

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:24-8 (Senior Citizens and Disabled--abuse & neglected--approp. \$90,000 under Domestic Violence Act)

LAWS OF: 1989 **CHAPTER:** 23

Bill No: S2159

Sponsor(s): Brown and Pallone

Date Introduced: February 22, 1988

Committee: Assembly: Senior Citizens

Senate: Aging

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: December 19, 1988

Senate: March 28, 1988

Date of Approval: February 6, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: Yes

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: Yes

Hearings: Yes

974.90 New Jersey. Advisory Counsel on Elderly Abuse.
044 Report... May 15, 1986.
1986g

974.90 New Jersey. Legislature. Senate. Committee on Aging.
044 Public hearing on report of New Jersey Advisory Counsel on Elderly
1986q Abuse, held 8-13-86. Trenton, 1986

974.90 New Jersey. Legislature. Assembly. Committee on Aging.
044 Public hearing on prevention of crime and abuse against senior
1986m citizens, held 9-15-86. Trenton, 1986.

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[FIRST REPRINT]
SENATE, No. 2159

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1988

By Senators BROWN and PALLONE

1 AN ACT concerning abuse and neglect of elderly and disabled
persons, amending and supplementing Title 2C of the New
3 Jersey Statutes and making an appropriation therefor.

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

7 1. (New section) A person having a legal duty to care for or
who has assumed continuing responsibility for the care of a
9 person 60 years of age or older or disabled, who unreasonably
neglects to do or fails to permit to be done any act necessary for
11 the physical or mental health of the elderly or disabled person, is
guilty of a crime of the fourth degree. A person shall not be
13 considered to commit an offense under this section for the sole
reason that he provides or permits to be provided nonmedical
15 remedial treatment by spiritual means through prayer alone in
lieu of medical care, in accordance with the tenets and practices
17 of the person's established religious tradition, to a person to
whom he has a legal duty to care for or has assumed
19 responsibility for the care of. Nothing in this section shall be
construed to preclude or limit the prosecution or conviction for
21 any other offense defined in this code or in any other law of this
State.

23 2. Section 2 of P.L. 1981, c. 426 (C. 2C:25-2) is amended to
read as follows:

25 2. The Legislature finds and declares that domestic violence is
a serious crime against society; that there are thousands of
27 persons in this State who are regularly beaten, tortured and in
some cases even killed by their spouses or cohabitants; that a
29 significant number of women who are assaulted are pregnant;
that victims of domestic violence come from all social and
31 economic backgrounds and ethnic groups; that there is a positive

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Senate SAG committee amendments adopted February 29, 1988.

1 correlation between spouse abuse and child abuse; and that
2 children, even when they are not themselves physically assaulted,
3 suffer deep and lasting emotional effects from exposure to
4 domestic violence. It is therefore, the intent of the Legislature
5 to assure the victims of domestic violence the maximum
6 protection from abuse the law can provide.

7 The Legislature further finds and declares that the health and
8 welfare of some of its most vulnerable citizens, the elderly and
9 disabled, are at risk because of incidents of reported and
10 unreported domestic violence, abuse and neglect which are known
11 to include acts which victimize the elderly and disabled
12 emotionally, psychologically, physically and financially; because
13 of age, disabilities or infirmities, this group of citizens frequently
14 must rely on the aid and support of others; while the
15 institutionalized elderly are protected under P.L.1977, c.239 (C.
16 52:27G-1 et seq.), elderly and disabled adults in
17 noninstitutionalized or community settings may find themselves
18 victimized by family members or others upon whom they feel
19 compelled to depend.

20 The Legislature further finds and declares that violence against
21 the elderly and disabled, including criminal neglect of the elderly
22 and disabled under section 1 of P.L. . . . , c. . . . (C.) (now
23 pending before the Legislature as section 1 of this bill), must be
24 recognized and addressed on an equal basis as violence against
25 spouses and children in order to fulfill our responsibility as a
26 society to protect those who are less able to protect themselves.

27 The Legislature further finds and declares that even though
28 many of the existing criminal statutes are applicable to acts of
29 domestic violence, previous societal attitudes concerning
30 domestic violence have affected the response of our law
31 enforcement and judicial systems, resulting in these acts
32 receiving different treatment from similar crimes when they
33 occur in a domestic context. The Legislature finds that battered
34 adults presently experience substantial difficulty in gaining
35 access to protection from the judicial system, particularly due to
36 that system's inability to generate a prompt response in an
37 emergency situation.

