

SENATE, No. 1897

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 13, 2000

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

SYNOPSIS

Requires prosecutor to charge person with purpose to intimidate because of race, color, gender, handicap, religion, sexual orientation or ethnicity as element in indictment; responds to Apprendi decision.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning sentencing and supplementing Title 2C of the
2 New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. A prosecutor who plans to seek an extended term of
8 imprisonment pursuant to N.J.S.2C:43-7 for a defendant charged with
9 a crime set forth in Title 2C of the New Jersey Statutes because the
10 prosecutor alleges that the defendant acted with a purpose to
11 intimidate an individual or group of individuals because of race, color,
12 gender, handicap, religion, sexual orientation or ethnicity pursuant to
13 subsection e. of N.J.S.2C:44-3 in the commission of the crime shall
14 charge this purpose in the indictment. The purpose to intimidate shall
15 be treated as an element of the crime, and, as such, shall be submitted
16 to the jury and proven beyond a reasonable doubt.

17
18 2. This act shall take effect immediately.

19

20

21

STATEMENT

22
23 This bill responds to the United States Supreme Court decision in
24 Apprendi v. New Jersey (No.99-478) decided on June 26, 2000. The
25 court held that the due process clause of the Fourteenth Amendment
26 requires that a factual determination authorizing an increase in the
27 maximum prison sentence for an offense must be made by a jury on the
28 basis of proof beyond a reasonable doubt.

29 N.J.S.2C:43-7 permits a court upon application of the prosecutor
30 to sentence persons convicted of a crime (other than assault or
31 harassment which have provisions pertaining to intimidation included
32 therein or certain sexual crimes if the intimidation factor is based on
33 gender) to an extended term if the judge finds, by a preponderance of
34 the evidence, the grounds set forth in subsection e. of N.J.S.2C:44-3.
35 These grounds are that the defendant acted with a purpose to
36 intimidate an individual or group of individuals because of race, color,
37 gender, handicap, religion, sexual orientation or ethnicity. This
38 statutory scheme provides for extended terms that, for example, based
39 on the facts in the Apprendi case, increase the range of penalties for
40 a second degree crime to a range of penalties that is ordinarily
41 authorized for a first degree crime. The United States Supreme Court
42 held it was unconstitutional for the legislature to remove from the jury
43 the assessment of facts that increase the prescribed range of penalties
44 to which the defendant is exposed. This bill requires the prosecutor
45 to charge the purpose to intimidate in the indictment and prove it
46 beyond a reasonable doubt.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1897

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 14, 2000

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Senator Baer

SYNOPSIS

Establishes the crime of Bias Intimidation.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.



(Sponsorship Updated As Of: 2/16/2001)

1 AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979,
2 c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-
3 1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New
4 Jersey Statutes.

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

8
9 1. An additional chapter 16, Bias Crimes, is added to Title 2C of
10 the New Jersey Statutes as follows:

11 2C:16-1. Bias Intimidation.

12 a. Bias Intimidation. A person is guilty of the crime of bias
13 intimidation if he commits, attempts to commit, conspires with another
14 to commit, or threatens the immediate commission of an offense
15 specified in chapters 11 through 18 of Title 2C of the New Jersey
16 Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
17 N.J.S.2C:39-5,

18 (1) with a purpose to intimidate an individual or group of
19 individuals because of race, color, religion, gender, handicap, sexual
20 orientation, or ethnicity; or

21 (2) knowing that the conduct constituting the offense would cause
22 an individual or group of individuals to be intimidated because of race,
23 color, religion, gender, handicap, sexual orientation, or ethnicity; or

24 (3) under circumstances that caused any victim of the underlying
25 offense to be intimidated and the victim, considering the manner in
26 which the offense was committed, reasonably believed either that (a)
27 the offense was committed with a purpose to intimidate the victim or
28 any person or entity in whose welfare the victim is interested because
29 of race, color, religion, gender, handicap, sexual orientation, or
30 ethnicity, or (b) the victim or the victim's property was selected to be
31 the target of the offense because of the victim's race, color, religion,
32 gender, handicap, sexual orientation, or ethnicity.

33 b. Permissive inference concerning selection of targeted person or
34 property. Proof that the target of the underlying offense was selected
35 by the defendant, or by another acting in concert with the defendant,
36 because of race, color, religion, gender, handicap, sexual orientation,
37 or ethnicity shall give rise to a permissive inference by the trier of fact
38 that the defendant acted with a purpose to intimidate an individual or
39 group of individuals because of race, color, religion, gender, handicap,
40 sexual orientation, or ethnicity.

41 c. Grading. Bias intimidation is a crime of the fourth degree if the
42 underlying offense referred to in subsection a. is a disorderly persons
43 offense or petty disorderly persons offense. Otherwise, bias

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.

1 intimidation is a crime one degree higher than the most serious
2 underlying crime referred to in subsection a., except that where the
3 underlying crime is a crime of the first degree, bias intimidation is a
4 first-degree crime and the defendant upon conviction thereof may,
5 notwithstanding the provisions of paragraph (1) of subsection a. of
6 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
7 between 20 years and life imprisonment, with a presumptive term of
8 50 years.

9 d. Gender exemption in sexual offense prosecutions. It shall not
10 be a violation of subsection a. if the underlying criminal offense is a
11 violation of chapter 14 of Title 2C of the New Jersey Statutes and the
12 circumstance specified in paragraph (1), (2) or (3) of subsection a. of
13 this section is based solely upon the gender of the victim.

14 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any
15 other provision of law, a conviction for bias intimidation shall not
16 merge with a conviction of any of the underlying offenses referred to
17 in subsection a. of this section, nor shall any conviction for such
18 underlying offense merge with a conviction for bias intimidation. The
19 court shall impose separate sentences upon a conviction for bias
20 intimidation and a conviction of any underlying offense.

21 (Source: New)

22

23 2. N.J.S.2C:12-1 is amended to read as follows:

24 2C:12-1. Assault. a. Simple assault. A person is guilty of assault
25 if he:

26 (1) Attempts to cause or purposely, knowingly or recklessly
27 causes bodily injury to another; or

28 (2) Negligently causes bodily injury to another with a deadly
29 weapon; or

30 (3) Attempts by physical menace to put another in fear of
31 imminent serious bodily injury.

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

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

37 (1) Attempts to cause serious bodily injury to another, or causes
38 such injury purposely or knowingly or under circumstances
39 manifesting extreme indifference to the value of human life recklessly
40 causes such injury; or

41 (2) Attempts to cause or purposely or knowingly causes bodily
42 injury to another with a deadly weapon; or

43 (3) Recklessly causes bodily injury to another with a deadly
44 weapon; or

45 (4) Knowingly under circumstances manifesting extreme
46 indifference to the value of human life points a firearm, as defined in

1 section 2C:39-1f., at or in the direction of another, whether or not the
2 actor believes it to be loaded; or

3 (5) Commits a simple assault as defined in subsection a. (1), (2)
4 or (3) of this section upon:

5 (a) Any law enforcement officer acting in the performance of his
6 duties while in uniform or exhibiting evidence of his authority; or

7 (b) Any paid or volunteer fireman acting in the performance of his
8 duties while in uniform or otherwise clearly identifiable as being
9 engaged in the performance of the duties of a fireman; or

10 (c) Any person engaged in emergency first-aid or medical services
11 acting in the performance of his duties while in uniform or otherwise
12 clearly identifiable as being engaged in the performance of emergency
13 first-aid or medical services; or

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

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

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

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

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

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

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

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

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

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

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

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

1 disorderly persons offense if bodily injury results.

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

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

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

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

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

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

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

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

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

40 d. A person who is employed by a facility as defined in section
41 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as
42 defined in paragraph (1) or (2) of subsection a. of this section upon an
43 institutionalized elderly person as defined in section 2 of P.L.1977,
44 c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

45 e. [A person who commits a simple assault as defined in
46 subsection a. of this section is guilty of a crime of the fourth degree if

1 the person acted with a purpose to intimidate an individual or group
2 of individuals because of race, color, religion, gender, handicap, sexual
3 orientation, or ethnicity.] (Deleted by amendment P.L. _____ c. _____)
4 (now pending before the Legislature as this bill).
5 (cf: P.L.1999, c.381, s.1).

6

7 3. N.J.S.2C:33-4 is amended to read as follows:

8 2C:33-4. Harassment.

9 Except as provided in [subsections d. and] subsection e., a person
10 commits a petty disorderly persons offense if, with purpose to harass
11 another, he:

12 a. Makes, or causes to be made, a communication or
13 communications anonymously or at extremely inconvenient hours, or
14 in offensively coarse language, or any other manner likely to cause
15 annoyance or alarm;

16 b. Subjects another to striking, kicking, shoving, or other
17 offensive touching, or threatens to do so; or

18 c. Engages in any other course of alarming conduct or of
19 repeatedly committed acts with purpose to alarm or seriously annoy
20 such other person.

21 A communication under subsection a. may be deemed to have been
22 made either at the place where it originated or at the place where it
23 was received.

24 d. [A person commits a crime of the fourth degree if in
25 committing an offense under this section, he acted with a purpose to
26 intimidate an individual or group of individuals because of race, color,
27 religion, gender, handicap, sexual orientation or ethnicity.] (Deleted
28 by amendment, P.L. _____ c. _____)(now pending before the Legislature
29 as this bill).

30 e. A person commits a crime of the fourth degree if, in
31 committing an offense under this section, he was serving a term of
32 imprisonment or was on parole or probation as the result of a
33 conviction of any indictable offense under the laws of this State, any
34 other state or the United States.
35 (cf: P.L.1998, c.17, s.4).

36

37 4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read
38 as follows:

39 2C:39-4.1. Weapons; controlled dangerous substances[,] and
40 other offenses, penalties.

41 1. a. Any person who has in his possession any firearm while in
42 the course of committing, attempting to commit, or conspiring to
43 commit a violation of N.J.S.2C:35-3, N.J.S. 2C:35-4, N.J.S.2C:35-5,
44 section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3),
45 N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
46 P.L.1997, c.327 (C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-

1 1 is guilty of a crime of the second degree.

2 b. Any person who has in his possession any weapon, except a
3 firearm, with a purpose to use such weapon unlawfully against the
4 person or property of another, while in the course of committing,
5 attempting to commit, or conspiring to commit a violation of
6 N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of
7 P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section
8 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327
9 (C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a
10 crime of the second degree.

11 c. Any person who has in his possession any weapon, except a
12 firearm, under circumstances not manifestly appropriate for such
13 lawful uses as the weapon may have, while in the course of
14 committing, attempting to commit, or conspiring to commit a violation
15 of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section
16 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6,
17 section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
18 P.L.1997,c.327(C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-1
19 is guilty of a crime of the second degree.

20 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
21 provision of law, a conviction arising under this section shall not
22 merge with a conviction for a violation of any of the sections of
23 chapter 35 or chapter 16 referred to in this section nor shall any
24 conviction under those sections merge with a conviction under this
25 section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other
26 provision of law, the sentence imposed upon a violation of this section
27 shall be ordered to be served consecutively to that imposed for any
28 conviction for a violation of any of the sections of chapter 35 or
29 chapter 16 referred to in this section or a conviction for conspiracy or
30 attempt to violate any of those sections.

31 e. Nothing herein shall be deemed to preclude, if the evidence so
32 warrants, an indictment and conviction for a violation of
33 N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

34 f. Nothing herein shall prevent the court from also imposing
35 enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of
36 P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an
37 extended term.

38 (cf: P.L.1998, c.26, s.1).

39

40 5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read
41 as follows:

42 6. Certain Persons Not to Have Weapons.

43 a. Except as provided in subsection b. of this section, any person,
44 having been convicted in this State or elsewhere of the crime of
45 aggravated assault, arson, burglary, escape, extortion, homicide,
46 kidnapping, robbery, aggravated sexual assault, sexual assault, bias

1 intimidation in violation of N.J.S. 2C:16-1 or endangering the welfare
2 of a child pursuant to N.J.S.2C:24-4, whether or not armed with or
3 having in his possession any weapon enumerated in subsection r. of
4 N.J.S.2C:39-1, or any person convicted of a crime pursuant to the
5 provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any
6 person who has ever been committed for a mental disorder to any
7 hospital, mental institution or sanitarium unless he possesses a
8 certificate of a medical doctor or psychiatrist licensed to practice in
9 New Jersey or other satisfactory proof that he is no longer suffering
10 from a mental disorder which interferes with or handicaps him in the
11 handling of a firearm, or any person who has been convicted of other
12 than a disorderly persons or petty disorderly persons offense for the
13 unlawful use, possession or sale of a controlled dangerous substance
14 as defined in N.J.S.2C:35-2 who purchases, owns, possesses or
15 controls any of the said weapons is guilty of a crime of the fourth
16 degree.

17 b. A person having been convicted in this State or elsewhere of
18 the crime of aggravated assault, arson, burglary, escape, extortion,
19 homicide, kidnapping, robbery, aggravated sexual assault, sexual
20 assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering
21 the welfare of a child pursuant to N.J.S.2C:24-4, whether or not
22 armed with or having in his possession a weapon enumerated in
23 subsection r. of N.J.S.2C:39-1, or a person having been convicted of
24 a crime pursuant to the provisions of N.J.S.2C:35-3 through
25 N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7);
26 N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who
27 purchases, owns, possesses or controls a firearm is guilty of a crime
28 of the second degree.

29 c. Whenever any person shall have been convicted in another
30 state, territory, commonwealth or other jurisdiction of the United
31 States, or any country in the world, in a court of competent
32 jurisdiction, of a crime which in said other jurisdiction or country is
33 comparable to one of the crimes enumerated in subsection a. or b. of
34 this section, then that person shall be subject to the provisions of this
35 section.

36 (cf: P.L. 1995, c.114, s.1).

