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An Examination of New Jersey's Money Laundering Statutes

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AN EXAMINATION OF NEW JERSEY'S MONEY LAUNDERING STATUTES

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I. Introduction

Drug dealers, white-collar criminals and organized crime groups motivated by profit look at New Jersey as a safe haven when conducting financial transactions with their crime-tainted money.¹ Due to its proximity to New York, Northern New Jersey in particular has become susceptible to the money laundering industry.²

Law enforcement investigations at the federal and local levels have uncovered an enormous amount of money laundering activity in the Garden State.³ Recently, the Department of the Treasury in Washington, D.C. designated Northern New Jersey as a “High Intensity Drug Trafficking Area.”⁴ An estimated \$2 billion linked

¹ See N.J. DEP’T OF LAW & PUB. SAFETY, DIV. OF CRIMINAL JUSTICE, MONEY LAUNDERING IN NEW JERSEY: A PRELIMINARY ASSESSMENT ii (2001), available at http://www.state.nj.us/lps/dcj/njmoneylaundering/pdfs/threat_assessment.pdf [hereinafter MONEY LAUNDERING IN NEW JERSEY].

It is apparent that New Jersey has a significant money laundering problem. The combination of access to the largest financial center in the world and to major ports and airports makes New Jersey attractive to money launderers from several states. The thriving money service business industry and the Atlantic City casinos provide even more opportunities for money launderers and their clients.

The genesis of New Jersey’s laundered funds includes narcotics trafficking, fraud, corruption and other crimes.

Id.; see also James B. Johnston, *Implementing New Jersey’s Anti-Terrorism Laws to Prevent Terrorist Financing: A Statutory Analysis of the “Material Support or Resources” Provisions of the September 11, 2001 Anti-Terrorism Act and the “Freezing Funds and Assets Related to Terrorism” Legislation in the New Jersey Criminal Code*, 29 SETON HALL LEGIS. J. 85, 95, 144 (2004) (“The New York metropolitan area, especially Northern New Jersey, is susceptible to individuals in organized crime gangs, drug trafficking groups, and fraud rings, who launder their revenues through New Jersey financial institutions.”); Richard Newman, *Dirty Laundry: Banks Say They Are Vigilant in Tracking Drug Money in New Jersey*, THE RECORD (N.J.), Apr. 1, 2001, at B1.

² See Johnston, *supra* note 1; see also U.S. DEP’T OF THE TREASURY, THE NATIONAL MONEY LAUNDERING STRATEGY FOR 2000 11 (2000), available at <http://www.ustreas.gov/press/releases/docs/ml2000.pdf> [hereinafter NATIONAL MONEY LAUNDERING STRATEGY] (discussing money laundering activity in the New York/New Jersey area); MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 1 (According to former federal judge and U.S. Attorney for the District of New Jersey and current Secretary of the Department of Homeland Security Michael Chertoff, “New Jersey, because of its . . . close proximity to New York and Pennsylvania, its shipping and air access, is a natural place for money laundering to occur and though it is not the kingpin of money laundering, it does fit in the chain in many cases.”).

³ See NATIONAL MONEY LAUNDERING STRATEGY, *supra* note 2, at 11 (“All law enforcement agencies are investigating major cases in this area; undercover investigations, in particular, indicate a great deal of money laundering activity.”).

⁴ See *id.*

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to criminal activity flows through the Garden State annually.⁵ Some of the 9/11 hijackers conducted al-Qaeda related financial transactions by using numerous New Jersey banks.⁶ Without question, New Jersey has a profound and well documented problem in preventing and detecting those who are involved in the crime of money laundering.⁷

In response to an award winning series of articles published by the *Bergen Record* regarding the money laundering blight in New Jersey, and recommendations made by the New Jersey Attorney General's Office,⁹ state legislators passed a series of anti-money

⁵ See Johnston, *supra* note 1, at 96; see also Julie Fields, *State Launches Hunt for Drug Money; More Investigators and New Regulations*, THE RECORD (N.J.), Sept. 24, 1998, at A17.

⁶ See Johnston, *supra* note 1, at 86-87 ("Prior to 9/11, al-Qaeda operatives, including the hijackers, obtained money from their co-conspirators by conducting financial transactions in various parts of the United States, including New Jersey branches of the Dime Savings Bank, First Union Bank, and Hudson United Bank."); see also JOHN ROTH, DOUGLAS GREENBURG & SERENA WILLE, NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES: MONOGRAPH ON TERRORIST FINANCING 140-41 (2004), available at http://www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

⁷ See Johnston, *supra* note 1, at 96 ("The Office of the New Jersey Attorney General reports that money laundering in New Jersey poses a significant threat to our way of life."); see also MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 29 ("Thus, it is seen that the New Jersey systems described have a significant potential to be used by those who wish to launder money. The threat that this poses to the State is significant.").

⁸ In 1998 and 1999, the *Bergen Record* published an investigative series of articles entitled, *Dirty Money-Why We're Losing the War on Drugs. Record Wins 3 Awards for Reporting in 1998*, THE RECORD (N.J.), May 13, 1999, at A4 (discussing awards received by reporters Thomas Zambito and Jim Haner for "their series about how New Jersey has evolved into a home base for money launderers").

⁹ New Jersey State Assembly sponsors of the bill included: Assemblyman Wilfredo Caraballo (D-Essex), Assemblyman Neil M. Cohen (D-Union), Assemblyman Paul DiGaetano (R-Bergen), Assemblyman Peter Barnes (D-Middlesex), Assemblywoman Nia Gill (D-Essex), Assemblyman James Holzapfel (D-Ocean), Assemblyman Wayne Bryant (D-Hudson), and Assemblyman Charles Zisa (D-Bergen). New Jersey State Senate sponsors of the bill included: Senator Gary Furnari (D-Bergen), Senator Louis Kosco (R-Bergen), Senator Jack Sinagra (R-Middlesex), Senator Peter Inverso (R-Monmouth), Senator Robert Singer (R-Monmouth), Senator Diane Allen (R-Burlington), and Senator Anthony Bucco (R-Morris). N.J. State Legislature - A2171, <http://www.njleg.state.nj.us> (follow "Bills 1998-1999" hyperlink; then follow "Bill Number" hyperlink) [hereinafter N.J. State Legislature - A2171]. For the legislative history of the bill see *id.*; see also STATE OF N.J. ASSEMB. JUDICIARY COMM., STATEMENT TO ASSEMBLY, ASSEMBLY BILL NO. 2645, (Nov. 16, 1998), available at http://www.njleg.state.nj.us/9899/Bills/A3000/2645_s1.pdf; Assemb. B. 2645, 208th Leg., Reg. Sess. (N.J. 1998), available at <http://www.njleg.state.nj.us/>

laundering provisions that provide law enforcement with powerful tools designed to take the profit out of crime and bring money launderers to justice.¹⁰ Governor Whitman approved the legislation, considered one of the strongest in the country, on February 16, 1999.¹¹

When designing the money laundering provisions, one of the state legislature's primary goals was to give law enforcement the ability to effectively target those who profit from the drug trade.¹²

9899/Bills/a3000/2645_i1.pdf.

¹⁰ See Thomas Zambito, *Law OK'D to Curb Money Laundering; Whitman Signs Get-Tough Bill*, THE RECORD (N.J.), Feb. 17, 1999, at A1.

The legislation was prompted by a series of stories in The Record over the past year that detailed the state's emergence as a haven for money launderers, where criminals from bustling drug markets in Philadelphia and New York City came to buy expensive cars and jewelry, and members of organized crime plunked down dirty cash for chips at Atlantic City casinos.

Id. New Jersey's original money laundering statute was signed into law by Governor Whitman in 1994. See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 3. The amended money laundering statute that was signed by Governor Whitman in 1999, strengthened the original version by providing for greater sanctions against those convicted of money laundering. See *id.* at 4-5. These sanctions include an Anti-Money Laundering Profiteering Penalty, consecutive sentencing requirements, and for money laundering offenses where the amount of relevant transactions is \$500,000 or higher, first degree sanctions, which include ten to twenty years of prison time. See *id.*

¹¹ See Zambito, *supra* note 10; see also N.J. State Legislature - A2171, *supra* note 9.

¹² N.J. STAT. ANN. § 2C:21-23(e) (West 2005) stating:

The increased *trafficking in drugs* and other organized criminal activities have strengthened the money laundering industry which takes illegally acquired income and makes that money appear to be legitimate. In order to safeguard the public interest and stop the conversion of ill-gotten criminal profits, effective criminal and civil sanctions are needed to deter and punish those who are converting the illegal profits, those who are providing a method of hiding the true source of the funds, and those who facilitate such activities. It is in the public interest to make such conduct subject to strict criminal and civil penalties because of a need to deter individuals and business entities from assisting in the "legitimizing" of proceeds of illegal activity. To allow individuals or business entities to avoid responsibility for their criminal assistance in money laundering is clearly inimical to the public good.

Id. (emphasis added); see also Thomas Zambito, *Whitman Gets Bills to Curb Cash Trade; Tougher Penalties Set for Laundering*, THE RECORD (N.J.), Jan. 29, 1999, at A1. One of the main Senate sponsors of the money laundering bill was Senator Gary Furnari (D-Essex). *Id.* Senator Furnari said, "[i]f you're going to be the lifeblood of the illegal drug trade, you're going to face stiff, substantial penalties. We have now given our prosecutors the arsenal to fight the war." *Id.*

Drug traffickers, however, are not the only criminals laundering their money through New Jersey.¹³ The reach of the money laundering statute is so significant that it can also be used against white-collar criminals, organized crime offenders, and other criminals who generate revenues by participating in criminal activity.¹⁴

This article will examine New Jersey's money laundering statute and its potential contribution in bringing profit-motivated criminals to justice.¹⁵ This article will also provide an analysis of an indictment of Essex County lawyer and former assistant prosecutor Sonia Harris,¹⁶ who was convicted of money laundering.¹⁷ The indictment against Ms. Harris alleged that she used her attorney trust account to assist a client in a mortgage fraud scheme.¹⁸

New Jersey's money laundering legislation represents an important step in detecting money launderers who look to New Jersey as a home.¹⁹ Background information on what constitutes the crime of money laundering assists in comprehension of these laws. Thus, an overview of this crime, especially as it affects New Jersey,

¹³ See *supra* note 1 and accompanying text; see also N.J. DEP'T OF LAW & PUB. SAFETY, REPORT TO THE GOVERNOR BY THE ATTORNEY GENERAL'S MONEY LAUNDERING WORKING GROUP 6 (1998) [hereinafter MONEY LAUNDERING WORKING GROUP] (copy on file with author).

