

ASSEMBLY, No. 694

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ZISA

1 AN ACT clarifying the offense of leader of narcotics trafficking
2 network and amending N.J.S.2C:35-3.

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

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

8 2C:35-3. Leader of Narcotics Trafficking Network.

9 [A] Notwithstanding any other provision of law to the contrary, a
10 person is a leader of a narcotics trafficking network **only** if [he
11 conspires with others as an organizer, supervisor, financier or
12 manager, to engage for profit], in a scheme or course of conduct to
13 unlawfully manufacture, distribute, dispense, bring into or transport in
14 this State methamphetamine, lysergic acid diethylamide, phencyclidine
15 or any controlled dangerous substance classified in Schedule I or II,
16 or any controlled substance analog thereof, **the person is the principal**
17 administrator, organizer, or leader of the enterprise or is one of several
18 such principal administrators, organizers or leaders, and any two of the
19 following are present:

20 a. the violation involved at least five times the quantity of an illegal
21 narcotic necessary for criminal charges pursuant to the provisions of
22 N.J.S. 2C:35-5;

23 b. the enterprise, or any other enterprise in which the defendant
24 was the principal or one of the several principal administrators,
25 organizers or leaders, received \$500,000.00 in gross receipts during
26 any twelve month period of its existence for the unlawful
27 manufacturing, distributing, dispensing, bringing into or transporting
28 in this State the items listed in this section;

29 c. the person conspires with five or more other persons with
30 respect to whom the person occupies a position of organizer, or a
31 supervisory position, or any other position of management;

32 d. the person obtains substantial income or resources from such

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 enterprises.

2 Leader of narcotics trafficking network is a crime of the first degree
3 and upon conviction thereof, except as may be provided by
4 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of life
5 imprisonment during which the person must serve 25 years before
6 being eligible for parole. Notwithstanding the provisions of subsection
7 a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed
8 \$500,000.00 or five times the street value of the controlled dangerous
9 substance or controlled substance analog involved, whichever is
10 greater.

11 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
12 leader of narcotics trafficking network shall not merge with the
13 conviction for any offense which is the object of the conspiracy.
14 Nothing contained in this section shall prohibit the court from
15 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
16 section be construed in any way to preclude or limit the prosecution
17 or conviction of any person for conspiracy under N.J.S.2C:5-2, or any
18 prosecution or conviction under N.J.S.2C:35-4 (maintaining or
19 operating a CDS production facility), N.J.S.2C:35-5 (manufacturing,
20 distributing or dispensing), N.J.S.2C:35-6 (employing a juvenile in a
21 drug distribution scheme), N.J.S.2C:35-9 (strict liability for drug
22 induced death), N.J.S.2C:41-2 (racketeering activities) or subsection
23 g. of N.J.S.2C:5-2 (leader of organized crime).

24 It shall not be necessary in any prosecution under this section for
25 the State to prove that any intended profit was actually realized. The
26 trier of fact may infer that a particular scheme or course of conduct
27 was undertaken for profit from all of the attendant circumstances,
28 including but not limited to the number of persons involved in the
29 scheme or course of conduct, the actor's net worth and his
30 expenditures in relation to his legitimate sources of income, the
31 amount or purity of the specified controlled dangerous substance or
32 controlled substance analog involved, or the amount of cash or
33 currency involved.

34 It shall not be a defense to a prosecution under this section that
35 such controlled dangerous substance or controlled substance analog
36 was brought into or transported in this State solely for ultimate
37 distribution or dispensing in another jurisdiction; nor shall it be a
38 defense that any profit was intended to be made in another jurisdiction.
39 (cf: P.L.1987, c.106, s.1)

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41 2. This act shall take effect immediately.

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STATEMENT

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46 This bill would amend N.J.S.A.2C:35-3, the "drug kingpin" statute

1 to clarify the activities that will result in a person being a "leader of a
2 narcotics trafficking network." Under the bill, a person is a leader of
3 a narcotics trafficking network if the person is a principal
4 administrator, organizer, or leader of the enterprise or is one of several
5 such persons; and any two of the following are present: (1) the
6 violation involved at least five times the quantity of an illegal narcotic
7 necessary for a possession offense under N.J.S.A.2C:35-5; (2) the
8 enterprise or a related enterprise received \$500,000 in receipts for
9 trafficking in controlled dangerous substances; (3) the person
10 conspired with five or more other persons with respect to whom the
11 person occupies a management position; or, (4) the person obtains
12 substantial income or resources from such enterprise.

13 The bill is further intended to clarify the recent New Jersey
14 Supreme Court ruling State v. Alexander (decided July 19, 1994).
15 This decision held that in a prosecution under N.J.S.A.2C:35-3, the
16 trial court should instruct the jury that it must find that the defendant
17 occupies an "upper echelon" role and in that position exercises
18 supervisory power or control over others engaged in an organized
19 drug trafficking network. These amendments clarify that
20 N.J.S.A.2C:35-3 is the exclusive source of definition for the offense.

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25 Clarifies activities which constitute leader of a drug trafficking
26 network.