37

38 6. N.J.S.2C:43-7 is amended to read as follows:

39 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

40 a. In the cases designated in section 2C:44-3, a person who has
41 been convicted of a crime may be sentenced, and in the cases
42 designated in subsection e. of section 2 of P.L.1994, c.130
43 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
44 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
45 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall
46 be sentenced, to an extended term of imprisonment, as follows:

- 1 (1) In case of aggravated manslaughter sentenced under
2 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
3 crime of the first degree under paragraph (1) of subsection c. of
4 2C:13-1; or aggravated sexual assault if the person is eligible for an
5 extended term pursuant to the provisions of subsection g. of
6 N.J.S.2C:44-3 for a specific term of years which shall be between 30
7 years and life imprisonment;
- 8 (2) Except for the crime of murder and except as provided in
9 paragraph (1) of this subsection, in the case of a crime of the first
10 degree, for a specific term of years which shall be fixed by the court
11 and shall be between 20 years and life imprisonment;
- 12 (3) In the case of a crime of the second degree, for a term which
13 shall be fixed by the court between 10 and 20 years;
- 14 (4) In the case of a crime of the third degree, for a term which
15 shall be fixed by the court between five and 10 years;
- 16 (5) In the case of a crime of the fourth degree pursuant to
17 2C:43-6c. [,] and 2C:44-3d. [, 2C:44-3e.] for a term of five years,
18 and in the case of a crime of the fourth degree pursuant to 2C:43-6f.
19 and 2C:43-6g. for a term which shall be fixed by the court between
20 three and five years;
- 21 (6) In the case of the crime of murder, for a specific term of years
22 which shall be fixed by the court between 35 years and life
23 imprisonment, of which the defendant shall serve 35 years before being
24 eligible for parole;
- 25 (7) In the case of kidnapping under paragraph (2) of subsection
26 c. of 2C:13-1, for a specific term of years which shall be fixed by the
27 court between 30 years and life imprisonment, of which the defendant
28 shall serve 30 years before being eligible for parole.
- 29 b. As part of a sentence for an extended term and
30 notwithstanding the provisions of 2C:43-9, the court may fix a
31 minimum term not to exceed one-half of the term set pursuant to
32 subsection a. during which the defendant shall not be eligible for
33 parole or a term of 25 years during which time the defendant shall not
34 be eligible for parole where the sentence imposed was life
35 imprisonment; provided that no defendant shall be eligible for parole
36 at a date earlier than otherwise provided by the law governing parole.
- 37 c. In the case of a person sentenced to an extended term
38 pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall
39 impose a sentence within the ranges permitted by 2C:43-7a.(2), (3),
40 (4) or (5) according to the degree or nature of the crime for which the
41 defendant is being sentenced, which sentence shall include a minimum
42 term which shall, except as may be specifically provided by
43 N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the
44 sentence imposed by the court or five years, whichever is greater,
45 during which the defendant shall not be eligible for parole. Where the

1 sentence imposed is life imprisonment, the court shall impose a
2 minimum term of 25 years during which the defendant shall not be
3 eligible for parole, except that where the term of life imprisonment is
4 imposed on a person convicted for a violation of N.J.S.2C:35-3, the
5 term of parole ineligibility shall be 30 years.

6 d. In the case of a person sentenced to an extended term
7 pursuant to N.J.S.2C:43-6g., the court shall impose a sentence within
8 the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according
9 to the degree or nature of the crime for which the defendant is being
10 sentenced, which sentence shall include a minimum term which shall
11 be fixed at 15 years for a crime of the first or second degree, eight
12 years for a crime of the third degree, or five years for a crime of the
13 fourth degree during which the defendant shall not be eligible for
14 parole. Where the sentence imposed is life imprisonment, the court
15 shall impose a minimum term of 25 years during which the defendant
16 shall not be eligible for parole, except that where the term of life
17 imprisonment is imposed on a person convicted of a violation of
18 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

19 (cf: P.L.1997, c.410, s.2)

20

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

22 2C:44-1. Criteria for Withholding or Imposing Sentence of
23 Imprisonment. a. In determining the appropriate sentence to be
24 imposed on a person who has been convicted of an offense, the court
25 shall consider the following aggravating circumstances:

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

29 (2) The gravity and seriousness of harm inflicted on the victim,
30 including whether or not the defendant knew or reasonably should
31 have known that the victim of the offense was particularly vulnerable
32 or incapable of resistance due to advanced age, ill-health, or extreme
33 youth, or was for any other reason substantially incapable of exercising
34 normal physical or mental power of resistance;

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

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

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

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

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

1 (8) The defendant committed the offense against a police or other
2 law enforcement officer, correctional employee or fireman, acting in
3 the performance of his duties while in uniform or exhibiting evidence
4 of his authority; the defendant committed the offense because of the
5 status of the victim as a public servant; or the defendant committed the
6 offense against a sports official, athletic coach or manager, acting in
7 or immediately following the performance of his duties or because of
8 the person's status as a sports official, coach or manager;

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

11 (10) The offense involved fraudulent or deceptive practices
12 committed against any department or division of State government;

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

18 (12) The defendant committed the offense against a person who
19 he knew or should have known was 60 years of age or older, or
20 disabled;

21 (13) The defendant, while in the course of committing or
22 attempting to commit the crime, including the immediate flight
23 therefrom, used or was in possession of a stolen motor vehicle.

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

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

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

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

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

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

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

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

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

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

46 (10) The defendant is particularly likely to respond affirmatively

1 to probationary treatment;

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

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

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

8 c. (1) A plea of guilty by a defendant or failure to so plead shall
9 not be considered in withholding or imposing a sentence of
10 imprisonment.

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

15 d. Presumption of imprisonment. The court shall deal with a
16 person who has been convicted of a crime of the first or second degree
17 by imposing a sentence of imprisonment unless, having regard to the
18 character and condition of the defendant, it is of the opinion that his
19 imprisonment would be a serious injustice which overrides the need to
20 deter such conduct by others. Notwithstanding the provisions of
21 subsection e. of this section, the court shall deal with a person who has
22 been convicted of theft of a motor vehicle or of the unlawful taking of
23 a motor vehicle and who has previously been convicted of either
24 offense by imposing a sentence of imprisonment unless, having regard
25 to the character and condition of the defendant, it is of the opinion that
26 his imprisonment would be a serious injustice which overrides the need
27 to deter such conduct by others.

28 e. The court shall deal with a person convicted of an offense
29 other than a crime of the first or second degree, who has not
30 previously been convicted of an offense, without imposing sentence of
31 imprisonment unless, having regard to the nature and circumstances of
32 the offense and the history, character and condition of the defendant,
33 it is of the opinion that his imprisonment is necessary for the
34 protection of the public under the criteria set forth in subsection a.,
35 except that this subsection shall not apply if the person is convicted of
36 any of the following crimes of the third degree: theft of a motor
37 vehicle; unlawful taking of a motor vehicle; or eluding ; or if the
38 person is convicted of a crime of the third or fourth degree
39 constituting bias intimidation in violation of N.J.S.2C:16-1.

40 f. Presumptive Sentences. (1) Except for the crime of murder,
41 unless the preponderance of aggravating or mitigating factors, as set
42 forth in subsections a. and b., weighs in favor of a higher or lower
43 term within the limits provided in N.J.S.2C:43-6, when a court
44 determines that a sentence of imprisonment is warranted, it shall
45 impose sentence as follows:

46 (a) To a term of 20 years for aggravated manslaughter or

1 kidnapping pursuant to paragraph (1) of subsection c. of
2 N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

3 (b) Except as provided in paragraph (a) of this subsection to a
4 term of 15 years for a crime of the first degree;

5 (c) To a term of seven years for a crime of the second degree;

6 (d) To a term of four years for a crime of the third degree; and

7 (e) To a term of nine months for a crime of the fourth degree.

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

11 Unless the preponderance of mitigating factors set forth in
12 subsection b. weighs in favor of a lower term within the limits
13 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
14 presumptive term of life imprisonment. Unless the preponderance of
15 aggravating and mitigating factors set forth in subsections a. and b.
16 weighs in favor of a higher or lower term within the limits authorized,
17 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive
18 term of 50 years' imprisonment; sentences imposed pursuant to
19 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;
20 and sentences imposed pursuant to 2C:43-7a.(4) shall have a
21 presumptive term of seven years' imprisonment.

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

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

35 g. Imposition of Noncustodial Sentences in Certain Cases. If the
36 court, in considering the aggravating factors set forth in subsection a.,
37 finds the aggravating factor in paragraph a.(2) or a.(12) and does not
38 impose a custodial sentence, the court shall specifically place on the
39 record the mitigating factors which justify the imposition of a
40 noncustodial sentence.

41 h. Except as provided in section 2 of P.L.1993, c.123
42 (C.2C:43-11), the presumption of imprisonment as provided in
43 subsection d. of this section shall not preclude the admission of a
44 person to the Intensive Supervision Program, established pursuant to
45 the Rules Governing the Courts of the State of New Jersey.

46 (cf: P.L.1995, c.6, s.2)

1 8. N.J.S.2C:44-3 is amended to read as follows:

2 2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

3 The court may, upon application of the prosecuting attorney,
4 sentence a person who has been convicted of a crime of the first,
5 second or third degree to an extended term of imprisonment if it finds
6 one or more of the grounds specified in subsection a., b., c., or f. of
7 this section. [The court shall, upon application of the prosecuting
8 attorney, sentence a person who has been convicted of a crime, other
9 than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of
10 N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose
11 to intimidate because of gender, to an extended term if it finds, by a
12 preponderance of the evidence, the grounds in subsection e.] If the
13 grounds specified in subsection d. are found, and the person is being
14 sentenced for commission of any of the offenses enumerated in
15 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the
16 defendant to an extended term as required by N.J.S.2C:43-6c. or
17 N.J.S.2C:43-6g., and application by the prosecutor shall not be
18 required. The court shall, upon application of the prosecuting
19 attorney, sentence a person who has been convicted of a crime under
20 N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment
21 if the grounds specified in subsection g. of this section are found. The
22 court shall, upon application of the prosecuting attorney, sentence a
23 person who has been convicted of a crime to an extended term of
24 imprisonment if the grounds specified in subsection h. of this section
25 are found. The court shall, upon application of the prosecuting
26 attorney, sentence a person to an extended term if the imposition of
27 such term is required pursuant to the provisions of section 2 of
28 P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be
29 incorporated in the record.

30 a. The defendant has been convicted of a crime of the first,
31 second or third degree and is a persistent offender. A persistent
32 offender is a person who at the time of the commission of the crime is
33 21 years of age or over, who has been previously convicted on at least
34 two separate occasions of two crimes, committed at different times,
35 when he was at least 18 years of age, if the latest in time of these
36 crimes or the date of the defendant's last release from confinement,
37 whichever is later, is within 10 years of the date of the crime for which
38 the defendant is being sentenced.

39 b. The defendant has been convicted of a crime of the first,
40 second or third degree and is a professional criminal. A professional
41 criminal is a person who committed a crime as part of a continuing
42 criminal activity in concert with two or more persons, and the
43 circumstances of the crime show he has knowingly devoted himself to
44 criminal activity as a major source of livelihood.

45 c. The defendant has been convicted of a crime of the first,
46 second or third degree and committed the crime as consideration for

1 the receipt, or in expectation of the receipt, of anything of pecuniary
2 value the amount of which was unrelated to the proceeds of the crime
3 or he procured the commission of the offense by payment or promise
4 of payment of anything of pecuniary value.

5 d. Second offender with a firearm. The defendant is at least 18
6 years of age and has been previously convicted of any of the following
7 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
8 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously
9 convicted of an offense under Title 2A of the New Jersey Statutes or
10 under any statute of the United States or any other state which is
11 substantially equivalent to the offenses enumerated in this subsection
12 and he used or possessed a firearm, as defined in 2C:39-1f., in the
13 course of committing or attempting to commit any of these crimes,
14 including the immediate flight therefrom.

15 e. [The defendant in committing the crime acted with a purpose
16 to intimidate an individual or group of individuals because of race,
17 color, gender, handicap, religion, sexual orientation or ethnicity.]
18 (Deleted by amendment, P.L. c., (C.)(now pending before the
19 Legislature as this bill).

20 f. The defendant has been convicted of a crime under any of the
21 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
22 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
23 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of
24 committing or attempting to commit the crime, including the
25 immediate flight therefrom, the defendant used or was in possession
26 of a stolen motor vehicle.

27 g. The defendant has been convicted of a crime under
28 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of
29 violence and the victim of the crime was 16 years of age or less.

30 For purposes of this subsection, a crime involves violence or the
31 threat of violence if the victim sustains serious bodily injury as defined
32 in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses
33 a deadly weapon or threatens by word or gesture to use a deadly
34 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to
35 inflict serious bodily injury.

36 h. The crime was committed while the defendant was knowingly
37 involved in criminal street gang related activity. A crime is committed
38 while the defendant was involved in criminal street gang related
39 activity if the crime was committed for the benefit of, at the direction
40 of, or in association with a criminal street gang. "Criminal street
41 gang" means three or more persons associated in fact. Individuals are
42 associated in fact if (1) they have in common a group name or
43 identifying sign, symbol, tattoo or other physical marking, style of
44 dress or use of hand signs or other indicia of association or common
45 leadership, and (2) individually or in combination with other members
46 of a criminal street gang, while engaging in gang related activity, have

1 committed, conspired or attempted to commit , within the preceding
2 three years, two or more offenses of robbery, carjacking, aggravated
3 assault, assault, aggravated sexual assault, sexual assault, arson,
4 burglary, kidnapping, extortion, or a violation of chapter 11, section
5 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New
6 Jersey Statutes regardless of whether the prior offenses have resulted
7 in convictions.

8 The court shall not impose a sentence pursuant to this subsection
9 unless the ground therefore has been established by a preponderance
10 of the evidence established at a hearing, which may occur at the time
11 of sentencing. In making its finding, the court shall take judicial notice
12 of any testimony or information adduced at the trial, plea hearing or
13 other court proceedings and also shall consider the presentence report
14 and any other relevant information.

15 (cf: P.L.1999, c.160, s.4).

16

17 9. This act shall take effect immediately.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1897

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2000

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1897.

This substitute is in response to the United States Supreme Court ruling in Apprendi v. New Jersey, 530 U.S. , 120 S.Ct. 2348, (decided June 26, 2000) which held unconstitutional subsection e. of N.J.S.2C:44-3 which authorizes the imposition of an extended term of imprisonment upon a finding by the sentencing court that the defendant committed a crime with a purpose to intimidate the victim because of the victim's race, color, gender, handicap, religion, sexual orientation or ethnicity. In Apprendi, the Supreme Court held that any fact which increases the penalty of a crime beyond the statutory maximum, other than the fact of a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt.

SCS for S-1897 seeks to preserve the purpose of the New Jersey bias crime statute by establishing the separate crime of bias intimidation which must be charged and proved as any other crime. A person would be guilty of bias intimidation if the person commits any crime listed in the bill with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity. Bias intimidation would be graded one degree higher than the offense that was committed with the purpose to intimidate. Upon a conviction, the sentence imposed by the court would not merge with the sentence imposed for the underlying offense.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1897

STATE OF NEW JERSEY

DATED: MAY 7, 2001

The Assembly Judiciary Committee reports favorably Senate, No. 1897 (SCS).

This substitute is in response to the United States Supreme Court ruling in Apprendi v. New Jersey, 530 U.S. 466 (2000) which held unconstitutional subsection e. of N.J.S.2C:44-3 which authorizes the imposition of an extended term of imprisonment upon a finding by the sentencing court that the defendant committed a crime with a purpose to intimidate the victim because of the victim's race, color, gender, handicap, religion, sexual orientation or ethnicity. In Apprendi, the Supreme Court held that any fact which increases the penalty of a crime beyond the statutory maximum, other than the fact of a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt.

This substitute seeks to preserve the purpose of the New Jersey bias crime statute by establishing the separate crime of bias intimidation which must be charged and proved as any other crime. A person would be guilty of bias intimidation if the person commits any crime listed in the bill with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity. Bias intimidation would be graded one degree higher than the offense that was committed with the purpose to intimidate. Upon a conviction, the sentence imposed by the court would not merge with the sentence imposed for the underlying offense.

This substitute is identical to Assembly, No. 2702 (ACS).