In most cases, money launderers are attempting to conceal or disguise the nature of their proceeds, which are usually generated by the illicit sale of drugs in the United States. Although the overwhelming amount of money laundered in this country is derived from drug distribution activity, the act of laundering is also utilized by other profit-minded criminals, such as weapons smugglers, fraud rings, auto theft rings, and other financially motivated criminals.

Id.

¹⁴ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 4 (The money laundering statute "does not require that the criminal proceeds be derived from a specific unlawful activity. . . . N.J.S.A. 2C:21-25d allows for a conviction in circumstances in which the State cannot prove exactly what type of criminal activity generated the proceeds that were the object of the laundering activity.").

¹⁵ See discussion *infra* Part III.

¹⁶ See Gabriel H. Gluck, *Former Prosecutor Could Get 70 Years: Essex Woman Guilty of Real Estate Fraud*, STAR-LEDGER (N.J.), July 9, 2002, at 27.

¹⁷ See discussion *infra* Part IV.

¹⁸ See *infra* note 154 and accompanying text.

¹⁹ Zambito, *supra* note 10 (According to Governor Christine Whitman, "[k]eeping up with money laundering is a shell game. We're making it easier for our law enforcement community to uncover money launderers and make them pay for their crime . . . It's taking the dirty out of dirty money.").

is warranted.

II. Money Laundering: The Fundamentals

In its simplest form, the crime of money laundering generally refers to a criminal's attempts to disguise or conceal the nature of the monetary proceeds of a criminal scheme in order to make those proceeds look legitimate.²⁰ When an individual raises money through a crime, he or she must use the profits in a way that will not attract the attention of law enforcement.²¹ Thus in order to remain in business, the criminal motivated by profit must literally launder or clean the money of its criminal "taint."²² Money laun-

²⁰ See MONEY LAUNDERING WORKING GROUP, *supra* note 13, at 7-8; see also Kathleen A. Lacey & Barbara Crutchfield George, *Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms*, 23 NW. J. INT'L L. & BUS. 263, 265 (2003).

One of the most significant costs of corruption results from money laundering. Money laundering occurs when secret deposits of illicit funds move through a series of deceptive transactions designed to disguise the source of the funds and make them reappear in the market in a legitimate form, without a trace of their origin.

Id.; see also George A. Lyden, Note, *The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift*, 8 FORDHAM J. CORP. & FIN. L. 201, 205 (2003). "Money laundering has been defined as 'the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate.'" *Id.* (citation omitted); MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 1 ("Money laundering is the disguising or concealing of illicit income in order to make it appear legitimate.").

²¹ See Lacey & George, *supra* note 20, at 267 ("The series of deceptive laundering techniques prevent law enforcement officers from tracing the funds and determining the perpetrators and masterminds behind the vicious acts."); see also FIN. CRIMES ENFORCEMENT NETWORK, U.S. DEP'T OF THE TREASURY, FOLLOW THE MONEY: A LOCAL APPROACH FOR IDENTIFYING & TRACING CRIMINAL PROCEEDS 8 (1999) ("Many criminals face a common problem - how to dispose of large amounts of cash without drawing attention to themselves."); MONEY LAUNDERING WORKING GROUP, *supra* note 13, at 8 ("In effect, money laundering serves as the manner in which criminals attempt to thwart law enforcement's ability to track the success of a criminal venture by disguising the proceeds of that venture to make the proceeds appear lawful or to make them unidentifiable.").

²² See Lyden, *supra* note 20, at 205 ("It has become a virtual requirement for large organized crime groups to engage in money laundering, because it is the sustaining force that enables drug-dealers, terrorist groups, and other organized crime units to hide substantial amounts of wealth and to perpetuate further criminal activity."); see also MONEY LAUNDERING WORKING GROUP, *supra* note 13, at 8 ("Money laundering serves to rid the currency of the criminal enterprise of its illegal taint and, once funds are laundered, allows for the proceeds to be used by the enterprise for its vari-

dering is not an option for the profit-oriented criminal; it is a requirement.²³

The money laundering statutes in both the Federal Criminal Code²⁴ and the New Jersey Criminal Code²⁵ expand the common definition of “money laundering”²⁶ to include other corollary money laundering activities.²⁷ For instance, if one conducts a financial transaction with the proceeds of a specified unlawful activity in order to promote that unlawful activity, that person can be deemed to have engaged in money laundering under federal law.²⁸ In addition, smuggling money obtained from a specified crime into the United States may also be considered money laundering under federal law.²⁹ New Jersey’s money laundering statute has

ous activities, both lawful and unlawful.”).

²³ See *supra* note 17 and accompanying text.

²⁴ 18 U.S.C. § 1956(a) (2000).

²⁵ See discussion *infra* Part III.B; N.J. STAT. ANN. §§ 2C:21-23 to -28 (West 2005).

²⁶ See *supra* note 20 and accompanying text.

²⁷ See, e.g., 18 U.S.C. § 1956(a) (2) (A).

Whoever transports, transmits, or transfers, or attempts to transport, transmit or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both.

Id.

²⁸ See *id.* § 1956(a) (1) (A) (i).

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity – with the intent to promote the carrying on of specified unlawful activity shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

Id.

²⁹ See *supra* note 27 and accompanying text. Another form of money laundering occurs when a person conducts a financial transaction in illicit funds with the intent to avoid a transaction reporting requirement pursuant to the Bank Secrecy Act. See 31 U.S.C. § 5318(i) (Supp. II 2002). For example, banks and financial institutions are required to report certain financial transactions to the Internal Revenue Service. See, e.g., *id.* § 5318(g) (2000 & Supp. II 2002) (authorizing the Secretary of the Treasury to require banks to report suspicious financial transactions). If a person knows he is conducting a transaction in money generated by a crime and makes the

similar provisions.³⁰

Individuals engaged in money laundering use numerous strategies.³¹ For example, in New Jersey, some money launderers exploit banks,³² Atlantic City casinos,³³ or check cashing businesses³⁴ when transferring money. Smugglers transport bulk amounts of cash generated by out-of-state drug sales for storage in New Jersey.³⁵ In addition, money launderers often use off-shore bank ac-

transaction to avoid a transaction reporting requirement, he can be charged with money laundering under the federal money laundering statute. 18 U.S.C. § 1956(a)(1)(B)(ii) (2000).

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—knowing that the transaction is designed in whole or in part—to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

Id.

³⁰ See discussion *infra* Part III.

³¹ For a summary of the “mechanics” of a typical money laundering strategy, see generally Lyden, *supra* note 20, at 206-10; see also Lacey & George, *supra* note 20, at 267-68.

³² See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 26 (“It is clear that while some money launderers may turn to money service businesses to launder funds, there continues to be significant money laundering schemes effected through banks.”).

³³ See *id.* at 12.

Casinos are vulnerable to money laundering for several reasons. They are fast-paced, cash-intensive enterprises which provide a wide array of financial services to customers, including deposit and credit accounts, wire transfers, currency exchange, and check cashing. These are all aimed at allowing a patron to obtain funds with which to gamble.

With the availability of such a wide variety of transactions, criminals can mask the true nature of funds, oftentimes through structuring and the use of nominees.

Id.

³⁴ See *id.* at 9 (“According to one source, New Jersey check cashers ‘operate essentially free of meaningful federal and state regulation, oversight and enforcement.’ This makes the check cashing system an easy way for people to launder money.”).

³⁵ According to former New Jersey Attorney General John J. Farmer, Jr., “[b]ulk currency is routinely transported between New York cocaine groups and ‘stash houses’ in New Jersey.” John J. Farmer, Attorney Gen. of N.J., Currency Smuggling and Money Laundering in New Jersey, Testimony Before the Subcommittee on Financial Institutions and Consumer Credit (May 15, 2000), available at <http://financialservices.house.gov/banking/51500far.htm>.

counts in countries with strict bank secrecy laws.³⁶

The only limitations on the potential number of money laundering strategies are the imagination and innovation of the money launderer.³⁷ Access to computers and the Internet increases the options available to money launderers and highlights the lack of limitations in this field.³⁸ Although money laundering is not confined to New Jersey,³⁹ many of those who launder crime-related money look to New Jersey.⁴⁰ Thus, an analysis of the state's money laundering statute is relevant if law enforcement is serious about enforcing a fair and effective money laundering program designed to bring criminal financiers to justice.

III. *New Jersey's Money Laundering Statute*⁴¹

A. *The State Legislature Acts Decisively*

When the New Jersey legislature passed the money laundering statute, they decided that, as a matter of policy, it was in the state's best interest to implement powerful laws that impose significant restraints on those engaged in money laundering.⁴² The

³⁶ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 23 (noting that one of the indicators of illicit money laundering is when one sends money to countries with "strict bank secrecy laws (e.g., Switzerland, The Bahamas, Israel)"); see also Lacey & George, *supra* note 20, at 268 (noting that money launderers sometimes use dummy companies "usually registered in offshore havens" to carry out their financial scheme).

³⁷ See Eric Gouvin, *Bringing Out the Big Guns: The USA Patriot Act, Money Laundering, and the War on Terrorism*, 55 BAYLOR L. REV. 955, 964 (2003) (noting that "criminals with large amounts of cash to move are not, generally speaking, stupid").

³⁸ See MONEY LAUNDERING WORKING GROUP, *supra* note 13, at 43-44.

Perhaps the area that most likely represents the next wave for money launderers is the context of computers and high technology. Money laundering, in its many iterations, can be facilitated by high-technology . . . from the simple use of accounting software on a personal computer, through the manipulation of electronic money and personal identification cards.

