2C:35-2

LEGISLATIVE HISTORY CHECKLIST

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- LAWS OF: 2005 CHAPTER: 205
- **NJSA:** 2C:35-2 (Upgrades unlawful possession and distribution of prescription legend drugs)
- BILL NO: S1428 (Substituted for A2866)
- **SPONSOR(S):** Sarlo and others
- DATE INTRODUCED: March 29, 2004
- COMMITTEE: ASSEMBLY: SENATE: Judiciary
- AMENDED DURING PASSAGE: Yes
- DATE OF PASSAGE: ASSEMBLY: June 20, 2005

SENATE: June 27, 2005

DATE OF APPROVAL: August 24, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (3rd reprint enacted)

| S1428 SPONSOR'S STATEMENT: (Begins on p | Yes | |
|---|-----------|--|
| COMMITTEE STATEMENT: | ASSEMBLY: | No |
| | SENATE: | Yes |
| FLOOR AMENDMENT STATEMENT: | | Yes <u>3-14-2005</u> <u>5-16-2005</u> |
| LEGISLATIVE FISCAL ESTIMATE: | | Yes <u>11-8-2004</u> <u>7-8-2005</u> |
| A2866 SPONSOR'S STATEMENT: (Begins on page 7 of original bill) | | Yes |
| COMMITTEE STATEMENT: | ASSEMBLY: | Yes |
| | SENATE: | No |
| FLOOR AMENDMENT STATEMENT: | | Yes |
| LEGISLATIVE FISCAL ESTIMATE: | | Yes |
| VETO MESSAGE: | | No |
| GOVERNOR'S PRESS RELEASE ON SIGNING | : | Yes |

FOLLOWING WERE PRINTED:

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| HEARINGS: | No |
| | |
| NEWSPAPER ARTICLES: | Yes |
| | |

"NJ limits sale of cold remedies used for meth," 8-25-2005 Philadelphia Inquirer, p.B2 "Law cracks down on meth labs," 8-25-2005 The Times, p.A4

"Jersey enacts limits on cold pills" 8-25-2005 Star Ledger, p.20

"NJ targets meth labs by limiting cold-remedy sales," 8-25-2005 Home News Tribune p.A3 "Laws target prescription drug dealers,"8-25-2005 The Record, pA3

IS 10/2/07

P.L. 2005, CHAPTER 205, approved August 24, 2005 Senate, No. 1428 (Third Reprint)

1 AN ACT concerning prescription legend drugs and amending N.J.S.2C:35-2¹[,]and¹ P.L.1999, c.90¹[and supplementing Title 2 2C of the New Jersey Statutes]¹. 3 4 5 **BE IT ENACTED** by the Senate and General Assembly of the State 6 of New Jersey: 7 8 1. N.J.S.2C:35-2 is amended to read as follows: 9 2C:35-2. Definitions. As used in this chapter: "Administer" means the direct application of a controlled dangerous 10 substance or controlled substance analog, whether by injection, 11 12 inhalation, ingestion, or any other means, to the body of a patient or 13 research subject by: (1) a practitioner (or, in his presence, by his 14 lawfully authorized agent), or (2) the patient or research subject at the 15 lawful direction and in the presence of the practitioner. 16 "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not 17 18 include a common or contract carrier, public warehouseman, or 19 employee thereof. 20 "Controlled dangerous substance" means a drug, substance, or 21 immediate precursor in Schedules I through V, any substance the 22 distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of 23 P.L.1997,c. 194 (C.2C:35-5.3) and any drug or substance which, when 24 25 ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled 26 27 dangerous substances, or to a specific controlled dangerous substance, 28 it shall also be deemed to refer to any drug or substance which, when 29 ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any 30 31 substance that is an immediate precursor of a controlled dangerous 32 substance or the specific controlled dangerous substance. The term 33 shall not include distilled spirits, wine, malt beverages, as those terms 34 are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products. The term, wherever it appears in any law or administrative 35 regulation of this State, shall include controlled substance analogs. 36 "Controlled substance analog" means a substance that has a 37 38 chemical structure substantially similar to that of a controlled 39 dangerous substance and that was specifically designed to produce an

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

Matter underlined <u>thus</u> is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted October 14, 2004.

² Assembly floor amendments adopted March 14, 2005.

³ Assembly floor amendments adopted May 16, 2005.

1 effect substantially similar to that of a controlled dangerous substance.

2 The term shall not include a substance manufactured or distributed in

3 conformance with the provisions of an approved new drug application

4 or an exemption for investigational use within the meaning of section

5 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21

6 U.S.C. s.355).

"Counterfeit substance" means a controlled dangerous substance or 7 8 controlled substance analog which, or the container or labeling of 9 which, without authorization, bears the trademark, trade name, or 10 other identifying mark, imprint, number or device, or any likeness 11 thereof, of a manufacturer, distributor, or dispenser other than the 12 person or persons who in fact manufactured, distributed or dispensed 13 such substance and which thereby falsely purports or is represented to 14 be the product of, or to have been distributed by, such other 15 manufacturer, distributor, or dispenser.

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

20 "Dispense" means to deliver a controlled dangerous substance or 21 controlled substance analog to an ultimate user or research subject by 22 or pursuant to the lawful order of a practitioner, including the 23 prescribing, administering, packaging, labeling, or compounding 24 necessary to prepare the substance for that delivery. "Dispenser" 25 means a practitioner who dispenses.

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

29 "Drugs" means (a) substances recognized in the official United 30 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the 31 United States, or official National Formulary, or any supplement to 32 any of them; and (b) substances intended for use in the diagnosis, cure, 33 mitigation, treatment, or prevention of disease in man or other animals; 34 and (c) substances (other than food) intended to affect the structure or 35 any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections 36 37 (a), (b) and (c) of this section; but does not include devices or their 38 components, parts or accessories.

39 "Drug or alcohol dependent person" means a person who as a result 40 of using a controlled dangerous substance or controlled substance 41 analog or alcohol has been in a state of psychic or physical 42 dependence, or both, arising from the use of that controlled dangerous 43 substance or controlled substance analog or alcohol on a continuous 44 or repetitive basis. Drug or alcohol dependence is characterized by 45 behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to
 experience its psychic effects, or to avoid the discomfort of its
 absence.

4 ¹["Drug manufacturing business or wholesale drug business" means 5 a business required to file a completed registration statement with the 6 State Department of Health and Senior Services pursuant to P.L.1961, c.52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing 7 8 business" means the business of creating, making or producing drugs 9 by compounding, growing or other process. This definition shall 10 include persons engaged in the drug manufacturing business who do not maintain a manufacturing location in this State but who do operate 11 12 distribution depots or warehouses of such business in this State. 13 "Wholesale drug business" means the business of supplying drugs to 14 persons other than the ultimate consumer.]¹

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

"Manufacture" means the production, preparation, propagation, 18 19 compounding, conversion or processing of a controlled dangerous 20 substance or controlled substance analog, either directly or by 21 extraction from substances of natural origin, or independently by 22 means of chemical synthesis, or by a combination of extraction and 23 chemical synthesis, and includes any packaging or repackaging of the 24 substance or labeling or relabeling of its container, except that this 25 term does not include the preparation or compounding of a controlled 26 dangerous substance or controlled substance analog by an individual 27 for his own use or the preparation, compounding, packaging, or 28 labeling of a controlled dangerous substance: (1) by a practitioner as 29 an incident to his administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of 30 31 his professional practice, or (2) by a practitioner (or under his 32 supervision) for the purpose of, or as an incident to, research, 33 teaching, or chemical analysis and not for sale.

34 "Marijuana" means all parts of the plant Genus Cannabis L., 35 whether growing or not; the seeds thereof, and every compound, 36 manufacture, salt, derivative, mixture, or preparation of such plant or 37 its seeds, except those containing resin extracted from such plant; but 38 shall not include the mature stalks of such plant, fiber produced from 39 such stalks, oil or cake made from the seeds of such plant, any other 40 compound, manufacture, salt, derivative, mixture, or preparation of 41 such mature stalks, fiber, oil, or cake, or the sterilized seed of such 42 plant which is incapable of germination.