38 It is the intent of the Legislature to stress that the primary
39 duty of a law enforcement officer when responding to a domestic
40 violence call is to enforce the laws allegedly violated and to

1 protect the victim. It is further intended that the official
2 response to domestic violence shall communicate the attitude
3 that violent behavior will not be excused or tolerated, and shall
4 make clear the fact that the existing criminal laws and civil
5 remedies created under this act will be enforced without regard
6 to the fact that the violence grows out of a domestic situation.

7 (cf: P.L. 1981, c.426, s.2)

8 3. Section 4 of P.L.1981, c.426 (C. 2C:25-4) is amended to
9 read as follows:

10 4. The Police Training Commission in the Division of Criminal
11 Justice shall develop and approve a training course on the
12 handling, investigation and response procedures concerning
13 reports of domestic violence and abuse and neglect of the elderly
14 and disabled. This training course shall be modified by the Police
15 Training Commission from time to time as need may require, and
16 shall be made available to all law enforcement personnel who are
17 likely to encounter situations of domestic violence or abuse or
18 neglect of the elderly and disabled. The Attorney General shall
19 be responsible for ensuring that law enforcement officers
20 throughout the State receive training concerning domestic
21 violence and abuse and neglect of the elderly and disabled.

22 The Police Training Commission [in the Department of Law and
23 and Public Safety] shall provide that all training for law
24 enforcement officers on the handling of domestic violence and
25 neglect and abuse of the elderly and disabled complaints shall
26 stress the enforcement of criminal laws in domestic situations,
27 the protection of the victim, and the use of available community
28 resources. Law enforcement agencies may establish domestic
29 crisis teams or individual officers may be trained in methods of
30 dealing with domestic violence and neglect and abuse of the
31 elderly and disabled. The teams may include social workers,
32 clergy or other persons trained in counseling, crisis intervention
33 or in the treatment of domestic violence and neglect and abuse of
34 the elderly and disabled victims. When an alleged incident of
35 domestic violence or neglect and abuse of the elderly and
36 disabled is reported, the agency shall dispatch a domestic crisis
37 team or specially trained officer, if available, to the scene of the
38 incident.

39 (cf: P.L.1981, c.426, s.4)

4. N.J.S. 2C:44-1 is amended to read as follows:

1 2C:44-1. Criteria for Withholding or Imposing Sentence of
2 Imprisonment. a. In determining the appropriate sentence to be
3 imposed on a person who has been convicted of an offense, the
4 court shall consider the following aggravating circumstances:

5 (1) The nature and circumstances of the offense, and the role
6 of the actor therein, including whether or not it was committed
7 in an especially heinous, cruel, or depraved manner;

8 (2) The gravity and seriousness of harm inflicted on the victim,
9 including whether or not the defendant knew or reasonably should
10 have known that the victim of the offense was particularly
11 vulnerable or incapable of resistance due to advanced age,
12 [disability,] ill-health, or extreme youth, or was for any other
13 reason substantially incapable of exercising normal physical or
14 mental power of resistance;

15 (3) The risk that the defendant will commit another offense;

16 (4) A lesser sentence will depreciate the seriousness of the
17 defendant's offense because it involved a breach of the public
18 trust under chapters 27 and 30, or the defendant took advantage
19 of a position of trust or confidence to commit the offense;

20 (5) There is a substantial likelihood that the defendant is
21 involved in organized criminal activity;

22 (6) The extent of the defendant's prior criminal record and the
23 seriousness of the offenses of which he has been convicted;

24 (7) The defendant committed the offense pursuant to an
25 agreement that he either pay or be paid for the commission of
26 the offense and the pecuniary incentive was beyond that inherent
27 in the offense itself;

28 (8) The defendant committed the offense against a police or
29 other law enforcement officer, correctional employee or fireman,
30 acting in the performance of his duties while in uniform or
31 exhibiting evidence of his authority, or the defendant committed
32 the offense because of the status of the victim as a public
33 servant;

34 (9) The need for deterring the defendant and others from
35 violating the law;

36 (10) The offense involved fraudulent or deceptive practices
37 committed against any department or division of State
38 government;

1 (11) The imposition of a fine, penalty or order of restitution
without also imposing a term of imprisonment would be perceived
3 by the defendant or others merely as part of the cost of doing
business, or as an acceptable contingent business or operating
5 expense associated with the initial decision to resort to unlawful
practices;

7 (12) The defendant committed the offense against a person who
he knew or should have known was 60 years of age or older, or
9 disabled.

