

AN OVERVIEW OF THE COMPREHENSIVE DRUG REFORM ACT OF 1987

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I. Introduction

When I was appointed Attorney General in January, 1986, Governor Kean directed me to investigate the problem of substance abuse in New Jersey, to evaluate existing laws and programs and to devise a coordinated strategy to combat the scourge of drugs. With that mandate, I instructed the Division of Criminal Justice to review New Jersey's existing drug laws, including sentencing and enforcement practices, as well as current and pending legislation on the subject in other states and in the United States. I recognized, however, that a broad revision and toughening of existing drug laws would be futile without an understanding of the impact of these new laws upon the prison population. For example, in the late 1960's, New York adopted a drug law that was so harsh that it plunged that state's criminal justice system into chaos. With that sobering experience in mind, I sought to gain a realistic estimate of the impact that harsher sentencing would have upon New Jersey's prison system.

Detailed data of drug sentencing was collected with the assistance of the Administrative Office of the Courts. This entailed reviewing the judgments of conviction and presentence reports of every drug offender sentenced by New Jersey courts during the last six months of 1985. From this data base, it was possible to project how persons sentenced in 1985 would have been sentenced under a different statutory scheme. These computer models also proved important in selecting the most appropriate degree classification for each offense and the projected number of offenders who would be convicted of each separate offense.

Once this preliminary information was correlated and ana-

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lyzed, the Division of Criminal Justice drafted an initial version of the Comprehensive Drug Reform Act¹ (Comprehensive Act or Act). Subsequently, the legislature unanimously adopted a modified version of the bill which was signed by Governor Kean on April 23, 1987.

The enactment of the Comprehensive Act has given New Jersey one of the most effective drug statutes in the nation. As its name suggests, the law attacks the drug problem on a number of fronts. It ensures the imposition of stern, consistent punishment for all drug offenders, from users to drug kingpins. It provides an incentive for the young to avoid using drugs by the mandatory suspension or postponement of driving privileges upon conviction for any drug offense. It creates drug "safety zones" around schoolyards in recognition of the paramount responsibility of the school to educate our youth, a responsibility that cannot be fulfilled if drugs are readily available. It provides for the rehabilitation of drug-dependent persons in facilities outside of prison. Finally, it mandates the imposition of stiff cash penalties for all drug convictions, and the use of these funds to increase educational, preventive and treatment programs throughout the state.

I do, however, recognize that attempts to reduce the supply of drugs into New Jersey could not completely succeed as long as there continued to be a demand for these substances. Education, prevention and rehabilitation initiatives had to be implemented in order to reduce the demand for drugs. The legislature has determined, however, that such goals cannot be successful in an environment which tolerates drug trafficking and which characterizes drug use as a victimless crime. The Comprehensive Act, therefore, provides police, prosecutors and the courts with the tools necessary to wage an effective battle against drug traffickers. This combination of aggressive enforcement policies and education of the public ultimately will reduce the demand for drugs and achieve a drug-free New Jersey.

By adopting tough new drug laws, the legislature and the governor have entrusted an enormous responsibility to the law enforcement community. The effectiveness of a penal law depends almost entirely on the dedication of those who must enforce it. Thus, it is incumbent upon the entire New Jersey law

¹ N.J. STAT. ANN. §§ 2C:35-1 to -23 (West Supp. 1988).

enforcement community, working as a tightly knit network, to augment and redirect existing resources, to make better use of well-established operational tactics and to devise new techniques and technologies to take full advantage of the new law. Only in this way can we ultimately ensure the most aggressive, cost-effective and uniform enforcement of all the new law's provisions. Thus, following the adoption of the Act, I released the Statewide Action Plan for Narcotics Enforcement (Action Plan or Plan).

This Plan is intended to guide state, county and local law enforcement agencies in conducting increasingly aggressive and coordinated enforcement operations against drug offenders at all levels. The careful planning of strategies and tactics remains a critical and ongoing task. But we must now proceed beyond the planning stage—it is time for concerted action.

The Action Plan establishes the official policies of the state with respect to the enforcement of New Jersey's controlled dangerous substance laws. This Plan contains thirteen chapters, each devoted to a different concept of narcotics enforcement.

The Plan defines a number of "Strategic Objectives" which serve as benchmarks against which all narcotics enforcement policies, programs and operations must be measured. Also included in the Plan are "Tactical Objectives" which are narrower, more immediate goals.

