R.S.24:18-47

June 26, 1963

LEGISLATIVE HISTORY OF R.S.24:18-47

COPY NO. 3

L. 1933, Chapter 186, Article IV, Section 12 - S229.
Introduced February 27 [redacted].
No statement on bill.
April 11 - Committee substitute passed Senate, amended.
[redacted]
May 6 - Passed Assembly, amended.
May 8 - Senate passed Assembly Amendments.
June 5 - Approved - Chapter 186.

974.90 N222 1951 See: Governor's Committee on the Sale and Use of Narcotic Drug. Report, dated April 10, 1951, included (p.4) a proposed amendment of R.S. 24:18-47 providing for more severe penalties. (copy enclosed).

Amended L. 1951, Chapter 56, Section 1 - A30.
Introduced April 23 by Cavinato, Marggraff, Dwyer, Freeman, M.D. Haines, Pilger, and Savage.
No statement on bill.
Not amended during passage.

974.90 N222 1952 See: Report of Study and Recommendations of the Legislative Commission to Study Narcotics, dated March 22, 1952, which included:
"Report of the Committee on the Incarceration and Treatment of Narcotic Violators" (appointed by the New Jersey Supreme Court), dated September 10, 1951, included (pp.89-92) an explanation of the proposed amendment of R.S. 24:18-47. (Copy of explanation is enclosed).

Amended L. 1952, Chapter 90, Section 1 - A540.
Introduced March 10 by Tompkins, Newton, and Kurtz.
Statement on bill (copy enclosed).
Not amended during passage.

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Bills introduced 1954-64 attempting unsuccessfully to amend R.S. 24:18-47:

1955 - A432
1956 - A77
1956 - A478
1956 - A486
1957 - A160
1957 - A385
1958 - A223
1960 - A355
1961 - A47
1962 - A261
1962 - A296
1962 - S24
1963 - A190
1963 - A316
1964 - A139
1964 - A315
1964 - S22
1964 - S236

In 1956, a notable attempt to amend R.S. 24:18-47 was made with Assembly Bill 488, sponsored by the New Jersey Narcotic Control Commission. This bill passed both houses but was vetoed by Governor Meyner:

1956 A488: ([redacted])
Introduced April 23 by Kurtz, Newton, Dwyer, Ozzard, Crabiel, Cundari.
No statement on bill. (Purpose of bill included in Third Report of Study and Recommendations, New Jersey Commission on Narcotic Control, (974.901 N17), published March 15, 1957, pp. 40-41). (copy enclosed).
May 14 - Passed Assembly, amended.
May 24 - Passed Senate.
June 28 - Returned by Governor with recommended amendment (copy of veto letter enclosed).
November 29 - Motion to override veto lost.

974.901
N17

In 1958, the New Jersey Narcotic Control Commission reported that it had been asked to express its position on revision of R.S. 24:18-47 et.al. as proposed by the State Department of Health to the Uniform Narcotic Drug Law. (Fourth Report of Study and Recommendations. New Jersey Commission on Narcotic Control, published March 15, 1958, p.29).

974.901
N17

Amended L. 1964, Chapter 293, Section 1 - S199.
Introduced March 9 by Stamler and Hunt.
No statement on bill.
Not amended during passage.

974.90 N222 1966 See: New Jersey Legislature. Narcotic Drug Study Commission. Interim Report, 1965, (published March 1966), which provided explanations of changes in 24:18-47 involved in the proposed New Jersey Uniform Narcotic Drug Act:

"24-18-47. Excepts preparations specified under Section 24:18-47 from the high misdemeanor provision; disorderly person charge for persons under 21 dealing in excepted narcotic preparations obviates the necessity of indictment and enhances the possibility of effective enforcement. Deletes reference to marihuana since already in definitions". (p.146).

Amended L. 1966, Chapter 313, Section 29 - A547.
Introduced March 13 by Policastro, McDermott, Carlton, and Skevin.
No statement on bill. ([redacted]).
April 18 - Passed Assembly, amended.
May 16 - Passed Senate, amended.
May 25 - Assembly passed Senate amendment. ([redacted]).
December 29 - Approved - Chapter 313.

EDY/mau

ASSEMBLY, No. 540

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1952

By Messrs. TOMPKINS, KURTZ and Mrs. NEWTON

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning narcotic drugs, and amending section 24:18–47 of the Revised Statutes.

