

**LEGISLATIVE HISTORY CHECKLIST**  
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(Criminal code--various amendments)

**NJSA:** 2C:41-1 to 2C:41-6.2; 2C:5-2 and 2C:5-4;2C:20-1 et al

**LAWS OF:** 1981 **CHAPTER:** 167

**BILL NO:** A1079

**SPONSOR(S):** Jackman and others

**DATE INTRODUCED:** February 11, 1981

**COMMITTEE:** **ASSEMBLY:** Judiciary, Law, Public Safety and Defense  
**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes Senate committee substitute for  
Assembly committee substitute  
enacted

**DATE OF PASSAGE:** **ASSEMBLY:** December 8, 1980  
**SENATE:** May 4, 1981

**DATE OF APPROVAL:** June 15, 1981

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** Yes

**HEARINGS:** Yes

Reports cited in sponsor's statement:  
9974.90 New Jersey. Organized Crime Task Force.  
C929 Report...1978.  
1978b

Public Hearing:  
974.90 New Jersey. Assembly. Judiciary, Law, Public Safety and Defense.  
C929 Committee. Defense Committee.  
980b Public heading held on 10/30/80. Trenton.

Governor Byrne's Fifth annual message (relevant sections as referred to in statements) attached.

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CHAPTER 167 LAWS OF N. J. 1981  
APPROVED 6-15-81

SENATE COMMITTEE SUBSTITUTE FOR  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1079**

**STATE OF NEW JERSEY**

ADOPTED APRIL 27, 1981

AN ACT concerning certain crimes, enacting an additional Part 6, chapter 41, Racketeering in Subtitle 2 of Title 2C of the New Jersey Statutes, and amending and supplementing Title 2C of the New Jersey Statutes, the "New Jersey Code of Criminal Justice," P. L. 1978, c. 95.

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

1 1. (New section) Declaration of policy and legislative findings.  
2 The Legislature hereby finds and declares to be the public policy  
3 of this State, the following:

4 a. By enactment of the "Criminal Justice Act of 1970," P. L.  
5 1970, c. 74, (C. 52:17B-97 et seq.), the Legislature recognized that  
6 the existence of organized crime and organized crime type activities  
7 presents a serious threat to the political, social and economic insti-  
8 tutions of this State.

9 b. Despite the impressive gains of our law enforcement agencies,  
10 organized crime and similar activities in this State are still a highly  
11 sophisticated, diversified and widespread activity that annually  
12 drains millions of dollars from this State's economy by unlawful  
13 conduct and the illegal use of force, fraud and corruption. In recent  
14 years, that organized crime and organized criminal type activity  
15 has spread to the operation of otherwise legitimate businesses.

16 c. In order to safeguard the public interest, effective criminal and  
17 civil sanctions are needed to prevent, disrupt and eliminate the  
18 infiltration of organized crime type activities which are substantial  
19 in nature into the legitimate trade or commerce of this State. It is,  
20 therefore, in the public interest to provide that activity which is  
21 inimical to the general health, welfare and prosperity of the State  
22 and its inhabitants be made subject to strict civil and criminal  
23 sanctions.

1 2. An additional Part 6, chapter 41, Racketeering, is added to  
2 Subtitle 2 of Title 2C of the New Jersey Statutes as follows:

## PART 6

## CHAPTER 41. RACKETEERING

- 1 2C:41-1. Definitions. For purposes of this section and N. J. S.  
2 2C:41-2 through N. J. S. 2C:41-7: a. "Racketeering activity"  
3 means (1) any of the following crimes which are crimes under the  
4 laws of New Jersey or are equivalent crimes under the laws of any  
5 other jurisdiction:
- 6 (a) murder
  - 7 (b) kidnapping
  - 8 (c) gambling
  - 9 (d) promoting prostitution
  - 10 (e) obscenity
  - 11 (f) robbery
  - 12 (g) bribery
  - 13 (h) extortion
  - 14 (i) criminal usury
  - 15 (j) violations of Title 33 of the Revised Statutes
  - 16 (k) violations of Title 54A of the New Jersey Statutes and Title  
17 54 of the Revised Statutes
  - 18 (l) arson
  - 19 (m) burglary
  - 20 (n) theft and related crimes
  - 21 (o) forgery and fraudulent practices
  - 22 (p) fraud in the offering, sale or purchase of securities
  - 23 (q) alteration of motor vehicle identification numbers
  - 24 (r) unlawful manufacture, purchase, use or transfer of firearms
  - 25 (s) unlawful possession or use of destructive devices or ex-  
26 plosives
  - 27 (t) violation of sections 112 through 116 inclusive of the "Casino  
28 Control Act," P. L. 1977, c. 110 (C. 5:12-112 through 116)
  - 29 (u) violation of section 19 of the "New Jersey Controlled  
30 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-19), except  
31 possession of 84 grams or less of marijuana
  - 32 (2) any conduct defined as "racketeering activity" under Title  
33 18, United State Code, s. 1961 (1)(A), (B) and (D).
- 34 b. "Person" includes any individual or entity or enterprise as  
35 defined herein holding or capable of holding a legal or beneficial  
36 interest in property.
- 37 c. "Enterprise" includes any individual, sole proprietorship,  
38 partnership, corporation, business or charitable trust, association,  
39 or other legal entity, any any union or group of individuals asso-  
40 ciated in fact although not a legal entity, and it includes illicit as

41 well as licit enterprises and governmental as well as other entities.

42 d. "Pattern of racketeering activity" requires

43 (1) Engaging in at least two incidents of racketeering conduct  
44 one of which shall have occurred after the effective date of this act  
45 and the last of which shall have occurred within 10 years (excluding  
46 any period of imprisonment) after a prior incident of racketeering  
47 activity; and

48 (2) A showing that the incidents of racketeering activity embrace  
49 criminal conduct that has either the same or similar purposes,  
50 results, participants or victims or methods of commission or are  
51 otherwise interrelated by distinguishing characteristics and are not  
52 isolated incidents.

53 e. "Unlawful debt" means a debt

54 (1) Which was incurred or contracted in gambling activity which  
55 was in violation of the law of the United States, a state or political  
56 subdivision thereof; or

57 (2) Which is unenforceable under State or Federal law in whole  
58 or in part as to principle or interest because of the laws relating to  
59 usury; or

60 f. "Documentary material" includes any book, paper, document,  
61 writing, drawing, graph, chart, photograph, phonorecord, magnetic  
62 or recording or video tape, computer printout, other data compila-  
63 tion from which information can be obtained or from which informa-  
64 tion can be translated into useable form or other tangible item.

65 g. "Attorney General" includes the Attorney General of New  
66 Jersey, his assistants and deputies. The term shall also include a  
67 county prosecutor or his designated assistant prosecutor if a county  
68 prosecutor is expressly authorized in writing by the Attorney  
69 General to carry out the powers conferred on the Attorney General  
70 by this chapter.

71 h. "Trade or commerce" shall include all economic activity in-  
72 volving or relating to any commodity or service.

1 2C:41-2. Prohibited activities. a. It shall be unlawful for any  
2 person who has received any income derived, directly or indirectly,  
3 from a pattern of racketeering activity or through collection of an  
4 unlawful debt in which he has participated as a principal within  
5 the meaning of N. J. S. 2C:2-6 to use or invest, directly or in-  
6 directly, any part of the income, or the proceeds of the income,  
7 in acquisition of any interest in, or the establishment or operation  
8 of any enterprise which is engaged in or the activities of which  
9 affect trade or commerce. A purchase of securities on the open  
10 market for purposes of investment, and without the intention of

11 controlling or participating in the control of the issuer or of  
12 assisting another to do so, shall not be unlawful under this section,  
13 provided that the sum total of the securities of the issuer held by  
14 the purchaser, the members of his family, and his or their accom-  
15 plices in any pattern of racketeering activity or in the collection  
16 of an unlawful debt does not amount in the aggregate to 1% of  
17 the outstanding securities of any one class, or does not, either in  
18 law or in fact, empower the holders thereof to elect one or more  
19 directors of the issuer, provided further, that if, in any proceeding  
20 involving an alleged investment in violation of this section, it is  
21 established that over half of the defendant's aggregate income for  
22 a period of 2 or more years immediately preceding the investment  
23 was derived from a pattern of racketeering activity, a rebuttable  
24 presumption shall arise that the investment included income  
25 derived from a pattern of racketeering activity.

26 b. It shall be unlawful for any person through a pattern of  
27 racketeering activity or through collection of an unlawful debt to  
28 acquire or maintain, directly or indirectly, any interest in or  
29 control of any enterprise which is engaged in or activities of which  
30 affect trade or commerce.

31 c. It shall be unlawful for any person employed by or associated  
32 with any enterprise engaged in or activities of which affect trade  
33 or commerce to conduct or participate, directly or indirectly, in  
34 the conduct of the enterprise's affairs through a pattern or racke-  
35 teering activity or collection of unlawful debt.

36 d. It shall be unlawful for any person to conspire as defined by  
37 N. J. S. 2C:5-2, to violate any of the provisions of this section.

1 2C:41-3. Criminal penalties. a. Any person who violates any  
2 provision of N. J. S. 2C:41-2 in connection with a pattern of racke-  
3 teering activity which involves a crime of violence or the use of  
4 firearms shall be guilty of a crime of the first degree. All other  
5 violations of N. J. S. 2C:41-2 shall be crimes of the second degree.

6 b. In addition, such persons shall forfeit to the entity funding  
7 the prosecuting agency involved the following:

8 (1) Any interest including money or anything of value he has  
9 acquired or maintained in violation of this chapter and

10 (2) Any interest in, security of, claim against, or property or  
11 contractual right of any kind affording a source of influence over  
12 any enterprise which he has established, acquired, maintained,  
13 operated, controlled, conducted, or participated in the conduct of, in  
14 violation of this chapter.

15 c. In any action brought by the Attorney General under this  
16 section, the Superior Court shall have jurisdiction to enter such

17 restraining orders or prohibitions, or to take such other actions,  
18 including, but not limited to, the acceptance of satisfactory per-  
19 formance bonds, in connection with any property or other interests  
20 subject to forfeiture under this section, as it shall deem proper.

21 d. Upon conviction of a person under this section, the court shall  
22 authorize the Attorney General to seize all property or other  
23 interest declared forfeited under this section, subject to the rights  
24 of innocent persons such as any prior lienholders or other valid  
25 lienholders, upon such other terms and conditions as the court shall  
26 deem proper. If a property right or other interest is not exer-  
27 cisable or transferable for value by the Attorney General, it shall  
28 expire, and shall not revert to the convicted person.

29 e. The Attorney General shall dispose of all such property as  
30 soon as commercially feasible, making due provision for the rights  
31 of innocent persons.

32 f. When an offense charged may result in a criminal forfeiture,  
33 the indictment shall allege the extent of the interest or property  
34 subject to forfeiture. If the indictment alleges that an interest or  
35 property is subject to criminal forfeiture, a special verdict shall be  
36 returned as to the extent of the interest or property subject to  
37 forfeiture, if any.

1 2C:41-4. Civil remedies. a. The Superior Court, making due  
2 provisions for the rights of innocent persons, shall have jurisdic-  
3 tion to prevent and restrain the acts or conduct which constitute  
4 violations of N. J. S. 2C:41-2, by issuing appropriate orders, in-  
5 cluding, but not limited to:

6 (1) Ordering any person to divest himself of any interest, direct  
7 or indirect, in any enterprise;

8 (2) Imposing reasonable restrictions on the future activities or  
9 investments of any person, including but not limited to, prohibiting  
10 any person from engaging in the same type of endeavor as the  
11 enterprise found to be in violation of N. J. S. 2C:41-2.

12 (3) Ordering the dissolution or reorganization of any enterprise;

13 (4) Ordering the denial, suspension or revocation of the charter  
14 of any corporation organized under the laws of this State and to  
15 deny, suspend or revoke the license of any foreign corporation  
16 authorized to do business in the State of New Jersey;

17 (5) Ordering the denial, suspension or revocation of the license  
18 or permit granted to any enterprise by any department or agency  
19 of the State of New Jersey;

20 (6) Entering a cease and desist order which specifies the acts or  
21 conduct which is to be discontinued, altered or implemented by any  
22 person;

23 (7) Ordering the restitution of any moneys or property unlaw-  
24 fully obtained or retained by any person found to be in violation  
25 of N. J. S. 2C:41-2;

26 (8) Assessing civil monetary penalties against any person who  
27 has violated N. J. S. 2C:41-2 to deter future violations, provided  
28 that the court shall, upon making a finding on the record as to  
29 the gain any such person has acquired or maintained through the  
30 violation, assess such penalties in an amount not to exceed three  
31 times the amount of the gain; and

32 (9) Ordering any person to forfeit to the State of any interest  
33 he has acquired or maintained in violation of this chapter and any  
34 interest in, security of, claim against, or property or contractual  
35 right of any kind affording a source of influence over any enter-  
36 prises he has established, operated, controlled, conducted, or  
37 participated in the conduct of, in violation of this chapter. For-  
38 feiture under this subsection shall be in accordance with chapter  
39 64 of Title 2C of the New Jersey Statutes. The interest which shall  
40 be subject to forfeiture shall be as defined by this section and as  
41 defined by N. J. S. 2C:64-1a.

