registration or order form or is otherwise  
5 exempted or excepted from criminal liability by virtue of any pro-  
6 vision of P. L. 1970, c. 226 (C. 24:21-1 et seq.). The affirmative  
7 defense established herein shall be proved by the defendant by a  
8 preponderance of the evidence.

9 b. No liability shall be imposed by virtue of this chapter upon  
10 any duly authorized State officer, engaged in the enforcement of any  
11 law or municipal ordinance relating to controlled dangerous  
12 substances.

1 2C:35-19. Laboratory Certificates; Use; Admission into Evi-  
2 dence; Objections.

3 a. The Attorney General of New Jersey may designate State  
4 Forensic Laboratories. These laboratories shall be staffed by em-  
5 ployees of this State or any of the State's political subdivisions. A  
6 law enforcement agency may submit to one of these laboratories  
7 any substance, including, but not limited to, any substance believed  
8 to be a controlled dangerous substance or controlled substance  
9 analog thereof, or any poisons, drugs or medicines or human body  
10 tissues or fluids. The laboratory shall chemically analyze these  
11 substances.

12 b. Upon the request of any law enforcement agency, the labora-  
13 tory employee performing the chemical analysis shall prepare a  
14 certificate. This employee shall sign the certificate under oath and  
15 shall include in the certificate an attestation as to the result of the  
16 analysis. The presentation of this certificate to a court by any  
17 party to a proceeding shall be evidence that all of the requirements  
18 and provisions of this section have been complied with. This certifi-  
19 cate shall be sworn to before a notary public or other person em-  
20 powered by law to take oaths and shall contain a statement estab-  
21 lishing the following: the type of analysis performed; the result  
22 achieved; any conclusions reached based upon that result; that the  
23 subscriber is the person who performed the analysis and made the  
24 conclusions; the subscriber's training or experience to perform

25 the analysis; and the nature and condition of the equipment used.  
26 When properly executed, the certificate shall, subject to subsection  
27 c. of this section and notwithstanding any other provision of law,  
28 be admissible evidence of the composition, quality, and quantity of  
29 the substance submitted to the laboratory for analysis, and the  
30 court shall take judicial notice of the signature of the person per-  
31 forming the analysis and of the fact that he is that person.

32 c. Whenever a party intends to proffer in a criminal or quasi  
33 criminal proceeding, a certificate executed pursuant to this section,  
34 notice of an intent to proffer that certificate and all reports relating  
35 to the analysis in question, including a copy of the certificate, shall  
36 be conveyed to the opposing party or parties at least 20 days before  
37 the proceeding begins. An opposing party who intends to object  
38 to the admission into evidence of a certificate shall give notice of  
39 objection and the grounds for the objection within 10 days upon  
40 receiving the adversary's notice of intent to proffer the certificate.  
41 Whenever a notice of objection is filed, admissibility of the certifi-  
42 cate shall be determined not later than two days before the begin-  
43 ning of the trial. A proffered certificate shall be admitted in evi-  
44 dence unless it appears from the notice of objection and specific  
45 grounds for that objection that the composition, quality, or quantity  
46 of the substance submitted to the laboratory for analysis will be  
47 contested at trial. A failure to comply with the time limitations  
48 regarding the notice of objection required by this section shall  
49 constitute a waiver of any objections to the admission of the certifi-  
50 cate. The time limitations set forth in this section may be relaxed,  
51 in the discretion of the court, only upon a showing of good cause.

1 2C:35-20. Forensic Laboratory Fees.

2 a. In addition to any disposition made pursuant to the provi-  
3 sions of N. J. S. 2C:43-2, any person convicted of an offense  
4 under this chapter shall be assessed a criminal laboratory analysis  
5 fee of \$50.00 for each such offense for which he was convicted.  
6 Any person who is placed in supervisory treatment pursuant to  
7 N. J. S. 2C:43-12 shall be assessed a criminal laboratory analysis  
8 fee of \$50.00 for each such offense for which he was charged.

9 b. In addition to any other disposition made pursuant to the  
10 provisions of section 24 of P. L. 1982, c. 77 (C. 2A:4A-43) or  
11 any other statute indicating the dispositions that can be ordered  
12 for adjudications of delinquency, any juvenile adjudicated de-  
13 linquent for a violation of this chapter, shall be assessed a  
14 laboratory analysis fee of \$25.00 for each such adjudication.

15 c. All criminal laboratory analysis fees provided for in this  
16 section shall be collected as provided for the collection of fines

17 and restitutions in N. J. S. 2C:46-4, and shall be forwarded to  
18 the appropriate forensic laboratory fund as provided in subsec-  
19 tion d. of this section.

20 d. Forensic laboratory funds shall be established as follows:

21 (1) Any county which maintains a publicly funded forensic  
22 laboratory that regularly employs at least one forensic chemist  
23 engaged in the analysis of controlled dangerous substances may  
24 establish a county forensic laboratory fund within the office of  
25 the county treasurer.

26 (2) A separate account shall be established in the State Treasury  
27 and shall be designated the "State Forensic Laboratory Fund."

28 e. The \$50.00 analysis fee provided for in subsection a. of this  
29 section shall be forwarded to the office of the county treasurer  
30 of the county that performed the laboratory analysis if that  
31 county has established a county forensic laboratory fund or,  
32 where appropriate, to the State forensic laboratory that per-  
33 formed the analysis. If the county has not established a forensic  
34 laboratory fund, then the \$50.00 analysis fee shall be forwarded  
35 to the State forensic laboratory fund with the State Treasury.  
36 The county treasurer and State Treasurer may retain an amount  
37 of this money equal to the administrative costs incurred pursuant  
38 to carrying out their respective responsibilities under this section.

39 f. Moneys deposited in the county forensic laboratory fund  
40 created pursuant to paragraph (1) of subsection c. of this section  
41 shall be in addition to any allocations pursuant to existing law  
42 and shall be designated for the exclusive use of the county forensic  
43 laboratory. These uses may include, but are not limited to, the  
44 following:

45 (1) costs incurred in providing microscopic and chemical  
46 analyses for controlled substances in connection with criminal  
47 investigations conducted within this State;

48 (2) purchase and maintenance of equipment for use in per-  
49 forming analyses; and

50 (3) continuing education, training and scientific development  
51 of forensic scientists regularly employed by these laboratories.

52 g. Moneys deposited in the State forensic laboratory fund  
53 created pursuant to paragraph (2) of subsection c. of this section  
54 shall be used by State forensic laboratories that the Attorney  
55 General designates pursuant to N. J. S. 2C:35-19, and the Divi-  
56 sion of State Police in the Department of Law and Public Safety.  
57 These moneys shall be in addition to any allocations pursuant  
58 to existing law and shall be designated for the exclusive use of  
59 State forensic facilities. These uses may include those enumerated  
60 in subsection e. of this section.

1 2C:35-21. Seizure in Violation of Chapter; Pretrial Destruction  
2 of Bulk Seizures of Controlled Dangerous Substances.

3 Any controlled dangerous substance or controlled substance  
4 analog seized in violation of this chapter shall be subject to the  
5 forfeiture provisions of chapter 64 of this title. In any case in-  
6 volving a bulk seizure of controlled dangerous substance or con-  
7 trolled substance analog, a prosecuting authority, upon notice  
8 to defense counsel, may apply to the trial court for an order to  
9 destroy all or some portion of the seized substance. The State  
10 or county forensic laboratory that analyzes the substance shall  
11 make a photographic record thereof.

12 In the event that the defendant objects to the application to  
13 destroy all or some portion of the controlled dangerous substance  
14 or controlled substance analog, defense counsel shall within 20  
15 days of receiving notice from the prosecuting authority serve  
16 notice of objection upon the trial judge and the prosecuting  
17 authority. The notice of objection shall include the reasons there-  
18 for. Failure to comply with the time limitations regarding the  
19 notice of objection required by this section shall constitute a  
20 waiver of any objections to the destruction of all or some portion  
21 of the substance,

22 The decision to order the destruction of such substance shall  
23 be vested in the sound discretion of the trial court. Prior to the  
24 issuance of any order authorizing the destruction of all or some  
25 portion of the controlled dangerous substance or controlled sub-  
26 stance analog, and subject to reasonable supervision by laboratory  
27 or agency personnel, defense counsel shall be afforded an oppor-  
28 tunity to inspect or test the substance.

29 The State or county forensic laboratory authorized to destroy  
30 all or some portion of the controlled dangerous substance or con-  
31 trolled substance analog shall file with the court a certificate  
32 under oath attesting to the date on which the substance was  
33 destroyed, the quantity of the substance destroyed, and the method  
34 used to destroy the substance.

35 Notwithstanding any other provision of law, the photographic  
36 record made in accordance with the provisions of this section,  
37 upon proper authentication, may be introduced as evidence in  
38 any court.

1 2C:35-22. Severability.

2 If any one or more sections, clauses, sentences or parts of this  
3 chapter shall for any reason be questioned in any court, and shall  
4 be adjudged unconstitutional or invalid, the judgment shall not

5 affect, impair or invalidate the remaining provisions thereof, but  
6 shall be confined in its operation to the specific provisions so  
7 held unconstitutional or invalid.

1 2C:35-23. Pending Cases.

2 a. Except as provided in subsections b. and c. of this section,  
3 any violation of a provision of P. L. 1970, c. 226 (C. 24:21-1 et  
4 seq.) which is amended or deleted by this act, and which violation  
5 was committed prior to the effective date of this chapter, shall  
6 be governed by the prior law, which is continued in effect for  
7 that purpose, as if this act were not in force.

8 b. Any offense defined in this act and committed on or after  
9 the effective date shall be governed by the provisions of this act.  
10 For the purposes of this section, an offense was committed after  
11 the effective date of this act if any of the elements of the offense  
12 occurred subsequent thereto.

13 c. In any case pending on or initiated after the effective date  
14 of this act involving an offense defined herein and committed  
15 prior to such date:

16 (1) N. J. S. 2C:35-19 and N. J. S. 2C:35-21 shall govern,  
17 insofar as they are justly applicable and their application does  
18 not introduce confusion or delay;

19 (2) The court, with the consent of the defendant, may impose  
20 sentence under the provisions of this chapter applicable to the  
21 offense and the offender;

22 (3) A defendant who, on the effective date of this act, has not  
23 made application for supervisory treatment under section 27 of  
24 P. L. 1970, c. 226 (C. 24:21-27) shall not be eligible for super-  
25 visory treatment except pursuant to the provisions of 2C:43-12  
26 and as provided in Chapter 36A of this title.

1 2. An additional chapter, chapter 36, is added to Title 2C as  
2 follows:

#### CHAPTER 36 DRUG PARAPHERNALIA

- 3 N. J. S. 2C:36-1. Drug Paraphernalia, Defined; Determination.  
4 N. J. S. 2C:36-2. Use or Possession with Intent to Use, Disor-  
5 derly Persons Offense.  
6 N. J. S. 2C:36-3. Distribute, Dispense or Possession with Intent  
7 to Distribute or Manufacture, Crime of Fourth  
8 Degree.  
9 N. J. S. 2C:36-4. Advertising to Promote Sale, Crime of Fourth  
10 Degree.  
11 N. J. S. 2C:36-5. Delivering Drug Paraphernalia to Person Under  
12 18 Years of Age, Crime of Third Degree.



- 13 N. J. S. 2C:36-6. Possession or Distribution of Hypodermic Sy-  
14 rringe or Needle.  
15 N. J. S. 2C:36-7. Seizure in Violation of Act.  
16 N. J. S. 2C:36-8. Severability.  
17 N. J. S. 2C:36-9. Pending Cases.

1 2C:36-1. Drug paraphernalia, defined; determination.

