

2C:39-6, 2C:39-9

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:39-6, 2C:39-9 (Tear gas devices -- permits use)

LAWS 1981 CHAPTER 480

Bill No. S1353

Sponsor(s) Zane

Date Introduced June 23, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Law, Public Safety and Defense

Amended during passage Yes ~~XXX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Jan. 4, 1982

Senate Nov. 12, 1981

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Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

6/22/81

PP

[OFFICIAL COPY REPRINT]
SENATE, No. 1353

STATE OF NEW JERSEY

INTRODUCED JUNE 23, 1980

By Senator ZANE

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning weapons and amending ***[N. J. S. 2C:39-1]***

N. J. S. 2C:39-6 and N. J. S. 2C:39-9.

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

1 ***[1. N. J. S. 2C:39-1** is amended to read as follows:

2 2C:39-1. Definitions. The following definitions apply to this
3 chapter and to chapter 58:

4 a. "Antique firearm" means any firearm which is incapable of
5 being fired or discharged, or which does not fire fixed ammunition,
6 or which was manufactured before 1898 for which cartridge am-
7 munition is not commercially available, and is possessed as a curi-
8 osity or ornament or for its historical significance or value.

9 b. "Deface" means to remove, deface, cover, alter or destroy
10 the name of the maker, model designation, manufacturer's serial
11 number or any other distinguishing identification mark or number
12 on any firearm.

13 c. "Destructive device" means any device, instrument or object
14 designed to explode or produce uncontrolled combustion, including
15 (1) any explosive or incendiary bomb, mine or grenade; (2) any
16 rocket having a propellant charge of more than 4 ounces or
17 any missile having an explosive or incendiary charge of more than
18 one quarter of an ounce; (3) any weapon capable of firing a projec-
19 tile of a caliber greater than .60 caliber, except a shotgun or shot-
20 gun ammunition generally recognized as suitable for sporting
21 purposes; (4) any Molotov cocktail or other device consisting of
22 a breakable container containing flammable liquid and having a
23 wick or similar device capable of being ignited. The term does not
24 include any device manufactured for the purpose of illumination,
25 distress signaling, line-throwing, safety or similar purposes.

26 d. "Dispose of" means to give, give away, lease, loan, keep for

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

27 sale, offer, offer for sale, sell, transfer, or otherwise transfer
28 possession.

29 e. "Explosive" means any chemical compound or mixture that
30 is commonly used or is possessed for the purpose of producing an
31 explosion and which contains any oxidizing and combustible ma-
32 terials or other ingredients in such proportions, quantities or
33 packing that an ignition by fire, by friction, by concussion or by
34 detonation or any part of the compound or mixture may cause such
35 a sudden generalization of highly heated gases that the resultant
36 gaseous pressures are capable of producing destructive effects on
37 contiguous objects. The term shall not include small arms am-
38 munition, or explosives in the form prescribed by the official United
39 States Pharmacopœia.

40 f. "Firearm" means any hand gun, rifle, shotgun, machine gun,
41 automatic or semi-automatic rifle, or any gun, device or instrument
42 in the nature of a weapon from which may be fired or ejected any
43 solid projectible ball, slug, pellet, missile or bullet, or any gas,
44 vapor or other noxious thing, by means of a cartridge or shell or
45 by the action of an explosive or the igniting of flammable or ex-
46 plosive substances. It shall also include, without limitation, any
47 firearm which is in the nature of an air gun, spring gun or pistol
48 or other weapon of a similar nature in which the propelling force
49 is a spring, elastic band, carbon dioxide, compressed or other gas
50 or vapor, air or compressed air, or is ignited by compressed air,
51 and ejecting a bullet or missile smaller than three-eighths of an
52 inch in diameter, with sufficient force to injure a person.

53 g. "Firearm silencer" means any instrument, attachment, weapon
54 or appliance for causing the firing of any gun, revolver, pistol or
55 other firearm to be silent, or intended to lessen or muffle the noise
56 of the firing of any gun, revolver, pistol or other firearm.

57 h. "Gravity knife" means any knife which has a blade which is
58 released from the handle or sheath thereof by the force of gravity
59 or the application of centrifugal force.

60 i. "Machine gun" means any firearm, mechanism or instrument
61 not requiring that the trigger be pressed for each shot and having
62 a reservoir, belt or other means of storing and carrying ammuni-
63 tion which can be loaded into the firearm, mechanism or instrument
64 and fired therefrom.

65 j. "Manufacturer" means any person who receives or obtains
66 raw materials or parts and processes them into firearms or finished
67 parts of firearms, except a person who exclusively processes grips,
68 stocks and other nonmetal parts of firearms. The term does not
69 include a person who repairs existing firearms or receives new

70 and used raw materials or parts solely for the repair of existing
71 firearms.