STATEMENT TO
SENATE, No. 1897

with Assembly Floor Amendments
(Proposed By Assemblyman COHEN)

ADOPTED: DECEMBER 10, 2001

This bill establishes a separate crime of bias intimidation which must be charged and proved as any other crime. Under section 1 of the bill, the crime of bias intimidation would be graded one degree higher than the underlying offense that was committed with the purpose to intimidate. However, if the underlying offense was a crime of the first degree the sentence would be an ordinary term of imprisonment between 20 years and life imprisonment, with a presumptive term of 50 years. This floor amendment would amend this provision to provide that when the underlying crime is a crime of the first degree, the sentence would be an ordinary term of imprisonment between 15 years and 30 years, with a presumptive term of 20 years. This sentencing scheme is more consistent with the existing sentencing provisions as set forth in subsection f. of N.J.S. 2C:44-1 concerning presumptive sentences. Except for murder, crimes of the first degree receive presumptive sentences of 15 or 20 years.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1897

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 14, 2000

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Co-Sponsored by:

Senator Baer

SYNOPSIS

Establishes the crime of Bias Intimidation.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 10, 2001.



(Sponsorship Updated As Of: 2/16/2001)

1 AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979,
2 c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-
3 1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New
4 Jersey Statutes.

5

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

8

9 1. An additional chapter 16, Bias Crimes, is added to Title 2C of
10 the New Jersey Statutes as follows:

11 2C:16-1. Bias Intimidation.

12 a. Bias Intimidation. A person is guilty of the crime of bias
13 intimidation if he commits, attempts to commit, conspires with another
14 to commit, or threatens the immediate commission of an offense
15 specified in chapters 11 through 18 of Title 2C of the New Jersey
16 Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
17 N.J.S.2C:39-5,

18 (1) with a purpose to intimidate an individual or group of
19 individuals because of race, color, religion, gender, handicap, sexual
20 orientation, or ethnicity; or

21 (2) knowing that the conduct constituting the offense would cause
22 an individual or group of individuals to be intimidated because of race,
23 color, religion, gender, handicap, sexual orientation, or ethnicity; or

24 (3) under circumstances that caused any victim of the underlying
25 offense to be intimidated and the victim, considering the manner in
26 which the offense was committed, reasonably believed either that (a)
27 the offense was committed with a purpose to intimidate the victim or
28 any person or entity in whose welfare the victim is interested because
29 of race, color, religion, gender, handicap, sexual orientation, or
30 ethnicity, or (b) the victim or the victim's property was selected to be
31 the target of the offense because of the victim's race, color, religion,
32 gender, handicap, sexual orientation, or ethnicity.

33 b. Permissive inference concerning selection of targeted person or
34 property. Proof that the target of the underlying offense was selected
35 by the defendant, or by another acting in concert with the defendant,
36 because of race, color, religion, gender, handicap, sexual orientation,
37 or ethnicity shall give rise to a permissive inference by the trier of fact
38 that the defendant acted with a purpose to intimidate an individual or
39 group of individuals because of race, color, religion, gender, handicap,
40 sexual orientation, or ethnicity.

41 c. Grading. Bias intimidation is a crime of the fourth degree if the
42 underlying offense referred to in subsection a. is a disorderly persons

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:

¹ Assembly floor amendments adopted December 10, 2001.

1 offense or petty disorderly persons offense. Otherwise, bias
2 intimidation is a crime one degree higher than the most serious
3 underlying crime referred to in subsection a., except that where the
4 underlying crime is a crime of the first degree, bias intimidation is a
5 first-degree crime and the defendant upon conviction thereof may,
6 notwithstanding the provisions of paragraph (1) of subsection a. of
7 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
8 between ¹[20 years] 15 years¹ and ¹[life imprisonment] 30 years¹,
9 with a presumptive term of ¹[50 years] 20 years¹.

10 d. Gender exemption in sexual offense prosecutions. It shall not
11 be a violation of subsection a. if the underlying criminal offense is a
12 violation of chapter 14 of Title 2C of the New Jersey Statutes and the
13 circumstance specified in paragraph (1), (2) or (3) of subsection a. of
14 this section is based solely upon the gender of the victim.

15 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any
16 other provision of law, a conviction for bias intimidation shall not
17 merge with a conviction of any of the underlying offenses referred to
18 in subsection a. of this section, nor shall any conviction for such
19 underlying offense merge with a conviction for bias intimidation. The
20 court shall impose separate sentences upon a conviction for bias
21 intimidation and a conviction of any underlying offense.

22 (Source: New)

23

24 2. N.J.S.2C:12-1 is amended to read as follows:

25 2C:12-1. Assault. a. Simple assault. A person is guilty of assault
26 if he:

27 (1) Attempts to cause or purposely, knowingly or recklessly
28 causes bodily injury to another; or

29 (2) Negligently causes bodily injury to another with a deadly
30 weapon; or

31 (3) Attempts by physical menace to put another in fear of
32 imminent serious bodily injury.

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

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

38 (1) Attempts to cause serious bodily injury to another, or causes
39 such injury purposely or knowingly or under circumstances
40 manifesting extreme indifference to the value of human life recklessly
41 causes such injury; or

42 (2) Attempts to cause or purposely or knowingly causes bodily
43 injury to another with a deadly weapon; or

44 (3) Recklessly causes bodily injury to another with a deadly
45 weapon; or

46 (4) Knowingly under circumstances manifesting extreme

1 indifference to the value of human life points a firearm, as defined in
2 section 2C:39-1f., at or in the direction of another, whether or not the
3 actor believes it to be loaded; or
4 (5) Commits a simple assault as defined in subsection a. (1), (2)
5 or (3) of this section upon:
6 (a) Any law enforcement officer acting in the performance of his
7 duties while in uniform or exhibiting evidence of his authority; or
8 (b) Any paid or volunteer fireman acting in the performance of his
9 duties while in uniform or otherwise clearly identifiable as being
10 engaged in the performance of the duties of a fireman; or
11 (c) Any person engaged in emergency first-aid or medical services
12 acting in the performance of his duties while in uniform or otherwise
13 clearly identifiable as being engaged in the performance of emergency
14 first-aid or medical services; or
15 (d) Any school board member, school administrator, teacher,
16 school bus driver or other employee of a school board while clearly
17 identifiable as being engaged in the performance of his duties or
18 because of his status as a member or employee of a school board or
19 any school bus driver employed by an operator under contract to a
20 school board while clearly identifiable as being engaged in the
21 performance of his duties or because of his status as a school bus
22 driver; or
23 (e) Any employee of the Division of Youth and Family Services
24 while clearly identifiable as being engaged in the performance of his
25 duties or because of his status as an employee of the division; or
26 (f) Any justice of the Supreme Court, judge of the Superior Court,
27 judge of the Tax Court or municipal judge while clearly identifiable as
28 being engaged in the performance of judicial duties or because of his
29 status as a member of the judiciary; or
30 (g) Any operator of a motorbus or the operator's supervisor or any
31 employee of a rail passenger service while clearly identifiable as being
32 engaged in the performance of his duties or because of his status as an
33 operator of a motorbus or as the operator's supervisor or as an
34 employee of a rail passenger service; or
35 (6) Causes bodily injury to another person while fleeing or
36 attempting to elude a law enforcement officer in violation of
37 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
38 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
39 other provision of law to the contrary, a person shall be strictly liable
40 for a violation of this subsection upon proof of a violation of
41 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
42 violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily
43 injury to another person; or
44 (7) Attempts to cause significant bodily injury to another or causes
45 significant bodily injury purposely or knowingly or, under
46 circumstances manifesting extreme indifference to the value of human

1 life recklessly causes such significant bodily injury; or

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

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

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

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

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

44 c. (1) A person is guilty of assault by auto or vessel when the
45 person drives a vehicle or vessel recklessly and causes either serious
46 bodily injury or bodily injury to another. Assault by auto or vessel is

1 a crime of the fourth degree if serious bodily injury results and is a
2 disorderly persons offense if bodily injury results.

3 (2) Assault by auto or vessel is a crime of the third degree if the
4 person drives the vehicle while in violation of R.S.39:4-50 or section
5 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results
6 and is a crime of the fourth degree if the person drives the vehicle
7 while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
8 (C.39:4-50.4a) and bodily injury results.

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

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

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

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

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

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

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

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

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

46 e. [A person who commits a simple assault as defined in

1 subsection a. of this section is guilty of a crime of the fourth degree if
2 the person acted with a purpose to intimidate an individual or group
3 of individuals because of race, color, religion, gender, handicap, sexual
4 orientation, or ethnicity.] (Deleted by amendment P.L. _____ c. _____)
5 (now pending before the Legislature as this bill).
6 (cf: P.L.1999, c.381, s.1).

7
8 3. N.J.S.2C:33-4 is amended to read as follows:
9 2C:33-4. Harassment.

10 Except as provided in [subsections d. and] subsection e., a person
11 commits a petty disorderly persons offense if, with purpose to harass
12 another, he:

13 a. Makes, or causes to be made, a communication or
14 communications anonymously or at extremely inconvenient hours, or
15 in offensively coarse language, or any other manner likely to cause
16 annoyance or alarm;

17 b. Subjects another to striking, kicking, shoving, or other
18 offensive touching, or threatens to do so; or

19 c. Engages in any other course of alarming conduct or of
20 repeatedly committed acts with purpose to alarm or seriously annoy
21 such other person.

22 A communication under subsection a. may be deemed to have been
23 made either at the place where it originated or at the place where it
24 was received.

25 d. [A person commits a crime of the fourth degree if in
26 committing an offense under this section, he acted with a purpose to
27 intimidate an individual or group of individuals because of race, color,
28 religion, gender, handicap, sexual orientation or ethnicity.] (Deleted
29 by amendment, P.L. _____, c. _____)(now pending before the Legislature as
30 this bill).

31 e. A person commits a crime of the fourth degree if, in committing
32 an offense under this section, he was serving a term of imprisonment
33 or was on parole or probation as the result of a conviction of any
34 indictable offense under the laws of this State, any other state or the
35 United States.

36 (cf: P.L.1998, c.17, s.4).

37
38 4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read
39 as follows:

40 2C:39-4.1. Weapons; controlled dangerous substances[,] and
41 other offenses, penalties.

42 1. a. Any person who has in his possession any firearm while in
43 the course of committing, attempting to commit, or conspiring to
44 commit a violation of N.J.S.2C:35-3, N.J.S. 2C:35-4, N.J.S.2C:35-5,
45 section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3),
46 N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of

1 P.L.1997, c.327 (C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-
2 1 is guilty of a crime of the second degree.

3 b. Any person who has in his possession any weapon, except a
4 firearm, with a purpose to use such weapon unlawfully against the
5 person or property of another, while in the course of committing,
6 attempting to commit, or conspiring to commit a violation of
7 N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of
8 P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section
9 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327
10 (C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a
11 crime of the second degree.

12 c. Any person who has in his possession any weapon, except a
13 firearm, under circumstances not manifestly appropriate for such
14 lawful uses as the weapon may have, while in the course of
15 committing, attempting to commit, or conspiring to commit a violation
16 of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section
17 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6,
18 section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
19 P.L.1997,c.327(C.2C:35-7.1) [or] N.J.S.2C:35-11 or N.J.S.2C:16-1
20 is guilty of a crime of the second degree.

21 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
22 provision of law, a conviction arising under this section shall not
23 merge with a conviction for a violation of any of the sections of
24 chapter 35 or chapter 16 referred to in this section nor shall any
25 conviction under those sections merge with a conviction under this
26 section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other
27 provision of law, the sentence imposed upon a violation of this section
28 shall be ordered to be served consecutively to that imposed for any
29 conviction for a violation of any of the sections of chapter 35 or
30 chapter 16 referred to in this section or a conviction for conspiracy or
31 attempt to violate any of those sections.

32 e. Nothing herein shall be deemed to preclude, if the evidence so
33 warrants, an indictment and conviction for a violation of
34 N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

35 f. Nothing herein shall prevent the court from also imposing
36 enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of
37 P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an
38 extended term.

39 (cf: P.L.1998, c.26, s.1).

40

41 5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read
42 as follows:

43 6. Certain Persons Not to Have Weapons.

44 a. Except as provided in subsection b. of this section, any person,
45 having been convicted in this State or elsewhere of the crime of
46 aggravated assault, arson, burglary, escape, extortion, homicide,

1 kidnapping, robbery, aggravated sexual assault, sexual assault, bias
2 intimidation in violation of N.J.S.2C:16-1 or endangering the welfare
3 of a child pursuant to N.J.S.2C:24-4, whether or not armed with or
4 having in his possession any weapon enumerated in subsection r. of
5 N.J.S.2C:39-1, or any person convicted of a crime pursuant to the
6 provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any
7 person who has ever been committed for a mental disorder to any
8 hospital, mental institution or sanitarium unless he possesses a
9 certificate of a medical doctor or psychiatrist licensed to practice in
10 New Jersey or other satisfactory proof that he is no longer suffering
11 from a mental disorder which interferes with or handicaps him in the
12 handling of a firearm, or any person who has been convicted of other
13 than a disorderly persons or petty disorderly persons offense for the
14 unlawful use, possession or sale of a controlled dangerous substance
15 as defined in N.J.S.2C:35-2 who purchases, owns, possesses or
16 controls any of the said weapons is guilty of a crime of the fourth
17 degree.

18 b. A person having been convicted in this State or elsewhere of
19 the crime of aggravated assault, arson, burglary, escape, extortion,
20 homicide, kidnapping, robbery, aggravated sexual assault, sexual
21 assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering
22 the welfare of a child pursuant to N.J.S.2C:24-4, whether or not
23 armed with or having in his possession a weapon enumerated in
24 subsection r. of N.J.S.2C:39-1, or a person having been convicted of
25 a crime pursuant to the provisions of N.J.S.2C:35-3 through
26 N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7);
27 N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who
28 purchases, owns, possesses or controls a firearm is guilty of a crime
29 of the second degree.

30 c. Whenever any person shall have been convicted in another state,
31 territory, commonwealth or other jurisdiction of the United States, or
32 any country in the world, in a court of competent jurisdiction, of a
33 crime which in said other jurisdiction or country is comparable to one
34 of the crimes enumerated in subsection a. or b. of this section, then
35 that person shall be subject to the provisions of this section.
36 (cf: P.L.1995, c.114, s.1).

