

2C:12-1 Assault.

2C:12-1. Assault. a. Simple assault. A person is guilty of assault if he:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or
- (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
- (5) Commits a simple assault as defined in subsection a. (1), (2) or (3) of this section upon:
 - (a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority or because of his status as a law enforcement officer; or
 - (b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or
 - (c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or

(e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his duties or because of his status as an employee of the division; or

(f) Any justice of the Supreme Court, judge of the Superior Court, judge of the Tax Court or municipal judge while clearly identifiable as being engaged in the performance of judicial duties or because of his status as a member of the judiciary; or

(g) Any operator of a motorbus or the operator's supervisor or any employee of a rail passenger service while clearly identifiable as being engaged in the performance of his duties or because of his status as an operator of a motorbus or as the operator's supervisor or as an employee of a rail passenger service; or

(h) Any Department of Corrections employee, county corrections officer, juvenile corrections officer, State juvenile facility employee, juvenile detention staff member, juvenile detention officer, probation officer or any sheriff, undersheriff, or sheriff's officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or

(I) Any employee, including any person employed under contract, of a utility company as defined in section 2 of P.L.1971, c.224 (C.2A:42-86) or a cable television company subject to the provisions of the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in the performance of his duties in regard to connecting, disconnecting or repairing or attempting to connect, disconnect or repair any gas, electric or water utility, or cable television or telecommunication service; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person; or

(7) Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury; or

(8) Causes bodily injury by knowingly or purposely starting a fire or causing an explosion in violation of N.J.S.2C:17-1 which results in bodily injury to any emergency services personnel involved in fire suppression activities, rendering emergency medical services resulting from the fire or explosion or rescue operations, or rendering any necessary assistance at the scene of the fire or explosion, including any bodily injury sustained while responding to the scene of a reported fire or explosion. For purposes of this subsection, "emergency services personnel" shall include, but not be limited to, any paid or volunteer fireman, any person engaged in emergency first-aid or medical services and any law enforcement officer. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this paragraph upon proof of a violation of N.J.S.2C:17-1 which resulted in bodily injury to any emergency services personnel; or

(9) Knowingly, under circumstances manifesting extreme indifference to the value of human life, points or displays a firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer; or

(10) Knowingly points, displays or uses an imitation firearm, as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose; or

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

c. (1) A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

(2) Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-

50.4a) and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

(3) Assault by auto or vessel is a crime of the second degree if serious bodily injury results from the defendant operating the auto or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) while:

(a) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;

(b) driving through a school crossing as defined in R.S.39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or

(c) driving through a school crossing as defined in R.S.39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

Assault by auto or vessel is a crime of the third degree if bodily injury results from the defendant operating the auto or vessel in violation of this paragraph.

A map or true copy of a map depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board produced pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under subparagraph (a) of paragraph (3) of this section.

It shall be no defense to a prosecution for a violation of subparagraph (a) or (b) of paragraph (3) of this subsection that the defendant was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property or while driving through a school crossing. Nor shall it be a defense to a prosecution under subparagraph (a) or (b) of paragraph (3) of this subsection that no juveniles were present on the school property or crossing zone at the time of the offense or that the school was not in session.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. (Deleted by amendment, P.L.2001, c.443).

f. A person who commits a simple assault as defined in paragraph (1), (2) or (3)

of subsection a. of this section in the presence of a child under 16 years of age at a school or community sponsored youth sports event is guilty of a crime of the fourth degree. The defendant shall be strictly liable upon proof that the offense occurred, in fact, in the presence of a child under 16 years of age. It shall not be a defense that the defendant did not know that the child was present or reasonably believed that the child was 16 years of age or older. The provisions of this subsection shall not be construed to create any liability on the part of a participant in a youth sports event or to abrogate any immunity or defense available to a participant in a youth sports event. As used in this act, "school or community sponsored youth sports event" means a competition, practice or instructional event involving one or more interscholastic sports teams or youth sports teams organized pursuant to a nonprofit or similar charter or which are member teams in a youth league organized by or affiliated with a county or municipal recreation department and shall not include collegiate, semi-professional or professional sporting events.

Amended 1979, c.178, s.22; 1981, c.290, s.14; 1983, c.101; 1985, c.97, s.2; 1985, c.444; 1990, c.87, s.1; 1991, c.237, s.2; 1991, c.341, s.2; 1993, c.219, s.2; 1995, c.6, s.1; 1995, c.181; 1995, c.211, s.1; 1995, c.307, s.2; 1997, c.42; 1997, c.119; 1999, c.77; 1999, c.185, s.2; 1999, c.281; 1999, c.381; 2001, c.215; 2001, c.443, s.2; 2002, c.53; 2003, c.218; 2005, c.2.

2C:12-1.1 Knowingly leaving scene of motor vehicle accident resulting in serious bodily injury, fourth degree crime; sentencing.

A motor vehicle operator who knows he is involved in an accident and knowingly leaves the scene of that accident under circumstances that violate the provisions of R.S.39:4-129 shall be guilty of a crime of the fourth degree if the accident results in serious bodily injury to another person. The presumption of nonimprisonment set forth in N.J.S.2C:44-1 shall not apply to persons convicted under the provisions of this section.

If the evidence so warrants, nothing in this section shall be deemed to preclude an indictment and conviction for aggravated assault or assault by auto under the provisions of N.J.S.2C:12-1.

Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under this section shall not merge with a conviction for aggravated assault or assault by auto under the provisions of N.J.S.2C:12-1 and a separate sentence shall be imposed upon each conviction.

Notwithstanding the provisions of N.J.S.2C:44-5 or any other provisions of law, whenever in the case of such multiple convictions the court imposes multiple sentences of imprisonment for more than one offense, those sentences shall run consecutively.

For the purposes of this section, neither knowledge of the serious bodily injury nor knowledge of the violation are elements of the offense and it shall not be a defense that the driver of the motor vehicle was unaware of the serious bodily injury or provisions of R.S.39:4-129.

L.1997,c.111,s.2; amended 2003, c.55, s.3.

2C:12-3 Terroristic threats.

a. A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. A violation of this subsection is a crime of the second degree if it occurs during a declared period of national, State or county emergency. The actor shall be strictly liable upon proof that the crime occurred, in fact, during a declared period of national, State or county emergency. It shall not be a defense that the actor did not know that there was a declared period of emergency at the time the crime occurred.

b. A person is guilty of a crime of the third degree if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

Amended 1981, c.290, s.15; 2002, c.26, s.11.

2C:12-10. Definitions; stalking designated a crime; degrees

a. As used in this act:

(1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) "Repeatedly" means on two or more occasions.

(3) "Immediate family" means a spouse, parent, child, sibling or any other person who regularly resides in the household or who within the prior six months regularly resided in the household.

b. A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or a member of his immediate family or to fear the death of himself or a member of his immediate family.

c. A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.

d. A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.

e. A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

f. This act shall not apply to conduct which occurs during organized group picketing.

L.1992,c.209,s.1; amended 1996, c.39, s.1; 1998, c. 17, s.3; 1999, c.47, s.1; 2001, c.220, s.2.

2C:12-10.1. Conviction for stalking, permanent restraining order

3. a. A judgment of conviction for stalking shall operate as an application for a permanent restraining order limiting the contact of the defendant and the victim who was stalked.

b. A hearing shall be held on the application for a permanent restraining order at the time of the verdict or plea of guilty unless the victim requests otherwise. This hearing shall be in Superior Court. A permanent restraining order may grant the following specific relief:

(1) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim.

(2) An order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim, the victim's employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

c. The permanent restraining order entered by the court subsequent to a conviction for stalking as provided in this act may be dissolved upon the application of the stalking victim to the court which granted the order.

d. Notice of permanent restraining orders issued pursuant to this act shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

e. Any permanent restraining order issued pursuant to this act shall be in effect

throughout the State, and shall be enforced by all law enforcement officers.

f. A violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection a. of N.J.S.2C:29-9 and each order shall so state. Violations of these orders may be enforced in a civil or criminal action initiated by the stalking victim or by the court, on its own motion, pursuant to applicable court rules. Nothing in this act shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the permanent restraining order.

L.1996,c.39,s.3.

2C:12-13 Throwing bodily fluid at certain law enforcement officers deemed aggravated assault; grading, sentence.

A person who throws a bodily fluid at a Department of Corrections employee, county corrections officer, juvenile corrections officer, State juvenile facility employee, juvenile detention staff member, probation officer, any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer while in the performance of his duties or otherwise purposely subjects such employee to contact with a bodily fluid commits an aggravated assault. If the victim suffers bodily injury, this shall be a crime of the third degree. Otherwise, this shall be a crime of the fourth degree. A term of imprisonment imposed for this offense shall run consecutively to any term of imprisonment currently being served and to any other term imposed for another offense committed at the time of the assault. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation or attempted violation of chapter 11 of Title 2C of the New Jersey Statutes or subsection b. of N.J.S.2C:12-1 or any other provision of the criminal laws.

L.1997,c.182,s.2; amended 1999, c.429; 2003, c.283.

2C:13-1 Kidnapping.

2C:13-1. Kidnapping. a. Holding for ransom, reward or as a hostage. A person is guilty of kidnapping if he unlawfully removes another from the place where he is found or if he unlawfully confines another with the purpose of holding that person for ransom or reward or as a shield or hostage.

b. Holding for other purposes. A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes:

- (1) To facilitate commission of any crime or flight thereafter;
- (2) To inflict bodily injury on or to terrorize the victim or another;

(3) To interfere with the performance of any governmental or political function;
or

(4) To permanently deprive a parent, guardian or other lawful custodian of custody of the victim.

c. Grading of kidnapping. (1) Except as provided in paragraph (2) of this subsection, kidnapping is a crime of the first degree and upon conviction thereof, a person may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 15 and 30 years. If the actor releases the victim unharmed and in a safe place prior to apprehension, it is a crime of the second degree.

(2) Kidnapping is a crime of the first degree and upon conviction thereof, an actor shall be sentenced to a term of imprisonment by the court, if the victim of the kidnapping is less than 16 years of age and if during the kidnapping:

(a) A crime under N.J.S.2C:14-2 or subsection a. of N.J.S.2C:14-3 is committed against the victim;

(b) A crime under subsection b. of N.J.S.2C:24-4 is committed against the victim; or

(c) The actor sells or delivers the victim to another person for pecuniary gain other than in circumstances which lead to the return of the victim to a parent, guardian or other person responsible for the general supervision of the victim.

Notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, the term of imprisonment imposed under this paragraph shall be either a term of 25 years during which the actor shall not be eligible for parole, or a specific term between 25 years and life imprisonment, of which the actor shall serve 25 years before being eligible for parole; provided, however, that the crime of kidnapping under this paragraph and underlying aggravating crimes listed in subparagraph (a), (b) or (c) of this paragraph shall merge for purposes of sentencing. If the actor is convicted of the criminal homicide of a victim of a kidnapping under the provisions of chapter 11, any sentence imposed under provisions of this paragraph shall be served consecutively to any sentence imposed pursuant to the provisions of chapter 11.

d. "Unlawful" removal or confinement. A removal or confinement is unlawful within the meaning of this section and of sections 2C:13-2 and 2C:13-3, if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or is incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

e. It is an affirmative defense to a prosecution under paragraph (4) of subsection

b. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the victim from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a victim under his protection, give notice of the victim's location to the police department of the municipality where the victim resided, the office of the county prosecutor in the county where the victim resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the victim was consented to by a parent, or by an authorized State agency; or

(3) The victim, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition by his parent and without purpose to commit a criminal offense with or against the victim.

f. It is an affirmative defense to a prosecution under paragraph (4) of subsection b. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the victim's location to the police department of the municipality where the victim resided, the office of the county prosecutor in the county where the victim resided, or the Division of Youth and Family Services in the Department of Human Services; or

(2) Commences an action affecting custody in an appropriate court.

g. As used in subsections e. and f. of this section, "parent" means a parent, guardian or other lawful custodian of a victim.

Amended 1979, c.178, s.23; 1986, c.172, s.2; 1999, c.190, s.1.

2C:13-2. Criminal restraint

A person commits a crime of the third degree if he knowingly:

a. Restrains another unlawfully in circumstances exposing the other to risk of serious bodily injury; or

b. Holds another in a condition of involuntary servitude.

The creation by the actor of circumstances resulting in a belief by another that he must remain in a particular location shall for purposes of this section be deemed to be a holding in a condition of involuntary servitude.

In any prosecution under subsection b., it is an affirmative defense that the person held was a child less than 18 years old and the actor was a relative or legal guardian of such child and his sole purpose was to assume control of such child.

L.1978, c. 95, s. 2C:13-2, eff. Sept. 1, 1979.

2C:13-3. False imprisonment

A person commits a disorderly persons offense if he knowingly restrains another unlawfully so as to interfere substantially with his liberty. In any prosecution under this section, it is an affirmative defense that the person restrained was a child less than 18 years old and that the actor was a relative or legal guardian of such child and that his sole purpose was to assume control of such child.

L.1978, c. 95, s. 2C:13-3, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 24, eff. Sept. 1, 1979.

2C:13-4 Interference with custody.

2C:13-4. Interference with custody. a. Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of this State;

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or parenting time order.

Interference with custody is a crime of the second degree if the child is taken, detained, enticed or concealed: (i) outside the United States or (ii) for more than 24 hours. Otherwise, interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first

offense of a crime of the third degree shall not apply.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's

return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

Amended 1979, c.178, s.25; 1982, c.199; 1990, c.104, s.1; 1997, c.299, s.7; 1999, c.190, s.2.

2C:13-5. Criminal coercion

a. Offense defined. A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens to:

(1) Inflict bodily injury on anyone or commit any other offense;

(2) Accuse anyone of an offense;

(3) Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

(4) Take or withhold action as an official, or cause an official to take or withhold action;

(5) Bring about or continue a strike, boycott or other collective action, except that such a threat shall not be deemed coercive when the restriction compelled is demanded in the course of negotiation for the benefit of the group in whose interest the actor acts;

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

It is an affirmative defense to prosecution based on paragraphs (2), (3), (4), (6) and (7) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation,

exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, or refraining from taking any action or responsibility for which the actor believes the other disqualified.

b. Grading. Criminal coercion is a crime of the fourth degree unless the threat is to commit a crime more serious than one of the fourth degree or the actor's purpose is criminal, in which cases the offense is a crime of the third degree.

L.1978, c. 95, s. 2C:13-5, eff. Sept. 1, 1979.

2C:13-6 Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment.

Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment.

A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

"Child" as used in this act means a person less than 18 years old.

"Electronic means" as used in this section includes, but is not limited to, the Internet, which shall have the meaning set forth in N.J.S.2C:24-4.

"Structure" as used in this act means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for attempted kidnapping under the provisions of N.J.S.2C:13-1.

A person convicted of a second or subsequent offense under this section or a person convicted under this section who has previously been convicted of a violation of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4 shall be sentenced to a term of imprisonment. Notwithstanding the provisions of paragraph (2) of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

For the purposes of this section, an offense is considered a second or subsequent offense or a previous conviction of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4, as the case may be, if the actor has at any time been convicted pursuant to this section, or under any similar statute of the United States, this State or any other state for an offense that is substantially equivalent to this section or substantially equivalent to N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3 or N.J.S.2C:24-4

L.1993,c.291,s.1; amended 1994, c.91; 1999, c.277; 2001, c.233; 2003, c.229.

2C:13-7 Luring, enticing an adult, certain circumstances, third degree crime.

A person commits a crime of the third degree if he attempts, via electronic or any other means, to lure or entice a person into a motor vehicle, structure or isolated area, or to meet or appear at any place, with a purpose to commit a criminal offense with or against the person lured or enticed or against any other person.

"Electronic means" as used in this section includes, but is not limited to, the Internet. "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks. "Structure" shall have the meaning set forth in P.L.1993, c.291 (C.2C:13-6).

Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for attempted kidnapping under the provisions of N.J.S.2C:13-1 or for any other crime or offense.

Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

L.2005,c.1.

2C:14-1. Definitions

2C:14-1. Definitions. The following definitions apply to this chapter:

- a. "Actor" means a person accused of an offense proscribed under this act;

- b. "Victim" means a person alleging to have been subjected to offenses proscribed by this act;

c. "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;

d. "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;

e. "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;

f. "Severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;

g. "Physically helpless" means that condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act;

h. "Mentally defective" means that condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent;

i. "Mentally incapacitated" means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;

j. "Coercion" as used in this chapter shall refer to those acts which are defined as criminal coercion in section 2C:13-5(1), (2), (3), (4), (6) and (7).

Amended 1983, c.249, s.1; 1989,c.228,s.2.

2C:14-2 Sexual assault.

2C:14-2. Sexual assault. a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The victim is less than 13 years old;
- (2) The victim is at least 13 but less than 16 years old; and
 - (a) The actor is related to the victim by blood or affinity to the third degree, or
 - (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
 - (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
- (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;
- (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;
- (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;
- (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim;
- (7) The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated.

Aggravated sexual assault is a crime of the first degree.

b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;

(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;

(3) The victim is at least 16 but less than 18 years old and:

(a) The actor is related to the victim by blood or affinity to the third degree; or

(b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or

(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

Sexual assault is a crime of the second degree.

Amended 1979, c.178, s.26; 1983, c.249, s.2; 1989, c.228, s.3; 1997, c.194, s.1; 2001, c.60; 2004, c.130, s.13.

2C:14-2.1. Victim of sexual assault may consult with prosecutor on plea negotiations

Whenever there is a prosecution for a violation of N.J.S.A.2C:14-2, the victim of the sexual assault shall be provided an opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations.

Nothing contained herein shall be construed to alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate.

L.2003,c.137.

2C:14-3 Aggravated criminal sexual contact; criminal sexual contact

a. An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2a. (2) through(7).

Aggravated criminal sexual contact is a crime of the third degree.

b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c. (1) through(4).

Criminal sexual contact is a crime of the fourth degree.

Amended 1979, c.178, s.27; 1997, c.194, s.2.

2C:14-4. Lewdness

2C:14-4. Lewdness.

a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.

b. A person commits a crime of the fourth degree if:

(1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.

(2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.

c. As used in this section:

"lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

Amended 1992,c.8,s.1.

2C:14-5. Provisions generally applicable to Chapter 14

a. The prosecutor shall not be required to offer proof that the victim resisted, or resisted to the utmost, or reasonably resisted the sexual assault in any offense proscribed by this chapter.

b. No actor shall be presumed to be incapable of committing a crime under this chapter because of age or impotency or marriage to the victim.

c. It shall be no defense to a prosecution for a crime under this chapter that the actor believed the victim to be above the age stated for the offense, even if such a mistaken belief was reasonable.

L.1978, c. 95, s. 2C:14-5, eff. Sept. 1, 1979.

2C:14-6. Sentencing

If a person is convicted of a second or subsequent offense under sections 2C:14-2 or 2C:14-3a., the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7, include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3a.

L.1978, c. 95, s. 2C:14-6, eff. Sept. 1, 1979.

2C:14-7. Victim's previous sexual conduct; manner of dress

2C:14-7. a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S.2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S.2C:14-4, evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and highly material and meets the requirements of subsections c. and d. of this section and that the probative value of the evidence offered substantially outweighs its collateral nature or the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

b. In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim's previous sexual conduct with the defendant shall be

considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

f. For the purposes of this section, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

Amended 1988,c.69; 1994,c.95; 1995,c.237.

2C:14-9. Invasion of privacy, degree of crime; defenses, privileges

a. An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, and under circumstances in which a reasonable person would know that another may expose intimate parts or may engage in sexual penetration or sexual contact, he observes another person without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

b. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person's consent and under circumstances in which a reasonable person would not expect to be observed.

c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure. For purposes of this subsection, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection.

d. It is an affirmative defense to a crime under this section that:

(1) the actor posted or otherwise provided prior notice to the person of the actor's intent to engage in the conduct specified in subsection a., b., or c., and

(2) the actor acted with a lawful purpose.

e. (1) It shall not be a violation of subsection a. or b. to observe another person in the access way, foyer or entrance to a fitting room or dressing room operated by a retail establishment or to photograph, film, videotape, record or otherwise reproduce the image of such person, if the actor conspicuously posts at the entrance to the fitting room or dressing room prior notice of his intent to make the observations, photographs, films, videotapes, recordings or other reproductions.

(2) It shall be a violation of subsection c. to disclose in any manner any such photograph, film, videotape or recording of another person using a fitting room or dressing room except under the following circumstances:

(a) to law enforcement officers in connection with a criminal prosecution;

(b) pursuant to subpoena or court order for use in a legal proceeding; or

(c) to a co-worker, manager or supervisor acting within the scope of his employment.

f. It shall be a violation of subsection a. or b. to observe another person in a private dressing stall of a fitting room or dressing room operated by a retail establishment or to photograph, film, videotape, record or otherwise reproduce the image of another person in a private dressing stall of a fitting room or dressing room.

g. For purposes of this act, a law enforcement officer, or a corrections officer or guard in a correctional facility or jail, who is engaged in the official performance of his duties shall be deemed to be licensed or privileged to make and to disclose observations, photographs, films, videotapes, recordings or any other reproductions.

h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under subsection b. of this section shall not merge with a conviction under subsection c. of this section, nor shall a conviction under subsection c. merge with a conviction under subsection b.

L.2003,c.206,s.1.

2C:15-1. Robbery

a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:

(1) Inflicts bodily injury or uses force upon another; or

(2) Threatens another with or purposely puts him in fear of immediate bodily injury;
or

(3) Commits or threatens immediately to commit any crime of the first or second degree.

An act shall be deemed to be included in the phrase "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

b. Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

L.1979, c. 178, s. 28, eff. Sept. 1, 1979. Amended by L.1981, c. 22, s. 1, eff. Feb. 6, 1981.

2C:15-2. Carjacking defined

a. Carjacking defined. A person is guilty of carjacking if in the course of committing an unlawful taking of a motor vehicle, as defined in R.S.39:1-1, or in an attempt to commit an unlawful taking of a motor vehicle he:

(1) inflicts bodily injury or uses force upon an occupant or person in possession or control of a motor vehicle;

(2) threatens an occupant or person in control with, or purposely or knowingly puts an occupant or person in control of the motor vehicle in fear of, immediate bodily injury;

(3) commits or threatens immediately to commit any crime of the first or second degree; or

(4) operates or causes said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

An act shall be deemed to be "in the course of committing an unlawful taking of a motor vehicle" if it occurs during an attempt to commit the unlawful taking of a motor vehicle or during an immediate flight after the attempt or commission.

b. Grading. Carjacking is a crime of the first degree and upon conviction thereof a person may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 10 and 30 years. A person convicted of carjacking shall be sentenced to a term of imprisonment and that term of imprisonment shall include the imposition of a minimum term of at least five years during which the defendant shall be ineligible for parole.

L.1993,c.221.

2C:17-1. Arson and related offenses

2C:17-1. Arson and related offenses.

a. Aggravated arson. A person is guilty of aggravated arson, a crime of the second degree, if he starts a fire or causes an explosion, whether on his own property or another's:

- (1) Thereby purposely or knowingly placing another person in danger of death or bodily injury; or
- (2) With the purpose of destroying a building or structure of another; or
- (3) With the purpose of collecting insurance for the destruction or damage to such property under circumstances which recklessly place any other person in danger of death or bodily injury; or
- (4) With the purpose of destroying or damaging a structure in order to exempt the structure, completely or partially, from the provisions of any State, county or local zoning, planning or building law, regulation, ordinance or enactment under circumstances which recklessly place any other person in danger of death or bodily injury; or
- (5) With the purpose of destroying or damaging any forest.

b. Arson. A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's:

- (1) Thereby recklessly placing another person in danger of death or bodily injury; or
- (2) Thereby recklessly placing a building or structure of another in danger of damage or destruction; or
- (3) With the purpose of collecting insurance for the destruction or damage to such property; or
- (4) With the purpose of destroying or damaging a structure in order to exempt the structure, completely or partially, from the provisions of any State, county or local zoning, planning or building law, regulation, ordinance or enactment; or
- (5) Thereby recklessly placing a forest in danger of damage or destruction.

c. Failure to control or report dangerous fire. A person who knows that a fire is endangering life or a substantial amount of property of another and either fails to take

reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give prompt fire alarm, commits a crime of the fourth degree if:

(1) He knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) The fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

d. Any person who, directly or indirectly, pays or accepts or offers to pay or accept any form of consideration including, but not limited to, money or any other pecuniary benefit, regardless of whether any consideration is actually exchanged for the purpose of starting a fire or causing an explosion in violation of this section commits a crime of the first degree.

e. Notwithstanding the provisions of any section of this Title to the contrary, if a person is convicted of aggravated arson pursuant to the provisions of subsection a. of this section and the structure which was the target of the offense was a health care facility or a physician's office, the sentence imposed shall include a term of imprisonment. The court may not suspend or make any other noncustodial disposition of a person sentenced pursuant to the provisions of this subsection.

f. Definitions. "Structure" is defined in section 2C:18-1. Property is that of another, for the purpose of this section, if any one other than the actor has a possessory, or legal or equitable proprietary interest therein. Property is that of another for the purpose of this section, if anyone other than the actor has a legal or equitable interest in the property including, but not limited to, a mortgage, pledge, lien or security interest therein. If a building or structure is divided into separately occupied units, any unit not occupied by the actor is an occupied structure of another. As used in this section, "forest" means and includes any forest, brush land, grass land, salt marsh, wooded area and any combination thereof, including but not limited to, an open space area, public lands, wetlands, park lands, natural habitats, a State conservation area, a wildlife refuge area or any other designated undeveloped open space whether or not it is subject to specific protection under law.

