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P.L. 2003, CHAPTER 50, *approved April 23, 2003*
Senate Committee Substitute for
Senate, No. 2071

1 AN ACT concerning terrorism and amending P.L.2002, c.26.

2

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

5

6 1. Section 5 of P.L.2002, c.26 (C: 2C:38-5) is amended to read as
7 follows:

8 5. Soliciting or Providing Material Support or Resources for
9 Terrorism.

10 a. As used in this section:

11 "Charitable organization" means: (1) any person determined by the
12 federal Internal Revenue Service to be a tax exempt organization
13 pursuant to section 501(c)(3) of the Internal Revenue Code of 1986,
14 26 U.S.C. s.501(c)(3); or

15 (2) any person who is, or holds himself out to be, established for
16 any benevolent, philanthropic, humane, social welfare, public health,
17 or other eleemosynary purpose, or for the benefit of law enforcement
18 personnel, firefighters or other persons who protect the public safety,
19 or any person who in any manner employs a charitable appeal as the
20 basis of any solicitation, or an appeal which has a tendency to suggest
21 there is a charitable purpose to any such solicitation.

22 "Charitable purpose" means: (1) any purpose described in section
23 501 (c)(3) of the Internal Revenue Code of 1986, 26 U.S.C.
24 s.501(c)(3); or (2) any benevolent, philanthropic, humane, social
25 welfare, public health, or other eleemosynary objective, or an objective
26 that benefits law enforcement personnel, firefighters, or other persons
27 who protect the public safety.

28 "Material support or resources" means: (1) services or assistance
29 with knowledge or purpose that the services or assistance will be used
30 in preparing for or carrying out an act of terrorism in violation of
31 section 2 of P.L.2002, c.26 (C.2C:38-2);

32 (2) currency, financial securities or other monetary instruments,
33 financial services, lodging, training, safehouses, false documentation
34 or identification, communications equipment, facilities, weapons, lethal
35 substances, explosives, personnel, including but not limited to persons
36 recruited to participate directly or indirectly in a terrorist organization,
37 transportation and other physical assets or anything of value; or

38 (3) any chemical weapon, or any biological agent, toxin, vector or
39 delivery system for use as a weapon, or any nuclear or radiological
40 device, as defined in subsection c. of section 3 of P.L.2002, c.26

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 (C.2C:38-3).

2 "Professional fund raiser" means any person who for compensation
3 performs for a charitable organization any service in connection with
4 which contributions are or will be solicited in this State by that
5 compensated person or by any compensated person he employs,
6 procures, or engages, directly or indirectly to solicit contributions. A
7 bona fide salaried officer, employee, or volunteer of a charitable
8 organization shall not be deemed to be a professional fund raiser. No
9 attorney, accountant or banker who advises a person to make a
10 charitable contribution during the course of rendering professional
11 services to that person shall be deemed, as a result of that advice, to
12 be a professional fund raiser.

13 b. (1) It shall be unlawful for any person, charitable organization
14 or professional fund raiser to solicit, transport or otherwise provide
15 material support or resources with the purpose or knowledge that such
16 material support or resources will be used, in whole or in part, to aid,
17 plan, prepare or carry out an act of terrorism in violation of section 2
18 of P.L.2002, c.26 (C.2C:38-2) or with the purpose or knowledge that
19 such material support or resources are to be given, in whole or in part,
20 to a person or an organization that has committed or has the purpose
21 to commit or has threatened to commit an act of terrorism in violation
22 of section 2 of P.L.2002, c.26 (C.2C:38-2).

23 (2) It shall be unlawful for any person, charitable organization or
24 professional fund raiser to solicit, transport or otherwise provide
25 material support or resources to or on behalf of a person or an
26 organization that is designated as a foreign terrorist organization by
27 the United States Secretary of State pursuant to 8 U.S.C. s.1189. It
28 shall not be a defense to a prosecution for a violation of this section
29 that the actor did not know that the person or organization is
30 designated as a foreign terrorist organization.