37

38 6. N.J.S.2C:43-7 is amended to read as follows:

39 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

40 a. In the cases designated in section 2C:44-3, a person who has
41 been convicted of a crime may be sentenced, and in the cases
42 designated in subsection e. of section 2 of P.L.1994, c.130
43 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
44 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
45 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall
46 be sentenced, to an extended term of imprisonment, as follows:

1 (1) In case of aggravated manslaughter sentenced under
2 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
3 crime of the first degree under paragraph (1) of subsection c. of
4 2C:13-1; or aggravated sexual assault if the person is eligible for an
5 extended term pursuant to the provisions of subsection g. of
6 N.J.S.2C:44-3 for a specific term of years which shall be between 30
7 years and life imprisonment;

8 (2) Except for the crime of murder and except as provided in
9 paragraph (1) of this subsection, in the case of a crime of the first
10 degree, for a specific term of years which shall be fixed by the court
11 and shall be between 20 years and life imprisonment;

12 (3) In the case of a crime of the second degree, for a term which
13 shall be fixed by the court between 10 and 20 years;

14 (4) In the case of a crime of the third degree, for a term which
15 shall be fixed by the court between five and 10 years;

16 (5) In the case of a crime of the fourth degree pursuant to
17 2C:43-6c. [,] and 2C:44-3d. [, 2C:44-3e.] for a term of five years,
18 and in the case of a crime of the fourth degree pursuant to 2C:43-6f.
19 and 2C:43-6g. for a term which shall be fixed by the court between
20 three and five years;

21 (6) In the case of the crime of murder, for a specific term of years
22 which shall be fixed by the court between 35 years and life
23 imprisonment, of which the defendant shall serve 35 years before being
24 eligible for parole;

25 (7) In the case of kidnapping under paragraph (2) of subsection c.
26 of 2C:13-1, for a specific term of years which shall be fixed by the
27 court between 30 years and life imprisonment, of which the defendant
28 shall serve 30 years before being eligible for parole.

29 b. As part of a sentence for an extended term and notwithstanding
30 the provisions of 2C:43-9, the court may fix a minimum term not to
31 exceed one-half of the term set pursuant to subsection a. during which
32 the defendant shall not be eligible for parole or a term of 25 years
33 during which time the defendant shall not be eligible for parole where
34 the sentence imposed was life imprisonment; provided that no
35 defendant shall be eligible for parole at a date earlier than otherwise
36 provided by the law governing parole.

37 c. In the case of a person sentenced to an extended term pursuant
38 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a
39 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)
40 according to the degree or nature of the crime for which the defendant
41 is being sentenced, which sentence shall include a minimum term which
42 shall, except as may be specifically provided by N.J.S.2C:43-6f., be
43 fixed at or between one-third and one-half of the sentence imposed by
44 the court or five years, whichever is greater, during which the
45 defendant shall not be eligible for parole. Where the sentence imposed
46 is life imprisonment, the court shall impose a minimum term of 25

1 years during which the defendant shall not be eligible for parole,
2 except that where the term of life imprisonment is imposed on a person
3 convicted for a violation of N.J.S.2C:35-3, the term of parole
4 ineligibility shall be 30 years.

5 d. In the case of a person sentenced to an extended term pursuant
6 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges
7 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the
8 degree or nature of the crime for which the defendant is being
9 sentenced, which sentence shall include a minimum term which shall
10 be fixed at 15 years for a crime of the first or second degree, eight
11 years for a crime of the third degree, or five years for a crime of the
12 fourth degree during which the defendant shall not be eligible for
13 parole. Where the sentence imposed is life imprisonment, the court
14 shall impose a minimum term of 25 years during which the defendant
15 shall not be eligible for parole, except that where the term of life
16 imprisonment is imposed on a person convicted of a violation of
17 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

18 (cf: P.L.1997, c.410, s.2)

19
20 7. N.J.S. 2C:44-1 is amended to read as follows:

21 2C:44-1. Criteria for Withholding or Imposing Sentence of
22 Imprisonment. a. In determining the appropriate sentence to be
23 imposed on a person who has been convicted of an offense, the court
24 shall consider the following aggravating circumstances:

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

28 (2) The gravity and seriousness of harm inflicted on the victim,
29 including whether or not the defendant knew or reasonably should
30 have known that the victim of the offense was particularly vulnerable
31 or incapable of resistance due to advanced age, ill-health, or extreme
32 youth, or was for any other reason substantially incapable of exercising
33 normal physical or mental power of resistance;

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

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

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

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

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

46 (8) The defendant committed the offense against a police or other

1 law enforcement officer, correctional employee or fireman, acting in
2 the performance of his duties while in uniform or exhibiting evidence
3 of his authority; the defendant committed the offense because of the
4 status of the victim as a public servant; or the defendant committed the
5 offense against a sports official, athletic coach or manager, acting in
6 or immediately following the performance of his duties or because of
7 the person's status as a sports official, coach or manager;

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

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

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

17 (12) The defendant committed the offense against a person who
18 he knew or should have known was 60 years of age or older, or
19 disabled;

20 (13) The defendant, while in the course of committing or
21 attempting to commit the crime, including the immediate flight
22 therefrom, used or was in possession of a stolen motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 c. (1) A plea of guilty by a defendant or failure to so plead shall
8 not be considered in withholding or imposing a sentence of
9 imprisonment.

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

14 d. Presumption of imprisonment. The court shall deal with a
15 person who has been convicted of a crime of the first or second degree
16 by imposing a sentence of imprisonment unless, having regard to the
17 character and condition of the defendant, it is of the opinion that his
18 imprisonment would be a serious injustice which overrides the need to
19 deter such conduct by others. Notwithstanding the provisions of
20 subsection e. of this section, the court shall deal with a person who has
21 been convicted of theft of a motor vehicle or of the unlawful taking of
22 a motor vehicle and who has previously been convicted of either
23 offense by imposing a sentence of imprisonment unless, having regard
24 to the character and condition of the defendant, it is of the opinion that
25 his imprisonment would be a serious injustice which overrides the need
26 to deter such conduct by others.

27 e. The court shall deal with a person convicted of an offense other
28 than a crime of the first or second degree, who has not previously been
29 convicted of an offense, without imposing sentence of imprisonment
30 unless, having regard to the nature and circumstances of the offense
31 and the history, character and condition of the defendant, it is of the
32 opinion that his imprisonment is necessary for the protection of the
33 public under the criteria set forth in subsection a., except that this
34 subsection shall not apply if the person is convicted of any of the
35 following crimes of the third degree: theft of a motor vehicle; unlawful
36 taking of a motor vehicle; or eluding ; or if the person is convicted of
37 a crime of the third or fourth degree constituting bias intimidation in
38 violation of N.J.S.2C:16-1.

39 f. Presumptive Sentences. (1) Except for the crime of murder,
40 unless the preponderance of aggravating or mitigating factors, as set
41 forth in subsections a. and b., weighs in favor of a higher or lower
42 term within the limits provided in N.J.S.2C:43-6, when a court
43 determines that a sentence of imprisonment is warranted, it shall
44 impose sentence as follows:

45 (a) To a term of 20 years for aggravated manslaughter or
46 kidnapping pursuant to paragraph (1) of subsection c. of

1 N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

2 (b) Except as provided in paragraph (a) of this subsection to a
3 term of 15 years for a crime of the first degree;

4 (c) To a term of seven years for a crime of the second degree;

5 (d) To a term of four years for a crime of the third degree; and

6 (e) To a term of nine months for a crime of the fourth degree.

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

10 Unless the preponderance of mitigating factors set forth in
11 subsection b. weighs in favor of a lower term within the limits
12 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
13 presumptive term of life imprisonment. Unless the preponderance of
14 aggravating and mitigating factors set forth in subsections a. and b.
15 weighs in favor of a higher or lower term within the limits authorized,
16 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive
17 term of 50 years' imprisonment; sentences imposed pursuant to
18 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;
19 and sentences imposed pursuant to 2C:43-7a.(4) shall have a
20 presumptive term of seven years' imprisonment.

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

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

34 g. Imposition of Noncustodial Sentences in Certain Cases. If the
35 court, in considering the aggravating factors set forth in subsection a.,
36 finds the aggravating factor in paragraph a.(2) or a.(12) and does not
37 impose a custodial sentence, the court shall specifically place on the
38 record the mitigating factors which justify the imposition of a
39 noncustodial sentence.

40 h. Except as provided in section 2 of P.L.1993, c.123
41 (C.2C:43-11), the presumption of imprisonment as provided in
42 subsection d. of this section shall not preclude the admission of a
43 person to the Intensive Supervision Program, established pursuant to
44 the Rules Governing the Courts of the State of New Jersey.

45 (cf: P.L.1995, c.6, s.2)

1 8. N.J.S.2C:44-3 is amended to read as follows:

2 2C:44-3. Criteria for Sentence of Extended Term of
3 Imprisonment.

4 The court may, upon application of the prosecuting attorney,
5 sentence a person who has been convicted of a crime of the first,
6 second or third degree to an extended term of imprisonment if it finds
7 one or more of the grounds specified in subsection a., b., c., or f. of
8 this section. [The court shall, upon application of the prosecuting
9 attorney, sentence a person who has been convicted of a crime, other
10 than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of
11 N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose
12 to intimidate because of gender, to an extended term if it finds, by a
13 preponderance of the evidence, the grounds in subsection e.] If the
14 grounds specified in subsection d. are found, and the person is being
15 sentenced for commission of any of the offenses enumerated in
16 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the
17 defendant to an extended term as required by N.J.S.2C:43-6c. or
18 N.J.S.2C:43-6g., and application by the prosecutor shall not be
19 required. The court shall, upon application of the prosecuting
20 attorney, sentence a person who has been convicted of a crime under
21 N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment
22 if the grounds specified in subsection g. of this section are found. The
23 court shall, upon application of the prosecuting attorney, sentence a
24 person who has been convicted of a crime to an extended term of
25 imprisonment if the grounds specified in subsection h. of this section
26 are found. The court shall, upon application of the prosecuting
27 attorney, sentence a person to an extended term if the imposition of
28 such term is required pursuant to the provisions of section 2 of
29 P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be
30 incorporated in the record.

31 a. The defendant has been convicted of a crime of the first, second
32 or third degree and is a persistent offender. A persistent offender is a
33 person who at the time of the commission of the crime is 21 years of
34 age or over, who has been previously convicted on at least two
35 separate occasions of two crimes, committed at different times, when
36 he was at least 18 years of age, if the latest in time of these crimes or
37 the date of the defendant's last release from confinement, whichever is
38 later, is within 10 years of the date of the crime for which the
39 defendant is being sentenced.

40 b. The defendant has been convicted of a crime of the first, second
41 or third degree and is a professional criminal. A professional criminal
42 is a person who committed a crime as part of a continuing criminal
43 activity in concert with two or more persons, and the circumstances of
44 the crime show he has knowingly devoted himself to criminal activity
45 as a major source of livelihood.

46 c. The defendant has been convicted of a crime of the first, second

1 or third degree and committed the crime as consideration for the
2 receipt, or in expectation of the receipt, of anything of pecuniary value
3 the amount of which was unrelated to the proceeds of the crime or he
4 procured the commission of the offense by payment or promise of
5 payment of anything of pecuniary value.

6 d. Second offender with a firearm. The defendant is at least 18
7 years of age and has been previously convicted of any of the following
8 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
9 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously
10 convicted of an offense under Title 2A of the New Jersey Statutes or
11 under any statute of the United States or any other state which is
12 substantially equivalent to the offenses enumerated in this subsection
13 and he used or possessed a firearm, as defined in 2C:39-1f., in the
14 course of committing or attempting to commit any of these crimes,
15 including the immediate flight therefrom.

16 e. [The defendant in committing the crime acted with a purpose
17 to intimidate an individual or group of individuals because of race,
18 color, gender, handicap, religion, sexual orientation or ethnicity.]
19 (Deleted by amendment, P.L. , c., (C.)(now pending before the
20 Legislature as this bill).

21 f. The defendant has been convicted of a crime under any of the
22 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
23 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
24 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of
25 committing or attempting to commit the crime, including the
26 immediate flight therefrom, the defendant used or was in possession
27 of a stolen motor vehicle.

28 g. The defendant has been convicted of a crime under
29 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of
30 violence and the victim of the crime was 16 years of age or less.

31 For purposes of this subsection, a crime involves violence or the
32 threat of violence if the victim sustains serious bodily injury as defined
33 in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses
34 a deadly weapon or threatens by word or gesture to use a deadly
35 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to
36 inflict serious bodily injury.

37 h. The crime was committed while the defendant was knowingly
38 involved in criminal street gang related activity. A crime is committed
39 while the defendant was involved in criminal street gang related
40 activity if the crime was committed for the benefit of, at the direction
41 of, or in association with a criminal street gang. "Criminal street
42 gang" means three or more persons associated in fact. Individuals are
43 associated in fact if (1) they have in common a group name or
44 identifying sign, symbol, tattoo or other physical marking, style of
45 dress or use of hand signs or other indicia of association or common
46 leadership, and (2) individually or in combination with other members

1 of a criminal street gang, while engaging in gang related activity, have
2 committed, conspired or attempted to commit , within the preceding
3 three years, two or more offenses of robbery, carjacking, aggravated
4 assault, assault, aggravated sexual assault, sexual assault, arson,
5 burglary, kidnapping, extortion, or a violation of chapter 11, section
6 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New
7 Jersey Statutes regardless of whether the prior offenses have resulted
8 in convictions.

9 The court shall not impose a sentence pursuant to this subsection
10 unless the ground therefore has been established by a preponderance
11 of the evidence established at a hearing, which may occur at the time
12 of sentencing. In making its finding, the court shall take judicial notice
13 of any testimony or information adduced at the trial, plea hearing or
14 other court proceedings and also shall consider the presentence report
15 and any other relevant information.

16 (cf: P.L.1999, c.160, s.4).

17

18 9. This act shall take effect immediately.

ASSEMBLY, No. 2702

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JULY 13, 2000

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman DAVID C. RUSSO

District 40 (Bergen and Passaic)

Co-Sponsored by:

Assemblyman Bateman

SYNOPSIS

Requires prosecutor to charge person with purpose to intimidate because of race, color, gender, handicap, religion, sexual orientation or ethnicity as element in indictment; responds to Apprendi decision.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/4/2001)

1 AN ACT concerning sentencing and supplementing Title 2C of the
2 New Jersey Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. A prosecutor who plans to seek an extended term of
8 imprisonment pursuant to N.J.S.2C:43-7 for a defendant charged with
9 a crime set forth in Title 2C of the New Jersey Statutes because the
10 prosecutor alleges that the defendant acted with a purpose to
11 intimidate an individual or group of individuals because of race, color,
12 gender, handicap, religion, sexual orientation or ethnicity pursuant to
13 subsection e. of N.J.S.2C:44-3 in the commission of the crime shall
14 charge this purpose in the indictment. The purpose to intimidate shall
15 be treated as an element of the crime, and, as such, shall be submitted
16 to the jury and proven beyond a reasonable doubt.

17
18 2. This act shall take effect immediately.

19

20

21

STATEMENT

22
23 This bill responds to the United States Supreme Court decision in
24 Apprendi v. New Jersey (No.99-478) decided on June 26, 2000. The
25 court held that the due process clause of the Fourteenth Amendment
26 requires that a factual determination authorizing an increase in the
27 maximum prison sentence for an offense must be made by a jury on the
28 basis of proof beyond a reasonable doubt.

