

2C:35-12

LEGISLATIVE HISTORY CHECKLIST

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(Drug profiteering)

NJSA: 2C:35-12

LAWS OF: 1997 CHAPTER: 187

BILL NO: A2958

SPONSOR(S): LeFevre and others

DATE INTRODUCED: May 12, 1997

COMMITTEE: ASSEMBLY: Law & public Safety
SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 23, 1997
SENATE: June 26, 1997

DATE OF APPROVAL: August 4, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
REPORTS: Yes

HEARINGS: No

Recommendation referred to in committee statement--attached:
974.90 New Jersey. Dept. of Law & Public Safety.
N222 Report...on the need to update the comprehensive drug reform act
1996i of 1987. December 9, 1996. Trenton, 1996.

(recommendation #11)

See newspaper clippings--attached:
"Drug-law bills signed by Whitman," 8-5-97, Philadelphia Inquirer.
"Whitman signs 3-bill package..." 8-5-97 Asbury Park press.

KBP:pp

P.L. 1997, CHAPTER 187, *approved August 4, 1997*
Assembly, No. 2958

1 **AN ACT** concerning illegal drug profiteering, amending N.J.S.2C:35-
2 12 and P.L. 1991, c. 329 and supplementing Title 2C of the New
3 Jersey Statutes.

4

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

7

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

9 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

10 Whenever an offense defined in this chapter specifies a mandatory
11 sentence of imprisonment which includes a minimum term during
12 which the defendant shall be ineligible for parole, [or] a mandatory
13 extended term which includes a period of parole ineligibility, or an
14 anti-drug profiteering penalty pursuant to section 2 of P.L. , c.
15 (C.) (now pending before the Legislature as this bill), the court
16 upon conviction shall impose the mandatory sentence or anti-drug
17 profiteering penalty unless the defendant has pleaded guilty pursuant
18 to a negotiated agreement or, in cases resulting in trial, the defendant
19 and the prosecution have entered into a post-conviction agreement,
20 which provides for a lesser sentence [or], period of parole ineligibility
21 or anti-drug profiteering penalty. The negotiated plea or
22 post-conviction agreement may provide for a specified term of
23 imprisonment within the range of ordinary or extended sentences
24 authorized by law, a specified period of parole ineligibility, a specified
25 fine, a specified anti-drug profiteering penalty, or other disposition.
26 In that event, the court at sentencing shall not impose a lesser term of
27 imprisonment, lesser period of parole ineligibility [or], lesser fine or
28 lesser anti-drug profiteering penalty than that expressly provided for
29 under the terms of the plea or post-conviction agreement.

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

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 2. (New section) An additional chapter, chapter 35A, is added to
2 Title 2C as follows:

3 N.J.S. 2C:35A-1. Short Title.

4 This act shall be known and may be cited as the "Anti-Drug
5 Profiteering Act."

6 N.J.S.2C:35A-2. Declaration of Policy and Legislative Findings.

7 The Legislature hereby finds and declares the following:

8 a. Persons who engage in drug trafficking activities for profit are
9 a form of professional criminal, and deserve enhanced punishment that
10 is specially adapted to remove the economic incentives inherent in such
11 criminal activities.

12 b. It shall be the overriding objective of the provisions of this
13 chapter to eliminate to the greatest extent possible the economic
14 incentives inherent in commercial drug distribution activities at all
15 levels within the drug distribution chain. In order to accomplish this
16 objective, it is appropriate to impose stern economic sanctions in the
17 form of monetary penalties against certain convicted drug offenders.
18 So as to ensure that such economic sanctions are specially adapted and
19 proportionate to the true nature, extent and profitability of the
20 specific criminal activities involved, such monetary penalties should
21 in appropriate cases be based upon a multiple of the street level value
22 of all the illicit substances involved. The use of such a mechanism for
23 calculating an appropriate monetary penalty will help to offset and
24 overcome the perception of some drug offenders, and especially those
25 who are well insulated within a drug trafficking network, that they face
26 only a comparatively low risk of immediate detection and punishment.
27 The Legislature, by adoption of the "Comprehensive Drug Reform
28 Act," N.J.S.2C:35-1 et al., recognized the utility of such a mechanism
29 by providing for the imposition of discretionary cash fines which may
30 be based upon three, or in some cases five, times the street value of
31 the illicit drugs involved.

32 c. The imposition of monetary penalties pursuant to this act is
33 intended to serve as an adjunct to forfeiture actions, which are
34 designed to deprive offenders of the proceeds of their criminal
35 activities and of all property used in furtherance of or to facilitate such
36 illegal activities. While the seizure and forfeiture of property in
37 accordance with the provisions of chapters 41 and 64 of this Title and
38 P.L.1994, c.121 (money laundering) remain a critically important
39 means by which to reduce the economic incentive inherent in drug
40 trafficking activities, in many instances, given the efforts undertaken
41 by offenders to conceal and disguise assets and to resort to complex
42 financial transactions and money laundering schemes, it has become
43 increasingly difficult for law enforcement agencies to establish to the
44 required degree of certainty that a given asset or interest in property
45 is subject to forfeiture. Accordingly, it is necessary and appropriate
46 to impose an in personam debt against the defendant which may be

1 satisfied by proceeding against any asset or interest in property
2 belonging to the defendant, whether or not such property can be
3 directly or indirectly linked to criminal activity.

4 d. In order to ensure the maximum deterrent effect of imposing
5 such specially adapted economic sanctions as are required pursuant to
6 the provisions of this act, it shall be the policy of this State to enforce
7 the judgment and to collect the entire debt, or the greatest possible
8 portion thereof, as soon as is feasible following the imposition of the
9 penalty, taking full advantage, where necessary, of this State's long
10 arm jurisdiction and the full faith and credit clause of the Constitution
11 of the United States.

12 N.J.S.2C:35A-3. Criteria for Imposition of Anti-Drug Profiteering
13 Penalty.

14 a. In addition to any other disposition authorized by this title,
15 including but not limited to any fines which may be imposed pursuant
16 to the provisions of N.J.S.2C:43-3 and except as may be provided by
17 section 5 of this chapter, where a person has been convicted of a crime
18 defined in chapter 35 or 36 of this Title or an attempt or conspiracy to
19 commit such a crime, the court shall, upon the application of the
20 prosecutor, sentence the person to pay a monetary penalty in an
21 amount determined pursuant to section 4 of this chapter, provided the
22 court finds at a hearing, which may occur at the time of sentencing,
23 that the prosecutor has established by a preponderance of the evidence
24 one or more of the grounds specified in this section. The findings of
25 the court shall be incorporated in the record, and in making its
26 findings, the court shall take judicial notice of any evidence, testimony
27 or information adduced at the trial, plea hearing or other court
28 proceedings and shall also consider the presentence report and any
29 other relevant information.

30 b. Any of the following shall constitute grounds for imposing an
31 Anti-Drug Profiteering Penalty:

32 (1) The defendant was convicted of: (a) a violation of
33 N.J.S.2C:35-3 (leader of narcotics trafficking network), or (b) a
34 violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime),
35 or (c) an offense defined in chapter 41 of this Title (racketeering)
36 which involved the manufacture, distribution, possession with intent
37 to distribute or transportation of any controlled dangerous substance
38 or controlled substance analog.

39 (2) The defendant is a drug profiteer. A defendant is a drug
40 profiteer when the conduct constituting the crime shows that the
41 person has knowingly engaged in the illegal manufacture, distribution
42 or transportation of any controlled dangerous substance, controlled
43 substance analog or drug paraphernalia as a substantial source of
44 livelihood. In making its determination, the court may consider all of
45 the attending circumstances, including but not limited to the
46 defendant's role in the criminal activity, the nature, amount and purity

1 of the substance involved, the amount of cash or currency involved,
2 the extent and accumulation of the defendant's assets during the course
3 of the criminal activity and the defendant's net worth and his
4 expenditures in relation to his legitimate sources of income.

5 (3) The defendant is a wholesale drug distributor. (a) A defendant
6 is a wholesale drug distributor when the conduct constituting the crime
7 involves the manufacture, distribution or intended or attempted
8 distribution of a controlled dangerous substance or controlled
9 substance analog to any other person for pecuniary gain, knowing,
10 believing, or under circumstances where it reasonably could be
11 assumed that such other person would in turn distribute the substance
12 to another or others for pecuniary gain. It shall not be necessary for
13 the prosecution to establish to whom the substance was distributed or
14 intended or attempted to be distributed, and the court may draw all
15 reasonable inferences from the nature of the defendant's conduct and
16 the substance involved that such other person, while not specifically
17 identified, would in turn distribute the substance to another or others
18 for pecuniary gain. In making its determination, the court shall
19 consider all of the attending circumstances, including but not limited
20 to the defendant's role in the criminal activity, the nature, amount and
21 purity of the substance involved, and the likelihood that a substance of
22 such purity would be intended to be distributed directly to the ultimate
23 consumer of the substance.

24 (b) Notwithstanding that the prosecutor has established that the
25 defendant is a wholesale drug distributor within the meaning of this
26 paragraph, the court shall not impose an anti-drug profiteering penalty
27 on that ground if the defendant establishes by a preponderance of the
28 evidence at the hearing that his participation in the conduct
29 constituting the crime was limited solely to operating a conveyance
30 used to transport a controlled dangerous substance or controlled
31 substance analog, or loading or unloading the substance into such a
32 conveyance or storage facility. Nothing in this paragraph shall be
33 construed to establish a basis for not imposing a penalty where the
34 prosecutor has established any other ground or grounds specified in
35 this section for the imposition of an anti-drug profiteering penalty.

36 (4) The defendant is a professional drug distributor. A
37 professional drug distributor is a person who has at any time, for
38 pecuniary gain, unlawfully distributed a controlled dangerous
39 substance, controlled substance analog or drug paraphernalia to three
40 or more different persons, or on five or more separate occasions
41 regardless of the number of persons to whom the substance or
42 paraphernalia was distributed.

43 c. In making its determination, the court may rely upon expert
44 opinion in the form of live testimony or by affidavit, or by such other
45 means as the court deems appropriate.

46 d. For the purposes of this chapter, an act is undertaken for

1 pecuniary gain if it involves or contemplates the transfer of anything
2 of value in exchange for a controlled dangerous substance, controlled
3 substance analog or drug paraphernalia, provided that the thing of
4 value received or intended to be received in exchange for the
5 substance or paraphernalia is or was reasonably believed to be of a
6 higher value than that expended by the defendant or by any other
7 person with whom the actor is acting in concert, to acquire or
8 manufacture the substance or paraphernalia. It shall also include any
9 act which would constitute a violation of subsection a. of N.J.S.2C:35-
10 5, N.J.S.2C:35-11 or N.J.S.2C:36-3 for which the actor was paid or
11 expected to be paid in return for performing such act. There shall be
12 a rebuttable presumption at the hearing that any manufacturing,
13 distribution or possession with intent to distribute which contemplates
14 or involves the payment or exchange of anything of value constitutes
15 an act undertaken for pecuniary gain. It shall not be necessary for the
16 prosecution to establish that any intended profit or payment was
17 actually received; nor shall it be relevant that the act, payment in
18 return for such act or the transfer of anything of value in exchange for
19 the substance or paraphernalia, occurred or was intended to occur in
20 another jurisdiction.

21 N.J.S.2C:35A-4. Calculation of Anti-Drug Profiteering Penalty.

22 a. Where the prosecutor has established one or more grounds for
23 imposing an Anti-Drug Profiteering Penalty pursuant to section 3 of
24 this chapter, the court shall assess a monetary penalty as follows:

25 (1) \$200,000.00 in the case of a crime of the first degree;
26 \$100,000.00 in the case of a crime of the second degree; \$50,000.00
27 in the case of a crime of the third degree; \$25,000.00 in the case of a
28 crime of the fourth degree; or

29 (2) an amount equal to three times the street value of all controlled
30 dangerous substances or controlled substance analogs involved, or
31 three times the market value of all drug paraphernalia involved, if this
32 amount is greater than that provided in paragraph (1) of this
33 subsection.

34 b. When the court is for any reason unable to determine the amount
35 of the penalty pursuant to paragraph (2) of subsection a., the court
36 shall assess a penalty in the amount appropriate to the degree of the
37 offense as provided in paragraph (1) of subsection a.

38 c. In determining the street value of the substance involved or the
39 market value of drug paraphernalia involved, the court shall take into
40 account all amounts of the substance or paraphernalia reasonably
41 believed to have been involved in the course of the criminal activity in
42 which the defendant knowingly participated, and it shall not be
43 relevant for the purposes of this section that some of those amounts
44 or paraphernalia were involved in acts or transactions which occurred,
45 or which were intended to occur, in another jurisdiction.

