

2C:21-18

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:21-18 (Vending machines-- use of slugs--
incr. penalties)

LAWS OF: 1989 CHAPTER: 33

BILL NO: S1393

SPONSOR(S): Lesniak

Date Introduced: Pre-filed

Committee: Assembly: Law, Public Safety and Corrections

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks.

Date of Passage: Assembly: June 13, 1988 Re-enacted 2-23-89

Senate: May 2, 1988 Re-enacted 1-23-89

Date of Approval: March 3, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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[FIRST REPRINT]

SENATE, No. 1393

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator LESNIAK

1 AN ACT concerning vending machines and amending
N.J.S.2C:21-18.

3

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

1. N.J.S.2C:21-18 is amended to read as follows:
7 2C:21-18. Slugs.

A person is guilty of a [petty] disorderly persons offense when,
9 other than under such circumstances as would constitute a
violation of any of the provisions of the "Casino Control Act"
11 (P.L.1977, c.110):

(1) He inserts or deposits a slug, key, tool, instrument,
13 explosive or device in a coin, currency or credit card activated
machine with purpose to defraud; or

(2) He makes, possesses or disposes of a slug, key, tool,
15 instrument, explosive or device or a drawing, print or mold of a
17 key, tool, instrument, explosive or device with purpose to enable
a person to insert or deposit it in a coin, currency or credit card
19 activated machine.

"Slug" means an object or article which, by virtue of its size,
21 shape or any other quality is capable of being inserted or
deposited in a coin, currency or credit card activated machine
23 as an improper substitute for money.

¹[(3) Notwithstanding the provisions of chapters 43 and 45 of
25 this Title, such person shall be ordered to make restitution for
27 any loss or damage caused by his offense, and notwithstanding
the fine provided under N.J.S.2C:43-3, such person shall be
29 sentenced to pay a fine of not less than \$100.00, nor more than
\$500.00 for a first offense; to pay a fine of not less than
31 \$250.00, nor more than \$750.00 for a second offense and to pay
a fine of not less than \$500.00, nor more than \$1,000.00 for a
33 third and any subsequent offense. Additionally, notwithstanding
the term of imprisonment provided in N.J.S.2C:43-8, any person

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.
¹Senate amendments adopted in accordance with Governor's
recommendations January 12, 1989.

1 convicted of a third or subsequent offense shall serve a
2 minimum term of not less than 30 days.]¹

3 (cf: P.L.1979, c.176, s.1)

4 2. This act shall take effect immediately.

5

6

7 CRIMINAL JUSTICE
8 Criminal Sentences and Bail

9

10 Increases the penalties for the fraudulent use of slugs in vending
11 machines, and creates new offense of tampering with vending
machines.

1 the term of imprisonment provided in N.J.S. 2C:43-8, any person
 3 convicted of a third or subsequent offense shall serve a
 3 minimum term of not less than 30 days.

cf: L.1979, c. 176, s. 1.

5 2. This act shall take effect immediately.

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STATEMENT

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11 This bill increases the penalties for using slugs in a vending
 13 machine, and creates the new offenses of breaking into a
 15 vending machine and possessing tools or other devices to tamper
 17 with a vending machine. The bill also changes the current law's
 outdated reference to a "coin machine," amending it to "coin,
 currency or credit card activated machine" to reflect the recent
 technological changes that enable machines to accept paper
 currency and credit cards as well as coins.

19 Currently, the fraudulent use of a slug in a vending machine is
 21 a petty disorderly persons offense, punishable by a maximum
 23 fine of \$500.00 or a maximum term of imprisonment of 30 days,
 25 or both. This bill would classify the offenses as disorderly
 27 persons offenses, as well as impose minimum fines and a
 29 provision that offenders make restitution for any monetary
 31 losses that they caused. Although the general penalties for
 33 disorderly persons offenders provide for a maximum fine of
 \$1,000.00 or a maximum six-month imprisonment term, or both,
 with no minimum fine or term, first offenders under this bill
 would be subject to a minimum fine of \$100.00 and a maximum
 fine of \$500.00, second offenders would be subject to a minimum
 \$250.00 and maximum \$750.00 fine, and third and subsequent
 offenders would be subject to a minimum \$500.00 and maximum
 \$1,000.00 fine. The general imprisonment provision for
 disorderly persons would apply, except that a third or subsequent
 offender would serve a minimum imprisonment term of 30 days.

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CRIMINAL JUSTICE

37

Criminal Sentences and Bail

39 Increases the penalties for the fraudulent use of slugs in vending
 41 machines, and creates new offense of tampering with vending
 machines.

ASSEMBLY LAW, PUBLIC SAFETY AND CORRECTIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1393

STATE OF NEW JERSEY

DATED: JUNE 1, 1988

The Assembly Law, Public Safety and Corrections Committee favorably reports Senate Bill 1393.

Senate Bill 1393 amends N.J.S. 2C:21-18, the section of law prohibiting the fraudulent use of a slug in a vending machine. This bill expands the prohibition in N.J.S. 2C:21-18 to include any "key, tool, instrument, explosive or device" intended to be used to gain illegal access to a vending machine. The bill also changes the present reference in the section from "coin machine" to "coin, currency or credit card activated machine" to reflect recent technological changes that enable machines to accept paper currency and credit cards as well as coins.

In addition, the bill upgrades the penalties for offenses under N.J.S. 2C:21-18 from a petty disorderly person offense (subject to a fine of up to \$500, imprisonment of up to 30 days, or both) to a disorderly persons offense (subject to a fine of up to \$1,000, imprisonment of up to 6 months, or both) with the following specific penalties:

1. First offense - a fine of not less than \$100 nor more than \$500.
2. Second offense - a fine of not less than \$250 nor more than \$750.
3. Third offense - a fine of not less than \$500 nor more than \$1,000 plus incarceration for at least 30 days.