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

1 (a) Opium, coca leaves, and opiates; 2 (b) A compound, manufacture, salt, derivative, or preparation of 3 opium, coca leaves, or opiates; 4 (c) A substance (and any compound, manufacture, salt, derivative, 5 or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words 6 "narcotic drug" as used in this act shall not include decocainized coca 7 8 leaves or extracts of coca leaves, which extracts do not contain 9 cocaine or ecogine. means 10 "Opiate" any dangerous substance having an 11 addiction-forming or addiction-sustaining liability similar to morphine 12 or being capable of conversion into a drug having such 13 addiction-forming or addiction-sustaining liability. It does not include, 14 unless specifically designated as controlled pursuant to the provisions 15 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). 16 17 It does include its racemic and levorotatory forms. "Opium poppy" means the plant of the species Papaver somniferum 18 19 L., except the seeds thereof. "Person" means any corporation, association, partnership, trust, 20 21 other institution or entity or one or more individuals. 22 "Plant" means an organism having leaves and a readily observable 23 root formation, including, but not limited to, a cutting having roots, a rootball or root hairs. 24 25 "Poppy straw" means all parts, except the seeds, of the opium 26 poppy, after mowing. 27 "Practitioner" means a physician, dentist, veterinarian, scientific 28 investigator, laboratory, pharmacy, hospital or other person licensed, 29 registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous 30 31 substance or controlled substance analog in the course of professional 32 practice or research in this State. (a) "Physician" means a physician authorized by law to practice 33 34 medicine in this or any other state and any other person authorized by law to treat sick and injured human beings in this or any other state. 35 (b) "Veterinarian" means a veterinarian authorized by law to 36 practice veterinary medicine in this State. 37 (c) "Dentist" means a dentist authorized by law to practice dentistry 38 39 in this State. 40 (d) "Hospital" means any federal institution, or any institution for 41 the care and treatment of the sick and injured, operated or approved by the appropriate State department as proper to be entrusted with the 42 custody and professional use of controlled dangerous substances or 43 44 controlled substance analogs. 45 (e) "Laboratory" means a laboratory to be entrusted with the 46 custody of narcotic drugs and the use of controlled dangerous

1 substances or controlled substance analogs for scientific, experimental

2 and medical purposes and for purposes of instruction approved by the

3 State Department of Health and Senior Services.

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

"Immediate precursor" means a substance which the State 7 Department of Health and Senior Services has found to be and by 8 9 regulation designates as being the principal compound commonly used 10 or produced primarily for use, and which is an immediate chemical 11 intermediary used or likely to be used in the manufacture of a 12 controlled dangerous substance or controlled substance analog, the control of which is necessary to prevent, curtail, or limit such 13 14 manufacture.

15 "Residential treatment facility" means any facility licensed and 16 approved by the Department of Health and Senior Services and which 17 is approved by any county probation department for the inpatient 18 treatment and rehabilitation of drug or alcohol dependent persons.

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

25 "State" means the State of New Jersey.

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

30 "Prescription legend drug" means any drug which under federal or 31 State law requires dispensing by prescription or order of a licensed 32 physician, veterinarian or dentist and is required to bear the statement ¹["Caution:Federal law prohibits dispensing without a prescription"] 33 34 "Rx only" or similar wording indicating that such drug may be sold or 35 dispensed only upon the prescription of a licensed medical practitioner¹ and is not a controlled dangerous substance or 36 stramonium preparation. 37 "Stramonium preparation" means a substance prepared from any 38

part of the stramonium pleparation incans a substance prepared from anypart of the stramonium plant in the form of a powder, pipe mixture,cigarette, or any other form with or without other ingredients.

41 "Stramonium plant" means the plant Datura Stramonium Linne,42 including Datura Tatula Linne.

43 (cf: P.L.1999, c.376, s.1).

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45 2. Section 8 of P. L. 1999, c. 90 (C. 2C:35-10.5) is amended to 46 reads as follows:

8. Prescription legend drugs. a. ¹[Except as authorized by sections 1 9 through 15 of P.L.1970, c.226 (C.24:21-9 through 24:21-15) a] <u>A¹</u> 2 3 person who knowingly ¹: $(1)^{1}$ distributes a prescription legend drug or stramonium 4 preparation in an amount of ¹[at least 5] ²[four] ³[six²] four³ or 5 fewer dosage units¹ ³ [²within a 24 hour period²]³ unless lawfully 6 prescribed or administered by a licensed physician, veterinarian ¹[or],¹ 7 8 dentist ¹or other practitioner authorized by law to prescribe <u>medication</u>¹ is [a disorderly person] ¹[guilty of a crime of the third 9 10 degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed] a disorderly 11 person¹; 12 ¹(2) distributes for pecuniary gain or possesses or has under his 13 14 control with intent to distribute for pecuniary gain a prescription 15 legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed 16 physician, veterinarian, dentist or other practitioner authorized by law 17 18 to prescribe medication is guilty of a crime of the fourth degree: 19 (3) distributes or possesses or has under his control with intent to 20 distribute a prescription legend drug or stramonium preparation in an amount of at least five but fewer than 100 dosage units unless lawfully 21 22 prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is 23 guilty of a crime of the third degree. Notwithstanding the provisions 24 of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be 25 26 imposed; or 27 (4) distributes or possesses or has under his control with intent to distribute a prescription legend drug or stramonium preparation in an 28 29 amount of 100 or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other 30 31 practitioner authorized by law to prescribe medication is guilty of a 32 crime of the second degree. Notwithstanding the provisions of 33 subsection b. of N.J.S.2C:43-3, a fine of up to \$300,000 may be 34 imposed.¹ 35 ³Notwithstanding the above, a violation of paragraph (1) or (3) of this subsection shall be deemed a de minimis infraction subject to 36 dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that 37 38 the conduct involved no more than six dosage units distributed within 39 a 24 hour period, that the prescription legend drug or stramonium 40 preparation was lawfully prescribed for or administered to that person 41 by a licensed physician, veterinarian, dentist or other practitioner 42 authorized by law to prescribe medication, and that the person 43 intended for the amount he distributed to be solely for the recipient's personal use.³ 44 45 b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as

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lawfully prescribed or administered by a licensed physician ¹. 1 2 veterinarian, dentist or other practitioner authorized by law to prescribe medication¹ is [a disorderly person] ¹[guilty of a crime of 3 the fourth degree] a disorderly person¹. 4 5 c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or 6 7 reactions caused by the use of prescription legend drugs or 8 stramonium preparation. The State need not prove which specific 9 prescription legend drug or stramonium preparation defendant used. 10 d. A person who obtains or attempts to obtain possession of a 11 prescription legend drug or stramonium preparation by forgery or 12 deception is [a disorderly person] guilty of a crime of the fourth 13 degree. Nothing in this section shall be deemed to preclude or limit a 14 prosecution for theft as defined in chapter 20 of Title C of the New 15 Jersey Statutes. e. A person who ¹[unlawfully] knowingly¹ possesses ¹[or has 16 under his control with intent to distribute], actually or constructively¹: 17 18 (1) a prescription legend drug or stramonium preparation in an amount of ¹[at least 5 but fewer than 100] four or fewer¹ dosage 19 units ¹unless lawfully prescribed or administered by a licensed 20 physician, veterinarian, dentist or other practitioner authorized by law 21 to prescribe medication¹ is ¹[guilty of a crime of the third degree. 22 23 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a 24 fine of up to \$200,000 may be imposed] a disorderly person¹; ¹or¹ (2) a prescription legend drug or stramonium preparation in an 25 amount of ¹[over 100 dosage units is guilty of a crime of the second 26 degree. Notwithstanding the provisions of subsection a. of 27 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed] five or more 28 dosage units unless lawfully prescribed or administered by a licensed 29 30 physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree¹. 31 32 ³Notwithstanding the above, a violation of this subsection shall be 33 deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 34 2C:2-11 if the person demonstrates that he unlawfully received no more than six dosage units within a 24 hour period, that the 35 prescription legend drug or stramonium preparation was lawfully 36 37 prescribed for or administered to the person from whom he had 38 received it, and that the person possessed the prescription legend drug or stramonium preparation for solely for his personal use.³ 39 40 ¹<u>f. Where the degree of the offense for violation of this section</u> 41 depends on the number of dosage units of the prescription legend drug 42 or stramonium preparation, the number of dosage units involved shall 43

be determined by the trier of fact. Where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated

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in determining the grade of the offense, whether distribution is to the 1 2 same person or several persons, provided that each individual act of 3 distribution or possession with intent to distribute was committed 4 within the applicable statute of limitations. 5 g. Subsections a. and e. of this section shall not apply to: a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, 6 7 manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or 8 9 other practitioner authorized by law to prescribe medication; a nurse 10 acting under the direction of a physician; or a common carrier or 11 messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the 12 prescription legend drug or stramonium preparation was delivered to 13 14 him for transportation.¹ 15 (cf: P.L.1999,c.90, s.8) 16 17 ¹[3. (New section) a. It shall be unlawful for a drug manufacturing 18 business or wholesale drug business to fail to maintain the records and inventories required to be available for inspection and copying by 19 20 federal, State or local law enforcement agencies pursuant to law or 21 regulations. 22 b. A violation of this section is a crime of the third degree, except 23 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, 24 a fine of up to \$200,000.00 may be imposed.]¹ 25 ¹[4.] <u>3.</u>¹ This act shall take effect immediately. 26 27 28 29 30 31 Upgrades unlawful possession and distribution of prescription legend

32 drugs.