31 c. A person who violates the provisions of subsection b. of this
32 section shall be guilty of a crime of the first degree if the act of
33 terrorism in violation of section 2 of P.L.2002, c.26 (C.2C:38-2)
34 results in death. Otherwise, it is a crime of the second degree.
35 (cf: P.L.2002,c.26,s.5).

36
37 2. This act shall take effect immediately.

38

39

40

41

42 Clarifies the crime of soliciting or providing material support or
43 resources for terrorism.

SENATE, No. 2071

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED NOVEMBER 14, 2002

Sponsored by:

Senator JOSEPH A. PALAIA

District 11 (Monmouth)

SYNOPSIS

Establishes criminal penalties for recruiting members for a terrorist related organization.

CURRENT VERSION OF TEXT

As introduced.



S2071 PALAIA

2

1 AN ACT concerning terrorist organizations, supplementing Title 2C of
2 the New Jersey Statutes and amending N.J.S.2C:44-3.

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

6
7 1. (New section) a. An actor who solicits or recruits another to
8 join or actively participate in a terrorist related organization with the
9 knowledge or purpose that the person who is solicited or recruited will
10 promote, further, assist, plan, aid, agree, or attempt to aid in the
11 commission of criminal conduct by a member of a terrorist related
12 organization commits a crime of the fourth degree. For purposes of
13 this section, the actor shall have the requisite knowledge or purpose
14 if he knows that the person who is solicited or recruited will engage
15 in some form, though not necessarily which form, of criminal activity.
16 "Terrorist related organization" shall have the meaning set forth in
17 subsection i. of N.J.S.2C:44-3.

18 b. An actor who, in the course of violating subsection a. of this
19 section, threatens another with bodily injury on two or more separate
20 occasions within a 30-day period commits a crime of the third degree.

21 c. An actor who, in the course of violating subsection a. of this
22 section, inflicts significant bodily injury upon another commits a crime
23 of the second degree.

24 d. Any defendant convicted of soliciting, recruiting, coercing or
25 threatening a person under 18 years of age in violation of subsection
26 a., b. or c. of this section shall be sentenced by the court to an
27 extended term of imprisonment as set forth in subsection a. of
28 N.J.S.2C:43-7. Notwithstanding the provisions of N.J.S.2C:1-8,
29 N.J.S.2C:44-5 or any other provision of law, a conviction arising
30 under this section shall not merge with a conviction for any criminal
31 offense that the actor committed while involved in a terrorist related
32 organization activity, as defined in subsection i. of N.J.S.2C:44-3, nor
33 shall the conviction for any such offense merge with a conviction
34 pursuant to this section and the sentence imposed upon a violation of
35 this section shall be ordered to be served consecutively to that
36 imposed upon any other such conviction.

37
38 2. N.J.S.2C:44-3 is amended to read as follows:

39 2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.
40 The court may, upon application of the prosecuting attorney,
41 sentence a person who has been convicted of a crime of the first,
42 second or third degree to an extended term of imprisonment if it finds
43 one or more of the grounds specified in subsection a., b., c., or f. of

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 this section. If the grounds specified in subsection d. are found, and
2 the person is being sentenced for commission of any of the offenses
3 enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall
4 sentence the defendant to an extended term as required by
5 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the prosecutor
6 shall not be required. The court shall, upon application of the
7 prosecuting attorney, sentence a person who has been convicted of a
8 crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of
9 imprisonment if the grounds specified in subsection g. of this section
10 are found. The court shall, upon application of the prosecuting
11 attorney, sentence a person who has been convicted of a crime to an
12 extended term of imprisonment if the grounds specified in [subsection
13 h.] subsections h. or i. of this section are found. The court shall, upon
14 application of the prosecuting attorney, sentence a person to an
15 extended term if the imposition of such term is required pursuant to
16 the provisions of section 2 of P.L.1994, c.130 (C.2C:43-6.4). The
17 finding of the court shall be incorporated in the record.

