

LEGISLATIVE HISTORY CHECKLIST

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(Penalties -- marijuana)

NJSA: 2C:35-2

LAWS OF: 1997 CHAPTER: 186

BILL NO: A2957

SPONSOR(S): Blee

DATE INTRODUCED: May 12, 1997

COMMITTEE: ASSEMBLY: Law & public Safety

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 23, 1997

SENATE: June 26, 1997

DATE OF APPROVAL: August 4, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Recommendation referred to in committee statement--attached:

974.90 New Jersey. Dept. of Law & Public Safety.

N222 Report...update the Comprehensive Drug Reform Act of 1987.

1996i December 9, 1996. Trenton, 1996.

[see Recommendations #1 & #2 -- attached]

See newspaper clippings-attached:

"Drug law bills signed by Whitman," 8-5-97, Philadelphia Inquirer."Whitman signs 3-bill package," 8-5-97, Atlantic City Press.

KBP:pp

[Passed Both Houses]

ASSEMBLY, No. 2957

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1997

By Assemblymen BLEE, AZZOLINA, Gibson, LeFevre, Geist, Cottrell, Kelly, Talarico, T. Smith, Asselta, Corodemus, Arnone, Malone, DeSopo, Assemblywoman Heck, Assemblymen Wolfe, Holzapfel, Assemblywoman Crecco, Assemblymen Zecker, Bateman, O'Toole, Bucco and Senator Matheussen

1 AN ACT concerning controlled dangerous substances and amending
2 N.J.S.2C:35-2, N.J.S.2C:35-4 and N.J.S.2C:35-5.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

8 2C:35-2. Definitions.
9 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
21 immediate precursor in Schedules I through V. The term shall not
22 include distilled spirits, wine, malt beverages, as those terms are
23 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
24 products. The term, wherever it appears in any law or administrative
25 regulation of this State, shall include controlled substance analogs.

26 "Controlled substance analog" means a substance that has a

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

Matter underlined thus is new matter.

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

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

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

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

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

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

41 "Drug dependent person" means a person who is using a controlled
42 dangerous substance or controlled substance analog and who is in a
43 state of psychic or physical dependence, or both, arising from the use
44 of that controlled dangerous substance or controlled substance analog
45 on a continuous basis. Drug dependence is characterized by behavioral
46 and other responses, including but not limited to a strong compulsion

1 to take the substance on a recurring basis in order to experience its
2 psychic effects, or to avoid the discomfort of its absence.

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

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

22 **["Marihuana"]** "Marijuana" means all parts of the plant Genus
23 Cannabis L., whether growing or not; the seeds thereof, and every
24 compound, manufacture, salt, derivative, mixture, or preparation of
25 such plant or its seeds, except those containing resin extracted from
26 such plant; but shall not include the mature stalks of such plant, fiber
27 produced from such stalks, oil or cake made from the seeds of such
28 plant, any other compound, manufacture, salt, derivative, mixture, or
29 preparation of such mature stalks, fiber, oil, or cake, or the sterilized
30 seed of such plant which is incapable of germination.

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

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

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

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

44 "Opiate" means any dangerous substance having an
45 addiction-forming or addiction-sustaining liability similar to morphine
46 or being capable of conversion into a drug having such

1 addiction-forming or addiction-sustaining liability. It does not include,
2 unless specifically designated as controlled pursuant to the provisions
3 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
4 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
5 It does include its racemic and levorotatory forms.

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

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

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

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

15 "Practitioner" means a physician, dentist, veterinarian, scientific
16 investigator, laboratory, pharmacy, hospital or other person licensed,
17 registered, or otherwise permitted to distribute, dispense, conduct
18 research with respect to, or administer a controlled dangerous
19 substance or controlled substance analog in the course of professional
20 practice or research in this State.