SENATE, No. 1428 STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 29, 2004

Sponsored by: Senator PAUL SARLO District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Upgrades unlawful possession and distribution of prescription legend drugs; creates crime for failure to maintain certain records by drug manufacturing businesses or wholesale drug businesses.

CURRENT VERSION OF TEXT

As introduced.



AN ACT concerning prescription legend drugs and amending
 N.J.S.2C:35-2, P.L.1999, c.90 and supplementing Title 2C of the
 New Jersey Statutes.

4

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

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

9 2C:35-2. Definitions. As used in this chapter:

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

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

20 "Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the 21 22 distribution of which is specifically prohibited in N.J.S.2C:35-3, in 23 section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of 24 P.L.1997,c. 194 (C.2C:35-5.3) and any drug or substance which, when 25 ingested, is metabolized or otherwise becomes a controlled dangerous 26 substance in the human body. When any statute refers to controlled 27 dangerous substances, or to a specific controlled dangerous substance, 28 it shall also be deemed to refer to any drug or substance which, when 29 ingested, is metabolized or otherwise becomes a controlled dangerous 30 substance or the specific controlled dangerous substance, and to any 31 substance that is an immediate precursor of a controlled dangerous 32 substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms 33 34 are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco 35 products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs. 36

37 "Controlled substance analog" means a substance that has a 38 chemical structure substantially similar to that of a controlled 39 dangerous substance and that was specifically designed to produce an 40 effect substantially similar to that of a controlled dangerous substance. 41 The term shall not include a substance manufactured or distributed in 42 conformance with the provisions of an approved new drug application 43 or an exemption for investigational use within the meaning of section

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

Matter underlined <u>thus</u> is new matter.

1 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21

2 U.S.C. s.355).

3 "Counterfeit substance" means a controlled dangerous substance or 4 controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or 5 6 other identifying mark, imprint, number or device, or any likeness 7 thereof, of a manufacturer, distributor, or dispenser other than the 8 person or persons who in fact manufactured, distributed or dispensed 9 such substance and which thereby falsely purports or is represented to 10 be the product of, or to have been distributed by, such other 11 manufacturer, distributor, or dispenser.

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transfer from one person to another of a controlled dangerous
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25 "Drugs" means (a) substances recognized in the official United 26 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the 27 United States, or official National Formulary, or any supplement to 28 any of them; and (b) substances intended for use in the diagnosis, cure, 29 mitigation, treatment, or prevention of disease in man or other animals; 30 and (c) substances (other than food) intended to affect the structure or 31 any function of the body of man or other animals; and (d) substances 32 intended for use as a component of any article specified in subsections (a), (b) and (c) of this section; but does not include devices or their 33 34 components, parts or accessories.

35 "Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance 36 analog or alcohol has been in a state of psychic or physical 37 38 dependence, or both, arising from the use of that controlled dangerous 39 substance or controlled substance analog or alcohol on a continuous 40 or repetitive basis. Drug or alcohol dependence is characterized by 41 behavioral and other responses, including but not limited to a strong 42 compulsion to take the substance on a recurring basis in order to 43 experience its psychic effects, or to avoid the discomfort of its 44 absence.

45 <u>"Drug manufacturing business or wholesale drug business" means</u>
 46 <u>a business required to file a completed registration statement with the</u>

1 State Department of Health and Senior Services pursuant to P.L.1961,

2 c.52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing
3 business" means the business of creating, making or producing drugs

4 <u>by compounding, growing or other process</u>. This definition shall
5 include persons engaged in the drug manufacturing business who do

5 <u>include persons engaged in the drug manufacturing business who do</u>
6 <u>not maintain a manufacturing location in this State but who do operate</u>

7 distribution depots or warehouses of such business in this State.

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9 persons other than the ultimate consumer.

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

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

43 (b) A compound, manufacture, salt, derivative, or preparation of44 opium, coca leaves, or opiates;

45 (c) A substance (and any compound, manufacture, salt, derivative,46 or preparation thereof) which is chemically identical with any of the

1 substances referred to in subsections (a) and (b), except that the words 2 "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain 3 4 cocaine or ecogine. 5 "Opiate" means dangerous substance any having an 6 addiction-forming or addiction-sustaining liability similar to morphine 7 or being capable of conversion into a drug having such 8 addiction-forming or addiction-sustaining liability. It does not include, 9 unless specifically designated as controlled pursuant to the provisions 10 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer 11 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). 12 It does include its racemic and levorotatory forms. 13 "Opium poppy" means the plant of the species Papaver somniferum 14 L., except the seeds thereof. 15 "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals. 16 "Plant" means an organism having leaves and a readily observable 17 root formation, including, but not limited to, a cutting having roots, a 18 19 rootball or root hairs. 20 "Poppy straw" means all parts, except the seeds, of the opium 21 poppy, after mowing. 22 "Practitioner" means a physician, dentist, veterinarian, scientific 23 investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct 24 25 research with respect to, or administer a controlled dangerous 26 substance or controlled substance analog in the course of professional 27 practice or research in this State. 28 (a) "Physician" means a physician authorized by law to practice 29 medicine in this or any other state and any other person authorized by 30 law to treat sick and injured human beings in this or any other state. 31 (b) "Veterinarian" means a veterinarian authorized by law to 32 practice veterinary medicine in this State. "Dentist" means a dentist authorized by law to practice 33 (c) 34 dentistry in this State. (d) "Hospital" means any federal institution, or any institution for 35 the care and treatment of the sick and injured, operated or approved 36 37 by the appropriate State department as proper to be entrusted with the 38 custody and professional use of controlled dangerous substances or 39 controlled substance analogs. 40 (e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous 41 substances or controlled substance analogs for scientific, experimental 42 43 and medical purposes and for purposes of instruction approved by the 44 State Department of Health and Senior Services. 45 "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or 46

1 controlled substance analog. 2 "Immediate precursor" means a substance which the State 3 Department of Health and Senior Services has found to be and by 4 regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical 5 6 intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled substance analog, the 7 8 control of which is necessary to prevent, curtail, or limit such 9 manufacture. 10 "Residential treatment facility" means any facility licensed and approved by the Department of Health and Senior Services and which 11 is approved by any county probation department for the inpatient 12 13 treatment and rehabilitation of drug or alcohol dependent persons. "Schedules I, II, III, IV, and V" are the schedules set forth in 14 15 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any 16 regulations issued by the Commissioner of Health and Senior Services 17 18 pursuant to his authority as provided in section 3 of P.L.1970, c.226 19 (C.24:21-3). 20 "State" means the State of New Jersey. 21 "Ultimate user" means a person who lawfully possesses a controlled 22 dangerous substance or controlled substance analog for his own use 23 or for the use of a member of his household or for administration to an animal owned by him or by a member of his household. 24 "Prescription legend drug" means any drug which under federal or 25 26 State law requires dispensing by prescription or order of a licensed 27 physician, veterinarian or dentist and is required to bear the statement "Caution: Federal law prohibits dispensing without a prescription" and 28 29 is not a controlled dangerous substance or stramonium preparation. 30 "Stramonium preparation" means a substance prepared from any 31 part of the stramonium plant in the form of a powder, pipe mixture, 32 cigarette, or any other form with or without other ingredients. "Stramonium plant" means the plant Datura Stramonium Linne, 33 including Datura Tatula Linne. 34 (cf: P.L.1999, c.376, s.1). 35 36 37 2. Section 8 of P. L. 1999, c. 90 (C. 2C:35-10.5) is amended to 38 reads as follows: 39 8. Prescription legend drugs. a. Except as authorized by sections 40 9 through 15 of P.L.1970, c.226 (C.24:21-9 through 24:21-15) a person who knowingly distributes a prescription legend drug or 41 42 stramonium preparation in an amount of at least 5 dosage units unless 43 lawfully prescribed or administered by a licensed physician, 44 veterinarian or dentist is [a disorderly person] guilty of a crime of the third degree. Notwithstanding the provisions of subsection b. of 45 N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed; 46