As used in this section, "health care facility" means health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2).

g. Notwithstanding the provisions of any section of this Title to the contrary, if a person is convicted pursuant to the provisions of subsection a., b. or d. of this section and the structure which was the target of the offense was a church, synagogue, temple or other place of public worship, that person commits a crime of the first degree and the sentence imposed shall include a term of imprisonment. The term of imprisonment shall include a minimum term of 15 years, during which the defendant shall be ineligible for parole. The court may not suspend or make any other noncustodial disposition of a person sentenced pursuant to the provisions of this subsection.

Amended 1979, c.178, s.29; 1981, c.290, s.16; 1991, c.498; 1997, c.108; 1997, c.109.

2C:17-3 Criminal mischief.

2C:17-3. Criminal Mischief. a. Offense defined. A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed in subsection a. of N.J.S.2C:17-2; or

(2) Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property.

b. Grading. (1) Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes pecuniary loss of \$2,000.00 or more, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.

(2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of \$500.00. It is a disorderly persons offense if the actor causes pecuniary loss of \$500.00 or less.

(3) Criminal mischief is a crime of the third degree if the actor damages, defaces, eradicates, alters, receives, releases or causes the loss of any research property used by the research facility, or otherwise causes physical disruption to the functioning of the research facility. The term "physical disruption" does not include any lawful activity that results from public, governmental, or research facility employee reaction to the disclosure of information about the research facility.

(4) Criminal mischief is a crime of the fourth degree if the actor damages, removes or impairs the operation of any device, including, but not limited to, a sign, signal, light or other equipment, which serves to regulate or ensure the safety of air traffic at any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however, if the damage, removal or impediment of the device recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(5) Criminal mischief is a crime of the fourth degree if the actor interferes or tampers with any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however if the interference or tampering with the airport, landing field, landing strip, heliport, helistop or other aviation facility recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(6) Criminal mischief is a crime of the third degree if the actor tampers with a grave, crypt, mausoleum or other site where human remains are stored or interred, with the purpose to desecrate, destroy or steal such human remains or any part thereof.

c. A person convicted of an offense of criminal mischief that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property.

d. As used in this section:

(1) "Act of graffiti" means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

(2) "Spray paint" means any paint or pigmented substance that is in an aerosol or similar spray container.

Amended 1979, c.178, s.30; 1981, c.290, s.17; 1991, c.336, s.1, 1995, c.20, s.2; 1995, c.251, s.1; 1998, c.54, s.1; 1999, c.95, s.1.

2C:17-3.1 Traffic sign, signal damage, removal, violation.

A person who purposely, knowingly, recklessly or negligently defaces, injures or removes an official traffic sign or signal described in Title 39 of the Revised Statutes is guilty of a disorderly persons offense.

If a juvenile who is adjudicated delinquent for an act which, if committed by an adult, would constitute a violation of this section is assessed a fine and the court determines that the juvenile is unable to pay the fine, the juvenile's parents or legal guardian shall be responsible for the imposed fine.

L.1998,c.54,s.3.

2C:17-6. Motor vehicles; removal or alteration of identification number or mark; possession; penalty

a. A person who removes, defaces, alters, changes, destroys, covers or obliterates any trademark, distinguishing or identification number, serial number or mark on or from any motor vehicle for an unlawful purpose, is guilty of a crime of the third degree.

b. A person who for an unlawful purpose knowingly possesses any motor vehicle, or any of the parts thereof, from or on which any trademark, distinguishing or identification number, or serial number or mark has been removed, covered, altered, changed, defaced, destroyed or obliterated, is guilty of an offense, unless, within 10 days after the motor vehicle or any part thereof shall have come into his possession, he files with the Director of the Division of Motor Vehicles in the Department of Law and Public Safety a verified statement showing: the source of his title, the proper trademark, identification or distinguishing number, or serial number or mark, if known, and if known, the manner of and reason for the mutilation, change, alteration, concealment or defacement, the length of time the motor vehicle or part has been held and the price paid therefor.

If the value of the motor vehicle or parts possessed exceeds \$500.00 the offense is a crime of the third degree; if the value is at least \$200.00 but does not exceed \$500.00 it is a crime of the fourth degree; if the value is less than \$200.00 it is a disorderly persons offense.

c. As used in this section, "motor vehicle" includes motor bicycles, motorcycles, automobiles, trucks, tractors or other vehicles designed to be self-propelled by mechanical power, and otherwise than by muscular power, except motor vehicles running upon or guided by rails or tracks.

L.1983, c. 351, s. 1, eff. Sept. 29, 1983.

2C:18-2. Burglary

a. Burglary defined. A person is guilty of burglary if, with purpose to commit an offense therein he:

- (1) Enters a research facility, structure, or a separately secured or occupied portion thereof unless the structure was at the time open to the public or the actor is licensed or privileged to enter; or
- (2) Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.

b. Grading. Burglary is a crime of the second degree if in the course of committing the offense, the actor:

- (1) Purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or
- (2) Is armed with or displays what appear to be explosives or a deadly weapon.

Otherwise burglary is a crime of the third degree. An act shall be deemed "in the course

of committing" an offense if it occurs in an attempt to commit an offense or in immediate flight after the attempt or commission.

Amended 1980,c.112,s.2; 1981,c.290,s.18; 1995,c.20,s.3.

2C:18-3. Unlicensed entry of structures; defiant trespasser; peering into dwelling places; defenses

a. 2C:18-3. a. Unlicensed entry of structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any research facility, structure, or separately secured or occupied portion thereof. An offense under this subsection is a crime of the fourth degree if it is committed in a school or on school property. The offense is a crime of the fourth degree if it is committed in a dwelling. An offense under this section is a crime of the fourth degree if it is committed in a research facility. Otherwise it is a disorderly persons offense.

b. Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

c. Peering into windows or other openings of dwelling places. A person commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, he peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person and under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed.

d. Defenses. It is an affirmative defense to prosecution under this section that:

(1) A structure involved in an offense under subsection a. was abandoned;

(2) The structure was at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the structure; or

(3) The actor reasonably believed that the owner of the structure, or other person empowered to license access thereto, would have licensed him to enter or remain, or, in the case of subsection c. of this section, to peer.

Amended 1980, c.112, s.3; 1994, c.90; 1995, c.20, s.4; 1997, c.15.

2C:20-2 Consolidation of theft offenses; grading; provisions applicable to theft generally.

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

a. Consolidation of Theft and Computer Criminal Activity Offenses. Conduct denominated theft or computer criminal activity in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft or computer criminal activity may be supported by evidence that it was committed in any manner that would be theft or computer criminal activity under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is \$75,000.00 or more;

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram;

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000 or more; or

(e) The property stolen is human remains or any part thereof.

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

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

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;

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

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

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

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

(h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000;

(i) The property stolen is any real or personal property related to, necessary for, or derived from research, regardless of value, including, but not limited to, any sample, specimens and components thereof, research subject, including any warm-blooded or cold-blooded animals being used for research or intended for use in research, supplies, records, data or test results, prototypes or equipment, as well as any proprietary information or other type of information related to research;

(j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14; or

(k) The property stolen consists of an access device or a defaced access device.

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

(4) The amount involved in a theft or computer criminal activity shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts or computer criminal activities committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

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

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

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

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

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

Amended 1979, c.178, s.33; 1981, c.167, s.6; 1987, c.76, s.31; 1987, c.106, s.5; 1993, c.219, s.3; 1993, c.363; 1995, c.20, s.5; 1996, c.154, s.9; 1997, c.6, s.2; 1998, c.100, s.2; 1999, c.95, s.2; 2003, c.39, s.7.

2C:20-2.1. Additional penalties for theft or unlawful taking of motor vehicle

a. In addition to any other disposition authorized by law, a person convicted under the provisions of this chapter of theft or unlawful taking of a motor vehicle shall be subject:

(1) For the first offense, to a penalty of \$500.00 and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for a period of one year.

(2) For a second offense, to a penalty of \$750.00 and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for a period of two years.

(3) For a third or subsequent offense, to a penalty of \$1,000.00, and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for 10 years.

b. The suspension or postponement of the person's license to operate a motor vehicle pursuant to subsection a. of this section shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of one year for a first offense, two years for a second offense or 10 years for a third offense calculated from the day after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

c. All penalties provided for in this section shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), and shall be distributed in accordance with the provisions of N.J.S.2C:64-6 as if the collected monies were the proceeds of property forfeited pursuant to the provisions of chapter 64. However, the distributed monies are to be used for law enforcement activities related to auto theft.

L.1991,c.83,s.1; amended 1993,c.219,s.4.

2C:20-2.2. Additional fine for auto theft

Notwithstanding the provisions of N.J.S.2C:43-3, if the fair market value of the automobile and its contents at the time it was stolen exceeds \$7,500.00 and the automobile is not recovered, the court may sentence the defendant to pay a fine for that higher amount.

L.1991,c.83,s.2.

2C:20-3. Theft by unlawful taking or disposition

a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

b. Immovable property. A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not

entitled thereto.

L.1978, c. 95, s. 2C:20-3, eff. Sept. 1, 1979.

2C:20-4. Theft by deception

2C:20-4. Theft by deception.

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b. Prevents another from acquiring information which would affect his judgment of a transaction; or

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Amended 2003, c.43.

2C:20-5. Theft by extortion

A person is guilty of theft by extortion if he purposely and unlawfully obtains property of another by extortion. A person extorts if he purposely threatens to:

a. Inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense;

b. Accuse anyone of an offense or cause charges of an offense to be instituted against any person;

c. Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

d. Take or withhold action as an official, or cause an official to take or withhold action;

e. Bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

g. Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

It is an affirmative defense to prosecution based on paragraphs b, c, d or f that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances or as lawful compensation for property or services.

L.1978, c. 95, s. 2C:20-5, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 34, eff. Sept. 1, 1979.

2C:20-6. Theft of property lost, mislaid, or delivered by mistake

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, knowing the identity of the owner and with purpose to deprive said owner thereof, he converts the property to his own use.

L.1978, c. 95, s. 2C:20-6, eff. Sept. 1, 1979.

2C:20-7. Receiving stolen property

2C:20-7. Receiving Stolen Property.

a. Receiving. A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

b. Presumption of knowledge. The requisite knowledge or belief is presumed in the case of a person who:

(1) Is found in possession or control of two or more items of property stolen on two or more separate occasions; or

(2) Has received stolen property in another transaction within the year preceding the transaction charged; or

(3) Being a person in the business of buying or selling property of the sort received, acquires the property without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess and dispose of it ;or

(4) Is found in possession of two or more defaced access devices.

Amended 1979, c.178, s.35; 1981, c.290, s.19; 1997, c.6, s.3.

2C:20-7.1. Fencing

a. Possession of altered property. Any dealer in property who knew or should have known that the identifying features such as serial numbers and permanently affixed labels of property in his possession have been removed or altered without the consent of the manufacturer is guilty of possession of altered property. It is a defense to a prosecution under this subsection that a person lawfully possesses the usual indicia of ownership in addition to mere possession.

b. Dealing in stolen property. A person is guilty of dealing in stolen property if he traffics in, or initiates, organizes, plans, finances, directs, manages or supervises trafficking in stolen property.

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

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

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

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

e. In addition to the presumptions contained in N.J.S. 2C:20-7b. the following presumptions are available in the prosecution for a fencing offense:

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

(2) Proof of the purchase or sale of property by a dealer in that property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, or the property or the job lot of which it is a part was bought, received, possessed or controlled in broken succession of title, so that it cannot be traced, by appropriate documents, in unbroken succession to the manufacturer, in all cases where the regular course of business reasonably indicates records of purchase, transfer or sale,

unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew that it had been stolen; and

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

L.1981, c. 167, s. 7, eff. June 15, 1981.

2C:20-8. Theft of services

2C:20-8. Theft of Services.

a. A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token, slug, or other means, including but not limited to mechanical or electronic devices or through fraudulent statements, to avoid payment for the service. "Services" include labor or professional service; transportation, telephone, telecommunications, electric, water, gas, cable television, or other public service; accommodation in hotels, restaurants or elsewhere; entertainment; admission to exhibitions; use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

b. A person commits theft if, having control over the disposition of services of another, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

c. Any person who, without permission and for the purpose of obtaining electric current, gas or water with intent to defraud any vendor of electricity, gas or water or a person who is furnished by a vendor with electric current, gas or water:

(1) Connects or causes to be connected by wire or any other device with the wires, cables or conductors of any such vendor or any other person; or

(2) Connects or disconnects the meters, pipes or conduits of such vendor or any other person or in any other manner tampers or interferes with such meters, pipes or conduits, or connects with such meters, pipes or conduits by pipes, conduits or other instruments--is guilty of a disorderly persons offense.

The existence of any of the conditions with reference to meters, pipes, conduits or attachments, described in this subsection, is presumptive evidence that the person to whom gas, electricity or water is at the time being furnished by or through such meters, pipes, conduits or attachments has, with intent to defraud, created or caused to be created with reference to such meters, pipes, conduits or attachments, the condition so existing; provided, however, that the presumption shall not apply to any person so furnished with

gas, electricity or water for less than 31 days or until there has been at least one meter reading.

A violation of this subsection shall be deemed to be a continuing offense as long as the conditions described in this subsection exist.

d. Any person who, without permission or authority, connects or causes to be connected by wires or other devices, any meter erected or set up for the purpose of registering or recording the amount of electric current supplied to any customer by any vendor of electricity within this State, or changes or shunts the wiring leading to or from any such meter, or by any device, appliance or means whatsoever tampers with any such meter so that the meter will not measure or record the full amount of electric current supplied to such customer, is guilty of a disorderly persons offense.

The existence of any of the conditions with reference to meters or attachments described in this subsection is presumptive evidence that the person to whom electricity is at the time being furnished by or through such meters or attachments has, with intent to defraud, created or caused to be created with reference to such meters or attachments, the condition so existing; provided, however, that the presumption shall not apply to any person so furnished with electricity for less than 31 days or until there has been at least one meter reading.

A violation of this subsection shall be deemed to be a continuing offense as long as the conditions described in this subsection exist.

e. Any person who, with intent to obtain cable television service without payment, in whole or in part, of the lawful charges therefor, or with intent to deprive another of the lawful receipt of such service, damages, cuts, tampers with, installs, taps or makes any connection with, or who displaces, removes, injures or destroys any wire, cable, conduit, apparatus or equipment of a cable television company operating a CATV system; or who, without authority of a cable television company, intentionally prevents, obstructs or delays, by any means or contrivance, the sending, transmission, conveyance, distribution or receipt of programming material carried by equipment of the cable television company operating a CATV system, is a disorderly person.

The existence of any of the conditions with reference to wires, cables, conduits, apparatus or equipment described in this subsection is presumptive evidence that the person to whom cable television service is at the time being furnished has, with intent to obtain cable television service without authorization or compensation or to otherwise defraud, created or caused to be created the condition so existing.

f. Any person who purposely or knowingly manufactures, constructs, sells, offers for sale, distributes or installs any equipment, device or instrument designed or intended to facilitate the interception, decoding or receipt of any cable television service with intent to obtain such service and avoid the lawful payment of the charges therefor to the provider, in whole or in part, is a disorderly person.

Any communications paraphernalia prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

g. Any person who purposely or knowingly maintains or possesses any equipment, device or instrument of the type described in subsection f. of this section or maintains or possesses any equipment, device or instrument actually used to facilitate the interception, decoding or receipt of any cable television service with intent to obtain such service and avoid the lawful payment, in whole or in part, of the charges therefor to the provider, is a disorderly person.

Any communications paraphernalia prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

h. Any person who, with the intent of depriving a telephone company of its lawful charges therefor, purposely or knowingly makes use of any telecommunications service by means of the unauthorized use of any electronic or mechanical device or connection, or by the unauthorized use of billing information, or by the use of a computer, computer equipment or computer software, or by the use of misidentifying or misleading information given to a representative of the telephone company is guilty of a crime of the third degree.

The existence of any of the conditions with reference to electronic or mechanical devices, computers, computer equipment or computer software described in this subsection is presumptive evidence that the person to whom telecommunications service is at the time being furnished has, with intent to obtain telecommunications service without authorization or compensation or to otherwise defraud, created or caused to be created the condition so existing.

i. Any person who purposely or knowingly manufactures, constructs, sells, offers for sale, distributes, installs, or otherwise provides any service, equipment, device, computer, computer equipment, computer software or instrument designed or intended to facilitate the receipt of any telecommunications service and avoid the lawful payment of the charges therefor to the provider, in whole or in part, is guilty of a crime of the third degree.

Any communications paraphernalia, computer, computer equipment or computer software prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

j. Any person who purposely or knowingly maintains or possesses any equipment, device, computer, computer equipment, computer software or instrument of the type described in subsection i. of this section, or maintains or possesses any equipment,

device, computer, computer equipment, computer software or instrument actually used to facilitate the receipt of any telecommunications service with intent to obtain such service and avoid the lawful payment, in whole or in part, of the charges therefor to the provider, is guilty of a crime of the third degree.

Any communications paraphernalia, computer, computer equipment or computer software prohibited under this subsection shall be subject to forfeiture and may be seized by the State or any law enforcement officer in accordance with the provisions of N.J.S.2C:64-1 et seq.

k. In addition to any other disposition authorized by law, and notwithstanding the provisions of N.J.S.2C:43-3, every person who violates this section shall be sentenced to make restitution to the vendor and to pay a minimum fine of \$500.00 for each offense. In determining the amount of restitution, the court shall consider the costs expended by the vendor, including but not limited to the repair and replacement of damaged equipment, the cost of the services unlawfully obtained, investigation expenses, and attorney fees.

l. The presumptions of evidence applicable to offenses defined in subsections c., d., e. and h. of this section shall also apply in any prosecution for theft of services brought pursuant to the provisions of subsection a. or b. of this section.

Amended 1983, c.15, s.1; 1985, c.10; 1989, c.112; 1997, c.6, s.4.

2C:20-9. Theft by failure to make required disposition of property received

Theft by Failure to Make Required Disposition of Property Received. A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (a) to know any legal obligation relevant to his criminal liability under this section, and (b) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts. The fact that any payment or other disposition was made with a subsequently dishonored negotiable instrument shall constitute prima facie evidence of the actor's failure to make the required payment or disposition, and the trier of fact may draw a permissive inference therefrom that the actor did not intend to make the required payment or other disposition.

Amended by L. 1987, c. 76, s. 32.

2C:20-10. Unlawful taking of means of conveyance.

2C:20-10. Unlawful Taking of Means of Conveyance

a. A person commits a disorderly persons offense if, with purpose to withhold temporarily from the owner, he takes, operates, or exercises control over any means of conveyance, other than a motor vehicle, without consent of the owner or other person authorized to give consent. "Means of conveyance" includes but is not limited to motor vehicles, bicycles, motorized bicycles, boats, horses, vessels, surfboards, rafts, skimobiles, airplanes, trains, trams and trailers. It is an affirmative defense to prosecution under subsections a., b. and c. of this section that the actor reasonably believed that the owner or any other person authorized to give consent would have consented to the operation had he known of it.

b. A person commits a crime of the fourth degree if, with purpose to withhold temporarily from the owner, he takes, operates or exercises control over a motor vehicle without the consent of the owner or other person authorized to give consent.

c. A person commits a crime of the third degree if, with purpose to withhold temporarily from the owner, he takes, operates or exercises control over a motor vehicle without the consent of the owner or other person authorized to give consent and operates the motor vehicle in a manner that creates a risk of injury to any person or a risk of damage to property.

d. A person commits a crime of the fourth degree if he enters and rides in a motor vehicle knowing that the motor vehicle has been taken or is being operated without the consent of the owner or other person authorized to consent.

Amended 1979,c.178,s.35A; 1993,c.134.

2C:20-11 Shoplifting

a. Definitions. The following definitions apply to this section:

(1) "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store;

(2) "Store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale;

(3) "Merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof;

(4) "Merchant" means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or proprietor;

(5) "Person" means any individual or individuals, including an agent, servant or employee of a merchant where the facts of the situation so require;

(6) "Conceal" means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation;

(7) "Full retail value" means the merchant's stated or advertised price of the merchandise;

(8) "Premises of a store or retail mercantile establishment" means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment;

(9) "Under-ring" means to cause the cash register or other sale recording device to reflect less than the full retail value of the merchandise;

(10) "Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

b. Shoplifting. Shoplifting shall consist of any one or more of the following acts:

(1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

(2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

(3) For any person purposely to alter, transfer or remove any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the value thereof.

(4) For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment from the container in or on which the same shall be displayed to any other container with intent to

deprive the merchant of all or some part of the retail value thereof.

(5) For any person purposely to under-ring with the intention of depriving the merchant of the full retail value thereof.

(6) For any person purposely to remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

c. Gradation. (1) Shoplifting constitutes a crime of the second degree under subsection b. of this section if the full retail value of the merchandise is \$75,000.00 or more.

(2) Shoplifting constitutes a crime of the third degree under subsection b. of this section if the full retail value of the merchandise exceeds \$500.00 but is less than \$75,000.00.

(3) Shoplifting constitutes a crime of the fourth degree under subsection b. of this section if the full retail value of the merchandise is at least \$200.00 but does not exceed \$500.00.

(4) Shoplifting is a disorderly persons offense under subsection b. of this section if the full retail value of the merchandise is less than \$200.00. Additionally, notwithstanding the term of imprisonment provided in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting offense shall be sentenced to perform community service as follows: for a first offense, at least ten days of community service; for a second offense, at least 15 days of community service; and for a third or subsequent offense, a maximum of 25 days of community service and any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of imprisonment of not less than 90 days.

d. Presumptions. Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof, and the finding of such merchandise concealed upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

e. A law enforcement officer, or a special officer, or a merchant, who has probable cause for believing that a person has willfully concealed unpurchased

merchandise and that he can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section.

A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

f. Any person who possesses or uses any antishoplifting or inventory control device countermeasure within any store or other retail mercantile establishment is guilty of a disorderly persons offense.

Amended 1979, c.178, s.35B; 1997, c.319; 2000, c.16, s.1.

2C:20-11.1. Guidelines for prosecution of shoplifting offenses

The Attorney General shall develop, no later than the 120th day after the effective date of this act, guidelines to ensure that the prosecution of shoplifting offenses is conducted in a uniform manner throughout the State.

L.2000,c.16,s.2.

2C:21-1. Forgery and Related Offenses

2C:21-1. Forgery and Related Offenses.

a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(1) Alters or changes any writing of another without his authorization;

(2) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(3) Utters any writing which he knows to be forged in a manner specified in paragraph (1) or (2).

"Writing" includes printing or any other method of recording information, money,

coins, tokens, stamps, seals, credit cards, badges, trademarks, access devices, and other symbols of value, right, privilege, or identification, including retail sales receipts, universal product code (UPC) labels and checks. This section shall apply without limitation to forged, copied or imitated checks.

As used in this section, "information" includes, but is not limited to, personal identifying information as defined in subsection v. of N.J.S.2C:20-1.

b. Grading of forgery. Forgery is a crime of the third degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments, certificates or licenses issued by the government, New Jersey Prescription Blanks as referred to in R.S.45:14-14, or part of an issue of stock, bonds or other instruments representing interest in or claims against any property or enterprise, personal identifying information or an access device. Forgery is a crime of the third degree if the writing is or purports to be a check. Forgery is a crime of the third degree if the writing is or purports to be 15 or more forged or altered retail sales receipts or universal product code labels.

Otherwise forgery is a crime of the fourth degree.

c. Possession of forgery devices. A person is guilty of possession of forgery devices, a crime of the third degree, when with purpose to use, or to aid or permit another to use the same for purposes of forging written instruments, including access devices and personal identifying information, he makes or possesses any device, apparatus, equipment, computer, computer equipment, computer software or article specially designed or adapted to such use.

Amended 1981, c.290, s.20; 1996, c.154, s.10; 1997, c.6, s.5; 2001, c.110, s.1; 2002, c.85, s.2.