Id.

³⁹ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 1 ("Global money laundering has been estimated at \$2.85 trillion a year, heavily concentrated in Europe and North America.").

⁴⁰ See *supra* note 1 and accompanying text.

⁴¹ N.J. STAT. ANN. §§ 2C:21-23 to -28 (West 2005).

⁴² *Id.* § 2C:21-23(b).

state senate and assembly also acknowledged the presence of organized crime in New Jersey.⁴³ The legislature recognized that these illicit crimes could cause substantial danger to the state.⁴⁴

Furthermore, the legislature noted that while police agencies had made significant inroads to stop the curse of organized crime, criminals continued to generate income through illicit activities,⁴⁵ causing the money laundering industry in New Jersey to become more powerful.⁴⁶ The legislature was especially concerned that these crime groups were successful in transforming their crime-linked revenues into “legitimate” income.⁴⁷ In addition, the legislature placed special emphasis on those involved in the trafficking and sale of illegal narcotics.⁴⁸

Considering the harmful consequences of money laundering, an examination of the state’s money laundering statute is indispensable for law enforcement agencies charged with the obligation of tracking criminals who look to New Jersey as a money laundering safe haven. Whether the activities involve narcotics, organized crime, or white-collar crime, a balanced step-by-step analysis of these statutory provisions will help officials properly enforce an efficient, effective, and fair anti-money laundering initia-

By enactment of P.L.1981, c. 167 (C. 2C:41-1 et al), the legislature recognized the need to impose strict civil and criminal sanctions upon those whose activity is inimical to the general health, welfare and prosperity of this State, including, but not limited to, those who drain money from the economy by illegal conduct and then undertake the operation of otherwise legitimate businesses with the proceeds of illegal conduct.

Id.; see also discussion *supra* note 12.

⁴³ See N.J. STAT. ANN. § 2C:21-23(a) (“By enactment of the Criminal Justice Act of 1970 . . . the legislature recognized that the existence of organized crime and organized crime type activities present a serious threat to the political, social and economic institutions of this State.”).

⁴⁴ *Id.*

⁴⁵ *Id.* § 2C:21-23(d).

Despite the impressive efforts and gains of our law enforcement agencies, individuals still profit financially from illegal organized criminal activities and illegal trafficking of drugs, and they continue to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State while, at the same time, converting their illegally obtained profits into “legitimate” funds with the assistance of other individuals.

Id.

⁴⁶ See *supra* note 1 and accompanying text.

⁴⁷ N.J. STAT. ANN. § 2C:21-23(d).

⁴⁸ *Id.*

tive that will not only bring money launderers to justice, but also safeguard the state's citizenry.⁴⁹

B. *General Provisions*

New Jersey's money laundering statute is codified in the New Jersey Criminal Code at Title 2C, chapter 21, sections 23 through 28 of the New Jersey Criminal Code.⁵⁰ While the provisions are

⁴⁹ See *id.* § 2C:21-23(a).

⁵⁰ *Id.* §§ 2C:21-23 to -28. The acts that are prohibited pursuant to the money laundering statute are codified in chapter 25. See *id.* § 2C:21-25.

A person is guilty of a crime if the person:

a. transports or possesses property known or which a reasonable person would believe to be derived from criminal activity; or

b. engages in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity

(1) with the intent to facilitate or promote the criminal activity; or

(2) knowing that the transaction is designed in whole or in part:

(a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or

(b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States; or

c. directs, organizes, finances, plans, manages, supervises, or controls the transportation of or transactions in property known or which a reasonable person would believe to be derived from criminal activity.

d. For the purposes of this act, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted one or more financial transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner. The phrase "in any manner" includes the breaking down of a single sum of currency exceeding the transaction reporting requirement into smaller sums, including sums at or below the transaction reporting requirement, or the conduct of a transaction, or series of currency transactions, including transactions at or below the transaction reporting requirement. The transaction or transactions need not exceed the transaction reporting threshold at any single financial institution on any single day in order to demonstrate a violation of subparagraph (b) of paragraph (2) of subsection b. of this section.

e. A person is guilty of a crime if, with the purpose to evade a transaction reporting requirement of this State or of 31 U.S.C. § 5311 *et seq.* or 31 C.F.R. § 103 *et seq.*, or any rules or regulations adopted under those chapters and sections, he:

(1) causes or attempts to cause a financial institution, including a

foreign or domestic money transmitter or an authorized delegate thereof, casino, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to fail to file a report; or

(2) causes or attempts to cause a financial institution, including a foreign or domestic money transmitter or an authorized delegate thereof, casino, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to file a report that contains a material omission or misstatement of fact; or

(3) structures or assists in structuring, or attempts to structure or assist in structuring any transaction with one or more financial institutions, including foreign or domestic money transmitters or an authorized delegate thereof, casinos, check cashers, persons engaged in a trade or business or any other individuals or entities required by State or federal law to file a report regarding currency transactions or suspicious transactions. "Structure" or "structuring" means that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by State or federal law. "In any manner" includes, but is not limited to, the breaking down into smaller sums of a single sum of currency meeting or exceeding that which is necessary to trigger a currency reporting requirement or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this paragraph.

Id.; see also *id.* § 2C:21-26.

For purposes of section 3 of this act, the requisite knowledge may be inferred where the property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of such property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property.

Id.; see also *id.* § 2C:21-24.

As used in this act:

"Attorney General" includes the Attorney General of the State of New Jersey and the Attorney General's assistants and deputies. The term also shall include a county prosecutor or the county prosecutor's designated assistant prosecutor if a county prosecutor is expressly authorized in writing by the Attorney General pursuant to this act.

"Derived from" means obtained directly or indirectly from, maintained by or realized through.

"Person" means any corporation, unincorporated association or any other entity or enterprise, as defined in subsection q. of N.J.S. 2C:20-1, which is

similar to the federal money laundering statutes,⁵¹ New Jersey's money laundering statute is more powerful.⁵² For example, a money launderer must be involved in a *specific* underlying crime above and beyond the money laundering offense under federal money laundering legislation,⁵³ while New Jersey's money laundering statute only requires proof that the illicit funds were "known to be derived from criminal activity."⁵⁴ The type of criminal activity is irrelevant.⁵⁵ Thus prosecutors in New Jersey can utilize the money laundering statute whether the underlying crime is a violation of state or federal law.⁵⁶ Even a violation of another state's criminal statutes can potentially trigger the provisions of New Jersey's money laundering statute.⁵⁷ For instance, if an individual sells narcotics in New York and conducts financial transactions with the drug money in New Jersey, that individual may be subject to New Jersey's money laundering statute.⁵⁸

capable of holding a legal or beneficial interest in property.

"Property" means anything of value, as defined in subsection g. of N.J.S. 2C:20-1, and includes any benefit or interest without reduction for expenses incurred for acquisition, maintenance or any other purpose.

Id.; see also *id.* § 2C:20-1 (West 2002).

⁵¹ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 3 ("The statute itself is modeled in part on the federal money laundering law, with some important distinctions.").

⁵² See discussion *infra* note 54.

⁵³ See 18 U.S.C. § 1956(a)(1) (2000).

⁵⁴ N.J. STAT. ANN. § 2C:21-25(d); see also MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 4 ("Unlike the federal money laundering provisions, New Jersey's money laundering law does not require that the criminal proceeds be derived from a specified unlawful activity.").

⁵⁵ See N.J. STAT. ANN. § 2C:21-25(d); see also MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 4 ("The statute specifically provides that the property is known to be derived from criminal activity if the person knows that the property involved represents some form, though not necessarily which form, of criminal activity.") (quotations omitted).

⁵⁶ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 4.

Proceeds that derive from criminal activity that violates federal law or the law of a state other than New Jersey meet the requirements of the New Jersey money laundering statute . . . N.J.S.A. 2C:21-25d allows for a conviction in circumstances in which the State cannot prove exactly what type of criminal activity generated the proceeds that were the object of the laundering activity.

Id.

⁵⁷ See *supra* note 56 and accompanying text.

⁵⁸ See, e.g., MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 7 ("The 'New York Connection' is a significant element in nearly all money laundering cases in New Jer-

A person convicted of money laundering faces significant criminal⁵⁹ and civil sanctions.⁶⁰ Money laundering is a first degree

sey. Most activity is related to cocaine groups in Queens.”); *see* Zambito, *supra* note 10 (According to former New Jersey Attorney General and New Jersey Supreme Court Justice Peter Verniero, “[m]oney laundering does not stop at the border of any state. Now we will have significant penalties at our disposal.”).

⁵⁹ N.J. STAT. ANN. § 2C:21-27.

a. The offense defined in subsections a. b. and c. . . . constitutes a crime of the first degree if the amount involved is \$500,000.00 or more. If the amount involved is at least \$75,000.00 but less than \$500,000.00 the offense constitutes a crime of the second degree; otherwise, the offense constitutes a crime of the third degree. . . . Notwithstanding the provisions of N.J.S. 2C:43-3, the court may also impose a fine up to \$500,000.00. The amount involved in a prosecution for violation of this section shall be determined by the trier of fact. Amounts involved in transactions conducted pursuant to one scheme or course of conduct may be aggregated in determining the degree of the offense. Notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S. 2C:43-6, a person convicted of a crime of the first degree pursuant to the provisions of this subsection shall be sentenced to a term of imprisonment that shall include the imposition of a minimum term which shall be fixed, at or between, one-third and one-half of the sentence imposed, during which time the defendant shall not be eligible for parole.

...

c. Notwithstanding N.J.S. 2C:1-8 or any other provision of law, a conviction of an offense defined in this section shall not merge with the conviction of any other offense constituting the criminal activity involved or from which the property was derived, and a conviction of any offense constituting the criminal activity involved or from which the property was derived shall not merge with a conviction of an offense defined in section 3 of P.L.1994, c. 121 (C.2C:21-25), and the sentence imposed upon a conviction of any offense defined in section 3 . . . shall be ordered to be served consecutively to that imposed for a conviction of any offense constituting the criminal activity involved or from which the property was derived. Nothing in P.L.1994, c. 121 . . . shall be construed in any way to preclude or limit a prosecution or conviction for any offense defined in this Title or any other criminal law of this State.

