

ASSEMBLY, No. 704

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 concerning fines imposable in criminal cases and amending
2 various sections of Title 2C of the New Jersey Statutes.

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:35-3 is amended to read as follows:

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

9 A person is a leader of a narcotics trafficking network if he
10 conspires with others as an organizer, supervisor, financier or
11 manager, to engage for profit in a scheme or course of conduct to
12 unlawfully manufacture, distribute, dispense, bring into or transport in
13 this State methamphetamine, lysergic acid diethylamide, phencyclidine
14 or any controlled dangerous substance classified in Schedule I or II,
15 or any controlled substance analog thereof. Leader of narcotics
16 trafficking network is a crime of the first degree and upon conviction
17 thereof, except as may be provided by N.J.S.2C:35-12, a person shall
18 be sentenced to an ordinary term of life imprisonment during which the
19 person must serve 25 years before being eligible for parole.
20 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
21 court may also impose a fine not to exceed **[\$500,000.00]**
22 \$750,000.00 or five times the street value of the controlled dangerous
23 substance or controlled substance analog involved, whichever is
24 greater.

25 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
26 leader of narcotics trafficking network shall not merge with the
27 conviction for any offense which is the object of the conspiracy.
28 Nothing contained in this section shall prohibit the court from
29 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
30 section be construed in any way to preclude or limit the prosecution
31 or conviction of any person for conspiracy under N.J.S.2C:5-2, or any
32 prosecution or conviction under N.J.S.2C:35-4 (maintaining or

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 operating a CDS production facility), N.J.S.2C:35-5 (manufacturing,
2 distributing or dispensing), N.J.S.2C:35-6 (employing a juvenile in a
3 drug distribution scheme), N.J.S.2C:35-9 (strict liability for drug
4 induced death), N.J.S.2C:41-2 (racketeering activities) or subsection
5 g. of N.J.S.2C:5-2 (leader of organized crime).

6 It shall not be necessary in any prosecution under this section for
7 the State to prove that any intended profit was actually realized. The
8 trier of fact may infer that a particular scheme or course of conduct
9 was undertaken for profit from all of the attendant circumstances,
10 including but not limited to the number of persons involved in the
11 scheme or course of conduct, the actor's net worth and his
12 expenditures in relation to his legitimate sources of income, the
13 amount or purity of the specified controlled dangerous substance or
14 controlled substance analog involved, or the amount of cash or
15 currency involved.

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

22

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

24 2C:35-4. Maintaining or Operating a Controlled Dangerous
25 Substance Production Facility.

26 Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any
27 person who knowingly maintains or operates any premises, place or
28 facility used for the manufacture of methamphetamine, lysergic acid
29 diethylamide, phencyclidine or any substance classified as a narcotic
30 drug in Schedule I or II, or the analog of any such substance, or any
31 person who knowingly aids, promotes, finances or otherwise
32 participates in the maintenance or operations of such premises, place
33 or facility, is guilty of a crime of the first degree and shall, except as
34 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
35 which shall include the imposition of a minimum term which shall be
36 fixed at, or between, one-third and one-half of the sentence imposed,
37 during which the defendant shall be ineligible for parole.
38 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
39 court may also impose a fine not to exceed~~[\$500,000.00]~~ \$750,000.00
40 or five times the street value of all controlled dangerous substances or
41 controlled substance analogs at any time manufactured or stored at
42 such premises, place or facility, whichever is greater.
43 (cf: P.L.1988, c.44, s.1)

44

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

46 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as

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

3 (1) To manufacture, distribute or dispense, or to possess or have
4 under his control with intent to manufacture, distribute or dispense, a
5 controlled dangerous substance or controlled substance analog; or

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

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

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

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

28 (3) A substance referred to in paragraph (1) of this subsection in
29 a quantity less than one-half ounce including any adulterants or
30 dilutants is guilty of a crime of the third degree except that,
31 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
32 fine of up to~~[\$50,000.00]~~ \$75,000.00 may be imposed;

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

37 (5) A substance classified as a narcotic drug in Schedule I or II
38 other than those specifically covered in this section, or the analog of
39 any such substance, in a quantity of less than one ounce including any
40 adulterants or dilutants is guilty of a crime of the third degree except
41 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
42 a fine of up to~~[\$50,000.00]~~ \$75,000.00 may be imposed;

