

**Garden State CLE Presents:**

**You Can Bet On It**  
**Gambling Law in New Jersey**



**Instructors**

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**Lesson Plan**

**Part I**  
**A Little History**  
**“All Gamblers Will Go to Jail.”**

a) Introduction – The Legend of Storkey Storcella: Storcella vs. Dept. of Treasury, 296 N.J.Super 238(App.Div.1997).

b) A Little New Jersey Gambling History

1) There was a time, prior to the 1979 enactment of the Code, when the sentencing of gamblers in New Jersey was uniform and direct: all gamblers, including Storkey and his wife, went to jail.

2) This outcome was not necessarily mandated by law, but rather was a product of judicial fiat. The Chief Justice of the New Jersey Supreme Court had issued Directive #8-65 on November 5, 1965 requiring that the assignment judges in the respective counties pronounce sentence on all convicted organized crime figures and gamblers. This Directive was superseded by Directive 01-05, some 40 years later!

3) By using this procedure, the Chief Justice had a measure of assurance that his goal of jailing all convicted gamblers would occur without question or exception. The underlying directive was subject to constitutional challenge and upheld in an opinion written by the Chief Justice himself. State vs. Stasio, 49 N.J. 247 (1967)

4) This view of the appropriate sentence for convicted gamblers was based upon the Chief Justice's long-held belief, expressed by other jurists through a long line of case law from the 1950s, that both societal morality and the enforcement of the existing criminal law demanded such

sentences in every gambling case. As the Chief Justice noted in the Stasio decision:

Here we are dealing with organized crime. The offense is in no sense an isolated excursion beyond the pale of the law induced by engulfing circumstances. It may be such as to the particular individual at the bar, and if he alone were implicated in the criminal operation, a judge might well deal with him as he would with other first offenders. But when the offense serves the interests of a widespread conspiracy, it would be a mistake to think of the defendant as an isolated figure. He is part and parcel of an enterprise. The gambling racket is an ancient foe of society. It bilks the weak. It wrecks homes and destroys men. It spawns embezzlement, larceny and crimes of violence. It corrupts officialdom. It is reputed to be allied with other illicit traffic. The 'easy' money it yields doubtless finds its way under cover into legitimate fields, there to continue its polluting course. Such is the scene a judge should see in dealing with an offense of this kind. He would be myopic if he saw no more than the defendant before him. As the trial court aptly observed, a fine would be a license fee for the operators - a minor experience in a lucrative venture. A racket cannot be curtailed if fronts and tools are easily available, and they will be unless the price is too high.

5) The enactment of the New Jersey Code of Criminal Justice in 1979 put an end to this harsh sentencing practice. Presumptions of non-incarceration for certain first offenders and the mandatory judicial weighing of statutory aggravating and mitigating factors in the Code eliminated the perfunctory jailing of every convicted gambler.

6) Even before the Code went into effect, society's ideas about gambling in New Jersey were starting to change. In 1969 and 1976, respectively, the citizens of New Jersey voted to allow legalized, state-run and sanctioned gambling in the forms of a lottery and casino gambling in Atlantic City. By 1970, the New Jersey State Lottery was doing booming business and in 1978, the Resorts Casino Hotel was open for games of chance. Within a matter of a few years, Resorts was joined by other hotels in Atlantic City that drew millions of gamblers every year.

7) Today, the remaining nine (9) casino hotels in Atlantic City operate 24 hours per day. Their activities have been enhanced by the availability of online casino betting and the ability, since 2018, to place bets on professional sporting events. Murphy vs. NCAA, 584 U.S. 453(2018).

8) Given the enormous revenues that these gambling activities produce for the State of New Jersey by way of taxes and fees, the goal of enforcing gambling laws is no longer a question of morality, but rather one of aggressively protecting the State's regulatory monopoly on all forms of gambling from encroachment by rogue individuals and organizations.

9) As will be seen in the various gambling statutes set forth in Chapter 37 of the Code, the main, albeit unstated, goal of the Legislature is to suppress unauthorized competition so as to maximize revenues for the state government.

10) As a vestige of this bygone era, to this day, all gambling offenses, including disorderly and petty disorderly persons' offenses must be heard in Superior Court. N.J.S.A. 2C:37-8.

## Part II

### Words and Phrases

a) In a gambling case, the defense of a criminal charge begins with defining the role the defendant played in the transaction. Those roles are defined in section 2C:37-1 of the Code. Among the most important definitions are the following:

#### Player

For the most part, the Code does not criminalize the gambling activities of a mere player.

Player means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit there from other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity.

A person who gambles at a social game of chance on equal terms with the other participants therein does not thereby render material assistance to the establishment, conduct or operation of such game if he performs, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor or supplying cards or other equipment used therein.

Comment: The criminal lack of liability of a player can change quickly when the informal, social and friendly game utilizes some form of a RAKE.

## **Contest of Chance**

“Contest of chance” means any contest, game, pool, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants or some other persons may also be a factor therein.

## **Gambling**

“Gambling” means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

## Part III

# Criminal Offenses

### a) Promoting gambling – N.J.S.A. 2C:37-2

In general - As is the case with most of the criminal offenses defined in Chapter 37, promoting gambling offenses are intended to deter and punish gambling activity that has the capacity to divert gambling play, resources and taxes away from the State of New Jersey. Based upon this goal, the concept of promoting gambling is extremely broad under N.J.S.A. 2C:37-2 and is aimed primarily at organized bookmaking, illegal lotteries and daily number (policy) schemes.