42 (10) Imposing any or all of the foregoing sanctions in combi-  
43 nation with each other.

44 b. The Attorney General may institute proceedings in Superior  
45 Court for violations of N. J. S. 2C:41-2. In any action brought  
46 under this section, the court shall proceed as soon as practicable  
47 to the hearing and determination thereof. Pending final determi-  
48 nation thereof, the court may at any time enter restraining orders  
49 or prohibitions, or take other actions, including the acceptance of  
50 satisfactory performance bonds, as it shall deem proper.

51 c. Any person damaged in his business or property by reason of  
52 a violation of N. J. S. 2C:41-2 may sue therefor in any appro-  
53 priate court and shall recover threefold any damages he sustains  
54 and the cost of the suit, including a reasonable attorney's fee, costs  
55 of investigation and litigation.

56 d. A final judgment rendered in favor of the State in any crim-  
57 inal proceeding brought under this chapter shall estop the de-  
58 fendant from denying the essential allegations of the criminal  
59 offense in any subsequent civil proceeding.

1 2C:41-5. Investigative interrogatories.

2 a. Whenever the Attorney General determines that there exists  
3 a reasonable suspicion that any person or enterprise may have  
4 information or be in possession, custody, or control of any docu-  
5 mentary materials relevant to an investigation under this chapter,  
6 or whenever the Attorney General believes it to be in the public

7 interest that an investigation be made pursuant to this chapter.  
8 he may, prior to the institution of a civil or criminal proceeding  
9 thereon, issue in writing, and cause to be served upon the person,  
10 an investigative interrogatory requiring him to answer and produce  
11 material for examination.

12 b. Each interrogatory shall:

13 (1) State the nature of the conduct constituting the alleged  
14 violation which is under investigation and the provision of law  
15 applicable thereto;

16 (2) Advise the person that he has the right to discuss the inter-  
17 rogatory with legal counsel prior to returning it to the Attorney  
18 General or prior to making material available as provided herein-  
19 after in subsection f. and that he has the right to file in Superior  
20 Court a petition to modify or set aside the interrogatory pursuant  
21 to subsection j. hereinafter.

22 (3) Describe the class or classes of documentary material to be  
23 produced thereunder with such specificity and certainty as to per-  
24 mit the material to be fairly identified;

25 (4) Prescribe a return date which will provide a reasonable  
26 period of time within which answers may be made and material so  
27 demanded may be assembled and made available for inspection  
28 and copying or reproduction as provided hereinafter in subsection f.

29 c. No interrogatory shall:

30 (1) Contain any requirement which would be held to be un-  
31 reasonable if contained in a subpoena duces tecum issued in aid of  
32 a grand jury investigation; or

33 (2) Require the production of any documentary evidence which  
34 would be otherwise privileged from disclosure if demanded by a  
35 subpoena duces tecum issued in aid of a grand jury investigation.

36 d. Service of any interrogatory filed under this section may be  
37 made upon a person by:

38 (1) Delivering a duly executed copy thereof to any partner,  
39 executive officer, managing agent, or general agent thereof, or to  
40 any agent thereof authorized by appointment or by law to receive  
41 service of process on behalf of the person, or upon any individual  
42 person; or

43 (2) Delivering a duly executed copy thereof to the principal  
44 office or place of business of the person to be served; or

45 (3) Depositing a copy in the United States mail, by registered  
46 or certified mail duly addressed to the person at his principal office  
47 or place of business.



48 e. A verified return by the individual serving any interrogatory,  
49 setting forth the manner of service shall be prima facie proof of  
50 service. In the case of service by registered or certified mail, the  
51 return shall be accompanied by the return post office receipt of  
52 delivery of the interrogatory.

53 f. Any person upon whom any interrogatory issued under this  
54 section has been duly served which requires the production of  
55 materials shall make the material available for inspection and  
56 copying or reproduction to the Attorney General at the principal  
57 place of business of that person in the State of New Jersey or at  
58 such other place as the Attorney General and the person thereafter  
59 may agree and prescribe in writing, on the return date specified  
60 in the interrogatory or on a later date as the Attorney General  
61 may prescribe in writing. Upon written agreement between the  
62 person and the Attorney General, copies may be substituted for all  
63 or any part of the original materials. The Attorney General may  
64 cause the preparation of any copies of documentary material as  
65 may be required for official use by the Attorney General.

66 No material produced pursuant to this section shall be available  
67 for examination, without the consent of the person who produced  
68 the material, by an individual other than the Attorney General  
69 or any person retained by the Attorney General in connection with  
70 the enforcement of this act. Under reasonable terms and conditions  
71 as the Attorney General shall prescribe, documentary material  
72 while in his possession shall be available for examination by the  
73 person who produced the material or any duly authorized repre-  
74 sentatives of the person.

75 In any case or proceeding involving any alleged violation of this  
76 chapter, the Attorney General may present before any court or  
77 Grand Jury, any such documentary material in his possession pur-  
78 suant to this section subject to any protective order deemed proper  
79 by the Superior Court.

80 Any person who shall disclose to any person other than the  
81 Attorney General or a person retained by the Attorney General  
82 as set forth above, the name of any person who receives an investi-  
83 gative interrogatory or any information obtained pursuant thereto,  
84 except in proceedings involving an alleged violation of this chapter  
85 and except as so directed by the Attorney General shall be guilty  
86 of a crime of the fourth degree.

87 g. Upon completion of:

88 (1) The review and investigation for which any documentary  
89 material was produced under this section, and

90 (2) Any case or proceeding arising from the investigation, the  
91 Attorney General shall return to the person who produced the  
92 material all the material other than copies thereof made by the  
93 Attorney General pursuant to this section which has not passed  
94 into the control of any court or grand jury through the introduction  
95 thereof into the record of the case or proceeding.

96 h. When any documentary material has been produced by any  
97 person under this section for use in any racketeering investigation,  
98 and no case or proceeding arising therefrom has been instituted  
99 within 2 years after completion of the examination and analysis  
100 of all evidence assembled in the course of the investigation, the  
101 person shall be entitled, upon written demand made upon the  
102 Attorney General, to the return of all documentary material other  
103 than copies thereof made pursuant to this section so produced by  
104 the person.

105 i. Whenever any person fails to comply with any investigative  
106 interrogatory duly served upon him under this section or whenever  
107 satisfactory copying or reproduction of any material cannot be  
108 done and the person refuses to surrender the material, the Attorney  
109 General may file in the Superior Court a petition for an order of  
110 the court for the enforcement of this section.

111 j. At any time before the return date specified in the interroga-  
112 tory, such person may file in the Superior Court a petition for an  
113 order modifying or setting aside the interrogatory. The time  
114 allowed for compliance of the interrogatory, in whole or in part  
115 as deemed proper and order by the court, shall not run during the  
116 pendency of such petition in the court. The petition shall specify  
117 each ground upon which the petitioner relies in seeking relief, and  
118 may be based upon any failure of the interrogatory to comply with  
119 the provisions of this section or upon any constitutional or other  
120 legal right or privilege of the petitioner. In such proceeding the  
121 Attorney General shall establish the existence of an investigation  
122 pursuant to this chapter and the nature and subject matter of the  
123 investigation.

1 2C:41-6. Liberal construction.

2 The provisions of subsections a., c., d., e., and h. of 2C:41-1;  
3 2C:41-2; subsections b., c., d., e., and f. of 2C:41-3 and 2C:41-4  
4 shall be liberally construed to effectuate the remedial purposes  
5 of this chapter.

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

2 2C:5-2. Conspiracy. a. Definition of conspiracy. A person is  
3 guilty of conspiracy with another person or persons to commit a  
4 crime if with the purpose of promoting or facilitating its commis-  
5 sion he:

6 (1) Agrees with such other person or persons that they or one  
7 or more of them will engage in conduct which constitutes such  
8 crime or an attempt or solicitation to commit such crime; or

9 (2) Agrees to aid such other person or persons in the planning  
10 or commission of such crime or of an attempt or solicitation to  
11 commit such crime.

12 b. Scope of conspiratorial relationship. If a person guilty of  
13 conspiracy, as defined by subsection a. of this section, knows that  
14 a person with whom he conspires to commit a crime has conspired  
15 with another person or persons to commit the same crime, he is  
16 guilty of conspiring with such other person or persons, whether  
17 or not he knows their identity, to commit such crime.

18 c. Conspiracy with multiple objectives. If a person conspires to  
19 commit a number of crimes, he is guilty of only one conspiracy  
20 so long as such multiple crimes are the object of the same agree-  
21 ment or continuous conspiratorial relationship. It shall not be a  
22 defense to a charge under this section that one or more of the  
23 objectives of the conspiracy was not criminal provided that one or  
24 more of its objectives or the means of promoting or facilitating an  
25 objective of the conspiracy is criminal.

26 d. Overt act. No person may be convicted of conspiracy to com-  
27 mit a crime, other than a crime of the first or second degree or a  
28 crime defined under the "New Jersey Controlled Dangerous Sub-  
29 stances Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.), unless an overt  
30 act in pursuance of such conspiracy is proved to have been done  
31 by him or by a person with whom he conspired.

32 e. Renunciation of purpose. It is an affirmative defense which  
33 the actor must prove by a preponderance of the evidence that he,  
34 after conspiring to commit a crime, informed the authority of the  
35 existence of the conspiracy and his participation therein, and  
36 thwarted or caused to be thwarted the commission of any offense  
37 in furtherance of the conspiracy, under circumstances manifesting  
38 a complete and voluntary renunciation of criminal purpose as de-  
39 fined in 2C:5-1 (d), provided, however, that an attempt as defined  
40 in 2C:5-1 shall not be considered an offense for purposes of re-  
41 nunciation under this subsection.

42 f. Duration of conspiracy. For the purpose of section 2C:1-6d.:

43 (1) Conspiracy is a continuing course of conduct which termi-  
44 nates when the crime or crimes which are its object are committed  
45 or the agreement that they be committed is abandoned by the  
46 defendant and by those with whom he conspired; and

47 (2) Such abandonment is presumed with respect to a crime other  
48 than one of the first or second degree if neither the defendant nor

49 anyone with whom he conspired does any overt act in pursuance  
50 of the conspiracy during the applicable period of limitation; and

51 (3) If an individual abandons the agreement, the conspiracy is  
52 terminated as to him only if and when he advises those with whom  
53 he conspired of his abandonment or he informs the law enforce-  
54 ment authorities of the existence of the conspiracy and of his  
55 participation therein.

56 *g. Leader of organized crime. A person is a leader of organized*  
57 *crime if he purposefully conspires with others as an organizer,*  
58 *supervisor or manager, to commit a continuing series of crimes*  
59 *which constitute a pattern of racketeering activity under the pro-*  
60 *visions of N. J. S. 2C:41-1, provided, however, that notwithstand-*  
61 *ing 2C:1-8(a)2. a conviction of leader of organized crime shall not*  
62 *merge with the conviction of any other crime which constitutes*  
63 *racketeering activity under 2C:41-1.*

1 4. N. J. S. 2C:5-4 is amended to read as follows:

2 2C:5-4. Grading of Criminal Attempt and Conspiracy; Mitiga-  
3 tion in Cases of Lesser Danger. a. Grading. An attempt or con-  
4 spiracy to commit a crime of the first degree is a crime of the  
5 second degree. Otherwise an attempt is a crime of the same degree  
6 as the most serious crime which is attempted, and conspiracy is a  
7 crime of the same degree as the most serious crime which is the  
8 object of the conspiracy; *provided that, leader of organized crime*  
9 *is a crime of the second degree. An attempt or conspiracy to com-*  
10 *mit an offense defined by a statute outside the code shall be graded*  
11 *as a crime of the same degree as the offense is graded pursuant to*  
12 *sections 2C:1-4 and 2C:43-1.*

13 b. Mitigation. The court may impose sentence for a crime of a  
14 lower grade or degree if neither the particular conduct charged  
15 nor the defendant presents a public danger warranting the grading  
16 provided for such crime under subsection a. because:

17 (1) The criminal attempt or conspiracy charged is so inherently  
18 unlikely to result or culminate in the commission of a crime; or

19 (2) The conspiracy, as to the particular defendant charged, is  
20 so peripherally related to the main unlawful enterprise.