b. In determining the appropriate sentence to be imposed on a
11 person who has been convicted of an offense, the court may
properly consider the following mitigating circumstances:

13 (1) The defendant's conduct neither caused nor threatened
serious harm;

15 (2) The defendant did not contemplate that his conduct would
cause or threaten serious harm;

17 (3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify
19 the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or
21 facilitated its commission;

(6) The defendant has compensated or will compensate the
23 victim of his conduct for the damage or injury that he sustained,
or will participate in a program of community service;

25 (7) The defendant has no history of prior delinquency or
criminal activity or has led a law-abiding life for a substantial
27 period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances
29 unlikely to recur;

(9) The character and attitude of the defendant indicate that
31 he is unlikely to commit another offense;

(10) The defendant is particularly likely to respond
33 affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive
35 hardship to himself or his dependents;

(12) The willingness of the defendant to cooperate with law
37 enforcement authorities;

(13) The conduct of a youthful defendant was substantially
39 influenced by another person more mature than the defendant.

1 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
3 imprisonment.

(2) When imposing a sentence of imprisonment the court shall
5 consider the defendant's eligibility for release under the law
governing parole, including time credits awarded pursuant to
7 Title 30 of the Revised Statutes, in determining the appropriate
term of imprisonment.

9 d. Presumption of imprisonment. The court shall deal with a
person who has been convicted of a crime of the first or second
11 degree by imposing a sentence of imprisonment unless, having
regard to the character and condition of the defendant, it is of
13 the opinion that his imprisonment would be a serious injustice
which overrides the need to deter such conduct by others.

15 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
17 previously been convicted of an offense, without imposing
sentence of imprisonment unless, having regard to the nature and
19 circumstances of the offense and the history, character and
condition of the defendant, it is of the opinion that his
21 imprisonment is necessary for the protection of the public under
the criteria set forth in subsection a.

23 f. Presumptive Sentences. (1) Except for the crime of murder,
unless the preponderance of aggravating or mitigating factors, as
25 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
27 court determines that a sentence of imprisonment is warranted,
it shall impose sentence as follows:

29 (a) To a term of 20 years for aggravated manslaughter or
kidnapping pursuant to paragraph (1) of subsection c. of N. J. S.
31 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
33 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;

35 (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.

37 In imposing a minimum term pursuant to 2C:43-6b, the
sentencing court shall specifically place on the record the
39 aggravating factors set forth in this section which justify the
imposition of a minimum term.

1 Unless the preponderance of mitigating factors set forth in
2 subsection b. weighs in favor of a lower term within the limits
3 authorized, sentences imposed pursuant to 2C:43-7a(1) shall have
4 a presumptive term of life imprisonment. Unless the
5 preponderance of aggravating and mitigating factors set forth in
6 subsections a. and b. weighs in favor of a higher or lower term
7 within the limits authorized, sentences imposed pursuant to
8 2C:43-7a(2) shall have a presumptive term of 50 years'
9 imprisonment; sentences imposed pursuant to 2C:43-7a(3) shall
10 have a presumptive term of 15 years' imprisonment; and
11 sentences imposed pursuant to 2C:43-7a(4) shall have a
12 presumptive term of seven years' imprisonment.

13 In imposing a minimum term pursuant to 2C:43-7b, the
14 sentencing court shall specifically place on the record the
15 aggravating factors set forth in this section which justify the
16 imposition of a minimum term.

17 (2) In cases of convictions for crimes of the first or second
18 degree where the court is clearly convinced that the mitigating
19 factors substantially outweigh the aggravating factors and where
20 the interest of justice demands, the court may sentence the
21 defendant to a term appropriate to a crime of one degree lower
22 than that of the crime for which he was convicted. If the court
23 does impose sentence pursuant to this paragraph, or if the court
24 imposes a noncustodial or probationary sentence upon conviction
25 for a crime of the first or second degree, such sentence shall not
26 become final for 10 days in order to permit the appeal of such
27 sentence by the prosecution.

28 g. Imposition of Noncustodial Sentences in Certain Cases. If
29 the court, in considering the aggravating factors set forth in
30 subsection a., finds the aggravating factor in paragraph a.(2) or
31 a.¹~~[(10)]~~ ~~(12)~~¹ and does not impose a custodial sentence, the court
32 shall specifically place on the record the mitigating factors which
33 justify the imposition of a noncustodial sentence.