72 k. "Hand gun" means any pistol, revolver or other firearm
73 originally designed or manufactured to be fired by the use of a
74 single hand.

75 l. "Retail dealer" means any person including a gunsmith, ex-
76 cept a manufacturer or a wholesale dealer, who sells, transfers
77 or assigns for a fee or profit any firearm or parts of firearms or
78 ammunition which he has purchased or obtained with the inten-
79 tion, or for the purpose, of reselling or reassigning to persons who
80 are reasonably understood to be the ultimate consumer, and in-
81 cludes any person who is engaged in the business of repairing
82 firearms or who sells any firearm to satisfy a debt secured by the
83 pledge of a firearm.

84 m. "Rifle" means any firearm designed to be fired from the
85 shoulder and using the energy of the explosive in a fixed metallic
86 cartridge to fire a single projectile through a rifled bore for each
87 single pull of the trigger.

88 n. "Shotgun" means any firearm designed to be fired from the
89 shoulder and using the energy of the explosive in a fixed shotgun
90 shell to fire through a smooth bore either a number of ball shot
91 or a single projectile for each pull of the trigger, or any firearm
92 designed to be fired from the shoulder which does not fire fixed
93 ammunition.

94 o. "Sawed-off shotgun" means any shotgun having a barrel or
95 barrels of less than 18 inches in length measured from the breach
96 to the muzzle, or a rifle having a barrel or barrels of less than 16
97 inches in length measured from the breach to the muzzle, or any
98 firearm made from a rifle or a shotgun, whether by alteration, or
99 otherwise, if such firearm as modified has an overall length of
100 less than 26 inches.

101 p. "Switchblade knife" means any knife or similar device which
102 has a blade which opens automatically by hand pressure applied
103 to a button, spring or other device in the handle of the knife.

104 q. "Superintendent" means the Superintendent of the State
105 Police.

106 r. "Weapon" means anything readily capable of lethal use or
107 of inflicting serious bodily injury. The term includes, but is not
108 limited to, all (1) firearms, even though not loaded or lacking a
109 clip or other component to render them immediately operable;
110 (2) components which can be readily assembled into a weapon;
111 and (3) gravity knives, switchblade knives, daggers, dirks, stiletos,
112 or other dangerous knives, billies, blackjacks, bludgeons, metal

113 knuckles, sandclubs, slingshots, cestus or similar leather bands
 114 studded with metal filings or razor blades imbedded in wood; and
 115 any weapon or other device which projects, releases, or emits tear
 116 gas or any other substance *and is* intended to produce [temporary
 117 physical discomfort or] permanent injury through being vaporized
 118 or otherwise dispensed in the air.

119 s. "Wholesale dealer" means any person, except a manufacturer,
 120 who sells, transfers, or assigns firearms, or parts of firearms, to
 121 persons who are reasonably understood not to be the ultimate
 122 consumer, and includes persons who receive finished parts of fire-
 123 arms and assemble them into completed or partially completed fire-
 124 arms, in furtherance of such purpose, except that it shall not include
 125 those persons dealing exclusively in grips, stocks and other non-
 126 metal parts of firearms.]*

1 *1. N. J. S. 2C:39-6 is amended to read as follows:

2 2C:39-6. Exemptions. a. Section 2C:39-5 does not apply to:

3 (1) Members of the Armed Forces of the United States or of the
 4 National Guard while actually on duty, or while traveling between
 5 places of duty and carrying authorized weapons in the manner
 6 prescribed by the appropriate military authorities;

7 (2) Federal law enforcement officers, and any other federal offi-
 8 cers and employees required to carry firearms in the performance
 9 of their official duties;

10 (3) Members of the State Police, a motor vehicle inspector;

11 (4) A sheriff, undersheriff, sheriff's officer, county prosecutor,
 12 assistant prosecutor, prosecutor's detective or investigator, deputy
 13 attorney general or State [investigator] *investigator* employed
 14 by the Division of Criminal Justice of the Department of Law and
 15 Public Safety, investigator employed by the State Commission of
 16 Investigation, inspectors and investigators of the Division of Alco-
 17 holic Beverage Control in the Department of Law and Public
 18 Safety, State park ranger, or State conservation officer;

19 (5) A prison or jail warden of any penal institution in this State
 20 or his deputies, or an employee of the Department of Corrections
 21 engaged in the interstate transportation of convicted offenders,
 22 while in the performance of his duties, and when required to possess
 23 such a weapon by his superior officer, or a correction officer or
 24 keeper of a penal institution in this State at all times while in the
 25 State of New Jersey provided he annually passes an examination
 26 approved by the superintendent testing his proficiency in the han-
 27 dling of firearms;