2 As used in this act, "drug paraphernalia" means all equipment,  
3 products and materials of any kind which are used or intended for  
4 use in planting, propagating, cultivating, growing, harvesting,  
5 manufacturing, compounding, converting, producing, processing,  
6 preparing, testing, analyzing, packaging, repackaging, storing, con-  
7 taining, concealing, ingesting, inhaling, or otherwise introducing  
8 into the human body a controlled dangerous substance or con-  
9 trolled substance analogs in violation of the provisions of chapter  
10 35 of this title. It shall include, but not be limited to: a. kits used  
11 or intended for use in planting, propagating, cultivating, growing  
12 or harvesting of any species of plant which is a controlled danger-  
13 ous substance or from which a controlled dangerous substance can  
14 be derived; b. kits used or intended for use in manufacturing,  
15 compounding, converting, producing, processing, or preparing  
16 controlled dangerous substances or controlled substance analogs;  
17 c. isomerization devices used or intended for use in increasing the  
18 potency of any species of plant which is a controlled dangerous  
19 substance; d. testing equipment used or intended for use identifi-  
20 ing, or in analyzing the strength, effectiveness or purity of con-  
21 trolled dangerous substances or controlled substance analogs; e.  
22 scales and balances used or intended for use in weighing or mea-  
23 suring controlled dangerous substances or controlled substance  
24 analogs; f. diluents and adulterants, such as quinine hydrochloride,  
25 mannitol, mannite, dextrose and lactose, used or intended for use  
26 in cutting controlled dangerous substances or controlled sub-  
27 stance analogs; g. separation gins and sifters used or intended for  
28 use in removing twigs and seeds from, or in otherwise cleaning  
29 or refining, marihuana; h. blenders, bowls, containers, spoons and  
30 mixing devices used or intended for use in compounding controlled  
31 dangerous substances or controlled substance analogs; i. capsules,  
32 balloons, envelopes and other containers used or intended for use  
33 in packaging small quantities of controlled dangerous substances  
34 or controlled substance analogs; j. containers and other objects  
35 used or intended for use in storing or concealing controlled danger-  
36 ous substances or controlled substance analogs; k. objects used  
37 or intended for use in ingesting, inhaling, or otherwise introducing  
38 marihuana, cocaine, hashish, or hashish oil into the human body.

39 such as (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic  
 40 pipes with or without screens, permanent screens, hashish heads,  
 41 or punctured metal bowls; (2) water pipes; (3) carburetion tubes,  
 42 and devices; (4) smoking and carburetion masks; (5) roach clips,  
 43 meaning objects used to hold burning material, such as a mari-  
 44 huana cigarette, that has become too small or too short to be held  
 45 in the hand; (6) miniature cocaine spoons, and cocaine vials; (7)  
 46 chamber pipes; (8) carburetor pipes; (9) electric pipes; (10) air-  
 47 driven pipes; (11) chillums; (12) bongs; and (13) ice pipes or  
 48 chillers.

49 In determining whether or not an object is drug paraphernalia,  
 50 the trier of fact, in addition to or as part of the proofs, may con-  
 51 sider the following factors: a. statements by an owner or by any-  
 52 one in control of the object concerning its use; b. the proximity  
 53 of the object of illegally possessed controlled dangerous substances  
 54 or controlled substance analogs; c. the existence of any residue of  
 55 illegally possessed controlled dangerous substances or con-  
 56 trolled substance analogs on the object; d. direct or circum-  
 57 stantial evidence of the intent of an owner, or of anyone in control  
 58 of the object, to deliver it to persons whom he knows intend to use  
 59 the object to facilitate a violation of this act; the innocence of an  
 60 owner, or of anyone in control of the object, as to a direct violation  
 61 of this act shall not prevent a finding that the object is intended  
 62 for use as drug paraphernalia; e. instructions, oral or written, pro-  
 63 vided with the object concerning its use; f. descriptive materials  
 64 accompanying the object which explain or depict its use; g. na-  
 65 tional or local advertising whose purpose the person knows or  
 66 should know is to promote the sale of objects intended for use as  
 67 drug paraphernalia; h. the manner in which the object is displayed  
 68 for sale; i. the existence and scope of legitimate uses for the object  
 69 in the community; and j. expert testimony concerning its use.

1 2C:36-2. Use or possession with intent to use, disorderly per-  
 2 sons offense.

3 It shall be unlawful for any person to use, or to possess with  
 4 intent to use, drug paraphernalia to plant, propagate, cultivate,  
 5 grow, harvest, manufacture, compound, convert, produce, process,  
 6 prepare, test, analyze, pack, repack, store, contain, conceal, ingest,  
 7 inhale, or otherwise introduce into the human body a controlled  
 8 dangerous substance or controlled substance analog in violation  
 9 of the provisions of chapter 35 of this title. Any person who vio-  
 10 lates this section is guilty of a disorderly persons offense.

1 2C:36-3. Distribute, dispense or possession with intent to dis-  
 2 tribute or manufacture, crime of fourth degree.

3 It shall be unlawful for any person to distribute or dispense, or  
4 possess with intent to distribute or dispense, or manufacture with  
5 intent to distribute or dispense, drug paraphernalia, knowing that  
6 it will be used to plant, propagate, cultivate, grow, harvest, manu-  
7 facture, compound, convert, produce, process, prepare, test,  
8 analyze, pack, repack, store, contain, conceal, ingest, inhale or  
9 otherwise introduce into the human body a controlled dangerous  
10 substance or controlled substance analog in violation of the pro-  
11 visions of chapter 35 of this title. Any person who violates this  
12 section commits a crime of the fourth degree.

1 2C:36-4. Advertising to promote sale, crime of fourth degree.

2 It shall be unlawful for any person to place in any newspaper,  
3 magazine, handbill, or other publication any advertisement, know-  
4 that the purpose of the advertisement in whole or in part, is to  
5 promote the sale of objects intended for use as drug paraphernalia.  
6 Any person who violates this section commits a crime of the  
7 fourth degree.

1 2C:36-5. Delivering drug paraphernalia to person under 18  
2 years of age, crime of third degree.

3 Any person 18 years of age or over who violates N. J. S. 2C:36-3  
4 by delivering drug paraphernalia to a person under 18 years of  
5 age who is at least three years his junior commits a crime of the  
6 third degree.

1 2C:36-6. Possession or distribution of hypodermic syringe or  
2 needle.

3 Except as otherwise authorized by law, it shall be unlawful for  
4 a person to have under his control or possess with intent to use a  
5 hypodermic syringe, hypodermic needle or any other instrument  
6 adapted for the use of controlled dangerous substance or con-  
7 trolled substance analog as defined in chapter 35 of this title or  
8 to sell, furnish or give to any person such syringe, needle or in-  
9 strument. Any person who violates this section is guilty of a dis-  
10 orderly persons offense.

1 2C:36-7. Seizure in violation of Chapter.

2 Any drug paraphernalia, hypodermic syringe or needle seized  
3 in violation of this chapter shall be subject to the forfeiture pro-  
4 visions of Chapter 64 of this title.

1 2C:36-8. Severability.

2 If any provision of this chapter or the application thereof to any  
3 person or circumstance are held invalid, the invalidity shall not  
4 affect other provisions or applications of the sections which can  
5 be given effect without the invalid provision or application, and  
6 to this end the provisions of this chapter are severable.

1 2C:36-9. Pending Cases.

2 Notwithstanding any other provision of this act, the provisions  
3 of P. L. 1970, c. 226 (C. 24:21-1 et seq.) shall remain in full force  
4 and effect as to any offense committed prior to the effective date  
5 of this act.

1 3. An additional chapter, chapter 36A is added to Title 2C as  
2 follows:

Chapter 36A CONDITIONAL DISCHARGE FOR CERTAIN FIRST OFFENDERS

3 N. J. S. 2C:36A-1. Conditional discharge for certain first of-  
4 fenses; expunging of records. a. Whenever any person who has  
5 not previously been convicted of any offense under section 20 of  
6 P. L. 1970, c. 226 (C. 24:21-20), or a disorderly persons or petty  
7 disorderly persons offense defined in chapter 35 or 36 of this title  
8 or, subsequent to the effective date of this title, under any law of  
9 the United States, this State or any other state relating to mari-  
10 huana, or stimulant, depressant, or hallucinogenic drugs, is  
11 charged with or convicted of any disorderly persons offense or  
12 petty disorderly persons offense under chapter 35 or 36 of this  
13 title, the court upon notice to the prosecutor and subject to sub-  
14 section c. of this section, may on motion of the defendant of the  
15 court;

16 (1) Suspend further proceedings and with the consent of the  
17 person after reference to the State Bureau of Identification crim-  
18 inal history record information files, place him under supervisory  
19 treatment upon such reasonable terms and conditions as it may  
20 require: of

21 (2) After plea of guilty or finding of guilty, and without enter-  
22 ing a judgment of conviction, and with the consent of the person  
23 after proper reference to the State Bureau of Identification crim-  
24 inal history record information files, place him on supervisory  
25 treatment upon reasonable terms and conditions as it may require,  
26 or as otherwise provided by law.

27 b. In no event shall the court require as a term or condition of  
28 supervisory treatment under this section, referral to any resi-  
29 dential treatment facility for a period exceeding the maximum  
30 period of confinement prescribed by law for the offense for which  
31 the individual has been charged or convicted, nor shall any term  
32 of supervisory treatment imposed under this subsection exceed a  
33 period of three years. Upon violation of a term or condition of  
34 supervisory treatment the court may enter a judgment of convic-  
35 tion and proceed as otherwise provided, or where there has been  
36 no plea of guilty or finding of guilty, resume proceedings. Upon  
37 fulfillment of the terms and conditions of supervisory treatment

38 the court shall terminate the supervisory treatment and dismiss  
39 the proceedings against him. Termination of supervisory treat-  
40 ment and dismissal under this section shall be without court  
41 adjudication of guilt and shall not be deemed a conviction for pur-  
42 poses of disqualifications or disabilities, if any, imposed by law  
43 upon conviction of a crime or disorderly persons offense but shall  
44 be reported by the clerk of the court to the State Bureau of Identi-  
45 fication criminal history record information files. Termination of  
46 supervisory treatment and dismissal under this section may occur  
47 only once with respect to any person. Imposition of supervisory  
48 treatment under this section shall not be deemed a conviction for  
49 the purposes of determining whether a second or subsequent of-  
50 fense has occurred under section 29 of P. L. 1970, c. 226 (C.  
51 24:21-29), chapter 35 or 36 of this title or any law of this State.

52 c. Proceedings under this section shall not be available to any  
53 defendant unless the court in its discretion concludes that:

54 (1) The defendant's continued presence in the community, or in  
55 a civil treatment center or program, will not pose a danger to the  
56 community; or

57 (2) That the terms and conditions of supervisory treatment will  
58 be adequate to protect the public and will benefit the defendant by  
59 serving to correct any dependence on or use of controlled sub-  
60 stances which he may manifest; and

61 (3) The person has not previously received supervisory treat-  
62 ment under section 27 of P. L. 1970, c. 226 (C. 24:21-27) or the  
63 provisions of this chapter.

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

2 2C:5-2. Conspiracy. a. Definition of conspiracy. A person is  
3 guilty of conspiracy with another person or persons to commit a  
4 crime if with the purpose of promoting or facilitating its commis-  
5 sion he:

6 (1) Agrees with such other person or persons that they or one  
7 or more of them will engage in conduct which constitutes such  
8 crime or an attempt or solicitation to commit such crime; or

9 (2) Agrees to aid such other person or persons in the planning  
10 or commission of such crime or of an attempt or solicitation to  
11 commit such crime.

12 b. Scope of conspiratorial relationship. If a person guilty of  
13 conspiracy, as defined by subsection a. of this section, knows that  
14 a person with whom he conspires to commit a crime has conspired  
15 with another person or persons to commit the same crime, he is  
16 guilty of conspiring with such other person or persons, whether  
17 or not he knows their identity, to commit such crime.

18 c. Conspiracy with multiple objectives. If a person conspires  
19 to commit a number of crimes, he is guilty of only one conspiracy  
20 so long as such multiple crimes are the object of the same agree-  
21 ment or continuous conspiratorial relationship. It shall not be a  
22 defense to a charge under this section that one or more of the  
23 objectives of the conspiracy was not criminal; provided that one or  
24 more of its objectives or the means of promoting or facilitating an  
25 objective of the conspi. is criminal.

26 d. Overt act. No person may be convicted of conspiracy to commit  
27 a crime other than a crime of the first or second degree or distribu-  
28 tion or possession with intent to distribute a controlled dangerous  
29 substance [as defined under the "New Jersey Controlled Dan-  
30 gerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.),]  
31 or controlled substance analog as defined in chapter 35 of this title,  
32 unless an overt act in pursuance of such conspiracy is proved to  
33 have been done by him or by a person with whom he conspired.