29 N.J.S.2C:43-7 permits a court upon application of the prosecutor
30 to sentence persons convicted of a crime (other than assault or
31 harassment which have provisions pertaining to intimidation included
32 therein or certain sexual crimes if the intimidation factor is based on
33 gender) to an extended term if the judge finds, by a preponderance of
34 the evidence, the grounds set forth in subsection e. of N.J.S.2C:44-3.
35 These grounds are that the defendant acted with a purpose to
36 intimidate an individual or group of individuals because of race, color,
37 gender, handicap, religion, sexual orientation or ethnicity. This
38 statutory scheme provides for extended terms that, for example, based
39 on the facts in the Apprendi case, increase the range of penalties for
40 a second degree crime to a range of penalties that is ordinarily
41 authorized for a first degree crime. The United States Supreme Court
42 held it was unconstitutional for the legislature to remove from the jury
43 the assessment of facts that increase the prescribed range of penalties
44 to which the defendant is exposed. This bill requires the prosecutor
45 to charge the purpose to intimidate in the indictment and prove it
46 beyond a reasonable doubt.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2702

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 7, 2001

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman DAVID C. RUSSO

District 40 (Bergen and Passaic)

Co-Sponsored by:

**Assemblymen Bateman, Geist, Conaway, Felice, Assemblywoman Heck,
Assemblyman Kelly, Assemblywomen Watson Coleman, Weinberg and
Assemblyman Zisa**

SYNOPSIS

Establishes the crime of Bias Intimidation.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Judiciary Committee.



(Sponsorship Updated As Of: 12/11/2001)

1 AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979,
2 c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-
3 1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New
4 Jersey Statutes.

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

8
9 1. An additional chapter 16, Bias Crimes, is added to Title 2C of
10 the New Jersey Statutes as follows:

11 2C:16-1. Bias Intimidation.

12 a. Bias Intimidation. A person is guilty of the crime of bias
13 intimidation if he commits, attempts to commit, conspires with another
14 to commit, or threatens the immediate commission of an offense
15 specified in chapters 11 through 18 of Title 2C of the New Jersey
16 Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
17 N.J.S.2C:39-5,

18 (1) with a purpose to intimidate an individual or group of
19 individuals because of race, color, religion, gender, handicap, sexual
20 orientation, or ethnicity; or

21 (2) knowing that the conduct constituting the offense would cause
22 an individual or group of individuals to be intimidated because of race,
23 color, religion, gender, handicap, sexual orientation, or ethnicity; or

24 (3) under circumstances that caused any victim of the underlying
25 offense to be intimidated and the victim, considering the manner in
26 which the offense was committed, reasonably believed either that (a)
27 the offense was committed with a purpose to intimidate the victim or
28 any person or entity in whose welfare the victim is interested because
29 of race, color, religion, gender, handicap, sexual orientation, or
30 ethnicity, or (b) the victim or the victim's property was selected to be
31 the target of the offense because of the victim's race, color, religion,
32 gender, handicap, sexual orientation, or ethnicity.

33 b. Permissive inference concerning selection of targeted person or
34 property. Proof that the target of the underlying offense was selected
35 by the defendant, or by another acting in concert with the defendant,
36 because of race, color, religion, gender, handicap, sexual orientation,
37 or ethnicity shall give rise to a permissive inference by the trier of fact
38 that the defendant acted with a purpose to intimidate an individual or
39 group of individuals because of race, color, religion, gender, handicap,
40 sexual orientation, or ethnicity.

41 c. Grading. Bias intimidation is a crime of the fourth degree if the
42 underlying offense referred to in subsection a. is a disorderly persons
43 offense or petty disorderly persons offense. Otherwise, bias

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.

1 intimidation is a crime one degree higher than the most serious
2 underlying crime referred to in subsection a., except that where the
3 underlying crime is a crime of the first degree, bias intimidation is a
4 first-degree crime and the defendant upon conviction thereof may,
5 notwithstanding the provisions of paragraph (1) of subsection a. of
6 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
7 between 20 years and life imprisonment, with a presumptive term of
8 50 years.

9 d. Gender exemption in sexual offense prosecutions. It shall not
10 be a violation of subsection a. if the underlying criminal offense is a
11 violation of chapter 14 of Title 2C of the New Jersey Statutes and the
12 circumstance specified in paragraph (1), (2) or (3) of subsection a. of
13 this section is based solely upon the gender of the victim.

14 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any
15 other provision of law, a conviction for bias intimidation shall not
16 merge with a conviction of any of the underlying offenses referred to
17 in subsection a. of this section, nor shall any conviction for such
18 underlying offense merge with a conviction for bias intimidation. The
19 court shall impose separate sentences upon a conviction for bias
20 intimidation and a conviction of any underlying offense.

21 (Source: New)

22

23 2. N.J.S.2C:12-1 is amended to read as follows:

24 2C:12-1. Assault. a. Simple assault. A person is guilty of assault
25 if he:

26 (1) Attempts to cause or purposely, knowingly or recklessly
27 causes bodily injury to another; or

28 (2) Negligently causes bodily injury to another with a deadly
29 weapon; or

30 (3) Attempts by physical menace to put another in fear of
31 imminent serious bodily injury.

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

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

37 (1) Attempts to cause serious bodily injury to another, or causes
38 such injury purposely or knowingly or under circumstances
39 manifesting extreme indifference to the value of human life recklessly
40 causes such injury; or

41 (2) Attempts to cause or purposely or knowingly causes bodily
42 injury to another with a deadly weapon; or

43 (3) Recklessly causes bodily injury to another with a deadly
44 weapon; or

45 (4) Knowingly under circumstances manifesting extreme
46 indifference to the value of human life points a firearm, as defined in

1 section 2C:39-1f., at or in the direction of another, whether or not the
2 actor believes it to be loaded; or

3 (5) Commits a simple assault as defined in subsection a. (1), (2)
4 or (3) of this section upon:

5 (a) Any law enforcement officer acting in the performance of his
6 duties while in uniform or exhibiting evidence of his authority; or

7 (b) Any paid or volunteer fireman acting in the performance of his
8 duties while in uniform or otherwise clearly identifiable as being
9 engaged in the performance of the duties of a fireman; or

10 (c) Any person engaged in emergency first-aid or medical services
11 acting in the performance of his duties while in uniform or otherwise
12 clearly identifiable as being engaged in the performance of emergency
13 first-aid or medical services; or

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

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

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

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

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

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

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

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

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

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

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

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

1 disorderly persons offense if bodily injury results.

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

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

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

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

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

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

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

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

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

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

45 e. [A person who commits a simple assault as defined in
46 subsection a. of this section is guilty of a crime of the fourth degree if

1 the person acted with a purpose to intimidate an individual or group
2 of individuals because of race, color, religion, gender, handicap, sexual
3 orientation, or ethnicity.] (Deleted by amendment P.L. _____, c. _____)
4 (now pending before the Legislature as this bill).
5 (cf: P.L.1999, c.381, s.1).

6

7 3. N.J.S.2C:33-4 is amended to read as follows:

8 2C:33-4. Harassment.

9 Except as provided in [subsections d. and] subsection e., a person
10 commits a petty disorderly persons offense if, with purpose to harass
11 another, he:

12 a. Makes, or causes to be made, a communication or
13 communications anonymously or at extremely inconvenient hours, or
14 in offensively coarse language, or any other manner likely to cause
15 annoyance or alarm;

16 b. Subjects another to striking, kicking, shoving, or other
17 offensive touching, or threatens to do so; or

18 c. Engages in any other course of alarming conduct or of
19 repeatedly committed acts with purpose to alarm or seriously annoy
20 such other person.

21 A communication under subsection a. may be deemed to have been
22 made either at the place where it originated or at the place where it
23 was received.

24 d. [A person commits a crime of the fourth degree if in
25 committing an offense under this section, he acted with a purpose to
26 intimidate an individual or group of individuals because of race, color,
27 religion, gender, handicap, sexual orientation or ethnicity.] (Deleted
28 by amendment, P.L. _____, c. _____)(now pending before the
29 Legislature as this bill).

30 e. A person commits a crime of the fourth degree if, in committing
31 an offense under this section, he was serving a term of imprisonment
32 or was on parole or probation as the result of a conviction of any
33 indictable offense under the laws of this State, any other state or the
34 United States.

35 (cf: P.L.1998, c.17, s.4).

36

37 4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read
38 as follows:

39 1. a. Any person who has in his possession any firearm while
40 in the course of committing, attempting to commit, or conspiring
41 to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4,
42 N.J.S.2C:35-5, section 3 or section 5 of P.L.1997, c.194
43 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987,
44 c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1) [or]_,
45 N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second
46 degree.

1 b. Any person who has in his possession any weapon, except a
2 firearm, with a purpose to use such weapon unlawfully against the
3 person or property of another, while in the course of committing,
4 attempting to commit, or conspiring to commit a violation of
5 N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of
6 P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section
7 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327
8 (C.2C:35-7.1) [or], N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a
9 crime of the second degree.

10 c. Any person who has in his possession any weapon, except a
11 firearm, under circumstances not manifestly appropriate for such
12 lawful uses as the weapon may have, while in the course of
13 committing, attempting to commit, or conspiring to commit a violation
14 of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section
15 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6,
16 section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
17 P.L.1997,c.327(C.2C:35-7.1) [or] , N.J.S.2C:35-11 or N.J.S.2C:16-1
18 is guilty of a crime of the second degree.

19 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
20 provision of law, a conviction arising under this section shall not
21 merge with a conviction for a violation of any of the sections of
22 chapter 35 or chapter 16 referred to in this section nor shall any
23 conviction under those sections merge with a conviction under this
24 section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other
25 provision of law, the sentence imposed upon a violation of this section
26 shall be ordered to be served consecutively to that imposed for any
27 conviction for a violation of any of the sections of chapter 35 or
28 chapter 16 referred to in this section or a conviction for conspiracy or
29 attempt to violate any of those sections.

30 e. Nothing herein shall be deemed to preclude, if the evidence so
31 warrants, an indictment and conviction for a violation of
32 N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

33 f. Nothing herein shall prevent the court from also imposing
34 enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of
35 P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an
36 extended term.
37 (cf: P.L.1998, c.26, s.1).

38
39 5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read
40 as follows:

41 6. Certain Persons Not to Have Weapons.

42 a. Except as provided in subsection b. of this section, any person,
43 having been convicted in this State or elsewhere of the crime of
44 aggravated assault, arson, burglary, escape, extortion, homicide,
45 kidnapping, robbery, aggravated sexual assault, sexual assault, bias
46 intimidation in violation of N.J.S.2C:16-1 or endangering the welfare

1 of a child pursuant to N.J.S.2C:24-4, whether or not armed with or
2 having in his possession any weapon enumerated in subsection r. of
3 N.J.S.2C:39-1, or any person convicted of a crime pursuant to the
4 provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any
5 person who has ever been committed for a mental disorder to any
6 hospital, mental institution or sanitarium unless he possesses a
7 certificate of a medical doctor or psychiatrist licensed to practice in
8 New Jersey or other satisfactory proof that he is no longer suffering
9 from a mental disorder which interferes with or handicaps him in the
10 handling of a firearm, or any person who has been convicted of other
11 than a disorderly persons or petty disorderly persons offense for the
12 unlawful use, possession or sale of a controlled dangerous substance
13 as defined in N.J.S.2C:35-2 who purchases, owns, possesses or
14 controls any of the said weapons is guilty of a crime of the fourth
15 degree.

16 b. A person having been convicted in this State or elsewhere of
17 the crime of aggravated assault, arson, burglary, escape, extortion,
18 homicide, kidnapping, robbery, aggravated sexual assault, sexual
19 assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering
20 the welfare of a child pursuant to N.J.S.2C:24-4, whether or not
21 armed with or having in his possession a weapon enumerated in
22 subsection r. of N.J.S.2C:39-1, or a person having been convicted of
23 a crime pursuant to the provisions of N.J.S.2C:35-3 through
24 N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7);
25 N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who
26 purchases, owns, possesses or controls a firearm is guilty of a crime
27 of the second degree.

28 c. Whenever any person shall have been convicted in another state,
29 territory, commonwealth or other jurisdiction of the United States, or
30 any country in the world, in a court of competent jurisdiction, of a
31 crime which in said other jurisdiction or country is comparable to one
32 of the crimes enumerated in subsection a. or b. of this section, then
33 that person shall be subject to the provisions of this section.
34 (cf: P.L.1995, c.114, s.1).

35

36 6. N.J.S.2C:43-7 is amended to read as follows:

37 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

38 a. In the cases designated in section 2C:44-3, a person who has
39 been convicted of a crime may be sentenced, and in the cases
40 designated in subsection e. of section 2 of P.L.1994, c.130
41 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
42 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
43 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall
44 be sentenced, to an extended term of imprisonment, as follows:

45 (1) In case of aggravated manslaughter sentenced under
46 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a

1 crime of the first degree under paragraph (1) of subsection c. of
2 2C:13-1; or aggravated sexual assault if the person is eligible for an
3 extended term pursuant to the provisions of subsection g. of
4 N.J.S.2C:44-3 for a specific term of years which shall be between 30
5 years and life imprisonment;

6 (2) Except for the crime of murder and except as provided in
7 paragraph (1) of this subsection, in the case of a crime of the first
8 degree, for a specific term of years which shall be fixed by the court
9 and shall be between 20 years and life imprisonment;

10 (3) In the case of a crime of the second degree, for a term which
11 shall be fixed by the court between 10 and 20 years;

12 (4) In the case of a crime of the third degree, for a term which
13 shall be fixed by the court between five and 10 years;

14 (5) In the case of a crime of the fourth degree pursuant to
15 2C:43-6c. [,] and 2C:44-3d. [, 2C:44-3e.] for a term of five years,
16 and in the case of a crime of the fourth degree pursuant to 2C:43-6f.
17 and 2C:43-6g. for a term which shall be fixed by the court between
18 three and five years;

19 (6) In the case of the crime of murder, for a specific term of years
20 which shall be fixed by the court between 35 years and life
21 imprisonment, of which the defendant shall serve 35 years before being
22 eligible for parole;

23 (7) In the case of kidnapping under paragraph (2) of subsection c.
24 of 2C:13-1, for a specific term of years which shall be fixed by the
25 court between 30 years and life imprisonment, of which the defendant
26 shall serve 30 years before being eligible for parole.

27 b. As part of a sentence for an extended term and notwithstanding
28 the provisions of 2C:43-9, the court may fix a minimum term not to
29 exceed one-half of the term set pursuant to subsection a. during which
30 the defendant shall not be eligible for parole or a term of 25 years
31 during which time the defendant shall not be eligible for parole where
32 the sentence imposed was life imprisonment; provided that no
33 defendant shall be eligible for parole at a date earlier than otherwise
34 provided by the law governing parole.

35 c. In the case of a person sentenced to an extended term pursuant
36 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a
37 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)
38 according to the degree or nature of the crime for which the defendant
39 is being sentenced, which sentence shall include a minimum term which
40 shall, except as may be specifically provided by N.J.S.2C:43-6f., be
41 fixed at or between one-third and one-half of the sentence imposed by
42 the court or five years, whichever is greater, during which the
43 defendant shall not be eligible for parole. Where the sentence imposed
44 is life imprisonment, the court shall impose a minimum term of 25
45 years during which the defendant shall not be eligible for parole,
46 except that where the term of life imprisonment is imposed on a person

1 convicted for a violation of N.J.S.2C:35-3, the term of parole
2 ineligibility shall be 30 years.