Those convicted under N.J.S. 2C:21-18 would also be required to make restitution for any loss or damage caused by the offense.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1393

STATE OF NEW JERSEY

DATED: MARCH 21, 1988

The Senate Judiciary Committee reports favorably Senate Bill No. 1393.

N.J.S. 2C:21-18 presently prohibits the fraudulent use of slugs in the vending machines. This bill would expand the provisions of 2C:21-18 to cover any "key, tool, instrument, explosive or device" intended to be used to gain illegal excess to vending machines. The bill also changes the present reference in 2C:21-18 from "coin machine" to "coin, currency or credit card activated machine" to reflect recent technological changes that enable machines to accept paper currency and credit cards as well as coins.

In addition, the bill would upgrade offenses under 2C:21-18 from petty disorderly person offense (up to 30 days imprisonment; a fine of up to \$500,000 or both) to disorderly persons offense with (up to 6 months imprisonment; a fine of up to \$1,000.00 or both) with the following specific penalties:

1. First offense - a fine of not less than \$100 nor more than \$500.
2. Second offense - a fine of not less than \$250 nor more than \$750.
3. Third offense - a fine of not less than \$500 nor more than \$1,000 plus incarceration for at least 30 days.

Those convicted under 2C:21-18 would also be required to make restitution for any loss or damage caused by the offense.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 4, 1988

SENATE BILL NO. 1393

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 1393 with my objections for reconsideration.

Under current law, an individual is guilty of a petty disorderly persons offense when he uses a slug in a coin machine with a purpose to defraud, or makes, possesses or disposes of a slug with the purpose to enable a person to insert it or deposit it in a coin machine. The present bill would make several changes to current law. First, the bill changes the outdated reference to a "coin machine" amending it to "coin, currency or credit card activated machine" to reflect the recent technological changes that enable vending machines to accept paper currency and credit cards as well as coins. Second, the bill increases the penalties for violating this statute from a petty disorderly persons offense to a disorderly persons offense, and provides for mandatory restitution, a graded fine schedule and mandatory sentences for chronic offenders. Third, the bill creates a new offense of breaking into a vending machine and possessing tools or other devices to tamper with a vending machine. The purpose of the bill is to update the law governing tampering with and theft from vending machines and to increase the penalties in order to deter what is perceived by some as an increase in tamperings and thefts from these machines.

There are sections of the bill which are both proper and necessary. For example, the portions of the bill which update the statute are necessary in light of new technologies used in the vending machine industry. Likewise, increasing the offense from a petty disorderly to a disorderly persons offense may be necessary in order to deter violations of the statute. However, the provision of a graded fine mechanism, mandatory restitution, and mandatory sentences for chronic offenders are unnecessary and should be deleted from the bill. These provisions needlessly impinge on judicial discretion in circumvention of the general intent of our Code of Criminal Justice.

First, the graded fine mechanism set forth in this bill is inconsistent with one of the overriding purposes of the Criminal Code, that is, to establish uniform guidelines for punishment, including fines and terms of imprisonment. This individual fine mechanism limits judicial discretion beyond that generally

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envisaged by the Code. This mechanism is not necessary, as judges already have the ability, within certain parameters, to tailor the fines to specific circumstances of the offense, including whether the defendant has been previously convicted of a similar offense. While I recognize that a similar fine mechanism is set forth in N.J.S.A. 2C:20-11c. regarding shoplifting, this mechanism also contravenes the Criminal Code's general fine and penalty scheme. It was an unwarranted deviation from our general approach to criminal punishment, and should not be unnecessarily repeated.

Second, this bill requires that a person who violates its mandate make mandatory restitution for any loss or damage caused by the offense. The present Criminal Code provides for restitution to be ordered by the judge but leaves it to the discretion of the judge in the individual case. There seems to be no logical reason to mandate restitution in every case of tampering with a vending machine and to not require such restitution in other, more serious crimes of theft or violence. If mandatory restitution is a good idea, it is a good idea for all crimes and should not be targeted for use in a single interest area. It should be noted that there is presently a bill in the Legislature, Assembly Bill No. 2178, which would require mandatory restitution for all crime victims. That bill has been passed in the General Assembly and is now in the Senate Judiciary Committee for action. The issue of mandatory restitution can be addressed in relation to this legislation, where the issue can be afforded the time, scrutiny and expertise it deserves.

Third, the bill requires a mandatory jail sentence of 30 days for a third or subsequent offender. While such offenders may deserve such a sentence, the need for mandatory minimum sentences in this specific statute, or in any disorderly persons statute, is highly questionable. Mandatory sentencing has been reserved for only the most serious crimes and is not proper in a disorderly persons statute without an overriding rationale which does not appear to exist in this circumstance.

In conclusion, our Code of Criminal Justice was an answer to the myriad of piecemeal and disparate criminal statutes that governed before its adoption. There seems no apparent overriding public policy in the area of "slugs" to

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warrant a departure from the general purposes of the Code. Graded and statute-specific fine mechanisms, mandatory restitution and individualized mandatory sentence provisions in a disorderly persons statute, such as the present one, do not fit with the overall structure of our Criminal Code. While such mechanisms could be as easily justified for all criminal offenses, the resulting system would be both chaotic and in contravention of the policies of uniformity and equity envisioned by the drafters of the Criminal Code. Consequently, it is my recommendation that the provisions regarding the graded fine mechanism, mandatory restitution and mandatory sentencing be deleted from the bill.

Therefore, I herewith return Senate Bill No. 1393 and recommend that it be amended as follows:

Page 1, Section 1, Lines 24-32: Delete in entirety.

Page 2, Section 1, Lines 1-3: Delete in entirety.

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel