

CHAPTER 181

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

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

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

Leader of narcotics trafficking network.

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

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

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

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

It shall not be a defense to a prosecution under this section that such controlled dangerous substance or controlled substance analog was brought into or transported in this State solely for ultimate distribution or dispensing in another jurisdiction; nor shall it be a defense that any profit was intended to be made in another jurisdiction.

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

Maintaining or operating a controlled dangerous substance production facility.

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

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

substance analogs at any time manufactured or stored at such premises, place or facility, whichever is greater.

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

Manufacturing, distributing or dispensing.

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

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

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

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

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

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

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

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

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

(6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine, or its analog, in a quantity of 10 grams or more including any adulterants or dilutants, is guilty of a crime of the first degree. Except as provided in N.J.S.2C:35-12, the court shall impose a term of imprisonment which shall include the imposition of a minimum term, fixed at, or between, one-third and one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

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

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

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

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

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

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

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

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

c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

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

Employing a juvenile in a drug distribution scheme.

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

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

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

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

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

C.2C:35-7 Distribution on or within 1,000 feet of school property.

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

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

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

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

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

In a prosecution under this section, a map produced or reproduced by any municipal or county engineer for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or a true copy of such a map, shall, upon proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas, provided that the governing body of the municipality or county has adopted a resolution or ordinance approving the map as official finding and record of the location and boundaries of the area or areas on or within 1,000 feet of the school property. Any map approved pursuant to this section may be changed from time to time by the governing body of the municipality or county. The original of every map approved or revised pursuant to this section, or a true copy thereof, shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. Nothing in this section shall be construed to preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense; nor shall this section be construed to preclude the use or admissibility of any map or diagram other than one which has been approved by the governing body of a municipality or county, provided that the map or diagram is otherwise admissible pursuant to the Rules of Evidence.

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

Possession, use or being under the influence, or failure to make lawful disposition.

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

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the

substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to:

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

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

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

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

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

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

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

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

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

Imitation controlled dangerous substances; distribution, possession, manufacture, etc.; penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Obtaining by fraud.

2C:35-13. Obtaining by Fraud.

It shall be unlawful for any person to acquire or obtain possession of a controlled dangerous substance or controlled substance analog by misrepresentation, fraud, forgery, deception or subterfuge. It shall be unlawful for any person to acquire or obtain possession of a forged or fraudulent certificate of destruction required pursuant to N.J.S.2C:35-21. A violation of this section shall be a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$50,000.00 may be imposed. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of this title.

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

Promoting gambling.

2C:37-2. Promoting Gambling.

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

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

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

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

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

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

A person who violates the provisions of subsection a. by engaging in bookmaking to the extent he receives or accepts three or more bets in any two-week period is guilty of a crime of the fourth degree and notwithstanding the provisions of section N.J.S.2C:43-3 shall be subject to a fine of not more than \$25,000.00 and any other appropriate disposition authorized by N.J.S.2C:43-2b. Otherwise, promoting gambling is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than \$10,000.00 and any other appropriate disposition authorized by N.J.S.2C:43-2b.

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

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

Possession of gambling records.

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

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

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

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

b. Defenses.

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

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

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

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

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

Otherwise, possession of gambling records is a disorderly persons offense and notwithstanding the provisions of section 2C:43-3 shall be subject to a fine of not more than \$20,000.00 and any other appropriate disposition authorized by N.J.S.2C:43-2 b.

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

Maintenance of a gambling resort.

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

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

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

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

Fines and restitutions.

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

a. (1) \$200,000.00 when the conviction is of a crime of the first degree;

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

b. (1) \$15,000.00 when the conviction is of a crime of the third degree;

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

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

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

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term "victim" shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim. The terms "gain" and "loss" shall also mean, where appropriate, the amount of any tax, fee, penalty and interest avoided, evaded, or otherwise unpaid or improperly retained or disposed of;

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

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

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

The restitution ordered paid to the victim shall not exceed the victim's loss, except that in any case involving the failure to pay any State tax, the amount of restitution to the State shall be the

full amount of the tax avoided or evaded, including full civil penalties and interest as provided by law. In any case where the victim of the offense is any department or division of State government, the court shall order restitution to the victim. Any restitution imposed on a person shall be in addition to any fine which may be imposed pursuant to this section.

13. This act shall take effect immediately.

Approved August 1, 1997.