The Action Plan establishes a number of "Directives" and "Guidelines" which represent specific programs, activities or policy statements designed to promote or achieve a strategic or tactical objective. A "Directive" establishes the basic, minimum standard with which narcotics enforcement agencies are to comply. The term "Guideline" refers to a program, activity or operation which is strongly recommended but which may not be appropriate or cost-effective to implement.

Finally, this Action Plan recognizes that each region, county and locality within New Jersey has its own identifiable drug problem, and that specialized enforcement tactics that are needed in one place may be inappropriate or ineffective in another.

II. Responding to the Need for Reform—the Transfer of Offenses into the New Jersey Code of Criminal Justice

Prior to the recent enactment of the Comprehensive Act,

New Jersey's drug laws were last extensively studied and revised in 1970. The Controlled Dangerous Substances Act of 1970² (Controlled Act) was designed specifically to respond to the drug problem that existed in the late 1960's. That problem has altered drastically in the intervening seventeen years. Cocaine in all its forms has to a large extent displaced heroin as the drug of greatest concern to law enforcement. New Jersey's drug problem, once considered primarily an urban problem, now affects every region of this state. Rich and poor, white and black, urban, suburban and rural—no one and no group is immune. Not surprisingly, the fiscal impact of the problem in New Jersey is staggering. Illegal drugs cost New Jersey citizens billions of dollars each year. This includes the cost of police, prisons and courts. There are other hidden costs associated with drug use, among them lost productivity, absenteeism, sick leave and mistakes in the workplace, the cost of treatment programs and health insurance, as well as the value of property destroyed during drug-related criminal acts. At that rate, each New Jersey citizen is unwittingly called upon to pay a drug-related "surcharge" each year.

During the past two years, moreover, and for the first time since the Code of Criminal Justice went into effect in 1979, New Jersey has experienced a modest increase in the number of reported violent and nonviolent crimes. Much of this increase can be attributed directly to the proliferation of drug trafficking networks throughout the state. In 1986, a record 40,690 arrests for drug offenses were made by New Jersey's law enforcement officers.³ Approximately fifty percent of all crimes prosecuted in New Jersey are drug related.⁴ At least one-third of all crimes in this state, including violent crime and thefts, are committed by persons who are under the influence of alcohol or illicit substances.⁵

As still further evidence of the extent to which drug trafficking networks have proliferated throughout the state, a recent sur-

² *Id.* §§ 24:21-1 to -53.

³ For a statistical compilation of arrests for drug offenses in New Jersey, see documents on file at the Office of the Attorney General, Department of Law & Public Safety, Trenton, New Jersey.

⁴ *Id.*

⁵ *Id.*

vey of New Jersey high school students shows not only that 82.8% of students believe that marijuana is "easy" or "very easy" to obtain, but also that 58% of the students report that cocaine is also considered to be "easy" or "very easy" to obtain.⁶ When the survey was last administered in 1983, in contrast, less than 50% of the students believed this to be true with respect to cocaine.⁷

These statistics highlight not only the need to enhance New Jersey's narcotics enforcement efforts, but also the need to carefully evaluate New Jersey's penal laws to make certain that the interrelated goals of general and special deterrence, incapacitation and rehabilitation are achieved in the most cost-effective way possible.

Our analysis of the Controlled Act revealed that it was designed to give courts "greater flexibility" in sentencing decisions.⁸ This is in contrast to the more modern and structured sentencing provisions enacted in the penal code. The most notable defect in the system was the failure to provide the courts any meaningful graduation scheme by which to distinguish or rank the seriousness of a given drug offense.

The scheme was recently aptly characterized by the New Jersey Supreme Court as "somewhat unruly."⁹ The law simply failed to provide the courts with any guidelines with which to ensure in each case the imposition of an appropriate penalty. As a result, sentencing of drug offenders was left to the discretion of a trial judge given little guidance, so that a person convicted of a serious offense could be sentenced to a custodial term ranging from no time served to life imprisonment.