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

1. Section 24:18–47 of the Revised Statutes is amended to read as follows:

24:18–47. Any person as in this chapter defined [violating any of the provisions]

(a) Who, being of or over the age of twenty-one years, sells, gives, administers or dispenses any narcotic drug, except as authorized by this chapter, to any person under the age of eighteen years shall be guilty of a high misdemeanor and shall be punished by a fine of not less than two thousand dollars ($2,000.00) or more than ten thousand dollars ($10,000.00) and by imprisonment at hard labor for not less than two years with a maximum of imprisonment for life or

(b) Who violates any other provision hereof shall be guilty of a high misdemeanor and shall be punished as follows:

(1) for each first offense, by a fine not exceeding two thousand dollars ($2,000.00) and by imprisonment, with hard labor, for a term of not less than two years nor more than [five] fifteen years;

(2) for each second offense, by a fine not exceeding [two thousand dollars ($2,000.00)] five thousand dollars ($5,000.00) and by imprisonment, with hard labor, for a term of not less than five years nor more than [ten] twenty-five years;

(3) for each third offense and for each subsequent offense, by a fine not exceeding [two thousand dollars ($2,000.00)] five thousand dollars ($5,000.00) and by imprisonment, with hard labor, for a term of not less than ten years [nor more than twenty years] with a maximum of imprisonment for life.

In case a person charged with a violation of any of the provisions of this chapter shall have been previously convicted of a violation of the laws of the United States or of any other State, territory or district relating to narcotic drugs or marihuana, such previous conviction shall for the purpose of this section, be deemed a first or second offense as the case may be.

2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to create a wider spread between the minimum and maximum terms of imprisonment and also increasing the amount that may be imposed as a fine upon violators of the Uniform Narcotic Drug Law of this State. It has been found that the maximum term now set by statute is not practical in view of the many circumstances that may surround the offenses involved. This bill will permit a higher maximum sentence to be imposed and also a higher penalty in certain instances to be imposed where circumstances dictate. This bill has the recommendation and approval of the legislative commission to study narcotics and results from the investigation and study made by this commission.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 488

STATE OF NEW JERSEY

INTRODUCED APRIL 23, 1956

By Mr. KURTZ and Mrs. NEWTON

Referred to Committee on Judiciary

AN ACT concerning narcotic drugs, and amending section 24:18–47 of the Revised Statutes.

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

1. Section 24:18–47 of the Revised Statutes is amended to read as follows:

24:18–47. Any person as in this chapter defined

(a) Who, being of or over the age of 21 years, sells, gives, administers or dispenses any narcotic drug, except as authorized by this chapter, to any person under the age of 18 years shall be guilty of a high misdemeanor and shall be punished by a fine of not less than $2,000.00 or more than $10,000.00 and by imprisonment at hard labor for not less than **[**2**]** *20* years with a maximum of imprisonment for life or

(b) Who manufactures or sells any narcotic drug as defined in this chapter, in violation of any of the provisions of this chapter, shall be guilty of a high misdemeanor and shall be punished as follows:

(1) for each first offense, by a fine not exceeding $2,000.00 and by imprisonment, with hard labor, for a term of not less than 10 years nor more than 20 years;

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

(2) for each second offense, by a fine not exceeding $5,000.00 and by imprisonment, with hard labor, for a term of not less than 20 years nor more than 30 years;

(3) for each third offense and for each subsequent offense, by a fine not exceeding $5,000.00 and by imprisonment, with hard labor, for a term of not less than 30 years, with a maximum of imprisonment for life or

[(b)] *(c)* Who violates any other provision [hereof] *of this chapter* shall be guilty of a high misdemeanor and shall be punished as follows:

(1) for each first offense, by a fine not exceeding $2,000.00 and by imprisonment, with hard labor, for a term of not less than 2 years nor more than 15 years;

(2) for each second offense, by a fine not exceeding $5,000.00 and by imprisonment, with hard labor, for a term of not less than 5 years nor more than 25 years;

(3) for each third offense and for each subsequent offense, by a fine not exceeding $5,000.00 and by imprisonment, with hard labor, for a term of not less than 10 years with a maximum of imprisonment for life.

In case a person charged with a violation of any of the provisions of this chapter shall have been previously convicted of a violation of the laws of the United States or of any other State, territory or district relating to narcotic drugs or marihuana, such previous conviction shall for the purpose of this section, be deemed a first or second offense as the case may be. *The execution of any sentence imposed under paragraphs (a) or (b) of this section shall not be suspended.*

2. This act shall take effect immediately.

STATE OF NEW JERSEY
Executive Department

June 28, 1956

ASSEMBLY BILL NO. 488

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I am returning herewith for reconsideration and with my objections, Assembly Bill No. 488.

