

2C:35-3

LEGISLATIVE HISTORY CHECKLIST

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(Drug trafficking)

NJSA: 2C:35-3

LAWS OF: 1997 **CHAPTER:** 343

BILL NO: A694

SPONSOR(S): Zisa

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 24, 1997

SENATE: January 8, 1998

DATE OF APPROVAL: January 12, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

**FOLLOWING WERE PRINTED:
REPORTS:** No

HEARINGS: No

KBP:pp

P.L. 1997, CHAPTER 343, *approved January 12, 1998*
Assembly, No. 694 (*Second Reprint*)

1 AN ACT clarifying the offense of leader of narcotics trafficking
2 network and amending N.J.S.2C:35-3.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2C:35-3 is amended to read as follows:

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

9 **[A]** ¹[Notwithstanding any other provision of law to the contrary,
10 a]As used in this section:

11 ²["Organizer" means a person who arranges, devises, or plans a
12 drug trafficking network.

13 "Supervisor" means a person who oversees the operation of a drug-
14 trafficking network.]²

15 "Financier" means a person who ²[is responsible for providing the
16 funds or resources necessary to operate], with the intent to derive a
17 profit, provides money or credit or other thing of value in order to
18 purchase a controlled dangerous substance or an immediate precursor,
19 or otherwise to finance the operations of² a drug trafficking network.

20 ²["Manager" means a person who directs the operations of a drug
21 trafficking network.

22 "Upper echelon member" means a person who is superior to street-
23 level distributors and to their immediate supervisors or suppliers and
24 occupies a high-level position of authority in the organization and
25 exercises substantial control over its operation.]²

26 A¹ person is a leader of a narcotics trafficking network ¹[only]¹ if
27 [he conspires with others as an organizer, supervisor, financier or
28 manager, to engage for profit] ¹[.] ²[, as an upper echelon member
29 of the narcotic trafficking network, conspires with others as an
30 organizer, supervisor, financier or manager, to engage for profit]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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

² Senate SJU committee amendments adopted November 17, 1997.

1 conspires with two or more other persons² in a scheme or course of
2 conduct to unlawfully manufacture, distribute, dispense, bring into or
3 transport in this State methamphetamine, lysergic acid diethylamide,
4 phencyclidine or any controlled dangerous substance classified in
5 Schedule I or II, or any controlled substance analog thereof ¹[. the
6 person is the principal administrator, organizer, or leader of the
7 enterprise or is one of several such principal administrators, organizers
8 or leaders, and any two of the following are present:

9 a. the violation involved at least five times the quantity of an illegal
10 narcotic necessary for criminal charges pursuant to the provisions of
11 N.J.S. 2C:35-5;

12 b. the enterprise, or any other enterprise in which the defendant
13 was the principal or one of the several principal administrators,
14 organizers or leaders, received \$500,000.00 in gross receipts during
15 any twelve month period of its existence for the unlawful
16 manufacturing, distributing, dispensing, bringing into or transporting
17 in this State the items listed in this section:

18 c. the person conspires with five or more other persons with
19 respect to whom the person occupies a position of organizer, or a
20 supervisory position, or any other position of management:

21 d. the person obtains substantial income or resources from such
22 enterprises]^{1 2} as a financier, or as an organizer, supervisor or
23 manager of at least one other person.²

24 Leader of narcotics trafficking network is a crime of the first degree
25 and upon conviction thereof, except as may be provided by
26 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of life
27 imprisonment during which the person must serve 25 years before
28 being eligible for parole. Notwithstanding the provisions of subsection
29 a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed
30 ²~~[\$500,000.00]~~ \$750,000.00² or five times the street value of the
31 controlled dangerous substance or controlled substance analog
32 involved, whichever is greater.

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

46 It shall not be necessary in any prosecution under this section for

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

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

15 ² It shall not be a defense that the defendant was subject to the
16 supervision or management of another, nor that another person or
17 persons were also leaders of the narcotics trafficking network.²

18 (cf: P.L.1997, c.181, s.1)

19

20 2. This act shall take effect immediately.

21

22

23

24

25 Clarifies activities which constitute leader of a drug trafficking
26 network.

1 enterprises.

2 Leader of narcotics trafficking network is a crime of the first degree
3 and upon conviction thereof, except as may be provided by
4 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of life
5 imprisonment during which the person must serve 25 years before
6 being eligible for parole. Notwithstanding the provisions of subsection
7 a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed
8 \$500,000.00 or five times the street value of the controlled dangerous
9 substance or controlled substance analog involved, whichever is
10 greater.