34 e. Renunciation of purpose. It is an affirmative defense which the  
35 actor must prove by a preponderance of the evidence that he, after  
36 conspiring to commit a crime, informed the authority of the  
37 existence of the conspiracy and his participation therein, and  
38 thwarted or caused to be thwarted the commission of any offense  
39 in furtherance of the conspiracy, under circumstances manifesting  
40 a complete and voluntary renunciation of criminal purpose as  
41 defined in 2C:5-1d.; provided, however, that an attempt as defined  
42 in 2C:5-1 shall not be considered an offense for purposes of  
43 renunciation under this subsection.

44 f. Duration of conspiracy. For the purpose of section 2C:1-6d.:

45 (1) Conspiracy is a continuing course of conduct which termi-  
46 nates when the crime or crimes which are its object are committed  
47 or the agreement that the be committed is abandoned by the  
48 defendant and by those with whom he conspired; and

49 (2) Such abandonment is presumed with respect to a crime other  
50 than one of the first or second degree if neither the defendant nor  
51 anyone with whom he conspired does any overt act in pursuance  
52 of the conspiracy during the applicable period of limitation; and

53 (3) If an individual abandons the agreement, the conspiracy is  
54 terminated as to him only if and when he advises those with whom  
55 he conspired of his abandonment or he informs the law enforce-  
56 ment authorities of the existence of the conspiracy and of his  
57 participation therein.

58 g. Leader of organized crime. A person is a leader of organized  
59 crime if he purposefully conspires with others as an organizer,  
60 supervisor or manager, to commit a continuing series of crimes

61 which constitute a pattern of racketeering activity under the pro-  
 62 visions of N. J. S. 2C:41-1, provided, however, that notwithstand-  
 63 ing 2C:1-Sa. (2), a conviction of leader of organized crime shall not  
 64 merge with the conviction of any other crime which constitutes  
 65 racketeering activity under 2C:41-1.

1 5. N. J. S. 2C:20-2 is amended as follows:

2 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
 3 Applicable to Theft Generally. a. Consolidation of Theft Offenses.  
 4 Conduct denominated theft in this chapter constitutes a single  
 5 offense, but each episode or transaction may be the subject of a  
 6 separate prosecution and conviction. A charge of theft may be  
 7 supported by evidence that it was committed in any manner that  
 8 would be theft under this chapter, notwithstanding the specification  
 9 of a different manner in the indictment, or accusation, subject only  
 10 to the power of the court to ensure fair trial by granting a bill of  
 11 particulars, discovery, a continuance, or other appropriate relief  
 12 where the conduct of the defense would be prejudiced by lack of  
 13 fair notice or by surprise.

14 b. Grading of theft offenses.

15 (1) Theft constitutes a crime of the second degree if:

- 16 (a) *The [the] amount involved is \$75,000.00 or more [or];*  
 17 (b) *The [if the] property is taken by extortion; or*  
 18 (c) *The property stolen is a controlled dangerous substance*  
 19 *or controlled substance analog as defined in N. J. S. 2C:35-2*  
 20 *and the quantity is in excess of one kilogram.*

21 (2) Theft constitutes a crime of the third degree if:

- 22 (a) *The amount involved exceeds \$500.00 but is less than*  
 23 *\$75,000.00;*  
 24 (b) *The property stolen is a firearm, automobile, boat, horse*  
 25 *or airplane;*  
 26 (c) *The property stolen is a controlled dangerous substance*  
 27 *or controlled substance analog as defined in [P. L. 1970, c. 226*  
 28 *(C. 24:21-1 et seq.);] N. J. S. 2C:35-2 and the amount involved*  
 29 *is less than \$75,000.00 or is undetermined;*  
 30 (d) *It is from the person of the victim;*  
 31 (e) *It is in breach of an obligation by a person in his capacity*  
 32 *as a fiduciary;*  
 33 (f) *It is by threat not amounting to extortion; or*  
 34 (g) *It is of a public record, writing or instrument kept, filed*  
 35 *or deposited according to law with or in the keeping of any*  
 36 *public office or public servant.*

37 (3) Theft constitutes a crime of the fourth degree if the amount  
 38 involved is at least \$200.00 but does not exceed \$500.00. If the

39 amount involved was less than \$200.00 the offense constitutes a  
40 disorderly persons offense.

41 (4) The amount involved in a theft shall be determined by the  
42 trier of fact. Amounts involved in thefts committed pursuant to  
43 one scheme or course of conduct, whether from the same person or  
44 several persons, may be aggregated in determining the grade of  
45 the offense.

46 c. Claim of right. It is an affirmative defense to prosecution for  
47 theft that the actor:

48 (1) Was unaware that the property or service was that of an  
49 other;

50 (2) Acted under an honest claim of right to the property or  
51 service involved or that he had a right to acquire or dispose of it  
52 as he did; or

53 (3) Took property exposed for sale, intending to purchase and  
54 pay for it promptly, or reasonably believing that the owner, if  
55 present, would have consented.

56 d. Theft from spouse. It is no defense that theft was from the  
57 actor's spouse, except that misappropriation of household and  
58 personal effects, or other property normally accessible to both  
59 spouses, is theft only if it occurs after the parties have ceased  
60 living together.

1 6. Section 6 of P. L. 1979, c. 179 (C. 2C:39-7) is amended to read  
2 as follows:

3 Certain Persons Not to Have Weapons. Any person, having been  
4 convicted in this State or elsewhere of the crime of aggravated  
5 assault, arson, burglary, escape, extortion, homicide, kidnapping,  
6 robbery, aggravated sexual assault, or sexual assault, whether or  
7 not armed with or having in his possession any weapon enumerated  
8 in section 2C:39-1r., or any person who has ever been committed  
9 for a mental disorder to any hospital, mental institution or sani-  
10 tarium unless he possesses a certificate of a medical doctor or  
11 psychiatrist licensed to practice in New Jersey or other satisfactory  
12 proof that he is no longer suffering from a mental disorder which  
13 interferes with or handicaps him in the handling of a firearm, or  
14 any person who has been convicted of *other than a disorderly per-  
15 sons or petty disorderly persons offense* for the unlawful use, pos-  
16 session or sale of a controlled dangerous substance as defined in  
17 [article 2 of P. L. 1970, c. 226 (C. 24:21-3 et seq.)] N. J. S. 2C:35-  
18 who purchases, owns, possesses or controls any of the said weapons  
19 is guilty of a crime of the fourth degree.

20 Whenever any person shall have been convicted in another state,  
21 territory, commonwealth or other jurisdiction of the United States,



39 c. "Enterprise" includes any individual, sole proprietorship,  
40 partnership, corporation, business or charitable trust, association,  
41 or other legal entity, any union or group of individuals asso-  
42 ciated in fact although not a legal entity, and it includes illicit as  
43 well as licit enterprises and governmental as well as other entities.

44 d. "Pattern of racketeering activity" requires

45 (1) Engaging in at least two incidents of racketeering conduct  
46 one of which shall have occurred after the effective date of this  
47 act and the last of which shall have occurred within 10 years  
48 (excluding any period of imprisonment) after a prior incident  
49 of racketeering activity; and

50 (2) A showing that the incidents of racketeering activity em-  
51 brace criminal conduct that has either the same or similar pur-  
52 poses, results, participants or victims or methods of commission  
53 or are otherwise interrelated by distinguishing characteristics  
54 and are not isolated incidents.

55 e. "Unlawful debt" means a debt

56 (1) Which was incurred or contracted in gambling activity  
57 which was in violation of the law of the United States, a state or  
58 political subdivision thereof; or

59 (2) Which is unenforceable under State or Federal law in  
60 whole or in part as to principal or interest because of the laws  
61 relating to usury.

62 f. "Documentary material" includes any book, paper, docu-  
63 ment, writing, drawing, graph, chart, photograph, phonorecord,  
64 magnetic or recording or videto tape, computer printout, other  
65 data compilation from which information can be obtained or from  
66 which information can be translated into useable form or other  
67 tangible item.

68 g. "Attorney General" includes the Attorney General of New  
69 Jersey, his assistants and deputies. The term shall also include  
70 a county prosecutor or his designated assistant prosecutor if a  
71 county prosecutor is expressly authorized in writing by the  
72 Attorney General to carry out the powers conferred on the  
73 Attorney General by this chapter.

74 h. "Trade or commerce" shall include all economic activity in-  
75 volving or relating to any commodity or service.

1 8. N. J. S. 2C:43-1 is amended to read as follows:

2 2C:43-1. Degrees of Crimes. a. Crimes defined by this code are  
3 classified, for the purpose of sentence, into four degrees, as follows:

4 (1) Crimes of the first degree;

5 (2) Crimes of the second degree;

6 (3) Crimes of the third degree; and

7     **(4) Crimes of the fourth degree.**

8     **A crime is of the first, second, third or fourth degree when it is**  
 9 **so designated by the code. An offense, declared to be a crime,**  
 10 **without specification of degree, is of the fourth degree.**

11     **b. Notwithstanding any other provision of law, a crime defined**  
 12 **by any statute of this State other than this code and designated as**  
 13 **a high misdemeanor shall constitute for the purpose of sentence**  
 14 **a crime of the third degree. Except as provided in sections 2C:1-4c**  
 15 **and 2C:1-5b and notwithstanding any other provision of law, a**  
 16 **crime defined by any statute of this State other than this code**  
 17 **and designated as a misdemeanor shall constitute for the purpose**  
 18 **of sentence a crime of the fourth degree. [The provisions of this**  
 19 **subsection shall not, however, apply to the sentences authorized**  
 20 **by the "New Jersey Controlled Dangerous Substances Act,"**  
 21 **P. L. 1970, c. 226 (C. 24:21-1 through 45), which shall be con-**  
 22 **tinued in effect. A sentence imposed upon violation of the "New**  
 23 **Jersey Controlled Dangerous Substances Act" shall be governed**  
 24 **by this subtitle but shall be subject to the maximum sentence**  
 25 **authorized for the relevant offense under said act, or if there is**  
 26 **no specific penalty under that act, by imprisonment for not more**  
 27 **than three years or a fine of not more than \$1,000.00 or both,**  
 28 **in the case of a misdemeanor or other indictable offenses, or by**  
 29 **imprisonment for not more than six months or a fine of not more**  
 30 **than \$500.00 or both, in the case of a nonindictable offense.]**

1     **9. N. J. S. 2C:43-2 is amended to read as follows:**

2     **2C:43-2. Sentence in Accordance with Code; Authorized Dis-**  
 3 **positions. a. Except [as provided in section 2C:43-1b, as to**  
 4 **persons convicted of offenses under the New Jersey Controlled**  
 5 **Dangerous Substances Act, or] as otherwise provided by this code,**  
 6 **all persons convicted of an offense or offenses shall be sentenced**  
 7 **in accordance with this chapter.**

8     **b. Except as provided in subsection a. of this section and subject**  
 9 **to the applicable provisions of the code, the court may suspend**  
 10 **the imposition of sentence on a person who has been convicted of**  
 11 **an offense, or may sentence him as follows:**

12     **(1) To pay a fine or make restitution authorized by section**  
 13 **2C:43-3; or**

14     **(2) To be placed on probation and, in the case of a person con-**  
 15 **victed of a crime, to imprisonment for a term fixed by the court**  
 16 **not exceeding 180 days to be served as a condition of probation, or**  
 17 **in the case of a person convicted of a disorderly persons offense,**  
 18 **to imprisonment for a term fixed by the court not exceeding 90**  
 19 **days to be served as a condition of probation; or**

20 (3) To imprisonment for a term authorized by sections 2C:11-3,  
21 2C:43-5, 6, 7, and 8 or 2C:44-5; or

22 (4) To pay a fine, make restitution and probation, or fine, resti-  
23 tution and imprisonment; or

24 (5) To release under supervision in the community or to require  
25 the performance of community-related service; or

26 (6) To a halfway house or other residential facility in the com-  
27 munity, including agencies which are not operated by the Depart-  
28 ment of Human Services; or

29 (7) To imprisonment at night or on weekends with liberty to  
30 work or to participate in training or educational programs.

31 c. Instead of or in addition to any disposition made according to  
32 this section, the court may postpone, suspend, or revoke for a  
33 period not to exceed two years the driver's license, registration  
34 certificate, or both of any person convicted of a crime, disorderly  
35 persons offense, or petty disorderly persons offense in the course  
36 of which a motor vehicle was used. In imposing this disposition  
37 and in deciding the duration of the postponement, suspension, or  
38 revocation, the court shall consider the severity of the crime or  
39 offense and the potential effect of the loss of driving privileges  
40 on the person's ability to be rehabilitated. Any postponement,  
41 suspension, or revocation shall be imposed consecutively with any  
42 custodial sentence.