1 5. N. J. S. 2C:20-1 is amended to read as follows:

2 2C:20-1. Definitions. In chapters 20 and 21 unless a different  
3 meaning plainly is required:

4 a. "Deprive" means: (1) to withhold or cause to be withheld  
5 property of another permanently or for so extended a period as to  
6 appropriate a substantial portion of its economic value, or with  
7 purpose to restore only upon payment of reward or other compen-  
8 sation; or (2) to dispose or cause disposal of the property so as  
9 to make it unlikely that the owner will recover it.

10 . b. "Fiduciary" means an executor, general administrator of an  
11 intestate, administrator with the will annexed, substituted admin-  
12 istrator, guardian, substituted guardian, trustee under any trust  
13 expressed, implied, resulting or constructive, substituted trustee,  
14 executor, conservator, curator, receiver, trustee in bankruptcy,  
15 assignee for the benefit of creditors, partner, agent or officer of a  
16 corporation, public or private, temporary administrator, adminis-  
17 trator, administrator pendente lite, administrator ad prosequen-  
18 dum, administrator ad litem or other person acting in a similar  
19 capacity.

20 c. "Financial institution" means a bank, insurance company,  
21 credit union, savings and loan association, investment trust or  
22 other organization held out to the public as a place of deposit of  
23 funds or medium of savings or collective investment.

24 d. "Government" means the United States, any state, county,  
25 municipality, or other political unit, or any department, agency or  
26 subdivision of any of the foregoing, or any corporation or other  
27 association carrying out the functions of government.

28 e. "Movable property" means property the location of which  
29 can be changed, including things growing on, affixed to, or found  
30 in land, and documents although the rights represented thereby  
31 have no physical location. "Immovable property" is all other  
32 property.

33 f. "Obtain" means: (1) in relation to property, to bring about  
34 a transfer or purported transfer of a legal interest in the property,  
35 whether to the obtainer or another; or (2) in relation to labor or  
36 service, to secure performance thereof.

37 g. "Property" means anything of value, including real estate,  
38 tangible and intangible personal property, trade secrets, contract  
39 rights, choses-in-action and other interests in or claims to wealth,  
40 admission or transportation tickets, captured or domestic animals,  
41 food and drink, electric, gas, steam or other power.

42 h. "Property of another" includes property in which any person  
43 other than the actor has an interest which the actor is not privileged  
44 to infringe, regardless of the fact that the actor also has an interest  
45 in the property and regardless of the fact that the other person  
46 might be precluded from civil recovery because the property was  
47 used in an unlawful transaction or was subject to forfeiture as  
48 contraband. Property in possession of the actor shall not be deemed  
49 property of another who has only a security interest therein, even  
50 if legal title is in the creditor pursuant to a conditional sales  
51 contract or other security agreement.

52 i. "Trade secret" means the whole or any portion or phase of  
53 any scientific or technical information, design, process, procedure,  
54 formula or improvement which is secret and of value. A trade  
55 secret shall be presumed to be secret when the owner thereof takes  
56 measures to prevent it from becoming available to persons other  
57 than those selected by the owner to have access thereto for limited  
58 purposes.

59 j. "Dealer in property" means a person who buys and sells prop-  
60 erty as a business.

61 k. "Traffic" means:

62 (1) To sell, transfer, distribute, dispense or otherwise dispose of  
63 property to another person; or

64 (2) To buy, receive, possess, or obtain control of or use property,  
65 with intent to sell, transfer, distribute, dispense or otherwise dis-  
66 pose of such property to another person.

67 l. "Broken succession of title" means lack of regular documents  
68 of purchase and transfer by any seller except the manufacturer of  
69 the subject property, or possession of documents of purchase and  
70 transfer by any buyer without corresponding documents of sale and  
71 transfer in possession of seller, or possession of documents of sale  
72 and transfer by seller without corresponding documents of pur-  
73 chase and transfer in possession of any buyer.

74 m. "Person" includes any individual or entity or enterprise as  
75 defined herein holding or capable of holding a legal or beneficial  
76 interest in property.

77 n. "Anything of value" means any direct or indirect gain or  
78 advantage to any person.

79 o. "Interest in property which has been stolen" means title or  
80 right of possession to such property.

81 p. "Stolen property" means property that has been the subject  
82 of any unlawful taking.

83 q. "Enterprise" includes any individual, sole proprietorship,  
84 partnership, corporation, business trust, association, or other legal  
85 entity, and any union or group of individuals associated in fact  
86 although not a legal entity, and it includes illicit as well as licit  
87 enterprises and governmental as well as other entities.

88 r. "Attorney General" includes the Attorney General of New  
89 Jersey, his assistants and deputies. The term shall also include a  
90 county prosecutor or his designated assistant prosecutor if a county  
91 proecutor is expressly authorized in writing by the Attorney Gen-  
92 eral to carry out the powers conferred on the Attorney General by  
93 this chapter.

1 6. N. J. S. 2C:20-2 is amended to read as follows:

2 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions  
3 Applicable to Theft Generally. a. Consolidation of Theft Offenses.  
4 Conduct denominated theft in this chapter constitutes a single  
5 offense, but each episode or transaction may be the subject of a  
6 separate prosecution and conviction. A charge of theft may be  
7 supported by evidence that it was committed in any manner that  
8 would be theft under this chapter, notwithstanding the specification  
9 of a different manner in the indictment or accusation, subject only  
10 to the power of the court to ensure fair trial by granting a bill of  
11 particulars, discovery, a continuance, or other appropriate relief  
12 where the conduct of the defense would be prejudiced by lack of  
13 fair notice or by surprise.

14 b. Grading of theft offenses.

15 (1) Theft constitutes a crime of the second degree *if the amount*  
16 *involved is \$75,000.00 or more or if the property is taken by*  
17 *extortion.*

18 (2) Theft constitutes a crime of the third degree if:

19 (a) The amount involved exceed \$500.00 *but is less than*  
20 *\$75,000.00;*

21 (b) The property stolen is a firearm, automobile, boat, horse  
22 or airplane;

23 (c) The property stolen is a controlled dangerous substance  
24 as defined in P. L. 1970, c. 226 (C. 24:21-1 et seq.);

25 (d) It is from the person of the victim;

26 (e) It is in breach of an obligation by a person in his capacity  
27 as a fiduciary;

28 (f) It is by threat not amounting to extortion; or

29 (g) It is of a public record, writing or instrument kept, filed  
30 or deposited according to law with or in the keeping of any  
31 public office or public servant.

32 (3) Theft constitutes a crime of the fourth degree if the amount  
33 involved is at least \$200.00 but does not exceed \$500.00. If the  
34 amount involved was less than \$200.00 the offense constitutes a  
35 disorderly persons offense.

36 (4) The amount involved in a theft shall be determined by the  
37 trier of fact. Amounts involved in thefts committed pursuant to  
38 one scheme or course of conduct, whether from the same person or  
39 several persons, may be aggregated in determining the grade of  
40 the offense.

41 c. Claim of right. It is an affirmative defense to prosecution for  
42 theft that the actor:

43 (1) Was unaware that the property or service was that of an-  
43a other;

44 (2) Acted under an honest claim of right to the property or  
45 service involved or that he had a right to acquire or dispose of it  
46 as he did; or

47 (3) Took property exposed for sale, intending to purchase and  
48 pay for it promptly, or reasonably believing that the owner, if  
49 present, would have consented.

50 d. Theft from spouse. It is no defense that theft was from the  
51 actor's spouse, except that misappropriation of household and  
52 personal effects, or other property normally accessible to both  
53 spouses, is theft only if it occurs after the parties have ceased  
54 living together.

1 Chapter 20 of Title 2C of the New Jersey Statutes is suppl-  
2 mented by sections 7 through 10 as follows:

3 7. (New section) Fencing. a. Possession of altered property.  
4 Any dealer in property who knew or should have known that the  
5 identifying features such as serial numbers and permanently affixed  
6 labels of property in his possession have been removed or altered  
7 without the consent of the manufacturer is guilty of possession of  
8 altered property. It is a defense to a prosecution under this sub-  
9 section that a person lawfully possesses the usual indicia of owner-  
10 ship in addition to mere possession.

11 b. Dealing in stolen property. A person is guilty of dealing in  
12 stolen property if he traffics in, or initiates, organizes, plans, fi-  
13 nances, directs, manages or supervises trafficking in stolen property.

14 c. The value of the property involved in the violation of this  
15 section shall be determined by the trier of fact. The value of the  
16 property involved in the violation of this section may be aggregated  
17 in determining the grade of the offense where the acts or conduct  
18 constituting a violation were committed pursuant to one scheme or  
19 course of conduct, whether from the same person or several persons.

20 d. It is an affirmative defense to a prosecution under this section  
21 that the actor:

22 (1) Was unaware that the property or service was that of  
23 another;

24 (2) Acted under an honest claim of right to the property or  
25 service involved or that he had a right to acquire or dispose of  
26 it as he did.

27 e. In addition to the presumptions contained in N. J. S.  
28 2C:20-7(b) the following presumptions are available in the prose-  
29 cution for a fencing offense:



30 (1) Proof of the purchase or sale of property at a price substan-  
31 tially below its fair market value, unless satisfactorily explained,  
32 gives rise to an inference that the person buying or selling the  
33 property knew that it had been stolen;

34 (2) Proof of the purchase or sale of property by a dealer in that  
35 property, out of the regular course of business, or without the usual  
36 indicia of ownership other than mere possession, or the property  
37 or the job lot of which it is a part was bought, received, possessed  
38 or controlled in broken succession of title, so that it cannot be  
39 traced, by appropriate documents, in unbroken succession to the  
40 manufacturer, in all cases where the regular course of business  
41 reasonably indicates records of purchase, transfer or sale, unless  
42 satisfactorily explained, gives rise to an inference that the person  
43 buying or selling the property knew that it had been stolen; and

44 (3) Proof that a person buying or selling property of the sort  
45 received obtained such property without having ascertained by  
46 reasonable inquiry that the person from whom he obtained it had  
47 a legal right to possess or control it gives rise to an inference that  
48 such person knew that it had been stolen.

1 8. (New section) Civil Actions.

2 a. Any person damaged in his business or property by reason  
3 of a violation of section 7 of this amendatory and supplementary  
4 act may sue therefor in any appropriate court and shall recover  
5 threefold any damages he sustains and the cost of the suit, including  
6 a reasonable attorney's fee, costs of investigation and litigation.

7 b. (1) All persons who have possessed or obtained control of  
8 stolen property are liable as principals and may be sued jointly  
9 or severally, whether or not possession or control was joint.

10 (2) Any person held liable for possession or control of stolen  
11 property under chapter 20 of Title 2C of the New Jersey Statutes  
12 shall have standing to bring a civil action for contribution from any  
13 person who possessed or exercised control over the stolen property  
14 and who knew, had reason to know, or was reckless with regard  
15 to the risk that it was stolen.

16 c. Any action for damages under chapter 20 of Title 2C of the  
17 New Jersey Statutes shall be maintained in the Superior Court or  
18 county district court, sitting without a jury.

1 9. (New section) Injunctive Relief by State; Other Persons.

2 a. In addition to any other action or proceeding authorized by law,  
3 the Attorney General or a person alleging injury or loss, may bring  
4 an action in the Superior Court to enjoin violations of chapter 20  
5 of Title 2C of the New Jersey Statutes, or to enjoin any acts in  
6 furtherance thereof. The Superior Court, in any action brought

7 pursuant to this section, shall, after making due provisions for the  
8 rights of innocent persons such as prior lienholders or other valid  
9 lienholders whose rights are prior to those of the State, grant relief  
10 as may be appropriate in the circumstances, including but not  
11 limited to:

12 (1) Ordering any defendant to divest himself of any interest in  
13 any enterprise, including real estate.

14 (2) Imposing reasonable restrictions upon the future activities  
15 or investments of any defendant, including but not limited to, pro-  
16 hibiting any defendant from engaging in the same type of endeavor  
17 as the enterprise in which he was engaged in violation of chapter  
18 20 of Title 2C of the New Jersey Statutes; or

19 (3) Ordering the dissolution or reorganization of any enterprise;  
20 or

21 (4) Ordering the suspension or revocation of any license, permit,  
22 or prior approval granted to any enterprise by any department or  
23 agency of the State; or

24 (5) Ordering the forfeiture of the charter of a corporation  
25 organized under the laws of this State or the revocation of a  
26 certificate authorizing a foreign corporation to conduct business  
27 within this State, upon finding that the board of directors or a  
28 managerial agent acting on behalf of the corporation, in conducting  
29 the affairs of the corporation, has authorized or engaged in conduct  
30 in violation of chapter 20 of Title 2C of the New Jersey Statutes  
31 and that, for the prevention of future criminal activity, the public  
32 interest requires the charter of the corporation forfeited and the  
33 corporation dissolved or the certificate revoked.

34 b. In any action the Attorney General or injured person shall  
35 move as soon as practicable for a hearing and determination. Pend-  
36 ing final determination, the Superior Court may enter temporary  
37 orders, including restraints and prohibitions, or take other actions  
38 as are in the interest of justice.