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

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25 the State to prove that any intended profit was actually realized. The
26 trier of fact may infer that a particular scheme or course of conduct
27 was undertaken for profit from all of the attendant circumstances,
28 including but not limited to the number of persons involved in the
29 scheme or course of conduct, the actor's net worth and his
30 expenditures in relation to his legitimate sources of income, the
31 amount or purity of the specified controlled dangerous substance or
32 controlled substance analog involved, or the amount of cash or
33 currency involved.

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

40

41 2. This act shall take effect immediately.

42

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44 STATEMENT

45

46 This bill would amend N.J.S.A.2C:35-3, the "drug kingpin" statute

1 to clarify the activities that will result in a person being a "leader of a
2 narcotics trafficking network." Under the bill, a person is a leader of
3 a narcotics trafficking network if the person is a principal
4 administrator, organizer, or leader of the enterprise or is one of several
5 such persons; and any two of the following are present: (1) the
6 violation involved at least five times the quantity of an illegal narcotic
7 necessary for a possession offense under N.J.S.A.2C:35-5; (2) the
8 enterprise or a related enterprise received \$500,000 in receipts for
9 trafficking in controlled dangerous substances; (3) the person
10 conspired with five or more other persons with respect to whom the
11 person occupies a management position; or, (4) the person obtains
12 substantial income or resources from such enterprise.

13 The bill is further intended to clarify the recent New Jersey
14 Supreme Court ruling State v. Alexander (decided July 19, 1994).
15 This decision held that in a prosecution under N.J.S.A.2C:35-3, the
16 trial court should instruct the jury that it must find that the defendant
17 occupies an "upper echelon" role and in that position exercises
18 supervisory power or control over others engaged in an organized
19 drug trafficking network. These amendments clarify that
20 N.J.S.A.2C:35-3 is the exclusive source of definition for the offense.

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25 Clarifies activities which constitute leader of a drug trafficking
26 network.

[Passed Both Houses]

[Second Reprint]

ASSEMBLY, No. 694

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ZISA, DeSOPO, Assemblywoman Allen
and Senator Bubba

1 AN ACT clarifying the offense of leader of narcotics trafficking
2 network and amending N.J.S.2C:35-3.

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11 ²["Organizer" means a person who arranges, devises, or plans a
12 drug trafficking network.

13 "Supervisor" means a person who oversees the operation of a drug-
14 trafficking network.]²

15 "Financier" means a person who ²[is responsible for providing the
16 funds or resources necessary to operate], with the intent to derive a
17 profit, provides money or credit or other thing of value in order to
18 purchase a controlled dangerous substance or an immediate precursor,
19 or otherwise to finance the operations of² a drug trafficking network.

20 ²["Manager" means a person who directs the operations of a drug
21 trafficking network.

22 "Upper echelon member" means a person who is superior to street-
23 level distributors and to their immediate supervisors or suppliers and
24 occupies a high-level position of authority in the organization and
25 exercises substantial control over its operation.]²

26 A¹ person is a leader of a narcotics trafficking network ¹[only]¹
27 if [he conspires with others as an organizer, supervisor, financier or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

² Senate SJU committee amendments adopted November 17, 1997.

1 manager, to engage for profit] ¹ he ² as an upper echelon member
2 of the narcotic trafficking network, conspires with others as an
3 organizer, supervisor, financier or manager, to engage for
4 profit ¹ conspires with two or more other persons ² in a scheme or
5 course of conduct to unlawfully manufacture, distribute, dispense,
6 bring into or transport in this State methamphetamine, lysergic acid
7 diethylamide, phencyclidine or any controlled dangerous substance
8 classified in Schedule I or II, or any controlled substance analog
9 thereof ¹ the person is the principal administrator, organizer, or
10 leader of the enterprise or is one of several such principal
11 administrators, organizers or leaders, and any two of the following are
12 present:

13 a. the violation involved at least five times the quantity of an illegal
14 narcotic necessary for criminal charges pursuant to the provisions of
15 N.J.S. 2C:35-5;

16 b. the enterprise, or any other enterprise in which the defendant
17 was the principal or one of the several principal administrators,
18 organizers or leaders, received \$500,000.00 in gross receipts during
19 any twelve month period of its existence for the unlawful
20 manufacturing, distributing, dispensing, bringing into or transporting
21 in this State the items listed in this section;

22 c. the person conspires with five or more other persons with
23 respect to whom the person occupies a position of organizer, or a
24 supervisory position, or any other position of management;

25 d. the person obtains substantial income or resources from such
26 enterprises] ¹ ² as a financier, or as an organizer, supervisor or
27 manager of at least one other person. ²

28 Leader of narcotics trafficking network is a crime of the first degree
29 and upon conviction thereof, except as may be provided by
30 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of life
31 imprisonment during which the person must serve 25 years before
32 being eligible for parole. Notwithstanding the provisions of subsection
33 a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed
34 ² [\$500,000.00] \$750,000.00 ² or five times the street value of the
35 controlled dangerous substance or controlled substance analog
36 involved, whichever is greater.