46 d. Where the prosecution requests that the court assess a penalty

1 in an amount calculated pursuant to paragraph (2) of subsection a., the
2 prosecutor shall have the burden of establishing by a preponderance of
3 the evidence the appropriate amount of the penalty to be assessed
4 pursuant to that paragraph. In making its finding, the court shall take
5 judicial notice of any evidence, testimony or information adduced at
6 trial, plea hearing or other court proceedings and shall also consider
7 the presentence report and other relevant information, including expert
8 opinion in the form of live testimony or by affidavit. The court's
9 findings shall be incorporated in the record, and such findings shall not
10 be subject to modification by an appellate court except upon a showing
11 that the finding was totally lacking support in the record or was
12 arbitrary and capricious.

13 N.J.S.2C:35A-5. Revocation or Reduction of Penalty Assessment.

14 The court shall not revoke or reduce a penalty imposed pursuant to
15 this chapter except in accordance with the provisions of N.J.S.2C:35-
16 12. An anti-drug profiteering penalty imposed pursuant to this chapter
17 shall not be deemed a fine for purposes of N.J.S.2C:46-3.

18 N.J.S.2C:35A-6. Payment Schedule.

19 The court may, for good cause shown, and subject to the provisions
20 of this section, grant permission for the payment of a penalty assessed
21 pursuant to this chapter to be made within a specified period of time
22 or in specified installments, provided however that the payment
23 schedule fixed by the court shall require the defendant to pay the
24 penalty in the shortest period of time consistent with the nature and
25 extent of his assets and his ability to pay, and further provided that the
26 prosecutor shall be afforded the opportunity to present evidence or
27 information concerning the nature, extent and location of the
28 defendant's assets or interests in property which are or might be
29 subject to levy and execution. In such event, the court may only grant
30 permission for the payment to be made within a specified period of
31 time or installments with respect to that portion of the assessed
32 penalty which would not be satisfied by the liquidation of property
33 which is or may be subject to levy and execution, unless the court finds
34 that the immediate liquidation of such property would result in undue
35 hardship to innocent persons. If no permission to make payment
36 within a specified period of time or in installments is embodied in the
37 sentence, the entire penalty shall be payable forthwith.

38 N.J.S.2C:35A-7. Relation to Other Dispositions.

39 a. An anti-drug profiteering penalty assessed pursuant to this
40 chapter shall be imposed and paid in addition to any penalty required
41 to be imposed pursuant to N.J.S.2C:35-15 and N.J.S.2C:43-3.1, any
42 fee required to be imposed pursuant to N.J.S. 2C:35-20, and any other
43 fine, penalty, fee or order for restitution which may be imposed.

44 b. An anti-drug profiteering penalty imposed pursuant to this
45 chapter shall be in addition to and not in lieu of any forfeiture or other
46 cause of action instituted pursuant to chapter 41 or 64 of this Title,

1 and nothing in this chapter shall be construed in any way to preclude,
2 preempt or limit any such cause of action. A defendant shall not be
3 entitled to receive credit toward the payment of a penalty imposed
4 pursuant to this chapter for the value of property forfeited, or subject
5 to forfeiture, pursuant to the provision of chapter 41 and 64 of this
6 Title.

7 N.J.S.2C:35A-8. Collection and Distribution.

8 All penalties assessed pursuant to this chapter shall be docketed and
9 collected as provided for collection of fines, penalties and restitution
10 in chapter 46 of this Title. The Attorney General or prosecutor may
11 prosecute an action to collect penalties imposed pursuant to this
12 chapter. All penalties assessed pursuant to this chapter shall be
13 disposed of, distributed, appropriated and used as if the collected
14 penalties were the proceeds of property forfeited pursuant to chapter
15 64 of this Title.

16

17 3. Section 13 of P.L.1991, c.329 (C.2C:46-4.1) is amended to read
18 as follows:

19 13. Moneys that are collected in satisfaction of any assessment
20 imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or
21 in satisfaction of restitution or fines imposed in accordance with the
22 provisions of Title 2C of the New Jersey Statutes or with the
23 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), shall be
24 applied in the following order:

25 a. first, in satisfaction of all assessments imposed pursuant to
26 section 2 of P.L.1979, c.396 (C.2C:43-3.1);

27 b. second, in satisfaction of any restitution ordered;

28 c. third, in satisfaction of all assessments imposed pursuant to
29 section 11 of P.L.1993, c.220 (C.2C:43-3.2);

30 d. fourth, in satisfaction of any forensic laboratory fee assessed
31 pursuant to N.J.S.2C:35-20;

32 e. fifth, in satisfaction of any mandatory Drug Enforcement and
33 Demand Reduction penalty assessed pursuant to N.J.S.2C:35-15;

34 [and]

35 f. sixth, in satisfaction of any anti-drug profiteering penalty
36 imposed pursuant to section 2 of P.L. , c. (C.) (now pending
37 before the Legislature as this bill); and

38 g. seventh, in satisfaction of any fine.

39 (cf:1995, c.281, s.3)

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41 4. This act shall take effect immediately.

STATEMENT

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This bill would impose a new "anti-drug profiteering penalty" on persons who deal large amounts of drugs for profit. The penalty, which would be imposed by the court upon the application of the prosecutor, would consist of \$200,000 where the defendant is convicted of a crime of the first degree, \$100,000 in the case of a crime of the second degree, \$50,000 in the case of a crime of the third degree and \$25,000 in the case of a crime of the fourth degree. Alternatively, the court would impose an amount equal to three times the street value of all controlled dangerous substances or controlled substance analogs involved, if this amount is greater. The penalty could be satisfied by a judgment against any of the defendant's assets.

Drug dealers could be subject to the penalty if any of the following four provisions apply:

(1) The defendant was convicted of a violation of N.J.S.2C:35-3 (leader of narcotics trafficking network); a violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime); or a racketeering offense defined in chapter 41 of Title 2C of which involved drug dealing.

(2) The defendant is a "drug profiteer."

The bill provides that a defendant is a "drug profiteer" when the conduct constituting the crime of which he was convicted shows that he "has knowingly engaged in the illegal manufacture, distribution or transportation of any CDS or drug paraphernalia as a substantial source of livelihood."

(3) The defendant is a "wholesale drug distributor."