1 b. A person who uses any prescription legend drug or stramonium 2 preparation for a purpose other than treatment of sickness or injury as 3 lawfully prescribed or administered by a licensed physician is [a 4 disorderly person] guilty of a crime of the fourth degree. 5 c. A defendant may be convicted for a violation of subsection b. 6 if the State proves that the defendant manifested symptoms or 7 reactions caused by the use of prescription legend drugs or 8 stramonium preparation. The State need not prove which specific 9 prescription legend drug or stramonium preparation defendant used. 10 d. A person who obtains or attempts to obtain possession of a 11 prescription legend drug or stramonium preparation by forgery or 12 deception is [a disorderly person]guilty of a crime of the fourth 13 degree. Nothing in this section shall be deemed to preclude or limit a 14 prosecution for theft as defined in chapter 20 of Title 2C of the New 15 Jersey Statutes. 16 e. A person who unlawfully possesses or has under his control with 17 intent to distribute: 18 (1) a prescription legend drug or stramonium preparation in an 19 amount of at least 5 but fewer than 100 dosage units is guilty of a 20 crime of the third degree. Notwithstanding the provisions of 21 subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be 22 imposed; 23 (2) a prescription legend drug or stramonium preparation in an 24 amount of over 100 dosage units is guilty of a crime of the second 25 degree. Notwithstanding the provisions of subsection a. of 26 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed. (cf: P.L.1999,c.90, s.8) 27 28 29 3. (New section) a. It shall be unlawful for a drug manufacturing 30 business or wholesale drug business to fail to maintain the records and 31 inventories required to be available for inspection and copying by 32 federal, State or local law enforcement agencies pursuant to law or regulations. 33 b. A violation of this section is a crime of the third degree, except 34 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, 35 36 a fine of up to \$200,000.00 may be imposed. 37 38 4. This act shall take effect immediately. 39 40 41 **STATEMENT** 42 This bill amends N.J.S.A.2C:35-10.5 to upgrade the unlawful 43 44 distribution and unlawful possession of prescription legend drugs. 45 Currently this is a disorderly persons offense. This bill would make the unlawful possession of these drugs a crime of the fourth degree in 46

subsection b. of N.J.S.A.2C:35-10.5. The bill would also make the
unlawful distribution of at least 5 dosage units of these drugs a crime
of the third degree with a fine of up to \$200,000. It is the sponsor's
intent that this offense would apply to the person who distributes a
small quantity on one occasion.

6 To address the situation of the unlawful large scale distributor, the 7 bill would establish the offense of unlawful possession of prescription 8 legend drugs in large quantities with intent to distribute. The bill 9 provides a gradation scheme for this crime, as follows: (1) Possessing 10 with intent to distribute a prescription legend drug or stramonium 11 preparation in an amount of at least 5 but fewer than 100 dosage units would constitute a crime of the third degree. The bill provides an 12 13 increased fine for this offense of up to \$200,000; (2) Possessing with intent to distribute a prescription legend drug or stramonium 14 15 preparation in an amount of over 100 dosage units would constitute a crime of the second degree. The bill provides an increased fine for 16 17 this offense of up to \$300,000.

18 This bill would also make it a crime of the third degree for a drug 19 manufacturing business or wholesale drug business to fail to maintain 20 the records and inventories required to be available for inspection and 21 copying by federal, State or local law enforcement agencies pursuant 22 to law or regulations.

Generally, a crime of the third degree is punishable by a term of
imprisonment of three to five years, a fine of up to \$15,000 or both.
A crime of the fourth degree is generally punishable by a term of
imprisonment of up to 18 months, a fine of up to \$10,000 or both.

27 The bill defines "drug manufacturing business or wholesale drug 28 business" as a business which is required to file a completed 29 registration statement with the State Department of Health and Senior 30 Services pursuant to P.L.1961, c.52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing business" means the business of creating, 31 32 making or producing drugs by compounding, growing or other 33 process. This definition would include persons engaged in the drug 34 manufacturing business who do not maintain a manufacturing location 35 in this State but who do operate distribution depots or warehouses of such business in this State. "Wholesale drug business" means the 36 37 business of supplying drugs to persons other than the ultimate 38 consumer.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1428

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 14, 2004

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1428.

As amended, this bill expands the provisions of N.J.S.A.2C:35-10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations. Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill, as amended, would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.

Section 1 of the bill updates the definition of "prescription legend drug" so that the definition in N.J.S.A.2C:35-2, the general definition section, mirrors the federal definition under 21 U.S.C.A. §353 (b)(4)(A). This new definition requires prescription drugs to bear the statement "Rx only" or similar wording indicating that the drug may be sold or dispensed only upon the prescription of a licensed medical practitioner.

In addition, this section was amended to delete the definition of "drug manufacturing business or wholesale drug business" and to delete the provision which would have made it a crime of the third degree for a drug manufacturing business or wholesale drug business to fail to maintain appropriate records and inventories required by law.

Section 2 of the bill amends N.J.S.A.2C:35-10.5, concerning prescription legend drugs, to add *possession or having under one's control with intent to distribute* prescription legend drugs or stramonium preparations. Currently, this section prohibits only the unlawful *distribution* of these drugs.

As originally introduced, the bill would have provided that unlawful distribution or possession with intent to distribute *at least five* dosage units was a crime of the third degree, with no provision for unlawful distribution or possession of *less than five* dosage units.

The bill as amended would provide the following graduated penalties:

- *C* <u>Unlawful use of any amount</u>: a disorderly persons offense (same as current law);
- C <u>Unlawful possession:</u>
 - C Four or fewer dosage units: a disorderly persons offense;
 - C Five or more dosage units: a crime of the fourth degree; and
- *C* <u>Obtaining or attempting to obtain possession</u> of any amount <u>by</u> <u>forgery or deception</u>: a crime of the fourth degree;
- C <u>Unlawful distribution</u> of four or fewer dosage units: a disorderly persons offense (under current law, unlawful distribution of any amount constitutes a disorderly persons offense);
- C <u>Unlawful distribution for pecuniary gain, or possession or having</u> <u>under one's control with intent to distribute for pecuniary gain</u>, four or fewer dosage units: a crime of the fourth degree;
- *C* <u>Unlawful distribution or possession or having under one's control</u> <u>with intent to distribute:</u>
 - C At least five but fewer than 100 dosage units: a crime of the third degree with an increased fine of up to \$200,000 which may be imposed by the court;
 - C *100 or more* dosage units: *a crime of the second degree* with an increased fine of up to \$300,000 which may be imposed by the court.

Under the Criminal Code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000, or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000, or both; a crime of the fourth degree, by a term of up to 18 months or a fine of up to \$10,000, or both; and a disorderly persons offense, by a term of up to six months or a fine of up to \$1,000, or both.

The bill, as introduced, would have upgraded the unlawful use of any prescription legend drug or stramonium preparation to a crime of the fourth degree. The bill, as amended, would keep the current grade for this offense: a disorderly persons offense.

The bill would upgrade obtaining or attempting to obtain possession by forgery or deception from a disorderly persons offense to a crime of the fourth degree.

In addition, the amendments clarify that health practitioners other than licensed physicians are authorized to prescribe prescription legend drugs. Currently, N.J.S.A.2C:35-10.5 criminalizes distributing or using prescription legend drugs unless the drugs are "lawfully prescribed or administered by a licensed physician." The amendments provide that this exception applies not only to physicians, but also to veterinarians, dentists, or other practitioners authorized by law to prescribe medication.

The amendments would also add a new subsection f., modeled on the aggregation language in N.J.S.A.2C:35-5c., which provides that, where the degree of the offense depends on the number of dosage units, the number would be determined by the trier of fact. This new subsection also provides that where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated in determining the grade of the offense, whether distribution is to the same persons or several persons, provided that each individual act of distribution or possession with intent to distribute was committed within the applicable statute of limitations.

Finally, the amendments add a new subsection g. to clarify that the prohibitions against unlawful distribution and possession are not intended to apply to: a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication; a nurse acting under the direction of a physician; or a common carrier or messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the prescription legend drug or stramonium for transportation.

As amended, this bill is similar to Assembly, No. 2866 (1R) but incorporates the change in the grading of unlawfully using prescription legend drugs.

STATEMENT TO

[First Reprint] **SENATE, No. 1428**

with Assembly Floor Amendments (Proposed By Assemblyman SCALERA)

ADOPTED: MARCH 14, 2005

This bill expands the provisions of N.J.S.A.2C:35-10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.

The bill currently provides that it is a disorderly persons offense to unlawfully distribute *four or fewer* dosage units. These floor amendments would change the amount of dosage units needed to constitute a disorderly persons offense from <u>four or fewer</u> dosage units to <u>six or fewer dosage units within a 24 hour period</u>.

The remaining provisions of the bill concerning larger dosage units remain unchanged.

STATEMENT TO

[Second Reprint] SENATE, No. 1428

with Assembly Floor Amendments (Proposed By Assemblyman SCALERA)

ADOPTED: MAY 16, 2005

This bill establishes a graduated criminal penalty scheme based on dosage units for the unlawful distribution, distribution or possession with intent to distribute, use or possession of a prescription legend drug or stramonium preparation.

These amendments would provide that a violation for unlawfully distributing a prescription legend drug shall be deemed de minimis infraction subject to dismissal if the person demonstrates that the conduct involved: (1) no more than six dosage units distributed within a 24 hour period; and (2) that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to that person by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication, and that the person intended for the amount he distributed to be solely for the recipient's personal use.