3 d. In the case of a person sentenced to an extended term pursuant
4 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges
5 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the
6 degree or nature of the crime for which the defendant is being
7 sentenced, which sentence shall include a minimum term which shall
8 be fixed at 15 years for a crime of the first or second degree, eight
9 years for a crime of the third degree, or five years for a crime of the
10 fourth degree during which the defendant shall not be eligible for
11 parole. Where the sentence imposed is life imprisonment, the court
12 shall impose a minimum term of 25 years during which the defendant
13 shall not be eligible for parole, except that where the term of life
14 imprisonment is imposed on a person convicted of a violation of
15 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.
16 (cf: P.L.1997, c.410, s.2)

17

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

19 2C:44-1. Criteria for Withholding or Imposing Sentence of
20 Imprisonment. a. In determining the appropriate sentence to be
21 imposed on a person who has been convicted of an offense, the court
22 shall consider the following aggravating circumstances:

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

26 (2) The gravity and seriousness of harm inflicted on the victim,
27 including whether or not the defendant knew or reasonably should
28 have known that the victim of the offense was particularly vulnerable
29 or incapable of resistance due to advanced age, ill-health, or extreme
30 youth, or was for any other reason substantially incapable of exercising
31 normal physical or mental power of resistance;

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

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

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

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

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

44 (8) The defendant committed the offense against a police or other
45 law enforcement officer, correctional employee or fireman, acting in
46 the performance of his duties while in uniform or exhibiting evidence

1 of his authority; the defendant committed the offense because of the
2 status of the victim as a public servant; or the defendant committed the
3 offense against a sports official, athletic coach or manager, acting in
4 or immediately following the performance of his duties or because of
5 the person's status as a sports official, coach or manager;

6 (9) The need for deterring the defendant and others from violating
7 the law;

8 (10) The offense involved fraudulent or deceptive practices
9 committed against any department or division of State government;

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

15 (12) The defendant committed the offense against a person who
16 he knew or should have known was 60 years of age or older, or
17 disabled;

18 (13) The defendant, while in the course of committing or
19 attempting to commit the crime, including the immediate flight
20 therefrom, used or was in possession of a stolen motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 c. (1) A plea of guilty by a defendant or failure to so plead shall
6 not be considered in withholding or imposing a sentence of
7 imprisonment.

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

12 d. Presumption of imprisonment. The court shall deal with a
13 person who has been convicted of a crime of the first or second degree
14 by imposing a sentence of imprisonment unless, having regard to the
15 character and condition of the defendant, it is of the opinion that his
16 imprisonment would be a serious injustice which overrides the need to
17 deter such conduct by others. Notwithstanding the provisions of
18 subsection e. of this section, the court shall deal with a person who has
19 been convicted of theft of a motor vehicle or of the unlawful taking of
20 a motor vehicle and who has previously been convicted of either
21 offense by imposing a sentence of imprisonment unless, having regard
22 to the character and condition of the defendant, it is of the opinion that
23 his imprisonment would be a serious injustice which overrides the need
24 to deter such conduct by others.

25 e. The court shall deal with a person convicted of an offense other
26 than a crime of the first or second degree, who has not previously been
27 convicted of an offense, without imposing sentence of imprisonment
28 unless, having regard to the nature and circumstances of the offense
29 and the history, character and condition of the defendant, it is of the
30 opinion that his imprisonment is necessary for the protection of the
31 public under the criteria set forth in subsection a., except that this
32 subsection shall not apply if the person is convicted of any of the
33 following crimes of the third degree: theft of a motor vehicle; unlawful
34 taking of a motor vehicle; or eluding ; or if the person is convicted of
35 a crime of the third or fourth degree constituting bias intimidation in
36 violation of N.J.S.2C:16-1.

37 f. Presumptive Sentences. (1) Except for the crime of murder,
38 unless the preponderance of aggravating or mitigating factors, as set
39 forth in subsections a. and b., weighs in favor of a higher or lower
40 term within the limits provided in N.J.S.2C:43-6, when a court
41 determines that a sentence of imprisonment is warranted, it shall
42 impose sentence as follows:

43 (a) To a term of 20 years for aggravated manslaughter or
44 kidnapping pursuant to paragraph (1) of subsection c. of
45 N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

46 (b) Except as provided in paragraph (a) of this subsection to a

1 term of 15 years for a crime of the first degree;

2 (c) To a term of seven years for a crime of the second degree;

3 (d) To a term of four years for a crime of the third degree; and

4 (e) To a term of nine months for a crime of the fourth degree.

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

8 Unless the preponderance of mitigating factors set forth in
9 subsection b. weighs in favor of a lower term within the limits
10 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
11 presumptive term of life imprisonment. Unless the preponderance of
12 aggravating and mitigating factors set forth in subsections a. and b.
13 weighs in favor of a higher or lower term within the limits authorized,
14 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive
15 term of 50 years' imprisonment; sentences imposed pursuant to
16 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;
17 and sentences imposed pursuant to 2C:43-7a.(4) shall have a
18 presumptive term of seven years' imprisonment.

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

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

32 g. Imposition of Noncustodial Sentences in Certain Cases. If the
33 court, in considering the aggravating factors set forth in subsection a.,
34 finds the aggravating factor in paragraph a.(2) or a.(12) and does not
35 impose a custodial sentence, the court shall specifically place on the
36 record the mitigating factors which justify the imposition of a
37 noncustodial sentence.

38 h. Except as provided in section 2 of P.L.1993, c.123
39 (C.2C:43-11), the presumption of imprisonment as provided in
40 subsection d. of this section shall not preclude the admission of a
41 person to the Intensive Supervision Program, established pursuant to
42 the Rules Governing the Courts of the State of New Jersey.

43 (cf: P.L.1995, c.6, s.2)

44

45 8. N.J.S.2C:44-3 is amended to read as follows:

46 2C:44-3. Criteria for Sentence of Extended Term of

1 Imprisonment.

2 The court may, upon application of the prosecuting attorney,
3 sentence a person who has been convicted of a crime of the first,
4 second or third degree to an extended term of imprisonment if it finds
5 one or more of the grounds specified in subsection a., b., c., or f. of
6 this section. [The court shall, upon application of the prosecuting
7 attorney, sentence a person who has been convicted of a crime, other
8 than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of
9 N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose
10 to intimidate because of gender, to an extended term if it finds, by a
11 preponderance of the evidence, the grounds in subsection e.] If the
12 grounds specified in subsection d. are found, and the person is being
13 sentenced for commission of any of the offenses enumerated in
14 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the
15 defendant to an extended term as required by N.J.S.2C:43-6c. or
16 N.J.S.2C:43-6g., and application by the prosecutor shall not be
17 required. The court shall, upon application of the prosecuting
18 attorney, sentence a person who has been convicted of a crime under
19 N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment
20 if the grounds specified in subsection g. of this section are found. The
21 court shall, upon application of the prosecuting attorney, sentence a
22 person who has been convicted of a crime to an extended term of
23 imprisonment if the grounds specified in subsection h. of this section
24 are found. The court shall, upon application of the prosecuting
25 attorney, sentence a person to an extended term if the imposition of
26 such term is required pursuant to the provisions of section 2 of
27 P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be
28 incorporated in the record.

29 a. The defendant has been convicted of a crime of the first, second
30 or third degree and is a persistent offender. A persistent offender is a
31 person who at the time of the commission of the crime is 21 years of
32 age or over, who has been previously convicted on at least two
33 separate occasions of two crimes, committed at different times, when
34 he was at least 18 years of age, if the latest in time of these crimes or
35 the date of the defendant's last release from confinement, whichever is
36 later, is within 10 years of the date of the crime for which the
37 defendant is being sentenced.

38 b. The defendant has been convicted of a crime of the first, second
39 or third degree and is a professional criminal. A professional criminal
40 is a person who committed a crime as part of a continuing criminal
41 activity in concert with two or more persons, and the circumstances of
42 the crime show he has knowingly devoted himself to criminal activity
43 as a major source of livelihood.

44 c. The defendant has been convicted of a crime of the first, second
45 or third degree and committed the crime as consideration for the
46 receipt, or in expectation of the receipt, of anything of pecuniary value

1 the amount of which was unrelated to the proceeds of the crime or he
2 procured the commission of the offense by payment or promise of
3 payment of anything of pecuniary value.

4 d. Second offender with a firearm. The defendant is at least 18
5 years of age and has been previously convicted of any of the following
6 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
7 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously
8 convicted of an offense under Title 2A of the New Jersey Statutes or
9 under any statute of the United States or any other state which is
10 substantially equivalent to the offenses enumerated in this subsection
11 and he used or possessed a firearm, as defined in 2C:39-1f., in the
12 course of committing or attempting to commit any of these crimes,
13 including the immediate flight therefrom.

14 e. [The defendant in committing the crime acted with a purpose
15 to intimidate an individual or group of individuals because of race,
16 color, gender, handicap, religion, sexual orientation or ethnicity.]
17 (Deleted by amendment, P.L. , c. (C.)(now pending before the
18 Legislature as this bill).

19 f. The defendant has been convicted of a crime under any of the
20 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
21 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
22 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of
23 committing or attempting to commit the crime, including the
24 immediate flight therefrom, the defendant used or was in possession
25 of a stolen motor vehicle.

26 g. The defendant has been convicted of a crime under
27 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of
28 violence and the victim of the crime was 16 years of age or less.

29 For purposes of this subsection, a crime involves violence or the
30 threat of violence if the victim sustains serious bodily injury as defined
31 in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses
32 a deadly weapon or threatens by word or gesture to use a deadly
33 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to
34 inflict serious bodily injury.

35 h. The crime was committed while the defendant was knowingly
36 involved in criminal street gang related activity. A crime is committed
37 while the defendant was involved in criminal street gang related
38 activity if the crime was committed for the benefit of, at the direction
39 of, or in association with a criminal street gang. "Criminal street
40 gang" means three or more persons associated in fact. Individuals are
41 associated in fact if (1) they have in common a group name or
42 identifying sign, symbol, tattoo or other physical marking, style of
43 dress or use of hand signs or other indicia of association or common
44 leadership, and (2) individually or in combination with other members
45 of a criminal street gang, while engaging in gang related activity, have
46 committed, conspired or attempted to commit , within the preceding

1 three years, two or more offenses of robbery, carjacking, aggravated
2 assault, assault, aggravated sexual assault, sexual assault, arson,
3 burglary, kidnapping, extortion, or a violation of chapter 11, section
4 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New
5 Jersey Statutes regardless of whether the prior offenses have resulted
6 in convictions.

7 The court shall not impose a sentence pursuant to this subsection
8 unless the ground therefore has been established by a preponderance
9 of the evidence established at a hearing, which may occur at the time
10 of sentencing. In making its finding, the court shall take judicial notice
11 of any testimony or information adduced at the trial, plea hearing or
12 other court proceedings and also shall consider the presentence report
13 and any other relevant information.

14 (cf: P.L.1999, c.160, s.4).

15

16 9. This act shall take effect immediately.

ASSEMBLY JUDICIARY COMMITTEE
STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2702

STATE OF NEW JERSEY

DATED: MAY 7, 2001

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2702.

This substitute is in response to the United States Supreme Court ruling in Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, (2000) which held unconstitutional subsection e. of N.J.S.2C:44-3 which authorizes the imposition of an extended term of imprisonment upon a finding by the sentencing court that the defendant committed a crime with a purpose to intimidate the victim because of the victim's race, color, gender, handicap, religion, sexual orientation or ethnicity. In Apprendi, the Supreme Court held that any fact which increases the penalty of a crime beyond the statutory maximum, other than the fact of a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt.

This substitute seeks to preserve the purpose of the New Jersey bias crime statute by establishing the separate crime of bias intimidation which must be charged and proved as any other crime. A person would be guilty of bias intimidation if the person commits any crime listed in the bill with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity. Bias intimidation would be graded one degree higher than the offense that was committed with the purpose to intimidate. Upon a conviction, the sentence imposed by the court would not merge with the sentence imposed for the underlying offense.

This substitute is identical to Senate, No. 1897 (SCS).

P.L. 2001, CHAPTER 443, *approved January 11, 2002*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 1897

1 AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979,
2 c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-
3 1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New
4 Jersey Statutes.

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

8
9 1. An additional chapter 16, Bias Crimes, is added to Title 2C of
10 the New Jersey Statutes as follows:

11 2C:16-1. Bias Intimidation.

12 a. Bias Intimidation. A person is guilty of the crime of bias
13 intimidation if he commits, attempts to commit, conspires with another
14 to commit, or threatens the immediate commission of an offense
15 specified in chapters 11 through 18 of Title 2C of the New Jersey
16 Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or
17 N.J.S.2C:39-5,

18 (1) with a purpose to intimidate an individual or group of
19 individuals because of race, color, religion, gender, handicap, sexual
20 orientation, or ethnicity; or

21 (2) knowing that the conduct constituting the offense would cause
22 an individual or group of individuals to be intimidated because of race,
23 color, religion, gender, handicap, sexual orientation, or ethnicity; or

24 (3) under circumstances that caused any victim of the underlying
25 offense to be intimidated and the victim, considering the manner in
26 which the offense was committed, reasonably believed either that (a)
27 the offense was committed with a purpose to intimidate the victim or
28 any person or entity in whose welfare the victim is interested because
29 of race, color, religion, gender, handicap, sexual orientation, or
30 ethnicity, or (b) the victim or the victim's property was selected to be
31 the target of the offense because of the victim's race, color, religion,
32 gender, handicap, sexual orientation, or ethnicity.

33 b. Permissive inference concerning selection of targeted person or
34 property. Proof that the target of the underlying offense was selected
35 by the defendant, or by another acting in concert with the defendant,
36 because of race, color, religion, gender, handicap, sexual orientation,
37 or ethnicity shall give rise to a permissive inference by the trier of fact

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:

¹ Assembly floor amendments adopted December 10, 2001.

1 that the defendant acted with a purpose to intimidate an individual or
2 group of individuals because of race, color, religion, gender, handicap,
3 sexual orientation, or ethnicity.

4 c. Grading. Bias intimidation is a crime of the fourth degree if the
5 underlying offense referred to in subsection a. is a disorderly persons
6 offense or petty disorderly persons offense. Otherwise, bias
7 intimidation is a crime one degree higher than the most serious
8 underlying crime referred to in subsection a., except that where the
9 underlying crime is a crime of the first degree, bias intimidation is a
10 first-degree crime and the defendant upon conviction thereof may,
11 notwithstanding the provisions of paragraph (1) of subsection a. of
12 N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment
13 between ¹[20 years] 15 years¹ and ¹[life imprisonment] 30 years¹,
14 with a presumptive term of ¹[50 years] 20 years¹.