The bill provides that a defendant is a "wholesale drug distributor" when the conduct constituting the crime of which he was convicted involved the manufacture, distribution or intent to distribute a CDS to any other person for pecuniary gain, "knowing, believing, or under circumstances where it reasonably could be assumed that the other person would, in turn, distribute the CDS to another for pecuniary gain."

(4) The defendant is a "professional drug distributor." The bill provides that a defendant is a "professional drug distributor" if he, "at any time, for pecuniary gain, unlawfully distributed a CDS or drug paraphernalia to three or more different persons or on five or more separate occasions."

This bill embodies Recommendation #11 and a portion of Recommendation #4 of the Attorney General's "Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

Imposes anti-drug profiteering penalty against certain drug dealers.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2958

STATE OF NEW JERSEY

DATED: JUNE 9, 1997

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 2958.

Assembly Bill No. 2958, the "Anti-Drug Profiteering Act," authorizes enhanced penalties for persons found guilty of dealing large amounts of drugs for profit.

Under the provisions of the bill, the court, upon application of the prosecutor, is authorized to impose an additional monetary penalty on such defendants. In the case of a person convicted of a crime of the first degree, the additional penalty would be \$200,000; \$100,000 in the case of a crime of the second degree; \$50,000 in the case of a crime of the third degree; and \$25,000 in the case of a crime of the fourth degree. Alternatively, the court may impose a penalty in an amount equal to three times the street value of all the controlled dangerous substances or controlled substance analogs involved in the crime if that amount is greater. The bill specifies that the penalty may be satisfied by a judgment against any of the defendant's assets.

A drug dealer would be subject to these enhanced penalties if any of the following conditions apply:

(1) The defendant is convicted of a violation of N.J.S.2C:35-3 (leader of a narcotics trafficking network); a violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime); or a racketeering offense defined in chapter 41 of Title 2C of the New Jersey Statutes which involves drug dealing.

(2) The defendant is a "drug profiteer." The bill provides that a defendant is a "drug profiteer" when the conduct constituting the crime for which he was convicted shows that he "has knowingly engaged in the illegal manufacture, distribution or transportation of any CDS [controlled dangerous substance] or drug paraphernalia as a substantial source of livelihood."

(3) The defendant is a "wholesale drug distributor." A defendant qualifies as a "wholesale drug distributor" when the conduct constituting the crime for which he is convicted involves the manufacture, distribution or intent to distribute a CDS [controlled dangerous substance] to another for pecuniary gain, "knowing, believing, or under circumstances where it reasonably could be assumed that the other person would, in turn, distribute the CDS to

another for pecuniary gain."

(4) The defendant is a "professional drug distributor." A defendant is considered a "professional drug distributor" if he "at any time, for pecuniary gain, unlawfully distributed a CDS [controlled dangerous substance] or drug paraphernalia to three or more different persons or on five or more separate occasions."

The provisions of this bill embody proposals set forth in Recommendation 11 and Recommendation 4 of the Attorney General's "Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

FISCAL NOTE TO
ASSEMBLY, No. 2958
STATE OF NEW JERSEY

DATED: JULY 9, 1997

Assembly Bill No. 2958 of 1997 the "Anti-Drug Profiteering Act," authorizes enhanced penalties for persons found guilty of dealing large amounts of drugs for profit.

Under the bill, the court, upon application of the prosecutor, is authorized to impose an additional monetary penalty on such defendants. In the case of a person convicted of a crime of the first degree, the additional penalty would be \$200,000; \$100,000 in the case of a crime of the second degree; \$50,000 in the case of a crime of the third degree; and \$25,000 in the case of a crime of the fourth degree. Alternatively, the court may impose a penalty in an amount equal to three times the street value of all the controlled dangerous substances or controlled substance analogs involved in the crime if that amount is greater. The bill specifies that the penalty may be satisfied by a judgment against any of the defendant's assets.

A drug dealer would be subject to these enhanced penalties if any of the following conditions apply:

- (1) The defendant is convicted of a violation of N.J.S.2C:35-3 (leader of a narcotics trafficking network); a violation of subsection g. of N.J.S.2C:5-2 (leader of organized crime); or a racketeering offense defined in chapter 41 of Title 2C of the New Jersey Statutes which involves drug dealing.
- (2) The defendant is a "drug profiteer." The bill provides that a defendant is a "drug profiteer" when the conduct constituting the crime for which he was convicted shows that he "has knowingly engaged in the illegal manufacture, distribution or transportation of any CDS [controlled dangerous substance] or drug paraphernalia as a substantial source of livelihood."
- (3) The defendant is a "wholesale drug distributor." A defendant qualifies as a "wholesale drug distributor" when the conduct constituting the crime for which he is convicted involves the manufacture, distribution or intent to distribute a CDS [controlled dangerous substance] to another for pecuniary gain, "knowing, believing, or under circumstances where it reasonably could be assumed that the other person would, in turn, distribute the CDS to another for pecuniary gain."
- (4) The defendant is a "professional drug distributor." A defendant is considered a "professional drug distributor" if he "at any time, for pecuniary gain, unlawfully distributed a CDS [controlled dangerous substance] or drug paraphernalia to three or more different persons or

on five or more separate occasions."

The Administrative Office of Courts (AOC) states that in 1995 there were six convictions under 2C:35-3 (leader of a narcotics trafficking network) and two for racketeering offenses. The AOC further states that in 1995 there were 3,507 convictions under 2C:35-5b (manufacturing, distributing or dispensing controlled dangerous substances or controlled dangerous substance analogs). Of those convictions, 172 were for first degree crimes, 707 were for second degree crimes, 2,390 were for third degree crimes and 230 were for fourth degree crimes.

The Office of Legislative Services concurs and adds that based on the convictions noted above, the proposed bill could generate about \$230 million in increased fines. However, because these fines place sixth in a hierarchy of payments of fines assessed on convicted felons by the State, (such as victim restitution, Victim of Crimes Compensation Board, and DEDRE assessments) it seems likely that a portion of the amount owed would remain uncollected.

This fiscal note has been prepared pursuant to P.L.1980, c.67.

774.701
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OFFICE OF THE GOVERNOR NEWS RELEASE

PO BOX-004

CONTACT: Jayne O'Connor
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TRENTON, NJ 08625

RELEASE: MONDAY
Aug. 4, 1997

Gov. Whitman to Sign Booby Trap Legislation and a Law that will Stiffen Penalties for Dealers who Distribute Large Quantities of Drugs

Today Gov. Christie Whitman escalates the war against drug dealers by signing bills that increase penalties for drug dealers and better protect law enforcement officers on the street.