Assembly Bills Nos. 488, 489 and 490 are addressed to illegal traffic in narcotics. All three are now before me, and since they are related measures, interdependent in some respects and part of a single approach, they are here considered together.

Assembly Bill No. 488 would amend R.S. 24:18-47. That section is a penalty provision of the Uniform Narcotic Drug Law, chapter 18 of Title 24. As originally enacted, R.S. 24:18-47 denounced a violation of the act as a high misdemeanor. It was subsequently amended to increase the penalties. As thus amended the section now provides:

(a) Any person over 21 years of age who sells, gives, administers or dispenses any narcotic drug, except as authorized by Chapter 18, to any person under the age of 18 shall be punished by a fine of not less than $2,000.00 or more than $10,000.00 and by imprisonment at hard labor for not less than 2 years with a maximum of imprisonment for life.

(b) Any person who violates any other provision of the Drug Law shall be punished, (1) for each first offense by a fine not exceeding $2,000.00 and by imprisonment with hard labor for not less than 2 years nor more than 15 years; (2) for each second offense by a fine not exceeding $5,000.00 and by imprisonment with hard labor for not less than 5 years nor more than 25 years; and (3) for each third and subsequent

offense by a fine not exceeding $5,000.00 and by imprisonment with hard labor for a term of not less than 10 years with a maximum of imprisonment for life.

Assembly Bill No. 488 would increase the minimum sentence under (a) from 2 years to 20 years. It would carve out of (b) offenses consisting of the manufacture or sale of narcotics and provide that the manufacturer or seller shall be punished (1) for each first offense by a fine not exceeding $2,000.00 and by imprisonment with hard labor for not less than 10 years nor more than 20 years; (2) for each second offense, by a fine not exceeding $5,000.00 and by imprisonment with hard labor for not less than 20 years nor more than 30 years; and (3) for each third and subsequent offense by a fine not exceeding $5,000.00 and by imprisonment for not less than 30 years with a maximum of imprisonment for life.

The bill would leave unchanged the penalties for other violations of this chapter.

It should be noted that under existing law the minimum terms of imprisonment are mandatory, and this bill would increase mandatory minimums as outlined above.

Under N.J.S. 2A:168-1, the court is now empowered to suspend the imposition or execution of sentence for violation of the narcotics law only with respect to a first offender and to place such first offender on probation. Assembly Bill No. 488 would remove this power to suspend the execution of sentence with respect to a first offender under subsection (a) above (sale, gift, administering or dispensing by one over 21 years to another under 18) and under the new penalty provisions relating to manufacture or sale. In harmony with that provision,

Assembly Bill No. 489 would amend N.J.S. 2A:168-1 to prohibit suspension of imposition or execution of sentence and probation of such first offenders.

Assembly Bill No. 490 would amend chapter 121 of the Laws of 1952. That act presently provides that a person who hires, employs or uses any child under the age of 18 to transport, carry, sell, prepare for sale or offer for sale morphine, cocaine, heroin, opium or any derivative thereof, or marihuana, for any unlawful purpose, is guilty of a high misdemeanor which under sections 2A:85-6, 2A:85-8, 2A:85-9 and 2A:85-12 of the New Jersey Statutes provides for a maximum sentence of 7 years' imprisonment for a first offense, 14 years for a second offense, 21 years for each third offense and imprisonment for life for fourth and subsequent offenses. Assembly Bill No. 490 would amend this act to provide for imprisonment with hard labor for not less than 20 years with a maximum sentence of imprisonment for life. This mandatory minimum would apply as well to the first offender. Assembly Bill No. 489 would amend N.J.S. 2A:168-1 to bar the suspension of the imposition or execution of sentence and probation of a first offender.

Thus, these bills would not only sharply increase the mandatory minimum sentences, but would as well bar suspension of sentence and probation as to the first offenders described above.

Illegal traffic in narcotics is dirty and tragic. All responsible citizens would welcome some magnificent measure which would blot it out. I deeply appreciate the high purpose which motivated these bills, but I cannot escape the conviction that they would defeat themselves and in the course of that failure would leave a path of injustice.

The simple truth is that narcotic violations do not follow a single, simple pattern which may thus be adjudged en masse in advance of their commission. I could not approve these measures unless I could in good conscience say that I reasonably believe that all who hereafter may fall within the sweep of these bills would merit the inexorable and inflexible punishment which the bills would require. I confess that such prescience is not mine.