Such a broad range of potential sentencing options invites unjustified differences in sentences imposed upon similarly situated offenders. In evaluating the true effectiveness of a sentencing scheme, therefore, it is not enough to look solely to the potential sentences which can be imposed under it. Rather, the only accurate measure of a penal law's effectiveness is to examine how that law actually has been implemented. A law which ap-

⁶ N.J. DEP'T OF LAW & PUBLIC SAFETY, DRUG AND ALCOHOL USE AMONG NEW JERSEY HIGH SCHOOL STUDENTS 82 (1987).

⁷ *Id.*

⁸ State v. Staten, 62 N.J. 435, 439, 303 A.2d 65, 67 (1973) (per curiam).

⁹ State v. Sainz, 107 N.J. 283, 289 n.3, 526 A.2d 1015, 1018 n.3 (1987).

pears strict on its face, moreover, may in actuality be surprisingly lenient in its application.

Under the Controlled Act the most severe penalties for drug offenders were very rarely imposed. Of the more than 150 convicted drug offenders sentenced throughout New Jersey during the last six months of 1985 who were eligible for life terms of imprisonment, less than one-half were sentenced to state prison for any term whatsoever. Not one of these defendants, moreover, was sentenced to a life term.¹⁰

Such sentencing practices undermine two of the key ingredients to any rational and effective penal scheme: consistency and predictability. The New Jersey Code of Criminal Justice, in contrast, establishes clearly defined limits on sentencing discretion. All indictable offenses are given a degree classification: crimes are denominated as being either of the first, second, third or

¹⁰ The following charts depict actual sentencing practices under the Controlled Act with respect to the distribution, or possession with intent to distribute, of heroin and cocaine. These figures include all persons throughout the state sentenced for these offenses during the last six months of 1985—a total of approximately 780 defendants.

SENTENCING PATTERNS UNDER THE CONTROLLED
DANGEROUS SUBSTANCES ACT OF 1970

1. Heroin or Cocaine—one oz. or more

state prison	45.4%
county jail	35.5%
youth ind.	0.7%
noncustodial	18.4%

- * Sentences to state prison ranged from 12 months to 30 years.
- * About one-third (35.9%) of those sentenced to state prison are eligible for parole within 12 months.

fourth degree.¹¹ The penal code establishes a precise range of ordinary prison terms, as well as a presumptive sentence for each degree classification.¹² A third degree crime, for example, is punishable by not less than three and not more than five years in prison, with a presumptive four year sentence.¹³

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- * Of those sentenced to state prison 44.4% received terms of parole ineligibility ranging 12 months to 15 years.
 - 2. Heroin and Cocaine—less than one oz.

state prison	31.1%
county jail	31.1%
youth ind.	4.4%
noncustodial	33.5%
 - * Sentences to state prison ranged from 12 months to 20 years.
 - * Over one-half (51.1%) of those sentenced to state prison are eligible for parole within 12 months.
 - * Of those sentenced to state prison, 28% received terms of parole ineligibility ranging from 12 months to 10 years.

¹¹ N.J. STAT. ANN. § 2C:43-1a (West 1982 & Supp. 1988).

¹² *Id.* §§ 2C:43-6a; 2C:44-1f.

¹³ *Id.* §§ 2C:43-6a(3); 2C:44-1f(1)(d).

Punishment under the penal code is thus clearly tailored to and focuses inexorably upon the seriousness of the particular offense committed.¹⁴ It provides guidelines to sentencing courts and fixes punishments based upon a uniform scheme. For example, persons convicted of first and second degree crimes are presumed to be sentenced to a custodial term.¹⁵ Third and fourth degree offenders who have not previously been convicted of an offense, in contrast, are presumed to be sentenced to a noncustodial term.¹⁶ These presumptions can be overcome, but only after considering the specific, enumerated aggravating and mitigating factors applicable to the offense and to the offender. In this way, the sentencing provisions of the penal code provide courts with guidance on the two crucial questions which arise in every case: whether to impose a custodial term, and the length of any such term.

The single most important feature of the Comprehensive Act is to transfer the criminal offenses previously defined in the Controlled Act to the New Jersey Code of Criminal Justice. As a result every drug offense will be designated as a crime of a certain specified degree, thereby invoking all of the sentencing provisions found in the penal code. The New Jersey Supreme Court recently predicted that as a direct result of the passage of the Comprehensive Act, the sentencing process of drug offenders "will be made more rational."¹⁷

In assigning degree classifications to specific drug offenses, the provisions of the Act were carefully tailored to reflect the realities of current distribution and use patterns, as well as modern notions of the relative seriousness of each offense. Moreover, prison population impact projections were carefully considered in defining the offenses and in assigning specific degree classifications.