In Paterson she signs A-2957, the bill that increases the penalties for drug dealers who distribute large quantities of marijuana and methamphetamine. The new law will make it a first-degree crime to sell marijuana and methamphetamine in bulk. Additionally, during that ceremony, she will sign A-2958, a bill that imposes an anti-drug profiteering penalty against drug dealers.

In Camden, she signs A-2956, which outlaws the use of booby traps and fortification structures that are commonly used to injure law enforcement officers during drug busts.

"Last month I announced that crime rates had dropped dramatically in 1996, the sharpest drop in the past decade. Our neighborhoods are safer and law enforcement is armed with some of the toughest laws in the country," said Gov. Whitman. "But we can't stop now. Drug use among young people is on the rise. The bills that I am signing today will continue the war on drugs and help combat that disturbing trend."

"The increased penalties that we are putting into place will send a clear message to drug dealers: endanger a law enforcement officer or impede a search and you will pay dearly," said Gov. Whitman. "From now on, major dealers of marijuana and methamphetamine will be treated like the major criminals they are. And, the illegal profits of convicted drug dealers are now fair game for seizure by state authorities."

The bills being signed today implement recommendations made by the Governor in the "Governor's Drug Enforcement, Education and Awareness Program" last October. The legislation was also part of Attorney General Peter Verniero's *Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987*.

"These new laws play a critical role in our overall efforts to further strengthen the state's drug laws," said Verniero. "These tougher penalties not only punish the most culpable drug offenders, but also ensure that our law enforcement community is not put at risk while trying to protect New Jersey."

The booby trap bill, A-2956, sponsored by Assembly Members Guy Talarico (R-Bergen) and Carmine DeSopo (R-Burlington/Camden), steps up the punishment for drug dealers who set booby traps that can harm officers as they attempt to execute search warrants or make arrests. The law makes it a crime of the second

degree to knowingly place a booby trap on property used for the manufacture, distribution, dispensing or possession of controlled dangerous substances.

If the booby trap causes bodily injury to a law enforcement officer, the defendant would be guilty of a crime of the first degree. For a first-degree crime, the maximum sentence is 20 years imprisonment. Second degree crimes carry a maximum penalty of 10 years in prison.

The bill also makes it a third-degree offense to fortify a structure with steel doors, wooden planking, cross bars, alarm systems, dogs or any other means designed to prevent or delay police officers' entry into a building. A third-degree crime carries a maximum penalty of five years of imprisonment.

While in Camden, the Governor also highlighted her administration's efforts to clean up and demolish abandoned buildings in the city which are an invitation to criminal activity and drug transactions. The National Guard, in conjunction with the Departments of Community Affairs and Corrections, has boarded up more than 150 such sites in the area. Gov. Whitman in June signed legislation to create a \$20 million revolving loan program to assist municipalities with the costs associated with the demolition and disposal of unsafe buildings in urban and rural centers.

The drug distribution bill, A-2957, sponsored by Assembly Members Francis J. Blee (R-Atlantic), Joseph Azzolina (R-Middlesex/ Monmouth), increases penalties for the distribution of large quantities of marijuana and methamphetamine to a crime of the first degree.

Now it will be a first degree crime to manufacture, distribute or dispense 25 pounds or more of marijuana, 50 or more marijuana plants, five pounds or more of hashish and more than five ounces of methamphetamine or P2P. Hashish is an extract of the marijuana plant; P2P is an immediate chemical precursor to methamphetamine.

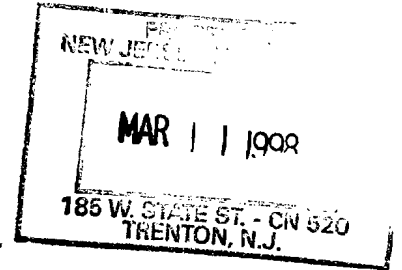
The bill also incorporates the grading of marijuana offenses by the number of live, growing plants into the New Jersey Criminal Code. This enables law enforcement officers to seize young, growing marijuana plants before they are mature. The Division of Criminal Justice reports that each marijuana plant has the potential to produce between one-half and two pounds of marijuana.

Crimes of the second degree would apply to five pounds or more but less than 25 pounds of marijuana, ten plants or more but fewer than 50 marijuana plants, one pound or more but less than five pounds of hashish and one-half ounce or more but less than five ounces of methamphetamine or P2P.

The third bill signed by the Governor, A-2598, was sponsored by Assembly Members Ken LeFevre (R-Atlantic) and Paul Kramer (R-Mercer/Middlesex) and Senator Dick LaRossa (R-Mercer). The bill allows the state to execute a penalty against the assets of a defendant who has been convicted of drug charges whether or not the assets can be directly traced to illegal drug profits. The bill is aimed at further removing the profit motive from illegal drug trafficking. Drug traffickers often convert drug profits into other types of assets to eliminate a possible trace to illegal activity.

As part of her overall strategy to combat drug use and related crimes, Gov. Whitman has also stressed the importance of prevention and education. Education Commissioner Leo Klagholz is working with schools throughout the state to strengthen efforts to keep drugs out of schools and teach students the deadly dangers of substance abuse. At the Governor's direction, the drug education section of the Core Curriculum education standards was fast tracked to ensure that it will be implemented by September. Drug education is one of the components of the Governor's curriculum standards which are currently being implemented by the state's school system.

**REPORT TO THE GOVERNOR
BY THE ATTORNEY GENERAL
ON THE NEED TO UPDATE
THE COMPREHENSIVE
DRUG REFORM ACT OF 1987**



Christine Todd Whitman, Governor

**Peter Verniero, Attorney General
Department of Law & Public Safety**

December 9, 1996

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imposed consecutively to any sentence the defendant may have been serving at the time of the offense.

11. Prosecutors should be provided with new tools to take the profit out of illegally dealing drugs. A new "anti-drug profiteering penalty" should be imposed by the court at the time of sentencing upon the application of the prosecutor if the drug trafficking offense was committed for profit. This penalty, which could be satisfied by executing judgment against any asset of the defendant, would be based upon either the value of illicit drugs involved in the drug trafficking scheme, or the degree of crime for which the defendant was convicted.

12. The use of court-ordered treatment as a sentencing alternative should be increased and enhanced in appropriate cases. N.J.S.A. 2C:35-14, which currently authorizes a court to impose a term of residential treatment instead of a prison term, should be amended to give courts greater authority to "leverage" addicted offenders into treatment. These amendments must be designed, first and foremost, to protect public safety.