21 (a) "Physician" means a physician authorized by law to practice
22 medicine in this or any other state and any other person authorized by
23 law to treat sick and injured human beings in this or any other state
24 and

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

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

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

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

39 "Production" includes the manufacture, planting, cultivation,
40 growing, or harvesting of a controlled dangerous substance or
41 controlled substance analog.

42 "Immediate precursor" means a substance which the State
43 Department of Health has found to be and by regulation designates as
44 being the principal compound commonly used or produced primarily
45 for use, and which is an immediate chemical intermediary used or
46 likely to be used in the manufacture of a controlled dangerous

1 substance or controlled substance analog, the control of which is
2 necessary to prevent, curtail, or limit such manufacture.

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

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

11 "State" means the State of New Jersey.

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

16 (cf: P.L.1987, c.106, s.1)

17

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

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

21 Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any
22 person who knowingly maintains or operates any premises, place or
23 facility used for the manufacture of methamphetamine, lysergic acid
24 diethylamide, phencyclidine, marijuana in an amount greater than five
25 pounds or ten plants or any substance **[classified as a narcotic drug]**
26 listed in Schedule I or II, or the analog of any such substance, or any
27 person who knowingly aids, promotes, finances or otherwise
28 participates in the maintenance or operations of such premises, place
29 or facility, is guilty of a crime of the first degree and shall, except as
30 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
31 which shall include the imposition of a minimum term which shall be
32 fixed at, or between, one-third and one-half of the sentence imposed,
33 during which the defendant shall be ineligible for parole.
34 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
35 court may also impose a fine not to exceed \$500,000.00 or five times
36 the street value of all controlled dangerous substances or controlled
37 substance analogs at any time manufactured or stored at such
38 premises, place or facility, whichever is greater.

39 (cf: P.L.1988, c.44, s.1)

40

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

42 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as
43 authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful
44 for any person knowingly or purposely:

45 (1) To manufacture, distribute or dispense, or to possess or have
46 under his control with intent to manufacture, distribute or dispense, a

1 controlled dangerous substance or controlled substance analog; or
2 (2) To create, distribute, or possess or have under his control with
3 intent to distribute, a counterfeit controlled dangerous substance.

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

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

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

23 (3) A substance referred to paragraph (1) of this subsection in a
24 quantity less than one-half ounce including any adulterants or dilutants
25 is guilty of a crime of the third degree except that, notwithstanding the
26 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
27 \$50,000.00 may be imposed;

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

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

38 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100
39 milligrams or more including any adulterants or dilutants, or
40 phencyclidine, or its analog, in a quantity of 10 grams or more
41 including any adulterants or dilutants, is guilty of a crime of the first
42 degree. Except as provided in 2C:35-12, the court shall impose a term
43 of imprisonment which shall include the imposition of a minimum term,
44 fixed at, or between, one-third and one-half of the sentence imposed
45 by the court, during which the defendant shall be ineligible for parole.
46 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a

1 fine of up to \$300,000.00 may be imposed;

2 (7) Lysergic acid diethylamide, or its analog, in a quantity of less
3 than 100 milligrams including any adulterants or dilutants, or where
4 the amount is undetermined, or phencyclidine, or its analog, in a
5 quantity of less than 10 grams including any adulterants or dilutants,
6 or where the amount is undetermined, is guilty of a crime of the
7 second degree;

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

13 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
14 (P2P), in a quantity of ~~less than one ounce~~ one-half ounce or more
15 but less than five ounces including any adulterants or dilutants is guilty
16 of a crime of the ~~third~~ second degree ~~except that, notwithstanding~~
17 ~~the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to~~
18 ~~\$50,000.00 may be imposed];~~

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

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

30 (b) Marijuana in a quantity of five pounds or more but less than 25
31 pounds including any adulterants [and] or dilutants, or 10 or more but
32 fewer than 50 marijuana plants, regardless of weight, or hashish in a
33 quantity of one pound or more but less than five pounds, including any
34 adulterants and dilutants, is guilty of a crime of the second degree;

