

[Passed Both Houses]

ASSEMBLY, No. 704

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ZISA, Assemblywoman Allen,
Senators Inverso, Scott, Kosco and Baer

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

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

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

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

24

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

26 2C:35-4. Maintaining or Operating a Controlled Dangerous
27 Substance Production Facility.

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100
46 milligrams or more including any adulterants or dilutants, or

1 phencyclidine, or its analog, in a quantity of 10 grams or more
2 including any adulterants or dilutants, is guilty of a crime of the first
3 degree. Except as provided in 2C:35-12, the court shall impose a term
4 of imprisonment which shall include the imposition of a minimum term,
5 fixed at, or between, one-third and one-half of the sentence imposed
6 by the court, during which the defendant shall be ineligible for parole.
7 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
8 fine of up to~~[\$300,000.00]~~ \$500,000.00 may be imposed;

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

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

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

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

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

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

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

42 (14) Any Schedule V substance, or its analog, is guilty of a crime
43 of the fourth degree except that, notwithstanding the provisions of
44 subsection b. of N.J.S.2C:43-3, a fine of up to ~~[\$15,000.00]~~
45 \$25,000.00 may be imposed.

46 c. Where the degree of the offense for violation of this section

1 depends on the quantity of the substance, the quantity involved shall
2 be determined by the trier of fact. Where the indictment or accusation
3 so provides, the quantity involved in individual acts of manufacturing,
4 distribution, dispensing or possessing with intent to distribute may be
5 aggregated in determining the grade of the offense, whether
6 distribution or dispensing is to the same person or several persons,
7 provided that each individual act of manufacturing, distribution,
8 dispensing or possession with intent to distribute was committed
9 within the applicable statute of limitations.

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

11

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

13 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

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

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

31 Nothing in this section shall be construed to preclude or limit a
32 prosecution or conviction for a violation of any offense defined in this
33 chapter pursuant to N.J.S.2C:2-6 or any other provision of law
34 governing an actor's liability for the conduct of another, and,
35 notwithstanding the provisions of N.J.S.2C:1-8 or any other provision
36 of law, a conviction arising under this section shall not merge with a
37 conviction for a violation of N.J.S.2C:35-3 (leader of narcotics
38 trafficking network), N.J.S.2C:35-4 (maintaining or operating a CDS
39 production facility), N.J.S.2C:35-5 (manufacturing, distributing or
40 dispensing), or N.J.S.2C:35-9 (strict liability for drug induced death).
41 (cf: P.L.1987, c.106, s.1)

42

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

45 1. Any person who violates subsection a. of N.J.S.2C:35-5 by
46 distributing, dispensing or possessing with intent to distribute a

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

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

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

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

43 In a prosecution under this section, a map produced or reproduced
44 by any municipal or county engineer for the purpose of depicting the
45 location and boundaries of the area on or within 1,000 feet of any
46 property used for school purposes which is owned by or leased to any

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

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

21

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

23 2C:35-10. Possession, Use or Being Under the Influence, or
24 Failure to Make Lawful Disposition.

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

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

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

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

1 (4) Possession of 50 grams or less of marijuana, including any
2 adulterants or dilutants, or five grams or less of hashish is a disorderly
3 person.

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

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

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

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

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

32

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

34 2C:35-11. Imitation controlled dangerous substances; distribution,
35 possession, manufacture, etc.; penalties.

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

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

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

46 (3) Under circumstances which would lead a reasonable person to

1 believe that the substance is a controlled dangerous substance or
2 controlled substance analog.

3 Any of the following shall constitute prima facie evidence of such
4 circumstances:

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

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

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

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

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

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

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

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

38

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

40 2C:35-13. Obtaining by Fraud.

41 It shall be unlawful for any person to acquire or obtain possession
42 of a controlled dangerous substance or controlled substance analog by
43 misrepresentation, fraud, forgery, deception or subterfuge. It shall be
44 unlawful for any person to acquire or obtain possession of a forged or
45 fraudulent certificate of destruction required pursuant to
46 N.J.S.2C:35-21. A violation of this section shall be a crime of the third

1 degree except that, notwithstanding the provisions of subsection b. of
2 N.J.S.2C:43-3, a fine of up to~~[\$30,000.00]~~ \$50,000.00 may be
3 imposed. Nothing in this section shall be deemed to preclude or limit
4 a prosecution for theft as defined in chapter 20 of this title.

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

6

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

8 2C:37-2. Promoting Gambling.

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

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

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

23 b. Grading. A person who violates the provisions of subsection a.
24 by:

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

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

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

45 c. It is a defense to a prosecution under subsection a. that the
46 person participated only as a player. It shall be the burden of the

1 defendant to prove by clear and convincing evidence his status as such
2 player.

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

4

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

6 2C:37-3. Possession of Gambling Records.

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

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

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

17 b. Defenses.

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

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

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

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

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

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

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

44

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

46 2C:37-4. Maintenance of a Gambling Resort.

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

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

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

21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34

35 13. This act shall take effect immediately.

36

37

38

39

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