In addition to ensuring more consistent, predictable sentencing practices, the Comprehensive Act will result in uniformly sterner punishment for all convicted drug offenders. The Department of Law and Public Safety projects that five years from the

¹⁴ See *State v. Roth*, 95 N.J. 334, 471 A.2d 370 (1984); *State v. Hodge*, 95 N.J. 369, 471 A.2d 389 (1984).

¹⁵ N.J. STAT. ANN. § 2C:44-1d (West 1982 & Supp. 1988).

¹⁶ *Id.* § 2C:44-1e.

¹⁷ *Sainz*, 107 N.J. at 289 n.3, 526 A.2d at 1018 n.3.

effective date of the new Act, 750 to 1,000 persons will be incarcerated in state prison who would not otherwise have been imprisoned had they been sentenced under the Controlled Act. In addition, those offenders who were previously sentenced to incarceration, if sentenced under the Act, would receive proportionately longer prison terms.

The prison population impact attributed exclusively to the enforcement and implementation of the Act is quite substantial, and is the equivalent of the combined total population of two medium-sized state correctional facilities. For this reason, the implementation of the Act was made contingent upon the adoption of this prison bond legislation which reflects the clearly stated legislative policy that New Jersey should not adopt tougher sentencing laws unless it is also prepared to build prisons to house these offenders.

In addition to transferring all major drug offenses into the penal code, the Comprehensive Act creates several new offenses designed to address specific problem areas, such as the profits reaped by drug kingpins, and the need to provide special protection for children against the activities of predatory drug distributors. It should be noted, however, that the stern new sentencing provisions envisioned by the Comprehensive Act necessarily address every level and every actor along the drug distribution chain. While the Act focuses special attention on the activities of the upper echelon drug distributors and profiteers who are the most culpable offenders and who pose the greatest danger to society, the Act does not ignore the need to impose appropriate punishment upon the far more numerous low level dealers and even users. In this way, the Act recognizes that drug kingpins could not operate profitably absent a steady demand for controlled dangerous substances.

It is a misnomer to speak of "minor" drug offenses. Just as there are "gateway" drugs which inevitably lead their users to more potent and addictive substances, so too there are gateway offenses which often lead to the commission of more serious or violent crimes. Often, such crimes are committed so that the offender can pay for his illicit drug habit. In these circumstances, no initiative to reform New Jersey's drug laws can be characterized as comprehensive unless it provides for the appropriate,

carefully tailored and properly differentiated treatment of *all* drug offenders.

The Comprehensive Act was designed specifically to further all of the recognized goals of a rational penal system. The *general deterrence* of offenders is achieved by the uniform enhancement of penal sanctions as well as the incorporation of those penal code sentencing provisions which ensure the imposition of a consistent, predictable quantum of punishment for a given offense.

For that reason deterrence requires that an appropriately stern sanction must be imposed upon drug users, without whom the dealers and profiteers would have neither a market nor a reason to exist. One way in which the general deterrence of users is achieved is by requiring the mandatory forfeiture of the offender's driving privileges upon any drug conviction.¹⁸ This particular sanction, which will not increase the prison population or rehabilitative treatment costs, is designed to deter young, would-be offenders from first purchasing or using controlled dangerous substances.

Such a mandatory sanction should significantly alter the "risk equation," so that the perceived chance of being caught, coupled with the certainty of receiving this form of punishment, will make it less likely that young people will elect to possess or use drugs, especially in schools and other public places. This is an essential first step in New Jersey's efforts to change the widely-held attitude that the use of certain illegal drugs is socially acceptable. More importantly, the comprehensive reform of New Jersey's drug laws can be used to galvanize public attitudes against the casual use of controlled substances. The potential success of such an approach is evidenced by the vigorous enforcement of New Jersey's drunk driving laws, which are among the toughest in the nation. The adoption of these laws was not simply a passive response to public outcry; rather, these statutes and enforcement programs helped to highlight the scope of the drunk driving problem, and were, in part, responsible for changing the public's attitude about the nature of this particular offense.