Id.

⁶⁰ *Id.* § 2C:21-28.

a. The Attorney General may institute a civil action against any person who violates section 3 of this act, and may recover a judgment against all persons who violate this section, jointly and severally, for damages in an amount equal to three times the value of all property involved in the criminal activity, together with costs incurred for resources and personnel used in the investigation and litigation of both criminal and civil proceedings. The standard of proof in actions brought under this subsection is a preponderance of the evidence, and the fact that a prosecution for a violation of this act is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this subsection. A

crime⁶¹ if the amount implicated in the money laundering scheme is greater than or equal to \$500,000.00.⁶² When the amount is at least \$75,000.00, but under \$500,000.00, then it is a second degree crime.⁶³ If the amount is less than \$75,000.00, it is a crime of the third degree.⁶⁴

In addition to large monetary fines⁶⁵ and forfeiture of any laundered funds,⁶⁶ an individual convicted of money laundering

final judgment rendered in favor of the State in any criminal proceedings shall estop the defendant from denying the same conduct in any civil action brought pursuant to this subsection.

b. The cause of action authorized by this section shall be in addition to and not in lieu of any forfeiture or any other action, injunctive relief or any other remedy available at law, except that where the defendant is convicted of a violation of this act, the court in the criminal action, upon the application of the Attorney General or the prosecutor, may in addition to any other disposition authorized by this Title, sentence the defendant to pay an amount equal to the damages calculated pursuant to the provisions of this subsection, whether or not a civil action has been instituted.

c. Notwithstanding any other provision of law, all monies collected pursuant to any judgment recovered or order issued pursuant to this section shall first be allocated to the payment of any State tax, penalty and interest due and owing to the State as a result of the conduct which is the basis for the action. Monies collected shall be allocated next in accordance with the provisions of N.J.S. 2C:64-6 as if collected pursuant to chapter 64 of Title 2C, in an amount equal to the amount of all property involved in the criminal activity plus the costs incurred for resources and personnel used in the investigation and litigation. The remainder of the monies collected shall be allocated to the General Fund of the State.

Id.

⁶¹ The New Jersey Criminal Code labels crimes as first, second, third, or fourth degree offenses. *See, e.g.*, N.J. STAT. ANN. § 2C:44-1 (West 2005), N.J. STAT. ANN. § 2C:43-6 (West 2005). First degree crimes are deemed the most serious while fourth degree crimes are less serious. *See generally* ROBERT J. KIPNEES, CRIMINAL TRIAL PREPARATION, PRACTICAL SKILLS SERIES 162 (2000); *see* Zambito, *supra* note 10 (discussing the penalties in the money laundering statute, “[t]his marks the first time a white-collar crime has been put in the same penalty category as murder and rape”).

⁶² N.J. STAT. ANN. § 2C:21-27(c); *see also* MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 4 (“Offenses under the money laundering statute are graded in accordance with the amount involved in the laundering activity.”).

⁶³ N.J. STAT. ANN. § 2C:21-27(c); *see also* MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 5.

⁶⁴ N.J. STAT. ANN. § 2C:21-27(c); *see also* MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 5.

⁶⁵ N.J. STAT. ANN. § 2C:21-27(a)-(b); *see also id.* § 2C:21-28; MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 5.

⁶⁶ N.J. STAT. ANN. § 2C:21-27(c). For an overview of New Jersey’s forfeiture laws,

faces mandatory consecutive sentencing, which may involve state prison time.⁶⁷ This is clearly a most powerful provision.⁶⁸ Under the statute, a judge is required to sentence a person convicted of money laundering for both the money laundering offense and the crime from which the illicit funds were derived.⁶⁹ A judge has no discretion to sentence a person convicted of money laundering to a sentence that can be served simultaneously with the underlying crime.⁷⁰

Through this legislation, the New Jersey legislature sends an unmistakable message to money launderers. The state imposes strict sanctions on convicted money launderers, thus taking the profit out of the money laundering enterprise and placing those who launder illicit revenues through New Jersey at risk for significant state prison time.⁷¹

C. *The Transportation/Possession Prong: New Jersey Statutes Annotated Section 2C:21-25(a)*

Title 2C, chapter 21, section 25 of the New Jersey Code defines the crime of money laundering.⁷² This section states that one can be convicted of money laundering if he or she commits any one of the three prongs that are outlined in the statute.⁷³ Under

see generally Johnston, *supra* note 1, at 122-25; see also N.J. STAT. ANN. § 2C:64-3(a)-(j).

⁶⁷ N.J. STAT. ANN. § 2C:21-27(c). In New Jersey courts, when a defendant is convicted of multiple counts in an indictment, the judge can sentence him or her to either concurrent or consecutive sentencing. Johnston *supra* note 1, at 110-11. If one is sentenced to a concurrent term of imprisonment, the defendant can serve his or her term for all counts at the same time. *Id.* If the defendant is sentenced to a consecutive term he or she must serve prison time for each count. *Id.* at 111. Thus, if one is sentenced to a concurrent term of five years in prison for two counts of an indictment, the maximum sentence is five years. If one is sentenced to five years consecutively for two counts in an indictment, he must serve a maximum of ten years, five years for each offense. See KIPNEES, *supra* note 61, at 172-74.

⁶⁸ Johnston, *supra* note 1, at 111. "A conviction of money laundering carries mandatory consecutive sentencing, thereby creating one of the most potent financial crime statutes in the entire New Jersey Criminal Code." *Id.*; see also MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 5.

⁶⁹ N.J. STAT. ANN. § 2C:21-27(c).

⁷⁰ *Id.*

⁷¹ *Id.* § 2C:21-23(b); see also *id.* § 2C:21-27.

⁷² See *supra* note 50 and accompanying text.

⁷³ See *supra* note 50 and accompanying text; see also MONEY LAUNDERING IN NEW

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subsection (a) of the money laundering statute, an individual can be charged with money laundering if the evidence shows he or she either possessed or transported illicit money he or she knew was generated from a crime.⁷⁴ The New Jersey Code relaxes the knowledge requirement of the money laundering statute.⁷⁵ For example, even if there is no evidence that an individual subjectively knew tainted money he or she transported or possessed was produced from a crime, prosecutors can use the possession prong if “a reasonable person would believe” that the money was generated by unlawful means.⁷⁶ Thus, there are both subjective and objective elements to the knowledge requirement of the statute.⁷⁷ In addition, if a defendant holds money “in a fashion inconsistent with the ordinary or usual means of transportation or possession,” knowledge can be inferred.⁷⁸ For example, the knowledge element is satisfied if money “is discovered in the absence of any documentation or other indicia of legitimate origin or right” to the money.⁷⁹

This prong of the money laundering statute can also be enforced against those who smuggle drug-related currency through the state.⁸⁰ This is important since drug dealers frequently transport drug money in bulk from New York into New Jersey.⁸¹ Prosecutors can potentially use the possession prong of the money laundering statute if an individual charged with transporting both narcotics and currency cannot provide proper documentation that he or she derived the money from a legitimate source.⁸²

Additionally, police officers can use the possession prong

JERSEY, *supra* note 1, at 4 (“N.J.S.A. 2C:21-25 includes three different types of money laundering offenses, any one of which constitutes a violation of the statute.”).

⁷⁴ N.J. STAT. ANN. § 2C:21-25(a).

⁷⁵ *Id.* § 2C:21-26.

⁷⁶ *Id.* The “reasonable person” provisions of section 2C:21-25 were added to the money laundering statute by amendment in 2002. *See* Assemb. B. 911, 210th Legis., Reg. Sess. (N.J. 2002).

⁷⁷ N.J. STAT. ANN. § 2C:21-25(a).

⁷⁸ *Id.*

⁷⁹ *Id.* (referring to the assembly version of section 2C:21-25(3)); *see also* N.J. Assemb. B. 911.

⁸⁰ *See supra* note 35 and accompanying text.

⁸¹ *See supra* note 35 and accompanying text.

⁸² N.J. STAT. ANN. § 2C:21-25(a).

when executing search warrants for drug dens.⁸³ If drug money and drugs are found “in a fashion inconsistent with the ordinary or usual means of . . . possession,”⁸⁴ the individuals associated with the drugs and money can potentially be charged with narcotics offenses *and* the possession prong, as long as there is no documentation that verifies the legitimacy of the money.⁸⁵

Interestingly, the word “money” is not found in the text of the possession prong of the money laundering statute.⁸⁶ Instead the phrase “*property* known or which a reasonable person would believe to be derived from criminal activity” is used.⁸⁷ Under Title 2C, chapter 21, section 24 of the New Jersey Code, “property” is defined as “anything of value;” thus currency fits within the definition of “property.”⁸⁸

Other financial instruments are also deemed “property” pursuant to the money laundering provisions.⁸⁹ These instruments include checks, money orders, foreign currency, and stock certificates.⁹⁰ Thus money laundering is not confined to the laundering of cash⁹¹ because laundering other valuable items generated by a criminal venture is included within the definition of “property.”⁹² Since the statute’s definition of “property” is so inclusive, the financial and non-financial items⁹³ that a criminal financier may use

⁸³ *Id.* § 2C:21-26.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* § 2C:21-25(a).

⁸⁷ *Id.* (emphasis added).

⁸⁸ N.J. STAT. ANN. § 2C:21-24; *see also id.* § 2C:20-1(g).

“Property” means anything of value, including real estate, tangible and intangible personal property, trade secrets, contract rights, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power, financial instruments, information, data, and computer software, in either human readable or computer readable form, copies or originals.

Id.

⁸⁹ *Id.* § 2C:20-1(g); *see also id.* § 2C:21-24.

⁹⁰ *See id.* § 2C:20-1(g).

⁹¹ *See id.* § 2C:21-25; *see also id.* § 2C:21-24; *id.* § 2C:20-1(g).

⁹² *Id.* § 2C:21-24.