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

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

45 (13) Any other controlled dangerous substance classified in

1 Schedule I, II, III or IV, or its analog, is guilty of a crime of the third
2 degree, except that, notwithstanding the provisions of subsection b. of
3 N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed; or

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

8 c. Where the degree of the offense for violation of this section
9 depends on the quantity of the substance, the quantity involved shall
10 be determined by the trier of fact. Where the indictment or accusation
11 so provides, the quantity involved in individual acts of manufacturing,
12 distribution, dispensing or possessing with intent to distribute may be
13 aggregated in determining the grade of the offense, whether
14 distribution or dispensing is to the same person or several persons,
15 provided that each individual act of manufacturing, distribution,
16 dispensing or possession with intent to distribute was committed
17 within the applicable statute of limitations.

18 (cf: P.L.1988, c.44, s.2)

19

20 4. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill would increase the penalties for manufacturing, distributing
26 or dispensing large quantities of marijuana.

27 The bill establishes gradations for marijuana based upon the number
28 of plants possessed (regardless of weight). This gradation scheme,
29 which is similar to the one presently used in federal law, allows law
30 enforcement officials to seize young, growing marijuana plants before
31 they are mature enough to produce large quantities of usable
32 marijuana.

33 The bill adds marijuana to the list of substances which may be used
34 as the basis for a conviction of "maintaining or operating a controlled
35 dangerous substance production facility" under the provisions of
36 N.J.S.A.2C:35-4. Under the bill, a person who maintains or operates
37 any premises for the manufacture of marijuana in an amount greater
38 than five pounds or ten plants would be guilty of a violation of
39 N.J.S.A.2C:35-4, a crime of the first degree. Normally, a crime of the
40 first degree is punishable by a term of imprisonment of up to 10 to 20
41 years, a fine of up to \$100,000, or both. However, a person found
42 guilty of a violation of N.J.S.A.2C:35-4 must be sentenced by the
43 court to a term of imprisonment which includes a mandatory minimum
44 term of between one-third and one-half of the sentence imposed. The
45 person also may be sentenced to pay a fine of up to \$500,000 or five
46 times the street value of all CDS at the facility, whichever is greater.

1 The bill also upgrades the offenses of distribution and possession
2 with intent to distribute methamphetamine ("speed") and marijuana.
3 Currently, this offense is a crime of the second degree, regardless of
4 the quantity involved. By contrast, currently the offenses of
5 distribution and possession with intent to distribute large quantities of
6 heroin and cocaine are both crimes of the first degree. The bill
7 provides that dealers in large quantities of marijuana and
8 methamphetamine would be guilty of first degree crimes as well.

9 The bill also provides that P2P, an immediate precursor used in the
10 manufacture of methamphetamine, would be included in the new
11 gradation scheme.

12 Specifically the bill provides as follows:

13 (1) Distribution or possession with intent to distribute more than
14 five ounces of methamphetamine would be a crime of the first degree.
15 (Currently, committing this offense with any amount of
16 methamphetamine greater than one ounce is a crime of the second
17 degree.)

18 (2) Distribution or possession with intent to distribute one-half
19 ounce to five ounces of methamphetamine would be a crime of the
20 second degree. (Currently, committing this offense with less than one
21 ounce of methamphetamine is a crime of the third degree.)

22 (3) Distribution or possession with intent to distribute 25 pounds
23 of marijuana or 50 marijuana plants, or five pounds of hashish, would
24 be a first degree crime. (Currently, committing this offense with any
25 amount of marijuana greater than five pounds, or any amount of
26 hashish greater than one pound, is a crime of the second degree.)

27 This bill embodies Recommendations #1 and #2 of the Attorney
28 General's "Report to the Governor on the Need to Update the
29 Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

30

31

32

33

34 _____
35 Increases penalties for distribution of large quantities of marijuana and
36 methamphetamine; adds marijuana to "Controlled dangerous substance
production facility" statute.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2957

STATE OF NEW JERSEY

DATED: JUNE 9, 1997

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 2957.