In addition, these amendments would provide that a violation for unlawfully possessing a prescription legend drug shall be deemed de minimis infraction subject to dismissal if the person demonstrates that: (1) he unlawfully received no more than six dosage units within a 24 hours period; and (2) that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to the person from whom he had received it and the person possessed the prescription legend drug or stramonium preparation for solely for his personal use.

LEGISLATIVE FISCAL ESTIMATE [First Reprint] SENATE, No. 1428 STATE OF NEW JERSEY 211th LEGISLATURE

DATED: NOVEMBER 8, 2004

SUMMARY

| Synopsis: | Upgrades unlawful possession and distribution of prescription legend drugs. | |
|--------------------|---|--|
| Type of Impact: | General Fund expenditure | |
| Agencies Affected: | Judiciary | |

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|---------------|----------------------------|---------------|---------------|
| State Cost | Minimal-See Comments Below | | |

- ! The Office of Legislative Services (OLS) notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of Corrections.
- ! The OLS further notes that the Administrative Office of the Courts (AOC) has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.
- ! The bill expands the provisions of N.J.S.A.2C:35-10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.
- ! Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.



BILL DESCRIPTION

Senate Bill No. 1428 (1R) of 2004 expands the provisions of N.J.S.A.2C:35- 10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.

Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.

The bill as amended would provide the following graduated penalties:

* Unlawful use of any amount: a disorderly persons offense (same as current law);

* Unlawful possession:

* Four or fewer dosage units: a disorderly persons offense;

* Five or more dosage units: a crime of the fourth degree; and

* Obtaining or attempting to obtain possession of any amount by forgery or deception: a crime of the fourth degree;

* Unlawful distribution of four or fewer dosage units: a disorderly persons offense (under current law, unlawful distribution of any amount constitutes a disorderly persons offense);

* Unlawful distribution for pecuniary gain, or possession or having under one's control with intent to distribute for pecuniary gain, four or fewer dosage units: a crime of the fourth degree;

* Unlawful distribution or possession or having under one's control with intent to distribute:

* At least five but fewer than 100 dosage units: a crime of the third degree with an increased fine of up to \$200,000 which may be imposed by the court;

* 100 or more dosage units: a crime of the second degree with an increased fine of up to \$300,000 which may be imposed by the court.

Under the Criminal Code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000, or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000, or both; a crime of the fourth degree, by a term of up to 18 months or a fine of up to \$10,000, or both; and a disorderly persons offense, by a term of up to six months or a fine of up to \$1,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of

Corrections.

The OLS further notes that the AOC has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.

| Section: | Judiciary |
|-----------|--|
| Analyst: | Anne C. Raughley Lead Fiscal Analyst |
| Approved: | David J. Rosen Legislative Budget and Finance Officer |

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

LEGISLATIVE FISCAL ESTIMATE [Third Reprint] SENATE, No. 1428 STATE OF NEW JERSEY 211th LEGISLATURE

DATED: JULY 8, 2005

SUMMARY

| Synopsis: | Upgrades unlawful possession and distribution of prescription legend drugs. |
|--------------------|---|
| Type of Impact: | General Fund expenditure |
| Agencies Affected: | Judiciary, Department of Corrections |

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|---------------|---------------|------------------------------|---------------|
| State Cost | | Minimal - See Comments Below | W |

- ! The Office of Legislative Services (OLS) notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of Corrections.
- ! The OLS further notes that the Administrative Office of the Courts has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.
- ! The bill expands the provisions of N.J.S.A.2C:35- 10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.
- ! Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.

BILL DESCRIPTION

Senate Bill No. 1428 (3R) of 2004 expands the provisions of N.J.S.A.2C:35-10.5 in order



to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations. Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs. The bill as amended would provide the following graduated penalties:

- C Unlawful use of any amount: a disorderly persons offense (same as current law);
- C Unlawful possession:
- C Four or fewer dosage units within a 24 hour period: a disorderly persons offense;
- C Five or more dosage units: a crime of the fourth degree; and
- C Obtaining or attempting to obtain possession of any amount by forgery or deception: a crime of the fourth degree;
- C Unlawful distribution of four or fewer dosage units: a disorderly persons offense (under current law, unlawful distribution of any amount constitutes a disorderly persons offense);
- C Unlawful distribution for pecuniary gain, or possession or having under one's control with intent to distribute for pecuniary gain, four or fewer dosage units: a crime of the fourth degree;
- C Unlawful distribution or possession or having under one's control with intent to distribute:
- C At least five but fewer than 100 dosage units: a crime of the third degree with an increased fine of up to \$200,000 which may be imposed by the court;
- C 100 or more dosage units: a crime of the second degree with an increased fine of up to \$300,000 which may be imposed by the court.

The amended bill also provides that a violation for unlawfully distributing a prescription legend drug shall be deemed de minimis infraction subject to dismissal if the person demonstrates that the conduct involved: (1) no more than six dosage units distributed within a 24 hour period; and (2) that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to that person by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication, and that the person intended for the amount he distributed to be solely for the recipient's personal use.

In addition, the amended bill provides that a violation for unlawfully possessing a prescription legend drug shall be deemed de minimis infraction subject to dismissal if the person demonstrates that: (1) he unlawfully received no more than six dosage units within a 24

hours period; and (2) that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to the person from whom he had received it and the person possessed the prescription legend drug or stramonium preparation for solely for his personal use.

Under the Criminal Code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000, or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000, or both; a crime of the fourth degree, by a term of up to 18 months or a fine of up to \$10,000, or both; and a disorderly persons offense, by a term of up to six months or a fine of up to \$1,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of Corrections.

The OLS further notes that the Administrative Office of the Courts has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.

| Section: | Judiciary |
|-----------|--|
| Analyst: | Anne C. Raughley Principal Fiscal Analyst |
| Approved: | David J. Rosen Legislative Budget and Finance Officer |

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 2866 **STATE OF NEW JERSEY** 211th LEGISLATURE

INTRODUCED MAY 17, 2004

Sponsored by: Assemblyman FREDERICK SCALERA District 36 (Bergen, Essex and Passaic) Assemblywoman LINDA R. GREENSTEIN District 14 (Mercer and Middlesex)

SYNOPSIS

Upgrades unlawful possession and distribution of prescription legend drugs; creates crime for failure to maintain certain records by drug manufacturing businesses or wholesale drug businesses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/25/2004)

AN ACT concerning prescription legend drugs and amending
 N.J.S.2C:35-2, P.L.1999, c.90 and supplementing Title 2C of the
 New Jersey Statutes.

4

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

7

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

9 2C:35-2. Definitions. As used in this chapter:

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

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

20 "Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the 21 22 distribution of which is specifically prohibited in N.J.S.2C:35-3, in 23 section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of 24 P.L.1997,c. 194 (C.2C:35-5.3) and any drug or substance which, when 25 ingested, is metabolized or otherwise becomes a controlled dangerous 26 substance in the human body. When any statute refers to controlled 27 dangerous substances, or to a specific controlled dangerous substance, 28 it shall also be deemed to refer to any drug or substance which, when 29 ingested, is metabolized or otherwise becomes a controlled dangerous 30 substance or the specific controlled dangerous substance, and to any 31 substance that is an immediate precursor of a controlled dangerous 32 substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms 33 34 are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco 35 products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs. 36

37 "Controlled substance analog" means a substance that has a 38 chemical structure substantially similar to that of a controlled 39 dangerous substance and that was specifically designed to produce an 40 effect substantially similar to that of a controlled dangerous substance. 41 The term shall not include a substance manufactured or distributed in 42 conformance with the provisions of an approved new drug application 43 or an exemption for investigational use within the meaning of section

Matter underlined <u>thus</u> is new matter.

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

1 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat.1052 (21

2 U.S.C. s.355).

3 "Counterfeit substance" means a controlled dangerous substance or 4 controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or 5 6 other identifying mark, imprint, number or device, or any likeness 7 thereof, of a manufacturer, distributor, or dispenser other than the 8 person or persons who in fact manufactured, distributed or dispensed 9 such substance and which thereby falsely purports or is represented to 10 be the product of, or to have been distributed by, such other 11 manufacturer, distributor, or dispenser.

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

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

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

25 "Drugs" means (a) substances recognized in the official United 26 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the 27 United States, or official National Formulary, or any supplement to 28 any of them; and (b) substances intended for use in the diagnosis, cure, 29 mitigation, treatment, or prevention of disease in man or other animals; 30 and (c) substances (other than food) intended to affect the structure or 31 any function of the body of man or other animals; and (d) substances 32 intended for use as a component of any article specified in subsections 33 (a), (b) and (c) of this section; but does not include devices or their 34 components, parts or accessories.