⁹³ *See, e.g.,* MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 27 (discussing a money laundering strategy where a criminal financier hides his money by purchasing assets with cash).

in implementing his money-laundering scheme are likely to be included within the money laundering statute's provisions.⁹⁴

Additionally, it is not necessary for a prosecutor to prove that a defendant obtained illicit money directly from a crime.⁹⁵ Prosecutors can use the possession prong whether a defendant obtained the proceeds of unlawful activity "directly or indirectly" from the underlying crime.⁹⁶ Thus, the State can charge an individual pursuant to the possession prong whether an individual obtained crime-related money directly from an unlawful act, such as selling narcotics, or indirectly, such as selling drugs through a co-conspirator.

D. *The Transactional Prongs: New Jersey Statutes Annotated Sections 2C:21-25(b) and 2C:21-25(e)*

There are three types of prohibited financial transactions pursuant to the money laundering statute's transactional prong.⁹⁷ First, under subsection (b)(1),⁹⁸ it is illegal for an individual to "engage in a transaction involving property known or which a reasonable person would believe" to be generated by a crime if there is evidence the individual intended to "facilitate or promote" the crime that is predicate to the money-laundering activity.⁹⁹ The language of subsection (b)(1) is similar to the language of the possession prong in that both prongs contain subjective and objective knowledge elements.¹⁰⁰ Thus, subsection (b)(1) can be used whether the evidence shows a defendant subjectively knew the money was generated by a crime or whether a "reasonable person" would believe it was a derivative of a crime.¹⁰¹

The reach of subsection (b)(1) is insightful. The legislature intended to provide law enforcement with the statutory tools to investigate those who assist criminals with the means to support and thus promote or facilitate any illicit schemes that involve a

⁹⁴ See N.J. STAT. ANN. § 2C:21-24; see also *id.* § 2C:20-1(g).

⁹⁵ See *id.* § 2C:21-24.

⁹⁶ *Id.*

⁹⁷ *Id.* § 2C:21-25.

⁹⁸ *Id.* § 2C:21-25(b)(1).

⁹⁹ *Id.*

¹⁰⁰ See N.J. STAT. ANN. § 2C:21-25(b)(1); see also discussion *supra* Part III.C.

¹⁰¹ N.J. STAT. ANN. § 2C:21-25(b)(1).

crime.¹⁰² Similar to the possession prong of the money laundering statute, the text of subsection (b)(1) provides no limits on the types of crimes an individual “facilitate[s] or promote[s]”¹⁰³ via the relevant financial transactions.¹⁰⁴ The scope of crimes that subsection (b)(1) is designed to encompass is broad and can potentially be used whether a defendant intended to “facilitate or promote”¹⁰⁵ a narcotics trafficking scheme or a financial crime scheme.¹⁰⁶

The definition of “money laundering” pursuant to subsection (b)(1) differs from the common definition of “money laundering.”¹⁰⁷ Here, there is no requirement that the financial transaction be designed to conceal the source or nature of the crime-linked money.¹⁰⁸ Subsection (b)(1) is potentially enforceable against those who assist in the underlying crime, even if those individuals are not directly involved in the predicate offense.¹⁰⁹ The provision only requires proof that a defendant engaged in a financial transaction involving money known to be “or which a reasonable person would believe” was obtained by illicit activity and that a defendant intended to “facilitate or promote” the crime underlying the money laundering activity.¹¹⁰

Significantly, there is no requirement that a defendant actually conduct the financial transaction in crime-linked property.¹¹¹ This further evidences the broad scope of subsection (b)(1). Thus, if a person assists a co-conspirator in conducting a financial transaction in money derived from a crime, that person could po-

¹⁰² *Id.*; see also *id.* § 2C:21-23(e).

In order to safeguard the public interest and stop the conversion of ill-gotten criminal profits, effective criminal and civil sanctions are needed to deter and punish those who are converting the illegal profits, those who are providing a method of hiding the true source of the funds, and those who facilitate such activities.

Id. (emphasis added).

¹⁰³ *Id.* § 2C:21-25(b)(1).

¹⁰⁴ *Id.*; see also discussion *supra* Part III.C.

¹⁰⁵ N.J. STAT. ANN. § 2C:21-25(b)(1).

¹⁰⁶ See, e.g., discussion *infra* Part IV.

¹⁰⁷ See *supra* note 20 and accompanying text.

¹⁰⁸ See N.J. STAT. ANN. § 2C:21-25(b)(1).

¹⁰⁹ See *id.* § 2C:21-24.

¹¹⁰ *Id.* § 2C:21-25(b)(1).

¹¹¹ *Id.*

tentially be charged under this provision.¹¹²

The second part of the transactional prong, found in subsection (b)(2)(a),¹¹³ prohibits traditional money laundering activities.¹¹⁴ Under this subsection, it is illegal for an individual to “engage in a transaction” of money where the individual knew the money was obtained by a crime or where “a reasonable person would believe” the money was obtained by a crime, “knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control” of the money generated by the criminal activity.¹¹⁵

The knowledge elements pertaining to the crime underlying the money laundering activity are the same in all three sections of the statute.¹¹⁶ However, the knowledge elements in subsection (b)(2)(a) differ from the knowledge elements in the possession prong and subsection (b)(1). Subsection (b)(2)(a) requires prosecutors to prove that a defendant subjectively knew the financial transaction was aimed at concealing the money’s crime-linked characteristics.¹¹⁷ There are no objective knowledge elements regarding the clandestine design of the transaction in subsection (a) of subsection (b)(2)(a).¹¹⁸ In other words, either the defendant knew the transaction was designed to “conceal or disguise” the criminal links to the transaction or he did not.¹¹⁹

Similar to other provisions in the money laundering statute, the scope of subsection (b)(2)(a) is broad.¹²⁰ It was clearly designed to encompass all types of financial transactions that are used to cover up predicate criminal connections.¹²¹ This subsection is potentially pertinent for individuals who fabricate shell corporations and subsequently conduct financial transactions with affiliated bank accounts.¹²² It is also relevant for individuals who

¹¹² *Id.*

¹¹³ *Id.* § 2C:21-25(b)(2)(a).

¹¹⁴ *See supra* note 20 and accompanying text.

¹¹⁵ N.J. STAT. ANN. § 2C:21-25(b)(2)(a).

¹¹⁶ *See id.* All three sections contain subjective and objective elements.

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See supra* notes 52-58 and accompanying text.

¹²¹ *See* N.J. STAT. ANN. § 2C:21-23(d)-(e).

¹²² *See* MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 25 (discussing the use of

conduct transactions in crime-linked monies on behalf of another in order to hide the identity of the actual beneficiary of the transaction.¹²³

The third prohibited financial transaction, found in subsection (b) (2) (b),¹²⁴ provides that it is illegal for a person to engage in a transaction of money, “known [to be] or which a reasonable person would believe” was generated by a crime in order to “avoid a transaction reporting requirement” that is required of banks and financial institutions pursuant to federal and state law.¹²⁵ Under the Bank Secrecy Act, banks, other financial institutions, and some businesses are required to submit myriad reports pertaining to financial transactions, especially cash transactions.¹²⁶ Money launderers and other criminals sometimes “structure” a transaction by breaking down large cash transactions into amounts less than \$10,000 so a bank’s transaction reporting requirements are not triggered.¹²⁷ This technique provides anonymity to the person

shell corporations in money laundering schemes).

¹²³ N.J. STAT. ANN. § 2C:21-25(b) (2) (a).

¹²⁴ *Id.* § 2C:21-25(b) (2) (b).

¹²⁵ *Id.*

¹²⁶ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 33 (providing a list of relevant reports that financial institutions are required to file pursuant to the Bank Secrecy Act); Lyden, *supra* note 20, at 206-08 (discussing the use of Currency Transaction Reports (CTRs) for cash transactions exceeding \$10,000 and Suspicious Activity Reports (SARs) for transactions that a financial institution deems to be potentially suspicious). For example, CTRs are reports sent to the U.S. Department of the Treasury for cash transactions exceeding \$10,000. See 31 U.S.C. § 5313 (2000 & Supp. II 2002); see also Lyden, *supra* note 20, at 206. Additionally, a financial institution is required to file SARs when a financial transaction is considered suspicious. See Lyden, *supra* note 20, at 208.

¹²⁷ See *supra* note 126 and accompanying text; see also Lyden, *supra* note 20, at 206.

Among the primary obstacles to simply depositing dirty funds in a bank account are the provisions of the Bank Secrecy Act of 1970, which requires that financial institutions file IRS Form 4789, Currency Transaction Report, whenever an individual or a person acting on the individual’s behalf conducts one or more cash transactions in a single day which involve, in the aggregate, over \$10,000.

Id. (quotations omitted); see also N.J. STAT. ANN. § 2C:21-25(e) (3). The money laundering statute defines “structure or structuring” as:

[A] person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by State or federal law.

Id.

conducting the transaction.¹²⁸

The subsection also encompasses almost any money laundering strategy involving crime-linked transactions designed to avoid a financial entity's transaction reporting requirements.¹²⁹ Thus, subsection (b)(2)(b) is intended to target individuals who implement various financial schemes in illicit money that are designed to avoid the filing of financial reports.¹³⁰

By targeting these kinds of schemes, subsection (b)(2)(b) also benefits narcotics trafficking investigations.¹³¹ Because drug-related deals often involve large cash transactions, drug dealers will find it burdensome to avoid this money laundering provision.¹³² Thus, if evidence reveals that a drug dealer makes transactions in drug money by decreasing the amount of the transaction to under the \$10,000 reporting requirement, subsection (b)(2)(b) will be applicable.

The text of subsection (b)(2)(b) is also similar in some ways to subsection (e) of the money laundering statute.¹³³ For example, subsection (b)(2)(b) requires prosecutors to show that a money launderer knew that a transaction was conducted in a manner to "avoid a transaction reporting requirement,"¹³⁴ while subsection (e) requires prosecutors to show that a money launderer conducted a transaction "with the purpose to evade a transaction reporting requirement."¹³⁵ It differs from subsection (e), however, in that subsection (b)(2)(b) is applicable if a defendant conducts a transaction with money "known [to be] or which a reasonable person would believe" was generated by a crime,¹³⁶ while subsection (e) contains no element requiring knowledge that the proceeds of

¹²⁸ See Lyden, *supra* note 20, at 206-07.