43 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100
44 milligrams or more including any adulterants or dilutants, or
45 phencyclidine, or its analog, in a quantity of 10 grams or more
46 including any adulterants or dilutants, is guilty of a crime of the first

1 degree. Except as provided in 2C:35-12, the court shall impose a term
2 of imprisonment which shall include the imposition of a minimum term,
3 fixed at, or between, one-third and one-half of the sentence imposed
4 by the court, during which the defendant shall be ineligible for parole.
5 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
6 fine of up to~~[\$300,000.00]~~ \$500,000.00 may be imposed;

7 (7) Lysergic acid diethylamide, or its analog, in a quantity of less
8 than 100 milligrams including any adulterants or dilutants, or where
9 the amount is undetermined, or phencyclidine, or its analog, in a
10 quantity of less than 10 grams including any adulterants or dilutants,
11 or where the amount is undetermined, is guilty of a crime of the
12 second degree;

13 (8) Methamphetamine, or its analog, in a quantity of one ounce or
14 more including any adulterants or dilutants is guilty of a crime of the
15 second degree;

16 (9) Methamphetamine, or its analog, in a quantity of less than one
17 ounce including any adulterants or dilutants is guilty of a crime of the
18 third degree except that, notwithstanding the provisions of subsection
19 b. of N.J.S.2C:43-3, a fine of up to~~[\$50,000.00]~~ \$75,000.00 may be
20 imposed;

21 (10) Marijuana in a quantity of five pounds or more including any
22 adulterants and dilutants, or hashish in a quantity of one pound or
23 more including any adulterants and dilutants, is guilty of a crime of the
24 second degree;

25 (11) Marijuana in a quantity of one ounce or more but less than
26 five pounds including any adulterants and dilutants, or hashish in a
27 quantity of five grams or more but less than one pound including any
28 adulterants and dilutants, is guilty of a crime of the third degree except
29 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
30 a fine of up to~~[\$15,000.00]~~ \$25,000.00 may be imposed;

31 (12) Marijuana in a quantity of less than one ounce including any
32 adulterants and dilutants, or hashish in a quantity of less than five
33 grams including any adulterants and dilutants, is guilty of a crime of
34 the fourth degree;

35 (13) Any other controlled dangerous substance classified in
36 Schedule I, II, III or IV, or its analog, is guilty of a crime of the third
37 degree, except that, notwithstanding the provisions of subsection b. of
38 N.J.S.2C:43-3, a fine of up to~~[\$15,000.00]~~ \$25,000.00 may be
39 imposed; or

40 (14) Any Schedule V substance, or its analog, is guilty of a crime
41 of the fourth degree except that, notwithstanding the provisions of
42 subsection b. of N.J.S.2C:43-3, a fine of up to ~~[\$15,000.00]~~
43 \$25,000.00 may be imposed.

44 c. Where the degree of the offense for violation of this section
45 depends on the quantity of the substance, the quantity involved shall
46 be determined by the trier of fact. Where the indictment or accusation

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

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

9

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

11 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

12 Any person being at least 18 years of age who knowingly uses,
13 solicits, directs, hires or employs a person 17 years of age or younger
14 to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5, is guilty
15 of a crime of the second degree and shall, except as provided in
16 N.J.S.2C:35-12, be sentenced to a term of imprisonment which shall
17 include the imposition of a minimum term which shall be fixed at, or
18 between, one-third and one-half of the sentence imposed, or five years,
19 whichever is greater, during which the defendant shall be ineligible for
20 parole. Notwithstanding the provisions of subsection a. of
21 N.J.S.2C:43-3, the court may also impose a fine not to
22 exceed[~~\$300,000.00~~] \$500,000.00 or five times the street value of the
23 controlled dangerous substance or controlled substance analog
24 involved, whichever is greater.

25 It shall be no defense to a prosecution under this section that the
26 actor mistakenly believed that the person which the actor used,
27 solicited, directed, hired or employed was 18 years of age or older,
28 even if such mistaken belief was reasonable.