43 d. This chapter does not deprive the court of any authority con-  
44 ferred by law to decree a forfeiture of property, suspend or cancel  
45 a license, remove a person from office, or impose any other civil  
46 penalty. Such a judgment or order may be included in the sentence.

47 e. The court shall state on the record the reasons for imposing  
48 the sentence, including its findings pursuant to the criteria for  
49 withholding or imposing imprisonment or fines under sections  
50 2C:44-1 to 2C:44-3, where imprisonment is imposed, considera-  
51 tion of the defendant's eligibility for release under the law gov-  
52 erning parole and the factual basis supporting its findings of  
53 particular aggravating or mitigating factors affecting sentence.

1 10. N. J. S. 2C:43-3 is amended to read as follows:

2 2C:43-3. Fines and Restitutions. A person who has been con-  
3 victed of an offense may be sentenced to pay a fine, to make resti-  
4 tution, or both, such fine not to exceed:

5 a. \$100,000.00, when the conviction is of a crime of the first or  
6 second degree;

7 b. \$7,500.00, when the conviction is of a crime of the third or  
8 fourth degree;

9 c. \$1,000.00, when the conviction is of a disorderly persons  
10 offense;

11 d. \$500.00, when the conviction is of a petty disorderly persons  
12 offense;

13 e. Any higher amount equal to double the pecuniary gain to the  
14 offender or loss to the victim caused by the conduct constituting  
15 the offense by the offender. In such case the court shall make a  
16 finding as to the amount of the gain or loss, and if the record does  
17 not contain sufficient evidence to support such a finding the court  
18 may conduct a hearing upon the issue. For purposes of this sec-  
19 tion the terms "gain" means the amount of money or the value of  
20 property derived by the offender and "loss" means the amount of  
21 value separated from the victim;

22 f. Any higher amount specifically authorized by another section  
23 of this code or any other statute.

24 The restitution ordered paid to the victim shall not exceed his  
25 loss. Any restitution imposed on a person shall be in addition to  
26 any fine which may be imposed pursuant to this section.

27 *g. In the case of violations of chapter 35, any higher amount*  
28 *equal to three times to the street value of the controlled dangerous*  
29 *substance or controlled substance analog. The street value for*  
30 *purposes of this section shall be determined pursuant to subsection*  
31 *c. of N. J. S. 2C:44-2.*

1 11. Section 2 of P. L. 1979, c. 396 (C. 2C:43-3.1) is amended to  
2 read as follows:

3 2. a. (1) In addition to any disposition made pursuant to the  
4 provisions of N. J. S. 2C:43-2, any person convicted of a crime of  
5 violence resulting in the injury or death of another person shall  
6 be assessed a penalty of at least \$30.00, but not to exceed  
7 \$10,000.00 for each such crime for which he was convicted. In im-  
8 posing this penalty, the court shall consider factors such as the  
9 severity of the crime, the defendant's criminal record, defen-  
10 dant's ability to pay and the economic impact of the penalty on the  
11 defendant's dependents.

12 (2) (a) In addition to any other disposition made pursuant to  
13 the provisions of N. J. S. 2C:43-2 or any other statute imposing  
14 sentences for crimes, any person convicted of any disorderly  
15 persons offense, any petty disorderly persons offense, [violation  
16 of the "New Jersey Controlled Dangerous Substances Act," P. L.  
17 1970, c. 226 (C. 24:21-1 et seq.),] or any crime not resulting in the  
18 injury or death of any other person shall be assessed a penalty of  
19 \$30.00 for each such offense or crime for which he was convicted.

20 (b) In addition to any other disposition made pursuant to the  
21 provisions of section 20 of P. L. 1973, c. 306 (C. 2A:4-61) or any  
22 other statute indicating the dispositions that can be ordered for  
23 adjudications of delinquency, any juvenile adjudicated delinquent,  
24 according to the definition of "delinquency" established in section  
25 3 of P. L. 1973, c. 306 (C. 2A:4-44), shall be assessed a penalty of  
26 at least \$15.00 for each such adjudication, but shall not exceed the  
27 amount which could be assessed if the offense was committed by  
28 an adult.

29 (3) All penalties provided for in this section shall be collected  
30 as provided for collection of fines and restitution in section 3 of  
31 P. L. 1979, c. 396 (C. 2C:46-4) and forwarded to the Violent  
32 Crimes Compensation Board for use as provided in subsection  
33 (4) hereof.

34 (4) All moneys collected pursuant to subsections 1 and 2 shall  
35 be forwarded by the Violent Crimes Compensation Board to the  
36 State Treasury to be deposited in a separate account for use by  
37 the Violent Crimes Compensation Board in satisfying claims and  
38 for related administrative costs, pursuant to the provisions of the  
39 "Criminal Injuries Compensation Act of 1971," P. L. 1971, c. 317  
40 (C. 52:4B-1 et seq.) except that after the Violent Crimes Compen-  
41 sation Board shall have received the first \$25.00 of each penalty  
42 assessment per count for an adult offender or the first \$10.00 of  
43 each penalty assessment per count for a juvenile offender, then the  
44 next \$5.00 of each penalty assessment collected shall be forwarded  
45 by the Violent Crimes Compensation Board to the State Treasury  
46 to be deposited in a separate account to be known as the Victim and  
47 Witness Advocacy Fund to be administered by the Department  
48 of Law and Public Safety as provided herein. If the initial penalty  
49 assessment is greater than \$30.00 for an adult offender or \$15.00  
50 for a juvenile offender then any penalty assessment money collected  
51 after the \$5.00 allocated to the Victim and Witness Advocacy Fund  
52 shall be forwarded by the Violent Crimes Compensation Board to  
53 the State Treasury to be deposited in the separate account for use  
54 by the Violent Crimes Compensation Board as provided for in this  
55 subsection. The parties responsible for collection of the penalty  
56 assessment, the municipal court clerks, the county probation de-  
57 partments and the Department of Corrections shall provide the  
58 Violent Crimes Compensation Board with a monthly accounting  
59 of the penalty assessment collections which enables the Violent  
60 Crimes Compensation Board to accurately identify the \$5.00 share  
61 allocatable to the Victim and Witness Advocacy Fund.

62 (5) The Department of Law and Public Safety through the Divi-  
63 sion of Criminal Justice shall be responsible for administering the  
64 Victim and Witness Advocacy Fund. This fund shall be used to  
65 support the development and provision of services to victims and  
66 witnesses of crimes and for related administrative costs. The Di-  
67 rector of the Division of Criminal Justice shall promulgate rules  
68 and regulations in order to effectuate the purposes of this fund.

69 (6) The Division of Criminal Justice shall report annually to  
70 the Governor and the Legislature concerning the implementation  
71 of this fund.

72 b. All moneys, including fines and restitution, collected from a  
73 person convicted of any disorderly persons offense, any petty dis-  
74 orderly persons offense, [violation of the "New Jersey Controlled  
75 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.).]  
76 from any juvenile adjudicated delinquent or any crime shall be  
77 applied first to any penalty imposed pursuant to this section upon  
78 such a person.

1 12. N. J. S. 2C:43-6 is amended to read as follows:

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

4 a. Except as otherwise provided, a person who has been con-  
5 victed of a crime may be sentenced to imprisonment, as follows:

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

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

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

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

18 b. As part of a sentence for any crime, where the court is clearly  
19 convinced that the aggravating factors substantially outweigh the  
20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,  
21 the court may fix a minimum term not to exceed one-half of the  
22 term set pursuant to subsection a., or one-half of the term set pur-  
23 suant to a maximum period of incarceration for a crime set forth  
24 in any statute other than this code, during which the defendant shall  
25 not be eligible for parole; provided that no defendant shall be  
26 eligible for parole at a date earlier than otherwise provided by the  
27 law governing parole.

28 c. A person who has been convicted under 2C:39-4a. of posses-  
29 sion of a firearm with intent to use it against the person of an-  
30 other, or of a crime under any of the following sections: 2C:11-3,  
31 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1,  
32 2C:18-2, 2C:29-5, who, while in the course of committing or at-  
33 tempting to commit the crime, including the immediate flight there-  
34 from, used or was in possession of a firearm as defined in 2C:39-1f.,  
35 shall be sentenced to a term of imprisonment by the court. The term  
36 of imprisonment shall include the imposition of a minimum term.  
37 The minimum term shall be fixed at, or between, one-third and  
38 one-half of the sentence imposed by the court or three years, which-  
39 ever is greater, or 18 months in the case of a fourth degree crime,  
40 during which the defendant shall be ineligible for parole.

41 The minimum terms established by this section shall not prevent  
42 the court from imposing presumptive terms of imprisonment pur-  
43 suant to 2C:44-1f. (1) except in cases of crimes of the fourth  
44 degree.

45 A person who has been convicted of an offense enumerated by  
46 this subsection and who used or possessed a firearm during its com-  
47 mission, attempted commission or flight therefrom and who has  
48 been previously convicted of an offense involving the use or  
49 possession of a firearm as defined in 2C:44-3d., shall be sentenced  
50 by the court to an extended term as authorized by 2C:43-7c., not-  
51 withstanding that extended terms are ordinarily discretionary  
52 with the court.

53 d. The court shall not impose a mandatory sentence pursuant to  
54 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the  
55 ground therefor has been established at a hearing. At the hearing,  
56 which may occur at the time of sentencing, the prosecutor shall  
57 establish by a preponderance of the evidence that the weapon used  
58 or possessed was a firearm. In making its finding, the court shall  
59 take judicial notice of any evidence, testimony or information ad-  
60 duced at the trial, plea hearing, or other court proceedings and  
61 shall also consider the presentence report and any other relevant  
62 information.

63 e. *A person convicted of manufacturing, distribution, dispensing*  
64 *or possession with intent to distribute any dangerous substance or*  
65 *controlled substance analog under N. J. S. 2C:35-5, of maintaining*  
66 *or operating a controlled dangerous substance laboratory under*  
67 *N. J. C. 2C:35-4, of employing a juvenile in a drug distribution*  
68 *scheme under N. J. S. 2C:35-6, who has been previously convicted*  
69 *of manufacturing, distributing, dispensing or possessing with in-*  
70 *tent to distribute a controlled dangerous substance or controlled*

71 *substance analog, shall upon application of the prosecuting attor-*  
 72 *ney be sentenced by the court to an extended term as authorized*  
 73 *by subsection c. of N. J. S. 2C:43-7, notwithstanding that extended*  
 74 *terms are ordinarily discretionary with the court. The term of*  
 75 *imprisonment shall, except as may be provided in N. J. S. 2C:35-12,*  
 76 *include the imposition of a minimum term. The minimum term*  
 77 *shall be fixed at, or between, one-third and one-half of the sentence*  
 78 *imposed by the court or three years, whichever is greater, or 18*  
 79 *months in the case of a fourth degree crime, during which the de-*  
 80 *fendant shall be ineligible for parole.*

81 *For the purpose of this subsection, a previous conviction exists*  
 82 *where the actor has at any time been convicted under chapter 35*  
 83 *of this title or under any similar statute of the United States or*  
 84 *any other state.*

1 13. N. J. S. 2C:43-7 is amended to read as follows:

2 2C:43-7. Sentence of Imprisonment for Crime: Extended Terms.

3 a. In the cases designated in section 2C:44-3, a person who has  
 4 been convicted of a crime may be sentenced to an extended term  
 5 of imprisonment, as follows:

6 (1) (Deleted by amendment, P. L. 1982, c. 111.)

7 (2) In the case of a crime of the first degree other than murder,  
 8 for a specific term of years which shall be fixed by the court and  
 9 shall be between 20 years and life imprisonment;

10 (3) In the case of a crime of the second degree, for a term which  
 11 shall be fixed by the court between 10 and 20 years;

12 (4) In the case of a crime of the third degree, for a term which  
 13 shall be fixed by the court between five and 10 years;

14 (5) In the case of a crime of the fourth degree pursuant to:  
 15 2C:43-6c. and 2C:44-3d. for a term of five years.