General deterrence is further advanced by providing enhanced economic sanctions in the form of cash fines of up to

¹⁸ N.J. STAT. ANN. § 2C:35-16 (West Supp. 1988).

three times the value of the controlled dangerous substances involved.¹⁹ In a similar vein, the Act also mandates the imposition of stiff, fixed penalties which are based on the degree of the offense.²⁰ These mandatory penalties range from a minimum of \$500 for a disorderly persons offense to \$3,000 for each first degree drug distribution crime.²¹ The minimum cash penalty under the Act, therefore, is fixed at twice the mandatory minimum fine now imposed on a first conviction for driving while intoxicated. These mandatory penalties and enhanced fines will serve, together with lengthier custodial sentences, to further deter profit-minded offenses. Monies collected from the mandatory penalties will serve to help pay for education, public awareness and rehabilitation programs designed to attack the drug abuse problem by reducing the demand for illicit substances.

The *special deterrence* of offenders is achieved primarily through especially stern sentencing provisions reserved for repeat drug offenders.²² Thus, any person convicted of a drug offense will know with certainty that he or she will no longer be eligible for lenient treatment if again apprehended and convicted. Rather, repeat distributors will face a mandatory term of imprisonment and parole ineligibility which can only be waived or reduced with the prosecutor's consent.

In a closely related vein, the punishment goal of *incapacitation* is achieved through the imposition of extended prison terms and periods of parole ineligibility for certain offenses and offenders. These mandatory terms, which can only be waived or reduced with the prosecutor's consent, will ensure that the most dangerous, prolific and recidivous offenders will be placed safely in prison, isolated from the mainstream of society. Statistics confirm that a relatively small number of drug offenders are responsible for committing a disproportionate percentage of the crimes committed in New Jersey, including crimes such as murder, robbery, assault and theft. It is hoped that the incapacitation of such offenders will result in a decline not only in the rate of drug crime but in the overall crime rate as well.

Rehabilitation, finally, is achieved by providing certain drug

¹⁹ *Id.* § 2C:43-3h.

²⁰ *See id.* § 2C:35-15.

²¹ *Id.* § 2C:35-15(a).

²² *Id.* § 2C:43-6e.

dependent offenders a meaningful opportunity to participate in carefully structured rehabilitative treatment programs in lieu of ordinary prison terms.²³ Eligibility for enrollment in such a rehabilitative program is restricted, and the Act further provides for strict monitoring and revocation procedures to ensure that the sentencing goal or rehabilitation can be accomplished without endangering the public's safety.

III. Structure of the Comprehensive Drug Reform Act

The text of the Comprehensive Act is divided into twenty-five sections. Section 1, which is by far the most important one in the entire Act, contains all of the major offenses which involve the use, possession or distribution of controlled dangerous substances. Some of the offenses were taken nearly verbatim from the Controlled Act. Other offenses are roughly patterned after pre-existing law, and still other offenses are entirely new. This section also contains provisions providing for sentencing enhancement features, as well as procedural sections which govern, for example, the waiver of mandatory minimum terms of parole ineligibility, the imposition, collection and disposition of cash penalties and laboratory fees, the destruction of bulk seizures of controlled dangerous substances, and the use of sworn laboratory certificates designed to streamline the trial process.

Section 2 governs prosecutions for the illegal sale, possession, use and advertisement of drug paraphernalia. This chapter is taken nearly verbatim from predecessor law.²⁴

Section 3 governs the conditional discharge of certain first-time drug offenders. These provisions were also closely patterned after pre-existing law²⁵ except that conditional discharge under the Act is not available to persons who have been charged with an indictable offense. It should also be noted that any person who prior to the effective date of the Comprehensive Act had applied for conditional discharge under prior law, or who was still undergoing supervisory treatment under that section, will continue to be governed by the provisions of the Controlled Act, and not under the provisions of the Comprehensive Act.

²³ *Id.* § 2C:35-14.

²⁴ *See id.* §§ 24:21-46 to -53.

²⁵ *See generally id.* § 24:21-27.

Sections 4 through 24 of the Act make various amendments to the previous law. Some of these amendments are technical in nature and account for the transfer of major drug offenses from the Controlled Act into the criminal code. Other sections, especially those pertaining to the sentencing provisions of the penal code, are substantive in nature, and govern the length and criteria for imposing extended terms of imprisonment, and the calculation of the maximum fines which may be imposed for a violation of New Jersey's amended drug law.