There are three elements of proof that the prosecution must establish:

- 1) That defendant accepted or received money or other property from another person;
- 2) That the money or other property was accepted or received pursuant to an agreement or understanding whereby the other person participates or will participate in the proceeds of gambling activity, and
- 3) That defendant acted knowingly when he/she engaged in such conduct.

This offense requires knowing conduct and can range between a crime of the third degree and a disorderly persons' offense depending upon the number of bets and the amount of those bets. It is an affirmative defense that the defendant was merely a player.

### b) Possession of gambling records: N.J.S.A. 2C:37-3

In general—It is virtually impossible to carry on a bookmaking, lottery or numbers operation of any significant size without using some form of record keeping. Recording bets, money received, wins, losses, debts and

payouts is an indispensable part of the gambling business. It is often far easier for prosecutors to build a case based upon the possession of records than to prove the actual gambling activities. For this reason, the Legislature criminalized the possession of gambling records related to bookmaking, lotteries and numbers (policy) games.

Elements - A person is guilty of possession of gambling records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

- 1) of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, including any paper or paper product in sheet form chemically converted to nitrocellulose having explosive characteristics as well as any water-soluble paper or paper derivative in sheet form; or
- 2) of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise.

Statutory defenses—The Legislature has provided several statutory defenses. These must be raised by the defendant Affirmative defenses - The defendant can assert these defenses when he demonstrates that:

- 1) the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself in a number not exceeding ten; or
- 2) the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or policy scheme or enterprise.

Jury charge - In order to convict defendant of this offense, you must be satisfied that the State has proved beyond a reasonable doubt each of the following elements:

- 1) That defendant knowingly possessed a particular writing, paper, instrument or article;
- 2) That [the writing, paper, etc.] is of a kind commonly used in a bookmaking scheme or enterprise; and
- 3) That defendant possessed the writing with knowledge of its contents.

Grading - Possession of gambling records can be graded as a crime of the third degree or a disorderly persons offense. The offense also has enhanced maximum fines that may be imposed well beyond the normal limitations in N.J.S.A. 2C:43-3.

**c) Maintaining a Gambling Resort: N.J.S.A. 2C:37-4**

In general - New Jersey law does not prohibit an individual from providing a place for gambling activities. Thus, by way of example, the movable weekly poker game among friends does not subject the host of the event to criminal prosecution. This legal proposition, changes for the worse when the host takes a portion of the winnings, or of each pot bet, which in the poker industry is known as a “rake.” Once the host of the gambling event accepts or receives money or other property from the gambling activity or knowingly possesses gambling records, he has committed the crime of maintaining a gambling resort.

This offense may be committed in two distinct manners: one involving purely private property and the other related to property that is otherwise open to the public. Each one requires knowledge of gambling activity, no effort to halt its occurrence and the acceptance or receipt of money or property by the defendant.

Comment – One popular Trenton host used to provide a private room which included food, drink and security for the invited poker players. The host would assess 5% of every pot as the rental fee. The games would go on for days (daze?). At the end of the game, guess who had all the money?

Grading - Maintaining a gambling resort is a crime of the fourth degree. It also carries an enhanced fine of as much as \$25,000.

#### **d) Possession of Gambling Devices: N.J.S.A. 2C:37-7**

In general - As with so many of the statutes punishing illegal gambling, possession of gambling devices is not aimed at mere players, but rather organizers and promoters of gambling activities. Although possession of all gambling devices by everyone except a player is broadly prohibited under the statute, slot machines are accorded special treatment.

A mere player is not included within the prohibitions set forth in the statute. In addition, the possession of one gambling device, other than a slot machine, for social use within the home is not an offense.

Finally, possession of one or more antique slot machines (manufactured prior to 1941) is not an offense under N.J.S.A. 2C:37-7, nor under N.J.S.A. 5:2-116 of the “Casino Control Act.”

Notwithstanding this exemption, however, antique slot machines may not be used for any unlawful purpose or for gaming.

Grading - Possession of a gambling device is a disorderly persons’ offense. Despite the fact that this violation is a petty offense, it must be heard exclusively in the Law Division of Superior Court.

#### **e) Gambling on ships at sea: N.J.S.A. 2C:37-4.1**

In general - The purpose of this statute is to prohibit gambling activities that take place on a vessel at sea, outside the territorial jurisdiction of New Jersey.

Jurisdiction over this offense is vested in New Jersey when the vessel embarks from a New Jersey location and returns to the same or different port in this State.

The actual offenses that occur on ship must involve promoting gambling, possessing gambling records or maintaining a gambling resort.

Elements of offense - The targeted defendants for this offense includes both the people who knowingly permit gambling activities on board ships and the owners or managers of the vessel itself who knowingly allow these activities. State; or

(2) manages, supervises, controls, operates or owns any vessel that embarks from any point within the State, and disembarks at the same or another point within the State, during which time the person knowingly causes or permits any gambling activity prohibited under this chapter, whether the gambling activity is conducted within or without the waters of the State.

Grading - Grading for this offense is tied to the specific gambling activity that takes place on board the ship. Any A person who violates N.J.S.A. 2C:37-4.1 is guilty of a crime of the same degree as the most serious crime that was committed in violation of N.J.S.A. 2C:37-2 (promoting gambling), N.J.S.A. 2C:37-3 (possessing gambling records) or N.J.S.A. 2C:37-4 (maintaining a gambling resort).

Exemptions - The prohibitions under N.J.S.A. 2C:37-4.1 are not intended to target the gambling activities that take place on large cruise ships that take thousands of passengers out to sea and visit ports of call in the Caribbean and other areas of the world. N.J.S.A. 2C:37-4.1c provides that the prohibition on shipboard gambling does not apply to gambling activity conducted on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the point of first entry into New Jersey waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from New Jersey waters.