2C:21-2. Criminal simulation

A person commits a crime of the fourth degree if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

L.1978, c. 95, s. 2C:21-2, eff. Sept. 1, 1979.

2C:21-2.1. Offenses involving false government documents, degree of crime

a. A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

b. A person who knowingly makes, or possesses devices or materials to make, a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

c. A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the third degree. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this subsection if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

d. A person who knowingly possesses a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the fourth degree.

e. In addition to any other disposition authorized by this Title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating the dispositions that may be ordered for an adjudication of delinquency, and, notwithstanding the provisions of subsection c. of N.J.S.2C:43-2, every person convicted of or adjudicated delinquent for a violation of any offense defined in this section shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of the sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement.

The court before whom any person is convicted of or adjudicated delinquent for a violation of any offense defined in this section shall collect forthwith the New Jersey driver's license or licenses of that person and forward the license or licenses to the

Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. The report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license, but shall notify forthwith the director who shall notify the appropriate officials in that licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

In addition to any other condition imposed, a court, in its discretion, may suspend, revoke or postpone the driving privileges of a person admitted to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12 without a plea of guilty or finding of guilt.

L.1983,c.565,s.1; amended 1999, c.28, s.14; 2002, c.85, s.3; 2003, c.184, s.2.

2C:21-2.3. Producing, selling, offering, displaying, possessing, fraudulent motor vehicle insurance ID cards; penalties

a. A person who knowingly produces, sells, offers or exposes for sale a document, printed form or other writing which simulates a motor vehicle insurance identification card is guilty of a crime of the third degree. In addition to any other penalty imposed, a person convicted under this section shall be ordered by the court to perform community service for a period of 30 days.

b. A person who exhibits or displays to a law enforcement officer or a person conducting a motor vehicle inspection pursuant to chapter 8 of Title 39 of the Revised Statutes a falsely made, forged, altered, counterfeited or simulated motor vehicle insurance identification card, knowing that the insurance identification card was falsely made, forged, altered, counterfeited or simulated, commits a crime of the fourth degree.

c. A person who possesses a falsely made, forged, altered, counterfeited or simulated motor vehicle insurance identification card, knowing that the insurance identification card was falsely made, forged, altered, counterfeited or simulated, commits a disorderly persons offense.

L.1997,c.385,s.2;(recodified April 1999) 1997, c.385, s.2; amended 2001, c.124.

2C:21-4.8 Motor vehicle title offenses, grading.

a. A person who purposely or knowingly violates a provision of chapter 10 of Title 39 of the Revised Statutes, for which a specific penalty is not provided in that chapter or this section, shall be guilty of a crime of the fourth degree.

b. A person who purposely or knowingly commits the following violations of chapter 10 of Title 39 of the Revised Statutes shall be guilty of a crime of the third degree:

(1) Makes a misrepresentation or false statement in any title papers or other papers submitted to the Chief Administrator of the New Jersey Motor Vehicle Commission in connection therewith;

(2) Purchases, receives or obtains a motor vehicle on a title paper in violation of chapter 10 of Title 39 of the Revised Statutes;

(3) Forges, changes or counterfeits a part of title papers;

(4) Misrepresents a number placed on a motor vehicle by the manufacturer, or in any other manner misrepresents the description of a motor vehicle; or

(5) Uses title papers on or for a wrong motor vehicle, with intent to evade or violate the requirements of chapter 10 of Title 39 of the Revised Statutes.

L.2003,c.217,s.2.

2C:21-5 Bad checks.

2C:21-5. A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits an offense as provided for in subsection c. of this section. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or money order (other than a post-dated check or order) would not be paid, if:

a. The issuer had no account with the drawee at the time the check or order was issued; or

b. Payment was refused by the drawee for lack of funds, or due to a closed account, after a deposit by the payee into a bank for collection or after presentation to the drawee within 46 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal or after notice has been sent to the issuer's last known address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

c. An offense under this section is:

- (1) a crime of the second degree if the check or money order is \$75,000.00 or more;
- (2) a crime of the third degree if the check or money order is \$1,000.00 or more but is less than \$75,000.00;
- (3) a crime of the fourth degree if the check or money order is \$200.00 or more but is less than \$1,000.00;
- (4) a disorderly persons offense if the check or money order is less than \$200.00.

Amended 1981, c.290, s.22; 2002, c.65, s.1.

2C:21-6. Credit cards

2C:21-6. Credit Cards.

a. Definitions. As used in this section:

(1) "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

(2) "Credit card" means any tangible or intangible instrument or device issued with or without fee by an issuer that can be used, alone or in connection with another means of account access, in obtaining money, goods, services or anything else of value on credit, including credit cards, credit plates, account numbers, or any other means of account access.

(3) "Expired credit card" means a credit card which is no longer valid because the term shown either on it or on documentation provided to the cardholder by the issuer has elapsed.

(4) "Issuer" means the business organization or financial institution which issues a credit card or its duly authorized agent.

(5) "Receives" or "receiving" means acquiring possession or control or accepting a credit card as security for a loan.

(6) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

b. False statements made in procuring issuance of credit card. A person who makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting his identity or that of any other

person, firm or corporation, or his financial condition or that of any other person, firm or corporation, for the purpose of procuring the issuance of a credit card is guilty of a crime of the fourth degree.

c. Credit card theft.

(1) A person who takes or obtains a credit card from the person, possession, custody or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder is guilty of a crime of the fourth degree. Taking a credit card without consent includes obtaining it by any conduct defined and prescribed in Chapter 20 of this title, Theft and Related Offenses.

A person who has in his possession or under his control (a) credit cards issued in the names of two or more other persons or, (b) two or more stolen credit cards is presumed to have violated this paragraph.

(2) A person who receives a credit card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder is guilty of a crime of the fourth degree.

(3) A person other than the issuer who sells a credit card or a person who buys a credit card from a person other than the issuer is guilty of a crime of the fourth degree.

(4) A person who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, obtains control over a credit card as security for debt is guilty of a crime of the fourth degree.

(5) A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card is guilty of a third degree offense. A person other than the purported issuer who possesses two or more credit cards which are falsely made or falsely embossed is presumed to have violated this paragraph. A person "falsely makes" a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued. A person "falsely embosses" a credit card when, without the authorization of the named issuer, he completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(6) A person other than the cardholder or a person authorized by him who, with intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, signs a credit card, is guilty of a crime of the

fourth degree. A person who possesses two or more credit cards which are so signed is presumed to have violated this paragraph.

d. Intent of cardholder to defraud; penalties; knowledge of revocation. A person, who, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, (1) uses for the purpose of obtaining money, goods, services or anything else of value a credit card obtained or retained in violation of subsection c. of this section or a credit card which he knows is forged, expired or revoked, or (2) obtains money, goods, services or anything else of value by representing without the consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, is guilty of a crime of the third degree. Knowledge of revocation shall be presumed to have been received by a cardholder four days after it has been mailed to him at the address set forth on the credit card or at his last known address by registered or certified mail, return receipt requested, and, if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

e. Intent to defraud by person authorized to furnish money, goods, or services; penalties.

(1) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who, with intent to defraud the issuer or the cardholder, furnishes money, goods, services or anything else of value upon presentation of a credit card obtained or retained in violation of subsection c. of this section or a credit card which he knows is forged, expired or revoked violates this paragraph and is guilty of a crime of the third degree.

(2) A person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, fails to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished is guilty of a crime of the fourth degree.

f. Incomplete credit cards; intent to complete without consent. A person other than the cardholder possessing two or more incomplete credit cards, with intent to complete them without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates or any other contrivance designed to reproduce instruments purporting to be the credit cards of an issuer who has not consented to the preparation of such credit cards, is guilty of a crime of the third degree. A credit card is "incomplete" if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted or written on it.

g. Receiving anything of value knowing or believing that it was obtained in violation

of subsection d. of N.J.S.2C:21-6. A person who receives money, goods, services or anything else of value obtained in violation of subsection d. of this section, knowing or believing that it was so obtained is guilty of a crime of the fourth degree. A person who obtains, at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired in violation of subsection d. of this section without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that such ticket was acquired under circumstances constituting a violation of subsection d. of this section.

h. Fraudulent use of credit cards.

A person who knowingly uses any counterfeit, fictitious, altered, forged, lost, stolen or fraudulently obtained credit card to obtain money, goods or services, or anything else of value; or who, with unlawful or fraudulent intent, furnishes, acquires, or uses any actual or fictitious credit card, whether alone or together with names of credit cardholders, or other information pertaining to a credit card account in any form, is guilty of a crime of the third degree.

Amended 1979,c.178,s.36; 1984,c.119; 1991,c.122,s.1.

2C:21-17. Impersonation; theft of identity; crime

2C:21-17. Impersonation; Theft of Identity; crime.

a. A person is guilty of an offense if the person:

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for purpose of obtaining a benefit for himself or another or to injure or defraud another;

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services; or

(4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent themselves as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a

crime by using the name of the other person.

As used in this section:

"Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.

b. A person is guilty of an offense if, in the course of making an oral or written application for services, the person impersonates another, assumes a false identity or makes a false or misleading statement with the purpose of avoiding payment for prior services. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

c. (1) If the actor obtains a benefit or deprives another of a benefit in an amount less than \$500 and the offense involves the identity of one victim, the actor shall be guilty of a crime of the fourth degree.

(2) For a second or subsequent offense, or if the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two but less than five victims, the actor shall be guilty of a crime of the third degree.

(3) If the actor obtains a benefit or deprives another of a benefit in the amount of \$75,000 or more, or the offense involves the identity of more than five victims, the actor shall be guilty of a crime of the second degree.

d. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

e. The sentencing court shall issue such orders as are necessary to correct any public record that contains false information as a result of a theft of identity. The sentencing court may provide restitution to the victim in accordance with the provisions of section 4 of P.L.2002, c.85 (C.2C:21-17.1).

Amended 1995, c.417, s.1; 1999, c.117; 2002, c.85, s.5; 2003, c.184, s.3.

2C:21-17.1. Restitution to victim of unlawful use of personal identifying information

Restitution to a victim of an offense under N.J.S.2C:21-1, section 1 of P.L.1983,

c.565 (C.2C:21-2.1) or N.J.S. 2C:21-17 when the offense concerns personal identifying information may include costs incurred by the victim:

- a. in clearing the credit history or credit rating of the victim; or
- b. in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.

L.2002,c.85,s.4.

2C:21-17.2. Use of personal identifying information of another, certain; second degree crime

a. A person is guilty of a crime of the second degree if, in obtaining or attempting to obtain a driver's license or other document issued by a governmental agency which could be used as a means of verifying a person's identity, age or any other personal identifying information, that person knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license or other document issued by a governmental agency or which belongs or pertains to a person other than the person who possesses the document.

b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.

c. A violation of R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) for using the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

L.2003,c.184,s.5.

2C:21-17.3. Trafficking in personal identifying information pertaining to another person, certain; crime degrees; terms defined

a. A person who knowingly distributes, manufactures or possesses any item containing personal identifying information pertaining to another person, without that person's authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone is guilty of a crime of the fourth degree.

b. (1) If the person distributes, manufactures or possesses 20 or more items containing personal identifying information pertaining to another person, or five or more items containing personal information pertaining to five or more separate persons,

without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the third degree.

(2) If the person distributes, manufactures or possesses 50 or more items containing personal identifying information pertaining to another person, or ten or more items containing personal identifying information pertaining to five or more separate persons, without authorization, and with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone the person is guilty of a crime of the second degree.

c. Distribution, manufacture or possession of 20 or more items containing personal identifying information pertaining to another person or of items containing personal identifying information pertaining to five or more separate persons without authorization shall create an inference that the items were distributed, manufactured or possessed with knowledge that the actor is facilitating a fraud or injury to be perpetrated by anyone.

d. As used in this section:

"Distribute" means, but is not limited to, any sale, purchase, transfer, gift, delivery, or provision to another, regardless of whether the distribution was for compensation.

"Item" means a writing or document, whether issued by a governmental agency or made by any business or person, recorded by any method that contains personal identifying information. Item includes, but is not limited to, an access device, book, check, paper, card, instrument, or information stored in electronic form by way of e-mail or otherwise, on any computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network or any part thereof, or by other mechanical or electronic device such as cellular telephone, pager or other electronic device capable of storing information.

L.2003,c.184,s.6.

2C:21-17.4. Action by person defrauded by unauthorized use of personal identifying information

a. Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use of that person's personal identifying information, in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17, may bring an action in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award damages in an amount three times the value of all costs incurred by the victim as a result of the person's criminal activity. These costs may include, but are not limited to, those incurred by the victim in clearing his credit history or credit rating, or those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant. The victim may also recover those costs incurred for attorneys' fees, court costs and any out-of -

pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to damages, but damages to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

b. The standard of proof in actions brought under this section is a preponderance of the evidence, and the fact that a prosecution for a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this section. A final judgment rendered in favor of the State in any criminal proceeding shall estop the defendant from denying the same conduct in any civil action brought pursuant to this section.

c. 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, shall in addition to any other disposition authorized by this Title sentence the defendant to pay restitution in an amount equal to the costs incurred by the victim as a result of the defendant's criminal activity, regardless of whether a civil action has been instituted. These costs may include, but are not limited to those incurred by the victim in clearing his credit history or credit rating; those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant; or those incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to restitution, but restitution to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

L.2003,c.184,s.7.

2C:24-4 Endangering welfare of children.

2C:24-4. Endangering Welfare of Children.

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

"Child" means any person under 16 years of age.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Prohibited sexual act" means

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

"Reproduction" means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c.291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5) (a) Any person who knowingly receives for the purpose of selling or who

knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 16 in any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 16. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 16, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 16, nor shall it be a defense that the actor believed that the child was 16 years of age or older, even if such a mistaken belief was reasonable.

Amended 1979, c.178, s.46; 1983, c.494; 1992, c.2; 1992, c.6; 1995, c.109; 1998, c.126; 2001, c.291.

2C:24-5. Willful nonsupport

A person commits a crime of the fourth degree if he willfully fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent. In addition to the sentence authorized by the code, the court may proceed under section 2C:62-1.

L.1978, c. 95, s. 2C:24-5, eff. Sept. 1, 1979.

2C:24-6. Unlawful adoptions

Unlawful adoptions shall be governed by the provisions of Title 9 of the Revised Statutes.

L.1978, c. 95, s. 2C:24-6, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 46A, eff. Sept. 1, 1979.

2C:24-7. Endangering the welfare of an incompetent person

A person is guilty of a disorderly persons offense when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself because of mental disease or defect.

L.1978, c. 95, s. 2C:24-7, eff. Sept. 1, 1979.

2C:24-8. Abandonment, neglect of elderly person, disabled adult; third degree crime

a. A person having a legal duty to care for or who has assumed continuing responsibility for the care of a person 60 years of age or older or a disabled adult, who abandons the elderly person or disabled adult or unreasonably neglects to do or fails to permit to be done any act necessary for the physical or mental health of the elderly person or disabled adult, is guilty of a crime of the third degree. For purposes of this section "abandon" means the willful desertion or forsaking of an elderly person or disabled adult.

b. A person shall not be considered to commit an offense under this section for the sole reason that he provides or permits to be provided nonmedical remedial treatment by spiritual means through prayer alone in lieu of medical care, in accordance with the tenets and practices of the elderly person's or disabled adult's established religious tradition, to an elderly person or disabled adult to whom he has a legal duty to care for or has assumed responsibility for the care of.

c. Nothing in this section shall be construed to preclude or limit the prosecution or conviction for any other offense defined in this code or in any other law of this State.

L.1989,c.23,s.1; amended 1999, c.8.

2C:24-9 Use of 17-year-old or younger to commit criminal offense; crime.

a. Except as provided in P.L.1991, c.81 (C.2C:20-17) and N.J.S.2C:35-6, any person who is at least 18 years of age who knowingly uses, solicits, directs, hires, employs or conspires with a person who is in fact 17 years of age or younger to commit a criminal offense is guilty of a crime.

b. An offense under this section constitutes a crime of the fourth degree if the underlying offense is a disorderly persons offense. Otherwise, an offense under this section shall be classified one degree higher than the underlying offense.

c. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction under this section shall not merge with a conviction for the underlying offense. Nor shall a conviction for the underlying offense merge with a conviction under this section. Nothing contained in this act shall prohibit the court from imposing an extended term of imprisonment pursuant to 2C:43-7; nor shall this be construed to preclude or limit a prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2, or any prosecution or conviction for any offense.

d. It shall be no defense to a prosecution under this act that the actor mistakenly

believed that the person which the actor used, solicited, directed, hired or employed was 18 years of age or older, even if such mistaken belief was reasonable.

L.1998,c.102,s.1.

2C:25-17. Short title

This act shall be known and may be cited as the "Prevention of Domestic Violence Act of 1991."

L.1991,c.261,s.1.

2C:25-18. Findings, declarations

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

The Legislature further finds and declares that the health and welfare of some of its most vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psychologically, physically and financially; because of age, disabilities or infirmities, this group of citizens frequently must rely on the aid and support of others; while the institutionalized elderly are protected under P.L.1977, c.239 (C.52:27G-1 et seq.), elderly and disabled adults in noninstitutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend.

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under section 1 of P.L.1989, c.23 (C.2C:24-8), must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the

judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. Further, it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public. To that end, the Legislature encourages the training of all police and judicial personnel in the procedures and enforcement of this act, and about the social and psychological context in which domestic violence occurs; and it further encourages the broad application of the remedies available under this act in the civil and criminal courts of this State. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.

L.1991,c.261,s.2.

2C:25-19. Definitions

As used in this act:

a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

- (1) Homicide N.J.S.2C:11-1 et seq.
- (2) Assault N.J.S.2C:12-1
- (3) Terroristic threats N.J.S.2C:12-3
- (4) Kidnapping N.J.S.2C:13-1
- (5) Criminal restraint N.J.S.2C:13-2

- (6) False imprisonment N.J.S.2C:13-3

- (7) Sexual assault N.J.S.2C:14-2

- (8) Criminal sexual contact N.J.S.2C:14-3

- (9) Lewdness N.J.S.2C:14-4

- (10) Criminal mischief N.J.S.2C:17-3

- (11) Burglary N.J.S.2C:18-2

- (12) Criminal trespass N.J.S.2C:18-3

- (13) Harassment N.J.S.2C:33-4

- (14) Stalking P.L.1992, c.209 (C.2C:12-10)

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

b. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. "Victim of domestic violence" means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

e. "Emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

L.1991,c.261,s.3; amended 1994,c.93,s.1; 1994,c.94,s.1.

2C:25-20 Development of training course; curriculum.

a. (1) The Division of Criminal Justice shall develop and approve a training course and curriculum on the handling, investigation and response procedures concerning reports of domestic violence and abuse and neglect of the elderly and disabled. This training course and curriculum shall be reviewed at least every two years and modified by the Division of Criminal Justice from time to time as need may require. The Division of Criminal Justice shall distribute the curriculum to all local police agencies.

(2) The Attorney General shall be responsible for ensuring that all law enforcement officers attend initial training within 90 days of appointment or transfer and annual inservice training of at least four hours as described in this section.

b. (1) The Administrative Office of the Courts shall develop and approve a training course and a curriculum on the handling, investigation and response procedures concerning allegations of domestic violence. This training course shall be reviewed at least every two years and modified by the Administrative Office of the Courts from time to time as need may require.

(2) The Administrative Director of the Courts shall be responsible for ensuring that all judges and judicial personnel attend initial training within 90 days of appointment or transfer and annual inservice training as described in this section.

(3) The Division of Criminal Justice and the Administrative Office of the Courts shall provide that all training on the handling of domestic violence matters shall include

information concerning the impact of domestic violence on society, the dynamics of domestic violence, the statutory and case law concerning domestic violence, the necessary elements of a protection order, policies and procedures as promulgated or ordered by the Attorney General or the Supreme Court, and the use of available community resources, support services, available sanctions and treatment options. Law enforcement agencies shall: (1) establish domestic crisis teams or participate in established domestic crisis teams, and (2) shall train individual officers in methods of dealing with domestic violence and neglect and abuse of the elderly and disabled. The teams may include social workers, clergy or other persons trained in counseling, crisis intervention or in the treatment of domestic violence and neglect and abuse of the elderly and disabled victims.

L.1991,c.261,s.4; amended 1994, c.93, s.2; 1999, c.289; 1999, c.433, s.1.

2C:25-21 Arrest of alleged attacker; seizure of weapons, etc.

a. When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:

(1) The victim exhibits signs of injury caused by an act of domestic violence;

(2) A warrant is in effect;

(3) There is probable cause to believe that the person has violated N.J.S.2C:29-9, and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or

(4) There is probable cause to believe that a weapon as defined in N.J.S.2C:39-1 has been involved in the commission of an act of domestic violence.

b. A law enforcement officer may arrest a person; or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the conditions in subsection a. of this section applies.

c. (1) As used in this section, the word "exhibits" is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

(2) In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors.

(3) No victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker.

d. (1) In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a) question persons present to determine whether there are weapons on the premises; and

(b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

(3) Weapons seized in accordance with the "Prevention of Domestic Violence Act of 1991", P.L.1991,c.261(C.2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized

weapons shall be returned to the owner.

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S.2C:58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

(a) With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or

(b) Order the revocation of the owner's firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c) Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in N.J.S.2C:64-6.

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney's fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.

L.1991,c.261,s.5; amended 2003, c.277, s.1.

2C:25-21.1 Rules, regulations concerning weapons prohibitions and domestic violence.

The Attorney General may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary and appropriate to implement this act.

L.2003,c.277,s.6.

2C:25-22. Immunity from civil liability

A law enforcement officer or a member of a domestic crisis team or any person who, in good faith, reports a possible incident of domestic violence to the police shall not be held liable in any civil action brought by any party for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission in good faith under this act.

L.1991,c.261,s.6; amended 1994,c.94,s.2.

2C:25-23. Dissemination of notice to victim of domestic violence

A law enforcement officer shall disseminate and explain to the victim the following notice, which shall be written in both English and Spanish:

"You have the right to go to court to get an order called a temporary restraining order, also called a TRO, which may protect you from more abuse by your attacker. The officer who handed you this card can tell you how to get a TRO.

The kinds of things a judge can order in a TRO may include:

- (1) That your attacker is temporarily forbidden from entering the home you live in;
- (2) That your attacker is temporarily forbidden from having contact with you or your relatives;
- (3) That your attacker is temporarily forbidden from bothering you at work;
- (4) That your attacker has to pay temporary child support or support for you;

(5) That you be given temporary custody of your children;

(6) That your attacker pay you back any money you have to spend for medical treatment or repairs because of the violence. There are other things the court can order, and the court clerk will explain the procedure to you and will help you fill out the papers for a TRO.

You also have the right to file a criminal complaint against your attacker. The police officer who gave you this paper will tell you how to file a criminal complaint.

On weekends, holidays and other times when the courts are closed, you still have a right to get a TRO. The police officer who gave you this paper can help you get in touch with a judge who can give you a TRO."

L.1991,c.261,s.7.

2C:25-24 Domestic violence offense reports.

a. It shall be the duty of a law enforcement officer who responds to a domestic violence call to complete a domestic violence offense report. All information contained in the domestic violence offense report shall be forwarded to the appropriate county bureau of identification and to the State bureau of records and identification in the Division of State Police in the Department of Law and Public Safety. A copy of the domestic violence offense report shall be forwarded to the municipal court where the offense was committed unless the case has been transferred to the Superior Court.

b. The domestic violence offense report shall be on a form prescribed by the supervisor of the State bureau of records and identification which shall include, but not be limited to, the following information:

- (1) The relationship of the parties;
- (2) The sex of the parties;
- (3) The time and date of the incident;
- (4) The number of domestic violence calls investigated;
- (5) Whether children were involved, or whether the alleged act of domestic violence had been committed in the presence of children;
- (6) The type and extent of abuse;

- (7) The number and type of weapons involved;
- (8) The action taken by the law enforcement officer;
- (9) The existence of any prior court orders issued pursuant to this act concerning the parties;
- (10) The number of domestic violence calls alleging a violation of a domestic violence restraining order;
- (11) The number of arrests for a violation of a domestic violence order; and
- (12) Any other data that may be necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence.

c. It shall be the duty of the Superintendent of the State Police with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety to compile and report annually to the Governor, the Legislature and the Advisory Council on Domestic Violence on the tabulated data from the domestic violence offense reports, classified by county

L.1991,c.261,s.8; amended 1999, c.119, s.2.

2C:25-25. Criminal complaints; proceedings

The court in a criminal complaint arising from a domestic violence incident:

- a. Shall not dismiss any charge or delay disposition of a case because of concurrent dissolution of a marriage, other civil proceedings, or because the victim has left the residence to avoid further incidents of domestic violence;
- b. Shall not require proof that either party is seeking a dissolution of a marriage prior to institution of criminal proceedings;
- c. Shall waive any requirement that the victim's location be disclosed to any person.