Additional Recommendations

1. Law enforcement officers should be given access to telephone subscriber information that is commonly available to non-law enforcement persons. The wiretap law should be revised to allow law enforcement access to subscriber information by means of a subpoena, than by a court order.

2. Persons who distribute or possess with intent to distribute illicit drugs in public parks should be subject to enhanced punishment. Therefore, the drug-free school zone law should be amended to include drug distribution activities occurring on the grounds of a public park, because these areas, like schools, are designed to attract children.

3. Persons convicted of distributing or possessing with intent to distribute illicit drugs should not be entitled to a presumption of nonimprisonment. A drug dealer convicted of a third degree crime should face a realistic possibility that he or she will be sentenced to a term of imprisonment.

4. We should prohibit the modification of vehicles intended to be used for smuggling controlled dangerous substances and other contraband. A new offense should be added to Chapter 5 of the penal code that would prohibit modifying a vehicle, or knowingly driving a vehicle that has been modified, when the purpose for the modification was to facilitate the transportation of a controlled dangerous substance or other contraband.

10. Persons who illegally possess a controlled dangerous substance in a penal institution should be subject to enhanced punishment.

Related to the proposal noted above, a person who illegally possesses a controlled dangerous substance in a prison, detention facility or residential treatment facility should be subject to a sentence enhancement of having the crime upgraded by one degree. Prisoners frequently do not fear the impact of a third or fourth degree charge of simple possession of a controlled dangerous substance because the punishment that may be imposed is relatively insubstantial in comparison to the sentences that they are already serving. Further, the sentence for the new offense of possession should be presumptively imposed consecutively to any sentence the defendant may have been serving at the time of the new offense. Whether the offender is an inmate, employee, contract service provider or visitor, the penal setting is a manifestly inappropriate place in which to violate the law.

11. Prosecutors should be provided with new tools to take the profit out of illegally dealing drugs.

Although some street-level dealers sell drugs to support their own habits, more often than not, drug distribution is motivated by greed. It has become a lucrative trade, generating billions of dollars. All too frequently, drug traffickers are sophisticated in concealing and relocating their ill-gotten profits. When those profits are converted into other assets or transferred to others who hold the assets for the use

and enjoyment of the drug dealer, the State is prevented from recovering the fines, fees, penalties and property which should be forfeited.

Therefore, there should be a new in personam penalty, imposed by the court at the time of sentencing upon the application of the prosecutor, when the drug trafficking offense was committed for profit. The "anti-drug profiteering penalty" would be based upon either a multiple of the value of drugs involved, or the degree of offense for which the defendant was convicted. The in personam penalty could be satisfied by executing judgment against any asset of the defendant, even if it cannot be "traced" to the drug trade. Thus, were the defendant to find his or her hidden assets after release from prison, or to reap new profits, those assets could be seized to pay off the previously imposed penalty.

12. The use of court-ordered treatment as a sentencing alternative should be increased and enhanced in appropriate cases.

The Governor's Program calls for new ways to support drug court programs. One way is to provide judges with new legal tools with which to "leverage" addicts into treatment. N.J.S.A. 2C:35-14, which authorizes a court in certain cases to impose a term of residential drug treatment in lieu of an otherwise mandatory term of imprisonment, may have been well-intentioned and even enlightened by the standards of 1987, was drafted at a time when there was comparatively little information about the efficacy of treatment and about how to improve the chances for rehabilitation. (See, "A Prosecutor's Guide to Treatment," (1996) developed by the American

which it was represented or appeared to be. A person who violates this section 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 in a public park, or while on any school bus, shall be sentenced pursuant to the provisions of section 7 of this chapter (N.J.S. 2C:35-7) [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 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.

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

2C:35-12. Waiver of Mandatory Minimum and Extended Terms

Whenever an offense defined in this chapter specifies a mandatory sentence of imprisonment which includes a minimum term during which the defendant shall be ineligible for parole, or a mandatory extended term which includes a period of parole ineligibility, or when the court imposes an anti-drug profiteering penalty pursuant to section 16 of P.L. , c. (N.J.S. 2C:35A-1 et seq.) (now pending before the Legislature as this

~~bill~~, the court upon conviction shall impose the mandatory sentence or anti-drug profiteering penalty unless the defendant has pleaded guilty pursuant to a negotiated agreement or, in cases resulting in trial, the defendant and the prosecution have entered into a post-conviction agreement, which provides for a lesser sentence or period of parole ineligibility or anti-drug profiteering penalty. The negotiated plea or post-conviction agreement may provide for a specified term of imprisonment within the range of ordinary or extended sentences authorized by law, a specified period of parole ineligibility, a specified fine, a specified anti-drug profiteering penalty, or other disposition. In that event, the court at sentencing shall not impose a lesser term of imprisonment, period of parole ineligibility, a lesser anti-drug profiteering penalty or lesser fine than that expressly provided for under the terms of the plea or post-conviction agreement.

13. N.J.S. 2C:35-14 is amended to read as follows:

2C:35-14. Rehabilitation Program For Drug Dependent Persons; Mandatory Commitment to Residential Treatment Facilities; Revocation; Brief Incarceration In Lieu of Permanent Revocation.

a. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S. 2C:44-1, and except as provided in subsection b. of this Section, whenever a drug or alcohol dependent person is convicted of or adjudicated delinquent for an offense under N.J.S. 2C:35-5, N.J.S. 2C:35-6, Section 1 of P.L. 1987, c. 101 (C. 2C:35-7), N.J.S. 2C:35-10, N.J.S. 2C:35-11, or N.J.S. 2C:35-13, other than a crime of the first degree, the court, upon notice to the prosecutor, may, on motion of the

section. If the defendant is convicted of more than one offense which is otherwise subject to punishment pursuant to this section, the court shall impose a consecutive sentence based upon the most serious offense for which the defendant was convicted. Notwithstanding any other provision of law, nothing herein shall prevent the court from also imposing an extended term pursuant to subsection f. of N.J.S. 2C:43-6 or any other law other than N.J.S. 2C:43-6c, or from also imposing enhanced punishment pursuant to N.J.S. 2C:35-8.

16. An additional chapter, chapter 35A, is added to Title 2C as follows:

N.J.S. 2C:35A-1. Short Title.

This act shall be known and may be cited as the "Anti-Drug Profiteering Act."