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

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

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

39 d. Second offender with a firearm. The defendant is at least
40 18 years of age and has been previously convicted of any of the
41 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a.,
42 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been
43 previously convicted of an offense under Title 2A of the New Jersey
44 Statutes or under any statute of the United States or any other state
45 which is substantially equivalent to the offenses enumerated in this
46 subsection and he used or possessed a firearm, as defined in 2C:39-1f.,

1 in the course of committing or attempting to commit any of these
2 crimes, including the immediate flight therefrom.

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

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

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

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

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

38 i. The crime was committed while the defendant was knowingly
39 involved in terrorist related organization activity. A crime is
40 committed while the defendant was involved in terrorist related
41 organization activity if the crime was committed for the benefit of, at
42 the direction of, or in association with a terrorist related organization.
43 "Terrorist related organization" means three or more persons
44 associated in fact who have committed, or have the purpose to commit
45 or have threatened to commit an act of terrorism. Individuals are
46 associated in fact if: (1) they have in common a group name or

1 identifying sign or other indicia of association or common leadership
2 and (2) individually or in combination with other members of a
3 terrorist related organization, while engaging in terrorist related
4 organization activity, have committed, conspired or attempted to
5 commit, an act of terrorism. "Terrorism" means the crime of terrorism
6 established by section 2 of P.L.2002, c.26 (C.2C:38-2).

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

15 (cf: P.L.2001, c.443, s.8)

16
17 3. This act shall take effect immediately.

18
19
20 STATEMENT

21
22 This bill establishes enhanced penalties for crimes committed while
23 a person was involved in a terrorist related organization and
24 establishes criminal penalties for persons who recruit members for the
25 terrorist related organization.

26 A terrorist related organization is defined in the bill as a group of
27 three or more persons associated in fact who have committed, or have
28 the purpose to commit or have threatened to commit an act of
29 terrorism. Individuals are associated in fact if: (1) they have in
30 common a group name or identifying sign or other indicia of
31 association or common leadership and (2) individually or in
32 combination with other members of a terrorist related organization,
33 while engaging in terrorist related organization activity, have
34 committed, conspired or attempted to commit, within an act of
35 terrorism. "Terrorism" means the crime of terrorism established by
36 section 2 of P.L.2002, c.26 (C.2C:38-2).

37 The bill requires that the sentencing court, upon application of the
38 prosecuting attorney, would sentence a defendant convicted of a crime
39 to an extended term of imprisonment if the crime was committed while
40 the defendant was involved in terrorist related organization activity.

41 The bill makes it a crime of the fourth degree for a person to solicit
42 or recruit another to join or actively participate in a terrorist related
43 organization knowing or intending that the recruited person will
44 promote, further, assist, plan, aid, agree, or attempt to aid in the
45 commission of criminal conduct by a member of a terrorist related
46 organization commits a crime of the fourth degree.

S2071 PALAIA

6

1 The bill provides that a person who threatens another with bodily
2 injury on two or more occasions within 30 days while recruiting for a
3 terrorist organization commits a crime of the third degree and a person
4 who inflicts significant bodily injury upon another while recruiting for
5 a terrorist organization commits a crime of the second degree.

ASSEMBLY HOMELAND SECURITY AND STATE
PREPAREDNESS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2071

STATE OF NEW JERSEY

DATED: MARCH 6, 2003

The Assembly Homeland Security and State Preparedness Committee reports favorably the Senate Committee Substitute for Senate Bill No. 2071.

The Senate Committee Substitute amends the "September 11, 2001 Anti-Terrorism Act," P.L. 2002, c.26, to include the act of recruiting others to participate in a terrorist organization within the scope of providing material support or resources for terrorism. It would become a crime of the second degree to recruit another person to participate in a terrorist organization. The recruiting activity would be upgraded to a crime of the first degree if any resulting act of terrorism caused any deaths.