L.1991,c.261,s.9.

2C:25-26 Release of defendant before trial; conditions.

a. When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or

business, or school, and from harassing or stalking the victim or victim's relatives in any way. The court may enter an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

b. The written court order releasing the defendant shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim or the victim's friends, co-workers or relatives. The clerk of the court or other person designated by the court shall provide a copy of this order to the victim forthwith.

c. The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.

d. Before bail is set, the defendant's prior record shall be considered by the court. The court shall also conduct a search of the domestic violence central registry. Bail shall be set as soon as is feasible, but in all cases within 24 hours of arrest.

e. Once bail is set it shall not be reduced without prior notice to the county prosecutor and the victim. Bail shall not be reduced by a judge other than the judge who originally ordered bail, unless the reasons for the amount of the original bail are available to the judge who reduces the bail and are set forth in the record.

f. A victim shall not be prohibited from applying for, and a court shall not be prohibited from issuing, temporary restraints pursuant to this act because the victim has charged any person with commission of a criminal act.

L.1991,c.261,s.10; amended 1994, c.94, s.3; 1999, c.421, s.2.

2C:25-26.1. Notification of victim of release of defendant

Notwithstanding any other provision of law to the contrary, whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim.

L.1994,c.137,s.1.

2C:25-27 Conditions of sentencing of defendant found guilty of domestic violence.

When a defendant is found guilty of a crime or offense involving domestic violence and a condition of sentence restricts the defendant's ability to have contact with the victim, that condition shall be recorded in an order of the court and a written copy of that order shall be provided to the victim by the clerk of the court or other person designated by the court. In addition to restricting a defendant's ability to have contact with the victim, the court may require the defendant to receive professional counseling from either

a private source or a source appointed by the court, and if the court so orders, the court shall require the defendant to provide documentation of attendance at the professional counseling. In any case where the court order contains a requirement that the defendant receive professional counseling, no application by the defendant to dissolve the restraining order shall be granted unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.

L.1991,c.261,s.11; amended 1999, c.236, s.1.

2C:25-28 Filing complaint alleging domestic violence in Family Part; proceedings.

a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.

f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refiling a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in the order granting relief, restrict the time and duration of such permission and provide for police supervision of

such visit.

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L.1994, c.94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

o. (Deleted by amendment, P.L.1994, c.94.)

p. Any temporary or permanent restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

q. Prior to the issuance of any temporary or permanent restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant's record.

L.1991,c.261,s.12; amended 1994, c.94, s.4; 1999, c.421, s.3; 2003, c.277, s.5.

2C:25-28.1. In-house restraining order prohibited

Notwithstanding any provision of P.L.1991, c.261 (C.2C:25-17 et seq.) to the contrary, no order issued by the Family Part of the Chancery Division of the Superior Court pursuant to section 12 or section 13 of P.L.1991, c.261 (C.2C:25-28 or 2C:25-29) regarding emergency, temporary or final relief shall include an in-house restraining order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises.

L.1995,c.242,s.2.

2C:25-29 Hearing procedure; relief.

a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint

arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or parenting time.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years whichever is greater, except that this provision shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

- (1) An order restraining the defendant from subjecting the victim to domestic

violence, as defined in this act.

(2) An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

(3) An order providing for parenting time. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time.

(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child.

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Board for any and all compensation paid by the Victims of Crime Compensation Board directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(5) An order requiring the defendant to receive professional domestic violence

counseling from either a private source or a source appointed by the court and, in that event, requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. No application by the defendant to dissolve a final order which contains a requirement for attendance at professional counseling pursuant to this paragraph shall be granted by the court unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration.

(13) (Deleted by amendment, P.L.1995, c.242).

(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery Division of the Superior Court for monitoring of any other provision of the order.

(16) In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

(18) An order requiring the defendant to undergo a psychiatric evaluation.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

e. Prior to the issuance of any order pursuant to this section, the court shall order that a search be made of the domestic violence central registry.

L.1991,c.261,s.13; amended 1994, c.94, s.5; 1994, c.137, s.2; 1995, c.242, s.1; 1997, c.299, s.8; 1999, c.236, s.2; 1999, c.421, s.4; 2003, c.277, s.2.

2C:25-30. Violations, penalties

Except as provided below, a violation by the defendant of an order issued pursuant

to this act shall constitute an offense under subsection b. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S.2C:29-9 involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery Division of the Superior Court. All contempt proceedings brought pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.) shall be subject to any rules or guidelines established by the Supreme Court to guarantee the prompt disposition of criminal matters. Additionally, and notwithstanding the term of imprisonment provided in N.J.S.2C:43-8, any person convicted of a second or subsequent nonindictable domestic violence contempt offense shall serve a minimum term of not less than 30 days. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of this act shall be excluded from enforcement under subsection b. of N.J.S.2C:29-9; however, violations of these orders may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion, pursuant to applicable court rules.

L.1991,c.261,s.14; amended 1994,c.93,s.3; 1994,c.94,s.6.

2C:25-31 Contempt, law enforcement procedures.

Where a law enforcement officer finds that there is probable cause that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.), the defendant shall be arrested and taken into custody by a law enforcement officer. The law enforcement officer shall follow these procedures:

The law enforcement officer shall transport the defendant to the police station or such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall:

- a. Conduct a search of the domestic violence central registry and sign a complaint concerning the incident which gave rise to the contempt charge;
- b. Telephone or communicate in person or by facsimile with the appropriate judge assigned pursuant to this act and request bail be set on the contempt charge;
- c. If the defendant is unable to meet the bail set, take the necessary steps to insure that the defendant shall be incarcerated at police headquarters or at the county jail; and
- d. During regular court hours, the defendant shall have bail set by a Superior Court judge that day. On weekends, holidays and other times when the court is closed, the officer shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. In addition, if a municipal court judge set the bail, the arresting officer shall notify the clerk of that municipal court of this information.

L.1991,c.261,s.15; amended 1994, c.94, s.7; 1999, c.421, s.5.

2C:25-32. Alleged contempt, complainant's procedure

Where a person alleges that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261, but where a law enforcement officer has found that there is not probable cause sufficient to arrest the defendant, the law enforcement officer shall advise the complainant of the procedure for completing and signing a criminal complaint alleging a violation of N.J.S.2C:29-9. During regular court hours, the assistance of the clerk of the Family Part of the Chancery Division of the Superior Court shall be made available to such complainants. Nothing in this section shall be construed to prevent the court from granting any other emergency relief it deems necessary.

L.1991,c.261,s.16.

2C:25-33 Records of applications for relief; reports; confidentiality; forms.

a. The Administrative Office of the Courts shall, with the assistance of the Attorney General and the county prosecutors, maintain a uniform record of all applications for relief pursuant to sections 9, 10, 11, 12, and 13 of P.L.1991, c.261 (C.2C:25-25, C.2C:25-26, C.2C:25-27, C.2C:25-28, and C.2C:25-29). The record shall include the following information:

- (1) The number of criminal and civil complaints filed in all municipal courts and the Superior Court;
- (2) The sex of the parties;
- (3) The relationship of the parties;
- (4) The relief sought or the offense charged, or both;
- (5) The nature of the relief granted or penalty imposed, or both, including, but not limited to, the following:
 - (a) custody;
 - (b) child support;
 - (c) the specific restraints ordered;
 - (d) any requirements or conditions imposed pursuant to paragraphs (1) through (18) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29), including but not limited to professional counseling or psychiatric evaluations;

(6) The effective date of each order issued; and

(7) In the case of a civil action in which no permanent restraints are entered, or in the case of a criminal matter that does not proceed to trial, the reason or reasons for the disposition.

It shall be the duty of the Director of the Administrative Office of the Courts to compile and report annually to the Governor, the Legislature and the Advisory Council on Domestic Violence on the data tabulated from the records of these orders.

All records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.

b. In addition to the provisions of subsection a. of this section, the Administrative Office of the Courts shall, with the assistance of the Attorney General and the county prosecutors, create and maintain uniform forms to record sentencing, bail conditions and dismissals. The forms shall be used by the Superior Court and by every municipal court to record any order in a case brought pursuant to this act. Such recording shall include but not be limited to, the specific restraints ordered, any requirements or conditions imposed on the defendant, and any conditions of bail.

L.1991,c.261,s.17; amended 1994, c.94, s.8; 1999, c.119, s.1; 1999, c.421, s.6.

2C:28-4. False reports to law enforcement authorities

a. Falsely incriminating another. A person who knowingly gives or causes to be given false information to any law enforcement officer with purpose to implicate another commits a crime of the fourth degree.

b. Fictitious reports. A person commits a disorderly persons offense if he:

(1) Reports or causes to be reported to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish or causes to be furnished such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

L.1978, c. 95, s. 2C:28-4, eff. Sept. 1, 1979.

2C:28-5. Tampering with witnesses and informants; retaliation against them.

2C:28-5. Tampering With Witnesses and Informants; Retaliation Against Them.

a. Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he knowingly attempts to induce or otherwise cause a witness or informant to:

(1) Testify or inform falsely;

(2) Withhold any testimony, information, document or thing;

(3) Elude legal process summoning him to testify or supply evidence; or

(4) Absent himself from any proceeding or investigation to which he has been legally summoned.

The offense is a crime of the second degree if the actor employs force or threat of force. Otherwise it is a crime of the third degree. Privileged communications may not be used as evidence in any prosecution for violations of paragraph (2), (3) or (4).

b. Retaliation against witness or informant. A person commits a crime of the fourth degree if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant.

c. Witness or informant taking bribe. A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection a. (1) through (4) of this section.

Amended 1981,c.290,s.27; 1991,c.33,s.1.

2C:28-8 Impersonating a public servant or law enforcement officer.

2C:28-8. Impersonating a public servant or law enforcement officer.

a. Except as provided in subsection b. of this section, a person commits a disorderly persons offense if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

b. A person commits a crime of the fourth degree if he falsely pretends to hold a position as an officer or member or employee or agent of any organization or association of law enforcement officers with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

Amended 2000, c.110.

2C:29-1. Obstructing administration of law or other governmental function

2C:29-1. Obstructing Administration of Law or Other Governmental Function.

a. A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. This section does not apply to failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

b. An offense under this section is a crime of the fourth degree if the actor obstructs the detection or investigation of a crime or the prosecution of a person for a crime, otherwise it is a disorderly persons offense.

Amended 1986, c.34, 2000, c.18, s.1.

2C:29-2. Resisting arrest, eluding officer

2C:29-2. Resisting Arrest; Eluding Officer. a. (1) Except as provided in paragraph (3), a person is guilty of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:

(a) Uses or threatens to use physical force or violence against the law enforcement officer or another; or

(b) Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State or any vessel, as defined pursuant to section 2 of P.L.1995, c.401 (C.12:7-71), on the waters of this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle or vessel to a full stop commits a crime of the third degree; except that, a person is guilty of a crime of the second degree if the flight or attempt to elude creates a risk of death or injury to any person. For purposes of this subsection, there shall be a permissive

inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39 or chapter 7 of Title 12 of the Revised Statutes. In addition to the penalty prescribed under this subsection or any other section of law, the court shall order the suspension of that person's driver's license, or privilege to operate a vessel, whichever is appropriate, for a period of not less than six months or more than two years.

In the case of a person who is at the time of the imposition of sentence less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle or a vessel, whichever is appropriate, during the period of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of violation of R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privileges, whichever is appropriate, in this State.

For the purposes of this subsection, it shall be a rebuttable presumption that the owner of a vehicle or vessel was the operator of the vehicle or vessel at the time of the offense.

Amended 1979, c.178, s.57; 1981, c.290, s.28; 1989, c.84; 1991, c.341, s.3; 1993,

c.219, s.5; 1995, c.401, s.54; 2000, c.18, s.2.

2C:29-3 Hindering apprehension or prosecution.

2C:29-3. Hindering Apprehension or Prosecution.

a. A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

- (1) Harbors or conceals the other;
- (2) Provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape;
- (3) Suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;
- (4) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;
- (5) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;
- (6) Aids such person to protect or expeditiously profit from an advantage derived from such crime; or
- (7) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

b. A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

Amended 1981, c.290, s.29; amended 1999, c.297.

2C:33-1. Riot; failure to disperse

a. Riot. A person is guilty of riot if he participates with four or more others in a course of disorderly conduct as defined in section 2C:33-2a:

(1) With purpose to commit or facilitate the commission of a crime;

(2) With purpose to prevent or coerce official action; or

(3) When he or any other participant, known to him, uses or plans to use a firearm or other deadly weapon.

Riot if committed under circumstances set forth in paragraph (3) is a crime of the third degree. Otherwise riot is a crime of the fourth degree.

b. Failure of disorderly persons to disperse upon official order. Where five or more persons are participating in a course of disorderly conduct as defined in section 2C:33-2 a. likely to cause substantial harm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order

commits a disorderly persons offense.

L.1978, c. 95, s. 2C:33-1, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 63, eff. Sept. 1, 1979; L.1981, c. 290, s. 35, eff. Sept. 24, 1981.

2C:33-2. Disorderly conduct

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

L.1978, c. 95, s. 2C:33-2, eff. Sept. 1, 1979.

2C:33-2.1. "Public place" defined; loitering to obtain or distribute CDS is a disorderly persons offense

a. As used in this section:

"Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

b. A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and (2) engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog includes, but is not limited to, conduct such as the following:

- (1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;
- (2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place;
- (3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.

d. The element of the offense described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.

L.1991,c.383.

2C:29-2. Resisting arrest, eluding officer

2C:29-2. Resisting Arrest; Eluding Officer. a. (1) Except as provided in paragraph (3), a person is guilty of a disorderly persons offense if he purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (2) Except as provided in paragraph (3), a person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. (3) An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:

- (a) Uses or threatens to use physical force or violence against the law enforcement officer or another; or
- (b) Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State or any vessel, as defined pursuant to section 2 of P.L.1995, c.401 (C.12:7-71), on the waters of this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle or vessel to a full stop commits a crime of the third degree; except that, a person is guilty of a crime of the second degree if the flight or attempt to elude creates a risk of

death or injury to any person. For purposes of this subsection, there shall be a permissive inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39 or chapter 7 of Title 12 of the Revised Statutes. In addition to the penalty prescribed under this subsection or any other section of law, the court shall order the suspension of that person's driver's license, or privilege to operate a vessel, whichever is appropriate, for a period of not less than six months or more than two years.

In the case of a person who is at the time of the imposition of sentence less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court. If the driving or vessel operating privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle or a vessel, whichever is appropriate, during the period of license suspension or postponement imposed pursuant to this section the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of violation of R.S.39:3-40 or section 14 of P.L.1995, c.401 (C.12:7-83), whichever is appropriate. If the person is the holder of a driver's or vessel operator's license from another jurisdiction, the court shall not collect the license but shall notify the director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving or vessel operating privileges, whichever is appropriate, in this State.

For the purposes of this subsection, it shall be a rebuttable presumption that the owner of a vehicle or vessel was the operator of the vehicle or vessel at the time of the offense.

Amended 1979, c.178, s.57; 1981, c.290, s.28; 1989, c.84; 1991, c.341, s.3; 1993, c.219, s.5; 1995, c.401, s.54; 2000, c.18, s.2.

2C:29-3 Hindering apprehension or prosecution.

2C:29-3. Hindering Apprehension or Prosecution.

a. A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

- (1) Harbors or conceals the other;
- (2) Provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape;
- (3) Suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;
- (4) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;
- (5) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;
- (6) Aids such person to protect or expeditiously profit from an advantage derived from such crime; or
- (7) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

b. A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17

of the Revised Statutes, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

Amended 1981, c.290, s.29; amended 1999, c.297.

2C:33-1. Riot; failure to disperse

a. Riot. A person is guilty of riot if he participates with four or more others in a course of disorderly conduct as defined in section 2C:33-2a:

(1) With purpose to commit or facilitate the commission of a crime;

(2) With purpose to prevent or coerce official action; or

(3) When he or any other participant, known to him, uses or plans to use a firearm or other deadly weapon.

Riot if committed under circumstances set forth in paragraph (3) is a crime of the third degree. Otherwise riot is a crime of the fourth degree.

b. Failure of disorderly persons to disperse upon official order. Where five or more persons are participating in a course of disorderly conduct as defined in section 2C:33-2 a. likely to cause substantial harm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate

vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a disorderly persons offense.

L.1978, c. 95, s. 2C:33-1, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 63, eff. Sept. 1, 1979; L.1981, c. 290, s. 35, eff. Sept. 24, 1981.

2C:33-2. Disorderly conduct

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

L.1978, c. 95, s. 2C:33-2, eff. Sept. 1, 1979.

2C:33-2.1. "Public place" defined; loitering to obtain or distribute CDS is a disorderly persons offense

a. As used in this section:

"Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

b. A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and (2) engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog includes, but is not limited to, conduct such as the following:

- (1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;
- (2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place;
- (3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.

d. The element of the offense described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.

L.1991,c.383.

2C:33-3 False public alarms.

2C:33-3. False Public Alarms. a. Except as provided in subsection b. or c. of this section, a person is guilty of a crime of the third degree if he initiates or circulates a report or warning of an impending fire, explosion, bombing, crime, catastrophe or emergency knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm. A person is guilty of a crime of the third degree if he knowingly causes such false alarm to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

b. A person is guilty of a crime of the second degree if in addition to the report or warning initiated, circulated or transmitted under subsection a. of this section, he places or causes to be placed any false or facsimile bomb in a building, place of assembly, or facility of public transport or in a place likely to cause public inconvenience or alarm. A violation of this subsection is a crime of the first degree if it occurs during a declared period of national, State or county emergency.

c. A person is guilty of a crime of the second degree if a violation of subsection a. of this section in fact results in serious bodily injury to another person or occurs during a declared period of national, State or county emergency. A person is guilty of a crime of the first degree if a violation of subsection a. of this section in fact results in death.

d. For the purposes of this section, "in fact" means that strict liability is imposed. It shall not be a defense that the death or serious bodily injury was not a foreseeable consequence of the person's acts or that the death or serious bodily injury was caused by the actions of another person or by circumstances beyond the control of the actor. The actor shall be strictly liable upon proof that the crime occurred during a declared period

of national, State or county emergency. It shall not be a defense that the actor did not know that there was a declared period of emergency at the time the crime occurred.

e. A person is guilty of a crime of the fourth degree if the person knowingly places a call to a 9-1-1 emergency telephone system without purpose of reporting the need for 9-1-1 service.

Amended 1987, c.6; 1994, c.115; 1996, c.63, s.1; 1999, c.195, s.1; 2002, c.26, s.16.

2C:33-4 Harassment.

2C:33-4. Harassment.

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

Amended 1983, c.334; 1990, c.87, s.2; 1995, c.211, s.2; 1998, c.17, s.4; 2001, c.443, s.3.

2C:33-12. Maintaining a nuisance

A person is guilty of maintaining a nuisance when:

a. By conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons;

b. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct; or

c. He knowingly conducts or maintains any premises, place or resort as a house of prostitution or as a place where obscene material, as defined in N.J.S. 2C:34-2 and N.J.S. 2C:34-3, is sold, photographed, manufactured, exhibited or otherwise prepared or shown, in violation of N.J.S. 2C:34-2, N.J.S. 2C:34-3, and N.J.S. 2C:34-4.

A person is guilty of a disorderly persons offense if the person is convicted under subsection a. or b. of this section. A person is guilty of a crime of the fourth degree if the person is convicted under subsection c. of this section.

Upon conviction under this section, in addition to the sentence authorized by this code, the court may proceed as set forth in section 2C:33-12.1.

L.1978, c. 95, s. 2C:33-12, eff. Sept. 1, 1979. Amended by L.1979, c. 178, s. 64, eff. Sept. 1, 1979; L.1982, c. 233, s. 1, eff. Jan. 7, 1983; L.1983, c. 234, s. 1, eff. June 30, 1983.

2C:33-12.1. Abating nuisance

2C:33-12.1. Abating Nuisance. a. In addition to the penalty imposed in case of conviction under N.J.S.2C:33-12 or under section 2 of P.L.1995, c.167 (C.2C:33-12.2), the court may order the immediate abatement of the nuisance, and for that purpose may order the seizure and forfeiture or destruction of any chattels, liquors, obscene material or other personal property which may be found in such building or place, and which the court is satisfied from the evidence were possessed or used with a purpose of maintaining the nuisance. Any such forfeiture shall be in the name and to the use of the State of New Jersey, and the court shall direct the forfeited property to be sold at public sale, the proceeds to be paid to the treasurer of the county wherein conviction was had.

b. If the owner of any building or place is found guilty of maintaining a nuisance, the court may order that the building or place where the nuisance was maintained be closed and not used for a period not exceeding one year from the date of the conviction.

Amended 1982,c.233,s.2; 1983,c.234,s.2; 1995,c.167,s.1.

2C:33-13 Smoking in public.

2C:33-13. Smoking in Public. a. Any person who smokes or carries lighted tobacco in or upon any bus or other public conveyance, except group charter buses, specially marked railroad smoking cars, limousines or livery services, and, when the driver is the only person in the vehicle, autocabs, is a petty disorderly person. For the purposes of this section, "bus" includes school buses and other vehicles owned or

contracted for by the governing body, board or individual of a nonpublic school, a public or private college, university, or professional training school, or a board of education of a school district, that are used to transport students to and from school and school-related activities; and the prohibition on smoking or carrying lighted tobacco shall apply even if students are not present in the vehicle.

b. Any person who smokes or carries lighted tobacco in any public place, including but not limited to places of public accommodation, where such smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 and 40:48-2 or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted, is guilty of a petty disorderly persons offense. Notwithstanding the provisions of 2C:43-3, the maximum fine which can be imposed for violation of this section is \$200.

c. The provisions of this section shall supersede any other statute and any rule or regulation adopted pursuant to law.

Amended 1979, c.178, s.66A; 1985, c.187; 2003, c.233.

2C:33-15. Possession, consumption of alcoholic beverages by persons under legal age; penalty

a. Any person under the legal age to purchase alcoholic beverages who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage in any school, public conveyance, public place, or place of public assembly, or motor vehicle, is guilty of a disorderly persons offense, and shall be fined not less than \$500.00.

b. Whenever this offense is committed in a motor vehicle, the court shall, in addition to the sentence authorized for the offense, suspend or postpone for six months the driving privilege of the defendant. Upon the conviction of any person under this section, the court shall forward a report to the Division of Motor Vehicles stating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If a person at the time of the imposition of a sentence is less than 17 years of age, the period of license postponement, including a suspension or postponement of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period of six months after the person reaches the age of 17 years.

If a person at the time of the imposition of a sentence has a valid driver's license issued by this State, the court shall immediately collect the license and forward it to the division along with the report. If for any reason the license cannot be collected, the court shall include in the report the complete name, address, date of birth, eye color, and sex of the person as well as the first and last date of the license suspension period imposed by the court.

The court shall inform the person orally and in writing that if the person is convicted of operating a motor vehicle during the period of license suspension or postponement, the

person shall be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40.

If the person convicted under this section is not a New Jersey resident, the court shall suspend or postpone, as appropriate, the non-resident driving privilege of the person based on the age of the person and submit to the division the required report. The court shall not collect the license of a non-resident convicted under this section. Upon receipt of a report by the court, the division shall notify the appropriate officials in the licensing jurisdiction of the suspension or postponement.

c. In addition to the general penalty prescribed for a disorderly persons offense, the court may require any person who violates this act to participate in an alcohol education or treatment program, authorized by the Department of Health and Senior Services, for a period not to exceed the maximum period of confinement prescribed by law for the offense for which the individual has been convicted.

d. Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R.S.33:1-26, or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post secondary educational institution.

e. The provisions of section 3 of P.L.1991, c.169 (C.33:1-81.1a) shall apply to a parent, guardian or other person with legal custody of a person under 18 years of age who is found to be in violation of this section.

L.1979,c.264,s.1; 1979, c.264; amended 1991, c.169, s.2; 1997, c.161.

2C:33-16. Alcoholic beverages; bringing or possession on school property by person of legal age; penalty

Any person of legal age to purchase alcoholic beverages, who knowingly and without the express written permission of the school board, its delegated authority, or any school principal, brings or possesses any alcoholic beverages on any property used for school purposes which is owned by any school or school board, is guilty of a disorderly persons offense.

L.1981, c. 197, s. 1, eff. July 9, 1981.

2C:33-17. Availability of alcoholic beverages to underaged, offenses

a. Anyone who purposely or knowingly offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic beverages or entices or encourages that person to drink an alcoholic beverage is a disorderly person.