28 (6) A civilian employee of the United States Government under
 29 the supervision of the commanding officer of any post, camp, sta-

30 tion, base or other military or naval installation located in this
 31 State who is required, in the performance of his official duties, to
 32 carry firearms, and who is authorized to carry such firearms by
 33 said commanding officer, while in the actual performance of his
 34 official duties; *or*

35 (7) A regularly employed member, including a detective, of the
 36 police department of any county or municipality, or of any state,
 37 interstate, municipal or county park police force or boulevard police
 38 force, at all times while in the State of New Jersey, or a special
 39 policeman appointed by the governing body of any county or
 40 municipality or by the commission, board or other body having
 41 control of a county park or boulevard police force, while engaged
 42 in the actual performance of his official duties and when specifically
 43 authorized by the governing body to carry weapons.

44 b. Subsections a., b. and c. of section 2C:39-5 do not apply to:

45 (1) A law enforcement officer employed by a governmental
 46 agency outside of the State of New Jersey while actually engaged
 47 in his official duties, provided, however, that he has first notified
 48 the superintendent or the chief law enforcement officer of the mu-
 49 nicipality or the prosecutor of the county in which he is engaged; or

50 (2) A licensed dealer in firearms and his registered employees
 51 during the course of their normal business while traveling to and
 52 from their place of business and other places for the purpose of
 53 demonstration, exhibition or delivery in connection with a sale,
 54 provided, however, that any such weapon is carried in the manner
 55 specified in subsection g. of this section.

56 c. Subsections b. and c. of section 2C:39-5 do not apply to:

56A (1) A special agent of the Division of Taxation who has passed
 56B an examination in an approved police training program testing
 56C proficiency in the handling of any firearm which he may be required
 56D to carry or a railway policeman, while in the actual performance
 56E of his official duties and while going to or from his place of duty,
 56F a campus police officer appointed pursuant to P. L. 1970, c. 211
 56G (C. 18A:6-4.2 et seq.) or any other police officer, while in the actual
 56H performance of his official duties;

56I (2) A State deputy conservation officer or a full-time employee
 56J of the Division of Parks and Forestry having the power of arrest
 56K and authorized to carry weapons, while in the actual performance
 56L of his official duties;

56M (3) A full-time member of the marine patrol force or a special
 56N marine patrolman authorized to carry such a weapon by the Com-
 56O missioner of Environmental Protection, while in the actual per-
 56P formance of his official duties;

56Q (4) A court attendant serving as such under appointment by the
56R sheriff of the county or by the judge [or magistrate] [or] of any
56S *municipal* court or other court of this State, while in the actual
56T performance of his official duties;

57 (5) A guard in the employ of any railway express company,
58 banking or building and loan or savings and loan institution of
59 this State, while in the actual performance of his official duties;

60 (6) A member of a legally recognized military organization while
61 actually under orders or while going to or from the prescribed
62 place of meeting and carrying the weapons prescribed for drill,
63 exercise or parade;

64 (7) An officer of the Society for the Prevention of Cruelty to
65 Animals, while in the actual performance of his duties; or

66 (8) An employee of a public utilities corporation actually en-
67 gaged in the transportation of explosives.

68 d. Subsections c. and d. of section 2C:39-5 do not apply to
69 antique firearms, provided that such antique firearms are unloaded
70 or are being fired for the purposes of exhibition or demonstration
71 at an authorized target range or in such other manner as has been
72 approved in writing by the chief law enforcement officer of the
73 municipality in which the exhibition or demonstration is held.

74 e. Nothing in subsections b., c. and d. of section 2C:39-5 shall
75 be construed to prevent a person keeping or carrying about his
76 place of business, residence, premises or other land owned or
77 possessed by him, any firearm, or from carrying the same, in the
78 manner specified in subsection g. of this section, from any place of
79 purchase to his residence or place of business between his dwellings
80 and his place of business, between one place of business or residence
81 and another when moving, or between his dwelling or place of
82 business and place where such firearms are repaired, for the
83 purpose of repair. For the purposes of this section, a place of
84 business shall be deemed to be a fixed location.