This Senate Committee Substitute is identical to the Assembly Committee Substitute for Assembly Bill Nos. 3410 and 2936.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2071**

STATE OF NEW JERSEY

DATED: NOVEMBER 25, 2002

The Senate Judiciary Committee reports favorably Senate Committee Substitute for Senate Bill No. 2071.

The bill, in its original form, would have prohibited a person involved in a terrorist related organization from recruiting members for that organization. The bill provided that it would be a crime of the fourth degree for soliciting or recruiting another person to participate in a terrorist related organization. It would be a crime of the third degree if bodily injury resulted under certain circumstances or a crime of the second degree if significant bodily injury resulted.

The committee proposed a committee substitute in order to make the terms of imprisonment consistent with the recently enacted "September 11th, 2001 Anti-Terrorism Act," P.L. 2002, c.26. Under the provisions of the terrorism act, it is unlawful for any person, charitable organization or professional fund raiser to solicit, transport or otherwise provide material support or resources with the purpose or knowledge that such material support or resources will be used, in whole or in part, to aid, plan, prepare or carry out an act of terrorism or with the purpose or knowledge that such material support or resources are to be given, in whole or in part, to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism in violation of section 2 of P.L.2002, c.26 (C.2C:38-2). Providing material support or resources is a crime of the second degree. This crime is upgraded to a crime of the first degree if the act results in death.

The committee substitute amends this section of the terrorism act to include within the definition of "material support or resources" the act of recruiting others to participate in a terrorist organization. Therefore, it would be a crime of the second degree to recruit another person to participate in a terrorist organization. This crime would be upgraded to a crime of the first degree if violation of the act results in death.

ASSEMBLY, No. 3410

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MARCH 6, 2003

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Clarifies the crime of soliciting or providing material support or resources for terrorism.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning terrorism and amending P.L.2002, c.26.

2

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

5

6 1. Section 5 of P.L.2002, c.26 (C: 2C:38-5) is amended to read as
7 follows:

8 5. Soliciting or Providing Material Support or Resources for
9 Terrorism.

10 a. As used in this section:

11 "Charitable organization" means: (1) any person determined by the
12 federal Internal Revenue Service to be a tax exempt organization
13 pursuant to section 501(c)(3) of the Internal Revenue Code of 1986,
14 26 U.S.C. s.501(c)(3); or

15 (2) any person who is, or holds himself out to be, established for
16 any benevolent, philanthropic, humane, social welfare, public health,
17 or other eleemosynary purpose, or for the benefit of law enforcement
18 personnel, firefighters or other persons who protect the public safety,
19 or any person who in any manner employs a charitable appeal as the
20 basis of any solicitation, or an appeal which has a tendency to suggest
21 there is a charitable purpose to any such solicitation.

22 "Charitable purpose" means: (1) any purpose described in section
23 501 (c)(3) of the Internal Revenue Code of 1986, 26 U.S.C.
24 s.501(c)(3); or (2) any benevolent, philanthropic, humane, social
25 welfare, public health, or other eleemosynary objective, or an objective
26 that benefits law enforcement personnel, firefighters, or other persons
27 who protect the public safety.

28 "Material support or resources" means: (1) services or assistance
29 with knowledge or purpose that the services or assistance will be used
30 in preparing for or carrying out an act of terrorism in violation of
31 section 2 of P.L.2002, c.26 (C.2C:38-2);

32 (2) currency, financial securities or other monetary instruments,
33 financial services, lodging, training, safehouses, false documentation
34 or identification, communications equipment, facilities, weapons, lethal
35 substances, explosives, personnel, including but not limited to persons
36 recruited to participate directly or indirectly in a terrorist organization,
37 transportation and other physical assets or anything of value; or

38 (3) any chemical weapon, or any biological agent, toxin, vector or
39 delivery system for use as a weapon, or any nuclear or radiological
40 device, as defined in subsection c. of section 3 of P.L.2002, c.26
41 (C.2C:38-3).