1 10. (New section) Estoppel. A final judgment rendered in favor  
2 of the Attorney General or other person in any criminal action, or  
3 proceeding under chapter 20 of Title 2C of the New Jersey Statutes,  
4 shall estop the defendant in the action or proceeding in any sub-  
5 sequent civil action or proceeding under chapter 20 of Title 2C of  
6 the New Jersey Statutes as to all matters as to which the judgment  
7 in the action or proceeding would be an estoppel as between the  
8 parties to it.

1 11. (New section) The remedies provided in this act shall be  
2 cumulative with each other and other remedies at law.

1 12. (New section) If any one or more sections, clauses, sentences  
2 or parts of this act shall for any reason be questioned in any court,  
3 and shall be adjudged unconstitutional or invalid, such judgment  
4 shall not affect, impair or invalidate the remaining provisions  
5 thereof, but shall be confined in its operation to the specific pro-  
6 visions so held unconstitutional or invalid.

1 13. This act shall take effect immediately.

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ASSEMBLY, No. 1079

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Assemblymen JACKMAN, KARCHER, BORNHEIMER, DEVERIN, PATERNITI, OTLOWSKI, MATTHEWS, BURSTEIN, THOMPSON, SCHUCK and LITTELL

Referred to Committee for Judiciary, Law, Public Safety and Defense

AN ACT concerning certain crimes, enacting an additional Part 6, chapter 41, Racketeer Influenced and Corrupt Organizations in Subtitle 2 of Title 2C of the New Jersey Statutes, and amending and supplementing Title 2C of the New Jersey Statutes, the "New Jersey Code of Criminal Justice," P. L. 1978, c. 95.

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

1 1. (New section) Declaration of policy and legislative findings.  
2 The Legislature hereby finds and declares to be the public policy  
3 of this State, the following:

4 a. By enactment of the "Criminal Justice Act of 1970," P. L.  
5 1970, c. 74, (C. 52:17B-97 et seq.), the Legislature recognized that  
6 the existence of organized crime presents a serious threat to the  
7 political, social and economic institutions of this State.

8 b. Despite the impressive gains of our law enforcement agencies,  
9 organized crime in this State is still a highly sophisticated, diversi-  
10 fied and widespread activity that annually drains millions of dollars  
11 from this State's economy by unlawful conduct and the illegal use  
12 of force, fraud and corruption. In recent years, that organized  
13 criminal activity has spread to the operation of otherwise legiti-  
14 mate businesses.

15 c. In order to safeguard the public interest, effective criminal  
16 and civil sanctions are needed to prevent, disrupt and eliminate  
17 the infiltration of organized crime into the legitimate trade or  
18 commerce of this State. It is, therefore, in the public interest to  
19 provide that activity which is inimical to the general health, welfare  
20 and prosperity of the State and its inhabitants be made subject to  
21 strict civil and criminal sanctions.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

1 2. An additional Part 6, chapter 41, Racketeer Influenced and  
2 Corrupt Organizations, is added to Subtitle 2 of Title 2C of the  
3 New Jersey Statutes as follows:

**PART 6**

**CHAPTER 41. RACKETEER INFLUENCED AND  
CORRUPT ORGANIZATIONS**

4 2C:41-1. Definitions. For purposes of this section and N. J. S.  
5 2C:41-2 through N. J. S. 2C:41-7: a. "Racketeering activity"  
6 means (1) any act or threat involving murder, kidnapping, gam-  
7 bling, robbery, bribery, extortion, criminal usury, arson, burglary,  
8 theft and related crimes, forgery and fraudulent practices, altera-  
9 tion of motor vehicle identification numbers, unlawful manufacture,  
10 purchase, use, or transfer of firearms, or unlawful possession or  
11 use of destructive devices or explosives, a violation of section 112  
12 or 115 of the "Casino Control Act," P. L. 1977, c. 110 (C. 5:12-112  
13 and 115), or a violation of section 19 of the "New Jersey Controlled  
14 Dangerous Substances Act," P. L. 1970, c. 226 (C. 24:21-19), except  
15 possession of 84 grams or less of marijuana, which is a crime under  
16 the laws of New Jersey or is an equivalent crime under the laws  
17 of any other jurisdiction; (2) Any act which is indictable under  
18 any of the following provisions of Title 18, United States Code:  
19 section 201 (relating to bribery), section 224 (relating to sports  
20 bribery), sections 471, 472, 473 (relating to counterfeiting), section  
21 659 (relating to theft from interstate shipment) if the act indictable  
22 under section 659 is felonious, section 664 (relating to embezzle-  
23 ment from pension and welfare funds), section 891-894 (relating  
24 to extortionate credit transactions), section 1084 (relating to the  
25 transmission of gambling information), section 1341 (relating to  
26 mail fraud), section 1343 (relating to wire fraud), section 1503 (re-  
27 lating to obstruction of justice), section 1510 (relating to obstruction  
28-29 of criminal investigations), section 1511 (relating to the obstruc-  
30 tion of State or local law enforcement), section 1951 (relating to  
31 interference with commerce by robbery or extortion), section 1952  
32 (relating to racketeering), section 1953 (relating to interstate  
33 transportation of wagering paraphernalia), section 1954 (relating  
34 to unlawful fund payments), section 1955 (relating to the prohibi-  
35 tion of illegal gambling businesses), sections 2314 and 2315 (relat-  
36 ing to interstate transportation of stolen property), sections 2421-  
37 2424 (relating to white slave traffic); (3) Any act which is  
38 indictable under Title 29, United States Code, section 186 (relating  
39 to restrictions on payments and loans to labor organizations) or  
40 section 501(c) (relating to embezzlement from union funds); or  
41 (4) Any offense involving bankruptcy fraud, fraud in the sale of  
42 securities, or the felonious manufacture, importation, receiving,

43 concealment, buying, selling, or otherwise dealing in narcotic or  
44 other dangerous drugs, punishable under any law of the United  
45 States.

46 b. "Person" includes any individual or entity holding or capable  
47 of holding a legal or beneficial interest in property.

48 c. "Enterprise" includes any individual, partnership, corpora-  
49 tion, association, or other legal entity, and any union or group of  
50 individuals associated in fact although not a legal entity.

51 d. "Pattern of racketeering activity" requires at least two acts  
52 of racketeering activity, one of which shall have occurred after the  
53 effective date of this act and the last of which shall have occurred  
54 within 10 years (excluding any period of imprisonment) after the  
55 commission of a prior act of racketeering activity.

56 e. "Unlawful debt" means a debt

57 (1) Which was incurred or contracted in gambling activity which  
58 was in violation of the law of the United States, a state or political  
59 subdivision thereof; or

60 (2) Which is unenforceable under State or Federal law in  
61 whole or in part as to principal or interest because of the laws  
62 relating to usury; or

63 (3) Which was incurred in connection with the business of  
64 gambling in violation of the law of the United States, a state or  
65 political subdivision thereof; or

66 (4) Which was incurred in connection with the business of lend-  
67 ing money or a thing of value at a rate usurious under State or  
68 Federal law, where the usurious rate is at least twice the enforce-  
69 able rate.

70 f. "Documentary material" includes any book, paper, docu-  
71 ment, record, recording, or other material.

72 g. "Attorney General" includes the Attorney General of New  
73 Jersey, his assistants and deputies. The term may also include a  
74 county prosecutor or his designated assistant prosecutor if a  
75 county prosecutor is expressly authorized in writing by the  
76 Attorney General to carry out the powers conferred on the  
77 Attorney General by this chapter.

78 h. "Trade or commerce" shall include all economic activity  
79 involving or relating to any commodity or service.

1 2C:41-2. Prohibited activities. a. It shall be unlawful for any  
2 person who has received any income derived, directly or indirectly,  
3 from a pattern of racketeering activity or through collection of an  
4 unlawful debt in which he has participated as a principal within  
5 the meaning of N. J. S. 2C:2-6 to use or invest, directly or

6 indirectly, any part of the income, or the proceeds of the income,  
7 in acquisition of any interest in, or the establishment or operation  
8 of any enterprise which is engaged in or the activities of which  
9 affect trade or commerce. A purchase of securities on the open  
10 market for purposes of investment, and without the intention of  
11 controlling or participating in the control of the issuer or of  
12 assisting another to do so, shall not be unlawful under this section,  
13 provided that the sum total of the securities of the issuer held by  
14 the purchaser, the members of his family, and his or their accom-  
15 plices in any pattern of racketeering activity or in the collection  
16 of an unlawful debt does not amount in the aggregate to 1% of  
17 the outstanding securities of any one class, or does not, either in  
18 law or in fact, empower the holders thereof to elect one or more  
19 directors of the issuer, provided, further, that if, in any proceeding  
20 involving an alleged investment in violation of this section, it is  
21 established that over half of the defendant's aggregate income for  
22 a period of 2 or more years immediately preceding the investment  
23 was derived from a pattern of racketeering activity, a rebuttable  
24 presumption shall arise that the investment included income  
25 derived from a pattern of racketeering activity.

26 b. It shall be unlawful for any person through a pattern of  
27 racketeering activity or through collection of an unlawful debt to  
28 acquire or maintain, directly or indirectly, any interest in or  
29 control of any enterprise which is engaged in or activities of which  
30 affect trade or commerce.

31 c. It shall be unlawful for any person employed by or associated  
32 with any enterprise engaged in or activities of which affect trade  
33 or commerce to conduct or participate, directly or indirectly, in  
34 the conduct of the enterprise's affairs through a pattern of racke-  
35 teering activity or collection of unlawful debt.

36 d. It shall be unlawful for any person to conspire to violate any  
37 of the provisions of subsections a., b., or c. of this section.

1 2C:41-3. Criminal penalties. Any person who violates any  
2 provision of N. J. S. 2C:41-2 shall be guilty of a crime of the  
3 first degree and shall forfeit to the State

4 a. Any interest he has acquired or maintained in violation of  
5 this chapter and

6 b. Any interest in, security of, claim against, or property or  
7 contractual right of any kind affording a source of influence over  
8 any enterprise which he has established, operated, controlled,  
9 conducted, or participated in the conduct of, in violation of this  
10 chapter.

1 2C:41-4. Civil remedies. a. The Superior Court, making due  
2 provisions for the rights of innocent persons, shall have jurisdic-  
3 tion to prevent and restrain violations of N. J. S. 2C:41-2, by is-  
4 suing appropriate orders, including, but not limited to:

5 (1) Ordering any person to divest himself of any interest, direct  
6 or indirect, in any enterprise;

7 (2) Imposing reasonable restrictions on the future activities or  
8 investments of any person, including but not limited to, prohibiting  
9 any person from engaging in the same type of endeavor as the  
10 enterprise found to be in violation of N. J. S. 2C:41-2;

11 (3) Ordering the dissolution or reorganization of any enterprise;

12 (4) Ordering the denial, suspension or revocation of the charter  
13 of any corporation organized under the laws of this State and to  
14 deny, suspend or revoke the license of any foreign corporation  
15 authorized to do business in the State of New Jersey;

16 (5) Ordering the denial, suspension or revocation of the license  
17 or permit granted to any enterprise by any department or agency  
18 of the State of New Jersey;

19 (6) Entering a cease and desist order which specifies the con-  
20 duct which is to be discontinued, altered or implemented by any  
21 person;

22 (7) Ordering the restitution of any moneys or property unlaw-  
23 fully obtained or retained by any person found to be in violation  
24 of N. J. S. 2C:41-2;

25 (8) Assessing civil penalties as may be necessary to punish mis-  
26 conduct and to deter future violations, which penalties may not  
27 exceed \$100,000.00; and

28 (9) Ordering forfeiture to the State of any interest he has ac-  
29 quired or maintained in violation of this chapter and any interest  
30 in, security of, claim against, or property or contractual right of any  
31 kind affording a source of influence over any enterprises he has  
32 established, operated, controlled, conducted, or participated in the  
33 conduct of, in violation of this chapter.

34 (10) Imposing any or all of the foregoing sanctions in combi-  
35 nation with each other.

36 b. In any action brought by the Attorney General under this  
37 chapter, the Superior Court shall have the jurisdiction to enter  
38 restraining orders or prohibitions, or to take other actions, in-  
39 cluding but not limited to, the acceptance of satisfactory perform-  
40 ance bonds, in connection with any property or other interest sub-  
41 ject to forfeiture under this chapter, as it shall deem proper.



42 c. Upon conviction of a person under this chapter, the court  
43 shall authorize the Attorney General to seize all property or other  
44 interest declared forfeited under this section upon terms and con-  
45 ditions as the court shall deem proper. If a property right or other  
46 interest is not exercisable or transferable for value by the State,  
47 it shall expire and shall not revert to the convicted person.