¹²⁹ See *supra* note 126 and accompanying text.

¹³⁰ N.J. STAT. ANN. § 2C:21-25(b)(2)(b).

¹³¹ See Lyden, *supra* note 20, at 206 ("Most of the crimes that the money laundering statutes are intended to target are crimes that tend to produce significant sums of cash, such as drug dealing.").

¹³² *Id.* ("For example, while a kilo of heroin weighs about 2.2 pounds, the equivalent value of cash, in small denomination bills, can weigh as much as 256 pounds.").

¹³³ See N.J. STAT. ANN. § 2C:21-25(e). Subsection (b)(2)(b) and subsection (e) both address a financial institution's transaction reporting requirements pursuant to the Bank Secrecy Act.

¹³⁴ *Id.* § 2C:21-25(b)(2)(b).

¹³⁵ *Id.* § 2C:21-25(e)(3).

¹³⁶ *Id.* § 2C:21-25(b)(2)(b).

the transaction were linked to a crime.¹³⁷ Thus, authorities can potentially use subsection (e) even if there is no evidence that a defendant had any knowledge that the proceeds of the transaction were related to illicit activity.

There is also no requirement in subsection (e) that the proceeds of the applicable transaction actually be obtained by a crime.¹³⁸ Thus, authorities can potentially use subsection (e) if a person conducts a transaction in legitimate funds but did so in a way that compromised a bank's reporting requirements pursuant to the Bank Secrecy Act.

Subsection (e) also imposes sanctions on individuals who intentionally cause a financial entity¹³⁹ to either (1) fail to file a transaction report pursuant to the Bank Secrecy Act¹⁴⁰ or (2) file a transaction report pursuant to the Bank Secrecy Act with false information or material omissions.¹⁴¹ Subsection (e) also applies if a money launderer "structures or assists in structuring, or attempts to structure or assist in structuring any transaction"¹⁴²

In addition, while the reach of subsection (b)(2)(b) is broad in that it can potentially apply to any crime-linked transactions that are structured to avoid bank reporting requirements, the scope of subsection (e) is narrower. Subsection (e)(1) can only be used when evidence reveals that a defendant conducted or attempted to conduct a transaction by getting a financial entity "to fail to file a report."¹⁴³ Thus, this subsection could possibly be used if, for example, an individual persuaded a bank employee not to file an applicable transaction report.

Subsection (e)(2) can only be used when evidence reveals that a defendant conducted or attempted to conduct a transaction by getting a financial entity to file a report "that contains a mate-

¹³⁷ *Id.* § 2C:21-25(e).

¹³⁸ *Id.*

¹³⁹ Subsection (e) includes transactions made by a "financial institution, including a foreign or domestic money transmitter or an authorized delegate thereof, casino, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions" N.J. STAT. ANN. § 2C:21-25(e)(1), (2).

¹⁴⁰ *Id.* § 2C:21-25(e)(1).

¹⁴¹ *Id.* § 2C:21-25(e)(2).

¹⁴² *Id.* § 2C:21-25(e)(3).

¹⁴³ *Id.* § 2C:21-25(e)(1).

rial omission or misstatement of fact.”¹⁴⁴ This subsection can potentially be employed if, for example, a transactor provides a bank employee with false identification that is subsequently inserted into an applicable transaction report.

Finally, subsection (e)(3) can only be used when evidence reveals that an individual broke down the sums of several transactions so as not to exceed the \$10,000 reporting requirement.¹⁴⁵ This subsection can potentially be enforced if, for example, a drug dealer makes multiple cash transactions that are individually under \$10,000, but in sum exceed \$10,000, with the intention of avoiding the filing of a transaction report.

E. *Director/Organizer Prong: New Jersey Statutes Annotated Section 2C:21-25(c)*

The third prong of the money laundering statute, the director/organizer prong, found under subsection (c) of the statute,¹⁴⁶ is designed to target the leaders of money laundering enterprises.¹⁴⁷ Specifically, if an individual “directs, organizes, finances, plans, manages, supervises, or controls the transportation of or transactions in” money he knew to be or in which “a reasonable person would believe” was obtained by a crime, that individual can be charged with money laundering under subsection (c).¹⁴⁸

Like the other money laundering provisions, the potential reach of the director/organizer prong is broad. It can be used whether a defendant is at the highest tier of a crime ring or the lowest tier.¹⁴⁹ The director/organizer prong can potentially be enforced against almost any member of a criminal organization who supervises, administers, or funds the fiscal aspects of a criminal venture.¹⁵⁰ Thus, if evidence reveals that a crime boss ordered an underling to supervise lower-level members of the crime ring regarding the crime ring’s financial transactions, and the underling subsequently followed orders, authorities can potentially charge

¹⁴⁴ *Id.* § 2C:21-25(e)(2).

¹⁴⁵ N.J. STAT. ANN. § 2C:21-25(e)(3).

¹⁴⁶ *Id.* § 2C:21-25(c).

¹⁴⁷ *See id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *See id.*

both the crime boss and the underling pursuant to subsection (c). When using subsection (c), the key issue is determining whether a defendant administered a money-laundering scheme where transactions were conducted in crime-linked property.¹⁵¹

Clearly, the New Jersey legislature provided state and local law enforcement with a commanding device to take the profit out of crime. The language of the money laundering statute prohibits almost any type of money laundering strategy with links to the state. Furthermore, convicted individuals are subject to significant sanctions under the statute.¹⁵²

IV. Case Analysis: State v. Harris¹⁵³

The second objective of this article is to present an analysis of the New Jersey judiciary's treatment of the money laundering statute. This analysis should provide guidance to those who are charged with the obligation of investigating or litigating money laundering cases pursuant to New Jersey law, including law enforcement and defense attorneys.

¹⁵¹ N.J. STAT. ANN. § 2C:21-25(c).

¹⁵² See discussion *supra* Part III.B.

¹⁵³ 861 A.2d 165 (N.J. Super. Ct. App. Div. 2004), *cert. denied*, 872 A.2d 799 (2005).

A. *Case Summary*¹⁵⁴

Sonia Harris was a New Jersey lawyer with a private practice in Essex County.¹⁵⁵ Ms. Harris, her client, George “Shamond” Scott, and other co-conspirators engaged in a mortgage fraud scheme, whereby Scott bought and sold properties that he never owned.¹⁵⁶ Harris was the closing attorney on some of the relevant properties.¹⁵⁷ Ms. Harris facilitated Scott’s scheme by filing fraudulent documents and funneling money generated from his scheme through her attorney trust account.¹⁵⁸

In 2001, prosecutors indicted Harris and her co-conspirators on charges related to the mortgage fraud.¹⁵⁹ The indictment charged Harris with two counts of money laundering:¹⁶⁰ one count for violation of the transactional prong and another count for vio-

¹⁵⁴ In April 2001, the New Jersey Division of Criminal Justice announced an indictment against East Orange lawyer Sonia Harris along with three other co-defendants, charging them with money laundering, theft, and conspiracy. *Id.* at 167; *see also* Press Release, N.J. Div. of Criminal Justice, Essex Attorney and Former Client Indicted in Multi-Million Dollar Real Estate Fraud (Apr. 6, 2001), *available at* <http://www.state.nj.us/lps/dcj/releases/scot0406.htm>. Harris was also charged with misapplication of entrusted funds. *Harris*, 861 A.2d at 167. Harris and her fellow conspirators were involved in a mortgage fraud scheme whereby she performed numerous real estate closings for properties that were bought and sold by her client and co-defendant George “Shamond” Scott. *Id.* Scott paid members of the applicable title agency to fabricate documents in order to show that the properties in question were free of any mortgages. *Id.* In some instances, Scott sold property he never owned to himself by using his company’s name as the purchaser. *Id.* at 167-69. Scott succeeded in his scheme in part because Harris, as his closing attorney, failed to file the proper title documents or provide notice of other mortgages that were filed on the properties. *Id.* at 167. She even allowed Scott to use her attorney trust account to store and disburse the stolen funds. *Id.* Scott generated approximately \$1 million for himself. *Id.* He paid Harris approximately \$14,000. *Id.* In July 2002, Harris was convicted of all counts in her indictment, including first degree money laundering pursuant to the transactional prong of the money laundering statute (section 2C:21-25(b)(1)) and the director/organizer prong of the money laundering statute (section 2C:21-25(c)). *Id.* She was sentenced to serve eighteen years in prison. *Id.* Harris subsequently filed an appeal with the New Jersey Superior Court Appellate Division. *Id.*

¹⁵⁵ *See* Press Release, N.J. Div. of Criminal Justice, *supra* note 154.

¹⁵⁶ *See supra* note 154 and accompanying text.

¹⁵⁷ *See supra* note 154 and accompanying text.

¹⁵⁸ *See supra* note 154 and accompanying text.

¹⁵⁹ *See supra* note 154 and accompanying text.

¹⁶⁰ *See State v. Harris*, 861 A.2d 165 (N.J. Super. Ct. App. Div. 2004), *cert. denied*, 872 A.2d 799 (2005)

lation of the director/organizer prong.¹⁶¹ In addition, prosecutors charged Harris with two counts of conspiracy, two counts of theft by deception, and one count of misapplication of entrusted funds.¹⁶² In 2002, she was convicted on all counts and sentenced to state prison for eighteen years, “with a four year parole disqualifier.”¹⁶³ She was also disbarred.¹⁶⁴

On appeal, Harris argued that the trial judge incorrectly applied the money laundering statute.¹⁶⁵ She claimed that her actions did not fall under the purview of the money laundering statute, specifically the transactional prong.¹⁶⁶ She argued that the indictment should have been confined to the theft, fraud, and conspiracy charges.¹⁶⁷

Although she was indicted for facilitating Scott’s mortgage fraud scheme pursuant to subsection (b) of the money laundering statute,¹⁶⁸ her attorney argued that for a money laundering charge to be sustained, the monies in the mortgage fraud scheme must have been laundered so as to hide the source and nature of the financial transactions and make the stolen funds appear legitimate.¹⁶⁹ This is the traditional definition of money laundering that

¹⁶¹ See *supra* note 154 and accompanying text.