42 "Professional fund raiser" means any person who for compensation
43 performs for a charitable organization any service in connection with

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 which contributions are or will be solicited in this State by that
2 compensated person or by any compensated person he employs,
3 procures, or engages, directly or indirectly to solicit contributions. A
4 bona fide salaried officer, employee, or volunteer of a charitable
5 organization shall not be deemed to be a professional fund raiser. No
6 attorney, accountant or banker who advises a person to make a
7 charitable contribution during the course of rendering professional
8 services to that person shall be deemed, as a result of that advice, to
9 be a professional fund raiser.

10 b. (1) It shall be unlawful for any person, charitable organization
11 or professional fund raiser to solicit, transport or otherwise provide
12 material support or resources with the purpose or knowledge that such
13 material support or resources will be used, in whole or in part, to aid,
14 plan, prepare or carry out an act of terrorism in violation of section 2
15 of P.L.2002, c.26 (C.2C:38-2) or with the purpose or knowledge that
16 such material support or resources are to be given, in whole or in part,
17 to a person or an organization that has committed or has the purpose
18 to commit or has threatened to commit an act of terrorism in violation
19 of section 2 of P.L.2002, c.26 (C.2C:38-2).

20 (2) It shall be unlawful for any person, charitable organization or
21 professional fund raiser to solicit, transport or otherwise provide
22 material support or resources to or on behalf of a person or an
23 organization that is designated as a foreign terrorist organization by
24 the United States Secretary of State pursuant to 8 U.S.C. s.1189. It
25 shall not be a defense to a prosecution for a violation of this section
26 that the actor did not know that the person or organization is
27 designated as a foreign terrorist organization.

28 c. A person who violates the provisions of subsection b. of this
29 section shall be guilty of a crime of the first degree if the act of
30 terrorism in violation of section 2 of P.L.2002, c.26 (C.2C:38-2)
31 results in death. Otherwise, it is a crime of the second degree.

32 (cf: P.L.2002,c.26,s.5).

33
34 2. This act shall take effect immediately.

35 36 37 STATEMENT

38
39 The bill would amend the recently enacted "September 11th,
40 2001 Anti-Terrorism Act," P.L. 2002, c.26 to make it a crime to solicit
41 or recruit another person to participate in a terrorist related
42 organization.

43 Under the provisions of the terrorism act, it is unlawful for any
44 person, charitable organization or professional fund raiser to solicit,
45 transport or otherwise provide material support or resources with the
46 purpose or knowledge that such material support or resources will be

A3410 COHEN

1 used, in whole or in part, to aid, plan, prepare or carry out an act of
2 terrorism or with the purpose or knowledge that such material
3 support or resources are to be given, in whole or in part, to a person
4 or an organization that has committed or has the purpose to commit
5 or has threatened to commit an act of terrorism in violation of section
6 2 of P.L.2002, c.26 (C.2C:38-2). Providing material support or
7 resources is a crime of the second degree. This crime is upgraded to
8 a crime of the first degree if the act results in death.

9 The bill would amend this section of the terrorism act to include
10 within the definition of "material support or resources" the act of
11 recruiting others to participate in a terrorist organization. Therefore,
12 it would be a crime of the second degree to recruit another person to
13 participate in a terrorist organization. This crime would be upgraded
14 to a crime of the first degree if violation of the act results in death.

ASSEMBLY, No. 2936

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED OCTOBER 21, 2002

Sponsored by:

Assemblyman FRANCIS L. BODINE

District 8 (Burlington)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Establishes criminal penalties for recruiting members for a terrorist related organization.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/4/2003)

1 AN ACT concerning terrorist organizations, supplementing Title 2C of
2 the New Jersey Statutes and amending N.J.S.2C:44-3.