48 d. The Attorney General may institute proceedings in Superior  
49 Court for violations of N. J. S. 2C:41-2. In any action brought  
50 under this section, the court shall proceed as soon as practicable  
51 to the hearing and determination thereof. Pending final determi-  
52 nation thereof, the court may at any time enter restraining orders  
53 or prohibitions, or take other actions, including the acceptance of  
54 satisfactory performance bonds, as it shall deem proper.

55 e. Any person damaged in his business or property by reason of  
56 a violation of N. J. S. 2C:41-2 may sue therefor in any appro-  
57 priate court and shall recover threefold any damages he sustains  
58 and the cost of the suit, including a reasonable attorney's fee.

59 f. A final judgment rendered in favor of the State in any crim-  
60 inal proceeding brought under this chapter shall estop the de-  
61 fendant from denying the essential allegations of the criminal  
62 offense in any subsequent civil proceeding.

1 2C:41-5. Civil investigative demand. a. Whenever the Attorney  
2 General has reason to believe that any person or enterprise may  
3 be in possession, custody, or control of any documentary materials  
4 relevant to an investigation under this chapter, or whenever the  
5 Attorney General believes it to be in the public interest that an  
6 investigation be made, he may, prior to the institution of a civil  
7 or criminal proceeding thereon, issue in writing, and cause to be  
8 served upon the person, a civil investigative demand requiring  
9 him to produce the material for examination.

10 b. Each demand shall:

11 (1) State the nature of the conduct constituting the alleged vio-  
12 lation which is under investigation and the provision of law ap-  
12A plicable thereto;

13 (2) Describe the class or classes of documentary material to be  
14 produced thereunder with such specificity and certainty as to per-  
15 mit the material to be fairly identified;

16 (3) Prescribe a return date which will provide a reasonable  
17 period of time within which the material so demanded may be  
18 assembled and made available for inspection and copying or repro-  
19 duction; and

20 (4) Identify the custodian to whom the material shall be made  
21 available.

22 c. No demand shall:

23 (1) Contain any requirement which would be held to be un-  
24 reasonable if contained in a subpoena duces tecum issued in aid of  
25 a grand jury investigation; or

26 (2) Require the production of any documentary evidence which  
27 would be otherwise privileged from disclosure if demanded by a  
28 subpoena duces tecum issued in aid of a grand jury investigation.

29 d. Service of any demand filed under this section may be made  
30 upon a person by:

31 (1) Delivering a duly executed copy thereof to any partner,  
32 executive officer, managing agent, or general agent thereof, or to  
33 any agent thereof authorized by appointment or by law to receive  
34 service of process on behalf of the person, or upon any individual  
35 person;

36 (2) Delivering a duly executed copy thereof to the principal  
37 office or place of business of the person to be served; or

38 (3) Depositing a copy in the United States mail, by registered  
39 or certified mail duly addressed to the person at his principal  
40 office or place of business.

41 e. A verified return by the individual serving any demand,  
42 setting forth the manner of service shall be prima facie proof of  
43 service. In the case of service by registered or certified mail, the  
44 return shall be accompanied by the return post office receipt of  
45 delivery of the demand.

46 f. Any person upon whom any demand issued under this section  
47 has been duly served shall make the material available for in-  
48 spection and copying or reproduction to the Attorney General at  
49 the principal place of business of that person in the State of New  
50 Jersey or at such other place as the Attorney General and the  
51 person thereafter may agree and prescribe in writing, on the re-  
52 turn date specified in the demand or on a later date as the Attorney  
53 General may prescribe in writing. Upon written agreement be-  
54 tween the person and the Attorney General, copies may be substi-  
55 tuted for all or any part of the original materials. The Attorney  
56 General may cause the preparation of any copies of documentary  
57 material as may be required for official use by the Attorney General.  
58 While in the possession of the Attorney General no material so  
59 produced shall be available for examination, without the consent  
60 of the person who produced the material, by an individual other  
61 than the Attorney General or his duly appointed representatives.  
62 Under reasonable terms and conditions as the Attorney General  
63 shall prescribe, documentary material while in his possession shall

64 be available for examination by the person who produced the ma-  
65 terial or any duly authorized representatives of the person.

66 g. Upon completion of:

67 (1) The review and investigation for which any documentary  
68 material was produced under this section, and

69 (2) Any case or proceeding arising from the investigation, the  
70 Attorney General shall return to the person who produced the  
71 material all the material other than copies thereof made by the  
72 Attorney General pursuant to this section which has not passed  
73 into the control of any court or grand jury through the introduction  
74 thereof into the record of the case or proceeding.

75 h. When any documentary material has been produced by any  
76 person under this section for use in any racketeering investigation,  
77 and no case or proceeding arising therefrom has been instituted  
78 within a reasonable time after completion of the examination and  
79 analysis of all evidence assembled in the course of the investigation,  
80 the person shall be entitled, upon written demand made upon the  
81 Attorney General, to the return of all documentary material other  
82 than copies thereof made pursuant to this section so produced by  
83 the person.

84 i. Whenever any person fails to comply with any civil investi-  
85 gative demand duly served upon him under this section or when-  
86 ever satisfactory copying or reproduction of any material cannot  
87 be done and the person refuses to surrender the material, the  
88 Attorney General may file in the Superior Court a petition for an  
89 order of the court for the enforcement of this section.

1 2C:41-6. Investigations. a. Whenever it shall appear to the  
2 Attorney General, either upon complaint or otherwise, that any  
3 person shall have engaged in or engages in or is about to engage  
4 in any act or practice prohibited or declared to be illegal by N. J. S.  
5 2C:41-2 or sections 3 through 16 of this amendatory and supple-  
6 mentary act, or whenever the Attorney General believes it to be in  
7 the public interest that an investigation be made, he may in his  
8 discretion either require or permit the person to file with him a  
9 statement in writing under oath or otherwise as to all the facts  
10 and circumstances concerning the subject matter which he believes  
11 is to be in the public interest to investigate. The Attorney General  
12 may also require any other data and information as he may deem  
13 relevant and may make any special and independent investigations  
14 as he may deem necessary in connection with the matter. In con-  
15 nection with any investigation the Attorney General is empowered  
16 to subpoena witnesses, compel their attendance, examine them under  
17 oath before himself or a court of record, and require the production

18 of any books or papers which he deems relevant or material to  
19 the inquiry. The power of subpoena and examination shall not  
20 abate or terminate by reason of any action or proceeding brought  
21 by the Attorney General under chapter 41 of Title 2C of the New  
22 Jersey Statutes. No person shall be excused from attending an  
23 inquiry in compliance with a subpoena, or from producing a paper  
24 or book, document or any other record, or from being examined  
25 or required to answer questions on the ground of failure to tender  
26 or pay a witness or mileage fee unless demand therefor is made at  
27 the time testimony is about to be taken and as a condition precedent  
28 to offering the production or testimony and unless payment thereof  
29 be not thereupon made.

30 b. If a person subpoenaed to attend an inquiry shall fail to obey  
31 the command of the subpoena without good cause, he shall be guilty  
32 of a crime of the fourth degree. If a person in attendance upon  
33 an inquiry pursuant to subpoena, or if a person required to file with  
34 the Attorney General a statement in writing under oath or other-  
35 wise, refuses to answer a question or produce evidence of any  
36 other kind or make the required statement in writing under oath  
37 or otherwise on the ground that he may be incriminated thereby,  
38 and if the Attorney General, in a writing directed to the person  
39 being questioned orders that person to answer the question or  
40 produce the evidence or the statement in writing under oath or  
41 otherwise, that person shall comply with the order. After comply-  
42 ing, and if but for this section he would have been privileged to  
43 withhold the answer given or the evidence produced or the state-  
44 ment in writing under oath or otherwise given, the testimony,  
45 evidence or statement, and the evidence derived therefrom, may  
46 not be used against the person in any prosecution for a crime or  
47 offense concerning which he gave answer or produced evidence or  
48 submitted a written statement under the order of the Attorney  
49 General. However, he may nevertheless be prosecuted or sub-  
50 jected to penalty or forfeiture for any perjury, false swearing or  
51 contempt committed in answering, or failing to answer, or in pro-  
52 ducing evidence or failing to produce evidence or in presenting a  
53 written statement or failing to do so in accordance with the order.  
54 If a person refuses to testify after being granted immunity from  
55 prosecution and after being ordered to testify as aforesaid, he may  
56 be adjudged in contempt in accordance with the rules of court and  
57 committed to the county jail until such time as he purges himself  
58 of contempt by testifying, producing evidence or presenting a  
59 written statement as ordered. The foregoing shall not prevent the

60 Attorney General from instituting civil contempt proceedings  
61 against any person who violates any of the above provisions.

62 a. Notwithstanding subsection b., whenever any person fails to  
63 comply with any subpoena duly served upon him under this section  
64 the Attorney General may file in the Superior Court a petition for  
65 an order of the court for the enforcement of this section.

1 2C:41-7. Burden of proof. In any civil action commenced under  
2 chapter 41 of Title 2C of the New Jersey Statutes by the Attorney  
3 General or by an injured person, where permitted, the burden of  
4 the proof shall be by a preponderance of the evidence.

1 3. N. J. S. 2C:20-1 is amended to read as follows:

2 2C:20-1. Definitions. In chapters 20 and 21 unless a different  
3 meaning plainly is required:

4 a. "Deprive" means: (1) to withhold or cause to be withheld  
5 property of another permanently or for so extended a period as to  
6 appropriate a substantial portion of its economic value, or with  
7 purpose to restore only upon payment of reward or other compen-  
8 sation; or (2) to dispose or cause disposal of the property so as  
9 to make it unlikely that the owner will recover it.

10 b. "Fiduciary" means an executor, general administrator of an  
11 intestate, administrator with the will annexed, substituted admin-  
12 istrator, guardian, substituted guardian, trustee under any trust  
13 expressed, implied, resulting or constructive, substituted trustee,  
14 executor, conservator, curator, receiver, trustee in bankruptcy,  
15 assignee for the benefit of creditors, partner, agent or officer of a  
16 corporation, public or private, temporary administrator, adminis-  
17 trator, administrator pendente lite, administrator ad prosequen-  
18 dum, administrator ad litem or other person acting in a similar  
19 capacity.

20 c. "Financial institution" means a bank, insurance company,  
21 credit union, savings and loan association, investment trust or  
22 other organization held out to the public as a place of deposit of  
23 funds or medium of savings or collective investment.

24 d. "Government" means the United States, any state, county,  
25 municipality, or other political unit, or any department, agency or  
26 subdivision of any of the foregoing, or any corporation or other  
27 association carrying out the functions of government.

28 e. "Movable property" means property the location of which  
29 can be changed, including things growing on, affixed to, or found  
30 in land, and documents although the rights represented thereby  
31 have no physical location. "Immovable property" is all other  
32 property.

33 f. "Obtain" means: (1) in relation to property, to bring about  
34 a transfer or purported transfer of a legal interest in the property,  
35 whether to the obtainer or another; or (2) in relation to labor or  
36 service, to secure performance thereof.

37 g. "Property" means anything of value, including real estate,  
38 tangible and intangible personal property, trade secrets, contract  
39 rights, choses-in-action and other interests in or claims to wealth,  
40 admission or transportation tickets, captured or domestic animals,  
41 food and drink, electric, gas, steam or other power.

42 h. "Property of another" includes property in which any person  
43 other than the actor has an interest which the actor is not privileged  
44 to infringe, regardless of the fact that the actor also has an interest  
45 in the property and regardless of the fact that the other person  
46 might be precluded from civil recovery because the property was  
47 used in an unlawful transaction or was subject to forfeiture as  
48 contraband. Property in possession of the actor shall not be  
49 deemed property of another who has only a security interest  
50 therein, even if legal title is in the creditor pursuant to a condi-  
51 tional sales contract or other security agreement.

52 i. "Trade secret" means the whole or any portion or phase of  
53 any scientific or technical information, design, process, procedure,  
54 formula or improvement which is secret and of value. A trade  
55 secret shall be presumed to be secret when the owner thereof takes  
56 measures to prevent it from becoming available to persons other  
57 than those selected by the owner to have access thereto for limited  
58 purposes.

59 j. "*Dealer in property*" means a person who buys and sells prop-  
60 erty as a business.

61 k. "*Traffic*" means:

62 (1) *To sell, transfer, distribute, dispense or otherwise dispose*  
63 *of to another person; or*

64 (2) *To buy, receive, possess, or obtain control of, with intent to*  
65 *sell, transfer, distribute, dispense or otherwise dispose of to another*  
66 *person.*

67 l. "*Broken succession of title*" means lack of regular documents  
68 *of purchase and transfer by any seller except the manufacturer of*  
69 *the subject property, or possession of documents of purchase and*  
70 *transfer by any buyer without corresponding documents of sale and*  
71 *transfer in possession of seller, or possession of documents of sale*  
72 *and transfer by seller without corresponding documents of pur-*  
73 *chase and transfer in possession of any buyer.*

74 m. "*Person*" includes any individual or entity holding or  
75 *capable of holding a legal or beneficial interest in property.*

76 n. "Anything of value" means any direct or indirect gain or  
77 advantage to any person.

