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*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 214TH LEGISLATURE ***
2ND ANNUAL SESSION (P.L. 2011 CHAPTER 46 AND JR 3)
STATE CONSTITUTION CURRENT THROUGH THE NOVEMBER, 2010 ELECTION
ANNOTATIONS CURRENT THROUGH APRIL 12, 2011.

TITLE 2C. THE NEW JERSEY CODE OF CRIMINAL JUSTICE
SUBTITLE 2. SPECIFIC OFFENSES
PART 5. OFFENSES AGAINST THE PUBLIC; PUBLIC ORDER, HEALTH AND DECENCY
CHAPTER 35A. DRUG PROFITEERING

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N.J. Stat. § 2C:35A-3 (2011)

§ 2C:35A-3. Criteria for imposition of anti-drug profiteering penalty

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

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

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

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

defendant's net worth and his expenditures in relation to his legitimate sources of income.

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

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

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

(5) The defendant was involved in criminal street gang related activity.

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

d. For the purposes of this chapter, an act is undertaken for pecuniary gain if it involves or contemplates the transfer of anything of value in exchange for a controlled dangerous substance, controlled substance analog or drug paraphernalia, provided that the thing of value received or intended to be received in exchange for the substance or paraphernalia is or was reasonably believed to be of a higher value than that expended by the defendant or by any other person with whom the actor is acting in concert, to acquire or manufacture the substance or paraphernalia. It shall also include any act which would constitute a violation of subsection a. of N.J.S. 2C:35-5, N.J.S. 2C:35-11, N.J.S. 2C:36-3 or any other crime for which the actor was paid or expected to be paid in return for performing such act, or from which the actor received a benefit for himself or another or injured another or deprived another of a benefit. There shall be a rebuttable presumption at the hearing that any manufacturing, distribution or possession with intent to distribute which contemplates or involves the payment or exchange of anything of value constitutes an act undertaken for pecuniary gain. It shall not be necessary for the prosecution to establish that any intended profit or payment was actually received; nor shall it be relevant that the act, payment in return for such act or the transfer of anything of value in exchange for the substance or paraphernalia, occurred or was intended to occur in another jurisdiction.

HISTORY: L. 1997, c. 187, § 2; amended 1999, c. 160, § 2, eff. July 8, 1999.