

SENATE, No. 191

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator LESNIAK

1 AN ACT concerning the crime of being a leader of a narcotics  
2 trafficking network and amending N.J.S.2C:35-3.

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

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

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

9 a. 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 or to death  
20 as provided in subsection b. of this section. Notwithstanding the  
21 provisions of subsection a. of N.J.S.2C:43-3, the court may also  
22 impose a fine not to exceed \$500,000.00 or five times the street value  
23 of the controlled dangerous substance or controlled substance analog  
24 involved, whichever is 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 is 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 b. Any person convicted under subsection a. may be sentenced to  
20 death as provided hereinafter:

21 (1) The court shall conduct a separate sentencing proceeding to  
22 determine whether the defendant should be sentenced to death or  
23 sentenced pursuant to the provisions of subsection a. of this section.

24 Where the defendant has been tried by a jury, the proceeding shall  
25 be conducted by the judge who presided at the trial and before the jury  
26 which determined the defendant's guilt, except that, for good cause,  
27 the court may discharge that jury and conduct the proceeding before  
28 a jury empaneled for the purpose of the proceeding. Where the  
29 defendant has entered a plea of guilty or has been tried without a jury,  
30 the proceeding shall be conducted by the judge who accepted the  
31 defendant's plea or who determined the defendant's guilt and before a  
32 jury empaneled for the purpose of the proceeding. On motion of the  
33 defendant and with consent of the prosecuting attorney the court may  
34 conduct a proceeding without a jury. Nothing in this subsection shall  
35 be construed to prevent the participation of an alternate juror in the  
36 sentencing proceeding if one of the jurors who rendered the guilty  
37 verdict becomes ill or is otherwise unable to proceed before or during  
38 the sentencing proceeding.

39 (2) (a) At the proceeding, the State shall have the burden of  
40 establishing beyond a reasonable doubt the existence of any  
41 aggravating factors set forth in paragraph (4) of this subsection. The  
42 defendant shall have the burden of producing evidence of the existence  
43 of any mitigating factors set forth in paragraph (5) of this subsection  
44 but shall not have a burden with regard to the establishment of a  
45 mitigating factor.

46 (b) The admissibility of evidence offered by the State to establish

1 any of the aggravating factors shall be governed by the rules governing  
2 the admission of evidence at criminal trials. The defendant may offer,  
3 without regard to the rules governing the admission of evidence at  
4 criminal trials, reliable evidence relevant to any of the mitigating  
5 factors. If the defendant produces evidence in mitigation which would  
6 not be admissible under the rules governing the admission of evidence  
7 at criminal trials, the State may rebut that evidence without regard to  
8 the rules governing the admission of evidence at criminal trials.

9 (c) Evidence admitted at the trial, which is relevant to the  
10 aggravating and mitigating factors set forth in paragraphs (4) and (5)  
11 of this subsection, shall be considered without the necessity of  
12 reintroducing that evidence at the sentencing proceeding; provided  
13 that the fact finder at the sentencing proceeding was present as either  
14 the fact finder or the judge at the trial.

15 (d) The State and the defendant shall be permitted to rebut any  
16 evidence presented by the other party at the sentencing proceeding and  
17 to present argument as to the adequacy of the evidence to establish the  
18 existence of any aggravating or mitigating factor.

19 (e) Prior to the commencement of the sentencing proceeding, or at  
20 such time as he has knowledge of the existence of an aggravating  
21 factor, the prosecuting attorney shall give notice to the defendant of  
22 the aggravating factors which he intends to prove in the proceeding.

23 (f) Evidence offered by the State with regard to the establishment  
24 of a prior conviction pursuant to paragraph (4)(a) of this subsection  
25 may include the identity and age of the victim, the manner of death in  
26 cases of murder and manslaughter and the relationship, if any, of the  
27 victim to the defendant.

28 (3) The jury or, if there is no jury, the court shall return a special  
29 verdict setting forth in writing the existence or nonexistence of each  
30 of the aggravating and mitigating factors set forth in paragraphs (4)  
31 and (5) of this subsection. If any aggravating factor is found to exist,  
32 the verdict shall also state whether it outweighs beyond a reasonable  
33 doubt any one or more mitigating factors.

34 (a) If the jury or the court finds that any aggravating factors exist  
35 and that all of the aggravating factors outweigh beyond a reasonable  
36 doubt all of the mitigating factors, the court shall sentence the  
37 defendant to death.

38 (b) If the jury or the court finds that no aggravating factors exist,  
39 or that all of the aggravating factors which exist do not outweigh all  
40 of the mitigating factors, the court shall sentence the defendant  
41 pursuant to subsection a.