78 o. "Interest in property which has been stolen" means title or  
79 right of possession to such property.

1 4. N. J. S. 2C:20-2 is amended to read as follows:

2 2C:20-2. Consolidation of theft offenses; grading; provisions  
3 applicable to theft generally. a. Consolidation of theft offenses.  
4 Conduct denominated theft in this chapter constitutes a single  
5 offense, but each episode or transaction may be the subject of a  
6 separate prosecution and conviction. A charge of theft may be  
7 supported by evidence that it was committed in any manner that  
8 would be theft under this chapter, notwithstanding the specification  
9 of a different manner in the indictment or accusation, subject only  
10 to the power of the court to ensure fair trial by granting a bill of  
11 particulars, discovery, a continuance, or other appropriate relief  
12 where the conduct of the defense would be prejudiced by lack of  
13 fair notice or by surprise.

14 b. Grading of theft offenses.

15 (1) Theft constitutes a crime of the second degree if the amount  
16 involved is \$75,000.00 or more or if the property is taken by  
17 extortion.

18 (2) Theft constitutes a crime of the third degree if:

19 (a) The amount involved exceeds \$500.00 but is less than  
20 \$75,000.00;

21 (b) The property stolen is a firearm, automobile, boat, horse  
22 or airplane;

23 (c) The property stolen is a controlled dangerous substance  
24 as defined in P. L. 1970, c. 226 (C. 24:21-1 et seq.);

25 (d) It is from the person of the victim;

26 (e) It is in breach of an obligation by a person in his capacity  
27 as a fiduciary;

28 (f) It is by threat not amounting to extortion; or

29 (g) It is of a public record, writing or instrument kept, filed  
30 or deposited according to law with or in the keeping of any  
31 public office or public servant.

32 (3) Theft constitutes a crime of the fourth degree if the amount  
33 involved is at least \$200.00 but does not exceed \$500.00. If the  
34 amount involved was less than \$200.00 the offense constitutes a  
35 disorderly persons offense.

35a (4) The amount involved in a theft shall be determined by the  
35b trier of fact. Amounts involved in thefts committed pursuant to  
35c one scheme or course of conduct, whether from the same person or

30D several persons, may be aggregated in determining the grade of  
35E the offense.

36 c. Claim of right. It is an affirmative defense to prosecution for  
37 theft that the actor:

38 (1) Was unaware that the property or service was that of  
39 another;

40 (2) Acted under an honest claim of right to the property or  
41 service involved or that he had a right to acquire or dispose of it  
42 as he did; or

43 (3) Took property exposed for sale, intending to purchase and  
44 pay for it promptly, or reasonably believing that the owner, if  
45 present, would have consented.

46 d. Theft from spouse. It is no defense that theft was from the  
47 actor's spouse, except that misappropriation of household and  
48 personal effects, or other property normally accessible to both  
49 spouses, is theft only if it occurs after the parties have ceased  
50 living together.

1 Chapter 20 of Title 2C of the New Jersey Statutes is supple-  
2 mented by sections 5 through 17 as follows:

3 5. (New section) Fencing. a. Possession of altered property. A  
4 person is guilty of possession of altered property if he is a dealer  
5 in property and he possesses property which has been stolen or the  
6 identifying features of which, including serial numbers or labels,  
7 have been removed or in any fashion altered, without the consent  
8 of the manufacturer of the property.

9 b. Dealing in stolen property. A person is guilty of dealing in  
10 stolen property if he traffics in, or initiates, organizes, plans,  
11 finances, directs, manages or supervises trafficking in, the property  
12 of another which has been stolen.

13 c. Grading. Violation of this section is a crime of the second  
14 degree. If the value of the property is \$75,000.00 or more, the  
15 violation constitutes a crime of the second degree, but notwith-  
16 standing the provisions of N. J. S. 2C:43-6(2), the person con-  
17 victed may be sentenced to imprisonment for a specific term of  
18 years which shall be fixed by the court and shall be between 5  
19 years and 20 years.

1 6. (New section) Presumptions. In addition to the presumptions  
2 contained in N. J. S. 2C:20-7(b) the following presumptions are  
3 available in the prosecution for a fencing offense:

4 a. Proof of the purchase or sale of property at a price substan-  
5 tially below its fair market value, unless satisfactorily explained,  
6 gives rise to an inference that the person buying or selling the  
7 property knew that it had been stolen;



8 b. Proof of the purchase or sale of property by a dealer in prop-  
 9 erty, out of the regular course of business, or without the usual  
 10 indicia of ownership other than mere possession, or the property  
 11 or the job lot of which it is a part was bought, received, possessed  
 12 or controlled in broken succession of title, so that it cannot be  
 13 traced, by appropriate documents, in unbroken succession to the  
 14 manufacturer, in all cases where the regular course of business  
 15 reasonably indicates records of purchase, transfer or sale, unless  
 16 satisfactorily explained, gives rise to an inference that the person  
 17 buying or selling the property knew that it had been stolen; and

18 c. Proof that a pawnbroker obtained property without having  
 19 ascertained by reasonable inquiry that the person from whom he  
 20 obtained it had a legal right to possess or control it gives rise to  
 21 an inference that the pawnbroker knew that it had been stolen.

1 7. (New section) Liability. A person is liable for damages if he  
 2 possesses or obtains control of property of another which has been  
 3 stolen, whether or not he knows or has reason to believe, or has been  
 4 negligent with respect to the fact that it has been stolen and intends  
 5 to sell, transfer, distribute, dispense, or otherwise dispose of the  
 6 property to another as consideration for anything of value.

1 8. (New section) Parties plaintiff. a. The Attorney General  
 2-3 shall have a right to take possession of all property of another,  
 4 which has been stolen, located in this State.

5 b. The Attorney General shall have standing to bring an action  
 6 for damages under chapter 20 of Title 2C of the New Jersey  
 7 Statutes as a real party in interest.

8 c. Any other person who has an interest in property which has  
 9 been stolen shall have standing to bring an action for damages  
 10 under chapter 20 of Title 2C of the New Jersey Statutes.

11 d. The Attorney General may, at his election or on the court's  
 12 own motion, join or be joined by any person seeking relief under  
 13 chapter 20 of Title 2C of the New Jersey Statutes.

1 9. (New section) Parties defendant. a. All persons who have  
 2 possessed or obtained control of property of another which has  
 3 been stolen are liable as principals and may be sued jointly or  
 4 severally, whether or not possession or control was joint.

5 b. Any person held liable for possession or control of stolen  
 6 property under chapter 20 of Title 2C of the New Jersey Statutes  
 7 shall have standing to bring a civil action:

8 (1) For contribution, from any person who previously possessed  
 9 or controlled the property while it was stolen; or

10 (2) For full indemnification from any person who possessed or  
11 exercised control over the property and who knew, had reason to  
12 know, or was reckless with regard to the risk than it was stolen.

1 10. (New section) Affirmative defense. It is an affirmative  
2 defense to an action brought under Chapter 20 of Title 2C of the  
3 New Jersey Statutes that the defendant bought, received, possessed  
4 or obtained control of the property with intent to report the matter  
5 to a law enforcement officer and restore the property to its owner.

1 11. (New section) Jurisdiction. Any action for damages under  
2 chapter 20 of Title 2C of the New Jersey Statutes shall be main-  
3 tained in the Superior Court, sitting without a jury.

1 12. (New section) Damages. a. For purposes of estimating actual  
2 damages, the value of the property shall be the retail value of the  
3 property at the time when it was stolen, or, if that cannot be  
4 ascertained, at the time action for recovery of damages was begun.

5 b. The extent of actual damages shall be the retail value of the  
6 property stolen, if that value is ascertainable, not of some part of  
7 it which the persons found liable possessed or controlled.

8 c. Damages recoverable in any action brought under chapter 20  
9 of Title 2C of the New Jersey Statutes by the Attorney General  
10 shall be twice the actual damages, and where stolen goods have been  
11 knowingly or recklessly possessed or controlled, punitive damages  
12 in addition.

13 d. Damages recoverable in any action brought under chapter 20  
14 of Title 2C of the New Jersey Statutes by any other person, jointly  
15 with or separately from the Attorney General, shall be the actual  
16 damages, and where stolen goods have been knowingly or recklessly  
17 possessed or controlled, punitive damages in addition.

18 e. A judgment in damages in favor of the Attorney General  
19 under chapter 20 of Title 2C of the New Jersey Statutes shall not  
20 bar recovery by any private person in respect of the same property,  
21 nor shall judgment in favor of any private person bar recovery by  
22 the Attorney General, provided, however, that the total amount  
23 recovered in respect of the same property shall not exceed treble  
24 damages. Punitive damages, where applicable, are not part of the  
25 limitation of treble damages.

1 13. (New section) Costs. The Attorney General and any other  
2 person who recovers under chapter 20 of Title 2C of the New Jersey  
3 Statutes shall be entitled to full indemnification for attorney's  
4 fees, costs of investigation, and costs of litigation.

1 14. (New section) Injunctive Relief by State; Other Persons.  
2 a. In addition to any other action or proceeding authorized by law,  
3 the Attorney General or a person alleging injury or loss, may bring

4 an action in the Superior Court to enjoin violations of chapter 20  
5 of Title 2C of the New Jersey Statutes, or to enjoin any acts in  
6 furtherance thereof. The Superior Court, in any action brought  
7 pursuant to this section, shall grant relief as may be appropriate  
8 in the circumstances, including but not limited to:

9 (1) Ordering any person to divest himself of any interest in any  
10 organization;

11 (2) Imposing reasonable restraints on the future conduct of any  
12 person; or

13 (3) Ordering the dissolution or reorganization of any organiza-  
14 tion, making due provisions for the rights of innocent persons.

15 b. In any action the Attorney General or injured person shall  
16 move as soon as practicable for a hearing and determination. Pend-  
17 ing final determination, the Superior Court may enter temporary  
18 orders, including restraints and prohibitions, or take other actions  
19 as are in the interest of justice.

1 15. (New section) Commingled property; forfeiture. a. If a  
2 person who is a dealer in property, is found to be in possession of  
3 stolen property, within the scope of Chapter 20 of Title 2C of the  
4 New Jersey Statutes which is commingled with other property, all  
5 of the commingled property shall be subject to forfeiture by the  
6 State. In addition to any other action or proceeding authorized by  
7 law, the Attorney General may bring an action in the Superior  
8 Court, sitting without a jury, to declare all such commingled prop-  
9 erty forfeited to the State. Proof of the existence of commingled  
10 property shall create a presumption that all the property was stolen  
11 property, in the absence of satisfactory explanation or proof to the  
12 contrary.

13 b. The procedure to be utilized in forfeiture actions brought  
14 pursuant to this section shall be consistent with the forfeiture pro-  
15 cedures set forth in Chapter 64 of Title 2C of the New Jersey  
16 Statutes.

1 16. (New section) Estoppel. A final judgment rendered in favor  
2 of the Attorney General or other person in any criminal action, or  
3 proceeding under chapter 20 of Title 2C of the New Jersey Statutes,  
4 shall estop the defendant in the action or proceeding in any sub-  
5 sequent civil action or proceeding under chapter 20 of Title 2C of  
6 the New Jersey Statutes as to all matters as to which the judgment  
7 in the action or proceeding would be an estoppel as between the  
8 parties to it.

1 17. (New section) Civil investigative demand and investigations.  
2 N. J. S. 2C:41-5 (Civil Investigative Demand) and N. J. S. 2C:41-6

3 (Investigations) shall be applicable to investigations conducted  
4 under chapter 20 of Title 2C of the New Jersey Statutes.

1 18. (New section) Continuing criminal business; forfeiture;  
2 definition. a. Continuing criminal business. A person who know-  
3 ingly engages in a continuing criminal business is guilty of a crime  
4 of the first degree and, in addition to the penalties prescribed  
5 therefor, is subject to the forfeiture prescribed in subsection b.

6 b. Forfeiture. A person who is convicted of engaging in a con-  
7 tinuing criminal business shall in accordance with the rules of  
8 court forfeit to the entity funding the prosecuting agency involved:

9 (1) All profits obtained by him in the business, and

10 (2) Any of his interest in, claim against, or property or con-  
11 tractual rights of any kind which afford a source of influence over,  
12 the business.