15 d. Gender exemption in sexual offense prosecutions. It shall not
16 be a violation of subsection a. if the underlying criminal offense is a
17 violation of chapter 14 of Title 2C of the New Jersey Statutes and the
18 circumstance specified in paragraph (1), (2) or (3) of subsection a. of
19 this section is based solely upon the gender of the victim.

20 e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any
21 other provision of law, a conviction for bias intimidation shall not
22 merge with a conviction of any of the underlying offenses referred to
23 in subsection a. of this section, nor shall any conviction for such
24 underlying offense merge with a conviction for bias intimidation. The
25 court shall impose separate sentences upon a conviction for bias
26 intimidation and a conviction of any underlying offense.

27 (Source: New)

28
29 2. N.J.S.2C:12-1 is amended to read as follows:

30 2C:12-1. Assault. a. Simple assault. A person is guilty of assault
31 if he:

32 (1) Attempts to cause or purposely, knowingly or recklessly
33 causes bodily injury to another; or

34 (2) Negligently causes bodily injury to another with a deadly
35 weapon; or

36 (3) Attempts by physical menace to put another in fear of
37 imminent serious bodily injury.

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

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

43 (1) Attempts to cause serious bodily injury to another, or causes
44 such injury purposely or knowingly or under circumstances
45 manifesting extreme indifference to the value of human life recklessly
46 causes such injury; or

- 1 (2) Attempts to cause or purposely or knowingly causes bodily
2 injury to another with a deadly weapon; or
- 3 (3) Recklessly causes bodily injury to another with a deadly
4 weapon; or
- 5 (4) Knowingly under circumstances manifesting extreme
6 indifference to the value of human life points a firearm, as defined in
7 section 2C:39-1f., at or in the direction of another, whether or not the
8 actor believes it to be loaded; or
- 9 (5) Commits a simple assault as defined in subsection a. (1), (2)
10 or (3) of this section upon:
- 11 (a) Any law enforcement officer acting in the performance of his
12 duties while in uniform or exhibiting evidence of his authority; or
- 13 (b) Any paid or volunteer fireman acting in the performance of his
14 duties while in uniform or otherwise clearly identifiable as being
15 engaged in the performance of the duties of a fireman; or
- 16 (c) Any person engaged in emergency first-aid or medical services
17 acting in the performance of his duties while in uniform or otherwise
18 clearly identifiable as being engaged in the performance of emergency
19 first-aid or medical services; or
- 20 (d) Any school board member, school administrator, teacher,
21 school bus driver or other employee of a school board while clearly
22 identifiable as being engaged in the performance of his duties or
23 because of his status as a member or employee of a school board or
24 any school bus driver employed by an operator under contract to a
25 school board while clearly identifiable as being engaged in the
26 performance of his duties or because of his status as a school bus
27 driver; or
- 28 (e) Any employee of the Division of Youth and Family Services
29 while clearly identifiable as being engaged in the performance of his
30 duties or because of his status as an employee of the division; or
- 31 (f) Any justice of the Supreme Court, judge of the Superior Court,
32 judge of the Tax Court or municipal judge while clearly identifiable as
33 being engaged in the performance of judicial duties or because of his
34 status as a member of the judiciary; or
- 35 (g) Any operator of a motorbus or the operator's supervisor or any
36 employee of a rail passenger service while clearly identifiable as being
37 engaged in the performance of his duties or because of his status as an
38 operator of a motorbus or as the operator's supervisor or as an
39 employee of a rail passenger service; or
- 40 (6) Causes bodily injury to another person while fleeing or
41 attempting to elude a law enforcement officer in violation of
42 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in
43 violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any
44 other provision of law to the contrary, a person shall be strictly liable
45 for a violation of this subsection upon proof of a violation of
46 subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in

1 violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily
2 injury to another person; or

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

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

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

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

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

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

1 crime of the second degree. Aggravated assault under subsection
2 b.(11) is a crime of the third degree.

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

8 (2) Assault by auto or vessel is a crime of the third degree if the
9 person drives the vehicle while in violation of R.S.39:4-50 or section
10 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily injury results
11 and is a crime of the fourth degree if the person drives the vehicle
12 while in violation of R.S.39:4-50 or section 2 of P.L.1981, c.512
13 (C.39:4-50.4a) and bodily injury results.

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

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

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

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

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

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

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

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

46 d. A person who is employed by a facility as defined in section 2

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

5 e. [A person who commits a simple assault as defined in
6 subsection a. of this section is guilty of a crime of the fourth degree if
7 the person acted with a purpose to intimidate an individual or group
8 of individuals because of race, color, religion, gender, handicap, sexual
9 orientation, or ethnicity.] (Deleted by amendment P.L. c.)
10 (now pending before the Legislature as this bill).
11 (cf: P.L.1999, c.381, s.1).

12

13 3. N.J.S.2C:33-4 is amended to read as follows:

14 2C:33-4. Harassment.

15 Except as provided in [subsections d. and] subsection e., a person
16 commits a petty disorderly persons offense if, with purpose to harass
17 another, he:

18 a. Makes, or causes to be made, a communication or
19 communications anonymously or at extremely inconvenient hours, or
20 in offensively coarse language, or any other manner likely to cause
21 annoyance or alarm;

22 b. Subjects another to striking, kicking, shoving, or other
23 offensive touching, or threatens to do so; or

24 c. Engages in any other course of alarming conduct or of
25 repeatedly committed acts with purpose to alarm or seriously annoy
26 such other person.

27 A communication under subsection a. may be deemed to have been
28 made either at the place where it originated or at the place where it
29 was received.

30 d. [A person commits a crime of the fourth degree if in
31 committing an offense under this section, he acted with a purpose to
32 intimidate an individual or group of individuals because of race, color,
33 religion, gender, handicap, sexual orientation or ethnicity.] (Deleted
34 by amendment, P.L. , c.)(now pending before the Legislature as
35 this bill).

36 e. A person commits a crime of the fourth degree if, in committing
37 an offense under this section, he was serving a term of imprisonment
38 or was on parole or probation as the result of a conviction of any
39 indictable offense under the laws of this State, any other state or the
40 United States.

41 (cf: P.L.1998, c.17, s.4).

42

43 4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read
44 as follows:

45 2C:39-4.1. Weapons; controlled dangerous substances[,] and
46 other offenses, penalties.

1 1. a. Any person who has in his possession any firearm while in
2 the course of committing, attempting to commit, or conspiring to
3 commit a violation of N.J.S.2C:35-3, N.J.S. 2C:35-4, N.J.S.2C:35-5,
4 section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3),
5 N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
6 P.L.1997, c.327 (C.2C:35-7.1) **[or]** N.J.S.2C:35-11 or N.J.S.2C:16-
7 1 is guilty of a crime of the second degree.

8 b. Any person who has in his possession any weapon, except a
9 firearm, with a purpose to use such weapon unlawfully against the
10 person or property of another, while in the course of committing,
11 attempting to commit, or conspiring to commit a violation of
12 N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of
13 P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section
14 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327
15 (C.2C:35-7.1) **[or]**, N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a
16 crime of the second degree.

17 c. Any person who has in his possession any weapon, except a
18 firearm, under circumstances not manifestly appropriate for such
19 lawful uses as the weapon may have, while in the course of
20 committing, attempting to commit, or conspiring to commit a violation
21 of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section
22 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6,
23 section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of
24 P.L.1997,c.327(C.2C:35-7.1) **[or]** N.J.S.2C:35-11 or N.J.S.2C:16-1
25 is guilty of a crime of the second degree.

26 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
27 provision of law, a conviction arising under this section shall not
28 merge with a conviction for a violation of any of the sections of
29 chapter 35 or chapter 16 referred to in this section nor shall any
30 conviction under those sections merge with a conviction under this
31 section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other
32 provision of law, the sentence imposed upon a violation of this section
33 shall be ordered to be served consecutively to that imposed for any
34 conviction for a violation of any of the sections of chapter 35 or
35 chapter 16 referred to in this section or a conviction for conspiracy or
36 attempt to violate any of those sections.

37 e. Nothing herein shall be deemed to preclude, if the evidence so
38 warrants, an indictment and conviction for a violation of
39 N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

40 f. Nothing herein shall prevent the court from also imposing
41 enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of
42 P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an
43 extended term.

44 (cf: P.L.1998, c.26, s.1).

45

46 5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read

1 as follows:

2 6. Certain Persons Not to Have Weapons.

3 a. Except as provided in subsection b. of this section, any person,
4 having been convicted in this State or elsewhere of the crime of
5 aggravated assault, arson, burglary, escape, extortion, homicide,
6 kidnapping, robbery, aggravated sexual assault, sexual assault, bias
7 intimidation in violation of N.J.S.2C:16-1 or endangering the welfare
8 of a child pursuant to N.J.S.2C:24-4, whether or not armed with or
9 having in his possession any weapon enumerated in subsection r. of
10 N.J.S.2C:39-1, or any person convicted of a crime pursuant to the
11 provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any
12 person who has ever been committed for a mental disorder to any
13 hospital, mental institution or sanitarium unless he possesses a
14 certificate of a medical doctor or psychiatrist licensed to practice in
15 New Jersey or other satisfactory proof that he is no longer suffering
16 from a mental disorder which interferes with or handicaps him in the
17 handling of a firearm, or any person who has been convicted of other
18 than a disorderly persons or petty disorderly persons offense for the
19 unlawful use, possession or sale of a controlled dangerous substance
20 as defined in N.J.S.2C:35-2 who purchases, owns, possesses or
21 controls any of the said weapons is guilty of a crime of the fourth
22 degree.

23 b. A person having been convicted in this State or elsewhere of
24 the crime of aggravated assault, arson, burglary, escape, extortion,
25 homicide, kidnapping, robbery, aggravated sexual assault, sexual
26 assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering
27 the welfare of a child pursuant to N.J.S.2C:24-4, whether or not
28 armed with or having in his possession a weapon enumerated in
29 subsection r. of N.J.S.2C:39-1, or a person having been convicted of
30 a crime pursuant to the provisions of N.J.S.2C:35-3 through
31 N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7);
32 N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who
33 purchases, owns, possesses or controls a firearm is guilty of a crime
34 of the second degree.

35 c. Whenever any person shall have been convicted in another state,
36 territory, commonwealth or other jurisdiction of the United States, or
37 any country in the world, in a court of competent jurisdiction, of a
38 crime which in said other jurisdiction or country is comparable to one
39 of the crimes enumerated in subsection a. or b. of this section, then
40 that person shall be subject to the provisions of this section.
41 (cf: P.L.1995, c.114, s.1).

42

43 6. N.J.S.2C:43-7 is amended to read as follows:

44 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

45 a. In the cases designated in section 2C:44-3, a person who has
46 been convicted of a crime may be sentenced, and in the cases

1 designated in subsection e. of section 2 of P.L.1994, c.130
2 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
3 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
4 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall
5 be sentenced, to an extended term of imprisonment, as follows:

6 (1) In case of aggravated manslaughter sentenced under
7 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
8 crime of the first degree under paragraph (1) of subsection c. of
9 2C:13-1; or aggravated sexual assault if the person is eligible for an
10 extended term pursuant to the provisions of subsection g. of
11 N.J.S.2C:44-3 for a specific term of years which shall be between 30
12 years and life imprisonment;

13 (2) Except for the crime of murder and except as provided in
14 paragraph (1) of this subsection, in the case of a crime of the first
15 degree, for a specific term of years which shall be fixed by the court
16 and shall be between 20 years and life imprisonment;

17 (3) In the case of a crime of the second degree, for a term which
18 shall be fixed by the court between 10 and 20 years;

19 (4) In the case of a crime of the third degree, for a term which
20 shall be fixed by the court between five and 10 years;

21 (5) In the case of a crime of the fourth degree pursuant to
22 2C:43-6c. [,] and 2C:44-3d. [, 2C:44-3e.] for a term of five years,
23 and in the case of a crime of the fourth degree pursuant to 2C:43-6f.
24 and 2C:43-6g. for a term which shall be fixed by the court between
25 three and five years;

26 (6) In the case of the crime of murder, for a specific term of years
27 which shall be fixed by the court between 35 years and life
28 imprisonment, of which the defendant shall serve 35 years before being
29 eligible for parole;

30 (7) In the case of kidnapping under paragraph (2) of subsection c.
31 of 2C:13-1, for a specific term of years which shall be fixed by the
32 court between 30 years and life imprisonment, of which the defendant
33 shall serve 30 years before being eligible for parole.

34 b. As part of a sentence for an extended term and notwithstanding
35 the provisions of 2C:43-9, the court may fix a minimum term not to
36 exceed one-half of the term set pursuant to subsection a. during which
37 the defendant shall not be eligible for parole or a term of 25 years
38 during which time the defendant shall not be eligible for parole where
39 the sentence imposed was life imprisonment; provided that no
40 defendant shall be eligible for parole at a date earlier than otherwise
41 provided by the law governing parole.

42 c. In the case of a person sentenced to an extended term pursuant
43 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a
44 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)
45 according to the degree or nature of the crime for which the defendant
46 is being sentenced, which sentence shall include a minimum term which

1 shall, except as may be specifically provided by N.J.S.2C:43-6f., be
2 fixed at or between one-third and one-half of the sentence imposed by
3 the court or five years, whichever is greater, during which the
4 defendant shall not be eligible for parole. Where the sentence imposed
5 is life imprisonment, the court shall impose a minimum term of 25
6 years during which the defendant shall not be eligible for parole,
7 except that where the term of life imprisonment is imposed on a person
8 convicted for a violation of N.J.S.2C:35-3, the term of parole
9 ineligibility shall be 30 years.

10 d. In the case of a person sentenced to an extended term pursuant
11 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges
12 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the
13 degree or nature of the crime for which the defendant is being
14 sentenced, which sentence shall include a minimum term which shall
15 be fixed at 15 years for a crime of the first or second degree, eight
16 years for a crime of the third degree, or five years for a crime of the
17 fourth degree during which the defendant shall not be eligible for
18 parole. Where the sentence imposed is life imprisonment, the court
19 shall impose a minimum term of 25 years during which the defendant
20 shall not be eligible for parole, except that where the term of life
21 imprisonment is imposed on a person convicted of a violation of
22 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

23 (cf: P.L.1997, c.410, s.2)

24

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

26 2C:44-1. Criteria for Withholding or Imposing Sentence of
27 Imprisonment. a. In determining the appropriate sentence to be
28 imposed on a person who has been convicted of an offense, the court
29 shall consider the following aggravating circumstances:

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

33 (2) The gravity and seriousness of harm inflicted on the victim,
34 including whether or not the defendant knew or reasonably should
35 have known that the victim of the offense was particularly vulnerable
36 or incapable of resistance due to advanced age, ill-health, or extreme
37 youth, or was for any other reason substantially incapable of exercising
38 normal physical or mental power of resistance;

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

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

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

46 (6) The extent of the defendant's prior criminal record and the

1 seriousness of the offenses of which he has been convicted;

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

5 (8) The defendant committed the offense against a police or other
6 law enforcement officer, correctional employee or fireman, acting in
7 the performance of his duties while in uniform or exhibiting evidence
8 of his authority; the defendant committed the offense because of the
9 status of the victim as a public servant; or the defendant committed the
10 offense against a sports official, athletic coach or manager, acting in
11 or immediately following the performance of his duties or because of
12 the person's status as a sports official, coach or manager;

13 (9) The need for deterring the defendant and others from violating
14 the law;

15 (10) The offense involved fraudulent or deceptive practices
16 committed against any department or division of State government;

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

22 (12) The defendant committed the offense against a person who
23 he knew or should have known was 60 years of age or older, or
24 disabled;

25 (13) The defendant, while in the course of committing or
26 attempting to commit the crime, including the immediate flight
27 therefrom, used or was in possession of a stolen motor vehicle.