¹⁶² *Harris*, 861 A.2d at 167.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 169. Ms. Harris appealed on two grounds. *Id.* First, she argued that the trial court improperly applied the money laundering statute and second, she argued that the trial court issued deficient jury instructions. *Id.* This case analysis will concentrate only on the first ground of Ms. Harris’s appeal.

¹⁶⁶ See discussion *supra* Part. III.D; *Harris*, 861 A.2d at 169-70.

Defendant argues for the first time on appeal that the money laundering statute is inapplicable to her actions. Defendant participated in fraudulent real estate transactions by aiding Scott in selling properties without ownership and procuring multiple mortgages on properties without disclosing previous mortgages. Defendant asserts that criminal liability should have been limited to the second-degree offenses of theft by deception . . . and bank fraud.

Id. at 169 (citations omitted).

¹⁶⁷ *Harris*, 861 A.2d at 169.

¹⁶⁸ *Id.* (“Harris was indicted for money laundering as proscribed by N.J.S.A. 2C:21-25b(1), engaging in a transaction involving property derived from criminal activity with the intent to facilitate or promote the criminal activity.”).

¹⁶⁹ *Id.* (“Defendant contends that the federal cases interpreting the federal counterpart, 18 U.S.C. § 1956, upon which New Jersey’s statute is modeled, require evidence that illegitimate funds were washed for the purposes of making them appear

is codified in subsection (b)(2)(a) of the money laundering statute.¹⁷⁰ Harris claimed that because there was no sanitization of her stolen funds, there was no money laundering.¹⁷¹ Harris further argued on appeal that illicit funds are not laundered without a transaction that is separate and distinct from the act of money laundering.¹⁷²

In sum, according to Harris's lawyer, unless there are separate activities, the predicate crime and subsequent financial transactions that are designed to clean the stolen money from its criminal connections, there is no violation of the money laundering statute.¹⁷³ Judge John S. Holston, writing on behalf of the New Jersey Superior Court Appellate Division, was unmoved.¹⁷⁴

B. *The Court's Analysis*

Judge Holston began his analysis of Harris's arguments by re-

legitimate as part of the conduct.”).

¹⁷⁰ See N.J. STAT. ANN. § 2C:21-25(b)(2)(a) (West 2005); Mary P. Gallagher, *First Conviction of a N.J. Lawyer for Money Laundering Upheld on Appeal; Acting as Closing Attorney in Land-Flipping Scheme Suffices Under State Law*, 178 N.J. L.J. 921 (2004) (noting that the act of “concealing the source of funds” is the “traditional” definition of money laundering); see also discussion *supra* Part III.D.

¹⁷¹ See *infra* note 171 and accompanying text.

¹⁷² *Harris*, 861 A.2d at 169-70.

Defendant claims that illegitimate money cannot be considered laundered unless it is generated in a distinct transaction separate from the laundering transaction. Defendant's actions involved connected transactions with no predicate offense from which proceeds were generated. Defendant contends that without such a wash, there is no proof of any property derived from criminal activity.

Id. (quotations omitted); see also *id.* at 170 (“Defendant also asserts that the purpose of Congress and presumably the New Jersey Legislature in enacting the money laundering statute was to penalize only those purchases designed in whole or in part to hide illegally-obtained money. Other conduct, defendant contends, is outside the statute.”).

¹⁷³ *Id.* at 170.

Defendant also argues that federal precedent establishes that a predicate offense must produce proceeds before anyone can launder those proceeds. . . . Defendant contends the State's case against her must fail because the absence of a predicate offense precludes the State from being able to separate the money at issue (proceeds) from the property obtained. In other words, the transactions here were interconnected and any proceeds were not obtained from prior separate criminal activity.

Id. (citations omitted).

¹⁷⁴ *Id.* at 171 (“Defendant reads the money laundering statute . . . too narrowly.”).

viewing the language in the money laundering statute.¹⁷⁵ The court held that as long as the import of the text of a statute is “clear and unambiguous,” the court is required to enforce that interpretation.¹⁷⁶ Alternatively, the court held that if the language of a statute is unclear, the court will look at other authorities to determine the legislature’s intent.¹⁷⁷

Judge Holston conducted a thorough analysis of the text of the money laundering statute.¹⁷⁸ He focused on the three separate categories of prohibited money laundering activities.¹⁷⁹ Judge Holston noted that the money laundering statute is not confined to a money launderer’s customary financial schemes whereby he or she merely conceals or disguises the source or criminal nature of illicit revenues.¹⁸⁰ The appellate division ruled that, under New Jersey’s money laundering statutory provisions, the act of facilitating or promoting a criminal financial scheme is as illegal as the more traditional money laundering strategy of concealing or disguising the proceeds of an illicit financial scheme.¹⁸¹

In addition, the appellate division found persuasive the public policy documented in the statute itself.¹⁸² The court noted that

¹⁷⁵ *Id.* According to the court:

[the] goal of implementing the Legislature’s intent, begins with the text of the statute. If the meaning of the text is clear and unambiguous on its face, [the court will] enforce that meaning. Only if the language admits to more than one reasonable interpretation [does the court] look to sources outside the language to ascertain the Legislature’s intent.

Id. (citations omitted).

¹⁷⁶ *Id.* (citations omitted).

¹⁷⁷ *Id.* (citations omitted).

¹⁷⁸ *Harris*, 861 A.2d at 171.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

[S]ubsection (b) criminalizes two separate and distinct criminal acts if the person “engages in a transaction involving property known . . . to be derived from criminal activity.” The first, which is the activity the jury found defendant engaged in, is the requirement that the actor intended to facilitate or promote that activity. The second, not implicated by defendant’s actions, is the more traditional money laundering activity, where the actor knows that the transaction is designed in whole or in part to conceal or disguise the nature, the location, source or ownership or control of the property derived from criminal activity.

Id.

¹⁸¹ *Id.*

¹⁸² *Id.* (“The public policy expressed in N.J.S.A. 2C:21-23 supports the application

the State's Law and Public Safety Committee statement regarding the money laundering statute clearly states that the money laundering statute was passed in order to dissuade and sanction those who launder crime-linked money in *every* form, *not* just the more traditional strategy of purifying illicit money to make it appear legitimate.¹⁸³

The three prongs of the money laundering statute are at the forefront of the *Harris* opinion for a simple reason.¹⁸⁴ There is no evidence that the money laundering statute was designed to limit a prosecutor's ability to bring other criminal charges that are linked to the money laundering activities of the actors.¹⁸⁵ In applying the money laundering statutory sections to the facts in *Harris*, the appellate division found that the statute requires two separate transactions.¹⁸⁶ The initial transaction must be the predicate crime that generates the money.¹⁸⁷ The second transaction occurs when the actor either cleans the money from its criminal links or facilitates or promotes the underlying crime.¹⁸⁸

Defense counsel argued that in a money laundering indictment, criminal venture proceeds are required to be washed, thus concealing or disguising its criminal nature.¹⁸⁹ The problem with defense counsel's argument, according to Judge Holston, is that application of the money laundering statute is not confined to the

of the statute to defendant's conduct."); *see also* discussion *supra* Part III.A.

¹⁸³ *Id.* at 171-72. The statement reads: "This committee substitute would provide the law enforcement community with new tools to combat the knowing financial facilitation of criminal activity, also known as money laundering. This committee substitute is designed to confront this problem by prohibiting money laundering conduct in *any* form . . ." *Id.* at 171.

¹⁸⁴ *Harris*, 861 A.2d at 172. "The committee report then reiterates the tripartite definition of money laundering, including the alternative definitions contained in Subsection (b)." *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 173 ("Thus, the statute requires two transactions (1) the underlying criminal activity generating the property, and (2) the money-laundering transaction where that property is either (a) used to facilitate or promote criminal activity, or (b) concealed, or washed.") (quotations omitted).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* ("Defendant contends that the second transaction of the money-laundering statute requires the washing of illegitimate money, as money laundering is generally perceived. That argument fails to recognize the facilitation or promotion alternative, the applicable second transaction in this case.") (quotations omitted).

washing of illicit funds.¹⁹⁰ The money laundering statute also contains a “facilitation or promotion prong.”¹⁹¹ When Harris allowed Scott to use her attorney trust account to obtain the proceeds of his mortgage fraud scheme, she triggered this prong.¹⁹²

Here, the evidence revealed that Ms. Harris was actively involved in Scott’s criminal enterprise, specifically the financial transactions that allowed Scott to receive his fraudulent gains.¹⁹³ The appellate division found that she not only conducted the financial transactions at Scott’s behest, she also possessed the stolen money by placing it in her attorney trust account.¹⁹⁴ This allowed Scott and his co-conspirators to finance more transactions relating to the mortgage fraud scheme.¹⁹⁵

The court also held that the knowledge element of the money laundering statute was satisfied because Harris knew the proceeds of the mortgages were fraudulently obtained.¹⁹⁶ She generated falsified financial documents and created the impression that Scott owned the property when in fact he did not.¹⁹⁷

In addition, the federal money laundering statutes, like New Jersey’s statute, contain both a promotion prong and a concealment prong.¹⁹⁸ Defense counsel in *Harris* presented several federal cases supporting the argument that there must be a cleansing of criminal proceeds.¹⁹⁹ However, the cases cited by the defense ad-

¹⁹⁰ *Harris*, 861 A.2d at 173.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Defendant engaged in transactions involving property known by her to be derived from criminal activity and engaged in transactions with the intent to facilitate or promote further activity. . . . She possessed the proceeds from George Scott’s illicit real estate transaction in her trust account, and she assisted her accomplices in using those proceeds to fund further fraudulent transactions.

Id.

¹⁹⁶ *Harris*, 861 A.2d at 173 (“Clearly, she knew that the funds were derived from criminal activity because she was a participant.”).