42 (c) If the jury is unable to reach a unanimous verdict, the court  
43 shall sentence the defendant pursuant to subsection a.

44 (4) The aggravating factors which may be found by the jury or the  
45 court are:

46 (a) The defendant has been convicted, at any time, of murder,

1 manslaughter, aggravated assault, sexual assault, kidnapping or  
2 carjacking. For purposes of this section, a conviction shall be deemed  
3 final when sentence is imposed and may be used as an aggravating  
4 factor regardless of whether it is on appeal;

5 (b) The defendant is a persistent offender as defined in subsection  
6 a. of N.J.S.2C:44-3; or

7 (c) The defendant employed a juvenile in the drug distribution  
8 scheme.

9 (5) The mitigating factors which may be found by the jury or the  
10 court are:

11 (a) The age of the defendant at the time of the crime;

12 (b) The defendant's capacity to appreciate the wrongfulness of his  
13 conduct or to conform his conduct to the requirements of the law was  
14 significantly impaired as the result of mental disease or defect, but not  
15 to a degree sufficient to constitute a defense to prosecution;

16 (c) The defendant was under unusual and substantial duress  
17 insufficient to constitute a defense to prosecution;

18 (d) The defendant has no significant history of prior criminal  
19 activity;

20 (e) The defendant rendered substantial assistance to the State in the  
21 prosecution of another person; or

22 (f) Any other factor which is relevant to the defendant's character  
23 or record or to the circumstances of the offense.

24 c. The sentencing proceeding set forth in subsection b. of this  
25 section shall not be waived by the prosecuting attorney.

26 d. Prior to the jury's sentencing deliberations, the trial court shall  
27 inform the jury of the sentence which may be imposed pursuant to  
28 subsection a. of this section on the defendant if the defendant is not  
29 sentenced to death. The jury shall also be informed that a failure to  
30 reach a unanimous verdict shall result in sentencing by the court  
31 pursuant to subsection a.

32 e. A juvenile who has been tried as an adult and convicted of being  
33 a leader of a narcotics trafficking network shall not be sentenced  
34 pursuant to the provisions of subsection b. but shall be sentenced  
35 pursuant to the provisions of subsection a. of this section.

36 f. In a sentencing proceeding conducted pursuant to this section,  
37 no evidence shall be admissible concerning the method or manner of  
38 execution which would be imposed on a defendant sentenced to death.

39 g. Every judgment of conviction which results in a sentence of  
40 death under this section shall be appealed, pursuant to the Rules of the  
41 Court, to the Supreme Court.

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

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44 2 . This act shall take effect immediately.

## STATEMENT

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3 This bill would permit the imposition of the death penalty in certain  
4 circumstances on persons convicted of the crime of being a leader of  
5 a narcotics trafficking network. The bill provides for a separate  
6 post-conviction proceeding to determine whether the death penalty  
7 should be imposed on a person convicted of being the leader of a  
8 narcotics trafficking network. The procedures to be followed during  
9 this sentencing proceeding are modeled on the procedures presently  
10 set forth in N.J.S.2C:11-3 governing the imposition of the death  
11 penalty on those persons convicted of murder.

12 During this sentencing proceeding, the following aggravating  
13 factors set forth in the bill are to be considered: the defendant was  
14 previously convicted of murder, manslaughter, kidnapping, aggravated  
15 assault, sexual assault or carjacking; the defendant is a persistent  
16 offender or the defendant employed a juvenile in the narcotics  
17 distribution scheme. The mitigating factors set forth in the bill are:  
18 the defendant's age; the defendant's mental capacity; whether the  
19 defendant was under unusual and substantial duress; the defendant's  
20 lack of significant history of prior criminal activity; whether the  
21 defendant cooperated with law enforcement officials and any other  
22 factor relevant to the defendant's character or record.

23 If the jury determines that one or more aggravating factors exist  
24 and that the aggravating factors outweigh any mitigating factors  
25 beyond a reasonable doubt, the death penalty would be imposed. If no  
26 aggravating factor is found, if the mitigating factors are found to  
27 outweigh the aggravating factors or if the jury is unable to reach an  
28 unanimous verdict, the present penalty of life imprisonment with no  
29 eligibility for parole for 25 years would be imposed.

30 Any sentence of death imposed upon a person convicted of being  
31 a leader of a narcotics trafficking network would be subject to review  
32 by the Supreme Court.

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37 Permits the imposition of the death penalty on persons convicted of  
38 being a leader of narcotics trafficking network in certain  
39 circumstances.