Assembly Bill No. 2957 revises the gradation schemes pertaining to violations of the controlled dangerous substance (CDS) law involving methamphetamine ("speed") and marijuana to increase the penalties imposed on those who deal in large quantities of these substances. As revised, the gradation scheme mirrors federal law.

Under the bill, a person convicted of manufacturing, distributing or dispensing the CDS methamphetamine, including adulterants or dilutants, in an amount:

- a. equal to or exceeding five ounces commits a first-degree crime;
- b. equal to or exceeding one-half ounce, but less than five ounces, commits a second-degree crime; and
- c. less than one-half ounce commits a third-degree crime.

The bill's revised gradation scheme for convictions involving the CDS marijuana is expressed in terms of weight, as under current law, as well as in terms of the number of plants, without regard to weight. A conviction involving an amount, including adulterants and dilutants, of marijuana:

- a. equal to or exceeding 25 pounds, or exceeding 50 plants, is a first-degree crime;
- b. equal to or exceeding five pounds, but less than 25 pounds, or equal to or exceeding 10 plants, but fewer than 50 plants, is a second-degree crime;
- c. equal to or exceeding one ounce, but less than five pounds, is a third-degree crime; and
- d. less than one ounce is a fourth-degree crime.

The provisions pertaining to methamphetamine have been expanded by the bill to apply to phenyl-2-propanone (P2P), the immediate precursor to methamphetamine.

Finally, the bill expands the list of controlled dangerous substances for which it is illegal to knowingly operate a manufacturing facility to include marijuana.

FISCAL NOTE TO
ASSEMBLY, No. 2957

STATE OF NEW JERSEY

DATED: JULY 9, 1997

Assembly Bill No. 2957 of 1997 revises the penalties for violations of the controlled dangerous substance (CDS) law involving methamphetamine ("speed") and marijuana to mirror federal law.

Under the bill, a conviction for manufacturing, distributing or dispensing the CDS methamphetamine, including adulterants or dilutants, in an amount: a. equal to or exceeding five ounces is increased from a second degree to a first-degree crime; b. equal to or exceeding one-half ounce, but less than five ounces, is increased from a third-degree to a second-degree crime; and c. less than one-half ounce remains a third-degree crime.

The bill's revised penalties for convictions involving the CDS marijuana is expressed in terms of weight, as under current law, as well as in terms of the number of plants, without regard to weight. A conviction involving an amount, including adulterants and dilutants, of marijuana: a. equal to or exceeding 25 pounds, or exceeding 50 plants, is increased from a second-degree to a first-degree crime; b. equal to or exceeding five pounds, but less than 25 pounds, or equal to or exceeding 10 plants, but fewer than 50 plants, is a second degree crime; c. equal to or exceeding one ounce, but less than five pounds, is a third-degree crime; and d. less than one ounce is a fourth-degree crime. The provisions pertaining to methamphetamine have been expanded by the bill to apply to phenyl-2-propanone (P2P), the immediate precursor to methamphetamine.

Finally, the bill expands the list of controlled dangerous substances for which it is illegal to knowingly operate a manufacturing facility to include marijuana.

The Administrative Office of the Courts (AOC) states that in 1994 there were four convictions under 2C:35-4, maintaining or operating a controlled dangerous substance production facility. The AOC does not collect data on the type of drugs involved.

The AOC further states that in 1995 there were four convictions under 2C:35-5b(8), distributing or possessing with the intent to distribute one ounce or more of methamphetamine. There were 40 convictions under 2C:35-5b(10), distributing or possessing with the intent to distribute five pounds or more of marijuana, or one pound or more of hashish. The AOC does not collect data on the exact quantity of drugs involved. There were 164 convictions for the first degree

A2957

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crime of distributing or possessing with the intent to distribute five or more ounces of heroin or cocaine.