29 Nothing in this section shall be construed to preclude or limit a
30 prosecution or conviction for a violation of any offense defined in this
31 chapter pursuant to N.J.S.2C:2-6 or any other provision of law
32 governing an actor's liability for the conduct of another, and,
33 notwithstanding the provisions of N.J.S.2C:1-8 or any other provision
34 of law, a conviction arising under this section shall not merge with a
35 conviction for a violation of N.J.S.2C:35-3 (leader of narcotics
36 trafficking network), N.J.S.2C:35-4 (maintaining or operating a CDS
37 production facility), N.J.S.2C:35-5 (manufacturing, distributing or
38 dispensing), or N.J.S.2C:35-9 (strict liability for drug induced death).

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

40

41 5. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read as
42 follows:

43 1. Any person who violates subsection a. of N.J.S.2C:35-5 by
44 distributing, dispensing or possessing with intent to distribute a
45 controlled dangerous substance or controlled substance analog while
46 on any school property used for school purposes which is owned by or

1 leased to any elementary or secondary school or school board, or
2 within 1,000 feet of such school property or a school bus, or while on
3 any school bus, is guilty of a crime of the third degree and shall,
4 except as provided in N.J.S.2C:35-12, be sentenced by the court to a
5 term of imprisonment. Where the violation involves less than one
6 ounce of marijuana, the term of imprisonment shall include the
7 imposition of a minimum term which shall be fixed at, or between,
8 one-third and one-half of the sentence imposed, or one year,
9 whichever is greater, during which the defendant shall be ineligible for
10 parole. In all other cases, the term of imprisonment shall include the
11 imposition of a minimum term which shall be fixed at, or between,
12 one-third and one-half of the sentence imposed, or three years,
13 whichever is greater, during which the defendant shall be ineligible for
14 parole. Notwithstanding the provisions of subsection b. of
15 N.J.S.2C:43-3, a fine of up to~~[\$100,000.00]~~ \$150,000.00 may also be
16 imposed upon any conviction for a violation of this section.

17 Notwithstanding the provisions of N.J.S.2C:1-8 or any other
18 provisions of law, a conviction arising under this section shall not
19 merge with a conviction for a violation of subsection a. of
20 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
21 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

22 It shall be no defense to a prosecution for a violation of this section
23 that the actor was unaware that the prohibited conduct took place
24 while on or within 1,000 feet of any school property. Nor shall it be a
25 defense to a prosecution under this section, or under any other
26 provision of this title, that no juveniles were present on the school
27 property at the time of the offense or that the school was not in
28 session.

29 It is an affirmative defense to prosecution for a violation of this
30 section that the prohibited conduct took place entirely within a private
31 residence, that no person 17 years of age or younger was present in
32 such private residence at any time during the commission of the
33 offense, and that the prohibited conduct did not involve distributing,
34 dispensing or possessing with the intent to distribute or dispense any
35 controlled dangerous substance or controlled substance analog for
36 profit. The affirmative defense established in this section shall be
37 proved by the defendant by a preponderance of the evidence. Nothing
38 herein shall be construed to establish an affirmative defense with
39 respect to a prosecution for an offense defined in any other section of
40 this chapter.

41 In a prosecution under this section, a map produced or reproduced
42 by any municipal or county engineer for the purpose of depicting the
43 location and boundaries of the area on or within 1,000 feet of any
44 property used for school purposes which is owned by or leased to any
45 elementary or secondary school or school board, or a true copy of
46 such a map, shall, upon proper authentication, be admissible and shall

1 constitute prima facie evidence of the location and boundaries of those
2 areas, provided that the governing body of the municipality or county
3 has adopted a resolution or ordinance approving the map as official
4 finding and record of the location and boundaries of the area or areas
5 on or within 1,000 feet of the school property. Any map approved
6 pursuant to this section may be changed from time to time by the
7 governing body of the municipality or county. The original of every
8 map approved or revised pursuant to this section, or a true copy
9 thereof, shall be filed with the clerk of the municipality or county, and
10 shall be maintained as an official record of the municipality or county.
11 Nothing in this section shall be construed to preclude the prosecution
12 from introducing or relying upon any other evidence or testimony to
13 establish any element of this offense; nor shall this section be
14 construed to preclude the use or admissibility of any map or diagram
15 other than one which has been approved by the governing body of a
16 municipality or county, provided that the map or diagram is otherwise
17 admissible pursuant to the Rules of Evidence.

18 (cf: P.L.1988, c.44, s.3)

19

20 6. N.J.S.2C:35-10 is amended to read as follows:

21 2C:35-10. Possession, Use or Being Under the Influence, or
22 Failure to Make Lawful Disposition.