This subsection shall not apply to a parent or guardian of the person under legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages or to a religious observance, ceremony or rite. This subsection shall also not apply to any person in his home who is of the legal age to consume alcoholic beverages who offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic beverages or entices that person to drink an alcoholic beverage in the presence of and with the permission of the parent or guardian of the person under the legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages.

b. A person who makes real property owned, leased or managed by him available to, or leaves that property in the care of, another person with the purpose that alcoholic beverages will be made available for consumption by, or will be consumed by, persons who are under the legal age for consuming alcoholic beverages is guilty of a disorderly persons offense.

This subsection shall not apply if:

(1) the real property is licensed or required to be licensed by the Division of Alcoholic Beverage Control in accordance with the provisions of R.S.33:1-1 et seq;

(2) the person making the property available, or leaving it in the care of another person, is of the legal age to consume alcoholic beverages and is the parent or guardian of the person who consumes alcoholic beverages while under the legal age for consuming alcoholic beverages; or

(3) the alcoholic beverages are consumed by a person under the legal age for consuming alcoholic beverages during a religious observance, ceremony or rite.

L.1985,c.311,s.1; amended 1995,c.31.

2C:34-1. Prostitution and related offenses

2C:34-1. Prostitution and Related Offenses.

a. As used in this section:

(1) "Prostitution" is sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.

(2) "Sexual activity" includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.

(3) "House of prostitution" is any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another.

(4) "Promoting prostitution" is:

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

(b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;

(d) Soliciting a person to patronize a prostitute;

(e) Procuring a prostitute for a patron;

(f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or

(g) Leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

b. A person commits an offense if:

(1) The actor engages in prostitution;

(2) The actor promotes prostitution;

(3) The actor knowingly promotes prostitution of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;

(5) The actor compels another to engage in or promote prostitution;

(6) The actor promotes prostitution of the actor's spouse; or

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.

c. Grading of offenses under subsection b.

(1) An offense under subsection b. constitutes a crime of the second degree if the offense falls within paragraph (3) or (4) of that subsection.

(2) An offense under subsection b. constitutes a crime of the third degree if the offense falls within paragraph (5), (6) or (7) of that subsection.

(3) An offense under paragraph (2) of subsection b. constitutes a crime of the third degree if the conduct falls within subparagraph (a), (b), or (c) of paragraph (4) of subsection a. Otherwise the offense is a crime of the fourth degree.

(4) An offense under subsection b. constitutes a disorderly persons offense if the offense falls within paragraph (1) of that subsection except that a second or subsequent conviction for such an offense constitutes a crime of the fourth degree. In addition, where a motor vehicle was used in the commission of any offense under paragraph (1) of subsection b. the court shall suspend for six months the driving privilege of any such offender who has a valid driver's license issued by this State. Upon conviction, the court shall immediately collect the offender's driver's license and shall forward it, along with a report stating the first and last day of the suspension imposed pursuant to this paragraph, to the Division of Motor Vehicles.

d. Presumption from living off prostitutes. A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is supported in whole or substantial part by the proceeds of prostitution is presumed to be knowingly promoting prostitution.

Amended 1991, c.211; 1997, c.93, s.1; 1999, c.9.

2C:34-1.1 Loitering for the purpose of engaging in prostitution

a. As used in this section, "public place" means any place to which the public has access, including but not limited to any public street, sidewalk, bridge, alley, plaza, park, boardwalk, driveway, parking lot or transportation facility, public library or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor

vehicle in or on any such place.

b. A person commits a disorderly persons offense if he:

(1) wanders, remains or prowls in a public place with the purpose of engaging in prostitution or promoting prostitution as defined in N.J.S.2C:34-1; and

(2) engages in conduct that, under the circumstances, manifests a purpose to engage in prostitution or promoting prostitution as defined in N.J.S.2C:34-1.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to engage in prostitution or promoting prostitution includes, but is not limited to, conduct such as the following:

(1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;

(2) Repeatedly attempting to stop, or repeatedly attempting to engage passers-by in conversation;

(3) Repeatedly stopping or attempting to stop motor vehicles.

d. The element described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.

L.1997,c.93,s.3.

2C:35-1. Short Title

This act shall be known and may be cited as the "Comprehensive Drug Reform Act of 1987."

L. 1987, c. 106, s. 1.

2C:35-1.1. Declaration of policy and legislative findings

The Legislature hereby finds and declares to be the public policy of this State, the following:

a. By enactment of the "New Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq., the Legislature recognized the need for the comprehensive reevaluation, revision, consolidation and codification of our criminal laws, and the need to ensure a uniform, consistent and predictable system for the sentencing of convicted offenders, focusing principally on the seriousness and degree of dangerousness inherent in a particular offense. In enacting the sentencing provisions of the penal code, the Legislature recognized that the imposition of a uniform, consistent and predictable sentence for a given offense is an essential prerequisite to any rational deterrent scheme designed ultimately to reduce the incidence of crime.

b. Despite the impressive efforts and gains of our law enforcement agencies, the unlawful use, manufacture and distribution of controlled dangerous substances continues to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State. New Jersey continues to experience an unacceptably high rate of drug-related crime, and continues to serve as a conduit for the illegal trafficking of drugs to and from other jurisdictions. In addition to the harm suffered by the victims of drug abuse and drug-related crime, the incidence of such offenses is directly related to the rate of other violent and non-violent crimes, including murder, assault, robbery, theft, burglary and organized criminal activities. For this reason, enhanced and coordinated efforts designed specifically to curtail drug-related offenses will lead inexorably to a reduction in the rate of crime generally, and is therefore decidedly in the public interest.

c. In order to be effective, the battle against drug abuse and drug-related crime must be waged aggressively at every level along the drug distribution chain, but in particular, our criminal laws must target for expedited prosecution and enhanced punishment those repeat drug offenders and upper echelon members of organized narcotics trafficking networks who pose the greatest danger to society. In order to ensure the most efficient and effective dedication of limited investigative, prosecutorial, judicial and correctional resources, it is the policy of this State to distinguish between drug offenders based on the seriousness of the offense, considering principally the nature, quantity and purity of the controlled substance involved, and the role of the actor in the overall drug distribution network. It is the intention of the Legislature to provide for the strict punishment, deterrence and incapacitation of the most culpable and dangerous drug offenders, and to facilitate where feasible the rehabilitation of drug dependent persons so as ultimately to reduce the demand for illegal controlled dangerous substances and the incidence of drug-related crime. It is also the policy of this State to afford special protection to children from the perils of drug trafficking, to ensure that all schools and areas adjacent to schools are kept free from drug distribution activities, and to provide especially stern punishment for those drug offenders who operate on or near schools and school buses, who distribute to juveniles, or who employ juveniles in a drug distribution scheme. In addition, our criminal laws and sentencing practices must be reexamined and amended so as to minimize pretrial delay, thereby to ensure the prompt disposition of all drug-related criminal charges and the prompt imposition of fair and certain punishment.

d. Under the current drug laws, there are inadequate sentencing guidelines with which consistently to identify the most serious offenders and offenses and to guard against sentencing disparity and the resulting depreciation of the deterrent thrust of the criminal law. In order to protect the public interest, and so as to deter, disrupt and eliminate the operation of organized drug trafficking networks, it is necessary to undertake a comprehensive reexamination of our controlled dangerous substances laws, procedures and sentencing practices. The transfer of the provisions of the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.) into the penal code which is accomplished herein, along with the amendments and supplements thereto, will better ensure that the most culpable drug offenders will be subject to swift prosecutions and strict, consistently imposed criminal sanctions.

L. 1987, c. 106, s. 1.

2C:35-1.2. Reference to Code of Criminal Justice

Whenever in any law, rule or regulation, reference is made to the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226 (C. 24:21-1 et seq.) or any part thereof, the same shall mean and refer to the appropriate chapter, section or provision of the "New Jersey Code of Criminal Justice" as amended and supplemented herein. Similarly, any reference to chapter 35 or 36 in the "New Jersey Code of Criminal Justice" shall be deemed to incorporate P.L.1970, c.226 (C.24:21-1 et seq.) or any other predecessor statute.

L. 1987, c. 106, s. 24.

2C:35-2. Definitions

2C:35-2. Definitions. As used in this chapter:

"Administer" means the direct application of a controlled dangerous substance or controlled substance analog, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (1) a practitioner (or, in his presence, by his lawfully authorized agent), or (2) the patient or research subject at the lawful direction and in the presence of the practitioner.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

"Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of P.L.1997,c. 194 (C.2C:35-5.3) and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

"Controlled substance analog" means a substance that has a chemical structure substantially similar to that of a controlled dangerous substance and that was specifically designed to produce an effect substantially similar to that of a controlled dangerous substance. The term shall not include a substance manufactured or distributed in conformance with the provisions of an approved new drug application or an exemption

for investigational use within the meaning of section 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21 U.S.C. s. 355).

"Counterfeit substance" means a controlled dangerous substance or controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled dangerous substance or controlled substance analog, whether or not there is an agency relationship.

"Dispense" means to deliver a controlled dangerous substance or controlled substance analog to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. "Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog. "Distributor" means a person who distributes.

"Drugs" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections (a), (b) and (c) of this section; but does not include devices or their components, parts or accessories.

"Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

"Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled dangerous substance or controlled substance analog by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of his professional practice, or (2) by a practitioner (or under his supervision) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, except those containing resin extracted from such plant; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (a) Opium, coca leaves, and opiates;
- (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
- (c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

"Opiate" means any dangerous substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled pursuant to the provisions of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

"Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

"Plant" means an organism having leaves and a readily observable root formation, including, but not limited to, a cutting having roots, a rootball or root hairs.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance or controlled substance analog in the course of professional practice or research in this State.

(a) "Physician" means a physician authorized by law to practice medicine in this or any other state and any other person authorized by law to treat sick and injured human beings in this or any other state.

(b) "Veterinarian" means a veterinarian authorized by law to practice veterinary medicine in this State.

(c) "Dentist" means a dentist authorized by law to practice dentistry in this State.

(d) "Hospital" means any federal institution, or any institution for the care and treatment of the sick and injured, operated or approved by the appropriate State department as proper to be entrusted with the custody and professional use of controlled dangerous substances or controlled substance analogs.

(e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous substances or controlled substance analogs for scientific, experimental and medical purposes and for purposes of instruction approved by the State Department of Health and Senior Services.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or controlled substance analog.

"Immediate precursor" means a substance which the State Department of Health and Senior Services has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled substance analog, the control of which is necessary to prevent, curtail, or limit such manufacture.

"Residential treatment facility" means any facility licensed and approved by the Department of Health and Senior Services and which is approved by any county

probation department for the inpatient treatment and rehabilitation of drug or alcohol dependent persons.

"Schedules I, II, III, IV, and V" are the schedules set forth in sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any regulations issued by the Commissioner of Health and Senior Services pursuant to his authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

"State" means the State of New Jersey.

"Ultimate user" means a person who lawfully possesses a controlled dangerous substance or controlled substance analog for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

"Prescription legend drug" means any drug which under federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian or dentist and is required to bear the statement "Caution: Federal law prohibits dispensing without a prescription" and is not a controlled dangerous substance or stramonium preparation.

"Stramonium preparation" means a substance prepared from any part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form with or without other ingredients.

"Stramonium plant" means the plant *Datura Stramonium* Linne, including *Datura Tatula* Linne.

Amended 1997, c.186, s.1; 1999, c.90, s.1; 1999, c.186; 1999, c.376, s.1.

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

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

As used in this section:

"Financier" means a person who, with the intent to derive a profit, provides money or credit or other thing of value in order to purchase a controlled dangerous substance or an immediate precursor, or otherwise to finance the operations of a drug trafficking network.

A person is a leader of a narcotics trafficking network if he conspires with two or more other persons in a scheme or course of conduct to unlawfully manufacture, distribute, dispense, bring into or transport in this State methamphetamine, lysergic acid diethylamide, phencyclidine, gamma hydroxybutyrate, flunitrazepam or any controlled dangerous substance classified in Schedule I or II, or any controlled substance analog thereof as a financier, or as an organizer, supervisor or manager of at least one other

person.

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

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

It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attendant circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, the amount or purity of the specified controlled dangerous substance, controlled substance analog, gamma hydroxybutyrate or flunitrazepam involved, or the amount of cash or currency involved.

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

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

Amended 1997, c.181, s.1; 1997, c.343; 1999, c.133, s.1.

2C:35-4. Maintaining or operating a controlled dangerous substance production facility

2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any person who knowingly maintains or operates any premises, place or facility used for the

manufacture of methamphetamine, lysergic acid diethylamide, phencyclidine, gamma hydroxybutyrate, flunitrazepam, marijuana in an amount greater than five pounds or ten plants or any substance listed in Schedule I or II, or the analog of any such substance, or any person who knowingly aids, promotes, finances or otherwise participates in the maintenance or operations of such premises, place or facility, is guilty of a crime of the first degree and shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment which 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 the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed \$750,000.00 or five times the street value of all controlled dangerous substances, controlled substance analogs, gamma hydroxybutyrate or flunitrazepam at any time manufactured or stored at such premises, place or facility, whichever is greater.

Amended 1988, c.44, s.1; 1997, c.181, s.2; 1997, c.186, s.2; 1999, c.133, s.2.

2C:35-4.1 Booby traps in manufacturing or distribution facilities; fortified premises

Booby traps in Manufacturing or Distribution Facilities; Fortified Premises.

a. As used in this section:

(1) "Booby trap" means any concealed or camouflaged device designed or reasonably likely to cause bodily injury when triggered by the action of a person entering a property or building or any portion thereof, or moving on the property or in the building, or by the action of another person. The term includes, but is not limited to, firearms, ammunition or destructive devices activated by a trip wire or other triggering mechanism, sharpened stakes, traps, and lines or wires with hooks, weights or other objects attached.

(2) "Structure" means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not the person is actually present.

b. Any person who knowingly assembles, maintains, places or causes to be placed a booby trap on property used for the manufacture, distribution, dispensing, or possession or control with intent to manufacture, distribute or dispense, controlled dangerous substances in violation of this chapter shall be guilty of a crime of the second degree. If the booby trap causes bodily injury to any person, the defendant shall be guilty of a crime of the first degree.

It shall not be a defense that the device was inoperable or was not actually triggered, or that its existence or location was known to a law enforcement officer or another person.

c. Any person who fortifies or maintains in a fortified condition a structure for the manufacture, distribution, dispensing or possession or control with intent to manufacture, distribute or dispense, controlled dangerous substances, or who violates section 3, 4, 5, 6

or 7 of chapter 35 in a structure which he owns, leases, occupies or controls, and which has been fortified, is guilty of a crime of the third degree. A structure has been fortified if steel doors, wooden planking, cross bars, alarm systems, dogs, lookouts or any other means are employed to prevent, impede, delay or provide warning of the entry into a structure or any part of a structure by law enforcement officers.

d. A booby trap or fortification is maintained if it remains on property or in a structure while the property or structure is owned, occupied, controlled or used by the defendant.

e. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation of chapters 11, 12, 17, and 39 of this title, or any other law. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5 or any other provisions of law, a conviction arising under this section shall not merge with a conviction for a violation of any section of chapter 35 of Title 2C of the New Jersey Statutes, or for conspiring or attempting to violate any section of chapter 35 of Title 2C of the New Jersey Statutes, and the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed for any other conviction arising under any section of chapter 35 of Title 2C of the New Jersey Statutes or for conspiracy or attempt to violate any section of chapter 35 of Title 2C of the New Jersey Statutes, unless the court, in consideration of the character and circumstances of the defendant, finds that imposition of consecutive sentences would be a serious injustice which overrides the need to deter such conduct by others. If the court does not impose a consecutive sentence, the sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

L.1997,c.185.

2C:35-5. Manufacturing, distributing or dispensing

2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

(1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which

do not contain cocaine or ecogine, or or 3,4-methylenedioxyamphetamine or 3,4-methylenedioxyamphetamine, in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court. The term of imprisonment 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 the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

(2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants is guilty of a crime of the second degree;

(3) A substance referred to paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

(4) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of one ounce or more including any adulterants or dilutants is guilty of a crime of the second degree;

(5) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

(6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine, or its analog, in a quantity of 10 grams or more including any adulterants or dilutants, is guilty of a crime of the first degree. Except as provided in N.J.S.2C:35-12, the court shall impose a term of imprisonment which shall include the imposition of a minimum term, fixed at, or between, one-third and one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

(7) Lysergic acid diethylamide, or its analog, in a quantity of less than 100 milligrams including any adulterants or dilutants, or where the amount is undetermined, or phencyclidine, or its analog, in a quantity of less than 10 grams including any adulterants or dilutants, or where the amount is undetermined, is guilty of a crime of the second degree;

(8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first

degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

(9) (a) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of one-half ounce or more but less than five ounces including any adulterants or dilutants is guilty of a crime of the second degree;

(b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

(10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

(b) Marijuana in a quantity of five pounds or more but less than 25 pounds including any adulterants or dilutants, or 10 or more but fewer than 50 marijuana plants, regardless of weight, or hashish in a quantity of one pound or more but less than five pounds, including any adulterants and dilutants, is guilty of a crime of the second degree;

(11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants or dilutants, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

(12) Marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than five grams including any adulterants or dilutants, is guilty of a crime of the fourth degree;

(13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or its analog, is guilty of a crime of the third degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed; or

(14) Any Schedule V substance, or its analog, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed.

c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be

aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

Amended 1988, c.44, s.2; 1997, c.181, s.3; 1997, c.186, s.3; 2000, c.55; 2000, c.136.

2C:35-5.2 Manufacturing, etc. gamma hydroxybutyrate; penalties

a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be a crime of the second degree for any person knowingly or purposely to manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense gamma hydroxybutyrate.

b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other law, a fine of up to \$150,000.00 may be imposed upon a person who violates this section.

L.1997,c. 194, s.3.

2C:35-5.3 Manufacturing, etc. flunitrazepam; penalties

a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it is unlawful for any person knowingly or purposely to manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense flunitrazepam.

b. A person who violates subsection a. of this section with respect to flunitrazepam in a quantity of one gram or more is guilty of a crime of the first degree and, notwithstanding the provisions of N.J.S.2C:43-3 or any other law, a fine of up to \$250,000.00 may be imposed upon the person.

c. A person who violates subsection a. of this section with respect to flunitrazepam in a quantity of less than one gram is guilty of a crime of the second degree and, notwithstanding the provisions of N.J.S.2C:43-3 or any other law, a fine of up to \$150,000.00 may be imposed upon the person.

L.1997,c. 194, s.5.

2C:35-6 Employing a juvenile in a drug distribution scheme

2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

Any person being at least 18 years of age who knowingly uses, solicits, directs, hires or employs a person 17 years of age or younger to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5, is guilty of a crime of the second degree and shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment which shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or five years, whichever is greater, during which the defendant

shall be ineligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed \$500,000.00 or five times the street value of the controlled dangerous substance or controlled substance analog involved, whichever is greater.

It shall be no defense to a prosecution under this section that the actor mistakenly believed that the person which the actor used, solicited, directed, hired or employed was 18 years of age or older, even if such mistaken belief was reasonable.

Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of any offense defined in this chapter pursuant to N.J.S.2C:2-6 or any other provision of law governing an actor's liability for the conduct of another, and, notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction arising under this section shall not merge with a conviction for a violation of N.J.S.2C:35-3 (leader of narcotics trafficking network), N.J.S.2C:35-4 (maintaining or operating a CDS production facility), N.J.S.2C:35-5 (manufacturing, distributing or dispensing), or N.J.S.2C:35-9 (strict liability for drug induced death).

Amended 1997, c.181, s.4.

2C:35-7 Distribution on or within 1,000 feet of school property

Any person who violates subsection a. of N.J.S.2C:35-5 by distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog while on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property or a school bus, or while on any school bus, is guilty of a crime of the third degree and shall, except as provided in N.J.S.2C:35-12, be sentenced by the court to a term of imprisonment. Where the violation involves less than one ounce of marijuana, the term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or one year, whichever is greater, during which the defendant shall be ineligible for parole. In all other cases, the term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or three years, whichever is greater, during which the defendant shall be ineligible for parole. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$150,000.00 may also be imposed upon any conviction for a violation of this section.

Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under this section shall not merge with a conviction for a violation of subsection a. of N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

It shall be no defense to a prosecution for a violation of this section that the actor was unaware that the prohibited conduct took place while on or within 1,000 feet of any school property. Nor shall it be a defense to a prosecution under this section, or under any

other provision of this title, that no juveniles were present on the school property at the time of the offense or that the school was not in session.

It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person 17 years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve distributing, dispensing or possessing with the intent to distribute or dispense any controlled dangerous substance or controlled substance analog for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

In a prosecution under this section, a map produced or reproduced by any municipal or county engineer for the purpose of depicting the location and boundaries of the area on or within 1,000 feet of any property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or a true copy of such a map, shall, upon proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas, provided that the governing body of the municipality or county has adopted a resolution or ordinance approving the map as official finding and record of the location and boundaries of the area or areas on or within 1,000 feet of the school property. Any map approved pursuant to this section may be changed from time to time by the governing body of the municipality or county. The original of every map approved or revised pursuant to this section, or a true copy thereof, shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. Nothing in this section shall be construed to preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense; nor shall this section be construed to preclude the use or admissibility of any map or diagram other than one which has been approved by the governing body of a municipality or county, provided that the map or diagram is otherwise admissible pursuant to the Rules of Evidence.

L.1987,c.101,c.1; amended 1997, c.181, s.5.

2C:35-7.1. Violations of N.J.S.2C:35-5, certain locations; degree of crime; terms defined

a. Any person who violates subsection a. of N.J.S.2C:35-5 by distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog while in, on or within 500 feet of the real property comprising a public housing facility, a public park, or a public building is guilty of a crime of the second degree, except that it is a crime of the third degree if the violation involved less than one ounce of marijuana.

b. It shall be no defense to a prosecution for violation of this section that the actor was unaware that the prohibited conduct took place while on or within 500 feet of a public housing facility, a public park, or a public building.

c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under this section shall not merge with a conviction for a violation of subsection a. of N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme). Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of N.J.S.2C:35-7 or any other offense defined in this chapter.

d. It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct did not involve distributing, dispensing or possessing with the intent to distribute or dispense any controlled dangerous substance or controlled substance analog for profit, and that the prohibited conduct did not involve distribution to a person 17 years of age or younger. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

e. In a prosecution under this section, a map produced or reproduced by any municipal or county engineer for the purpose of depicting the location and boundaries of the area on or within 500 feet of a public housing facility which is owned by or leased to a housing authority according to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), the area in or within 500 feet of a public park, or the area in or within 500 feet of a public building, or a true copy of such a map, shall, upon proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas, provided that the governing body of the municipality or county has adopted a resolution or ordinance approving the map as official finding and record of the location and boundaries of the area or areas on or within 500 feet of a public housing facility, a public park, or a public building. Any map approved pursuant to this section may be changed from time to time by the governing body of the municipality or county. The original of every map approved or revised pursuant to this section, or a true copy thereof, shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. Nothing in this section shall be construed to preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense; nor shall this section be construed to preclude the use or admissibility of any map or diagram other than one which has been approved by the governing body of a municipality or county, provided that the map or diagram is otherwise admissible pursuant to the Rules of Evidence.

f. As used in this act:

"Public housing facility" means any dwelling, complex of dwellings, accommodation, building, structure or facility and real property of any nature appurtenant thereto and used in connection therewith, which is owned by or leased to a local housing authority in accordance with the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) for the purpose of providing living accommodations to

persons of low income.

"Public park" means a park, recreation facility or area or playground owned or controlled by a State, county or local government unit.

"Public building" means any publicly owned or leased library or museum.

L.1997,c.327.

2C:35-8. Distribution to persons under age 18; enhanced punishment

2C:35-8. Distribution to Persons Under Age 18; Enhanced Punishment. Upon the application of the prosecuting attorney, any person being at least 18 years of age who has been convicted for violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L. 1987, c. 101 (C. 2C:35-7) by distributing a controlled dangerous substance or controlled substance analog to a pregnant female or a person 17 years of age or younger shall, except as provided in N.J.S. 2C:35-12, be subject to twice the term of imprisonment, fine and penalty, including twice the term of parole ineligibility, if any, authorized or required to be imposed by subsection b. of N.J.S. 2C:35-5 or section 1 of P.L. 1987, c. 101 (C. 2C:35-7) or any other provision of this title. In addition, the presumption of non-imprisonment for certain offenders set forth in subsection e. of N.J.S. 2C:44-1 shall not apply to any person subject to enhanced punishment pursuant to this section.

