

ASSEMBLY, No. 704

STATE OF NEW JERSEY

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  
33 operating a CDS production facility), N.J.S.2C:35-5 (manufacturing,  
34 distributing or dispensing), N.J.S.2C:35-6 (employing a juvenile in a

**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 drug distribution scheme), N.J.S.2C:35-9 (strict liability for drug  
2 induced death), N.J.S.2C:41-2 (racketeering activities) or subsection  
3 g. of N.J.S.2C:5-2 (leader of organized crime).

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

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

20

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

22 2C:35-4. Maintaining or Operating a Controlled Dangerous  
23 Substance Production Facility.

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

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

42

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

44 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as  
45 authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful  
46 for any person knowingly or purposely:

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

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

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

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

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

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

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

35 (5) 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 less than one ounce including any  
38 adulterants or dilutants is guilty of a crime of the third degree except  
39 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,  
40 a fine of up to~~[\$50,000.00]~~ \$75,000.00 may be imposed;

41 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100  
42 milligrams or more including any adulterants or dilutants, or  
43 phencyclidine, or its analog, in a quantity of 10 grams or more  
44 including any adulterants or dilutants, is guilty of a crime of the first  
45 degree. Except as provided in 2C:35-12, the court shall impose a term  
46 of imprisonment which shall include the imposition of a minimum term,

1 fixed at, or between, one-third and one-half of the sentence imposed  
2 by the court, during which the defendant shall be ineligible for parole.  
3 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a  
4 fine of up to~~[\$300,000.00]~~ \$500,000.00 may be imposed;

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

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

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

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

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

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

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

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

42 c. Where the degree of the offense for violation of this section  
43 depends on the quantity of the substance, the quantity involved shall  
44 be determined by the trier of fact. Where the indictment or accusation  
45 so provides, the quantity involved in individual acts of manufacturing,  
46 distribution, dispensing or possessing with intent to distribute may be

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

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

7

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

9 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

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

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

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

38

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

41 1. Any person who violates subsection a. of N.J.S.2C:35-5 by  
42 distributing, dispensing or possessing with intent to distribute a  
43 controlled dangerous substance or controlled substance analog while  
44 on any school property used for school purposes which is owned by or  
45 leased to any elementary or secondary school or school board, or  
46 within 1,000 feet of such school property or a school bus, or while on

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

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

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

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

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

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

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

17

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

19 2C:35-10. Possession, Use or Being Under the Influence, or  
20 Failure to Make Lawful Disposition.

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

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

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

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

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

46 Any person who commits any offense defined in this section while

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

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

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

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

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

28

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

30 2C:35-11. Imitation controlled dangerous substances; distribution,  
31 possession, manufacture, etc.; penalties.

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

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

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

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

45 Any of the following shall constitute prima facie evidence of such  
46 circumstances:

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

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

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

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

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

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

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

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

34

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

36 2C:35-13. Obtaining by Fraud.

37 It shall be unlawful for any person to acquire or obtain possession  
38 of a controlled dangerous substance or controlled substance analog by  
39 misrepresentation, fraud, forgery, deception or subterfuge. It shall be  
40 unlawful for any person to acquire or obtain possession of a forged or  
41 fraudulent certificate of destruction required pursuant to  
42 N.J.S.2C:35-21. A violation of this section shall be a crime of the third  
43 degree except that, notwithstanding the provisions of subsection b. of  
44 N.J.S.2C:43-3, a fine of up to~~[\$30,000.00]~~ \$50,000.00 may be  
45 imposed. Nothing in this section shall be deemed to preclude or limit

1 a prosecution for theft as defined in chapter 20 of this title.  
2 (cf: P.L.1987, c.106, s.1)

3

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

5 2C:37-2. Promoting Gambling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 b. Defenses.

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

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

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

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

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

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

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

40

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

42 2C:37-4. Maintenance of a Gambling Resort.

43 a. A person is guilty of a crime of the fourth degree if, having  
44 substantial proprietary or other authoritative control over premises  
45 which are being used with his knowledge for purposes of activities  
46 prohibited by 2C:37-2 and 2C:37-3, he permits such to occur or

1 continue or makes no effort to prevent its occurrence or continuation  
2 and he accepts or receives money or other property pursuant to an  
3 agreement or understanding with any person whereby he participates  
4 or will participate in the proceeds of such gambling activity on such  
5 premises and notwithstanding the provisions of section 2C:43-3 shall  
6 be subject to a fine of not more than~~[\$15,000.00]~~ \$25,000.00 and any  
7 other appropriate disposition authorized by 2C:43-2 b.

8 b. A person is guilty of a crime of the fourth degree if, having  
9 substantial proprietary or other authoritative control over premises  
10 open to the general public which are being used with his knowledge  
11 for purposes of gambling activity, he permits such to occur or continue  
12 or makes no effort to prevent its occurrence or continuation and  
13 notwithstanding the provisions of section 2C:43-3 shall be subject to  
14 a fine of not more than~~[\$15,000.00]~~ \$25,000.00 and any other  
15 appropriate disposition authorized by 2C:43-2 b.  
16 (cf: P.L.1979, c.178, s.71)

17

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

19 2C:43-3. Fines and Restitutions. A person who has been convicted  
20 of an offense may be sentenced to pay a fine, to make restitution, or  
21 both, such fine not to exceed:

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

25 (2) \$150,000.00 when the conviction is of a crime of the second  
26 degree;

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

30 (2) \$10,000.00 when the conviction is of a crime of the fourth  
31 degree;

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

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

36 e. Any higher amount equal to double the pecuniary gain to the  
37 offender or loss to the victim caused by the conduct constituting the  
38 offense by the offender. In such case the court shall make a finding as  
39 to the amount of the gain or loss, and if the record does not contain  
40 sufficient evidence to support such a finding the court may conduct a  
41 hearing upon the issue. For purposes of this section the terms "gain"  
42 means the amount of money or the value of property derived by the  
43 offender and "loss" means the amount of value separated from the  
44 victim and includes any reasonable and necessary expense incurred by  
45 the owner in recovering or replacing lost, stolen or damaged property,  
46 and, with respect to property of a research facility, includes the cost

1 of repeating an interrupted or invalidated experiment or loss of profits.  
2 The term "victim" shall mean a person who suffers a personal physical  
3 or psychological injury or death or incurs loss of or injury to personal  
4 or real property as a result of a crime committed against that person,  
5 or in the case of a homicide, the nearest relative of the victim. The  
6 term "gain" shall also mean, where appropriate, the amount of any tax,  
7 fee, penalty and interest avoided, evaded, or otherwise unpaid or  
8 improperly retained or disposed of;

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

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

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

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

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

30

31 13. This act shall take effect immediately.

32

33

34

35

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