Let us take a few examples culled, not from a fertile imagination, but from the hard experience of men charged with enforcement of narcotic laws.

Some university students, while at college, acquired marihuana from a peddler and distributed some of it to friends in New Jersey while home on vacation. The students were convicted but sentence was suspended and the defendants placed on probation. These young men have gone on to become useful and valuable citizens. But under Assembly Bill No. 488, they would have to be sentenced to 10 years at hard labor, and if one of the students was 21 years or over and the marihuana was given to one under 18, the mandatory minimum of 20 years would be imperatively imposed.

A druggist who answered an emergency call of a physician and delivered a narcotic without a written prescription would face a mandatory minimum of 10 years, beyond the power to suspend. An inexperienced drug clerk who sold more than 4 ounces of Brown's Mixture or Stokes Expectorant without a prescription would face a mandatory sentence of 10 years, and if the buyer was under 18 and the clerk was over 21, to a mandatory 20-year sentence. A druggist or physician who fails to maintain the detailed records required by chapter 18 or to retain them for the prescribed period would have to be incarcerated for a minimum of 2 to 10 years depending upon which of the many sections of the act he violated because these bills would forbid the suspension

of sentence and probation. One who violates the provisions of the act relating to labeling would, without regard to varying circumstances, be subjected to the mandatory minimum of 10 years.

A drug user who, facing imminent arrest for possession, slips the narcotic to his son under 18 to conceal his offense, would fall within the mandatory minimum of 20 years provided in Assembly Bill No. 490.

A drug user, who pools his funds with other users and purchases drugs which he divides with them, may be deemed to be a seller depending upon the niceties of the transaction. One who, out of sympathy for an addict member of his family or an addict friend, obtains a narcotic and gives it to him, would face a mandatory minimum sentence of 10 or 20 years depending upon the ages of the parties.

Such are the implications of these bills. They far exceed in severity and scope the bills now under consideration by the Congress.

Because of the importance of this matter, I held a public hearing to which were invited both advocates and opponents of the bills. The conflicting views were ably and forcefully presented.

The proponents of these bills seek to reach or frustrate the non-addicted supplier of drugs. If the bills reached only him, I would unhesitatingly give my approval. But they are not so confined and although the deterrent quality of punishment may be conceded in certain areas, the question remains whether deterrence may not also be achieved by severe sentences where the facts so warrant, without the inherent self-defeating weakness of laws which are excessively severe in cases involving individuals whose offenses do not merit the punishment commanded by the bills.

In evaluating the bills, we must look at the setting in which they are to operate. The State of New Jersey has been lauded for its effective enforcement of its narcotic laws. Testifying before the Boggs Committee of the United States House of Representatives on October 14, 1955, United States Commissioner of Narcotics, Harry J. Anslinger said:

> "New Jersey has the equivalent of the Boggs Act. There are very, very strict judges who regard trafficking as one of the worst crimes known to man. There is a State police narcotics squad. All of the sheriffs are engaged in narcotics enforcement... . All through New Jersey where we have any problem — sometimes in Atlantic City or Newark we might run into some trafficking -- the Federal, State police, and local police and sheriffs all work as a team.
>
> "I must say that New Jersey is the one State which has had this terrific problem and has been able to bring it under control by good legislation and by good enforcement and, most important of all, by good judges, because there you do not see a suspended sentence. . . . In some of these districts cases are postponed and postponed and postponed, but not in New Jersey. That is one State I want you to keep in mind when we are talking about the rest of the country, where from the Governor on down they have tried to bring this problem under control and they have done so. . . ."

James C. Ryan, Supervisor of the New York District of the Bureau of Narcotics, which includes the northern counties of New Jersey, reported on October 5, 1955 to Commissioner Anslinger:

> "The northern counties of New Jersey . . . do not pose any serious problem to us. Narcotic trafficking is light and the occasional major trafficker encountered in these areas is usually dealt with severely.
>
> " . . . Because of the severity of sentences imposed in State courts in New Jersey, we usually prosecute narcotic cases locally and obtain very satisfactory results."

Our records sustain the views expressed by the Federal officials. The bulk of the narcotic problem is centered in Essex County. Yet the

Chief Probation Officer of that county advises that in the 5 years 1951 to 1955, there were only 282 drug cases in the County Court of Essex County, only 42 of which were for selling. In recent years the non-addict promoter, peddler or pusher has constituted but a minute percentage of the defendants. For instance, among the 55 persons convicted in the County Court of Essex County in 1955, only one was a non-addict peddler. There is no reliable evidence of increase in the traffic in our State. In these circumstances, we should hesitate before embarking upon a new program of mandatory minimum sentences devoid of discretion to fit the punishment to the offense and the offender.