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

6
7 1. (New section) a. An actor who solicits or recruits another to
8 join or actively participate in a terrorist related organization with the
9 knowledge or purpose that the person who is solicited or recruited will
10 promote, further, assist, plan, aid, agree, or attempt to aid in the
11 commission of criminal conduct by a member of a terrorist related
12 organization commits a crime of the fourth degree. For purposes of
13 this section, the actor shall have the requisite knowledge or purpose
14 if he knows that the person who is solicited or recruited will engage
15 in some form, though not necessarily which form, of criminal activity.
16 "Terrorist related organization" shall have the meaning set forth in
17 subsection i. of N.J.S.2C:44-3.

18 b. An actor who, in the course of violating subsection a. of this
19 section, threatens another with bodily injury on two or more separate
20 occasions within a 30-day period commits a crime of the third degree.

21 c. An actor who, in the course of violating subsection a. of this
22 section, inflicts significant bodily injury upon another commits a crime
23 of the second degree.

24 d. Any defendant convicted of soliciting, recruiting, coercing or
25 threatening a person under 18 years of age in violation of subsection
26 a., b. or c. of this section shall be sentenced by the court to an
27 extended term of imprisonment as set forth in subsection a. of
28 N.J.S.2C:43-7. Notwithstanding the provisions of N.J.S.2C:1-8,
29 N.J.S.2C:44-5 or any other provision of law, a conviction arising
30 under this section shall not merge with a conviction for any criminal
31 offense that the actor committed while involved in criminal street gang
32 related activity, as defined in subsection h. of N.J.S.2C:44-3, nor shall
33 the conviction for any such offense merge with a conviction pursuant
34 to this section and the sentence imposed upon a violation of this
35 section shall be ordered to be served consecutively to that imposed
36 upon any other such conviction.

37

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

39 2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

40 The court may, upon application of the prosecuting attorney,
41 sentence a person who has been convicted of a crime of the first,
42 second or third degree to an extended term of imprisonment if it finds
43 one or more of the grounds specified in subsection a., b., c., or f. of

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

Matter underlined thus is new matter.

1 this section. If the grounds specified in subsection d. are found, and
2 the person is being sentenced for commission of any of the offenses
3 enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall
4 sentence the defendant to an extended term as required by
5 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the prosecutor
6 shall not be required. The court shall, upon application of the
7 prosecuting attorney, sentence a person who has been convicted of a
8 crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of
9 imprisonment if the grounds specified in subsection g. of this section
10 are found. The court shall, upon application of the prosecuting
11 attorney, sentence a person who has been convicted of a crime to an
12 extended term of imprisonment if the grounds specified in [subsection
13 h.] subsections h. or i. of this section are found. The court shall, upon
14 application of the prosecuting attorney, sentence a person to an
15 extended term if the imposition of such term is required pursuant to
16 the provisions of section 2 of P.L.1994, c.130 (C.2C:43-6.4). The
17 finding of the court shall be incorporated in the record.

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

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

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

39 d. Second offender with a firearm. The defendant is at least
40 18 years of age and has been previously convicted of any of the
41 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a.,
42 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been
43 previously convicted of an offense under Title 2A of the New Jersey
44 Statutes or under any statute of the United States or any other state
45 which is substantially equivalent to the offenses enumerated in this
46 subsection and he used or possessed a firearm, as defined in 2C:39-1f.,

1 in the course of committing or attempting to commit any of these
2 crimes, including the immediate flight therefrom.

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

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

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

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

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

38 i. The crime was committed while the defendant was knowingly
39 involved in terrorist related organization activity. A crime is
40 committed while the defendant was involved in terrorist related
41 organization activity if the crime was committed for the benefit of, at
42 the direction of, or in association with a terrorist related organization.
43 "Terrorist related organization" means three or more persons
44 associated in fact who have committed, or have the purpose to commit
45 or have threatened to commit an act of terrorism. Individuals are
46 associated in fact if: (1) they have in common a group name or

1 identifying sign or other indicia of association or common leadership
2 and (2) individually or in combination with other members of a
3 terrorist related organization, while engaging in terrorist related
4 organization activity, have committed, conspired or attempted to
5 commit, an act of terrorism. "Terrorism" means the crime of terrorism
6 established by section 2 of P.L.2002, c.26 (C.2C:38-2).