23 a. It is unlawful for any person, knowingly or purposely, to obtain,
24 or to possess, actually or constructively, a controlled dangerous
25 substance or controlled substance analog, unless the substance was
26 obtained directly, or pursuant to a valid prescription or order form
27 from a practitioner, while acting in the course of his professional
28 practice, or except as otherwise authorized by P.L.1970, c.226
29 (C.24:21-1 et seq.). Any person who violates this section with respect
30 to:

31 (1) A controlled dangerous substance, or its analog, classified in
32 Schedule I, II, III or IV other than those specifically covered in this
33 section, is guilty of a crime of the third degree except that,
34 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
35 fine of up to ~~[\$25,000.00]~~ \$35,000.00 may be imposed;

36 (2) Any controlled dangerous substance, or its analog, classified in
37 Schedule V, is guilty of a crime of the fourth degree except that,
38 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
39 fine of up to \$15,000.00 may be imposed;

40 (3) Possession of more than 50 grams of marijuana, including any
41 adulterants or dilutants, or more than five grams of hashish is guilty of
42 a crime of the fourth degree, except that, notwithstanding the
43 provisions of subsection b. of N.J.S.2C:43-3, a fine of up
44 to ~~[\$15,000.00]~~ \$25,000.00 may be imposed; or

45 (4) Possession of 50 grams or less of marijuana, including any
46 adulterants or dilutants, or five grams or less of hashish is a disorderly

1 person.

2 Any person who commits any offense defined in this section while
3 on any property used for school purposes which is owned by or leased
4 to any elementary or secondary school or school board, or within
5 1,000 feet of any such school property or a school bus, or while on
6 any school bus, and who is not sentenced to a term of imprisonment,
7 shall, in addition to any other sentence which the court may impose,
8 be required to perform not less than 100 hours of community service.

9 b. Any person who uses or who is under the influence of any
10 controlled dangerous substance, or its analog, for a purpose other than
11 the treatment of sickness or injury as lawfully prescribed or
12 administered by a physician is a disorderly person.

13 In a prosecution under this subsection, it shall not be necessary for
14 the State to prove that the accused did use or was under the influence
15 of any specific drug, but it shall be sufficient for a conviction under
16 this subsection for the State to prove that the accused did use or was
17 under the influence of some controlled dangerous substance,
18 counterfeit controlled dangerous substance, or controlled substance
19 analog, by proving that the accused did manifest physical and
20 physiological symptoms or reactions caused by the use of any
21 controlled dangerous substance or controlled substance analog.

22 c. Any person who knowingly obtains or possesses a controlled
23 dangerous substance or controlled substance analog in violation of
24 subsection a. of this section and who fails to voluntarily deliver the
25 substance to the nearest law enforcement officer is guilty of a
26 disorderly persons offense. Nothing in this subsection shall be
27 construed to preclude a prosecution or conviction for any other
28 offense defined in this title or any other statute.

29 (cf: P.L.1988, c.44, s.5)

30

31 7. N.J.S.2C:35-11 is amended to read as follows:

32 2C:35-11. Imitation controlled dangerous substances; distribution,
33 possession, manufacture, etc.; penalties.

34 a. It is unlawful for any person to distribute or to possess or have
35 under his control with intent to distribute any substance which is not
36 a controlled dangerous substance or controlled substance analog:

37 (1) Upon the express or implied representation to the recipient that
38 the substance is a controlled dangerous substance or controlled
39 substance analog; or

40 (2) Upon the express or implied representation to the recipient that
41 the substance is of such nature, appearance or effect that the recipient
42 will be able to distribute or use the substance as a controlled
43 dangerous substance or controlled substance analog; or

44 (3) Under circumstances which would lead a reasonable person to
45 believe that the substance is a controlled dangerous substance or
46 controlled substance analog.

1 Any of the following shall constitute prima facie evidence of such
2 circumstances:

3 (a) The substance was packaged in a manner normally used for the
4 unlawful distribution of controlled dangerous substances or controlled
5 substance analogs.

6 (b) The distribution or attempted distribution of the substance was
7 accompanied by an exchange of or demand for money or other thing
8 as consideration for the substance, and the value of the consideration
9 exceeded the reasonable value of the substance.