The court shall not impose more than one enhanced sentence pursuant to this section. If the defendant is convicted of more than one offense which is otherwise subject to enhanced punishment pursuant to this section, the court shall impose enhanced punishment based upon the most serious such offense for which the defendant was convicted, or, where applicable, the offense which mandates the imposition of the longest term of parole ineligibility. Notwithstanding the provisions of paragraph (2) of subsection a. of 2C:44-5, nothing herein shall prevent the court from also imposing an extended term pursuant to subsection f. of N.J.S. 2C:43-6. The court shall not impose an enhanced sentence pursuant to this section unless the prosecutor has established the ground therefor by a preponderance of the evidence at a hearing, which may occur at the time of sentencing. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and any other relevant information. It shall not be relevant to the imposition of enhanced punishment pursuant to this section that the defendant mistakenly believed that the recipient of the substance was 18 years of age or older, even if the mistaken belief was reasonable. Nor shall it be relevant to the imposition of enhanced punishment pursuant to this section that the defendant did not know that the recipient was pregnant.

P.L. 1987,c.106,s.1; amended 1988,c.44,s.4.

2C:35-10 Possession, use or being under the influence, or failure to make lawful disposition

2C:35-10. Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition.

a. It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.). Any person who violates this section with respect to:

(1) A controlled dangerous substance, or its analog, classified in Schedule I, II, III or IV other than those specifically covered in this section, is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$35,000.00 may be imposed;

(2) Any controlled dangerous substance, or its analog, classified in Schedule V, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed;

(3) Possession of more than 50 grams of marijuana, including any adulterants or dilutants, or more than five grams of hashish is guilty of a crime of the fourth degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed; or

(4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.

Any person who commits any offense defined in this section while on any property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of any such school property or a school bus, or while on any school bus, and who is not sentenced to a term of imprisonment, shall, in addition to any other sentence which the court may impose, be required to perform not less than 100 hours of community service.

b. Any person who uses or who is under the influence of any controlled dangerous substance, or its analog, for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician is a disorderly person.

In a prosecution under this subsection, it shall not be necessary for the State to prove that the accused did use or was under the influence of any specific drug, but it shall be sufficient for a conviction under this subsection for the State to prove that the accused did use or was under the influence of some controlled dangerous substance, counterfeit controlled dangerous substance, or controlled substance analog, by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled dangerous substance or controlled substance analog.

c. Any person who knowingly obtains or possesses a controlled dangerous substance or controlled substance analog in violation of subsection a. of this section and who fails to voluntarily deliver the substance to the nearest law enforcement officer is guilty of a disorderly persons offense. Nothing in this subsection shall be construed to preclude a prosecution or conviction for any other offense defined in this title or any other statute.

Amended 1988, c.44, s.5; 1997, c.181, s.6.

2C:35-10.2 Possession, etc. of gamma hydroxybutyrate; penalties

a. It is a crime of the third degree for any person, knowingly or purposely, to obtain, or to possess, gamma hydroxybutyrate unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.).

b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other law, a fine of up to \$100,000.00 may be imposed upon a person who violates this section.

L.1997,c. 194, s.4.

2C:35-10.3 Possession, etc. of flunitrazepam; penalties

a. It is a crime of the third degree for any person, knowingly or purposely, to obtain, or to possess, flunitrazepam, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L.1970, c.226 (C.24:21-1 et seq.).

b. Notwithstanding the provisions of N.J.S.2C:43-3 or any other law, a fine of up to \$100,000.00 may be imposed upon a person who violates this section.

L.1997,c. 194, s.6.

2C:35-10.5. Prescription legend drugs

Prescription legend drugs.

a. Except as authorized by sections 9 through 15 of P.L.1970, c.226 (C.24:21-9 through 24:21-15) a person who knowingly distributes a prescription legend drug or stramonium preparation unless lawfully prescribed or administered by a licensed physician, veterinarian or dentist is a disorderly person.

b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician is a disorderly person.

c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is a disorderly person. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of Title 2C of the New Jersey Statutes.

L.1999,c.90, s.8.

2C:35-11 Imitation controlled dangerous substances; distribution, possession, manufacture, etc.; penalties

2C:35-11. Imitation controlled dangerous substances; distribution, possession, manufacture, etc.; penalties.

a. It is unlawful for any person to distribute or to possess or have under his control with intent to distribute any substance which is not a controlled dangerous substance or controlled substance analog:

(1) Upon the express or implied representation to the recipient that the substance is a controlled dangerous substance or controlled substance analog; or

(2) Upon the express or implied representation to the recipient that the substance is of such nature, appearance or effect that the recipient will be able to distribute or use the substance as a controlled dangerous substance or controlled substance analog; or

(3) Under circumstances which would lead a reasonable person to believe that the substance is a controlled dangerous substance or controlled substance analog.

Any of the following shall constitute prima facie evidence of such circumstances:

(a) The substance was packaged in a manner normally used for the unlawful distribution of controlled dangerous substances or controlled substance analogs.

(b) The distribution or attempted distribution of the substance was accompanied by an exchange of or demand for money or other thing as consideration for the substance, and the value of the consideration exceeded the reasonable value of the substance.

(c) The physical appearance of the substance is substantially the same as that of a specific controlled dangerous substance or controlled substance analog.

b. It is unlawful for any person to manufacture, compound, encapsulate, package or imprint any substance which is not a controlled dangerous substance, controlled

substance analog or any combination of such substances, other than a prescription drug, with the purpose that it resemble or duplicate the physical appearance of the finished form, package, label or imprint of a controlled dangerous substance or controlled substance analog.

c. In any prosecution under this section, it shall not be a defense that the defendant mistakenly believed a substance to be a controlled dangerous substance or controlled substance analog.

d. A violation of this section is a crime of the third degree, except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000.00 may be imposed.

e. The provisions of this section shall not be applicable to (1) practitioners or agents, servants and employees of practitioners dispensing or administering noncontrolled substances to patients on behalf of practitioners in the normal course of their business or professional practice; and (2) persons who manufacture, process, package, distribute or sell noncontrolled substances to practitioners for use as placebos in the normal course of their business, professional practice or research or for use in Federal Food and Drug Administration investigational new drug trials.

Amended 1997, c.181, s.7.

2C:35-14 Rehabilitation program for drug and alcohol dependent persons; criteria for imposing special probation; ineligible offenders; prosecutorial objections; mandatory commitment to residential treatment facilities; presumption of revocation; brief incarceration in lieu of permanent revocation.

2C:35-14. Rehabilitation Program for Drug and Alcohol Dependent Persons; Criteria for Imposing Special Probation; Ineligible Offenders; Prosecutorial Objections; Mandatory Commitment to Residential Treatment Facilities; Presumption of Revocation; Brief Incarceration in Lieu of Permanent Revocation.

a. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and except as provided in subsection c. of this section, whenever a drug or alcohol dependent person is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:

(1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; and

(2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; and

(3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and

(4) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and

(5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first, second or third degree, other than crimes defined in N.J.S.2C:35-10; and

(7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, robbery, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and

(8) a suitable treatment facility licensed and approved by the Department of Health and Senior Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and

(9) no danger to the community will result from the person being placed on special probation pursuant to this section.

In determining whether to sentence the person pursuant to this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and the results of the professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment.

As a condition of special probation, the court shall order the person to enter a treatment program at a facility licensed and approved by the Department of Health and Senior Services, to comply with program rules and the requirements of the course of treatment, to cooperate fully with the treatment provider, and to comply with such other reasonable terms and conditions as may be required by the court or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine testing for drug or alcohol usage throughout the period of special probation. Subject to the requirements of subsection d.

of this section, the conditions of special probation may include different methods and levels of community-based or residential supervision.

b. A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for:

(1) a crime of the first degree;

(2) a crime of the first or second degree enumerated in subsection d. of N.J.S.2C:43-7.2;

(3) a crime, other than that defined in N.J.S.2C:35-7, for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or

(4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

c. A person convicted of or adjudicated delinquent for an offense under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there exists a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1 or any other statute, or who has been previously convicted of an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, shall not be eligible for sentence in accordance with this section if the prosecutor objects to the person being placed on special probation. The court shall not place a person on special probation over the prosecutor's objection except upon a finding by the court of a gross and patent abuse of prosecutorial discretion. If the court makes a finding of a gross and patent abuse of prosecutorial discretion and imposes a sentence of special probation notwithstanding the objection of the prosecutor, the sentence of special probation imposed pursuant to this section shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

d. A person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c.101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential treatment facility licensed and approved by the Department of Health and Senior Services, whether or not residential treatment was recommended by the person conducting the diagnostic assessment. The person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider,

determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The person shall not be eligible for early discharge of special probation pursuant to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

e. The probation department or other appropriate agency designated by the court to monitor or supervise the person's special probation shall report periodically to the court as to the person's progress in treatment and compliance with court-imposed terms and conditions. The treatment provider shall promptly report to the probation department or other appropriate agency all significant failures by the person to comply with any court imposed term or condition of special probation or any requirements of the course of treatment, including but not limited to a positive drug or alcohol test or the unexcused failure to attend any session or activity, and shall immediately report any act that would constitute an escape. The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person refuses to submit to a periodic drug or alcohol test or for any reason terminates his participation in the course of treatment, or commits any act that would constitute an escape.

f. (1) Upon a first violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court in its discretion may permanently revoke the person's special probation.

(2) Upon a second or subsequent violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation unless the court finds on the record that there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation, and the court is clearly convinced, considering the nature and seriousness of the violations, that no danger to the community will result from permitting the person to continue on special probation pursuant to this section. The court's determination to permit the person to continue on special probation following a second or subsequent violation pursuant to this paragraph may be appealed by the prosecution.

(3) In making its determination whether to revoke special probation, and whether to overcome the presumption of revocation established in paragraph (2) of this

subsection, the court shall consider the nature and seriousness of the present infraction and any past infractions in relation to the person's overall progress in the course of treatment, and shall also consider the recommendations of the treatment provider. The court shall give added weight to the treatment provider's recommendation that the person's special probation be permanently revoked, or to the treatment provider's opinion that the person is not amenable to treatment or is not likely to complete the treatment program successfully.

(4) If the court permanently revokes the person's special probation pursuant to this subsection, the court shall impose any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was convicted or adjudicated delinquent. The court shall conduct a de novo review of any aggravating and mitigating factors present at the time of both original sentencing and resentencing. If the court determines or is required pursuant to any other provision of this chapter or any other law to impose a term of imprisonment, the person shall receive credit for any time served in custody pursuant to N.J.S.2C:45-1 or while awaiting placement in a treatment facility pursuant to this section, and for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

(5) Following a violation, if the court permits the person to continue on special probation pursuant to this section, the court shall order the person to comply with such additional terms and conditions, including but not limited to more frequent drug or alcohol testing, as are necessary to deter and promptly detect any further violation.

(6) Notwithstanding any other provision of this subsection, if the person at any time refuses to undergo urine testing for drug or alcohol usage as provided in subsection a. of this section, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at any time while committed to the custody of a residential treatment facility pursuant to this section commits an act that would constitute an escape, the court shall forthwith permanently revoke the person's special probation.

(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. A person who fails to comply with the terms of his special probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall thereafter be ineligible for entry into the Intensive Supervision Program.

g. When a person on special probation is subject to a presumption of revocation on a second or subsequent violation pursuant to paragraph (2) of subsection f. of this section, or when the person refuses to undergo drug or alcohol testing pursuant to paragraph (6) of subsection f. of this section, the court may, in lieu of permanently

revoking the person's special probation, impose a term of incarceration for a period of not less than 30 days nor more than six months, after which the person's term of special probation pursuant to this section may be reinstated. In determining whether to order a period of incarceration in lieu of permanent revocation pursuant to this subsection, the court shall consider the recommendations of the treatment provider with respect to the likelihood that such confinement would serve to motivate the person to make satisfactory progress in treatment once special probation is reinstated. This disposition may occur only once with respect to any person unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition with respect to the person. Any such determination by the court to reimpose this disposition may be appealed by the prosecution. Nothing in this subsection shall be construed to limit the authority of the court at any time during the period of special probation to order a person on special probation who is not subject to a presumption of revocation pursuant to paragraph (2) of subsection f. of this section to be incarcerated over the course of a weekend, or for any other reasonable period of time, when the court in its discretion determines that such incarceration would help to motivate the person to make satisfactory progress in treatment.

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with his participation in any rehabilitation program or period of residential treatment imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

i. The court shall impose, as a condition of the special probation, any fine, penalty, fee or restitution applicable to the offense for which the person was convicted or adjudicated delinquent.

Amended 1999, c.376, s.2; 2001, c.129, s.2.

2C:35-16. Mandatory forfeiture or postponement of driving privileges

2C:35-16. Mandatory Forfeiture or Postponement of Driving Privileges. In addition to any disposition authorized by this title, the provisions of section 24 of P.L. 1982, c. 77 (C. 2A:4A-43), or any other statute indicating the dispositions that can be ordered for an adjudication of delinquency, and notwithstanding the provisions of subsection c. of N.J.S. 2C:43-2 every person convicted of or adjudicated delinquent for a violation of any offense defined in this chapter or chapter 36 of this title shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under

revocation, suspension, or postponement for a violation of any provision of this title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

The court before whom any person is convicted of or adjudicated delinquent for a violation of any offense defined in this chapter or chapter 36 of this title shall collect forthwith the New Jersey driver's license or licenses of the person and forward such license or licenses to the Director of the Division of Motor Vehicles along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Director. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S. 39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S. 39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the Director who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privilege in this State.

In addition to any other condition imposed, a court may in its discretion suspend, revoke or postpone in accordance with the provisions of this section the driving privileges of a person admitted to supervisory treatment under N.J.S. 2C:36A-1 or N.J.S. 2C:43-12 without a plea of guilty or finding of guilt.

Amended 1988,c.44,s.7.

2C:35-24. Possession of certain prescription drugs

Possession of certain prescription drugs.

A person who possesses a controlled dangerous substance that was prescribed or dispensed lawfully may possess it only in the container in which it was dispensed; except that the person may possess no more than a 10-day supply in other than the original container if the person produces, upon the request of a law enforcement officer, the name and address of the practitioner who prescribed the substance or the pharmacist who dispensed it. A person who violates this section is a disorderly person.

L.1999,c.90, s.9.

2C:36-1. Drug paraphernalia, defined; determination

As used in this act, "drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. It shall include, but not be limited to: a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived; b. kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances or controlled substance analogs; c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance; d. testing equipment used or intended for use identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances or controlled substance analogs; e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances or controlled substance analogs; f. dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances or controlled substance analogs; g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana; h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances or controlled substance analogs; i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances or controlled substance analogs; j. containers and other objects used or intended for use in storing or concealing controlled dangerous substances or controlled substance analogs; k. objects used or intended for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; (2) water pipes; (3) carburetion tubes and devices; (4) smoking and carburetion masks; (5) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; (6) miniature cocaine spoons, and cocaine vials; (7) chamber pipes; (8) carburetor pipes; (9) electric pipes; (10) air-driven pipes; (11) chillums; (12) bongs; and (13) ice pipes or chillers.

In determining whether or not an object is drug paraphernalia, the trier of fact, in addition to or as part of the proofs, may consider the following factors: a. statements by an owner or by anyone in control of the object concerning its use; b. the proximity of the object of illegally possessed controlled dangerous substances or controlled substance analogs; c. the existence of any residue of illegally possessed controlled dangerous substances or controlled substance analogs on the object; d. direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to

persons whom he knows intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use as drug paraphernalia; e. instructions, oral or written, provided with the object concerning its use; f. descriptive materials accompanying the object which explain or depict its use; g. national or local advertising whose purpose the person knows or should know is to promote the sale of objects intended for use as drug paraphernalia; h. the manner in which the object is displayed for sale; i. the existence and scope of legitimate uses for the object in the community; and j. expert testimony concerning its use.

L. 1987, c. 106, s. 2.

2C:36-2. Use or possession with intent to use, disorderly persons offense

It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. Any person who violates this section is guilty of a disorderly persons offense.

L. 1987, c. 106, s. 2.

2C:36-3. Distribute, dispense or possession with intent to distribute or manufacture, crime of fourth degree

It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a controlled dangerous substance or controlled substance analog in violation of the provisions of chapter 35 of this title. Any person who violates this section commits a crime of the fourth degree.

L. 1987, c. 106, s. 2.

2C:36-4. Advertising to promote sale, crime of fourth degree

It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Any person who violates this section commits a crime of the fourth degree.

L. 1987, c. 106, s. 2.

2C:36-5. Delivering drug paraphernalia to person under 18 years of age, crime of third degree

Any person 18 years of age or over who violates N.J.S. 2C:36-3 by delivering drug paraphernalia to a person under 18 years of age commits a crime of the third degree.

L. 1987, c. 106, s. 2.

2C:36-6. Possession or distribution of hypodermic syringe or needle

2C:36-6. a. Except as authorized by subsection b., c. or other law, it shall be unlawful for a person to have under his control or possess with intent to use a hypodermic syringe, hypodermic needle or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog as defined in chapter 35 of Title 2C of the New Jersey Statutes or to sell, furnish or give to any person such syringe, needle or instrument. Any person who violates this section is guilty of a disorderly persons offense.

b. A person is authorized to possess and use a hypodermic needle or hypodermic syringe if the person obtains the hypodermic syringe or hypodermic needle by a valid prescription issued by a licensed physician, dentist or veterinarian and uses it for its authorized purpose.

No prescription for a hypodermic syringe, hypodermic needle or any other instrument adapted for the use of controlled dangerous substances by subcutaneous injections shall be valid for more than one year from the date of issuance.

c. Subsection a. does not apply to a duly licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, registered pharmacist, or a hospital, sanitarium, clinical laboratory or any other medical institution, or a state or a governmental agency, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution.

Amended 1999,c.90, s.2.

2C:36A-1. Conditional discharge for certain first offenses; expunging of records

2C:36A-1. Conditional discharge for certain first offenses; expunging of records. a. Whenever any person who has not previously been convicted of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty disorderly persons offense defined in chapter 35 or 36 of this title or, subsequent to the effective date of this title, under any law of the United States, this State or any other state relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of this title, the court upon notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of the person after reference to the State Bureau of Identification criminal history record information files, place him

under supervisory treatment upon such reasonable terms and conditions as it may require;
or

(2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of the person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of three years. If a person is placed under supervisory treatment under this section after a plea of guilty or finding of guilt, the court as a term and condition of supervisory treatment shall suspend the person's driving privileges for a period to be fixed by the court at not less than six months or more than two years. In the case of a person who at the time of placement under supervisory treatment under this section is less than 17 years of age, the period of suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the person is placed on supervisory treatment and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years.

If the driving privilege of a person is under revocation, suspension, or postponement for a violation of this title or Title 39 of the Revised Statutes at the time of the person's placement on supervisory treatment under this section, the revocation, suspension or postponement period imposed herein shall commence as of the date of the termination of the existing revocation, suspension or postponement. The court which places a person on supervisory treatment under this section shall collect and forward the person's driver's license to the Division of Motor Vehicles and file an appropriate report with the division in accordance with the procedure set forth in N.J.S.2C:35-16. The court shall also inform the person of the penalties for operating a motor vehicle during the period of license suspension or postponement as required in N.J.S.2C:35-16.

Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this

section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest; and

(3) The person has not previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or the provisions of this chapter.

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75.00. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey. Of the moneys collected under this subsection, \$30.00 of each fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be paid to the court, for use by the State.

Amended 1988,c.44,s.12; 1993,c.275,s.14.

2C:39-1 Definitions.

2C:39-1. Definitions. The following definitions apply to this chapter and to chapter 58:

a. "Antique firearm" means any rifle or shotgun and "antique cannon" means a destructive device defined in paragraph (3) of subsection c. of this section, if the rifle, shotgun or destructive device, as the case may be, is incapable of being fired or discharged, or which does not fire fixed ammunition, regardless of date of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

b. "Deface" means to remove, deface, cover, alter or destroy the name of the maker, model designation, manufacturer's serial number or any other distinguishing identification mark or number on any firearm.

c. "Destructive device" means any device, instrument or object designed to

explode or produce uncontrolled combustion, including (1) any explosive or incendiary bomb, mine or grenade; (2) any rocket having a propellant charge of more than four ounces or any missile having an explosive or incendiary charge of more than one-quarter of an ounce; (3) any weapon capable of firing a projectile of a caliber greater than 60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes; (4) any Molotov cocktail or other device consisting of a breakable container containing flammable liquid and having a wick or similar device capable of being ignited. The term does not include any device manufactured for the purpose of illumination, distress signaling, line-throwing, safety or similar purposes.

d. "Dispose of" means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession.

e. "Explosive" means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

f. "Firearm" means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

g. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm.

h. "Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force.

I. "Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom.

j. "Manufacturer" means any person who receives or obtains raw materials or parts and processes them into firearms or finished parts of firearms, except a person who

exclusively processes grips, stocks and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and used raw materials or parts solely for the repair of existing firearms.

k. "Handgun" means any pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand.

l. "Retail dealer" means any person including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

m. "Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

n. "Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

o. "Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breech to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breech to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

p. "Switchblade knife" means any knife or similar device which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

q. "Superintendent" means the Superintendent of the State Police.

r. "Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

s. "Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

t. "Stun gun" means any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person.

u. "Ballistic knife" means any weapon or other device capable of lethal use and which can propel a knife blade.

v. "Imitation firearm" means an object or device reasonably capable of being mistaken for a firearm.

w. "Assault firearm" means:

(1) The following firearms:

Algimec AGM1 type

Any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

G3SA type

Galil type Heckler and Koch HK91, HK93, HK94, MP5, PSG-1

Intratec TEC 9 and 22 semi-automatic firearms

M1 carbine type

M14S type

MAC 10, MAC 11, MAC 11-9mm carbine type firearms

PJK M-68 carbine type

Plainfield Machine Company Carbine

Ruger K-Mini-14/5F and Mini-14/5RF

SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types

SKS with detachable magazine type

Spectre Auto carbine type

Springfield Armory BM59 and SAR-48 type

Sterling MK-6, MK-7 and SAR types

Steyr A.U.G. semi-automatic firearms

USAS 12 semi-automatic type shotgun

Uzi type semi-automatic firearms

Valmet M62, M71S, M76, or M78 type semi-automatic firearms

Weaver Arm Nighthawk.

(2) Any firearm manufactured under any designation which is substantially identical to any of the firearms listed above.

(3) A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock.

(4) A semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds.

(5) A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

x. "Semi-automatic" means a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet.

y. "Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

z. "Pistol grip" means a well-defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand.

aa. "Antique handgun" means a handgun manufactured before 1898, or a replica thereof, which is recognized as being historical in nature or of historical significance and either (1) utilizes a match, friction, flint, or percussion ignition, or which utilizes a pin-fire cartridge in which the pin is part of the cartridge or (2) does not fire fixed ammunition or for which cartridge ammunition is not commercially available.

bb. "Trigger lock" means a commercially available device approved by the Superintendent of State Police which is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. It may include, but need not be limited to, devices that obstruct the barrel or cylinder of the firearm, as well as devices that immobilize the trigger.

cc. "Trigger locking device" means a device that, if installed on a firearm and secured by means of a key or mechanically, electronically or electromechanically operated combination lock, prevents the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically or electromechanically operated combination lock.

dd. "Personalized handgun" means a handgun which incorporates within its design, and as part of its original manufacture, technology which automatically limits its

operational use and which cannot be readily deactivated, so that it may only be fired by an authorized or recognized user. The technology limiting the handgun's operational use may include, but not be limited to: radio frequency tagging, touch memory, remote control, fingerprint, magnetic encoding and other automatic user identification systems utilizing biometric, mechanical or electronic systems. No make or model of a handgun shall be deemed to be a "personalized handgun" unless the Attorney General has determined, through testing or other reasonable means, that the handgun meets any reliability standards that the manufacturer may require for its commercially available handguns that are not personalized or, if the manufacturer has no such reliability standards, the handgun meets the reliability standards generally used in the industry for commercially available handguns.

Amended 1981, c.363, s.1; 1983, c.479, s.1; 1985, c.360, s.1; 1987, c.228, s.1; 1989, c.120, s.1; 1990, c.32, s.1; 1999, c.233, s.1; 1999, c.255, s.1; 2002, c.130, s.5.

2C:39-2. Presumptions

a. Possession of firearms, weapons, destructive devices, silencers, or explosives in a vehicle. When a firearm, weapon, destructive device, silencer, or explosive described in this chapter is found in a vehicle, it is presumed to be in the possession of the occupant if there is but one. If there is more than one occupant in the vehicle, it shall be presumed to be in the possession of all, except under the following circumstances:

(1) When it is found upon the person of one of the occupants, it shall be presumed to be in the possession of that occupant alone;

(2) When the vehicle is not a stolen one and the weapon or other instrument is found out of view in a glove compartment, trunk or other enclosed customary depository, it shall be presumed to be in the possession of the occupant or occupants who own or have authority to operate the vehicle; and

(3) When the vehicle is a taxicab and a weapon or other instrument is found in the passenger's portion of the vehicle, it shall be presumed to be in the possession of all the passengers, if there are any, and if not, in the possession of the driver.

b. Licenses and permits. When the legality of a person's conduct under this chapter depends on his possession of a license or permit or on his having registered with or given notice to a particular person or agency, it shall be presumed that he does not possess such a license or permit or has not registered or given the required notice, until he establishes the contrary.