Finally, section 25 expressly repeals certain provisions of pre-existing law. It should be noted that many of the provisions of the Controlled Act are not repealed by the Comprehensive Act, but rather are left intact and will continue to be used to enforce these regulatory provisions. A number of disorderly persons offenses, for example, are retained. By the same token, so as to avoid confusion, certain procedural provisions now exist under both the Controlled and Comprehensive Acts.

IV. Selected Highlights of the Comprehensive Drug Reform Act of 1986

In addition to transferring all drug offenses listed under the Controlled Act into the Code of Criminal Justice, the Act makes a sweeping revision of New Jersey's drug laws, creates several new offenses and adopts a number of innovative provisions designed not only to target the most dangerous offenders, but also to provide meaningful rehabilitative opportunities for certain other offenders.

The Act recognizes that drug crimes undermine the basic fabric of our social and legal institutions, and that none of these offenses can be fairly characterized as victimless.²⁶ To that end, the Act incorporates controlled substance analogs, so-called "designer drugs," into the definition of controlled dangerous substances thereby closing a loophole in current law and ensuring that our drug laws will hereafter keep pace with advances in pharmacological technologies.²⁷

In recognition of their prevalence, availability and inherent dangerousness, the Comprehensive Act provides for stiff punish-

²⁶ See generally *id.* § 2C:35-1.1.

²⁷ *Id.* § 2C:35-2.

ment for seven specific substances, namely: cocaine, heroin, PCP (angel dust), methamphetamine (speed), LSD, marijuana and hashish.²⁸

The Comprehensive Act also creates several new offenses. One new offense, Leader of Narcotics Trafficking Network,²⁹ is patterned after New Jersey's current racketeering laws and is designed to facilitate the investigation and prosecution of upper echelon drug distributors and kingpins. Another entirely new offense, Maintaining or Operating a Controlled Dangerous Substance Production Facility,³⁰ is designed to provide especially stern punishment for persons involved in the illegal manufacture of drugs.

Likewise, the new offense, Employing a Juvenile in a Drug Distribution Scheme,³¹ is designed to provide especially stern punishment for an adult who employs or uses a juvenile in furtherance of a drug distribution scheme. The Comprehensive Act also provides for the doubling of the term of imprisonment, term of parole ineligibility, and fine and penalty otherwise applicable to an adult who is convicted of distributing drugs to a minor or to a pregnant female.³² The Act also abolishes the requirement in predecessor law that the defendant be at least three years older than the recipient of the drug.³³

The Comprehensive Act contains an entirely new, separate offense to provide especially stern punishment for persons who distribute drugs within 1,000 feet of any elementary or secondary school or school bus. The Act establishes a drug "safety zone" around schools and schoolyards in recognition that our schools must serve as the primary medium for educating our youth and modifying widely-held, tolerant attitudes about drug use.³⁴ The Act also makes drug distributors and manufacturers strictly liable for drug-induced (i.e., overdose) deaths.³⁵

The Comprehensive Act mandates extended terms and peri-

²⁸ *Id.* § 2C:35-5.

²⁹ *Id.* § 2C:35-3.

³⁰ *Id.* § 2C:35-4.

³¹ *Id.* § 2C:35-6.

³² *Id.* § 2C:35-8.

³³ *See id.* § 24:21-50.

³⁴ *Id.* § 2C:35-7.

³⁵ *Id.* § 2C:35-9.

ods of parole ineligibility for repeat drug distributors. Those offenders who are not deterred by the prospect of enduring harsher penalties and who continue to commit serious drug crimes will, upon apprehension and conviction, be incapacitated for a substantial period of time.³⁶ Likewise, the Act establishes mandatory terms of imprisonment and terms of parole ineligibility for certain offenses and offenders.³⁷ These mandatory terms will carefully circumscribe judicial sentencing discretion, and can only be waived with the consent of the prosecutor pursuant to a plea or post-conviction agreement. Recognizing that all drug offenders are part of a complex drug distribution chain, the Act facilitates and encourages offenders to cooperate with law enforcement efforts to detect, apprehend and successfully prosecute otherwise well-insulated upper echelon drug traffickers. This provision prohibits the imposition of shorter prison terms or lesser fines than are contemplated by a negotiated plea or post-conviction agreement, thereby ensuring that prosecutors as well as defendants receive the full benefit of negotiated agreements.