10 (c) The physical appearance of the substance is substantially the
11 same as that of a specific controlled dangerous substance or controlled
12 substance analog.

13 b. It is unlawful for any person to manufacture, compound,
14 encapsulate, package or imprint any substance which is not a
15 controlled dangerous substance, controlled substance analog or any
16 combination of such substances, other than a prescription drug, with
17 the purpose that it resemble or duplicate the physical appearance of
18 the finished form, package, label or imprint of a controlled dangerous
19 substance or controlled substance analog.

20 c. In any prosecution under this section, it shall not be a defense
21 that the defendant mistakenly believed a substance to be a controlled
22 dangerous substance or controlled substance analog.

23 d. A violation of this section is a crime of the third degree, except
24 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
25 a fine of up to~~[\$100,000.00]~~ \$200,000.00 may be imposed.

26 e. The provisions of this section shall not be applicable to (1)
27 practitioners or agents, servants and employees of practitioners
28 dispensing or administering noncontrolled substances to patients on
29 behalf of practitioners in the normal course of their business or
30 professional practice; and (2) persons who manufacture, process,
31 package, distribute or sell noncontrolled substances to practitioners for
32 use as placebos in the normal course of their business, professional
33 practice or research or for use in Federal Food and Drug
34 Administration investigational new drug trials.

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

36

37 8. N.J.S.2C:35-13 is amended to read as follows:

38 2C:35-13. Obtaining by Fraud.

39 It shall be unlawful for any person to acquire or obtain possession
40 of a controlled dangerous substance or controlled substance analog by
41 misrepresentation, fraud, forgery, deception or subterfuge. It shall be
42 unlawful for any person to acquire or obtain possession of a forged or
43 fraudulent certificate of destruction required pursuant to
44 N.J.S.2C:35-21. A violation of this section shall be a crime of the third
45 degree except that, notwithstanding the provisions of subsection b. of
46 N.J.S.2C:43-3, a fine of up to~~[\$30,000.00]~~ \$50,000.00 may be

1 imposed. Nothing in this section shall be deemed to preclude or limit
2 a prosecution for theft as defined in chapter 20 of this title.

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

4

5 9. N.J.S.2C:37-2 is amended to read as follows:

6 2C:37-2. Promoting Gambling.

7 a. Promoting Gambling Defined. A person is guilty of promoting
8 gambling when he knowingly:

9 (1) Accepts or receives money or other property, pursuant to an
10 agreement or understanding with any person whereby he participates
11 or will participate in the proceeds of gambling activity; or

12 (2) Engages in conduct, which materially aids any form of
13 gambling activity. Such conduct includes but is not limited to conduct
14 directed toward the creation or establishment of the particular game,
15 contest, scheme, device or activity involved, toward the acquisition or
16 maintenance of premises, paraphernalia, equipment or apparatus
17 therefor, toward the solicitation or inducement of persons to
18 participate therein, toward the actual conduct of the playing phases
19 thereof, toward the arrangement of any of its financial or recording
20 phases, or toward any other phase of its operation.

21 b. Grading. A person who violates the provisions of subsection a.
22 by:

23 (1) Engaging in bookmaking to the extent he receives or accepts
24 in any 1 day more than five bets totaling more than \$1,000.00; or

25 (2) Receiving, in connection with a lottery or policy scheme or
26 enterprise (a) money or written records from a person other than a
27 player whose chances or plays are represented by such money or
28 records, or (b) more than \$100.00 in any 1 day of money played in
29 such scheme or enterprise, is guilty of a crime of the third degree and
30 notwithstanding the provisions of section 2C:43-3 shall be subject to
31 a fine of not more than~~[\$25,000.00]~~ \$35,000.00 and any other
32 appropriate disposition authorized by 2C:43-2 b.

33 A person who violates the provisions of subsection a. by engaging
34 in bookmaking to the extent he receives or accepts three or more bets
35 in any 2-week period is guilty of a crime of the fourth degree and
36 notwithstanding the provisions of section 2C:43-3 shall be subject to
37 a fine of not more than~~[\$15,000.00]~~ \$25,000.00 and any other
38 appropriate disposition authorized by 2C:43-2 b. Otherwise,
39 promoting gambling is a disorderly persons offense and
40 notwithstanding the provisions of section 2C:43-3 shall be subject to
41 a fine of not more than \$10,000.00 and any other appropriate
42 disposition authorized by 2C:43-2 b.