The Office of Legislative Services concurs.

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



OFFICE OF THE GOVERNOR NEWS RELEASE

PO BOX-004

TRENTON, NJ 08625

CONTACT: Jayne O'Connor
Rita Malley
609-777-2600

RELEASE: MONDAY
Aug. 4, 1997

Gov. Whitman to Sign Booby Trap Legislation and a Law that will Stiffen Penalties for Dealers who Distribute Large Quantities of Drugs

Today Gov. Christie Whitman escalates the war against drug dealers by signing bills that increase penalties for drug dealers and better protect law enforcement officers on the street.

In Paterson she signs A-2957, the bill that increases the penalties for drug dealers who distribute large quantities of marijuana and methamphetamine. The new law will make it a first-degree crime to sell marijuana and methamphetamine in bulk. Additionally, during that ceremony, she will sign A-2958, a bill that imposes an anti-drug profiteering penalty against drug dealers.

In Camden, she signs A-2956, which outlaws the use of booby traps and fortification structures that are commonly used to injure law enforcement officers during drug busts.

"Last month I announced that crime rates had dropped dramatically in 1996, the sharpest drop in the past decade. Our neighborhoods are safer and law enforcement is armed with some of the toughest laws in the country," said Gov. Whitman. "But we can't stop now. Drug use among young people is on the rise. The bills that I am signing today will continue the war on drugs and help combat that disturbing trend."

"The increased penalties that we are putting into place will send a clear message to drug dealers: endanger a law enforcement officer or impede a search and you will pay dearly," said Gov. Whitman. "From now on, major dealers of marijuana and methamphetamine will be treated like the major criminals they are. And, the illegal profits of convicted drug dealers are now fair game for seizure by state authorities."

The bills being signed today implement recommendations made by the Governor in the "Governor's Drug Enforcement, Education and Awareness Program" last October. The legislation was also part of Attorney General Peter Verniero's *Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987*.

"These new laws play a critical role in our overall efforts to further strengthen the state's drug laws," said Verniero. "These tougher penalties not only punish the most culpable drug offenders, but also ensure that our law enforcement community is not put at risk while trying to protect New Jersey."

The booby trap bill, A-2956, sponsored by Assembly Members Guy Talarico (R-Bergen) and Carmine DeSopo (R-Burlington/Camden), steps up the punishment for drug dealers who set booby traps that can harm officers as they attempt to execute search warrants or make arrests. The law makes it a crime of the second

degree to knowingly place a booby trap on property used for the manufacture, distribution, dispensing or possession of controlled dangerous substances.

If the booby trap causes bodily injury to a law enforcement officer, the defendant would be guilty of a crime of the first degree. For a first-degree crime, the maximum sentence is 20 years imprisonment. Second degree crimes carry a maximum penalty of 10 years in prison.

The bill also makes it a third-degree offense to fortify a structure with steel doors, wooden planking, cross bars, alarm systems, dogs or any other means designed to prevent or delay police officers' entry into a building. A third-degree crime carries a maximum penalty of five years of imprisonment.

While in Camden, the Governor also highlighted her administration's efforts to clean up and demolish abandoned buildings in the city which are an invitation to criminal activity and drug transactions. The National Guard, in conjunction with the Departments of Community Affairs and Corrections, has boarded up more than 150 such sites in the area. Gov. Whitman in June signed legislation to create a \$20 million revolving loan program to assist municipalities with the costs associated with the demolition and disposal of unsafe buildings in urban and rural centers.

The drug distribution bill, A-2957, sponsored by Assembly Members Francis J. Blee (R-Atlantic), Joseph Azzolina (R-Middlesex/ Monmouth), increases penalties for the distribution of large quantities of marijuana and methamphetamine to a crime of the first degree.