(cf: P.L. 1987, c.76, s.36)

34 5. (New section) There is appropriated \$90,000 from the
35 General Fund to the Police Training Commission in the Division
36 of Criminal Justice in the Department of Law and Public Safety,
37 to effectuate and implement the training provisions of section 3
38 of this act.
39

1 6. This act shall take effect immediately.

3

SENIOR CITIZENS

5

 Public Safety

7 Provides additional protections for senior citizens and disabled
persons and appropriates \$90,000.

STATEMENT

2

4 This bill creates a new offense which makes it a fourth degree
6 crime for a person who has a legal duty to care for or who has
8 assumed continuing responsibility for the care of an elderly or
10 disabled person to unreasonably fail to do or permit to be done an
12 act necessary for the physical or mental health of that elderly or
14 disabled person. However, a person will not be considered to
16 have committed the crime if he provides nonmedical treatment
18 through prayer alone in accordance with the person's established
20 religious tradition.

12 The bill requires the Police Training Commission in the
14 Division of Criminal Justice in the Department of Law and Public
16 Safety to develop and update training curricula for police officers
18 concerning the handling, investigation and response procedures
20 for suspected incidents of domestic violence and elderly or
22 disabled abuse and neglect. The Attorney General, as chief law
24 enforcement officer, is responsible for ensuring that law
26 enforcement officers throughout the State receive training
28 concerning domestic violence and elderly or disabled abuse and
30 neglect.

22 The bill also creates a new aggravating factor which the court
24 must consider at sentencing when the defendant commits an
26 offense against a person who he knew or should have known was
28 60 years of age or older or disabled. The new aggravating factor
30 would not be limited to cases involving physical violence, but
would also apply to any other crime knowingly committed against
an elderly or disabled person, including financial crimes such as
theft or fraud.

30

32

SENIOR CITIZENS

Public Safety

34

36 Provides additional protections for senior citizens and disabled
persons and appropriates \$90,000.

ASSEMBLY SENIOR CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2159

STATE OF NEW JERSEY

DATED: APRIL 21, 1988

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The Assembly Senior Citizens Committee favorably reports Senate Bill No. 2159.

This bill creates a new offense which makes it a fourth degree crime for a person who has a legal duty to care for, or who has assumed continuing responsibility for the care of, an elderly or disabled person to unreasonably fail to do or permit to be done any act necessary for the physical or mental health of that elderly or disabled person. However, a person will not be considered to have committed the crime if he provides nonmedical treatment through prayer alone in accordance with the person's established religious tradition.

The bill requires the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety to develop and update training curricula for police officers concerning the handling, investigation and response procedure for suspected incidents of domestic violence and elderly or disabled abuse and neglect. The Attorney General, as chief law enforcement officer, is responsible for ensuring that law enforcement officers throughout the State receive training concerning domestic violence and elderly or disabled abuse and neglect.

The bill also creates a new aggravating factor which the court must consider at sentencing when the defendant commits an offense against a person who he knew or should have known was 60 years of age or older or disabled. The new aggravating factor would not be limited to cases involving physical violence, but would also apply to any other crime knowingly committed against an elderly or disabled person, including financial crimes such as theft or fraud.

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SENATE COMMITTEE ON AGING

STATEMENT TO

SENATE, No. 2159

with Senate committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 29, 1988

The Senate Committee on Aging favorably reports Senate Bill No. 2159 with committee amendments.

As amended, this bill creates a new offense which makes it a fourth degree crime for a person who has a legal duty to care for, or who has assumed continuing responsibility for the care of, an elderly or disabled person to unreasonably fail to do or permit to be done an act necessary for the physical or mental health of that elderly or disabled person. However, a person will not be considered to have committed the crime if he provides nonmedical treatment through prayer alone in accordance with the person's established religious tradition.

The bill requires the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety to develop and update training curricula for police officers concerning the handling, investigation and response procedure for suspected incidents of domestic violence and elderly or disabled abuse and neglect. The Attorney General, as chief law enforcement officer, is responsible for ensuring that law enforcement officers throughout the State receive training concerning domestic violence and elderly or disabled abuse and neglect.

The bill also creates a new aggravating factor which the court must consider at sentencing when the defendant commits an offense against a person who he knew or should have known was 60 years of age or older or disabled. The new aggravating factor would not be limited to cases involving physical violence, but would also apply to any other crime knowingly committed against an elderly or disabled person, including financial crimes such as theft or fraud.

A technical amendment was made to correct an internal reference in section 4 of the bill.