The Act provides for enhanced cash fines which are based on three, or in some cases five times the street value of the controlled dangerous substances involved, thereby reducing the economic incentive to engage in illegal drug trafficking.³⁸ The Act likewise requires the imposition of stiff cash penalties based on the degree of the offense. The proceeds of which are used to fund enhanced education, public awareness and rehabilitation programs.³⁹

The Act permits courts and prosecutors to "aggregate" the amount of drugs distributed on separate occasions or to separate individuals in order to determine the degree of the crime committed.⁴⁰ This ensures that the most dangerous drug dealers will be accurately identified and subjected to appropriate punishment. The Controlled Act also authorizes the rehabilitation of drug dependent persons.⁴¹ Such rehabilitation includes

³⁶ See *id.* § 2C:43-6.

³⁷ See *id.* § 2C:35-12.

³⁸ *Id.* §§ 2C:43-3; 2C:44-2.

³⁹ *Id.* § 2C:35-15.

⁴⁰ *Id.* § 2C:35-5(c).

⁴¹ *Id.* § 2C:35-14.

mandatory periodic urinalysis and, in all cases involving convictions for second degree crimes, a minimum of six months confinement to a residential treatment facility. This provision establishes strict revocation procedures to ensure compliance with the program and the safety of the community.

The Act mandates that all persons convicted of any drug-related offenses, including disorderly persons and petty disorderly persons offenses, forfeit their driving privileges for not less than six months, and further renders any juvenile under age seventeen adjudicated as delinquent for a drug-related offense as ineligible for a driver's license for at least six months after he reaches the age of seventeen.⁴²

The Comprehensive Act facilitates the waiver of jurisdiction of juvenile offenders to adult court when the juvenile is accused of a drug-induced death or of selling drugs for profit while on school property⁴³ and also provides that offenders convicted of a disorderly persons possessor drug offense which is committed on or near school grounds or on school buses be required to perform no less than 100 hours of community service.⁴⁴

On a final note, the Act repeals conditional discharge, leaving Pretrial Intervention as the exclusive means for the pretrial diversion of persons accused of serious drug crimes,⁴⁵ streamlines trial practice and related costs by authorizing, in certain circumstances, the use of sworn laboratory certificates in lieu of the live testimony of state forensic chemists⁴⁶ and authorizes the pretrial destruction of bulk seizures of controlled substances.⁴⁷

V. Combining the Old and the New: A Framework for Reform

Although the Comprehensive Act creates a number of new offenses and works sweeping changes in New Jersey's criminal drug laws, the new statute nonetheless embraces many concepts and legal principles already established in the Controlled Act. These principles are familiar to New Jersey's law enforcement, legal and judicial communities, and this will facilitate the smooth

⁴² *Id.* § 2C:35-16.

⁴³ *Id.* § 2A:4A-26.

⁴⁴ *Id.* § 2C:35-10a.

⁴⁵ *Id.* § 2C:36A-1; *see also* § 2C:43-12g.

⁴⁶ *Id.* § 2C:35-19b.

⁴⁷ *Id.* § 2C:35-21.

transition from the old statutory scheme to the new one now embodied in the Comprehensive Act. The Act thus adopts the general penal code proposition that “[t]he provisions of the code not inconsistent with those of prior laws shall be construed as a continuation of such laws.”⁴⁸ Accordingly, many of the reported cases construing the Controlled Act will continue to be binding and persuasive precedent, and should not be deemed to have been superseded or overruled by the adoption of the Comprehensive Act.

The Act, for example, incorporates by reference the schedules of controlled dangerous substances⁴⁹ which have been modified by regulations promulgated from time to time by the Commissioner of Health. The Comprehensive Act does, however, expand the definition of controlled dangerous substance to include controlled substance analogs, or “designer drugs.” The definition of the act of “possession,” including the closely related concepts of “constructive” and “joint” possession, are left unchanged under the Act. So too, the definitions of “manufacturer” and “distribution” are taken verbatim from pre-existing law.