N.J.S. 2C:35A-2. Declaration of Policy and Legislative Findings.

The Legislature hereby finds and declares the following:

a. Persons who engage in drug trafficking activities for profit are a form of professional criminal, and deserve enhanced punishment which is specially adapted to remove the economic incentives inherent in such criminal activities.

b. It shall be the overriding objective of the provisions of this chapter to eliminate to the greatest extent possible the economic incentives inherent in commercial drug distribution activities at all levels within the drug distribution chain. In order to accomplish this objective, it is appropriate to impose stern economic sanctions in the form of monetary penalties against certain convicted drug offenders. So as to ensure that such economic sanctions are specially adapted and proportionate to the true nature, extent and

profitability of the specific criminal activities involved, such monetary penalties should in appropriate cases be based upon a multiple of the street level value of all the illicit substances involved. The use of such a mechanism for calculating an appropriate monetary penalty will help to offset and overcome the perception of some drug offenders, and especially those who are well insulated within a drug trafficking network, that they face only a comparatively low risk of immediate detection and punishment. The Legislature, by adoption of the Comprehensive Drug Reform Act of 1986 (L. 1987, c. 106; C. 2C:35-1 et seq.), recognized the utility of such a mechanism by providing for the imposition of discretionary cash fines which may be based upon three, or in some cases five, times the street value of the illicit drugs involved.

c. The imposition of monetary penalties pursuant to this act is intended to serve as an adjunct to forfeiture actions, which are designed to deprive offenders of the proceeds of their criminal activities and of all property used in furtherance of or to facilitate such illegal activities. While the seizure and forfeiture of property in accordance with the provisions of chapters 41 and 64 of this title and P.L. 1994, c. 121 (money laundering) remain a critically important means by which to reduce the economic incentives inherent in drug trafficking activities, in many instances, given the efforts undertaken by offenders to conceal and disguise assets and to resort to complex financial transactions and money laundering schemes, it has become increasingly difficult for law enforcement agencies to establish to the required degree of certainty that a given asset or interest in property is subject to forfeiture. Accordingly, it is necessary and appropriate to impose an in personam debt against the defendant which may be satisfied by proceeding against any

asset or interest in property belonging to the defendant, whether or not such property can be directly or indirectly linked to criminal activity.

d. In order to ensure the maximum deterrent effect of imposing such specially adapted economic sanctions as are required pursuant to the provisions of this act, it shall be the policy of this State to enforce the judgment and to collect the entire debt, or the greatest possible portion thereof, as soon as is feasible following the imposition of the penalty, taking full advantage, where necessary, of this State's long arm jurisdiction and the full faith and credit clause of the Constitution of the United States.

N.J.S. 2C:35A-3. Criteria for Imposition of Anti-Drug Profiteering Penalty.

a. In addition to any disposition authorized by this title, including but not limited to any fines which may be imposed pursuant to the provisions of N.J.S. 2C:43-3 and N.J.S. 2C:44-2, and except as may be provided by section 5 of this chapter, where a person has been convicted of a crime defined in chapter 35 or 36 of this title or an attempt or conspiracy to commit such a crime, the court shall, upon the application of the prosecutor, sentence the person to pay a monetary penalty in an amount determined pursuant to section 4 of this chapter, provided the court finds at a hearing, which may occur at the time of sentencing, that the prosecutor has established by a preponderance of the evidence one or more of the grounds specified in this section. The findings of the court shall be incorporated in the record, and in making its findings, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings and shall also consider the presentence report and any other relevant

information.

Any of the following shall constitute grounds for imposing an Anti-Drug Profiteering Penalty:

1. The defendant was convicted of

- a) a violation of N.J.S. 2C:35-3 (Leader of narcotics Trafficking Network), or
- b) a violation of subsection g. of N.J.S. 2C:5-2 (Leader of Organized Crime), or
- c) an offense defined in chapter 41 of this title (racketeering) which involved the manufacture, distribution, possession with intent to distribute or transportation of any controlled dangerous substance or controlled substance analog.

2. The defendant is a drug profiteer. A defendant is a drug profiteer when the conduct constituting the crime shows that the person has knowingly engaged in the illegal manufacture, distribution or transportation of any controlled dangerous substance, controlled substance analog or drug paraphernalia as a substantial source of livelihood. In making its determination, the court may consider all of the attending circumstances, including but not limited to the defendant's role in the criminal activity, the nature, amount and purity of the substance involved, the amount of cash or currency involved, the extent and accumulation of the defendant's assets during the course of the criminal activity and the defendant's net worth and his expenditures in relation to his legitimate sources of income.

3. The defendant is a wholesale drug distributor. A defendant is a wholesale drug distributor when the conduct constituting the crime involves the manufacture, distribution or intended or attempted distribution of a controlled dangerous substance or controlled

substance analog to any other person for pecuniary gain, knowing, believing, or under circumstances where it reasonably could be assumed that such other person would in turn distribute the substance to another or others for pecuniary gain. It shall not be necessary for the State to establish to whom the substance was distributed or intended or attempted to be distributed, and the court may draw all reasonable inferences from the nature of the defendant's conduct and the substance involved that such other person, while not specifically identified, would in turn distribute the substance to another or others for pecuniary gain. In making its determination, the court shall consider all of the attending circumstances, including but not limited to the defendant's role in the criminal activity, the nature, amount and purity of the substance involved, and the likelihood that a substance of such purity would be intended to be distributed directly to the ultimate consumer of the substance. Notwithstanding that the prosecutor has established that the defendant is a wholesale drug distributor within the meaning of this subsection, the court shall not impose an anti-drug profiteering penalty on that ground if the defendant establishes by a preponderance of the evidence at the hearing that his participation in the conduct constituting the crime was limited solely to operating a conveyance used to transport a controlled dangerous substance or controlled substance analog, or loading or unloading the substance into such a conveyance or storage facility. Nothing in this paragraph shall be construed to establish a basis for not imposing a penalty where the prosecutor has established any other ground or grounds specified in this section for the imposition of an anti-drug profiteering penalty.