35 "Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance 36 analog or alcohol has been in a state of psychic or physical 37 38 dependence, or both, arising from the use of that controlled dangerous 39 substance or controlled substance analog or alcohol on a continuous 40 or repetitive basis. Drug or alcohol dependence is characterized by 41 behavioral and other responses, including but not limited to a strong 42 compulsion to take the substance on a recurring basis in order to 43 experience its psychic effects, or to avoid the discomfort of its 44 absence.

45 <u>"Drug manufacturing business or wholesale drug business" means</u>
 46 <u>a business required to file a completed registration statement with the</u>

1 State Department of Health and Senior Services pursuant to P.L.1961,

c. 52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing
business" means the business of creating, making or producing drugs
by compounding, growing or other process. This definition shall
include persons engaged in the drug manufacturing business who do
not maintain a manufacturing location in this State but who do operate
distribution depots or warehouses of such business in this State.

8 <u>"Wholesale drug business" means the business of supplying drugs to</u>

9 persons other than the ultimate consumer.

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

13 "Manufacture" means the production, preparation, propagation, 14 compounding, conversion or processing of a controlled dangerous 15 substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by 16 17 means of chemical synthesis, or by a combination of extraction and 18 chemical synthesis, and includes any packaging or repackaging of the 19 substance or labeling or relabeling of its container, except that this 20 term does not include the preparation or compounding of a controlled 21 dangerous substance or controlled substance analog by an individual 22 for his own use or the preparation, compounding, packaging, or 23 labeling of a controlled dangerous substance: (1) by a practitioner as 24 an incident to his administering or dispensing of a controlled 25 dangerous substance or controlled substance analog in the course of 26 his professional practice, or (2) by a practitioner (or under his 27 supervision) for the purpose of, or as an incident to, research, 28 teaching, or chemical analysis and not for sale.

29 "Marijuana" means all parts of the plant Genus Cannabis L., 30 whether growing or not; the seeds thereof, and every compound, 31 manufacture, salt, derivative, mixture, or preparation of such plant or 32 its seeds, except those containing resin extracted from such plant; but 33 shall not include the mature stalks of such plant, fiber produced from 34 such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of 35 such mature stalks, fiber, oil, or cake, or the sterilized seed of such 36 37 plant which is incapable of germination.

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

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

43 (b) A compound, manufacture, salt, derivative, or preparation of44 opium, coca leaves, or opiates;

45 (c) A substance (and any compound, manufacture, salt, derivative,46 or preparation thereof) which is chemically identical with any of the

1 substances referred to in subsections (a) and (b), except that the words 2 "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain 3 4 cocaine or ecogine. 5 "Opiate" means dangerous substance any having an 6 addiction-forming or addiction-sustaining liability similar to morphine 7 or being capable of conversion into a drug having such 8 addiction-forming or addiction-sustaining liability. It does not include, 9 unless specifically designated as controlled pursuant to the provisions 10 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer 11 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). 12 It does include its racemic and levorotatory forms. 13 "Opium poppy" means the plant of the species Papaver somniferum 14 L., except the seeds thereof. 15 "Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals. 16 "Plant" means an organism having leaves and a readily observable 17 18 root formation, including, but not limited to, a cutting having roots, a 19 rootball or root hairs. 20 "Poppy straw" means all parts, except the seeds, of the opium 21 poppy, after mowing. 22 "Practitioner" means a physician, dentist, veterinarian, scientific 23 investigator, laboratory, pharmacy, hospital or other person licensed, 24 registered, or otherwise permitted to distribute, dispense, conduct 25 research with respect to, or administer a controlled dangerous 26 substance or controlled substance analog in the course of professional 27 practice or research in this State. 28 (a) "Physician" means a physician authorized by law to practice 29 medicine in this or any other state and any other person authorized by 30 law to treat sick and injured human beings in this or any other state. 31 (b) "Veterinarian" means a veterinarian authorized by law to 32 practice veterinary medicine in this State. "Dentist" means a dentist authorized by law to practice 33 (c) 34 dentistry in this State. (d) "Hospital" means any federal institution, or any institution for 35 the care and treatment of the sick and injured, operated or approved 36 37 by the appropriate State department as proper to be entrusted with the 38 custody and professional use of controlled dangerous substances or 39 controlled substance analogs. 40 (e) "Laboratory" means a laboratory to be entrusted with the 41 custody of narcotic drugs and the use of controlled dangerous 42 substances or controlled substance analogs for scientific, experimental 43 and medical purposes and for purposes of instruction approved by the 44 State Department of Health and Senior Services. 45 "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or 46

1 controlled substance analog.

2 "Immediate precursor" means a substance which the State 3 Department of Health and Senior Services has found to be and by 4 regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical 5 6 intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled substance analog, the 7 8 control of which is necessary to prevent, curtail, or limit such 9 manufacture.

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

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

20 "State" means the State of New Jersey.

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

"Prescription legend drug" means any drug which under federal or
State law requires dispensing by prescription or order of a licensed
physician, veterinarian or dentist and is required to bear the statement
"Caution: Federal law prohibits dispensing without a prescription" and
is not a controlled dangerous substance or stramonium preparation.

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

33 "Stramonium plant" means the plant Datura Stramonium Linne,34 including Datura Tatula Linne.

- 35 (cf: P.L.1999, c.376, s.1).
- 36

37 2. Section 8 of P. L. 1999, c. 90 (C. 2C:35-10.5) is amended to
38 reads as follows:

39 8. Prescription legend drugs. a. Except as authorized by sections 40 9 through 15 of P.L.1970, c.226 (C.24:21-9 through 24:21-15) a person who knowingly distributes a prescription legend drug or 41 42 stramonium preparation in an amount of at least 5 dosage units unless 43 lawfully prescribed or administered by a licensed physician, 44 veterinarian or dentist is [a disorderly person] guilty of a crime of the third degree. Notwithstanding the provisions of subsection b. of 45 N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed; 46

1 b. A person who uses any prescription legend drug or stramonium 2 preparation for a purpose other than treatment of sickness or injury as 3 lawfully prescribed or administered by a licensed physician is [a 4 disorderly person] guilty of a crime of the fourth degree. 5 c. A defendant may be convicted for a violation of subsection b. 6 if the State proves that the defendant manifested symptoms or 7 reactions caused by the use of prescription legend drugs or 8 stramonium preparation. The State need not prove which specific 9 prescription legend drug or stramonium preparation defendant used. 10 d. A person who obtains or attempts to obtain possession of a 11 prescription legend drug or stramonium preparation by forgery or 12 deception is [a disorderly person]guilty of a crime of the fourth 13 degree. Nothing in this section shall be deemed to preclude or limit a 14 prosecution for theft as defined in chapter 20 of Title 2C of the New 15 Jersey Statutes. 16 e. A person who unlawfully possesses or has under his control with 17 intent to distribute: 18 (1) a prescription legend drug or stramonium preparation in an 19 amount of at least 5 but fewer than 100 dosage units is guilty of a 20 crime of the third degree. Notwithstanding the provisions of 21 subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be 22 imposed; 23 (2) a prescription legend drug or stramonium preparation in an 24 amount of over 100 dosage units is guilty of a crime of the second 25 degree. Notwithstanding the provisions of subsection a. of 26 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed. (cf: P.L.1999,c.90, s.8) 27 28 29 3. (New section) a. It shall be unlawful for a drug manufacturing 30 business or wholesale drug business to fail to maintain the records and 31 inventories required to be available for inspection and copying by 32 federal, State or local law enforcement agencies pursuant to law or regulations. 33 b. A violation of this section is a crime of the third degree, except 34 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, 35 36 a fine of up to \$200,000.00 may be imposed. 37 38 4. This act shall take effect immediately. 39 40 41 **STATEMENT** 42 This bill amends N.J.S.A.2C:35-10.5 to upgrade the unlawful 43 44 distribution and unlawful possession of prescription legend drugs. 45 Currently this is a disorderly persons offense. This bill would make the unlawful possession of these drugs a crime of the fourth degree in 46

subsection b. of N.J.S.A.2C:35-10.5. The bill would also make the
 unlawful distribution of at least 5 dosage units of these drugs a crime
 of the third degree with a fine of up to \$200,000. It is the sponsor's
 intent that this offense would apply to the person who distributes a
 small quantity on one occasion.
 To address the situation of the unlawful large scale distributor, the

bill would establish the offense of unlawful possession of prescription 7 8 legend drugs in large quantities with intent to distribute. The bill 9 provides a gradation scheme for this crime, as follows: (1) Possessing 10 with intent to distribute a prescription legend drug or stramonium 11 preparation in an amount of at least 5 but fewer than 100 dosage units would constitute a crime of the third degree. The bill provides an 12 13 increased fine for this offense of up to \$200,000; (2) Possessing with 14 intent to distribute a prescription legend drug or stramonium 15 preparation in an amount of over 100 dosage units would constitute a crime of the second degree. The bill provides an increased fine for 16 17 this offense of up to \$300,000.