16 b. As part of a sentence for an extended term and notwithstand-  
 17 ing the provisions of 2C:43-9, the court may fix a minimum term  
 18 not to exceed one-half of the term set pursuant to subsection a.  
 19 during which the defendant shall not be eligible for parole or a  
 20 term of 25 years during which time the defendant shall not be  
 21 eligible for parole where the sentence imposed was life imprison-  
 22 ment; provided that no defendant shall be eligible for parole at a  
 23 date earlier than otherwise provided by the law governing parole.

24 c. In the case of a person sentenced to an extended term pursuant  
 25 to 2C:43-6c., 2C:43-6e. and 2C:44-3d., the court shall impose a  
 26 sentence within the ranges permitted by 2C:43-7a. (2), (3), (4) or  
 27 (5) according to the degree or nature of the crime for which the  
 28 defendant is being sentenced, which sentence shall include a mini-  
 29 mum term which shall be fixed at, or between one-third and one-half



30 of the sentence imposed by the court or five years, whichever is  
31 greater, during which the defendant shall not be eligible for parole.  
32 Where the sentence imposed is life imprisonment, the court shall  
33 impose a minimum term of 25 years during which the defendant  
34 shall not be eligible for parole.

1 14. N. J. S. 2C:43-12 is amended to read as follows:

2 2C:43-12. Supervisory Treatment—Pretrial Intervention. a.  
3 Public policy. The purpose of sections 2C:43-12 through 2C:43-22  
4 of this chapter is to effectuate a Statewide program of Pretrial  
5 Intervention. It is the policy of the State of New Jersey that  
6 supervisory treatment should ordinarily be limited to persons who  
7 have not previously been convicted of any criminal offense under  
8 the laws of New Jersey, or under any criminal law of the United  
9 States, or any other state when supervisory treatment would:

10 (1) Provide applicants, on an equal basis, with opportunities to  
11 avoid ordinary prosecution by receiving early rehabilitative ser-  
12 vices or supervision, when such services or supervision can reason-  
13 ably be expected to deter future criminal behavior by an applicant.  
14 and when there is apparent causal connection between the offense  
15 charged and the rehabilitative or supervisory need, without which  
16 cause both the alleged offense and the need to prosecute might not  
17 have occurred; or

18 (2) Provide an alternative to prosecution for applicants who  
19 might be harmed by the imposition of criminal sanctions as pres-  
20 ently administered, when such an alternative can be expected to  
21 serve as sufficient sanction to deter criminal conduct; or

22 (3) Provide a mechanism for permitting the least burdensome  
23 form of prosecution possible for defendants charged with "victim-  
24 less" offenses; or

25 (4) Provide assistance to criminal calendars in order to focus  
26 expenditure of criminal justice resources on matters involving  
27 serious criminality and severe correctional problems; or

28 (5) Provide deterrence of future criminal or disorderly behavior  
29 by an applicant in a program of supervisory treatment.

30 b. Admission of an applicant into a program of supervisory  
31 treatment shall be measured according to the applicant's amena-  
32 bility to correction, responsiveness to rehabilitation and the nature  
33 of the offense.

34 c. The decision and reasons therefor made by the designated  
35 judges (or assignment judges), prosecutors and program directors  
36 in granting or denying applications for supervisory treatment, in  
37 recommending and ordering termination from the program or dis-  
38 missal of charges, in all cases shall be reduced to writing and  
39 disclosed to the applicant.

40 d. If an applicant desires to challenge the decision of the prose-  
41 cutor or program director not to recommend enrollment in a pro-  
42 gram of supervisory treatment the proceedings prescribed under  
43 section 14 shall be followed.

44 e. Referral. At any time prior to trial but after the filing of a  
45 criminal complaint, or the filing of an accusation or the return of  
46 an indictment, with the consent of the prosecutor and upon written  
47 recommendation of the program director, the assignment judge  
48 or a judge designated by him may postpone all further proceed-  
49 ings against an applicant and refer said applicant to a program of  
50 supervisory treatment approved by the Supreme Court. Prosecu-  
51 tors and program directors shall consider in formulating their  
52 recommendation of an applicant's participation in a supervisory  
53 treatment program, among others, the following criteria:

54 (1) The nature of the offense;

55 (2) The facts of the case;

56 (3) The motivation and age of the defendant;

57 (4) The desire of the complainant or victim to forego prosecu-  
58 tion;

59 (5) The existence of personal problems and character traits  
60 which may be related to the applicant's crime and for which services  
61 are unavailable within the criminal justice system, or which may  
62 be provided more effectively through supervisory treatment and the  
63 probability that the causes of criminal behavior can be controlled  
64 by proper treatment;

65 (6) The likelihood that the applicant's crime is related to a con-  
66 dition or situation that would be conducive to change through his  
67 participation in supervisory treatment;

68 (7) The needs and interests of the victim and society;

69 (8) The extent to which the applicant's crime constitutes part  
70 of a continuing pattern of anti-social behavior;

71 (9) The applicant's record of criminal and penal violations and  
72 the extent to which he may present a substantial danger to others;

73 (10) Whether or not the crime is of an assaultive or violent  
74 nature, whether in the criminal act itself or in the possible injurious  
75 consequences of such behavior;

76 (11) Consideration of whether or not prosecution would exacer-  
77 bate the social problem that led to the applicant's criminal act;

78 (12) The history of the use of physical violence toward others;

79 (13) Any involvement of the applicant with organized crime;

80 (14) Whether or not the crime is of such a nature that the  
81 value of supervisory treatment would be outweighed by the public  
82 need for prosecution;

12

83 (15) Whether or not the applicant's involvement with other  
84 people in the crime charged or in other crime is such that the  
85 interest of the State would be best served by processing his case  
86 through traditional criminal justice system procedures:

87 (16) Whether or not applicant's participation in pretrial inter-  
88 vention will adversely affect the prosecution of codefendants: and

89 (17) Whether or not the harm done to society by abandoning  
90 criminal prosecution would outweigh the benefits to society from  
91 channeling an offender into a supervisory treatment program.

92 f. Review of Supervisory Treatment Applications. Procedure  
93 Upon Denial: Each applicant for supervisory treatment shall be  
94 entitled to full and fair consideration of his application. If an  
95 application is denied, the program director or the prosecutor shall  
96 precisely state his findings and conclusion which shall include the  
97 facts upon which the application is based and the reasons offered  
98 for the denial. If the applicant desires to challenge the decision of  
99 a program director not to recommend, or of a prosecutor not to  
100 consent to, enrollment into a supervisory treatment program, a  
101 motion shall be filed before the designated judge (or assignment  
102 judge) authorized pursuant to the rules of court to enter orders.

103 g. Limitations. Supervisory treatment [ , whether under this sec-  
104 tion or under section 27 of P. L. 1970, c. 226 (C. 24:21-27), ] may  
105 occur only once with respect to any defendant [ , however, ] and any  
106 person who has previously received supervisory treatment under  
107 section 27 of P. L. 1970, c. 226 (C. 24:21-27), shall not be eligible  
108 for supervisory treatment under this section. However, supervi-  
109 sory treatment, as provided herein, shall be available to a defendant  
110 irrespective of whether the defendant contests his guilt of the  
111 charge or charges against him.

112 h. Termination. Termination of supervisory treatment under  
113 this section shall be immediately reported to the assignment judge  
114 of the county who shall forward such information to the Adminis-  
115 trative Director of the Courts.

116 i. Appointment of Program Directors; Authorized Referrals.  
117 Programs of supervisory treatment and appointment of the pro-  
118 gram directors require approval by the Supreme Court with the  
119 consent of the assignment judge and prosecutor. Referrals of  
120 participants from supervisory treatment programs may be to any  
121 public or private office or agency, including but not limited to pro-  
122 grams within the probation service of the court, offering counseling  
123 or any other social service likely to aid in the rehabilitation of the  
124 participant and to deter the commission of other offenses.

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

2 2C:44-2. Criteria for Imposing Fines and Restitutions. a. The  
3 court may sentence a defendant to pay a fine or make restitution,  
4 or both, in addition to a sentence of imprisonment or probation if:

5 (1) The defendant has derived a pecuniary gain from the  
6 offense; or

7 (2) The court is of opinion that a fine or restitution, or both,  
8 is specially adapted to deterrence of the type of offense involved or  
9 to the correction of the offender.

10 b. The court may sentence a defendant to pay a fine or make resti-  
11 tution, or both, if the defendant is able, or given a fair opportunity  
12 to do so, will be able to pay the fine or make restitution, or both.  
13 The court may sentence a defendant to pay a fine only if the fine  
14 will not prevent the defendant from making restitution to the  
15 victim of the offense.

16 c. In determining the amount and method of payment of a fine  
17 or restitution, the court shall take into account the financial re-  
18 sources of the defendant and the nature of the burden that its  
19 payment will impose.

20 d. Nonpayment. When a defendant is sentenced to pay a fine or  
21 make restitution, or both, the court shall not impose at the same  
22 time an alternative sentence to be served in the event that the  
23 fine is not paid. The response of the court to nonpayment shall be  
24 determined only after the fine has not been paid, as provided in  
25 section 2C:46-2.

26 e. *Whenever the maximum potential fine which may be imposed*  
27 *on a conviction for an offense defined in chapter 35 (Controlled*  
28 *Dangerous Substances) depends on the street value of the con-*  
29 *trolled dangerous substance or controlled substance analog in-*  
30 *volved and the court intends to impose a fine in excess of the*  
31 *maximum ordinary fine applicable to the offense for which defen-*  
32 *dant was convicted, and where the fine has not been agreed to*  
33 *pursuant to the provisions of 2C:35-12, the court at the time of*  
34 *sentence shall determine the street value at the time and place of*  
35 *the offense based on the amount and purity of the controlled*  
36 *dangerous substance or controlled substance analog involved. The*  
37 *sentencing court's finding as to the street value may be based on*  
38 *expert opinion in the form of live testimony or by affidavit, or by*  
39 *such other means as the court deems appropriate. The court's find-*  
40 *ing as to street value shall not be subject to modification by an*  
41 *appellate court except upon a showing of a clear and patent abuse*  
42 *of the sentencing court's discretion.*

1 16. N. J. S. 2C:52-5 is amended to read as follows:

2 2C:52-5. Expungement of Records of Young Drug Offenders.

3 Notwithstanding the provisions of sections 2C:52-2 and 2C:52-3,  
 4 after a period of not less than one year following conviction,  
 5 termination of probation or parole or discharge from custody,  
 6 whichever is later, any person convicted of an offense under [Title  
 7 24 of the New Jersey Statutes] chapters 35 or 36 of this title for  
 8 the possession or use of a controlled dangerous substance, con-  
 9 victed of violating P. L. 1955, c. 277, § 3 (C. 2A:170-77.5), or con-  
 10 victed of violating P. L. 1962, c. 113, § 1 (C. 2A:170-77.8), and who  
 11 at the time of the offense was 21 years of age or younger, may  
 12 apply to the Superior Court in the county wherein the matter was  
 13 disposed of for the expungement of such person's conviction and  
 14 all records pertaining thereto. The relief of expungement under  
 15 this section shall be granted only if said person has not, prior to the  
 16 time of hearing, violated any of the conditions of his probation or  
 17 parole, albeit subsequent to discharge from probation or parole,  
 18 has not been convicted of any previous or subsequent criminal act  
 19 or any subsequent or previous violation of [Title 24] chapters 35  
 20 or 36 of this title or of P. L. 1955, c. 277, § 3 (C. 2A:170-77.5) or of  
 21 P. L. 1962, c. 113, § 1 (C. 2A:170-77.8), or who has not had a prior  
 22 or subsequent criminal matter dismissed because of acceptance into  
 23 a supervisory treatment or other diversion program.

24 This section shall not apply to any person who has been convicted  
 25 of the sale or distribution of a controlled dangerous substance  
 26 or possession with the intent to sell any controlled dangerous sub-  
 27 stance except:

- 28 (1) Marijuana, where the total sold, distributed or possessed  
 29 with intent to sell was 25 grams or less, or
- 30 (2) Hashish, where the total amount sold, distributed or pos-  
 31 sessed with intent to sell was 5 grams or less.

1 17. N. J. S. 2C:64-2 is amended to read as follows:

2 2C:64-2. Forfeiture Procedures: Prima Facie Contraband.