13 c. Definition. A person is engaged in a continuing criminal  
14 business if:

15 (1) He violates section 2C:17-1 (arson), section 2C:20-5 (theft  
16 by extortion), subsections a., b., and c. of section 2C:21-19 (criminal  
17 usury etc.), or sections 2C:37-2 through 2C:37-5 and 2C:37-7,  
18 inclusive, (gambling offenses) of Title 2C of the New Jersey  
19 Statutes, or section 19 of the "New Jersey Controlled Dangerous  
20 Substances Act," P. L. 1970, c. 226 (C. 24:21-19), except possession  
21 of 84 grams or less of marijuana; and

22 (2) The violation of offense specified above is a part of a con-  
23 tinuing series of violations of the specified offense which are under-  
24 taken by the person in concert with five or more other persons with  
25 respect to whom he occupies a position of organizer, supervisor or  
26 manager, and from which the person obtains substantial income or  
27 resources.

1 19. This act shall take effect immediately.

### *Sponsors'* STATEMENT

In his fifth annual message, Governor Byrne called for the enact-  
ment of a number of law enforcement initiatives which had been  
recommended by the Divisions of Criminal Justice and State Police  
in the Department of Law and Public Safety and the 21 county  
prosecutors. This bill, which is written in the form of amendments  
to the "New Jersey Code of Criminal Justice" (more commonly  
known as the Penal Code), P. L. 1978, c. 95, contained in Title 2C  
of the New Jersey Statutes, includes provisions concerning orga-  
nized crime, theft, fencing and receiving stolen property and labor  
racketeering. Many of the provisions were first recommended in  
the Report of the Task Force on Organized Crime which was the

product of a joint effort by the Division of Criminal Justice and the County Prosecutors Association.

Section 2 of this bill comprises a new chapter of Title 2C of the New Jersey Statutes under the title of "Racketeer Influenced and Corrupt Organizations" (R. I. C. O.). R. I. C. O. statutes, which first appeared in Title IX of the Federal Organized Crime Control Act of 1970, P. L. 91-452, were developed in response to the growing economic power of organized crime. The statutes provide law enforcement authorities with specific criminal and civil sanctions designed to fight the infiltration of legitimate businesses by organized criminal elements. The criminal involvement prohibited by R. I. C. O. statutes includes the investment of organized crime or racketeer funds in legitimate businesses by "strong arm" methods.

Since the Federal R. I. C. O. statute was enacted six states have adopted legislation that provides certain civil sanctions which may be brought against criminally operated businesses. New Jersey has adopted a R. I. C. O.-type statute specifically limited to investigations of casino and casino-related activities as a part of the "Casino Control Act", P. L. 1977, c. 110. This bill, which also follows the model of the Federal law, authorizes the use of such remedies as divestiture of interest, dissolution or reorganization of a corporation and loss of charter or license to do business in New Jersey.

Sections 3 through 17 of this bill amend and supplement chapter 20 of Title 2C of the New Jersey Statutes, "Theft and Related Offenses." Theft and the related crimes of fencing and receiving stolen property have a significant impact on New Jersey's economy. Figures gathered by the State Police indicate that \$175 million worth of property was reported stolen during 1977. In order to provide a penalty equal to the seriousness of the crime, this bill raises the penalty for theft to a crime of the second degree where the value of the property taken is \$75,000.00 or more. Similar penalties are provided for the offenses of fencing or dealing in stolen property. In addition to the enhanced criminal penalties, this bill creates a number of civil remedies including injunctive relief and compensatory and punitive damages that may be brought against a possessor of stolen property.

Section 18 creates a new offense, "engaging in a continuing criminal business," a crime of the first degree. A person is guilty of engaging in a continuing criminal business if, as an organizer or supervisor and as a part of a continuing series of violations, he violates the laws regarding arson, extortion, loansharking or gambling or narcotics offenses.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1079**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 24, 1980

In his fifth annual message, Governor Byrne called for enactment of a number of law enforcement initiatives which had been recommended by the Divisions of Criminal Justice and State Police in the Department of Law and Public Safety and the 21 county prosecutors. This bill, which is written in the form of amendments to the "New Jersey Code of Criminal Justice" (more commonly known as the Penal Code), P. L. 1978, c. 95, contained in Title 2C of the New Jersey Statutes, includes provisions concerning organized crime, theft, fencing and receiving stolen property. Many of the provisions were first recommended in the Report of the Task Force on Organized Crime which was the product of a joint effort by the Division of Criminal Justice and the County Prosecutors Association.

Section 2 of this bill comprises a new chapter of Title 2C of the New Jersey Statutes under the title of "Racketeer Influenced and Corrupt Organizations" (R.I.C.O.). R.I.C.O. statutes, which first appeared in Title IX of the Federal Organized Crime Control Act of 1970, P. L. 91-452, were developed in response to the growing economic power of organized crime. The statutes provide law enforcement authorities with specific criminal and civil sanctions designed to fight the infiltration of legitimate businesses by organized criminal elements. The criminal involvement prohibited by R.I.C.O. statutes includes the investment of organized crime, or racketeer funds in legitimate businesses by "strong arm" methods.

Since the Federal R.I.C.O. statute was enacted, six states have adopted legislation that provides certain civil sanctions which may be brought against criminally operated businesses. New Jersey has adopted a R.I.C.O. type statute specifically limited to investigations of casino and casino-related activities as a part of the "Casino Control Act," P. L. 1977, c. 110. This bill, which also follows the model of the Federal law, authorizes the use of such remedies as divestiture of

interest, dissolution or reorganization of a corporation and loss of charter or license to do business in New Jersey.

It is worth noting here what the United States Congress observed in connection with the Federal Act. It stated that "organized crime activities in the United States weakened the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competitions, seriously burden interstate and foreign commerce, threaten the domestic security and undermine the general welfare of the Nation and its citizens." "It is the purpose of this act," Congress continued, "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." From what has been said about the Federal corollary, it is clear the State statute must propose powerful weapons against a formidable foe. It is equally clear from the declaration of the policy in the bill that these sanctions are directed toward substantial organized crime activity. Courts and prosecutors alike will be guided by the declaration of policy. Thus, the commencement of a R.I.C.O. action where not appropriate or intended by the Legislature would not only be incompatible with a clear legislative intent manifested in the declaration of policy but a violation of a prosecutor's ethical obligations to insure that a R.I.C.O. charge is supported by probable cause. In recognition of these factors, the Federal appeals courts in upholding R.I.C.O. prosecutions have counselled the Federal trial bench to evaluate independently each set of facts in a R.I.C.O. case since they are unable to lay down any fixed rules concerning applicability of the statute and have cautioned prosecutors against undue prosecutorial zeal in invoking R.I.C.O. See *United States v. Huber*, 603 F. 2d 387 (2 Cir. 1979). See also *United States v. Swiderski*, 593 F. 2d 1246, 1249 (D.C. Cir. 1978); *United States v. Elliott*, 571 F. 2d 880 (5 Cir. 1978).

The United States Congress has told the courts that Federal R.I.C.O., although it is criminal in scope, is remedial in purpose and, therefore, is to be liberally construed. Essentially, R.I.C.O. deals with a degree of criminality. It is not operative until racketeering acts, which are independent criminal statutes which are strictly construed, have been violated. The Federal courts have recognized the validity of this liberal construction provision. See, for example, *United States v. Swiderski*, 593 F. 2d 1246 (D.C. Cir. 1978).

Since this bill draws from the model of the Federal R.I.C.O. statute, the comments of the Federal Senate Judiciary Committee on the question of whether the law was an *ex post facto* law are illuminating. The

committee stated: "One act in the pattern must be engaged in after the effective date of the legislation. This avoids the prohibition against *ex post facto* laws and bills of attainder. Anyone who has engaged in the prohibited activities before the effective date of the legislation is on prior notice that only one further act may trigger the increased penalties and new remedies of this chapter." *S. Rept.* 91-617, 91st Cong. 1st Sess. p. 158. The committee's comments are supported by the decision in *United States v. Campanale*, 518 F. 2d 352, 364, 365 (9 Cir. 1975).

Federal R.I.C.O. was innovative when it introduced for the first time in American jurisprudence criminal forfeiture. We have provided for this same criminal forfeiture in section 2C:41-3. The forfeiture which appears in 2C:41-4a(9) is civil forfeiture which we presently have in the Code of Criminal Justice under Chapter 64. Upon conviction of a violation of 2C:41-2, and assuming that the notice to forfeit has been pleaded in the indictment, the defendant automatically forfeits the property provided in 2C:41-3. This is the hallmark of criminal forfeiture. This type of criminal forfeiture is based on personal guilt and the rights of the State and the property derive from an *in personam* judgment against the offender. The forfeiture mentioned under civil remedies in 2C:41-4a(9) is civil forfeiture as is the forfeiture provided in Chapter 64 of the code. Under civil forfeiture the property is deemed "tainted" and the proceeding is theoretically against the property itself. The forfeiture stems from the "guilt" of the property and the rights of the State derived from an *in rem* judgment against the offending property. In order to clarify the distinction between the two types of forfeiture and to provide for procedural safeguards in each instance, 2C:41-3, which is criminal forfeiture, has been brought in line with its Federal counterpart. See 18 *U. S. C. A.* 1963. At the same time, 2C:41-4 which contains civil forfeiture, should proceed pursuant to Chapter 64 of the New Jersey Code of Criminal Justice. It is axiomatic that before a court will forfeit any money or interest the State will be put to its proofs. In the case of money which is fungible, the State will be required to trace the funds. See *United States v. Nerone*, 563 F. 2d 836, 851 (7 Cir. 1977). The committee recognizes that the Attorney General must establish a nexus between the section 2C:41-2 violation and the forfeited property and must also establish the extent of the defendant's interest in that property. In order to do so, the principles of tracing must come into play. We recognize, however, that these principles are as numerous as the situations they are designed to confront and, thus, it is unworkable to provide for them in statutory language. The special verdict of the jury, which is required by this



act, will aid the court in the determination of the forfeiture, which may be supplemented by post-sentence court proceeding. We acknowledge that the court must decide these questions on a case by case basis and we understand that primary resort has been made to the *Restatement of Restitution* with its rules for tracing, equitable liens and constructive trust and we expect and intend that this practice will continue.

Other changes have been effected by the committee. Section 1 has been amended to clarify the scope of the statute. Section 2C:41-1 has been amended to clarify definitions. For example, "racketeering activity" is defined more clearly and rather than listing all of the Federal offenses is defined by reference to the Federal statute. The definition of "enterprise" is more strictly delineated and it is made clear that it includes illicit as well as licit enterprises and governmental as well as other entities. The definition of "pattern or racketeering activity" is made more precise. In addition to two incidents of racketeering activity, the prosecution must also establish that the incidents of such racketeering activity embraced criminal conduct which has the same or similar purposes, results, participants or victims or methods of commission or otherwise are interrelated by distinguishing characteristics. The definition of "documentary material" has also been made more specific. Section 2C:41-7, which established the burden of proof in a civil action, has been deleted because it duplicates the same provision which is presently found in the code. See *N. J. S. 2C:1-13f*. A liberal construction section has been inserted here.

Another amendment provides for the offense of being a "leader of organized crime." This provision, made a part of the conspiracy sections of the code, provides that a person is guilty of being a leader of organized crime if he conspires with others to commit a continuing series of the crimes as specified in 2C:41-1, or any combination thereof, and with respect to those persons he occupies a position of organizer, supervisor or manager. The section of the bill providing for civil investigative interrogatories has been amended to make plain that the recipient of a civil investigative interrogatory has the right to file a petition in Superior Court for an order modifying or setting aside such interrogatory. We have also clarified the immunity provisions of the investigations section and the civil and criminal penalties attendant thereto.

Sections 3 through 11 of this bill amend and supplement chapter 20 of Title 2C of the New Jersey Statutes, "Theft and Related Offenses." Theft and the related crimes of fencing and receiving stolen property have a significant impact on New Jersey's economy. Figures gathered by the State Police indicate that \$175 million worth of property was reported stolen during 1977. In order to provide a penalty equal to the

seriousness of the crime, this bill raises the penalty for theft to a crime of the second degree where the value of the property taken is \$75,000.00 or more. Similar penalties are provided for the offenses of fencing or dealing in stolen property. In addition to the enhanced criminal penalties, this bill creates a number of civil remedies including injunctive relief and treble damages that may be brought against a possessor of stolen property. Section 9 makes clear that a person is liable for damages only if there is a showing that he has violated the criminal provisions (possession of altered property or dealing in stolen property which are set forth in section 5 of the act).

With respect to the offense of possession of altered property it was questioned whether this statute would apply to an innocent shop owner who removes labels for competitive rather than criminal purposes. In order to avoid that result, an affirmative defense has been provided which makes it a defense to prosecution if a person lawfully possesses the usual indicia of ownership in addition to mere possession. Also, the grading of this offense has been changed to conform to the amended grading for theft.

The right of possession of the Attorney General to all stolen property in connection with fencing or dealing with stolen offense in this State has been deleted as unnecessary. Also, the provisions which granted the Attorney General and private person standing to bring an action for damages have been deleted in favor of the same language which appears in the R.I.C.O. damages at 2C:41-4e (any person damaged in his business or property . . ."). In that fashion, a right for damages, either in the Attorney General or a private citizen dependent upon the damages suffered, is granted. The original bill provides for injunctive relief by the State in connection with a theft and fencing offense and it is the intent of this section to allow for freezing of contested assets at the time of the filing of the complaint so that such assets will be intact at the time of judgment. It is also anticipated that the flexibility of injunctive relief can provide wide ranging solutions to fencing problems.