18 This bill would also make it a crime of the third degree for a drug 19 manufacturing business or wholesale drug business to fail to maintain 20 the records and inventories required to be available for inspection and 21 copying by federal, State or local law enforcement agencies pursuant 22 to law or regulations.

Generally, a crime of the third degree is punishable by a term of
imprisonment of three to five years, a fine of up to \$15,000 or both.
A crime of the fourth degree is generally punishable by a term of
imprisonment of up to 18 months, a fine of up to \$10,000 or both .

27 The bill defines "drug manufacturing business or wholesale drug business" as a business which is required to file a completed 28 29 registration statement with the State Department of Health and Senior 30 Services pursuant to P.L.1961, c.52 (C.24:6B-1 et. seq.) or any other law. "Drug manufacturing business" means the business of creating, 31 32 making or producing drugs by compounding, growing or other 33 process. This definition would include persons engaged in the drug 34 manufacturing business who do not maintain a manufacturing location 35 in this State but who do operate distribution depots or warehouses of 36 such business in this State. "Wholesale drug business" means the 37 business of supplying drugs to persons other than the ultimate 38 consumer.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2866

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2004

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2866.

As amended, this bill expands the provisions of N.J.S.A.2C:35-10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations. Under the current law, the unlawful distribution or possession of prescription legend drugs or stramonium preparations is a disorderly persons offenses. This bill, as amended, would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.

Section 1 of the bill updates the definition of "prescription legend drug" so that the definition in N.J.S.A.2C:35-2, the general definition section, mirrors the federal definition under 21 U.S.C.A. §353 (b)(4)(A). This new definition requires prescription drugs to bear the statement "Rx only" or similar wording indicating that the drug may be sold or dispensed only upon the prescription of a licensed medical practitioner.

In addition, this section was amended to delete the definition of "drug manufacturing business or wholesale drug business." The provision in the bill which would have made it a crime of the third degree for a drug manufacturing business or wholesale drug business to fail to maintain appropriate records and inventories required by law was deleted. The committee received testimony which stated civil penalties for this type of violation may be a more appropriate mechanism for enforcing this requirement. Nevertheless, criminal penalties for any unlawful distribution of prescription legend drugs or stramonium preparations would apply to wholesalers, distributors or manufacturers or their representative acting outside the line and scope of their employment.

Section 2 of the bill which amends N.J.S.A.2C:35-10.5, concerning prescription legend drugs, adds possession or having under one's control with intent to distribute prescription legend drugs or

stramonium preparations. Currently, this section prohibits only the unlawful distribution of these drugs.

As originally introduced, the bill would have provided that unlawful distribution or possession with intent to distribute *at least five* dosage units was a crime of the third degree, with no provision for unlawful distribution or possession of *less than five* dosage units. As amended by the committee, the bill establishes a graduated criminal penalty scheme, based on dosage units, for unlawfully distributing, or possessing or having under control with intent to distribute, prescription legend drugs or stramonium preparations.

The bill as amended would provide the following graduated penalties:

Unlawful distribution, or possession with intent to distribute:

- C Four or fewer dosage units: a crime of the fourth degree;
- C At least five but fewer than 100 dosage units: a crime of the *third degree* with an increased fine of up to \$200,000 that may be imposed by the court; and
- C *100 or more* dosage units: *a crime of the second degree* with an increased fine of up to \$300,000 which may be imposed by the court.

The bill as amended would also imposes graduated penalties for simple possession (knowingly possessing, actually or constructively, with no intent to distribute) of prescription legend drugs or stramonium preparations:

Unlawful possession

- C Four or fewer dosage units: a disorderly persons offense;
- *C Five or more* dosage units: a *crime of the fourth degree*.

Under the Criminal Code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000, or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000, or both; a crime of the fourth degree, by a term of up to 18 months or a fine of up to \$10,000, or both; and a disorderly persons offense, by a term of up to six months or a fine of up to \$1,000, or both.

The bill's provisions upgrading the following disorderly persons offenses to crimes of the fourth degree remain unchanged: (1) using prescription legend drugs or stramonium preparations for purpose other than treatment of sickness or injury; or (2) obtaining or attempting to obtain possession by forgery or deception.

In addition, the amendments clarify that health practitioners other than licensed physicians are authorized to prescribe prescription legend drugs. Currently, N.J.S.A.2C:35-10.5 criminalizes distributing or using prescription legend drugs unless the drugs are "lawfully prescribed or administered by a licensed physician." The amendments provide that this exception applies not only to physicians, but also to veterinarians, dentists, or other practitioners authorized by law to prescribe medication.

The amendments would also add a new subsection f., modeled on the aggregation language in N.J.S.A.2C:35-5c., which provides that, where the degree of the offense depends on the number of dosage units, the number would be determined by the trier of fact. This new subsection also provides that where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated in determining the grade of the offense, whether distribution is to the same persons or several persons, provided that each individual act of distribution or possession with intent to distribute was committed within the applicable statute of limitations.

Finally, the amendments add a new subsection g. to clarify that the prohibitions against unlawful distribution and possession are not intended to apply to: a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication; a nurse acting under the direction of a physician; or a common carrier or messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the prescription legend drug or stramonium for transportation.

COMMITTEE AMENDMENTS:

1. Delete reference to "supplementing Title 2C of the New Jersey Statutes" in the title of the bill.

2. Delete the definition of "drug manufacturing business or wholesale drug business" in section 1 of the bill and clarify the definition of "prescription legend drug" in order to comply with the federal requirement concerning the label "Rx only."

- 3. Amends section 2 as follows:
- C eliminates the reference to P.L.1970, c.226 (C. 24:21-9 et seq.) in order to clarify the exceptions under the criminal law for licensed physicians, veterinarians and other practitioners authorized to prescribe medications in subsection a. of section 2;
- C adds new paragraphs (1) through (3) to subsection a. of section 2 to provide for graduated criminal penalties. Restructures the number of dosage units in subsection a. to provide that four or fewer dosage units constitutes a crime of the fourth degree; at least five but fewer than 100 dosage units is a crime of the third degree, and a fine of up to \$200,000 may be imposed; an amount of 100 or more dosage units is a crime of the second degree and a fine of up to \$300,000 may be imposed;

- C adds to subsection b. of this section concerning *unlawful use* of prescription legend drug or stramonium preparation, specified exemptions for lawful prescription or administration by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication;
- C changes subsection e. of N.J.S.A.2C:35-10.5, concerning simple possession, from "a person who unlawfully possesses or has under his control with intent to distribute" to "a person who knowingly possesses, actually or constructively."
- C restructures the number of dosage units in subsection e., concerning simple possession, to establish a graduated scheme of sentencing by providing that four or fewer dosage units constitutes a disorderly persons offense, and five or more dosage units constitutes a crime of the fourth degree.
- C adds new subsection f., modeled on the aggregation language in N.J.S.A.2C:35-5c., which provides that, where the degree of the offense depends on the number of dosage units, the trier of fact would determine the number, and where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated in determining the grade of the offense, whether distribution is to the same persons or several persons, provided that each individual act of distribution or possession with intent to distribute was committed within the applicable statute of limitations.
- C adds new subsection g. to provide that subsections a. and e. shall not apply to a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication; a nurse acting under the direction of a physician; or a common carrier or messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the prescription legend drug or stramonium preparation.

4. Replaces synopsis to eliminate reference to drug manufacturing and wholesale drug businesses.

STATEMENT TO

[First Reprint] ASSEMBLY, No. 2866

with Assembly Floor Amendments (Proposed By Assemblyman SCALERA)

ADOPTED: OCTOBER 25, 2004

As amended by committee, this bill expands the provisions of N.J.S.A.2C:35-10.5, concerning prescription legend drugs or stramonium preparations, to establish a graduated criminal penalty scheme based on dosage units for: (1) unlawfully distributing or possessing with intent to distribute; (2) unlawfully using; (3) obtaining possession by forgery; and (4) mere possession.

These floor amendments would restructure the number of dosage units concerning the offense of distributing in order to retain the current grading for <u>mere distribution</u> and at the same time provide for an enhanced penalty for <u>distribution for pecuniary gain</u> or possession with intent to distribute for pecuniary gain a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units. These floor amendments would also retain the gradation in the current law for the unlawful use of any prescription legend drug or stramonium preparation: a disorderly persons offense.