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

15 (cf: P.L.2001, c.443, s.8)

16
17 3. This act shall take effect immediately.

20 STATEMENT

21
22 This bill establishes enhanced penalties for crimes committed while
23 a person was involved in a terrorist related organization and
24 establishes criminal penalties for persons who recruit members for the
25 terrorist related organization.

26 A terrorist related organization is defined in the bill as a group of
27 three or more persons associated in fact who have committed, or have
28 the purpose to commit or have threatened to commit an act of
29 terrorism. Individuals are associated in fact if: (1) they have in
30 common a group name or identifying sign or other indicia of
31 association or common leadership and (2) individually or in
32 combination with other members of a terrorist related organization,
33 while engaging in terrorist related organization activity, have
34 committed, conspired or attempted to commit, within an act of
35 terrorism. "Terrorism" means the crime of terrorism established by
36 section 2 of P.L.2002, c.26 (C.2C:38-2).

37 The bill requires that the sentencing court, upon application of the
38 prosecuting attorney, would sentence a defendant convicted of a crime
39 to an extended term of imprisonment if the crime was committed while
40 the defendant was involved in terrorist related organization activity.

41 The bill makes it a crime of the fourth degree for a person to solicit
42 or recruit another to join or actively participate in a terrorist related
43 organization knowing or intending that the recruited person will
44 promote, further, assist, plan, aid, agree, or attempt to aid in the
45 commission of criminal conduct by a member of a terrorist related
46 organization commits a crime of the fourth degree.

A2936 BODINE, COHEN

6

1 The bill provides that a person who threatens another with bodily
2 injury on two or more occasions within 30 days while recruiting for a
3 terrorist organization commits a crime of the third degree and a person
4 who inflicts significant bodily injury upon another while recruiting for
5 a terrorist organization commits a crime of the second degree.

ASSEMBLY HOMELAND SECURITY AND STATE
PREPAREDNESS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3410 and 2936

STATE OF NEW JERSEY

DATED: MARCH 6, 2003

The Assembly Homeland Security and State Preparedness Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3410 and 2936.

The substitute would amend the "September 11th, 2001 Anti-Terrorism Act," P.L.2002, c.26, to make it a crime to recruit another person to participate in a terrorist organization.

Under the existing provisions of the Act, it is unlawful for any person, charitable organization or professional fund raiser to solicit, transport or otherwise provide material support or resources with the purpose or knowledge that such material support or resources will be used, in whole or in part, to aid, plan, prepare or carry out an act of terrorism or with the purpose or knowledge that such material support or resources are to be given, in whole or in part, to a person or an organization that has committed or has the purpose to commit or has threatened to commit an act of terrorism. N.J.S.A.2C:38-5. Providing material support or resources is a crime of the second degree. This crime is upgraded to a crime of the first degree if any resulting terrorist act caused any death.

The committee substitute would amend the Act to include the activity of recruiting others to participate in a terrorist organization within the defined scope of providing material support or resources for terrorism. It would become a crime of the second degree to recruit another person to participate in a terrorist organization. The recruiting activity would be upgraded to a crime of the first degree if any resulting act of terrorism caused any deaths.

The committee substitute is identical to the Senate Committee Substitute for Senate Bill No. 2071.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3410 and 2936

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED MARCH 6, 2003

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman FRANCIS L. BODINE

District 8 (Burlington)

Assemblyman SEAN T. KEAN

District 11 (Monmouth)

SYNOPSIS

Clarifies the crime of soliciting or providing material support or resources for terrorism.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Homeland Security and State Preparedness Committee.



(Sponsorship Updated As Of: 3/14/2003)

1 AN ACT concerning terrorism and amending P.L.2002, c.26.

2

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

5

6 1. Section 5 of P.L.2002, c.26 (C.2C:38-5) is amended to read as
7 follows:

8 5. Soliciting or Providing Material Support or Resources for
9 Terrorism.