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

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

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

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

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

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

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

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

46 (8) The defendant's conduct was the result of circumstances

1 unlikely to recur;

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

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

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

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

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

12 c. (1) A plea of guilty by a defendant or failure to so plead shall
13 not be considered in withholding or imposing a sentence of
14 imprisonment.

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

19 d. Presumption of imprisonment. The court shall deal with a
20 person who has been convicted of a crime of the first or second degree
21 by imposing a sentence of imprisonment unless, having regard to the
22 character and condition of the defendant, it is of the opinion that his
23 imprisonment would be a serious injustice which overrides the need to
24 deter such conduct by others. Notwithstanding the provisions of
25 subsection e. of this section, the court shall deal with a person who has
26 been convicted of theft of a motor vehicle or of the unlawful taking of
27 a motor vehicle and who has previously been convicted of either
28 offense by imposing a sentence of imprisonment unless, having regard
29 to the character and condition of the defendant, it is of the opinion that
30 his imprisonment would be a serious injustice which overrides the need
31 to deter such conduct by others.

32 e. The court shall deal with a person convicted of an offense other
33 than a crime of the first or second degree, who has not previously been
34 convicted of an offense, without imposing sentence of imprisonment
35 unless, having regard to the nature and circumstances of the offense
36 and the history, character and condition of the defendant, it is of the
37 opinion that his imprisonment is necessary for the protection of the
38 public under the criteria set forth in subsection a., except that this
39 subsection shall not apply if the person is convicted of any of the
40 following crimes of the third degree: theft of a motor vehicle; unlawful
41 taking of a motor vehicle; or eluding ; or if the person is convicted of
42 a crime of the third or fourth degree constituting bias intimidation in
43 violation of N.J.S.2C:16-1.

44 f. Presumptive Sentences. (1) Except for the crime of murder,
45 unless the preponderance of aggravating or mitigating factors, as set
46 forth in subsections a. and b., weighs in favor of a higher or lower

1 term within the limits provided in N.J.S.2C:43-6, when a court
2 determines that a sentence of imprisonment is warranted, it shall
3 impose sentence as follows:

4 (a) To a term of 20 years for aggravated manslaughter or
5 kidnapping pursuant to paragraph (1) of subsection c. of
6 N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

7 (b) Except as provided in paragraph (a) of this subsection to a
8 term of 15 years for a crime of the first degree;

9 (c) To a term of seven years for a crime of the second degree;

10 (d) To a term of four years for a crime of the third degree; and

11 (e) To a term of nine months for a crime of the fourth degree.

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

15 Unless the preponderance of mitigating factors set forth in
16 subsection b. weighs in favor of a lower term within the limits
17 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
18 presumptive term of life imprisonment. Unless the preponderance of
19 aggravating and mitigating factors set forth in subsections a. and b.
20 weighs in favor of a higher or lower term within the limits authorized,
21 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive
22 term of 50 years' imprisonment; sentences imposed pursuant to
23 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;
24 and sentences imposed pursuant to 2C:43-7a.(4) shall have a
25 presumptive term of seven years' imprisonment.

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

29 (2) In cases of convictions for crimes of the first or second degree
30 where the court is clearly convinced that the mitigating factors
31 substantially outweigh the aggravating factors and where the interest
32 of justice demands, the court may sentence the defendant to a term
33 appropriate to a crime of one degree lower than that of the crime for
34 which he was convicted. If the court does impose sentence pursuant
35 to this paragraph, or if the court imposes a noncustodial or
36 probationary sentence upon conviction for a crime of the first or
37 second degree, such sentence shall not become final for 10 days in
38 order to permit the appeal of such sentence by the prosecution.

39 g. Imposition of Noncustodial Sentences in Certain Cases. If the
40 court, in considering the aggravating factors set forth in subsection a.,
41 finds the aggravating factor in paragraph a.(2) or a.(12) and does not
42 impose a custodial sentence, the court shall specifically place on the
43 record the mitigating factors which justify the imposition of a
44 noncustodial sentence.

45 h. Except as provided in section 2 of P.L.1993, c.123
46 (C.2C:43-11), the presumption of imprisonment as provided in

1 subsection d. of this section shall not preclude the admission of a
2 person to the Intensive Supervision Program, established pursuant to
3 the Rules Governing the Courts of the State of New Jersey.

4 (cf: P.L.1995, c.6, s.2)

5
6 8. N.J.S.2C:44-3 is amended to read as follows:

7 2C:44-3. Criteria for Sentence of Extended Term of
8 Imprisonment.

9 The court may, upon application of the prosecuting attorney,
10 sentence a person who has been convicted of a crime of the first,
11 second or third degree to an extended term of imprisonment if it finds
12 one or more of the grounds specified in subsection a., b., c., or f. of
13 this section. [The court shall, upon application of the prosecuting
14 attorney, sentence a person who has been convicted of a crime, other
15 than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of
16 N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose
17 to intimidate because of gender, to an extended term if it finds, by a
18 preponderance of the evidence, the grounds in subsection e.] If the
19 grounds specified in subsection d. are found, and the person is being
20 sentenced for commission of any of the offenses enumerated in
21 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the
22 defendant to an extended term as required by N.J.S.2C:43-6c. or
23 N.J.S.2C:43-6g., and application by the prosecutor shall not be
24 required. The court shall, upon application of the prosecuting
25 attorney, sentence a person who has been convicted of a crime under
26 N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment
27 if the grounds specified in subsection g. of this section are found. The
28 court shall, upon application of the prosecuting attorney, sentence a
29 person who has been convicted of a crime to an extended term of
30 imprisonment if the grounds specified in subsection h. of this section
31 are found. The court shall, upon application of the prosecuting
32 attorney, sentence a person to an extended term if the imposition of
33 such term is required pursuant to the provisions of section 2 of
34 P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be
35 incorporated in the record.

36 a. The defendant has been convicted of a crime of the first, second
37 or third degree and is a persistent offender. A persistent offender is a
38 person who at the time of the commission of the crime is 21 years of
39 age or over, who has been previously convicted on at least two
40 separate occasions of two crimes, committed at different times, when
41 he was at least 18 years of age, if the latest in time of these crimes or
42 the date of the defendant's last release from confinement, whichever is
43 later, is within 10 years of the date of the crime for which the
44 defendant is being sentenced.

45 b. The defendant has been convicted of a crime of the first, second
46 or third degree and is a professional criminal. A professional criminal

1 is a person who committed a crime as part of a continuing criminal
2 activity in concert with two or more persons, and the circumstances of
3 the crime show he has knowingly devoted himself to criminal activity
4 as a major source of livelihood.

5 c. The defendant has been convicted of a crime of the first, second
6 or third degree and committed the crime as consideration for the
7 receipt, or in expectation of the receipt, of anything of pecuniary value
8 the amount of which was unrelated to the proceeds of the crime or he
9 procured the commission of the offense by payment or promise of
10 payment of anything of pecuniary value.

11 d. Second offender with a firearm. The defendant is at least 18
12 years of age and has been previously convicted of any of the following
13 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
14 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously
15 convicted of an offense under Title 2A of the New Jersey Statutes or
16 under any statute of the United States or any other state which is
17 substantially equivalent to the offenses enumerated in this subsection
18 and he used or possessed a firearm, as defined in 2C:39-1f., in the
19 course of committing or attempting to commit any of these crimes,
20 including the immediate flight therefrom.

21 e. [The defendant in committing the crime acted with a purpose
22 to intimidate an individual or group of individuals because of race,
23 color, gender, handicap, religion, sexual orientation or ethnicity.]
24 (Deleted by amendment, P.L. , c., (C.)(now pending before the
25 Legislature as this bill).

26 f. The defendant has been convicted of a crime under any of the
27 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
28 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
29 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of
30 committing or attempting to commit the crime, including the
31 immediate flight therefrom, the defendant used or was in possession
32 of a stolen motor vehicle.

33 g. The defendant has been convicted of a crime under
34 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of
35 violence and the victim of the crime was 16 years of age or less.

36 For purposes of this subsection, a crime involves violence or the
37 threat of violence if the victim sustains serious bodily injury as defined
38 in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses
39 a deadly weapon or threatens by word or gesture to use a deadly
40 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to
41 inflict serious bodily injury.

42 h. The crime was committed while the defendant was knowingly
43 involved in criminal street gang related activity. A crime is committed
44 while the defendant was involved in criminal street gang related
45 activity if the crime was committed for the benefit of, at the direction
46 of, or in association with a criminal street gang. "Criminal street

1 gang" means three or more persons associated in fact. Individuals are
2 associated in fact if (1) they have in common a group name or
3 identifying sign, symbol, tattoo or other physical marking, style of
4 dress or use of hand signs or other indicia of association or common
5 leadership, and (2) individually or in combination with other members
6 of a criminal street gang, while engaging in gang related activity, have
7 committed, conspired or attempted to commit , within the preceding
8 three years, two or more offenses of robbery, carjacking, aggravated
9 assault, assault, aggravated sexual assault, sexual assault, arson,
10 burglary, kidnapping, extortion, or a violation of chapter 11, section
11 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New
12 Jersey Statutes regardless of whether the prior offenses have resulted
13 in convictions.

14 The court shall not impose a sentence pursuant to this subsection
15 unless the ground therefore has been established by a preponderance
16 of the evidence established at a hearing, which may occur at the time
17 of sentencing. In making its finding, the court shall take judicial notice
18 of any testimony or information adduced at the trial, plea hearing or
19 other court proceedings and also shall consider the presentence report
20 and any other relevant information.

21 (cf: P.L.1999, c.160, s.4).

22

23 9. This act shall take effect immediately.

24

25

26

27

28 Establishes the crime of Bias Intimidation.

CHAPTER 443

AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979, c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New Jersey Statutes.

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

1. An additional chapter 16, Bias Crimes, is added to Title 2C of the New Jersey Statutes as follows:

Bias intimidation.

2C:16-1. Bias Intimidation.

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or N.J.S.2C:39-5,

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, handicap, sexual orientation, or ethnicity.

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, handicap, sexual orientation, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

c. Grading. Bias intimidation is a crime of the fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise, bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a., except that where the underlying crime is a crime of the first degree, bias intimidation is a first-degree crime and the defendant upon conviction thereof 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 years and 30 years, with a presumptive term of 20 years

d. Gender exemption in sexual offense prosecutions. It shall not be a violation of subsection a. if the underlying criminal offense is a violation of chapter 14 of Title 2C of the New Jersey Statutes and the circumstance specified in paragraph (1), (2) or (3) of subsection a. of this section is based solely upon the gender of the victim.

e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction for bias intimidation shall not merge with a conviction of any of the underlying offenses referred to in subsection a. of this section, nor shall any conviction for such underlying offense merge with a conviction for bias intimidation. The court shall impose separate sentences upon a conviction for bias intimidation and a conviction of any underlying offense.

2. N.J.S.2C:12-1 is amended to read as follows:

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

(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 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).

3. N.J.S.2C:33-4 is amended to read as follows:

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.

4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read as follows:

C.2C:39-4.1 Weapons; controlled dangerous substances and other offenses, penalties.

2C:39-4.1. Weapons; controlled dangerous substances and other offenses, penalties.

1. 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.

5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b. A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall 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 five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of imprisonment pursuant to N.J.S. 2C:43-7, the extended 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 by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

c. Whenever any person shall have been convicted in another state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

6. N.J.S.2C:43-7 is amended to read as follows:

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. and 2C:44-3d. for a term of five years, and in the case of a crime of the fourth degree pursuant to 2C:43-6f. and 2C:43-6g. 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.

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

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;

(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 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; or eluding; 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.

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 kidnapping 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.

8. N.J.S.2C:44-3 is amended to read as follows:

Criteria for sentence of extended term of imprisonment.

2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime of the first, second or third degree to an extended term of imprisonment if it finds one or more of the grounds specified in subsection a., b., c., or f. of this section. If the grounds specified in subsection d. are found, and the person is being sentenced for commission of any of the offenses enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the defendant to an extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the prosecutor shall not be required. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment if the grounds specified in subsection g. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime to an extended term of imprisonment if the grounds specified in subsection h. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person to an extended term if the imposition of such term is required pursuant to the provisions of section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be incorporated in the record.

a. The defendant has been convicted of a crime of the first, second or third degree and is a persistent offender. A persistent offender is a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.

b. The defendant has been convicted of a crime of the first, second or third degree and is a professional criminal. A professional criminal is a person who committed a crime as part of a continuing criminal activity in concert with two or more persons, and the circumstances of the crime show he has knowingly devoted himself to criminal activity as a major source of livelihood.

c. The defendant has been convicted of a crime of the first, second or third degree and committed the crime as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value the amount of which was unrelated to the proceeds of the crime or he procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

d. Second offender with a firearm. The defendant is at least 18 years of age and has been previously convicted of any of the following crimes: 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, 2C:39-4a., or has been previously convicted of an offense under Title 2A of the New Jersey Statutes or under any statute of the United States or any other state which is substantially equivalent to the offenses enumerated in this subsection and he used or possessed a firearm, as defined in 2C:39-1f., in the course of committing or

attempting to commit any of these crimes, including the immediate flight therefrom.

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

f. The defendant has been convicted of a crime under any of the following sections: 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:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of committing or attempting to commit the crime, including the immediate flight therefrom, the defendant used or was in possession of a stolen motor vehicle.

g. The defendant has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of violence and the victim of the crime was 16 years of age or less.

For purposes of this subsection, a crime involves violence or the threat of violence if the victim sustains serious bodily injury as defined in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict serious bodily injury.

h. The crime was committed while the defendant was knowingly involved in criminal street gang related activity. A crime is committed while the defendant was involved in criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang. "Criminal street gang" means three or more persons associated in fact. Individuals are associated in fact if (1) they have in common a group name or identifying sign, symbol, tattoo or other physical marking, style of dress or use of hand signs or other indicia of association or common leadership, and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed, conspired or attempted to commit, within the preceding three years, two or more offenses of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, or a violation of chapter 11, section 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes regardless of whether the prior offenses have resulted in convictions.

The court shall not impose a sentence pursuant to this subsection unless the ground therefore has been established by a preponderance of the evidence established at a hearing, which may occur at the time of sentencing. In making its finding, the court shall take judicial notice of any testimony or information adduced at the trial, plea hearing or other court proceedings and also shall consider the presentence report and any other relevant information.

9. This act shall take effect immediately.

Approved January 11, 2002.