Public officials representing a tremendous number of years of practical experience in law enforcement in general and narcotics in particular joined in opposition to these features of the bills. On the State level, the Attorney General of New Jersey, the Commissioner of Institutions and Agencies and the Principal Keeper of the New Jersey State Prison oppose the measures. The Conference of County Judges unanimously disapproves of them, and all of the county prosecutors express the same opposition. The experienced Chief Probation Officer of Essex County condemns the measures. This opposition springs not from a desire to retain the power now vested in county judges, or the opportunity which prosecutors or probation officers have to be heard in connection with sentencing -- a power and opportunity which less conscientious men would gladly forego -- but rather from a conviction born of long exposure to the problem, that the bills would neither serve the public nor do justice to its members.

We have had some experience with mandatory legislation of such severity. Under our fourth offender statute which required a mandatory life sentence, the diminishing returns and stark inequity of its provisions led to an amendment which vested discretion at the trial level. California forbade probation in narcotic cases in 1951, but found it necessary to repeal its legislation in 1953. The reasons are readily apparent.

Further, when the punishment is shockingly beyond the offense and the offender, officials charged with the execution of the laws are driven to devices to escape the legislative mandate. Prosecutors are reluctant to prosecute; grand juries will not indict; judges join in refined constructions to avoid palpable injustice and thereby the law is weakened in later applications to real culprits; petit juries, when the stakes become known, refuse to convict. A mandatory sentence which may not be suspended means that the accused necessarily defends; he has nothing to lose. There is thus devoted to prosecutions valuable manpower which would be more productive in additional investigations. The weak link in a criminal chain, who would speak and inform in hope of leniency, is silenced.

The self-defeating infirmity inheres not only in a severe mandatory penalty which may not be suspended, but as well in an unduly severe mandatory penalty for a first offense even though it may be suspended. When the mandatory minimum is thus unrelated to a just result, the sentencing judge is driven to suspend the sentence, although he believes that the actual execution of a prison sentence less than the statutory minimum would be more fitting.

Thus, the public interest would be disserved. And perhaps of greater importance would be the abandonment of our principles of justice. We are dedicated to justice not only to the public at large but also to the individual. Justice to the individual means treatment which accords with the offense and the offender. Equality of justice necessarily means equal treatment under like circumstances and rejects identical punishment for all who trespass, without regard to the facts of the particular case. We have developed an extensive program of presentence investigation and probation to this end. We salvage when we can.

The bills seem to embrace the tenet that injustice to individual defendants is a fair price to pay for the deterrent effect upon the addict as well as the non-addict sellers. We do not sacrifice individuals for the common good; rather we find the common good in doing justice to the individual. And justice to the individual, with adequate deterrence to others, can best be achieved at the hands of an alert, conscientious and competent trial judge who has before him all of the facts relating to the offense and the offender. His is the real and intelligent opportunity to reach a sound judgment.

For these reasons, I cannot approve of bills which would impose severe mandatory penalties upon first offenders without the safety valve of the probation program. Nor can I approve of excessive mandatory minimum sentences for first offenders which may drive trial judges to suspend sentence rather than to impose a jail sentence deemed to be oppressive. I am willing to approve increases in the authorized maximums, to the end that, in appropriate cases, sentences may be imposed which will both fit the situation and serve to deter others.

STATE OF NEW JERSEY
Executive Department

I am accordingly returning all three bills with recommended amendments. As to Assembly Bills Nos. 489 and 490, the suggested amendments are set forth in separate messages relating to each bill.

Therefore, I am returning herewith Assembly Bill No. 488 for reconsideration and with the recommendation that the bill be amended as follows:

On page 1, section 1, line 8, delete the figure "20" and insert in lieu thereof the figure "2".

On page 1, section 1, line 14, delete the figure "10" and insert in lieu thereof the figure "2".

On page 2, section 1, line 17, delete the figure "20" and insert in lieu thereof the figure "5".

On page 2, section 1, line 21, delete the figure "30" and insert in lieu thereof the figure "15".

On page 2, section 1, lines 38 to 40 inclusive, delete the sentence "The execution of any sentence imposed under paragraphs (a) or (b) of this section shall not be suspended.".

Respectfully,

ROBERT B. MEYNER

GOVERNOR

(Seal)

Attest:

ROBERT J. BURKHARDT

Secretary to the Governor