85 f. Nothing in subsections b., c. and d. of section 2C:39-5 shall
86 be construed to prevent:

87 (1) A member of any rifle or pistol club organized in accordance
88 with the rules prescribed by the National Board for the Promotion
89 of Rifle Practice, in going to or from a place of target practice,
90 carrying such firearms as are necessary for said target practice
91 provided that the club has filed a copy of its charter with the
92 superintendent and annually submits a list of its members to the
93 superintendent and provided further that the firearms are carried
94 in the manner specified in subsection g. of this section;

137 *canines or other animals by the Commissioner of Health and which*
 138 *immobilizes only on a temporary basis and produces only tempo-*
 139 *rary physical discomfort through being vaporized or otherwise*
 140 *dispensed in the air for the sole purpose of repelling canine or*
 141 *other animal attacks.*

142 *The device shall be used solely to repel only those canine or other*
 143 *animal attacks when the canines or other animals are not restrained*
 144 *in a fashion sufficient to allow the employee to properly perform*
 145 *his duties.*

146 *Any device used pursuant to this act shall be selected from a list*
 147 *of products, which consist of active and inert ingredients, permitted*
 148 *by the Commissioner of Health.*

149 *i. Nothing in subsection d. of 2C:39-5 shall be construed to*
 150 *prevent any person who is 18 years of age or older and who has*
 151 *not been convicted of a felony, from possession for the purpose of*
 152 *personal self-defense of one pocket-sized device which contains and*
 153 *releases not more than three-quarters of an ounce of chemical*
 154 *substance not ordinarily capable of lethal use or of inflicting serious*
 155 *bodily injury, but rather, is intended to produce temporary physical*
 156 *discomfort or disability through being vaporized or otherwise dis-*
 157 *persed in the air. Any person in possession of any device in viola-*
 158 *tion of this subsection shall be deemed and adjudged to be a*
 159 *disorderly person, and upon conviction thereof, shall be punished*
 160 *by a fine of not less than \$100.00.**

1 2. N. J. S. 2C:39-9 is amended to read as follows:

2 2C:39-9. Manufacture, Transport, Disposition and Defacement
 3 of Weapons and Dangerous Instruments and Appliances. a. Ma-
 4 chine guns. Any person who manufactures, causes to be manufac-
 5 tured, transports, ships, sells or disposes of any machine gun
 6 without being registered or licensed to do so as provided in chap-
 7 ter 58 is guilty of a crime of the third degree.

8 b. Sawed-off shotguns. Any person who manufactures, causes
 9 to be manufactured, transports, ships, sells or disposes of any
 10 sawed-off shotgun is guilty of a crime of the third degree.

11 c. Firearm silencers. Any person who manufactures, causes to
 12 be manufactured, transports, ships, sells or disposes of any firearm
 13 silencer is guilty of a crime of the fourth degree.

14 d. Weapons. Any person who manufactures, causes to be manu-
 15 factured, transports, ships, *sells* or disposes of any weapon includ-
 16 ing gravity knives, switchblade knives, daggers, dirks, stilettoes,
 17 billies, blackjacks, metal knuckles, sandclubs, slingshots, cestus or
 18 similar leather bands studded with metal filings, or in the case of
 19 firearms if he is not licensed or registered to do so as provided in

95 (2) A person carrying a firearm or knife in the woods or fields
 96 or upon the waters of this State for the purpose of hunting, target
 97 practice or fishing, provided that the firearm or knife is legal and
 98 appropriate for hunting or fishing purposes in this State and he
 99 has in his possession a valid hunting license, or, with respect to
 100 fresh water fishing, a valid fishing license;

101 (3) A person transporting any firearm or knife while traveling:
 102 (a) Directly to or from any place for the purpose of hunting or
 103 fishing, provided such person has in his possession a valid hunting
 104 or fishing license; or

105 (b) Directly to or from any target range, or other authorized
 106 place for the purpose of practice, match, target, trap or skeet shoot-
 107 ing exhibitions, provided in all cases that during the course of
 108 such travel all firearms are carried in the manner specified in sub-
 109 section g. of this section and the person has complied with all the
 110 provisions and requirements of Title 23 of the Revised Statutes
 111 and any amendments thereto and all rules and regulations promul-
 112 gated thereunder[:]; or

113 (c) In the case of a firearm, directly to or from any exhibition
 114 or display of firearms which is sponsored by any law enforcement
 115 agency, any rifle or pistol club, or any firearms collectors club,
 116 for the purpose of displaying of the firearms to the public or to the
 117 members of such organization or club, provided, however, that not
 118 less than 30 days prior to such exhibition or display, notice of such
 119 exhibition or display shall be given to the Superintendent of the
 120 State Police by the sponsoring organization or club, and the spon-
 121 sor has complied with such reasonable safety regulations [or] as
 122 the superintendent may promulgate. Any firearms transported pur-
 123 suant to this section [must] shall be transported in the manner
 124 specified in [paragraph] subsection g. of this section.