The Comprehensive Act also includes acts of simple possession, use and being under the influence of a controlled substance under a single statutory proscription.⁵⁰ Similarly, the new law retains the previous scheme of proscribing the acts of manufacturing, distributing, dispensing, and possessing with intent to distribute under a single section.⁵¹ The Comprehensive Act generally does not distinguish between the commercial “sale” and noncommercial “distribution” of controlled dangerous substances. Thus, under the Act, a person is deemed to have “distributed” a substance whether the transfer of the drug was done in exchange for money or anything else of value.

In a related vein, the Comprehensive Act effects no change in predecessor law as to the proofs necessary to establish that a defendant possessed a given substance “with intent to distribute.” During the legislative committee process, the legislature rejected the idea of establishing a “presumption” or

⁴⁸ *Id.* § 2C:1-1e.

⁴⁹ *Id.* §§ 24:21-5 to -8.1.

⁵⁰ *Id.* § 2C:35-10.

⁵¹ *Id.* § 2C:35-5a.

statutorily prescribed “permissive inference” with respect to the actor’s intent based on the quantity of drugs found in his possession. Instead, the question of a defendant’s intent under the Act is to be inferred by the trier of fact from all of the surrounding facts and circumstances.

Finally, the Comprehensive Act generally does not change pre-existing law with respect to whether separate acts within a continuing transaction or scheme of events may be prosecuted and punished separately. Given appropriate facts, for example, a defendant can be convicted under the Comprehensive Act of possessing a drug with intent to distribute it, and may also be convicted of the separate offense of later actually distributing the very same sample of drugs. This represents a continuation of predecessor law as construed by the courts.⁵² By the same token, the Comprehensive Act continues the practice of allowing separate convictions and separate sentences to be imposed upon the possession of two distinct drugs, such as marijuana and cocaine, even if the defendant was found to have been in possession of the two substances simultaneously.

It should also be noted that where the Comprehensive Act creates entirely new offenses, it generally provides guidance to the courts and prosecutors as to whether the legislature intended for the new offense to “merge” with punishment for a violation of a more traditional offense which might also be charged. In addition, it permits prosecutors to “aggregate” the amount of drugs distributed on separate occasions or to separate individuals where such aggregation will enhance the degree of the crime committed. The new aggregation provision, however, does not prevent a prosecutor in his discretion from charging chronologically distinct distribution episodes in separate counts, in which case a defendant can be convicted for each distinct offense, and ultimately receive separate and even consecutive terms of imprisonment upon each separate distribution conviction.

⁵² See, e.g., *State v. Jester*, 68 N.J. 87, 342 A.2d 850 (1975); *State v. Davis*, 68 N.J. 69, 342 A.2d 841 (1975); *State v. Ruiz*, 68 N.J. 54, 342 A.2d 833 (1975); *State v. Land*, 136 N.J. Super. 354, 346 A.2d 411 (App. Div. 1975), *rev'd on other grounds*, 73 N.J. 24, 372 A.2d 297 (1977).

VI. Conclusion: The Need for Continuing Study and Evaluation

The sweeping reform accomplished by the recent adoption of the Comprehensive Drug Reform Act of 1987 was the product of many months of research and evaluation. The Act incorporates a number of innovative and creative provisions designed specifically to deal with New Jersey's current drug abuse problem. It will be necessary, however, to undertake on a continuing basis a study and critical evaluation of the Act and its effect, especially upon sentencing practices, speedy trial goals and state and county prison populations. Needless to say, a penal law can only be as effective as the efforts of those who are sworn to enforce and implement it. This is especially true with respect to the enforcement of drug laws, which depend almost entirely on active police efforts.

It is important to recognize, finally, that no law as complex and detailed as the Comprehensive Act is perfect or immutable. This statute was the product of careful deliberations, compromises and the reasoned balancing of competing policy interests. The legislative process which gave rise to the Comprehensive Act is a dynamic one. For this reason, the new law and its effects must be carefully scrutinized to determine whether it is, in fact, accomplishing its stated objective, and whether it should be amended or refined to account for new developments and new illicit marketing practices. With this in mind, the recently created Statewide Narcotics Task Force will continue to solicit input from all members of the law enforcement, judicial, legal and correctional communities, and from citizens-at-large, as to any problems which arise with respect to the enforcement of the Act which can and should be corrected by means of policy directives or legislative amendments. In this way, we can be certain that our criminal drug laws will remain up-to-date, responsive and cost-effective, and that they will be properly and uniformly enforced and implemented.