3 [Prima] *Except as provided in N. J. S. 2C:35-17, prima facie*  
 4 *contraband shall be retained by the State until entry of judgment*  
 5 *or dismissal of the criminal proceeding, if any, arising out of the*  
 6 *seizure. Thereafter, prima facie contraband shall be forfeited to*  
 7 *the entity funding the prosecuting agency involved, subject to the*  
 8 *rights of owners and others holding interests pursuant to section*  
 9 *2C:64-5.*

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

3 22. Prohibited acts D.—Fraud or misrepresentation by regis-  
 4 tered manufacturers or distributors—Penalties.

5 a. It shall be unlawful for any person knowingly or intentionally:

6 (1) Who is a registrant to distribute a controlled dangerous  
7 substance classified in Schedule I or II, in the course of his legiti-  
8 mate business, except pursuant to an order form as required by  
9 section 14 of this act;

10 (2) To use in the course of the manufacture or distribution of a  
11 controlled dangerous substance a registration number which is  
12 fictitious, revoked, suspended or issued to another person;

13 (3) ~~【To acquire or obtain possession of a controlled dangerous~~  
14 ~~substance by misrepresentation, fraud, forgery, deception or sub-~~  
15 ~~terfuge;】 Deleted by amendment (P. L. 1970, c. 226 (C. 24:21-23)).~~

16 (4) To furnish false or fraudulent material information in, or  
17 omit any material information from, any application, report, or  
18 other document required to be kept or filed under this act, or any  
19 record required to be kept by this act; or

20 (5) To make, distribute, or possess any punch, die, plate, stone,  
21 or other thing designed to print, imprint, or reproduce the trade-  
22 mark, trade name, or other identifying mark, imprint, or device of  
23 another or any likeness of any of the foregoing upon any drug or  
24 container or labeling thereof so as to render such drug a counterfeit  
25 controlled dangerous substance.

26 b. Any person who violates this section shall be punished by  
27 imprisonment for not more than three years, or by a fine of not  
28 more than \$30,000.00, or both.

1 19. Section 23 of P. L. 1970, c. 226 (C. 24:21-23) is amended to  
2 read as follows:

3 23. General Penalty. Any person who violates any provision of  
4 this act for which no specific penalty is provided shall be guilty of a  
5 ~~【misdemeanor】~~ *disorderly persons offense*.

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

3 24. Attempt, Endeavor and Conspiracy. a. Any person who  
4 attempts, endeavors or conspires to commit any offense defined in  
5 this act is punishable by imprisonment or fine or both which may  
6 not exceed the maximum punishment prescribed for the offense,  
7 the commission of which was the object of the endeavor or con-  
8 spiracy.

9 b. ~~【Information communicated to a practitioner in an effort un-~~  
10 ~~lawfully to obtain or procure the administration of a controlled~~  
11 ~~dangerous substance shall not be a privileged communication.】~~  
12 ~~Deleted by amendment (P. L. 1970, c. 226 (C. 24:21-24)).~~

1 21. Section 29 of P. L. 1970, c. 226 (C. 24:21-29) is amended to  
2 read as follows:

3 29. Second or subsequent offenses. a. Any person convicted of  
 4 any offense under this act, if the offense is a second or subsequent  
 5 offense, shall be punished by a term of imprisonment of up to twice  
 6 that otherwise authorized, by up to twice the fine otherwise autho-  
 7 rized, or by both [; provided, however, that this section shall not  
 8 apply to section 20a. (3) and (4) and b. offenses].

9 b. For purposes of this section, an offense shall be considered a  
 10 second or subsequent offense, if, prior to the commission of the  
 11 offense, the offender has at any time been convicted of an offense  
 12 or offenses under this act or under any law of the United States  
 13 or of any state relating to narcotic drugs, marihuana, depressant,  
 14 stimulant, or hallucinogenic drugs.

1 22. Section 36 of P. L. 1970, c. 226 (C. 24:21-36) is amended to  
 2 read as follows:

3 36. Reports of conviction of manufacturers and practitioners.  
 4 Whenever a manufacturer or practitioner is convicted of violating  
 5 any provision of this act or of a rule or regulation issued there-  
 6 under or of any offense defined in chapters 35 or 36 of Title 2C  
 7 of the New Jersey Statutes, the court shall cause a copy of the  
 8 judgment and sentence and opinion of the court, if any, to be sent  
 9 to the State Department or professional board, as the case may be,  
 10 by which the defendant was registered or licensed.

1 23. Section 7 of P. L. 1982, c. 77 (C. 2A:4A-26) is amended to  
 2 read as follows:

3 7. Referral to another court without juvenile's consent.

4 a. On motion of the prosecutor, the court shall, without the  
 5 consent of the juvenile, waive jurisdiction over a case and refer  
 6 that case from the family court to the appropriate court and prose-  
 7 cuting authority having jurisdiction if it finds, after hearing, that:

8 (1) The juvenile was 14 years of age or older at the time of the  
 9 charged delinquent act; and

10 (2) There is probable cause to believe that the juvenile com-  
 11 mitted a delinquent act or acts which if committed by an adult  
 12 would constitute:

13 (a) Criminal homicide other than death by auto, *strict*  
 14 *liability for drug induced deaths, pursuant to N. J. S. 2C:35-9,*  
 15 robbery which would constitute a crime of the first degree,  
 16 aggravated sexual assault, sexual assault, aggravated assault  
 17 which would constitute a crime of the second degree, kidnap-  
 18 ping or aggravated arson; or

19 (b) A crime committed at a time when the juvenile had  
 20 previously been adjudicated delinquent, or convicted, on the  
 21 basis of any of the offenses enumerated in subsection a. (2)

22 (a); or

23 (c) A crime committed at a time when the juvenile had  
24 previously been sentenced and confined in an adult penal in-  
25 stitution; or

26 (d) An offense against a person committed in an aggressive,  
27 violent and willful manner, other than an offense enumerated  
28 in subsection a. (2) (a) of this section, or the unlawful posses-  
29 sion of a firearm, destructive device or other prohibited  
30 weapon, or arson; or

31 (e) A violation of [section 19 of the "Controlled Dangerous  
32 Substances Act" (P. L. 1970, c. 226; C. 24:21-19)] N. J. S.  
33 2C:35-3, N. J. S. 2C:35-4, or N. J. S. 2C:35-5; or

34 (f) Crimes which are a part of a continuing criminal activity  
35 in concert with two or more persons and the circumstances of  
36 the crimes show the juvenile has knowingly devoted himself  
37 to criminal activity as a source of livelihood; or

38 (g) An attempt or conspiracy to commit any of the acts  
39 enumerated in paragraph (a), (d) or (e) of this subsection;  
40 and

41 (3) Except with respect to any of the acts enumerated in sub-  
42 section a. (2) (a) of this section, *or with respect to any acts enumer-*  
43 *ated in subparagraph (e) of paragraph (2) of this section which*  
44 *involve the distribution for pecuniary gain of any controlled*  
45 *dangerous substance or controlled substance analog while on any*  
46 *property used for school purposes which is owned by any school*  
47 *or school board, or any attempt or conspiracy to commit any of*  
48 *those acts, the State has shown that the nature and circumstances*  
49 *of the charge or the prior record of the juvenile are sufficiently*  
50 *serious that the interests of the public require waiver.*

51 However, if in any case the juvenile can show that the proba-  
52 bility of his rehabilitation by the use of the procedures, services  
53 and facilities available to the court prior to the juvenile reaching  
54 the age of 19 substantially outweighs the reasons for waiver, waiver  
55 shall not be granted.

56 b. In every case where there is a motion seeking waiver, the  
57 prosecutor shall within a reasonable time thereafter file a state-  
58 ment with the Attorney General setting forth the basis for the  
59 motion. In addition, the court shall, in writing, state its reasons  
60 for granting or denying the waiver motion. The Attorney General  
61 shall compile this information and report its findings to the Legis-  
62 lature 18 months after the effective date of this act with the objec-  
63 tive of developing, where appropriate, guidelines as to the waiver  
64 of juveniles from the family court.



65 c. An order referring a case shall incorporate therein not only  
 66 the alleged act or acts upon which the referral is premised, but also  
 67 all other delinquent acts arising out of or related to the same  
 68 transaction.

69 d. A motion seeking waiver shall be filed by the prosecutor within  
 70 30 days of receipt of the complaint. This time limit shall not, except  
 71 for good cause shown, be extended.

1 24. (New section) Whenever in any law, rule or regulation,  
 2 reference is made to the "New Jersey Controlled Dangerous Sub-  
 3 stances Act," P. L. 1970, c. 226 (24:21-1 et seq.) or any part  
 4 thereof, the same shall mean and refer to the appropriate chapter,  
 5 section or provision of the "New Jersey Code of Criminal Justice"  
 6 as amended and supplemented herein. Similarly, any reference to  
 7 chapters 35 or 36 in the "New Jersey Code of Criminal Justice"  
 8 shall be deemed to incorporate N. J. S. 24:21-1 et seq. or any other  
 9 predecessor statute.

1 25. The following are repealed:

2 Section 19 of P. L. 1970, c. 226 (C. 24:21-19);

3 Sections 1 and 2 of P. L. 1982, c. 38 (C. 24:21-19.1 and 19.2);

4 Section 20 of P. L. 1970, c. 226 (C. 24:21-20);

5 Section 26 of P. L. 1970, c. 226 (C. 24:21-26);

6 Section 27 of P. L. 1970, c. 226 (C. 24:21-27),

7 except that any person who prior to the effective date of this act  
 8 has made application for or is undergoing supervisory treatment  
 9 pursuant to this section shall continue to be governed by this  
 10 section;

11 Section 30 of P. L. 1970, c. 226 (C. 24:21-30);

12 Sections 1 through 5, inclusive of P. L. 1980, c. 133 (C. 24:21-46  
 13 through 24:21-50);

14 P. L. 1952, c. 121 (C. 2A:96-5);

15 P. L. 1966, c. 12 (C. 2A:96-5.1).

1 26. This act shall take effect on the 60th day following enactment.

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#### STATEMENT

This bill establishes the "Comprehensive Drug Reform Act of 1986," which will modernize New Jersey's drug laws. Drug abuse and the proliferation of drug trafficking networks is the foremost law enforcement and health problem facing this State. The problem of drug abuse and drug-related crime is destined to become even more acute unless innovative and effective new strategies are promptly devised and implemented.

These strategies must be comprehensive in scope, simultaneously attacking both the supply and demand sides of the drug distribu-

tion problem. No effort to reduce demand by educating the public and our youth as to the dangers of drug abuse can succeed unless this State demonstrates its commitment to reform its drug laws and to get tough with drug offenders, especially those upper echelon distributors who pose the greatest danger to society.

The cornerstone of any comprehensive drug law must be to ensure swift, certain punishment of the most culpable drug offenders. Measured against this standard, New Jersey's current drug laws and sentencing practices are seriously flawed and must be revised so as to provide courts with far more precise, consistent and predictable sentencing guidelines. Accordingly, the most important feature of this bill is to transfer the criminal offenses currently defined in the "Controlled Dangerous Substances Act" into the more modern "New Jersey Code of Criminal Justice." The consolidation of these offenses and provisions into the penal code will limit courts' sentencing discretion, which will ensure more uniform, consistent and predictable sentencing practices. In contrast to New Jersey's current drug laws, the penal code establishes degrees of offenses and provides definitive sentencing ranges and presumptive terms for each degree. This bill clearly establishes the degree and severity of every drug offense, taking into account the nature and dangerousness of the specific controlled substance involved, the amount and purity of that substance, and the defendant's role in the drug distribution hierarchy.

This bill provides specific penalties for the manufacture, distribution or possession with intent to distribute of various quantities of heroin, cocaine, methamphetamine, phencyclidine (PCP or angel dust), LSD, marijuana and hashish. These drugs are highlighted because of the prevalence of their use or because of their inherent dangerousness. Distribution of five ounces or more of heroin or cocaine, including at least 3.5 grams of the pure free base drug, or distribution of 100 milligrams or more of LSD or 10 grams or more of PCP, is a first degree crime and carries a mandatory term of incarceration and a minimum period of parole ineligibility. Distribution of between one-half ounce and five ounces of heroin or cocaine, with at least 3.5 grams of the pure free base drug, or distribution of less than 100 milligrams of LSD or less than 10 grams of PCP, or distribution of one ounce or more of methamphetamine, is a second degree crime. Distribution of less than one-half ounce of heroin or cocaine, or distribution of less than ounce of methamphetamine, is a crime of the third degree. Distribution of five pounds or more of marijuana, or one pound

or more of hashish, is a second degree crime. Distribution of one ounce to five pounds of marijuana, or between five grams and one pound of hashish, is a third degree crime. Distributing less than one ounce of marijuana, or less than five grams of hashish, is a fourth degree crime. The bill permits the amounts distributed to different persons or on different occasions to be aggregated in determining the degree of the offense. A person who distributes two ounces of cocaine on one day, and three ounces on the next day, for example, could be convicted of distributing an aggregate five ounces—a first degree crime—even if the two acts of distribution were to different people or at different locations.