37 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
38 leader of narcotics trafficking network shall not merge with the
39 conviction for any offense which is the object of the conspiracy.
40 Nothing contained in this section shall prohibit the court from
41 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
42 section be construed in any way to preclude or limit the prosecution
43 or conviction of any person for conspiracy under N.J.S.2C:5-2, or any
44 prosecution or conviction under N.J.S.2C:35-4 (maintaining or
45 operating a CDS production facility), N.J.S.2C:35-5 (manufacturing,
46 distributing or dispensing), N.J.S.2C:35-6 (employing a juvenile in a

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 ² It shall not be a defense that the defendant was subject to the
20 supervision or management of another, nor that another person or
21 persons were also leaders of the narcotics trafficking network.²

22 (cf: P.L.1997, c.181, s.1)

23
24 2. This act shall take effect immediately.

25
26
27 _____
28
29 Clarifies activities which constitute leader of a drug trafficking
30 network.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 694

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 1996

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No.694.

This bill amends N.J.S.A.2C:35-3, the "drug kingpin" statute to clarify the activities that will result in a person being a "leader of a narcotics trafficking network." In its original form the bill provided that a person is a leader of a narcotics trafficking network if the person is a principal administrator, organizer, or leader of the enterprise or is one of several such persons; and any two of certain factors were present.

The committee amendments would delete this language and clarify the intent of the statute by defining the following terms which are expressed as material elements of the crime: "organizer" would be defined as a person who arranges, devises, or plans a drug trafficking network; "supervisor" would be defined as a person who oversees the operation of a drug trafficking network; "financier" would be defined as a person who is responsible for providing the funds or resources necessary to operate a drug trafficking network; "manager" would be defined as a person who directs the operation of a drug trafficking network; and an "upper echelon member" would be defined as a person who is superior to street level distributors and to their immediate supervisors or suppliers and occupies a high-level position of authority in the organization and exercises substantial control over its operation.

These committee amendments are intended to reiterate the statement of policy as set forth in N.J.S.2C:35-1.1. The statement declares that the Legislature recognizes that in order for our criminal laws to be effective in the war against drugs these laws must target repeat drug offenders and the "upper echelon" member in the narcotics trafficking network.

Furthermore, these amendments are intended to codify the New Jersey Supreme Court's decision in State v. Alexander, 136 N.J. 563 (1994) . In that case the Court noted that since the Legislature clearly intended that the status and the position of the defendant in the drug trafficking network be a substantive part of the crime, then the

trial court should explain to the jury the statutory terms of "organizer", "supervisor", "financier" and "manager" and instruct the jury that it must find that the defendant occupies an "upper echelon" role and in that position exercises supervisory power or control over others engaged in an organized drug trafficking network. *Id.* at 570, 571.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 694

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 17, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 694 (1R).

This bill would amend N.J.S.A.2C:35-3, the "drug kingpin" statute to clarify the nature of the activities that will result in a person being prosecuted as a "leader of a narcotics trafficking network." As amended by the committee, a person would be considered a leader of a narcotics trafficking network if he conspires with two or more other persons in a scheme to sell or manufacturer illegal drugs as a financier, or as an organizer, supervisor or manager of at least one other person.

The amendments delete the definitions of the terms "supervisor," "manager" and "upper echelon member" included in the bill as passed by the Assembly. The definition of the term "financier" would be modified to provide that: "financier" means a person who, with intent to derive a profit, provides money or credit or other thing of value in order to purchase a CDS or an immediate precursor or otherwise finance the operations of a drug trafficking network.

In addition, the amendments add language indicating that it shall not be a defense to a charge of being a leader of a narcotics trafficking network that the defendant was subject to the supervision or management of another nor that another person or persons were also leaders of the narcotics trafficking network.

The amendments also conform the provisions of the bill with those of recently enacted P.L.1997, c.181 which raised the maximum fine for the crime of being a leader of a narcotics trafficking network.