43 c. It is a defense to a prosecution under subsection a. that the
44 person participated only as a player. It shall be the burden of the
45 defendant to prove by clear and convincing evidence his status as such

1 player.

2 (cf: P.L.1979, c.178, s.69)

3

4 10. N.J.S.2C:37-3 is amended to read as follows:

5 2C:37-3. Possession of Gambling Records.

6 a. A person is guilty of possession of gambling records when, with
7 knowledge of the contents thereof, he possesses any writing, paper,
8 instrument or article:

9 (1) Of a kind commonly used in the operation or promotion of a
10 bookmaking scheme or enterprise, including any paper or paper
11 product in sheet form chemically converted to nitrocellulose having
12 explosive characteristics as well as any water soluble paper or paper
13 derivative in sheet form; or

14 (2) Of a kind commonly used in the operation, promotion or
15 playing of a lottery or policy scheme or enterprise.

16 b. Defenses.

17 (1) It is a defense to a prosecution under subsection a. (2) which
18 must be proven by the defendant by clear and convincing evidence that
19 the writing, paper, instrument or article possessed by the defendant
20 constituted, reflected or represented plays, bets or chances of the
21 defendant himself in a number not exceeding 10.

22 (2) It is a defense to a prosecution under subsection a. which must
23 be proven by the defendant by clear and convincing evidence that the
24 writing, paper, instrument or article possessed by the defendant was
25 neither used nor intended to be used in the operation or promotion of
26 a bookmaking scheme or enterprise, or in the operation, promotion or
27 playing of a lottery or policy scheme or enterprise.

28 c. Grading. Possession of gambling records is a crime of the third
29 degree and notwithstanding the provisions of section 2C:43-3 shall be
30 subject to a fine of not more than ~~[\$25,000.00]~~ \$35,000.00 and any
31 other appropriate disposition authorized by 2C:43-2 b. when the
32 writing, paper, instrument or article:

33 (1) In a bookmaking scheme or enterprise, constitute, reflect or
34 represent more than five bets totaling more than \$1,000.00; or

35 (2) In the case of a lottery or policy scheme or enterprise,
36 constitute, reflect or represent more than one hundred plays or chances
37 therein.

38 Otherwise, possession of gambling records is a disorderly persons
39 offense and notwithstanding the provisions of section 2C:43-3 shall be
40 subject to a fine of not more than ~~[\$10,000.00]~~ \$20,000.00 and any
41 other appropriate disposition authorized by 2C:43-2 b.

42 (cf: P.L.1979, c.178, s.70)

43

44 11. N.J.S.2C:37-4 is amended to read as follows:

45 2C:37-4. Maintenance of a Gambling Resort.

46 a. A person is guilty of a crime of the fourth degree if, having

1 substantial proprietary or other authoritative control over premises
2 which are being used with his knowledge for purposes of activities
3 prohibited by 2C:37-2 and 2C:37-3, he permits such to occur or
4 continue or makes no effort to prevent its occurrence or continuation
5 and he accepts or receives money or other property pursuant to an
6 agreement or understanding with any person whereby he participates
7 or will participate in the proceeds of such gambling activity on such
8 premises and notwithstanding the provisions of section 2C:43-3 shall
9 be subject to a fine of not more than~~[\$15,000.00]~~ \$25,000.00 and any
10 other appropriate disposition authorized by 2C:43-2 b.

11 b. A person is guilty of a crime of the fourth degree if, having
12 substantial proprietary or other authoritative control over premises
13 open to the general public which are being used with his knowledge
14 for purposes of gambling activity, he permits such to occur or continue
15 or makes no effort to prevent its occurrence or continuation and
16 notwithstanding the provisions of section 2C:43-3 shall be subject to
17 a fine of not more than~~[\$15,000.00]~~ \$25,000.00 and any other
18 appropriate disposition authorized by 2C:43-2 b.