4. The defendant is a professional drug distributor. A professional drug distributor

is a person who has at any time, for pecuniary gain, unlawfully distributed a controlled dangerous substance, controlled substance analog or drug paraphernalia to three or more different persons, or on five or more separate occasions regardless of the number of persons to whom the substance or paraphernalia was distributed.

b. In making its determination, the court may rely upon expert opinion in the form of live testimony or by affidavit, or by such other means as the court deems appropriate. For the purposes of this chapter, an act is undertaken for pecuniary gain if it involves or contemplates the transfer of anything of value in exchange for a controlled dangerous substance, controlled substance analog or drug paraphernalia, provided that the thing of value received or intended to be received in exchange for the substance or paraphernalia is or was reasonably believed to be of a higher value than that expended by the defendant or by any other person with whom the actor is acting in concert, to acquire or manufacture the substance or paraphernalia. It shall also include any act which would constitute a violation of subsection a. of N.J.S. 2C:35-5, N.J.S. 2C:35-11 or N.J.S. 2C:36-3 for which the actor was paid or expected to be paid in return for performing such act. There shall be a rebuttable presumption at the hearing that any manufacturing, distribution or possession with intent to distribute which contemplates or involves the payment or exchange of anything of value constitutes an act undertaken for pecuniary gain. It shall not be necessary for the State to establish that any intended profit or payment was actually received; nor shall it be relevant that the act, payment in return for such act or the transfer of anything of value in exchange for the substance or paraphernalia, occurred or was intended to occur in another jurisdiction.

N.J.S. 2C:35A-4. Calculation of Anti-Drug Profiteering Penalty.

a. Where the prosecutor has established one or more grounds for imposing an Anti-Drug Profiteering Penalty pursuant to section 3 of this chapter, the court shall assess a monetary penalty as follows:

1) \$200,000.00 in the case of a crime of the first degree; \$100,000.00 in the case of a crime of the second degree; \$50,000.00 in the case of a crime of the third degree; \$25,000.00 in the case of a crime of the fourth degree; or

2) an amount equal to three times the street value of all controlled dangerous substances or controlled substance analog involved, or three times the market value of all drug paraphernalia involved, if this amount is greater than that provided in subsection a. (1) of this section.

When the court is for any reason unable to determine the amount of the penalty pursuant to subsection a(2) of this section, the court shall assess a penalty in the amount appropriate to the degree of the offense as provided in subsection a(1) of this section.

b. In determining the street value of the substance involved or the market value of drug paraphernalia involved, the court shall take into account all amounts of the substance or paraphernalia reasonably believed to have been involved in the course of the criminal activity in which the defendant knowingly participated, and it shall not be relevant for the purposes of this section that some of those amounts or paraphernalia were involved in acts or transactions which occurred, or which were intended to occur, in another jurisdiction.

c. Where the State requests that the court assess a penalty in an amount calculated pursuant to subsection a.(2) of this section, the prosecutor shall have the burden of

establishing by a preponderance of the evidence the appropriate amount of the penalty to be assessed pursuant to that subsection. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at trial, plea hearing or other court proceedings and shall also consider the presentence report and other relevant information, including expert opinion in the form of live testimony or by affidavit. The court's findings shall be incorporated in the record, and such findings shall not be subject to modification by an appellate court except upon a showing that the finding was totally lacking support in the record or was arbitrary and capricious.

N.J.S. 2C:35A-5. Revocation or Reduction of Penalty Assessment.

The court shall not revoke or reduce a penalty imposed pursuant to this chapter except in accordance with the provisions of N.J.S. 2C:35-12. An anti-drug profiteering penalty imposed pursuant to this chapter shall not be deemed a fine for purposes of N.J.S. 46-3.

N.J.S. 2C:35A-6. Payment Schedule.

The court may, for good cause shown, and subject to the provisions of this section, grant permission for the payment of a penalty assessed pursuant to this chapter to be made within a specified period of time or in specified installments, provided however that the payment schedule fixed by the court shall require the defendant to pay the penalty in the shortest period of time consistent with the nature and extent of his assets and his ability to pay, and further provided that the prosecutor shall be afforded the opportunity

to present evidence or information concerning the nature, extent and location of the defendant's assets or interests in property which are or might be subject to levy and execution. In such event, the court may only grant permission for the payment to be made within a specified period of time or installments with respect to that portion of the assessed penalty which would not be satisfied by the liquidation of property which is or may be subject to levy and execution, unless the court finds that the immediate liquidation of such property would result in undue hardship to innocent persons. If no permission to make payment within a specified period of time or in installments is embodied in the sentence, the entire penalty shall be payable forthwith.

N.J.S. 2C:35A-7. Relation to Other Dispositions.

a. An anti-drug profiteering penalty assessed pursuant to this chapter shall be imposed and paid in addition to any penalty required to be imposed pursuant to N.J.S. 2C:35-15 and N.J.S. 2C:43-3.1, any fee required to be imposed pursuant to N.J.S. 2C:35-20, and any other fine, penalty, fee or order for restitution which may be imposed.

b. An anti-drug profiteering penalty imposed pursuant to this chapter shall be in addition to and not in lieu of any forfeiture or other cause of action instituted pursuant to chapter 41 or 64 of this title, and nothing in this chapter shall be construed in any way to preclude, preempt or limit any such cause of action. A defendant shall not be entitled to receive credit toward the payment of a penalty imposed pursuant to this chapter for the value of property forfeited, or subject to forfeiture, pursuant to the provision of chapter 41 and 64 of this title.

N.J.S. 2C:35A-8. Collection and Distribution.

All penalties assessed pursuant to this chapter shall be docketed and collected as provided for collection of fines, penalties and restitution in chapter 46 of this title. The Attorney General or prosecutor may prosecute an action to collect penalties imposed pursuant to this chapter. All penalties assessed pursuant to this chapter shall be disposed of, distributed, appropriated and used in accordance with the provisions of section 10 of P.L. 1986, c. 135 (C. 2C:64-6) as if the collected penalties were the proceeds of property forfeited pursuant to chapter 64 of this title.

17. N.J.S. 2C:29-6 is amended to read as follows:

2C:29-6. Implements for escape; controlled dangerous substances and other contraband

a. Escape implements.

(1) A person commits an offense if he knowingly and unlawfully introduces within an institution for commitment of persons under N.J.S. 2C:4-8 or a detention facility, or knowingly and unlawfully provides an inmate with any weapon, tool, instrument, document or other thing which may be useful for escape. The offense is a crime of the second degree and shall be punished by a minimum term of imprisonment, which shall be fixed at no less than three years if the item is a weapon as defined by N.J.S. 2C:39-1(r). Otherwise it is a crime of the third degree.

(2) An inmate of an institution or facility defined by paragraph (1) of subsection a. of this section commits an offense if he knowingly and unlawfully procures, makes, or