10 a. As used in this section:

11 "Charitable organization" means: (1) any person determined by the
12 federal Internal Revenue Service to be a tax exempt organization
13 pursuant to section 501(c)(3) of the Internal Revenue Code of 1986,
14 26 U.S.C. s.501(c)(3); or

15 (2) any person who is, or holds himself out to be, established for
16 any benevolent, philanthropic, humane, social welfare, public health,
17 or other eleemosynary purpose, or for the benefit of law enforcement
18 personnel, firefighters or other persons who protect the public safety,
19 or any person who in any manner employs a charitable appeal as the
20 basis of any solicitation, or an appeal which has a tendency to suggest
21 there is a charitable purpose to any such solicitation.

22 "Charitable purpose" means: (1) any purpose described in section
23 501 (c)(3) of the Internal Revenue Code of 1986, 26 U.S.C.
24 s.501(c)(3); or (2) any benevolent, philanthropic, humane, social
25 welfare, public health, or other eleemosynary objective, or an objective
26 that benefits law enforcement personnel, firefighters, or other persons
27 who protect the public safety.

28 "Material support or resources" means: (1) services or assistance
29 with knowledge or purpose that the services or assistance will be used
30 in preparing for or carrying out an act of terrorism in violation of
31 section 2 of P.L.2002, c.26 (C.2C:38-2);

32 (2) currency, financial securities or other monetary instruments,
33 financial services, lodging, training, safehouses, false documentation
34 or identification, communications equipment, facilities, weapons, lethal
35 substances, explosives, personnel, including but not limited to persons
36 recruited to participate directly or indirectly in a terrorist organization,
37 transportation and other physical assets or anything of value; or

38 (3) any chemical weapon, or any biological agent, toxin, vector or
39 delivery system for use as a weapon, or any nuclear or radiological
40 device, as defined in subsection c. of section 3 of P.L.2002, c.26
41 (C.2C:38-3).

42 "Professional fund raiser" means any person who for compensation
43 performs for a charitable organization any service in connection with

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

Matter underlined thus is new matter.

1 which contributions are or will be solicited in this State by that
2 compensated person or by any compensated person he employs,
3 procures, or engages, directly or indirectly to solicit contributions. A
4 bona fide salaried officer, employee, or volunteer of a charitable
5 organization shall not be deemed to be a professional fund raiser. No
6 attorney, accountant or banker who advises a person to make a
7 charitable contribution during the course of rendering professional
8 services to that person shall be deemed, as a result of that advice, to
9 be a professional fund raiser.

10 b. (1) It shall be unlawful for any person, charitable organization
11 or professional fund raiser to solicit, transport or otherwise provide
12 material support or resources with the purpose or knowledge that such
13 material support or resources will be used, in whole or in part, to aid,
14 plan, prepare or carry out an act of terrorism in violation of section 2
15 of P.L.2002, c.26 (C.2C:38-2) or with the purpose or knowledge that
16 such material support or resources are to be given, in whole or in part,
17 to a person or an organization that has committed or has the purpose
18 to commit or has threatened to commit an act of terrorism in violation
19 of section 2 of P.L.2002, c.26 (C.2C:38-2).

20 (2) It shall be unlawful for any person, charitable organization or
21 professional fund raiser to solicit, transport or otherwise provide
22 material support or resources to or on behalf of a person or an
23 organization that is designated as a foreign terrorist organization by
24 the United States Secretary of State pursuant to 8 U.S.C. s.1189. It
25 shall not be a defense to a prosecution for a violation of this section
26 that the actor did not know that the person or organization is
27 designated as a foreign terrorist organization.

28 c. A person who violates the provisions of subsection b. of this
29 section shall be guilty of a crime of the first degree if the act of
30 terrorism in violation of section 2 of P.L.2002, c.26 (C.2C:38-2)
31 results in death. Otherwise, it is a crime of the second degree.
32 (cf: P.L.2002,c.26,s.5).

33

34 2. This act shall take effect immediately.