The bill also adds controlled substance analogs, so-called "designer drugs," to the definition of controlled dangerous substances. This provision closes a loophole in current law, and ensures that New Jersey's drug laws will hereinafter keep abreast of the latest pharmacological technologies.

The bill establishes several new offenses which are designed to single out for sternest punishment the most dangerous offenders. One such offense, Leader of Narcotics Trafficking Network, is designed to reach the upper echelon participants in an illegal narcotics conspiracy. This provision makes it a crime to conspire with others as an organizer, supervisor, financier or manager to engage in a profit-making scheme to manufacture, distribute or transport certain of the most dangerous drugs, such as heroin, cocaine, methamphetamine, LSD or PCP. This offense distinguishes between lower-level dealers and "mules," and higher-ranking drug profiteers. Persons convicted of this especially dangerous offense will be subject to a mandatory life term during which they shall be ineligible for parole for a term of 25 years.

The bill would also establish a first degree offense for maintaining or operating a controlled dangerous substance laboratory. These laboratories, many of which employ sophisticated technologies and trained chemists, have proliferated throughout the State, and have become an important part of the drug trafficking networks operating in New Jersey, especially with respect to the distribution of methamphetamine and cocaine.

The bill also creates a new first degree offense which would hold drug distributors strictly liable for any deaths proximately resulting from their illegal distribution activities, even if those deaths were due to accidental drug overdoses. This new offense responds to illicit new manufacturing techniques which produce drugs of extremely high purity, which in turn increases the risk of a fatal overdose. This offense imposes criminal liability without regard

to the defendant's mental state: the State need only prove that the defendant illegally distributed or manufactured a specified controlled dangerous substance and that this substance was responsible for the death. This offense would not, however, preclude a prosecution for aggravated manslaughter or murder where the facts so warrant.

The bill contains a number of provisions designed to protect New Jersey's youth. One such provision prohibits an adult from using or employing a juvenile in a scheme to illegally manufacture or distribute controlled substances. In many cases, traffickers use children to infiltrate schools and playgrounds and to distribute drugs to their schoolmates. The bill provides that any adult who uses children to distribute drugs is guilty of a second degree crime and is subject to a mandatory term of imprisonment of not less than five years. The bill further provides that any adult convicted of distributing drugs to a juvenile at least three years his junior is subject to up to twice the punishment otherwise provided. Together, these provisions will better ensure that our children can live, play and learn in an environment free from the influence of drug traffickers and drug distribution activities.

To discourage juveniles from committing drug offenses, the bill facilitates the waiver of jurisdiction to adult court of a juvenile charged with a drug induced death or with distributing drugs for profit on or near school grounds or on school buses. This provision would relieve the State of the burden of showing that the nature and circumstances of the charges are sufficiently serious so that the public interest requires the juvenile to be tried as an adult. The bill also mandates that a person convicted of any drug-related offense, including a disorderly persons offense, must forfeit his or her driving privileges for not less than six months. Under this provision, any juvenile under the age of 17 who is adjudicated delinquent for a drug-related offense would be ineligible to obtain a drivers license for at least six months after he or she reaches the age of 17. The bill further provides that any person convicted of a minor possessory drug offense while on or near school grounds or while on a school bus would be required to perform not less than 100 hours of community service.

The bill requires the imposition of mandatory terms of imprisonment and mandatory terms of parole ineligibility for the most prolific or repeat offenders. These mandatory prison terms can only be waived by a negotiated plea or post-conviction agreement with the prosecuting authority. Under this provision, where the prosecutor agrees to enter into a negotiated plea or post-conviction

agreement, and where that agreement expressly so provides, the defendant cannot receive a lesser term of imprisonment or fine than that expressly agreed to. This provision will ensure that the State, as well as the defendant, receives the full benefit of a negotiated agreement. Under current law, in contrast, courts are free to impose a lesser sentence than that contemplated by a plea agreement, or even to suspend the imposition of sentence altogether.

The bill provides for greatly enhanced economic sanctions designed to take the profit out of drug trafficking. The bill not only establishes greater ordinary fines for most drug offenses, but further permits the court to impose cash fines based on three and in some cases five times the street value of the controlled dangerous substances involved. In addition to possible fines, the bill provides for a mandatory Drug Enforcement and Demand Reduction Penalty to be assessed against each person convicted, adjudicated delinquent or placed in supervisory treatment for a drug or drug paraphernalia violation. This mandatory penalty is based on the degree of the offense and ranges from \$500.00 for a disorderly persons offense to \$3,000.00 for a first degree crime. The mandatory penalty for even the most minor drug offense is twice the minimum fine now imposed upon a first conviction for driving while intoxicated. In addition to any other penalty, any person convicted of or adjudicated delinquent for a drug offense must be assessed a criminal laboratory analysis fee. This fee will be used to fund forensic laboratories and to reimburse the State or county for the cost of testing suspected drugs. All monies collected from a defendant are to be applied first to the Violent Crimes Compensation Board penalty, then to any forensic laboratory fee and next to the mandatory Drug Enforcement and Demand Reduction Penalty.

The bill provides for rehabilitative treatment as an alternative to incarceration in appropriate cases. A defendant's eligibility for admission into a rehabilitation program, and the standards governing his or her continued participation in such a program, are carefully prescribed. Before being admitted, the defendant must demonstrate that he or she is drug dependent, that the treatment may prove successful and that the community will not be endangered. The term of probation under this program is fixed at five years, throughout which the defendant must undergo periodic urine testing for substance abuse. Refusal at any time to undergo urine testing will result in mandatory revocation of the defendant's probation and his or her return to prison. With respect

to other violations of the terms of probation, the court may revoke the defendant's placement after a first violation, and must revoke the defendant's participation in the rehabilitation program upon any subsequent violation. A person with a previous conviction for drug distribution, or a person convicted of distributing drugs on or near school property or of employing a juvenile in a drug distribution scheme, is ineligible for rehabilitative treatment unless the prosecutor consents. Furthermore, anyone placed in a rehabilitation program upon a conviction for any second degree offense, or for distributing drugs on or near school property, must be committed to a residential (inpatient) treatment facility for a minimum of six months. If the defendant should leave the facility without authorization, he or she would be guilty of criminal escape.

So as to further consolidate the controlled dangerous substances provisions into the penal code, this bill eliminates conditional discharge for drug offenders and provides instead that diversion for all criminal proceedings be done through the pretrial intervention program set forth in the penal code. The bill also allows the use of sworn laboratory certificates as an exception to the hearsay rule of evidence, in lieu of the live testimony of forensic chemists. This provision is designed to alleviate the burden imposed on State laboratory facilities by the necessity of having their employees involved in perfunctory court appearances.

The bill provides that large quantities of seized drugs (contraband subject to forfeiture under Chapter 64 of the penal code) may be destroyed completely or in part prior to trial. Large drug seizures present a number of security and logistical problems with respect to storing the substances and safeguarding them against theft. The bill permits a court to order the destruction of the drugs upon the motion of the prosecutor and after defense counsel has been provided a reasonable opportunity to examine the evidence. Prior to destruction, the substance must be photographed and the photograph may be introduced as evidence at trial. To ensure that the seized drugs are in fact destroyed, the laboratory which destroys the controlled dangerous substance must file with the court a certificate indicating when and how the substance was destroyed, as well as the quantity destroyed.

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#### CRIMES

Revises the law with respect to controlled dangerous substances.

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ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
**ASSEMBLY, No. 3270**

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**STATE OF NEW JERSEY**

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DATED: DECEMBER 18, 1986

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3270.

This bill establishes the "Comprehensive Drug Reform Act of 1986," which will modernize New Jersey's drug laws.

The most important feature of the bill is the transfer of criminal offenses currently defined in the "New Jersey Controlled Dangerous Substances Act" into the more modern "New Jersey Code of Criminal Justice." The consolidation of these offenses and provisions into the penal code will limit courts' sentencing discretion, and will ensure more uniform, consistent and predictable sentencing practices. In contrast to New Jersey's current drug laws, the penal code establishes degrees of offenses and provides definitive sentencing ranges and presumptive terms for each degree. This bill clearly establishes the degree and severity of every drug offense, taking into account the nature and dangerousness of the specific controlled substance involved, the amount and purity of that substance, and the defendant's role in the drug distribution hierarchy.

The bill further provides specific penalties for the manufacture, distribution or possession with intent to distribute of various quantities of heroin, cocaine, methamphetamine, phencyclidine (PCP or angel dust), LSD, marijuana and hashish. These drugs are highlighted because of the prevalence of their use and because of their inherent dangerousness. Distribution of five ounces or more of heroin or cocaine, provided there are at least 3.5 grams of the pure free base drug, or distribution of 100 milligrams or more of LSD or 10 grams or more of PCP, is a first degree crime and carries a mandatory term of incarceration and a minimum period of parole ineligibility. Distribution of between one-half ounce and five ounces of heroin or cocaine, provided there are at least 3.5 grams of the pure free base drug, or distribution of less than 100 milligrams of LSD or less than 10 grams of PCP, or distribution of one ounce or more of methamphetamine, is a second degree crime. Distribution of less than one-half ounce of heroin or cocaine, or distribution of less than one ounce of methamphetamine, is a crime of the third degree.

Distribution of five pounds or more of marijuana, or one pound or more of hashish, is a second degree crime. Distribution of one ounce to five pounds of marijuana, or between five grams and one pound of hashish, is a third degree crime. Distribution of less than one ounce of marijuana, or less than five grams of hashish, is a fourth degree crime.

The bill permits the amounts distributed to different persons on different occasions to be aggregated in determining the degree of the offense. A person who distributes two ounces of cocaine on one day, and three ounces on the next day, for example, could be convicted of distributing an aggregate five ounces—a first degree crime—even if the two acts of distribution were to different people or at different locations.

The bill also adds controlled substance analogs, so-called “designer drugs,” to the definition of controlled dangerous substances. This provision closes a loophole in current law, and ensures that New Jersey’s drug laws will keep abreast of the latest pharmacological technologies.

The bill establishes several new offenses.

(1) **Leader of Narcotics Trafficking Network**, is designed to reach the upper echelon participants in an illegal narcotics conspiracy. This provision makes it a crime to conspire with others as an organizer, supervisor, financier or manager to engage in a profit-making scheme to manufacture, distribute or transport certain of the most dangerous drugs, such as heroin, cocaine, methamphetamine, LSD or PCP. This offense distinguishes between lower-level dealers and “mules,” and higher-ranking drug profiteers. Persons convicted of this offense will be subject to a mandatory life term during which they shall be ineligible for parole for a term of 25 years.

(2) The bill establishes a first degree offense for **Maintaining or Operating a Controlled Dangerous Substance Production Facility**. These facilities, many of which employ sophisticated technologies and trained chemists, have proliferated throughout the State, and have become an important part of the drug trafficking networks operating in New Jersey, especially with respect to the distribution of methamphetamine and cocaine.

(3) The bill creates a new first degree offense which would hold drug distributors strictly liable for any deaths proximately resulting from their illegal distribution activities, even if those deaths were due to accidental drug overdoses. This new offense responds to illicit new manufacturing techniques which produce drugs of extremely high purity, which in turn increases the risk of a fatal overdose. This offense imposes criminal liability without regard to the defendant’s mental state. The State need only prove that the defendant illegally distributed or manufactured a specified controlled dangerous substance



and that this substance was responsible for the death. This offense would not, however, preclude a prosecution for aggravated manslaughter or murder where the facts so warrant.

(4) The bill contains a number of provisions designed to protect New Jersey's youth. One new offense, Employing a Juvenile in a Drug Distribution Scheme, prohibits an adult from using or employing a juvenile to illegally manufacture or distribute controlled substances. In many cases, traffickers use children to infiltrate schools and playgrounds and to distribute drugs to their schoolmates. The bill provides that any adult who uses children to distribute drugs is guilty of a second degree crime and is subject to a mandatory term of imprisonment of not less than five years. The bill further provides that any adult convicted of distributing drugs to a juvenile is subject to up to twice the punishment otherwise provided. This enhanced penalty provision is also applicable to distribution of drugs to pregnant women.