These floor amendments would provide the following graduated penalties:

- *C* <u>Unlawful use of any amount</u>: a disorderly persons offense (same as current law);
- C <u>Unlawful possession:</u>
 - C Four or fewer dosage units: a disorderly persons offense;
 - C *Five or more* dosage units: a crime of the fourth degree;
- *C* <u>Obtaining or attempting to obtain possession</u> of any amount <u>by</u> <u>forgery or deception</u>: a crime of the fourth degree;
- C <u>Unlawful distribution</u> of four or fewer dosage units: a disorderly persons offense (under current law, unlawful distribution of any amount constitutes a disorderly persons offense);
- C <u>Unlawful distribution for pecuniary gain, or possession or having</u> <u>under one's control with intent to distribute for pecuniary gain</u>, four or fewer dosage units: a crime of the fourth degree;
- *C* <u>Unlawful distribution or possession or having under one's control</u> with intent to distribute:
 - C At least five but fewer than 100 dosage units: a crime of the third degree with an increased fine of up to \$200,000 which may be imposed by the court;
 - C *100 or more* dosage units: *a crime of the second degree* with an increased fine of up to \$300,000 which may be imposed by the court.

As amended, this bill would be identical to Senate Bill No. 1428 (1R).

LEGISLATIVE FISCAL ESTIMATE [First Reprint] ASSEMBLY, No. 2866 STATE OF NEW JERSEY 211th LEGISLATURE

DATED: NOVEMBER 10, 2004

SUMMARY

| Synopsis: | Upgrades unlawful possession and distribution of prescription legend drugs. |
|--------------------|---|
| Type of Impact: | General Fund expenditure |
| Agencies Affected: | Judiciary |

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|---------------|---------------|----------------------------|---------------|
| State Cost | | Minimal-See Comments Below | 7 |

- ! The Office of Legislative Services (OLS) notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of Corrections.
- ! The OLS further notes that the Administrative Office of the Courts (AOC) has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.
- ! The bill expands the provisions of N.J.S.A.2C:35- 10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.
- ! Under the current law, the unlawful distribution, use or possession of prescription legend drugs or stramonium preparations is a disorderly persons offense. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs.



BILL DESCRIPTION

Assembly Bill No. 2866 (1R) of 2004 expands the provisions of N.J.S.A.2C:35-10.5 in order to establish a graduated criminal penalty scheme based on dosage units for the unlawful distribution or possession with intent to distribute prescription legend drugs or stramonium preparations.

Under the current law, the unlawful distribution or possession of prescription legend drugs or stramonium preparations is a disorderly persons offenses. This bill would upgrade distribution or possession of prescription legend drugs or stramonium preparations depending upon the amount of the dosage involved and the circumstances surrounding the possession of the drugs. The bill as amended would provide the following graduated penalties:

Unlawful distribution, or possession with intent to distribute:

* Four or fewer dosage units: a crime of the fourth degree;

* At least five but fewer than 100 dosage units: a crime of the third degree with an increased fine of up to \$200,000 that may be imposed by the court; and

* 100 or more dosage units: a crime of the second degree with an increased fine of up to \$300,000 which may be imposed by the court.

The bill would also imposes graduated penalties for simple possession (knowingly possessing, actually or constructively, with no intent to distribute) of prescription legend drugs or stramonium preparations:

Unlawful possession

* Four or fewer dosage units: a disorderly persons offense;

* Five or more dosage units: a crime of the fourth degree.

Under the Criminal Code, a crime of the second degree is generally punishable by a term of imprisonment of five to 10 years or a fine of up to \$150,000, or both; a crime of the third degree, by a term of three to five years or a fine of up to \$15,000, or both; a crime of the fourth degree, by a term of up to 18 months or a fine of up to \$10,000, or both; and a disorderly persons offense, by a term of up to six months or a fine of up to \$1,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services notes that it does not have the information with which to determine the number of convictions which would fall under the provisions of this bill. However, the OLS states that the majority of the crimes enumerated in the bill are upgraded to third and fourth degree crimes. Convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. As a result, there should be no impact on the operations of the Department of Corrections.

The OLS further notes that the AOC has stated in other fiscal notes that whenever an increased penalty is enacted, the defendant's incentive to plea is reduced, thus increasing the need for trials. This, in turn, generates the need for additional judicial staff and resources to conduct these trials.

A2866 [1R] 3

Section:JudiciaryAnalyst:Anne C. Raughley
Lead Fiscal AnalystApproved:David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

PO BOX 004 TRENTON, NJ 08625

Contact: Kelley Heck 609-777-2600

RELEASE: August 24, 2005

Codey Signs Bills Cracking Down on Illegal Sale, Use of Prescription and OTC Drugs

Bills will Regulate Wholesale Drug Distributors and Target Makers of "Crystal Meth"

(TRENTON) –Acting Governor Richard J. Codey today signed into law a package of bills designed to crack down on the booming black market of stolen prescription drugs and prevent certain over the counter drugs from being used to manufacture dangerous methamphetamines. The legislation was conceived in response to the largest pharmaceutical drug bust in state history, which took place in Bergen County in March 2004.

"People caught selling stolen or counterfeit prescription drugs should not receive a slap on the wrist. Their very actions threaten the public welfare while preying on innocent victims," said Codey. "A person pushing these drugs is no different than a crack-cocaine dealer when it comes to jeopardizing the public's health."

"By strengthening the regulation of wholesale drug distributors and increasing the penalties for illegal distribution and possession of prescription drugs, we are making sure that some of our most vulnerable citizens receive the life-saving medications they need – untainted," Codey said.

Codey signed the three bills during a public ceremony at HD Smith, a wholesale drug distributor in Carlstadt. He was joined by bill sponsors, including Senators Paul A. Sarlo (D-Bergen, Essex, Passaic) and Joseph M. Kyrillos (R-Middlesex, Monmouth) and Assembly members Frederick Scalera (D-Bergen, Essex, Passaic) and Linda Stender (D-Middlesex, Somerset, Union). Also in attendance were Health and Senior Services Commissioner Fred M. Jacobs, M.D., J.D. and Bergen County Prosecutor John Mollinelli.

The three bills are:

<u>S1428</u>, which upgrades the penalties for unlawful distribution and possession of prescription drugs from a disorderly persons offense to a third and fourth degree crime, respectively. The bill's sponsors include Senators Paul A. Sarlo (D-Bergen, Essex, Passaic), Joseph V. Doria, Jr. (D-Hudson) as well as Assembly members Frederick Scalera (D-Bergen, Essex, Passaic), Linda R. Greenstein (D-Mercer, Middlesex), Joseph Vas (D-Middlesex) and Neil M.Cohen (D-Union).

"Today we are saying that a drug dealer is a drug dealer. There is no difference between trafficking black market prescription drugs or trafficking illegal narcotics," said Sarlo. "I am proud to have sponsored this comprehensive legislation that will protect New Jersey's consumers, pharmacies and pharmaceutical industry from criminal elements."

<u>S1753</u> establishes licensing requirements and standards for pharmaceutical wholesale <u>distribution</u>. The bill's sponsors include Senators Joseph F. Vitale (D-Middlesex) and Paul A. Sarlo (D-Bergen, Essex, Passaic).

"Today New Jersey is taking an important step in protecting New Jersey consumers from counterfeit and subpotent pharmaceuticals," said Vitale, Chair of the Senate Health, Human Services and Senior Citizens Committee. "For too long the federal government has delayed in enforcing its own laws in this area, so we are taking action to make sure that when someone picks up a prescription from the pharmacy, the medicine they get is safe and effective."

"This law will go a long way in protecting consumers from serious health and safety risks posed by counterfeit drugs. Increased fines and penalties and improved regulations for record-keeping, storage, transportation and distribution, demonstrate that New Jersey will not tolerate attempts to defraud and harm the public," said Dr. Jacobs.

S2320 restricts sales of ephedrine and pseudoephedrine and criminalizes certain possessions of anhydrous ammonia as precursors in the manufacturing of methamphetamine. The bill's sponsors include Senators Paul A. Sarlo (D-Bergen, Essex, Passaic), Joseph M. Kyrillos, Jr. (R-Middlesex, Monmouth) and Assembly members Linda Stender (D-Middlesex, Somerset, Union), Neil M. Cohen (D-Union) and Frederick Scalera (D-Bergen, Essex, Passaic).

Methamphetamine is a central nervous system stimulant like cocaine and caffeine. In the form of crystal meth, it can be produced relatively easily using ephedrine and pseudoephedrine as ingredients. Because these ingredients have many legitimate medical uses and are commonly sold over-the-counter as cold remedies, the new law is intended to make it more difficult to obtain the drugs for uses other than their legitimate medical purposes.

"Statistics indicate that states that have enacted legislation limiting the sale of products containing ephedrine and pseudoephedrine experienced a substantial decline in the number of meth labs. This bill is proactive as well as preventive legislation that will limit the potential inception of meth labs," said Scalera.

New Jersey now joins the growing list of more than 30 states that have imposed restrictions on the sale of products containing ephedrine and pseudoephedrine. New Jersey's legislation is part of a proactive measure to curb the spread of the methamphetamine epidemic, which is currently plaguing many mid-Western states and rural communities.