L.1978, c. 95, s. 2C:39-2, eff. Sept. 1, 1979. Amended by L.1979, c. 179, s. 1, eff. Sept. 1, 1979.

2C:39-3. Prohibited weapons and devices

2C:39-3. Prohibited Weapons and Devices.

a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

d. Defaced firearms. Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

e. Certain weapons. Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.

f. Dum-dum or body armor penetrating bullets. (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of N.J.S.2C:39-6, who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in Title 18, United States Code, section 921 (a) (13) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco and Firearms, who knowingly has in his possession any body armor breaching or penetrating ammunition, which means: (a) ammunition primarily designed for use in a handgun, and (b) which is comprised of a bullet whose core or jacket, if the jacket is thicker than .025 of an inch, is made of tungsten carbide, or hard bronze, or other material which is harder than a rating of 72 or greater on the Rockwell B. Hardness Scale, and (c) is therefore capable of breaching or penetrating body armor, is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.

g. Exceptions. (1) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders. Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the

person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) a. Nothing in subsection f. (1) shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall subsection f. (1) be construed to prevent any licensed retail or wholesale firearms dealer from possessing such ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

b. Nothing in subsection f.(1) shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of N.J.S.2C:39-6.

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of P.L.2000, c.46 (C.23:4-42.6), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

h. Stun guns. Any person who knowingly has in his possession any stun gun is

guilty of a crime of the fourth degree.

i. Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

j. Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered an assault firearm pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army.

k. Handcuffs. Any person who knowingly has in his possession handcuffs as defined in P.L.1991, c.437 (C.2C:39-9.2), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

Amended 1979, c.179, s.2; 1983, c.58, s.1; 1983, c.479, s.2; 1985, c.360, s.2; 1987, c.228, s.2; 1989, c.11; 1990, c.32, s.10; 1991, c.437, s.1; 1999, c.233, s.2; 2000, c.46, s.5; 2003, c.168, s.1.

2C:39-4. Possession of weapons for unlawful purposes

2C:39-4. Possession of weapons for unlawful purposes.

a. Firearms. Any person who has in his possession any firearm with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the second degree.

b. Explosives. Any person who has in his possession or carries any explosive substance with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the second degree.

c. Destructive devices. Any person who has in his possession any destructive device with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the second degree.

d. Other weapons. Any person who has in his possession any weapon, except a firearm, with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the third degree.

e. Imitation firearms. Any person who has in his possession an imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose is guilty of a crime of the fourth degree.

Amended 1979, c.179, s.3; 1989,c.120,s.2.

2C:39-4.1 Weapons; controlled dangerous substances and other offenses, penalties.

2C:39-4.1. Weapons; controlled dangerous substances and other offenses, penalties.

a. Any person who has in his possession any firearm while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S. 2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

b. Any person who has in his possession any weapon, except a firearm, with a purpose to use such weapon unlawfully against the person or property of another, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

c. Any person who has in his possession any weapon, except a firearm, under circumstances not manifestly appropriate for such lawful uses as the weapon may have, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327(C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction arising under this section shall not merge with a conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section nor shall any conviction under those sections merge with a conviction under this section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other provision of law, the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed for any conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section or a conviction for conspiracy or attempt to violate any of those sections.

e. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation of N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

f. Nothing herein shall prevent the court from also imposing enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of P.L.1997, c.117 (C.2C:43-7.2), or

any other provision of law, or an extended term.

L.1998,c.26,s.1; amended 2001, c.443, s.4.

2C:39-5. Unlawful possession of weapons

2C:39-5. Unlawful Possession of Weapons.

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in N.J.S.2C:58-5, is guilty of a crime of the third degree.

b. Handguns. Any person who knowingly has in his possession any handgun, including any antique handgun without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the third degree.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

d. Other weapons. Any person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.

e. Firearms or other weapons in educational institutions.

(1) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

(2) Any person who knowingly possesses any weapon enumerated in paragraphs (3) and (4) of subsection r. of N.J.S.2C:39-1 or any components which can readily be assembled into a firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 or any other weapon under circumstances not manifestly appropriate for such lawful use as it may have, while in or upon any part of the buildings or grounds of any school, college, university or other educational institution without the written authorization of the governing officer of the institution is guilty of a crime of the fourth degree.

(3) Any person who knowingly has in his possession any imitation firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the

institution, or while on any school bus is a disorderly person, irrespective of whether he possesses a valid permit to carry a firearm or a valid firearms purchaser identification card.

f. Assault firearms. Any person who knowingly has in his possession an assault firearm is guilty of a crime of the third degree except if the assault firearm is licensed pursuant to N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12) or rendered inoperable pursuant to section 12 of P.L.1990, c.32 (C.2C:58-13).

g. (1) The temporary possession of a handgun, rifle or shotgun by a person receiving, possessing, carrying or using the handgun, rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74 (C.2C:58-3.1) shall not be considered unlawful possession under the provisions of subsection b. or c. of this section.

(2) The temporary possession of a firearm by a person receiving, possessing, carrying or using the firearm under the provisions of section 1 of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered unlawful possession under the provisions of this section.

Amended 1979, c.179, s.4; 1990, c.32, s.2; 1992, c.74, s.2; 1992, c.94, s.1; 1995, c.389; 1997, c.375, s.2.

2C:39-6. Exemptions

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies,

or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a correction officer or keeper of a penal institution in this State at all times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection (b) of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c.409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) subject to the regulations promulgated by the commission;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or

armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area.

b. Subsections a., b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A law enforcement officer employed by a governmental agency outside of the State of New Jersey while actually engaged in his official duties, provided, however, that he has first notified the superintendent or the chief law enforcement officer of the municipality or the prosecutor of the county in which he is engaged; or

(2) A licensed dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale, provided, however, that the weapon is carried in the manner specified in subsection g. of this section.

c. Provided a person complies with the requirements of subsection j. of this section, subsections b. and c. of N.J.S.2C:39-5 do not apply to:

(1) A special agent of the Division of Taxation who has passed an examination in an approved police training program testing proficiency in the handling of any firearm which he may be required to carry, while in the actual performance of his official duties and while going to or from his place of duty, or any other police officer, while in the actual performance of his official duties;

(2) A State deputy conservation officer or a full-time employee of the Division of Parks and Forestry having the power of arrest and authorized to carry weapons, while in the actual performance of his official duties;

(3) (Deleted by amendment, P.L.1986, c.150.)

(4) A court attendant serving as such under appointment by the sheriff of the county or by the judge of any municipal court or other court of this State, while in the actual performance of his official duties;

(5) A guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State, while in the actual performance of his official duties;

(6) A member of a legally recognized military organization while actually under orders or while going to or from the prescribed place of meeting and carrying the weapons prescribed for drill, exercise or parade;

(7) An officer of the Society for the Prevention of Cruelty to Animals, while in the actual performance of his duties;

(8) An employee of a public utilities corporation actually engaged in the transportation of explosives;

(9) A railway policeman, except a transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided that he has passed an approved police academy training program consisting of at least 280 hours. The training program shall include, but need not be limited to, the handling of firearms, community relations, and juvenile relations;

(10) A campus police officer appointed under P.L.1970, c.211 (C.18A:6-4.2 et seq.) at all times. Prior to being permitted to carry a firearm, a campus police officer shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(11) (Deleted by amendment, P.L.2003, c.168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c.291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c.362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police

officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair.

For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b.,

subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in

paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including a retirement because of a disability pursuant to section 6 of P.L.1944, c.255 (C.43:16A-6), section 7 of P.L.1944, c.255 (C.43:16A-7), section 1 of P.L.1989, c.103 (C.43:16A-6.1) or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of five or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is less than 70 years of age, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State or county corrections officer; a full-time county park police officer; a full-time county prosecutor's detective or investigator; or a full-time federal law enforcement officer from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer, within six months after retirement, shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

(a) The name and address of the retired officer;

- (b) The date that the retired officer was hired and the date that the officer retired;
- (c) A list of all handguns known to be registered to that officer;
- (d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and
- (e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of such a hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth

in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

Amended 1979, c.179, s.5; 1979, c.332, s.8; 1981, c.108, s.1; 1981, c.219, s.1; 1981, c.294, s.1; 1981, c.409, s.2; 1981, c.480, s.1; 1981, c.511, s.4; 1982, c.154, s.1; 1982, c.173, s.1; 1983, c.479, s.3; 1983, c.552; 1985, c.76, s.8; 1985, c.150, s.1; 1985, c.324, s.1 (s.3 eff. date amended 1986, c.64); 1985, c.376, s.1; 1985, c.439, s.13, (s.15 eff. date amended 1986, c.2); 1986, c.150, ss.7,8; 1987, c.139; 1987, c.172; 1989, c.291, s.4; 1991, c.327, s.2; 1991, c.386, s.3; 1992, c.94, s.2; 1993, c.246, s.2; 1995, c.273, s.2; 1995, c.280, s.21; 1997, c.67, s.1; 1997, c.210, s.6; 1997, c.393; 2001, c.79, s.15; 2001, c.362, s.4; 2003, c.168, s.2.

2C:40-22 Penalty for causing death or injury while driving in violation of R.S.39:3-40.

a. A person who, while operating a motor vehicle in violation of R.S.39:3-40, is involved in an accident resulting in the death of another person, shall be guilty of a crime of the third degree, in addition to any other penalties applicable under R.S.39:3-40. The person's driver's license shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40. The additional period of suspension shall commence upon the completion of any term of imprisonment.

b. A person who, while operating a motor vehicle in violation of R.S.39:3-40, is involved in an accident resulting in serious bodily injury, as defined in N.J.S.2C:11-1, to

another person shall be guilty of a crime of the fourth degree, in addition to any other penalties applicable under R.S.39:3-40. The person's driver's license shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40. The additional period of suspension shall commence upon the completion of any term of imprisonment.

c. The provisions of N.J.S.2C:2-3 governing the causal relationship between conduct and result shall not apply in a prosecution under this section. For purposes of this offense, the defendant's act of operating a motor vehicle while his driver's license or reciprocity privilege has been suspended or revoked or who operates a motor vehicle without being licensed to do so is the cause of death or injury when:

(1) The operation of the motor vehicle is an antecedent but for which the death or injury would not have occurred; and

(2) The death or injury was not:

(a) too remote in its occurrence as to have a just bearing on the defendant's liability; or

(b) too dependent upon the conduct of another person which was unrelated to the defendant's operation of a motor vehicle as to have a just bearing on the defendant's liability.

d. It shall not be a defense to a prosecution under this section that the decedent contributed to his own death or injury by reckless or negligent conduct or operation of a motor vehicle.

e. Nothing in this section shall be construed to preclude or limit any prosecution for homicide.

L.2001,c.213,s.2.

2C:43-1. Degrees of crimes

2C:43-1. Degrees of Crimes. a. Crimes defined by this code are classified, for the purpose of sentence, into four degrees, as follows:

(1) Crimes of the first degree;

(2) Crimes of the second degree;

(3) Crimes of the third degree; and

(4) Crimes of the fourth degree.

A crime is of the first, second, third or fourth degree when it is so designated by the

code. An offense, declared to be a crime, without specification of degree, is of the fourth degree.

b. Notwithstanding any other provision of law, a crime defined by any statute of this State other than this code and designated as a high misdemeanor shall constitute for the purpose of sentence a crime of the third degree. Except as provided in sections 2C:1-4c. and 2C:1-5b. and notwithstanding any other provision of law, a crime defined by any statute of this State other than this code and designated as a misdemeanor shall constitute for the purpose of sentence a crime of the fourth degree.

Amended by L. 1979, c. 178, s. 81; 1987, c. 106, s. 8.

1. 2C:43-2 Sentence in accordance with code; authorized dispositions.

Sentence in accordance with code; authorized dispositions. a. Except as otherwise provided by this code, all persons convicted of an offense or offenses shall be sentenced in accordance with this chapter.

b. Except as provided in subsection a. of this section and subject to the applicable provisions of the code, the court may suspend the imposition of sentence on a person who has been convicted of an offense, or may sentence him as follows:

(1) To pay a fine or make restitution authorized by N.J.S.2C:43-3 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

(2) Except as provided in subsection g. of this section, to be placed on probation and, in the case of a person convicted of a crime, to imprisonment for a term fixed by the court not exceeding 364 days to be served as a condition of probation, or in the case of a person convicted of a disorderly persons offense, to imprisonment for a term fixed by the court not exceeding 90 days to be served as a condition of probation; or

(3) To imprisonment for a term authorized by sections 2C:11-3, 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

(4) To pay a fine, make restitution and probation, or fine, restitution and imprisonment; or

(5) To release under supervision in the community or to require the performance of community-related service; or

(6) To a halfway house or other residential facility in the community, including agencies which are not operated by the Department of Human Services; or

(7) To imprisonment at night or on weekends with liberty to work or to participate in training or educational programs.

c. Instead of or in addition to any disposition made according to this section, the court may postpone, suspend, or revoke for a period not to exceed two years the driver's license, registration certificate, or both of any person convicted of a crime, disorderly persons offense, or petty disorderly persons offense in the course of which a motor vehicle was used. In imposing this disposition and in deciding the duration of the postponement, suspension, or revocation, the court shall consider the severity of the crime or offense and the potential effect of the loss of driving privileges on the person's ability to be rehabilitated. Any postponement, suspension, or revocation shall be imposed consecutively with any custodial sentence.

d. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

e. The court shall state on the record the reasons for imposing the sentence, including its findings pursuant to the criteria for withholding or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration of the defendant's eligibility for release under the law governing parole and the factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence.

f. The court shall explain the parole laws as they apply to the sentence and shall state:

(1) the approximate period of time in years and months the defendant will serve in custody before parole eligibility;

(2) the jail credits or the amount of time the defendant has already served;

(3) that the defendant may be entitled to good time and work credits; and

(4) that the defendant may be eligible for participation in the Intensive Supervision Program.

g. Notwithstanding the provisions of paragraph (2) of subsection b. of this section, a court imposing sentence on a defendant who has been convicted of any offense enumerated in subsection a. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) may not sentence the defendant to be placed on probation.

Amended 1979, c.178, s.82; 1981, c.269, s.2; 1983, c.124, s.1; 1987, c.106, s.9; 1994, c.155; 1997, c.253, s.1; 2003, c.267, s.5.

2C:43-3 Fines and restitutions

2C:43-3. Fines and Restitutions. A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

- a. (1) \$200,000.00 when the conviction is of a crime of the first degree;
- (2) \$150,000.00 when the conviction is of a crime of the second degree;
- b. (1) \$15,000.00 when the conviction is of a crime of the third degree;
- (2) \$10,000.00 when the conviction is of a crime of the fourth degree;
- c. \$1,000.00, when the conviction is of a disorderly persons offense;
- d. \$500.00, when the conviction is of a petty disorderly persons offense;

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term "victim" shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim. The terms "gain" and "loss" shall also mean, where appropriate, the amount of any tax, fee, penalty and interest avoided, evaded, or otherwise unpaid or improperly retained or disposed of;

f. Any higher amount specifically authorized by another section of this code or any other statute;

g. Up to twice the amounts authorized in subsection a., b., c. or d. of this section, in the case of a second or subsequent conviction of any tax offense defined in Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, as amended and supplemented, or of any offense defined in chapter 20 or

21 of this code;

h. In the case of violations of chapter 35, any higher amount equal to three times the street value of the controlled dangerous substance or controlled substance analog. The street value for purposes of this section shall be determined pursuant to subsection e. of N.J.S.2C:44-2.

The restitution ordered paid to the victim shall not exceed the victim's loss, except that in any case involving the failure to pay any State tax, the amount of restitution to the State shall be the full amount of the tax avoided or evaded, including full civil penalties and interest as provided by law. In any case where the victim of the offense is any department or division of State government, the court shall order restitution to the victim. Any restitution imposed on a person shall be in addition to any fine which may be imposed pursuant to this section.

Amended 1979, c.178, s.83; 1981, c.290, s.37; 1987, c.76, s.34; 1987, c.106, s.10; 1991, c.329, s.2; 1995, c.20, s.6; 1995, c.417, s.2; 1997, c.181, s.12.

2C:43-6. Sentence of imprisonment for crime; ordinary terms; mandatory terms

2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms; Mandatory Terms.

a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;
- (2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;
- (3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;
- (4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

b. As part of a sentence for any crime, where the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors, as set forth in subsections a. and b. of 2C:44-1, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a., or one-half of the term set pursuant to a maximum period of incarceration for a crime set forth in any statute other than this code, during which the defendant shall not be eligible for parole; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. A person who has been convicted under 2C:39-4a. of possession of a firearm with

intent to use it against the person of another, or of a crime under any of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in 2C:39-1f., shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth degree.

A person who has been convicted of an offense enumerated by this subsection and who used or possessed a firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of a firearm as defined in 2C:44-3d., shall be sentenced by the court to an extended term as authorized by 2C:43-7c., notwithstanding that extended terms are ordinarily discretionary with the court.

d. The court shall not impose a mandatory sentence pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a firearm. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

e. A person convicted of a third or subsequent offense involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any other provision of this code, or under any of the provisions of Title 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes, as amended and supplemented, shall be sentenced to a term of imprisonment by the court. This shall not preclude an application for and imposition of an extended term of imprisonment under N.J.S.2C:44-3 if the provisions of that section are applicable to the offender.

f. A person convicted of manufacturing, distributing, dispensing or possessing with intent to distribute any dangerous substance or controlled substance analog under N.J.S.2C:35-5, of maintaining or operating a controlled dangerous substance production facility under N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme under N.J.S.2C:35-6, leader of a narcotics trafficking network under N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent to distribute on or near school property or buses under section 1 of P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of manufacturing, distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog, shall upon

application of the prosecuting attorney be sentenced by the court to an extended term as authorized by subsection c. of N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily discretionary with the court. The term of imprisonment shall, except as may be provided in N.J.S.2C:35-12, include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, not less than seven years if the person is convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The court shall not impose an extended term pursuant to this subsection unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish the ground therefor by a preponderance of the evidence. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

For the purpose of this subsection, a previous conviction exists where the actor has at any time been convicted under chapter 35 of this title or Title 24 of the Revised Statutes or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of P.L.1987, c.101 (C.2C:35-7).

g. Any person who has been convicted under subsection a. of N.J.S.2C:39-4 of possessing a machine gun or assault firearm with intent to use it against the person of another, or of a crime under any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5, who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a machine gun or assault firearm shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at 10 years for a crime of the first or second degree, five years for a crime of the third degree, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for crimes of the first degree.

A person who has been convicted of an offense enumerated in this subsection and who used or possessed a machine gun or assault firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of any firearm as defined in subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an extended term as authorized by subsection d. of N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily discretionary with the court.

h. The court shall not impose a mandatory sentence pursuant to subsection g. of this section, subsections d. of N.J.S.2C:43-7 or N.J.S.2C:44-3, unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a machine gun or assault firearm. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

i. A person who has been convicted under paragraph (6) of subsection b. of 2C:12-1 of causing bodily injury while eluding shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between one-third and one-half of the sentence imposed by the court. The minimum term established by this subsection shall not prevent the court from imposing a presumptive term of imprisonment pursuant to paragraph (1) of subsection f. of 2C:44-1.

Amended 1979,c.178,s.85; 1981,c.31,s.1; 1981,c.290,s.38; 1981,c.569,s.1; 1982,c.119,s.1; 1987,c.76,s.35; 1987,c.106,s.12; 1988,c.44,s.13; 1990,c.32,s.6; 1993,c.219,s.6.

2C:43-6.1. Person under minimum mandatory sentence for possession of firearm with intent to use against property of another; review of sentence; imposition of other sentence

Any person who, on the effective date of this amendatory and supplementary act, is serving a minimum mandatory sentence as provided for by N.J.S. 2C:43-6c. solely as a result of his conviction under subsection a. of N.J.S. 2C:39-4 for the possession of a firearm with intent to use it against the property of another, and has not had his sentence suspended or been paroled or discharged, may move to have his sentence reviewed by the sentencing court. For good cause shown, the court may impose any sentence which would have otherwise been available for such person.

L.1982, c. 119, s. 2, eff. Aug. 31, 1982.

2C:43-6.2. Probation; reduction of mandatory minimum term

1. On a motion by the prosecutor made to the assignment judge that the imposition of a mandatory minimum term of imprisonment under (a) subsection c. of N.J.S.2C:43-6 for a defendant who has not previously been convicted of an offense under that subsection, or (b) subsection e. of N.J.S.2C:39-10 for a defendant who has not previously been convicted of an offense under chapter 39 of Title 2C of the New Jersey Statutes, does not serve the interests of justice, the assignment judge shall place the defendant on probation pursuant to paragraph (2) of subsection b. of N.J.S.2C:43-2 or reduce to one year the mandatory minimum term of imprisonment during which the defendant will be ineligible for parole. The sentencing court may also refer a case of a defendant who has not previously been convicted of an offense under that subsection to the assignment judge, with the approval of the prosecutor, if the sentencing court believes that the interests of

justice would not be served by the imposition of a mandatory minimum term.

L.1989,c.53,s.1; amended 1993,c.49,s.2.

2C:43-6.3. Review of sentence

Any person who, on the effective date of this act, is serving a mandatory minimum sentence as provided for by subsection c. of N.J.S.2C:43-6, who has not been previously convicted under that subsection, and has not had his sentence suspended or been paroled or discharged, may move to have his sentence reviewed by the assignment judge for the sentencing court. If the prosecutor agrees that the sentence under review does not serve the interests of justice, the judge shall reduce the mandatory minimum term of imprisonment without parole eligibility to one year or place the person on probation pursuant to paragraph (2) of subsection b. of N.J.S.2C:43-2.

L.1989, c.53, s.2.

2C:43-6.4 Special sentence of parole supervision for life.

2. a. Notwithstanding any provision of law to the contrary, a judge imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4, luring or an attempt to commit any of these offenses shall include, in addition to any sentence authorized by this Code, a special sentence of parole supervision for life.

b. The special sentence of parole supervision for life required by this section shall commence immediately upon the defendant's release from incarceration. If the defendant is serving a sentence of incarceration for another offense at the time he completes the custodial portion of the sentence imposed on the present offense, the special sentence of parole supervision for life shall not commence until the defendant is actually released from incarceration for the other offense. Persons serving a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner of Corrections, shall be supervised by the Division of Parole of the State Parole Board, shall be subject to the provisions and conditions set forth in subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and shall be subject to conditions appropriate to protect the public and foster rehabilitation. If the defendant violates a condition of a special sentence of parole supervision for life, the defendant shall be subject to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and for the purpose of calculating the limitation on time served pursuant to section 21 of P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon the defendant related to the special sentence of parole supervision for life shall be deemed to be a term of life imprisonment.

When the court suspends the imposition of sentence on a defendant who has been convicted of any offense enumerated in subsection a. of this section, the court may not suspend imposition of the special sentence of parole supervision for life, which shall commence immediately, with the Division of Parole of the State Parole Board maintaining supervision over that defendant, including the defendant's compliance with any conditions imposed by the court pursuant to N.J.S.2C:45-1, in accordance with the provisions of this subsection. Nothing contained in this subsection shall prevent the court from at any time proceeding under the provisions of N.J.S.2C:45-1 through 2C:45-4 against any such defendant for a violation of any conditions imposed by the court when it suspended imposition of sentence, or prevent the Division of Parole from proceeding under the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) against any such defendant for a violation of any conditions of the special sentence of parole supervision for life, including the conditions imposed by the court pursuant to N.J.S.2C:45-1. In any such proceeding by the Division of Parole, the provisions of subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b) authorizing revocation and return to prison shall be applicable to such a defendant, notwithstanding that the defendant may not have been sentenced to or served any portion of a custodial term for conviction of an offense enumerated in subsection a. of this section.

c. A person sentenced to a term of parole supervision for life may petition the Superior Court for release from that parole supervision. The judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from parole supervision. Notwithstanding the provisions of section 22 of P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of parole supervision for life may be released from that parole supervision term only by court order as provided in this subsection.

d. A person who violates a condition of a special sentence imposed pursuant to this section without good cause is guilty of a crime of the fourth degree. Notwithstanding any other law to the contrary, a person sentenced pursuant to this subsection shall be sentenced to a term of imprisonment, unless the court is clearly convinced that the interests of justice so far outweigh the need to deter this conduct and the interest in public safety that a sentence to imprisonment would be a manifest injustice. Nothing in this subsection shall preclude subjecting a person who violates any condition of a special sentence of parole supervision for life to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to the provisions of subsection c. of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

e. A person who, while serving a special sentence of parole supervision for life imposed pursuant to this section, commits a violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5, subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, N.J.S.2C:13-6, N.J.S.2C:14-2, N.J.S.2C:14-3, N.J.S.2C:24-4, N.J.S.2C:18-2 when the offense is a crime of the second degree, or subsection a. of N.J.S.2C:39-4 shall be sentenced to an extended

term of imprisonment as set forth in N.J.S.2C:43-7, which term shall, notwithstanding the provisions of N.J.S.2C:43-7 or any other law, be served in its entirety prior to the person's resumption of the term of parole supervision for life.