¹⁹⁷ *Id.* (“Defendant committed theft by deception by preparing fraudulent documents that created the false impression on buyers and mortgage companies that Scott owned the properties and that no prior mortgages existed on the properties.”).

¹⁹⁸ *Id.* at 173-74; *see also supra* note 28 and accompanying text.

¹⁹⁹ *Harris*, 861 A.2d at 173.

dressed the concealment prong of the federal statute, not the promotion prong.²⁰⁰ Since Ms. Harris was only charged with the promotion prong of New Jersey's money laundering statute, the appellate division found the cases cited inapplicable.²⁰¹

The court thus rejected the defense counsel's claim that one can only be convicted of money laundering if he or she hides or conceals the nature of illicit money.²⁰² The court unequivocally held that Harris's actions constituted the crime of money laundering under New Jersey law because she conducted financial transactions that either promoted or facilitated her client's fraudulent schemes.²⁰³

The appellate division disagreed with the contention that a specific crime must underlie the money laundering offense.²⁰⁴ The court ruled that the New Jersey money laundering statute requires no *specific* underlying crime.²⁰⁵ The text of the New Jersey money laundering statute makes clear that *any* predicate crime will suffice.²⁰⁶ Judge Holston found that Harris's assistance in the mortgage fraud scheme provided Scott with the ability to steal a substantial amount of money from his victims.²⁰⁷ The scheme would have failed without her assistance.²⁰⁸

Finally, there must be a predicate crime underlying the money laundering scheme.²⁰⁹ However, the predicate crime need not be independent of the money laundering crime.²¹⁰ The under-

²⁰⁰ *Id.*

²⁰¹ *Id.* at 173.

²⁰² *Id.* ("As a result of these false representations, defendant received illicit funds from the deceived buyers and mortgage companies. Any subsequent financial transaction involving these proceeds that promoted or facilitated the illegal real estate business constituted money laundering.").

²⁰³ *Id.* at 173-74.

²⁰⁴ *Id.* at 173.

²⁰⁵ *Harris*, 861 A.2d at 173.

²⁰⁶ *Id.* ("The New Jersey statute does not require that a particular underlying crime be set in motion. Any criminal activity will suffice.") (quotations omitted) (citations omitted).

²⁰⁷ *Id.* ("Without defendant's assistance, George Scott would not have been able to deceive buyers and mortgage companies by creating the false impression that he . . . owned the property when, in fact, such was not the case.").

²⁰⁸ *Id.* at 174.

²⁰⁹ *Id.* at 173.

²¹⁰ *Id.*

Defendant claims that there was no independent predicate offense in this

lying offense can, in fact, be intertwined with the money laundering offense.²¹¹ Thus, the appellate division affirmed Ms. Harris's conviction for violating Title 2C, chapter 21, subsection 25(b)(1) of the New Jersey Code.²¹²

V. Conclusion

With the passage of the state's money laundering statute, New Jersey's legislature provided law enforcement with powerful tools to target those who conduct transactions in crime-linked property. *Harris* makes this clear.²¹³ It is the first State prosecution where the predicate crime underlying the defendant's money laundering activities was financial in nature.²¹⁴ Thus, it is plain that New Jersey's money laundering statute is flexible enough to combat any scheme that can be concocted by even the most insidious of money launderers.

Whether the underlying offense is white-collar in nature or something more sinister like raising money by trafficking in child pornography, New Jersey's money laundering statute provides the means to take the profit out of these crimes.²¹⁵ Whether a money launderer participates in a relatively simple scheme like currency smuggling or a more complex financial scheme like mortgage fraud, the scope of Title 2C, chapter 21, section 25 of the New Jersey Code is broad enough to thwart those who engage in crime for profit dynamic.²¹⁶

Other crimes underlying money laundering include organized crime, crimes of corruption, and even crimes of violence.²¹⁷

case from which criminally derived proceeds were obtained. An independent predicate offense is not necessary to the prosecution of the promotion prong of New Jersey's money laundering statute. Proceeds of a criminal activity may be derived from an already completed offense or a completed phase of an ongoing offense.

Id. (citation omitted).

²¹¹ *Harris*, 861 A.2d at 173.

²¹² *Id.* at 175 ("The illegal real estate transactions executed by Scott and defendant are contained within the scope of the promotion prong The statute is clear on its face. Defendant was properly charged. Her conviction will not be disturbed.").

²¹³ See *supra* note 183 and accompanying text.

²¹⁴ See Gluck, *supra* note 16.

²¹⁵ See discussion *supra* Part III.

²¹⁶ See Gouvin, *supra* note 37.

²¹⁷ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at ii.

However, the potential crimes that require a money laundering strategy to succeed are limitless. Money launderers can be a resourceful group.²¹⁸ *Harris* provides a classic illustration of the inventive ways money launderers often pursue their craft when designing and implementing fiscal schemes.²¹⁹ Despite their imaginative ways, money launderers can be brought to justice by proper enforcement of New Jersey's money laundering statute.

While money laundering is a worldwide problem,²²⁰ there is no state in this country with a more urgent reason to decisively enforce its money laundering statute than New Jersey.²²¹ Whether the underlying crime involves drugs, white-collar crime, or terrorism, criminals often obtain crime-linked money by looking to New Jersey as a home when carrying out their money laundering strategies.²²² However, if money laundering investigations are not prioritized at the state, county, and local levels, these laws will prove futile. Thus, from High Point to Cape May, law enforcement agencies at all levels are well advised to provide their investigators and prosecutors with the proper training to investigate and litigate money laundering schemes implemented throughout the state.

There are numerous benefits to doing so. First and foremost, following the paper trail of crime-linked financial transactions almost invariably leads to the head of the unlawful enterprise.²²³ By conducting money laundering investigations of criminal enterprises, evidence can be obtained that should assist law enforcement agencies in seizing the money launderers' assets that are linked to unlawful activities.²²⁴ Further, by imposing significant

²¹⁸ See Johnston, *supra* note 1, at 95 ("Money launderers, irrespective of their criminal venture, use a variety of mechanisms, such as the use of casinos, check cashers, shell corporations, and bank accounts located in off-shore tax havens . . ."); see also Gouvin, *supra* note 37; Johnston, *supra* note 1, at 144 n.395.

²¹⁹ See discussion *supra* Part IV.

²²⁰ See *supra* note 39 and accompanying text.

²²¹ See discussion *supra* Part I.

²²² See discussion *supra* Part I.

²²³ See Fletcher N. Baldwin, *Organized Crime, Terrorism, and Money Laundering in the Americas*, 15 FLA. J. INT'L L. 3, 10 (2002) (According to a detective with experience in conducting financial investigations of criminal organizations, "[i]f you follow the money trail, you are never far from those who exercise control over the operational activities."); see also Johnston, *supra* note 1, at 144.

²²⁴ See Johnston, *supra* note 1, at 122-25 (discussing the use of New Jersey's forfeiture laws to "deprive criminals of their financial gains").

penalties on criminal financiers,²²⁵ individuals will be deterred from looking to New Jersey as a base to conduct money laundering operations. At a minimum, they should look elsewhere for their money laundering headquarters. This is important if we are serious about changing New Jersey's reputation as a money laundering sanctuary.²²⁶

The consequences of a criminal organization's money laundering strategies to society are enormous.²²⁷ Money laundering compromises our financial institutions and provides criminals with the means to profit from their crimes.²²⁸ Its victims include indi-

²²⁵ See discussion *supra* Part III.B.

²²⁶ See discussion *supra* Part I.

²²⁷ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 29.

Money laundering represents two potential levels of corruption: that of the system it is using and that of the entity which regulates it or enforces the laws. Corruption of the system being used would mean that the people within the system were corrupted by the persons wanting to launder the money. One example of this might be a bank teller who did not fill out a CTR for a "regular" customer who deposited \$15,000. The degree of corruption could be seen in the level of collusion within the system itself.

External corruption would indicate the degree of corruption that might be seen in the governmental/regulatory system as influenced by the entity. An example could be a government official who allowed a bank to operate virtually without regulation in return for an interest-free loan.

The degree of societal harm which is realized through criminal activity may reflect the nature of the system which has been compromised. If the banking system, for example, is compromised, then society as a whole may be affected.

Thus, it is seen that the New Jersey systems described have a significant potential to be used by those who wish to launder money. The threat that this poses to the State is significant.

Id.

²²⁸ See MONEY LAUNDERING WORKING GROUP, *supra* note 13, at 5-6.

Unfortunately, within our midst there are those who weaken the fabric of our society by virtue of their illegal activities. These criminal enterprises seek to obtain money and power through criminal conduct, and then attempt to infiltrate our legitimate society, thereby distorting the terms of the compact.

These criminal enterprises generate vast profits for themselves and often seek to gain legitimacy and use their criminal proceeds to insulate their conduct from scrutiny. They generate millions upon millions of dollars for the members of the enterprise, and allow their associates to live lavish lifestyles that have been forged from the misery and despair that their criminal activity produces.

Moreover, vast sums of money in the hands of a corrupt few can have

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viduals, businesses, banks, and government agencies.²²⁹ Thus, money laundering is not just a white-collar crime; it is an all-encompassing crime that allows money-motivated criminals, both inside and outside the borders of New Jersey, to thrive. There is simply no credible way to completely dismantle a criminal organization without depriving it of its financial foundation. New Jersey's money laundering statutory provisions, coupled with the judicial guidance provided by the appellate division in *Harris*, provide the state's law enforcement personnel with the means to fairly and effectively combat the financial foundations of criminal organizations.

serious consequences on our nation's economic well-being. The infiltration of criminal proceeds into world markets can destabilize them, and can have a corrupting effect on those who work within the market system. The penetration of criminals into the legitimate markets can also shift the balance of economic power from responsible and responsive entities to rogue agents who have no political or social accountability. In short, when criminal enterprises are able to enjoy the fruits of their criminal ventures, the world market can be destabilized, leaving some countries vulnerable to persuasion and interference by corrupt organizations.

Id.

²²⁹ See MONEY LAUNDERING IN NEW JERSEY, *supra* note 1, at 29.