125 g. All weapons being transported under subsections b. (2), e.
 126 or f. (1) or (3) of this section shall be carried unloaded and con-
 127 tained in a closed and fastened case, gunbox, securely tied package,
 128 or locked in the trunk of the automobile in which it is being trans-
 129 ported, and the course of travel shall include only such deviations
 130 as are reasonably necessary under the circumstances.

131 h. *Nothing in subsection d. of section 2C:39-5 shall be construed*
 131A *to prevent any employee of a public utility, as defined in R. S.*
 132 *48:2-13, doing business in this State or any United States Postal*
 133 *Service employee, while in the actual performance of duties which*
 134 *specifically require regular and frequent visits to private premises,*
 135 *from possessing, carrying or using any device which projects, re-*
 136 *leases or emits any substance specified as being noninjurious to*

20 chapter 58, is guilty of a crime of the fourth degree. Any person
 21 who manufactures, causes to be manufactured, transports, ships,
 22 sells or disposes of any weapon [or other device which projects,
 23 releases or emits tear gas or any other substances intended to pro-
 24 duce temporary physical discomfort or permanent injury through
 25 being vaporized or otherwise dispensed in the air,] **or other device*
 25A *which projects, releases or emits tear gas or other substances*
 25B *intended to produce temporary physical discomfort or permanent*
 25C *injury through being vaporized or otherwise dispensed in the air,**
 26 which is intended to be used for any purpose other than for autho-
 27 rized military or law enforcement purposes by duly authorized
 28 military or law enforcement personnel **or the device is for the*
 28A *purpose of personal self-defense, is pocket-sized and contains not*
 28B *more than three-quarters of an ounce of chemical substance not*
 28C *ordinarily capable of lethal use or of inflicting serious bodily*
 28D *injury, or other than to be used by any person permitted to possess*
 28E *such weapon or device under the provisions of N. J. S. 2C:39-5d.,*
 28F *which is intended for use by financial and other business institu-*
 28G *tions as part of an integrated security system, placed at fixed*
 28H *locations, for the protection of money and property, by the duly*
 28I *authorized personnel of those institutions**, is guilty of a crime of
 28J the fourth degree.

29 e. Defaced firearms. Any person who defaces any firearm is
 30 guilty of a crime of the third degree. Any person who knowingly
 31 buys, receives, disposes of or conceals a defaced firearm, except
 32 an antique firearm, is guilty of a crime of the fourth degree.

1 3. This act shall take effect immediately.

28 law enforcement personnel, is guilty of a crime of the fourth degree.
29 e. Defaced firearms. Any person who defaces any firearm is
30 guilty of a crime of the third degree. Any person who knowingly
31 buys, receives, disposes of or conceals a defaced firearm, except
32 an antique firearm, is guilty of a crime of the fourth degree.

1 3. This act shall take effect immediately.

STATEMENT

This bill amends the Code of Criminal Justice so as to remove the releasing of "tear gas or any other substance intended to produce temporary physical discomfort through being vaporized or otherwise dispensed in the air" from the definition of "weapon."

This would decriminalize the manufacture, sale and possession of these items used primarily as protective devices and would decriminalize their use in self-defense.

51353(1980)

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

SENATE No. 1353

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1981

The effect of this bill is to delete possession of tear gas devices which produce only temporary or physical discomfort and are not intended to produce permanent injury, as a weapons offense. Presently, possession of these devices is not in and of itself unlawful. However, where possession and intent to use the device unlawfully (N. J. S. 2C:39-4d) or under circumstances not manifestly appropriate for its lawful use (N. J. S. 2C:39-5d) occur, a specific offense is committed.

This bill also removes the manufacture and sale of these type tear gas devices as an offense under 2C.

This bill, as amended, would define the nature or make-up of those tear gas or tear gas-like devices which would be permitted for sale and possession. The amendments would change Senate Bill No. 1353 to be similar to Assembly Bill No. 1676 which was previously released from committee.

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SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO

SENATE No. 1353

STATE OF NEW JERSEY

DATED: JUNE 8, 1981

This bill amends 2C:39-1 of the Code of Criminal Justice to remove from the definition of weapon devices which release tear gas or any other substance intended to produce temporary physical discomfort through being vaporized or otherwise dispensed in the air and are used primarily as protective devices for self-defense. Most states, including New Jersey's neighboring states, allow the possession of these devices. They are already widely carried within this State. They may be particularly helpful to women and the elderly, and may help deter rapes and muggings. Mailmen, utility workmen and joggers also often carry such devices to deter attacks by dogs.