19 (cf: P.L.1979, c.178, s.71)

20

21 12. N.J.S.2C:43-3 is amended to read as follows:

22 2C:43-3. Fines and Restitutions. A person who has been convicted
23 of an offense may be sentenced to pay a fine, to make restitution, or
24 both, such fine not to exceed:

25 a. ~~[\$100,000.00, when the conviction is of a crime of the first or~~
26 ~~second degree] (1) \$200,000.00 when the conviction is of a crime of~~
27 the first degree;

28 (2) \$150,000.00 when the conviction is of a crime of the second
29 degree;

30 b. ~~[\$7,500.00, when the conviction is of a crime of the third or~~
31 ~~fourth degree] (1) \$15,000.00 when the conviction is of a crime of the~~
32 third degree;

33 (2) \$10,000.00 when the conviction is of a crime of the fourth
34 degree;

35 c. \$1,000.00, when the conviction is of a disorderly persons
36 offense;

37 d. \$500.00, when the conviction is of a petty disorderly persons
38 offense;

39 e. Any higher amount equal to double the pecuniary gain to the
40 offender or loss to the victim caused by the conduct constituting the
41 offense by the offender. In such case the court shall make a finding as
42 to the amount of the gain or loss, and if the record does not contain
43 sufficient evidence to support such a finding the court may conduct a
44 hearing upon the issue. For purposes of this section the terms "gain"
45 means the amount of money or the value of property derived by the
46 offender and "loss" means the amount of value separated from the

1 victim and includes any reasonable and necessary expense incurred by
2 the owner in recovering or replacing lost, stolen or damaged property,
3 and, with respect to property of a research facility, includes the cost
4 of repeating an interrupted or invalidated experiment or loss of profits.
5 The term "victim" shall mean a person who suffers a personal physical
6 or psychological injury or death or incurs loss of or injury to personal
7 or real property as a result of a crime committed against that person,
8 or in the case of a homicide, the nearest relative of the victim. The
9 term "gain" shall also mean, where appropriate, the amount of any tax,
10 fee, penalty and interest avoided, evaded, or otherwise unpaid or
11 improperly retained or disposed of;

12 f. Any higher amount specifically authorized by another section of
13 this code or any other statute;

14 g. Up to twice the amounts authorized in subsection a., b., c. or d.
15 of this section, in the case of a second or subsequent conviction of any
16 tax offense defined in Title 54 of the Revised Statutes or Title 54A of
17 the New Jersey Statutes, as amended and supplemented, or of any
18 offense defined in chapter 20 or 21 of this code.

19 h. In the case of violations of chapter 35, any higher amount equal
20 to three times the street value of the controlled dangerous substance
21 or controlled substance analog. The street value for purposes of this
22 section shall be determined pursuant to subsection e. of N.J.S.2C:44-2.

23 The restitution ordered paid to the victim shall not exceed the
24 victim's loss, except that in any case involving the failure to pay any
25 State tax, the amount of restitution to the State shall be the full
26 amount of the tax avoided or evaded, including full civil penalties and
27 interest as provided by law. In any case where the victim of the
28 offense is any department or division of State government, the court
29 shall order restitution to the victim. Any restitution imposed on a
30 person shall be in addition to any fine which may be imposed pursuant
31 to this section.

32 (cf: P.L.1995, c.20, s.6)

33

34 13. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 Title 2C, "The New Jersey Code of Criminal Justice," was enacted
40 in 1978. As part of this enactment, the fines imposable for crimes
41 were established in N.J.S.2C:43-3. Since 1978, these fines have not
42 been raised. Presently, for crimes of the first or second degree, a fine
43 of up to \$100,000.00 may be imposed and for crimes of the third or
44 fourth degree a fine of up to \$7,500.00 is imposable. This bill would
45 raise the maximum fines for crimes under Title 2C as follows: for
46 crimes of the first degree, up to \$200,000.00; for crimes of the second

1 degree, up to \$150,000.00; for crimes of the third degree, up to
2 \$15,000.00 and for crimes of the fourth degree, up to \$10,000.00.

3 Chapter 35 of Title 2C deals with drug-related criminal offenses and
4 Chapter 37 of Title 2C deals with gambling offenses. In recognition
5 of the monetary gains which often motivate these types of crimes, the
6 fines set forth in chapters 35 and 37 have traditionally been set at a
7 considerably higher levels than generally proscribed under the
8 provisions of N.J.S.2C:43-3. This bill would also raise these fines.
9 The fines in Chapter 37 were last raised in 1978 while the fines for
10 drug-related crimes under chapter 35 were established in 1987.

11

12

13

14

15 Revises fines imposable for crimes under New Jersey's Criminal Code.