L.1994,c.130,s.2; amended 2003, c.267, s.1.

2C:43-7 Sentence of imprisonment for crime; extended terms.

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced, and in the cases designated in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997, c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall be sentenced, to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in the case of a crime of the fourth degree pursuant to any other provision of law for a term which shall be fixed by the court between three and five years;

(6) In the case of the crime of murder, for a specific term of years which shall be fixed by the court between 35 years and life imprisonment, of which the defendant shall serve 35 years before being eligible for parole;

(7) In the case of kidnapping under paragraph (2) of subsection c. of 2C:13-1, for a specific term of years which shall be fixed by the court between 30 years and life imprisonment, of which the defendant shall serve 30 years before being eligible for parole.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall impose a sentence within the ranges permitted by 2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f, be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g, the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

Amended 1979, c.178, s.86; 1981, c.31, s.2; 1982, c.111, s.2; 1986, c.172, s.3; 1987, c.106, s.13; 1988, c.44, s.14; 1990, c.32, s.7; 1990, c.87, s.3; 1994, c.127, s.1; 1994, c.130, s.3; 1995, c.126, s.3; 1997, c.410, s.2; 2001, c.443, s.6; 2003, c.267, s.4.

2C:43-7.2 Mandatory service of 85% of sentence for certain offenses.

a. A court imposing a sentence of incarceration for a crime of the first or second degree enumerated in subsection d. of this section shall fix a minimum term of 85% of the sentence imposed, during which the defendant shall not be eligible for parole.

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

c. Notwithstanding any other provision of law to the contrary and in addition to any other sentence imposed, a court imposing a minimum period of parole ineligibility of 85 percent of the sentence pursuant to this section shall also impose a five-year term of parole supervision if the defendant is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the defendant is being sentenced for a crime of the second degree. The term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the Commissioner of the Department of Corrections and shall be supervised by the State Parole Board as if on parole and shall be subject to the provisions and conditions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

d. The court shall impose sentence pursuant to subsection a. of this section upon conviction of the following crimes or an attempt or conspiracy to commit any of these crimes:

- (1) N.J.S.2C:11-3, murder;
- (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- (3) N.J.S.2C:11-5, vehicular homicide;
- (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- (5) subsection b. of N.J.S.2C:12-11, disarming a law enforcement officer;
- (6) N.J.S.2C:13-1, kidnapping;
- (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

- (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;
- (9) N.J.S.2C:15-1, robbery;
- (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;
- (12) N.J.S.2C:18-2, burglary;
- (13) subsection a. of N.J.S.2C:20-5, extortion;
- (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities; or
- (15) N.J.S.2C:35-9, strict liability for drug induced deaths.
- (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism; or
- (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices.
- e. (Deleted by amendment, P.L.2001, c.129).
- L.1997,c.117,s.2; amended 2001, c.79, s.16; 2001, c.129, s.1; 2002, c.26, s.19.

2C:43-8. Sentence of imprisonment for disorderly persons offenses and petty disorderly persons offenses

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months in the case of a disorderly persons offense or 30 days in the case of a petty disorderly persons offense.

L.1978, c. 95, s. 2C:43-8, eff. Sept. 1, 1979.

2C:43-12. Supervisory treatment - pretrial intervention

2C:43-12. Supervisory Treatment--Pretrial Intervention. a. Public policy. The purpose of sections 2C:43-12 through 2C:43-22 of this chapter is to effectuate a Statewide program of Pretrial Intervention. It is the policy of the State of New Jersey that supervisory treatment should ordinarily be limited to persons who have not previously been convicted of any criminal offense under the laws of New Jersey, or under any

criminal law of the United States, or any other state when supervisory treatment would:

(1) Provide applicants, on an equal basis, with opportunities to avoid ordinary prosecution by receiving early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by an applicant, and when there is apparent causal connection between the offense charged and the rehabilitative or supervisory need, without which cause both the alleged offense and the need to prosecute might not have occurred; or

(2) Provide an alternative to prosecution for applicants who might be harmed by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct; or

(3) Provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses; or

(4) Provide assistance to criminal calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems; or

(5) Provide deterrence of future criminal or disorderly behavior by an applicant in a program of supervisory treatment.

b. Admission of an applicant into a program of supervisory treatment shall be measured according to the applicant's amenability to correction, responsiveness to rehabilitation and the nature of the offense.

c. The decision and reasons therefor made by the designated judges (or assignment judges), prosecutors and program directors in granting or denying applications for supervisory treatment, in recommending and ordering termination from the program or dismissal of charges, in all cases shall be reduced to writing and disclosed to the applicant.

d. If an applicant desires to challenge the decision of the prosecutor or program director not to recommend enrollment in a program of supervisory treatment the proceedings prescribed under section 14 shall be followed.

e. Referral. At any time prior to trial but after the filing of a criminal complaint, or

the filing of an accusation or the return of an indictment, with the consent of the prosecutor and upon written recommendation of the program director, the assignment judge or a judge designated by him may postpone all further proceedings against an applicant and refer said applicant to a program of supervisory treatment approved by the Supreme Court. Prosecutors and program directors shall consider in formulating their recommendation of an applicant's participation in a supervisory treatment program, among others, the following criteria:

- (1) The nature of the offense;
- (2) The facts of the case;
- (3) The motivation and age of the defendant;
- (4) The desire of the complainant or victim to forego prosecution;
- (5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;
- (6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;
- (7) The needs and interests of the victim and society;
- (8) The extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;
- (9) The applicant's record of criminal and penal violations and the extent to which he may present a substantial danger to others;
- (10) Whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;
- (11) Consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;
- (12) The history of the use of physical violence toward others;
- (13) Any involvement of the applicant with organized crime;
- (14) Whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution;

(15) Whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the State would be best served by processing his case through traditional criminal justice system procedures;

(16) Whether or not the applicant's participation in pretrial intervention will adversely affect the prosecution of codefendants; and

(17) Whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

f. Review of Supervisory Treatment Applications; Procedure Upon Denial. Each applicant for supervisory treatment shall be entitled to full and fair consideration of his application. If an application is denied, the program director or the prosecutor shall precisely state his findings and conclusion which shall include the facts upon which the application is based and the reasons offered for the denial. If the applicant desires to challenge the decision of a program director not to recommend, or of a prosecutor not to consent to, enrollment into a supervisory treatment program, a motion shall be filed before the designated judge (or assignment judge) authorized pursuant to the rules of court to enter orders.

g. Limitations. Supervisory treatment may occur only once with respect to any defendant and any person who has previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), shall not be eligible for supervisory treatment under this section. However, supervisory treatment, as provided herein, shall be available to a defendant irrespective of whether the defendant contests his guilt of the charge or charges against him.

h. Termination. Termination of supervisory treatment under this section shall be immediately reported to the assignment judge of the county who shall forward such information to the Administrative Director of the Courts.

i. Appointment of Program Directors; Authorized Referrals. Programs of supervisory treatment and appointment of the program directors require approval by the Supreme Court with the consent of the assignment judge and prosecutor. Referrals of participants from supervisory treatment programs may be to any public or private office or agency, including but not limited to, programs within the probation service of the court, offering counseling or any other social service likely to aid in the rehabilitation of the participant and to deter the commission of other offenses.

j. Health Care Professional Licensing Board Notification. The program director shall promptly notify the State Board of Medical Examiners when a State licensed physician or podiatrist has been enrolled in a supervisory treatment program after he has been charged with an offense involving drugs or alcohol.

Amended 1979, c.178, s.88; 1987,c.106,s.14; 1989,c.300,s.22.

2C:43-13. Supervisory treatment procedure

2C:43-13. Supervisory Treatment Procedure a. Agreement. The terms and duration of the supervisory treatment shall be set forth in writing, signed by the prosecutor and agreed to and signed by the participant. Payment of the assessment required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the agreement. If the participant is represented by counsel, defense counsel shall also sign the agreement. Each order of supervisory treatment shall be filed with the county clerk.

b. Charges. During a period of supervisory treatment the charge or charges on which the participant is undergoing supervisory treatment shall be held in an inactive status pending termination of the supervisory treatment pursuant to subsection d. or e. of this section.

c. Period of treatment. Supervisory treatment may be for such period, as determined by the designated judge or the assignment judge, not to exceed three years, provided, however, that the period of supervisory treatment may be shortened or terminated as the program director may determine with the consent of the prosecutor and the approval of the court.

d. Dismissal. Upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice.

e. Violation of conditions. Upon violation of the conditions of supervisory treatment, the court shall determine, after summary hearing, whether said violation warrants the participant's dismissal from the supervisory treatment program or modification of the conditions of continued participation in that or another supervisory treatment program. Upon dismissal of the participant from the supervisory treatment program, the charges against the participant may be reactivated and the prosecutor may proceed as though no supervisory treatment had been commenced.

f. Evidence. No statement or other disclosure by a participant undergoing supervisory treatment made or disclosed to the person designated to provide such supervisory treatment shall be disclosed, at any time, to the prosecutor in connection with the charge or charges against the participant, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant. Nothing provided herein, however, shall prevent the person providing supervisory treatment from informing the prosecutor, or the court, upon request or otherwise as to whether or not the participant is satisfactorily responding to supervisory treatment.

g. Delay. No participant agreeing to undergo supervisory treatment shall be permitted to complain of a lack of speedy trial for any delay caused by the commencement of supervisory treatment.

A person applying for admission to a program of supervisory treatment shall pay to the court a fee of \$75.00. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey. Of the moneys collected under this subsection, \$30.00 of each application fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be paid to the court, for use by the State.

Amended 1979,c.178,s.89; 1988,c.44,s.15; 1991,c.329,s.5; 1993,c.275,s.15.

2C:44-1. Criteria for withholding or imposing sentence of imprisonment

2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;

(7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond

that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled; and

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that his conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;

(7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances unlikely to recur;

(9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;

(12) The willingness of the defendant to cooperate with law enforcement authorities;

(13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the

person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b.of section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.1997, c.111 (C.2C:11-5.1 or 2C:12-1.1).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnaping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which

justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

Amended 1979, c.178, s.93; 1981, c.290, s.40; 1983, c.317, s.1; 1986, c.172, s.4; 1987, c.76, s.36; 1989, c.23, s.4; 1993, c.123, s.1; 1993, c.132, s.1; 1993, c.135; 1995, c.6, s.2; 2001, c.443, s.7; 2003, c.55, s.4; 2003, c.184, s.4.

2C:44-2. Criteria for Imposing Fines and Restitutions

a. The court may sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation if:

(1) The defendant has derived a pecuniary gain from the offense or the court is of opinion that a fine is specially adapted to deterrence of the type of offense involved or to the correction of the offender;

(2) The defendant is able, or given a fair opportunity to do so, will be able to pay the fine; and

(3) The fine will not prevent the defendant from making restitution to the victim of the offense.

b. The court shall sentence a defendant to pay restitution in addition to a sentence of imprisonment or probation that may be imposed if:

(1) The victim, or in the case of a homicide, the nearest relative of the victim, suffered

a loss; and

(2) The defendant is able to pay or, given a fair opportunity, will be able to pay restitution.

c. (1) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

(2) In determining the amount and method of payment of restitution, the court shall take into account all financial resources of the defendant, including the defendant's likely future earnings, and shall set the amount of restitution so as to provide the victim with the fullest compensation for loss that is consistent with the defendant's ability to pay. The court shall not reduce a restitution award by any amount that the victim has received from the Violent Crimes Compensation Board, but shall order the defendant to pay any restitution ordered for a loss previously compensated by the Board to the Violent Crimes Compensation Board. If restitution to more than one person is set at the same time, the court shall set priorities of payment.

d. Nonpayment. When a defendant is sentenced to pay a fine or make restitution, or both, the court shall not impose at the same time an alternative sentence to be served in the event that the fine or restitution is not paid. The response of the court to nonpayment shall be determined only after the fine or restitution has not been paid, as provided in section 2C:46-2.

e. Whenever the maximum potential fine which may be imposed on a conviction for an offense defined in the "Comprehensive Drug Reform Act of 1986," N.J.S. 2C:35-1 et al. depends on the street value of the controlled dangerous substance or controlled substance analog involved and the court intends to impose a fine in excess of the maximum ordinary fine applicable to the offense for which defendant was convicted, and where the fine has not been agreed to pursuant to the provisions of N.J.S.2C:35-12, the court at the time of sentence shall determine the street value at the time and place of the offense based on the amount and purity of the controlled dangerous substance or controlled substance analog involved. The sentencing court's finding as to the street value may be based on expert opinion in the form of live testimony or by affidavit, or by such other means as the court deems appropriate. The court's finding as to street value shall not be subject to modification by an appellate court except upon a showing that the finding was totally lacking in support on the record or was arbitrary or capricious.

f. The ordering of restitution pursuant to this section shall not operate as a bar to the seeking of civil recovery by the victim based on the incident underlying the criminal conviction. Restitution ordered under this section is to be in addition to any civil remedy which a victim may possess, but any amount due the victim under any civil remedy shall be reduced by the amount ordered under this section to the extent necessary to avoid double compensation for the same loss, and the initial restitution judgment shall remain in full force and effect.

Amended 1979,c.178,s.94; 1987,c.106,s.15; 1991,c.329,s.6.

2C:52-1. Definition of expungement

a. Except as otherwise provided in this chapter, expungement shall mean the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.

b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.

L.1979, c. 178, s. 108, eff. Sept. 1, 1979.

2C:52-4.1. Juvenile delinquent; expungement of adjudications and charges

a. Any person adjudged a juvenile delinquent may have such adjudication expunged as follows:

(1) Pursuant to N.J.S. 2C:52-2, if the act committed by the juvenile would have constituted a crime if committed by an adult;

(2) Pursuant to N.J.S. 2C:52-3, if the act committed by the juvenile would have constituted a disorderly or petty disorderly persons offense if committed by an adult; or

(3) Pursuant to N.J.S. 2C:52-4, if the act committed by the juvenile would have constituted an ordinance violation if committed by an adult.

For purposes of expungement, any act which resulted in a juvenile being adjudged a delinquent shall be classified as if that act had been committed by an adult.

b. Additionally, any person who has been adjudged a juvenile delinquent may have his entire record of delinquency adjudications expunged if:

(1) Five years have elapsed since the final discharge of the person from legal custody or supervision or 5 years have elapsed after the entry of any other court order not involving custody or supervision;

(2) He has not been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the 5 years prior to the filing the petition, and no proceeding or complaint is pending seeking such a conviction or adjudication;

(3) He was never adjudged a juvenile delinquent on the basis of an act which if committed by an adult would constitute a crime not subject to expungement under N.J.S. 2C:52-2;

(4) He has never had an adult conviction expunged; and

(5) He has never had adult criminal charges dismissed following completion of a supervisory treatment or other diversion program.

c. Any person who has been charged with an act of delinquency and against whom proceedings were dismissed may have the filing of those charges expunged pursuant to the provisions of N.J.S. 2C:52-6.

L.1980, c. 163, s. 1. Amended by L.1981, c. 290, s. 44, eff. Sept. 24, 1981.

2C:52-5. Expungement of records of young drug offenders

Expungement of Records of Young Drug Offenders. Notwithstanding the provisions of sections 2C:52-2 and 2C:52-3, after a period of not less than one year following conviction, termination of probation or parole or discharge from custody, whichever is later, any person convicted of an offense under chapters 35 or 36 of this title for the possession or use of a controlled dangerous substance, convicted of violating P.L. 1955, c. 277, s. 3 (C. 2A:170-77.5), or convicted of violating P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), and who at the time of the offense was 21 years of age or younger, may apply to the Superior Court in the county wherein the matter was disposed of for the expungement of such person's conviction and all records pertaining thereto. The relief of expungement under this section shall be granted only if said person has not, prior to the time of hearing, violated any of the conditions of his probation or parole, albeit subsequent to discharge from probation or parole, has not been convicted of any previous or subsequent criminal act or any subsequent or previous violation of chapters 35 or 36 of this title or of P.L. 1955, c. 277, s. 3 (C. 2A:170-77.5) or of P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), or who has not had a prior or subsequent criminal matter dismissed because of acceptance into a supervisory treatment or other diversion program.

This section shall not apply to any person who has been convicted of the sale or distribution of a controlled dangerous substance or possession with the intent to sell any controlled dangerous substance except:

(1) Marihuana, where the total sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total amount sold, distributed or possessed with intent to sell was 5 grams or less.

L. 1979, c. 178, s. 111; amended by L. 1987, c. 106, s. 16.

2C:52-6. Arrests not resulting in conviction

a. In all cases, except as herein provided, wherein a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense or municipal ordinance violation under the laws of this State or of any governmental entity thereof and against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in section 2C:52-7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

b. Any person who has had charges dismissed against him pursuant to P.L.1970, c. 226, s. 27 (C. 24:21-27) or pursuant to a program of supervisory treatment, shall be barred from the relief provided in this section until 6 months after the entry of the order of dismissal.

c. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.

L.1979, c. 178, s. 113, eff. Sept. 1, 1979.

2C:52-7. Petition for expungement

Every petition for expungement filed pursuant to this chapter shall be verified and include:

- a. Petitioner's date of birth.
- b. Petitioner's date of arrest.
- c. The statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted.
- d. The original indictment, summons or complaint number.
- e. Petitioner's date of conviction, or date of disposition of the matter if no conviction resulted.
- f. The court's disposition of the matter and the punishment imposed, if any.

L.1979, c. 178, s. 114, eff. Sept. 1, 1979.

2C:52-8. Statements to accompany petition

There shall be attached to a petition for expungement:

- a. A statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons or criminal charges pending against the petitioner at the time of filing of the petition for expungement.

b. In those instances where the petitioner is seeking the expungement of a criminal conviction, a statement with affidavit or verification that he has never been granted expungement, sealing or similar relief regarding a criminal conviction by any court in this State or other state or by any Federal court. "Sealing" refers to the relief previously granted pursuant to P.L.1973, c. 191 (C. 2A:85-15 et seq.).

c. In those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a statement with affidavit or verification setting forth the nature of the original charge, the court of disposition and date of disposition.

L.1979, c. 178, s. 115, eff. Sept. 1, 1979.

2C:52-9. Order fixing time for hearing

Upon the filing of a petition for relief pursuant to this chapter, the court shall, by order, fix a time not less than 35 nor more than 60 days thereafter for hearing of the matter.

L.1979, c. 178, s. 116, eff. Sept. 1, 1979.

2C:52-10. Service of petition and documents

A copy of each petition, together with a copy of all supporting documents, shall be served pursuant to the rules of court upon the Superintendent of State Police; the Attorney General; the county prosecutor of the county wherein the court is located; the chief of police or other executive head of the police department of the municipality wherein the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest of the individual; the superintendent or warden of any institution in which the petitioner was confined; and, if a disposition was made by a municipal court, upon the magistrate of that court. Service shall be made within 5 days from the date of the order setting the date for the hearing upon the matter.

L.1979, c. 178, s. 117, eff. Sept. 1, 1979.

2C:52-11. Order expungement where no objection prior to hearing

If, prior to the hearing, there is no objection from those law enforcement agencies notified or from those offices or agencies which are required to be served under 2C:52-10, and no reason, as provided in section 2C:52-14, appears to the contrary, the court may, without a hearing, grant an order directing the clerk of the court and all relevant criminal justice and law enforcement agencies to expunge records of said disposition including evidence of arrest, detention, conviction and proceedings related thereto.

L.1979, c. 178, s. 118, eff. Sept. 1, 1979.

2C:52-12. Denial of relief although no objection entered

In the event that none of the persons or agencies required to be noticed under 2C:52-10 has entered any objection to the relief being sought, the court may nevertheless deny the relief sought if it concludes that petitioner is not entitled to relief for the reasons provided in section 2C:52-14.

L.1979, c. 178, s. 119, eff. Sept. 1, 1979.

2C:52-13. When hearing on petition for expungement shall not be held

No petition for relief made pursuant to this section shall be heard by any court if the petitioner, at the time of filing or date of hearing, has a charge or charges pending against him which allege the commission of a crime, disorderly persons offense or petty disorderly persons offense. Such petition shall not be heard until such times as all pending criminal and or disorderly persons charges are adjudicated to finality.

L.1979, c. 178, s. 120, eff. Sept. 1, 1979.

2C:52-14. Grounds for denial of relief

A petition for expungement filed pursuant to this chapter shall be denied when:

- a. Any statutory prerequisite, including any provision of this chapter, is not fulfilled or there is any other statutory basis for denying relief.
- b. The need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter. An application may be denied under this subsection only following objection of a party given notice pursuant to 2C:52-10 and the burden of asserting such grounds shall be on the objector.
- c. In connection with a petition under section 2C:52-6, the acquittal, discharge or dismissal of charges resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.
- d. The arrest or conviction sought to be expunged is, at the time of hearing, the subject matter of civil litigation between the petitioner or his legal representative and the State, any governmental entity thereof or any State agency and the representatives or employees of any such body.
- e. A person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present petition. This provision shall not apply:
 - (1) When the person is seeking the expungement of a municipal ordinance violation or,
 - (2) When the person is seeking the expungement of records pursuant to section 2C:52-6.

f. The person seeking the relief of expungement of a conviction for a disorderly persons, petty disorderly persons, or criminal offense has prior to or subsequent to said conviction been granted the dismissal of criminal charges following completion of a supervisory treatment or other diversion program.

L.1979, c. 178, s. 121, eff. Sept. 1, 1979.

2C:52-15. Records to be removed; control

If an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the agencies which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, and shall be placed in the control of a person who has been designated by the head of each such agency which, at the time of the hearing, possesses said records. That designated person shall, except as otherwise provided in this chapter, insure that such records or the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.

2C:52-16. Expunged record including names of persons other than petitioner

Any record or file which is maintained by a judicial or law enforcement agency, or agency in the criminal justice system, which is the subject of an order of expungement which includes the name or names of persons other than that of the petitioner need not be isolated from the general files of the agency retaining same if the other persons named in said record or file have not been granted an order of expungement of said record, provided that a copy of the record shall be given to the person designated in 2C:52-15 and the original shall remain in the agency's general files with the petitioner's name and other personal identifiers obliterated and deleted.

L.1979, c. 178, s. 123, eff. Sept. 1, 1979.

2C:52-17. Use of expunged records by agencies on pending petition for expungement

Expunged records may be used by the agencies that possess same to ascertain whether a person has had prior conviction expunged, or sealed under prior law, when the agency possessing the record is noticed of a pending petition for the expungement of a conviction. Any such agency may supply information to the court wherein the motion is pending and to the other parties who are entitled to notice pursuant to 2C:52-10.

L.1979, c. 178, s. 124, eff. Sept. 1, 1979.

2C:52-18. Supplying information to violent crimes compensation board

Information contained in expunged records may be supplied to the Violent Crimes Compensation Board, in conjunction with any claim which has been filed with said board.

2C:52-19. Order of superior court permitting inspection of records or release of information; limitations

Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need based on specific facts. The motion or any order granted pursuant thereto shall specify the person or persons to whom the records and information are to be shown and the purpose for which they are to be utilized. Leave to inspect shall be granted by the court only in those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings. Such records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purposes of impeachment or otherwise but may be used for purposes of sentencing on a subsequent offense after guilt has been established.

L.1979, c. 178, s. 126, eff. Sept. 1, 1979.

2C:52-20. Use of expunged records in conjunction with supervisory treatment or diversion programs

Expunged records may be used by any judge in determining whether to grant or deny the person's application for acceptance into a supervisory treatment or diversion program for subsequent charges. Any expunged records which are possessed by any law enforcement agency may be supplied to the Attorney General, any county prosecutor or judge of this State when same are requested and are to be used for the purpose of determining whether or not to accept a person into a supervisory treatment or diversion program for subsequent charges.

L.1979, c. 178, s. 127, eff. Sept. 1, 1979.

2C:52-21. Use of expunged records in conjunction with setting bail, presentence report or sentencing

Expunged records, or sealed records under prior law, of prior arrests or convictions shall be provided to any judge, county prosecutor, probation department or the Attorney General when same are requested for use in conjunction with a bail hearing or for the preparation of a presentence report or for purpose of sentencing.

L.1979, c. 178, s. 128, eff. Sept. 1, 1979.