Now it will be a first degree crime to manufacture, distribute or dispense 25 pounds or more of marijuana, 50 or more marijuana plants, five pounds or more of hashish and more than five ounces of methamphetamine or P2P. Hashish is an extract of the marijuana plant; P2P is an immediate chemical precursor to methamphetamine.

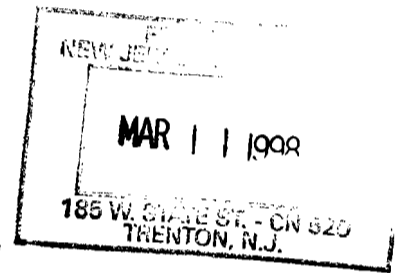
The bill also incorporates the grading of marijuana offenses by the number of live, growing plants into the New Jersey Criminal Code. This enables law enforcement officers to seize young, growing marijuana plants before they are mature. The Division of Criminal Justice reports that each marijuana plant has the potential to produce between one-half and two pounds of marijuana.

Crimes of the second degree would apply to five pounds or more but less than 25 pounds of marijuana, ten plants or more but fewer than 50 marijuana plants, one pound or more but less than five pounds of hashish and one-half ounce or more but less than five ounces of methamphetamine or P2P.

The third bill signed by the Governor, A-2598, was sponsored by Assembly Members Ken LeFevre (R-Atlantic) and Paul Kramer (R-Mercer/Middlesex) and Senator Dick LaRossa (R-Mercer). The bill allows the state to execute a penalty against the assets of a defendant who has been convicted of drug charges whether or not the assets can be directly traced to illegal drug profits. The bill is aimed at further removing the profit motive from illegal drug trafficking. Drug traffickers often convert drug profits into other types of assets to eliminate a possible trace to illegal activity.

As part of her overall strategy to combat drug use and related crimes, Gov. Whitman has also stressed the importance of prevention and education. Education Commissioner Leo Klagholz is working with schools throughout the state to strengthen efforts to keep drugs out of schools and teach students the deadly dangers of substance abuse. At the Governor's direction, the drug education section of the Core Curriculum education standards was fast tracked to ensure that it will be implemented by September. Drug education is one of the components of the Governor's curriculum standards which are currently being implemented by the state's school system.

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



Christine Todd Whitman, Governor

**Peter Verniero, Attorney General
Department of Law & Public Safety**

December 9, 1996

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

EXECUTIVE SUMMARY

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

Specific Recommendations Suggested in the Governor's Program

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

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

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

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

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

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

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

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

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

Thus, the following amendments are recommended:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

20 c. Where the degree of the offense for violation of this section depends on the
21 quantity of the substance, the quantity involved shall be determined by the trier of fact.
22 Where the indictment or accusation so provides, the quantity involved in individual acts

1 of manufacturing, distribution, dispensing or possessing with intent to distribute may be
2 aggregated in determining the grade of the offense, whether distribution or dispensing is
3 to the same person or several persons, provided that each individual act of manufacturing,
4 distribution, dispensing or possession with intent to distribute was committed within the
5 applicable statute of limitations.

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

8 **2C:35-6. Employing a Juvenile in a Drug Distribution Scheme**

9 Any person being at least 18 years of age who knowingly uses, solicits, directs, hires,
10 [or] employs or conspires with a person 17 years of age or younger to violate N.J.S.
11 2C:35-4 or subsection a. of N.J.S. 2C:35-5, is guilty of a crime of the second degree and
12 shall, except as provided in N.J.S. 2C:35-12, be sentenced to a term of imprisonment
13 which shall include the imposition of a minimum term which shall be fixed at, or between,
14 one-third and one-half of the sentence imposed, or five years, whichever is greater, during
15 which the defendant shall be ineligible for parole. Notwithstanding the provisions of
16 subsection a. of N.J.S. 2C:43-3, the court may also impose a fine not to exceed
17 \$300,000.00 or five times the street value of the controlled dangerous substance or
18 controlled substance analog involved, whichever is greater.

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

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