Being of the view that the provision providing that a dealer of property who is found to be in possession of stolen property which is commingled with the property shall be subject to the presumption that all the property was stolen probably constitutes denial of due process of law, the committee has deleted it.

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STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1079**

**STATE OF NEW JERSEY**

DATED: MARCH 23, 1981

Senate Committee Substitute for A-1079 amends Title 2C, the "New Jersey Code of Criminal Justice" in two ways. First, A-1079 would add a new chapter of Title 2C entitled "Racketeering." This is modeled after a portion of the Federal Organized Crime Control Act of 1970. The intent of this chapter is to provide law enforcement authorities with certain criminal and civil sanctions designed to fight infiltration of legitimate businesses by organized criminal elements. The bill also establishes a new criminal offense entitled "lender of organized crime."

The second part of A-1079 would amend and supplement Title 2C's chapter 20 (Theft and Related Offenses) to deal with problems relating to fencing of stolen property. In addition to defining a new separate offense of fencing and providing enhanced penalties for all theft offenses, these sections also create a number of civil remedies which may be brought against possessors of stolen property.

The following is a more detailed description of the provisions of SCS for A-1079.

*Section 1*

Section 1 contains a declaration of policy and findings in which the Legislature recognizes the existence of organized crime and its threat to New Jersey's economy through the infiltration of legitimate businesses. The racketeering chapter and the provisions of A-1079 dealing with fencing are based on these findings.

*Section 2*

Section 2 adds Racketeering as chapter 41 of Title 2C.

*2C:41-1*

2C:41-1 contains the definitions used throughout the racketeering statute. Among the key definitions are:

"Racketeering activity," which includes commission of the following crimes: murder, kidnapping, gambling, prostitution, obscenity, extortion, criminal usury, liquor-related offenses, taxation offenses, violation of the Casino Control Act, serious drug offenses, certain frauds, firearms violations, arson, burglary, robbery and theft-related crimes. "Racketeering activity" also includes any conduct defined as "racketeering activity" by the Federal statute.

"Pattern of racketeering activity" means at least two incidents of the racketeering activity, one of which has to occur after the effective date of the act and the last of which shall have occurred within 10 years of a prior incident. Additionally, in order to show a pattern of racketeering activity, there must be a showing that the racketeering incidents are interrelated and part of a scheme or pattern of illegal incidents.

Two other important definitions found in 2C:41-1 are "unlawful debt," which means a debt resulting from illegal gambling activity or usurious loans, and "enterprise," which includes an individual, corporation, partnership, trust, association, union or any group of associations whether a legal entity or not and whether or not engaged in legal or illegal activities.

*2C:41-2*

2C:41-2 prohibits the investment of income from a pattern of racketeering activity or collection of unlawful debts in any enterprise engaged in trade or commerce.

2C:41-2 also prohibits the acquisition or maintenance of any interest in any commercial enterprise through a pattern of racketeering and the management of the affairs of a commercial enterprise through a pattern of racketeering. Additionally, any conspiracy to do any of the above is prohibited.

*2C:41-3*

2C:41-3 classifies any violation of 2C:41-2 as a crime of the first degree if the pattern of racketeering involves crimes of violence or the use of firearms (between 10 and 20 years imprisonment with a presumptive sentence of 15 years, and/or a fine of up to \$100,000.00). All other violations of 2C:41-2 would be classified as crimes of the second degree (between 5 and 10 years imprisonment with a presumptive sentence of 7 years, and/or a fine of up to \$100,000.00).

Additionally, any person who violated 2C:41-2 would have to forfeit to the authority funding the prosecution any interest resulting from the racketeering activities.

2C:41-3 also provides that:

1. The Superior Court may enter restraining orders with regard to any property subject to forfeiture under the provisions of chapter 41.
2. The Attorney General, subject to rights of innocent persons or lienholders, may seize and dispose of all property declared forfeit under chapter 41.
3. When a racketeering offense might result in forfeiture, the indictment shall allege the extent of the interest and a special verdict shall determine the extent of the interest subject to forfeiture.

**2C:41-4**

2C:41-4 provides civil remedies for racketeering violations. It states that the court may order any of the following: divestment of any interest in an enterprise; restrictions on future activities of any enterprise; denial, suspension or revocation of a corporate charter or a license or permit issued by the State; the discontinuance of any act or conduct; the restitution of money or property unlawfully obtained; monetary penalties not to exceed three times the amount gained unlawfully and the forfeiture of any property unlawfully obtained.

2C:41-4 also provides that actions for racketeering violations may be brought by the Attorney General in the Superior Court, that any person damaged as the result of racketeering violations may recover threefold damages plus costs and attorney's fees that a criminal racketeering conviction will prevent a defendant from denying the essential allegations of the criminal offense in any civil proceeding.

**2C:41-5**

The Attorney General, prior to the institution of a racketeering proceeding, to issue an investigative interrogation requiring a person or enterprise to answer and produce documentary material for examination. The Attorney General could issue an interrogatory if he has reason to believe that the person had information relevant to a racketeering investigation or that it was in the public interest to undertake a racketeering investigation.

2C:41-5 represents a change in A-1079 as passed by the Assembly, which would have required a determination of probable cause by the Superior Court before the Attorney General could issue an investigative interrogatory.

Each interrogatory would state the nature of the conduct under investigation; advise the person of his right to legal counsel and his right to file a petition modifying or setting aside the interrogatory; describe the classes of documentary material required; and proscribe a return date.

No interrogatory may require the production of privileged information or anything that would be held unreasonable if contained in a subpoena issued by a grand jury.

An interrogatory may be served by delivering a copy by registered or certified mail to any executive officer, partner, or managing agent, or to the principal place of business.

Any person receiving an interrogatory must make the requested material available for inspection and copying by the Attorney General at the person's principal place of business or at some mutually agreed upon site. No material produced may be examined by a party other than the Attorney General without the consent of the person producing

the material, except that such material may be presented to any court or grand jury. Anyone who unlawfully discloses the name of any person receiving an interrogatory is guilty of a crime of the fourth degree (up to 18 months imprisonment and/or up to \$7,500.00 fine).

Materials produced under an interrogatory must be returned upon completion of either the investigation or any case or proceeding resulting from the investigation. Moreover, if within 2 years of the date the materials are produced no case or proceeding has been instituted, the person producing the materials shall be entitled to have them returned.

2C:41-5 also provides that if a person fails to comply with an interrogatory, the Attorney General may seek a court order for enforcement.

The section further provides that a person served with such a subpoena may, prior to the return date, file a petition seeking modification or a setting aside of the interrogatory. If such a petition is filed, the Attorney General must establish the existence of a racketeering investigation and the nature and subject matter of the investigation. This is the same standard established for modifying or setting aside a grand jury subpoena *duces tecum*.

A provision of A-1079 as passed by the Assembly which permitted the Attorney General before a racketeering proceeding was instituted, to issue a subpoena requiring a person to testify has not been included in the committee substitute. The committee felt that this procedure was unnecessary to effectuate the purposes of the racketeering chapter and that the interrogatory procedure was preferable as it was less intrusive on the right to privacy of New Jersey residents.

#### 2C:41-6

Normally, statutes similar to chapter 41, unlike other criminal laws are given liberal construction. However, the committee felt that because of the broad scope of chapter 41 and the extensive powers given to the Attorney General, certain definitions used in the chapter, the activities prohibited, the criminal penalties provided and the provisions establishing civil interrogatives should be strictly construed in order to protect the rights of individuals.

#### Sections 3 and 4

Sections 3 and 4 of the committee substitute, in connection with the racketeering chapter, establish a new specific criminal offense entitled "leader of organized crime." A person is guilty of this offense if he supervises or manages a continuing series of crimes that constitutes a pattern of racketeering activities under chapter 41. The offense of leader of organized crime would be classified as a crime of the second degree.

As previously noted, the second part of A-1079 addresses the problem of fencing of stolen property. The following is a description of the provisions of A-1079 relating to fencing.

*Section 5*

Section 5 amends 2C:20-1, which contains the definitions applicable to Title 2C's chapter 20 (Theft and Related Offenses), by adding the definitions of several terms later used in section 7 of A-1079 in connection with the new offense of fencing. The three key definitions are:

"Traffic" which is broadly defined to cover all types of transfers of property to another person and all forms of possession of property with intent to sell;

"Broken succession of title" which means the lack of regular documents of purchase and transfer by either one seller or one buyer.

*Section 6*

Section 6 amends 2C:20-2, which proscribes the penalties for all theft-related offenses found in chapter 20. Presently, theft is a crime of the third degree if the amount involved exceeds \$500.00 (between 3 and 5 years imprisonment, with a presumptive sentence of 4 years, and/or a fine of up to \$7,500.00).

A-1079 would classify theft as a crime of the third degree if the amount involved exceeds \$500.00 but is less than \$75,000.00. If the amount involved exceeds \$75,000.00, theft would be a crime of the second degree (between 5 and 10 years imprisonment with a presumptive sentence of 7 years, and/or a fine of up to \$100,000.00).

*Section 7*

Section 7 establishes fencing as a specific offense under Title 2C. It should probably be noted that receiving stolen property is already prohibited by 2C:20-7.

Fencing is divided into two separate offenses: possessing altered property and dealing in stolen property. A dealer who knowingly possesses property on which identifying features such as serial numbers or labels have been removed or altered is guilty of possessing altered property.

It is a defense to a prosecution for possession of altered property that the dealer possessed the usual indicia of ownership in addition to mere possession. This defense is intended to cover situations where a shop owner removes labels for competitive rather than criminal purpose.

The second offense prohibited by the term fencing is dealing or trafficking in stolen property.

Other features of section 7 include:

1. A provision which allows the trier of fact to aggregate the value of property in determining the degree of guilt if acts constituting the violation were committed pursuant to one operation;

2. A provision which establishes an affirmative defense to a charge of fencing if the person can show either that he was unaware that the property or service was that of another or that he acted under an honest claim of right to the property;

3. A provision which establishes the following presumptions giving rise to the inference that property was stolen: purchase or sale of property at a price substantially below fair market value; purchase or sale of property by a dealer out of the regular course or business, or without the usual indicia of ownership or in broken succession of title; purchase or sale of property without making a reasonable inquiry about whether the person from whom it was obtained had a legal right to possession.

#### *Section 8*

Section 8 allows a person whose business is damaged as the result of a fencing operation to sue civilly for threefold damages plus a reasonable attorney's fee, costs of investigation and litigation.

#### *Section 9*

Section 9 allows the Attorney General or any person alleging injury or loss to bring an action to enjoin theft-related activities. If the court grants relief in such action it may order divestiture of interest in a business; restrictions on future activities or investments; dissolution of or reorganization of a business; suspension or revocation of a license or permit; or forfeiture of a corporate charter.

#### *Section 10*

Section 10 states that a prior criminal conviction for a theft-related crime will estop a defendant from denying the essential allegations of the criminal offense in any civil proceeding.

#### *Section 11*

Section 11 states that the remedies provided in A-1079 shall be cumulative with each other and with other remedies at law.

Section 12 is the severability clause.

Section 13 provides that A-1079 shall take effect immediately.

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FROM THE OFFICE OF THE GOVERNOR

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FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

JUNE 15, 1981

KATHRYN FORSYTH

Governor Brendan Byrne today signed A-1079, sponsored by Assemblyman Christopher J. Jackman (D-Hudson) and Martin Herman (D-Gloucester).

The bill amends Title 2C by adding a "Racketeering" chapter modeled after similar provisions in the Federal Organized Crime Control Act of 1970.

Its purpose is to provide state law enforcement authorities with certain criminal and civil sanctions designed to fight infiltration of legitimate businesses by organized criminals.

It establishes a new criminal offense, "leader of organized crime," making it illegal to organize or manage a continuing series of crimes constituting a "pattern of racketeering."

In addition, it amends the Title to deal with the "fencing" of stolen property by defining "fencing" as a separate offense, increasing penalties for all theft offenses and providing for civil penalties against possessors of stolen property.

The bill also provides for certain civil remedies for racketeering violations. These remedies include divestment of interest restrictions on future activities; denial, suspension or revocation of a corporate charter; restitution; and monetary penalties.

"Racketeering activities" are defined as specified criminal activities, including murder, illegal gambling, promoting prostitution, extortion and criminal usury.

"A pattern of racketeering activity" is defined as the committing of two such incidents within ten years of one another, plus a showing that the incidents of racketeering activity...are not isolated incidents."

In addition, the bill prohibits any business investment or acquisition of enterprises with income derived from racketeering activity.