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LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

SENATE, No. 2159

STATE OF NEW JERSEY

DATED: June 30, 1988

Senate Bill 2159 (1R) of 1988 would amend and supplement the Domestic Violence Act, P.L. 1981, c. 426 to include incidents of abuse and neglect against the elderly and the disabled in noninstitutionalized or community settings. The bill requires the Police Training Commission (PTC) in the Department of Law and Public Safety to develop and approve a training course for all law enforcement personnel who are likely to encounter situations of domestic violence or abuse or neglect of the elderly and disabled. The bill requires the Attorney General to ensure that law enforcement officers throughout the State receive training concerning domestic violence and abuse and neglect of the elderly and disabled. The bill appropriate \$90,000 to implement the training provisions.

Based on information provided by the Police Training Commission, the Office of Legislative Services estimates that the implementation of this bill will result in a cost to the State of \$40,590 in the first year following enactment. Costs in the second and third years are estimated at \$44,649 and \$49,113 respectively. This amount would pay for one position which would have responsibility for the development and supervision of the training program. This amount also includes fringe benefits and an inflationary increase of ten percent for succeeding years. According to the PTC, the costs to provide training required by this bill to municipal police officers could be absorbed by the 24 police training academies approved by the PTC. Enactment of this bill would impose additional police overtime costs on municipalities if they chose to train their police officers during off-duty hours, according to the PTC.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c. 67.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

February 6, 1989

SENATE BILL NO. 2159 (FIRST REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 15 of the Constitution, I am appending to Senate Bill No. 2159 (First Reprint) at the time of signing it my statement of the item, or part thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

Senate Bill No. 2159 provides additional protection for senior and disabled citizens who are victims of neglect or abuse. The bill makes it a fourth degree crime for a person who has a legal duty to care for or has assumed continuing responsibility for the care of an elderly or disabled person, to unreasonably fail to do any act necessary for the health of that elderly or disabled individual. In addition, the bill requires the Police Training Commission in the Department of Law and Public Safety, Division of Criminal Justice, to develop and approve a training course on the handling, investigation and response procedures concerning reports of domestic violence as well as the abuse and neglect of the elderly and disabled. The bill appropriates \$90,000 from the General Fund to the Police Training Commission to implement the training provisions of the bill.

Current law contains certain requirements and procedures for law enforcement officers and agencies to use when responding to incidents of domestic violence. This bill amends current law to provide that these standards would also apply to the handling of incidents regarding the neglect and abuse of the elderly and disabled. Finally, this bill provides that upon sentencing a defendant, the court must consider whether the defendant committed an offense against a person who he or she knew or should have known was elderly or disabled.

I firmly believe that there is a legitimate need to strengthen our laws governing the protection of elderly and disabled citizens who are victims of neglect or abuse. Statistics suggest that 4 percent of the elderly population are victims of elderly abuse. Research completed in recent years has also confirmed that abusers of elderly and disabled persons tend to be close relatives, including adult children involved in caring for the victims. The mistreatment of the elderly and disabled may include neglect of a dependent older person or psychologically abusive treatment by an adult child or relative caring for the victim, the misuse of the victim's material and financial assets by an adult

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

child, spousal abuse, and in certain instances, actually physical abuse or sexual assault of the victim.

In response to this information, the New Jersey Advisory Council on Elderly Abuse, which I created by signing Executive Order No. 103 on May 28, 1985, made several recommendations to address the issue of elderly and disabled abuse. This bill implements several of those recommendations and its enactment is of great importance to our elderly and disabled citizens.

As much as I seek the enactment of this bill's provisions into law, I cannot sign this bill as presented. Budgetary limitations precipitated by a \$290 million shortfall in projected State revenues permit the disbursement of General Fund revenues for new programs only when an unequivocal need can be demonstrated, and then such needs must be prioritized. It is not at all clear that the Police Training Commission would be unable, in Fiscal Year 1989 to commence the development of the training course called for by this bill. Indeed, I am advised that the \$90,000 appropriation is representative of two years of funding actually required by the Commission, to implement the training provisions of this bill. Since this bill will be taking effect halfway through the current fiscal year, the Department of Law and Public Safety need only find approximately one-quarter of that amount within its existing budget to assist the Commission with this function. For Fiscal Year 1990, the Department of Law and Public Safety should prioritize funding for this task within its other spending priorities.

Accordingly, I herewith append the following statement of objections to the sums, or parts thereof, appropriated by this bill.

Page 7, Section 5, Lines 35-39: Delete in its entirety

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ Michael R. Cole
Chief Counsel