To discourage juveniles from committing drug offenses, the bill facilitates the waiver of jurisdiction to adult court of a juvenile charged with a drug induced death or with distributing drugs for profit on or near school grounds or on school buses. This provision would relieve the State of the burden of showing that the nature and circumstances of the charges are sufficiently serious so that the public interest requires the juvenile to be tried as an adult. The bill also mandates that any person convicted of any drug-related offense must forfeit his or her driving privileges for not less than six months. Under this provision, any juvenile under the age of 17 who is adjudicated delinquent for a drug-related offense would be ineligible to obtain a drivers license for at least six months after he or she reaches the age of 17. The bill further provides that any person convicted of a minor possessory drug offense while on or near school grounds or while on a school bus would be required to perform not less than 100 hours of community service.

The bill requires the imposition of mandatory terms of imprisonment and mandatory terms of parole ineligibility for the most prolific or repeat offenders. These mandatory prison terms can only be waived by a negotiated plea or post-conviction agreement with the prosecuting authority. Under this provision, where the prosecutor agrees to enter into a negotiated plea or post-conviction agreement, and where that agreement expressly so provides, the defendant cannot receive a lesser term of imprisonment or fine than that expressly agreed to. This provision will ensure that the State, as well as the defendant, receives the full benefit of a negotiated agreement. Under current law, courts are free to impose a lesser sentence than that contemplated by a plea agreement, or even to suspend the imposition of sentence altogether.

The bill provides for greatly enhanced economic sanctions designed to take the profit out of drug trafficking. The bill not only establishes greater ordinary fines for most drug offenses, but further permits the court to impose cash fines based on three, and in some cases, five, times the street value of the controlled dangerous substance involved.

In addition, the bill provides for a mandatory Drug Enforcement and Demand Reduction Penalty to be assessed against each person convicted, adjudicated delinquent or placed in supervisory treatment for a drug or drug paraphernalia violation. This mandatory penalty is based on the degree of the offense and ranges from \$500.00 for a disorderly persons offense to \$3,000.00 for a first degree crime.

In addition to the fines, any person convicted of or adjudicated delinquent for a drug offense will be assessed a criminal laboratory analysis fee. This fee will be used to fund forensic laboratories and to reimburse the State or county for the cost of testing suspected drugs. All moneys collected from a defendant are to be applied first to the Violent Crimes Compensation Board penalty, then to any forensic laboratory fee and then to the Drug Enforcement and Demand Reduction Fund.

The bill provides for rehabilitative treatment as an alternative to incarceration in appropriate cases. Prior to being admitted, the defendant must demonstrate that he or she is drug dependent, that the treatment may prove successful and that the community will not be endangered. The term of probation under this program is fixed at five years, throughout which the defendant must undergo periodic urine testing for substance abuse. Refusal at any time to undergo urine testing will result in mandatory revocation of the defendant's probation and his or her return to prison. With respect to other violations of the terms of probation, the court may revoke the defendant's participation in the rehabilitation program upon any subsequent violation.

A person with a previous conviction for drug distribution, or a person convicted of distributing drugs on or near school property or of employing a juvenile in a drug distribution scheme, is ineligible for rehabilitative treatment unless the prosecutor consents. Furthermore, anyone placed in a rehabilitation program for a conviction for any second degree offense, or for distributing drugs on or near school property, must be committed to a residential (inpatient) treatment facility for a minimum of six months. If the defendant leaves the facility without authorization, he or she is guilty of criminal escape (a crime of the second degree if the defendant uses force, threats, or a deadly weapon, otherwise, it is a crime of the third degree).

The bill also allows the use of sworn laboratory certificates as an exception to the hearsay rule of evidence, in lieu of the live testimony

of forensic chemists. This provision is designed to alleviate the burden imposed on State laboratory facilities by the necessity of having their employees involved in perfunctory court appearances.

The bill provides that large quantities of seized drugs (contraband subject to forfeiture under chapter 64 of the penal code) may be destroyed prior to trial. The bill permits a court to order the destruction of the drugs upon the motion of the prosecutor and after defense counsel has been provided a reasonable opportunity to examine the evidence. Prior to destruction, the substance must be photographed and the photograph may be introduced as evidence at trial. To ensure that the seized drugs are in fact destroyed, the laboratory which destroys them must file with the court a certificate indicating when and how the substance was destroyed, as well as the quantity destroyed.

**PLEASE NOTE:** The Assembly Judiciary Committee is issuing a separate report which details all of the changes made by this bill. The report will be available through the Office of the Clerk of the Assembly, upon request.

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Assembly Amendments  
Proposed by Assemblyman Kern  
~~(1/22/87)~~  
(2/05/87)  
to

ADOPTED

FEB 5 1987

Assembly Bill No. 3270 OCR of 1986  
Sponsored by Assemblyman Kern

Amend:

Page

Sec.

Line

~~42~~  
44

13

6

Omit "(Deleted by amendment, P.L. 1982, c. 111.)"  
insert "In case of aggravated manslaughter  
sentenced under subsection c. of N.J.S. 2C:11-4 or  
kidnapping when sentenced as a crime of the first  
degree under paragraph (1) of subsection c. of  
2C:13-1 for a specific term of years which shall be  
between 30 years and life imprisonment;"

~~42~~  
44

13

7

Omit "In" insert "Except for the crime of murder  
and except as provided in paragraph (1) of this  
subsection, in" Omit "other than murder"

54

26

1

After "enactment" insert "but shall remain  
inoperative until the enactment into law of  
Assembly Bill No. 3209 of 1986"

STATEMENT

These amendments make technical changes to  
conform the bill with a recently enacted law (P.L.  
1986, c. 172).

They also delay the operation of the  
"Comprehensive Drug Reform Act of 1986" until the  
enactment into law of Assembly Bill No. 3209 of  
1986 which authorizes a \$50,000,00 bond issue for  
the construction and improvement of State  
correctional facilities.



# OFFICE OF THE GOVERNOR

## NEWS RELEASE

**CN-001**  
**Contact:** CARL GOLDEN  
609-292-8956 OR 292-6000 EXT. 207

**TRENTON, N.J. 08625**  
**Release:** THURS., APRIL 23, 198

Governor Thomas H. Kean today signed legislation making sweeping changes in the State's drug laws and implementing his "Blueprint for a Drug Free New Jersey."

The bill, among its many provisions, calls for tougher new penalties for drug trafficking as well as for rehabilitation of drug dependent individuals.

The legislation, A-3270, was sponsored by Assemblyman Walter M.D. Kern, R-Bergen, and Assemblyman John Girgenti, D-Passaic, was signed at a public ceremony in the Governor's Office. Identical legislation, S-2845, was sponsored in the Senate by Senator Frank Graves, D-Passaic.

The bill is the second major anti-narcotics legislation signed by the Governor in a week. On April 15, Governor signed legislation establishing mandatory minimum jail sentences for persons convicted of selling or distributing drugs within 1,000 feet of a school or school bus.

That bill, as well as the one signed today, become effective upon legislative passage of a \$198 million bond issue for prison construction.

-more-

"With the enactment of this legislation, New Jersey has taken a major step toward attacking the drug abuse problem on as broad a front as possible," the Governor said. "This bill rewrites and revises our drug laws to crack down on those who deal in this despicable business, but it also provides help for those who have been hooked and become dependent on narcotics."

"The legislation provides for expanded education, public awareness and rehabilitation programs as spelled out last summer in the Blueprint for a Drug Free New Jersey," Kean said. "New Jersey, upon the full implementation of this bill, will be in a position to confront both the supply and demand sides of the narcotics problem --- something which is essential if we are to conquer the drug menace."

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MAJOR PROVISIONS OF A-3270  
COMPREHENSIVE DRUG REFORM ACT OF 1986

\*Creates an entirely new offense, Leader of Narcotics Trafficking Network, which is patterned after New Jersey's current racketeering law and which is designed to facilitate the investigation and prosecution of upper echelon drug distributors and kingpins. Conviction carries a 25-year to life imprisonment sentence, a 25-year minimum sentence, and a fine of \$500,000 or five times the street value of the drug involved.

\*Creates an entirely new offense, Maintaining and Operating a Controlled Dangerous Substances Production Facility, which is designed to provide especially stern punishment for persons involved in the illegal manufacture of drugs. Conviction carries a sentence of 10 to 20 years, a minimum of one-third to one-half the term, and a fine of \$500,000 or five times the street value of the drug involved.

\*Creates a new offense, Employing a Juvenile in a Drug Distribution Scheme, which is designed to provide especially stern punishment for any adult who employs or uses a juvenile in furtherance of a drug distribution scheme. Conviction carries a seven-year term, with a minimum sentence of five years, and a fine of \$300,000 or five times the street value of the drug involved.

\*Creates an entirely new offense which makes drug distributors and manufacturers strictly liable for drug-induced deaths. Conviction carries a sentence of 10 to 20 years, and a fine of \$100,000.

\*Provides for the doubling of the term of imprisonment, term of parole ineligibility, fine and penalty otherwise applicable to an adult who is convicted of distributing drugs to a minor.

\*Provides for mandatory extended terms and periods of parole ineligibility for repeat drug distributors. Those offenders who are not deterred by the prospect of enduring harsher penalties and who continue to commit serious drug crimes will, upon apprehension and conviction, be incapacitated for a substantial period of time.

\*Provides that mandatory terms of imprisonment and terms of parole ineligibility can only be waived with the consent of the prosecutor pursuant to a plea or post-conviction agreement. This provision, which recognizes that all drug offenders are part of a complex drug distribution chain, will facilitate and encourage offenders to cooperate with law enforcement efforts to detect, apprehend and successfully prosecute otherwise well-insulated upper echelon drug traffickers. This provision would also prohibit the imposition of shorter prison terms or lesser fines than are contemplated by a negotiated plea or post-conviction agreement, thereby ensuring that the State as well as defendants receive the full benefit of negotiated agreements.

\*Incorporates controlled substances analogs, so-called "designer drugs," into the definition of controlled dangerous substances so as to close a loophole in current law and thereby ensure that our drug laws will hereafter keep pace with advance in pharmacological technologies.

\*Creates enhanced cash fines which can be based on three (or in some cases five) times the street value of the controlled dangerous substances involved, thereby reducing the economic incentive to engage in illegal drug trafficking.

\*Requires the imposition of stiff cash penalties based on the degree of the offense, the proceeds of which will be used to fund enhanced education, public awareness and rehabilitation programs.

\*Permits courts and prosecutors to "aggregate" the amount of drugs distributed on separate occasions or to separate individuals in order to determine the degree of the crime committed. This will ensure that the most dangerous, prolific drug dealers will be accurately identified and subjected to appropriate punishment.

\*Authorizes the rehabilitation of drug dependent persons. Such rehabilitation includes mandatory periodic urinalysis and, in all cases involving convictions for second degree crimes, a minimum of six months confinement to a residential treatment facility. - This provision would also establish strict revocation procedures to ensure compliance with the program and the safety of the community.

\*Requires that all persons convicted of any drug-related offense, including disorderly persons and petty disorderly persons offenses, forfeit their driving privileges for not less than six months, and further renders any juvenile under age 17 adjudicated delinquent for a drug-related offense ineligible for a driver's license for at least six months after he reaches the age of 17.

\*Facilitates the waiver of jurisdiction of juvenile offenders to adult court when the juvenile is accused of a drug-related death or of selling drugs for profit while on or near school property.

\*Provides that offenders convicted of a disorderly persons possessory drug offense which is committed on or near school grounds or on school buses be required to perform not less than 100 hours of community service.

\*Repeals conditional discharge, leaving Pretrial Intervention as the exclusive means for the pretrial diversion of persons accused of indictable drug offenses.

\*Streamlines trial practice and related costs by authorizing in certain circumstances the use of sworn laboratory certificates in lieu of the live testimony of State forensic chemists.



\*Authorizes the pretrial destruction of bulk seizures of controlled substances.

\*Authorizes the State or counties to recoup certain laboratory analysis fees from drug offenders so as to help defray the cost of maintaining modern forensic laboratory facilities.

\*Establishes a comprehensive statutory scheme prescribing criminal penalties for the distribution, possession and use of drug paraphernalia.