

2C:33-29

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 341

NJSA: 2C:33-29 (Creates offenses of gang criminality and promoting organized street crime)

BILL NO: A4582 (Substituted for S2940)

SPONSOR(S) Watson Coleman and Others

DATE INTRODUCED: November 19, 2007

COMMITTEE: **ASSEMBLY:** Law and Public Safety

SENATE:

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2008

SENATE: January 7, 2008

DATE OF APPROVAL: January 13, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Third reprint enacted)

A4582

SPONSOR'S STATEMENT: (Begins on page 18 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes 12-13-07
1-7-08

LEGISLATIVE FISCAL NOTE: Yes 1-10-08
1-14-08

S2940

SPONSOR'S STATEMENT: (Begins on page 18 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Law and Public Safety
11-29-07
Budget
12-10-07

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL NOTE: Yes

(continued)

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GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: Yes

HEARINGS: No

NEWSPAPER ARTICLES: No

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R424

2006c Final report: prepared for Governor-elect Jon S. Corzine / Corrections Transition Policy Group.
By New Jersey. Corrections Transition Policy Group.
<https://dspace.njstatelib.org/handle/10929/24346>

974.09

J97

2007 Gangs in New Jersey : municipal law enforcement response to the 2007 NJSP gang survey.
Trenton, N.J.: New Jersey State Police, Intelligence Section, 2007
<https://dspace.njstatelib.org/handle/10929/24763>

LAW

P.L. 2007, CHAPTER 341, *approved January 13, 2008*
Assembly, No. 4582 (*Third Reprint*)

1 AN ACT concerning criminal street gangs and amending and
2 supplementing various parts of the statutory law.

3

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

6

7 1. (New section) a. A person is guilty of the crime of gang
8 criminality if, while knowingly involved in criminal street gang
9 activity, he commits, attempts to commit, or conspires to commit,
10 whether as a principal or an accomplice, any ²**[offense]** crime²
11 specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of
12 the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3;
13 ¹**[N.J.S.2C:39:4; N.J.S.2C:39-4.1]** N.J.S.2C:39-4; section 1 of
14 P.L.1998, c.26 (C.2C:39-4.1)¹; N.J.S.2C:39-5; or N.J.S.2C:39-9.
15 ²**[An offense]** A crime² is committed while involved in a criminal
16 street gang related activity if the ²**[offense]** crime² was committed
17 for the benefit of, at the direction of, or in association with a
18 criminal street gang.

19 “Criminal street gang” means three or more persons associated in
20 fact. Individuals are associated in fact if: (1) two of the following
21 seven criteria that indicate criminal street gang membership apply:
22 (a) self-proclamation; (b) witness testimony or official statement;
23 (c) written or electronic correspondence; (d) paraphernalia or
24 photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia
25 of street gang activity; and (2) individually or in combination with
26 other members of a criminal street gang, while engaging in gang
27 related activity, have committed or conspired or attempted to
28 commit, within the preceding five years from the date of present
29 offense, excluding any period of imprisonment, one or more
30 offenses on separate occasions of robbery, carjacking, aggravated
31 assault, assault, aggravated sexual assault, sexual assault, arson,
32 burglary, kidnapping, extortion, tampering with witnesses and
33 informants or a violation of chapter 11, sections 3, 4, 5, 6, or 7 of
34 chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes
35 ³**[regardless of whether the prior offenses have resulted in**
36 **convictions]**³.

37 b. Grading. Gang criminality is a crime of ²**[the fourth degree**
38 **if the underlying offense referred to in subsection a. of this section**
39 **is a disorderly persons offense or a petty disorderly persons offense.**

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:

¹Assembly ALP committee amendments adopted December 10, 2007.

²Assembly floor amendments adopted December 13, 2007.

³Senate floor amendments adopted January 7, 2008.

1 Otherwise, gang criminality is a crime of]² one degree higher than
2 the most serious underlying ²[offense] crime² referred to in
3 subsection a. of this section, except that where the underlying
4 ²[offense] crime² is a crime of the first degree, gang criminality is
5 a first degree crime and the defendant, upon conviction, and
6 notwithstanding the provisions of paragraph (1) of subsection a. of
7 N.J.S.2C:43-6, shall be sentenced to an ordinary term of
8 imprisonment between 15 and 30 years. A sentence imposed upon
9 conviction of the crime of gang criminality shall be ordered to be
10 served consecutively to the sentence imposed upon conviction of
11 any underlying offense referred to in subsection a. of this section.

12
13 2. (New section) a. A person promotes organized street crime
14 if he conspires with others as an organizer, supervisor, financier or
15 manager to commit any ²[offense] crime² specified in chapters 11
16 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;
17 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; ¹[N.J.S.2C:39-4.1]
18 section 1 of P.L.1998, c.26 (C.2C:39-4.1)¹; N.J.S.2C:39-5; or
19 N.J.S.2C:39-9.

20 b. Grading. Promotion of organized street crime is a crime of
21 ²[the fourth degree if the underlying offense referred to in
22 subsection a. of this section is a disorderly persons offense or a
23 petty disorderly persons offense. Otherwise, promotion of
24 organized street crime is a crime of]² one degree higher than the
25 most serious underlying ²[offense] crime² referred to in subsection
26 a. of this section, except that where the underlying offense is a
27 crime of the first degree, promotion of organized street crime is a
28 first degree crime and the defendant, upon conviction, and
29 notwithstanding the provisions of paragraph (1) of subsection a of
30 N.J.S.2C:43-6, shall be sentenced to an ordinary term of
31 imprisonment between 15 and 30 years. A sentence imposed upon
32 conviction of the crime of promotion of organized street crime shall
33 be ordered to be served consecutively to the sentence imposed upon
34 conviction of any underlying offense referred to in subsection a. of
35 this section.

36
37 3. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to
38 read as follows:

39 7. a. On motion of the prosecutor, the court shall, without the
40 consent of the juvenile, waive jurisdiction over a case and refer that
41 case from the Superior Court, Chancery Division, Family Part to the
42 appropriate court and prosecuting authority having jurisdiction if it
43 finds, after hearing, that:

44 (1) The juvenile was 14 years of age or older at the time of the
45 charged delinquent act; and

- 1 (2) There is probable cause to believe that the juvenile
2 committed a delinquent act or acts which if committed by an adult
3 would constitute:
- 4 (a) Criminal homicide other than death by auto, strict liability
5 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which
6 would constitute a crime of the first degree, carjacking, aggravated
7 sexual assault, sexual assault, aggravated assault which would
8 constitute a crime of the second degree, kidnapping **[or]**,
9 aggravated arson, or gang criminality pursuant to section 1 of
10 P.L. , c. (C.) (pending before the Legislature as this bill)
11 ²where the underlying crime is enumerated in this subparagraph² or
12 promotion of organized street crime pursuant to section 2 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill) which
14 would constitute a crime of the first or second degree ²which is
15 enumerated in this subparagraph²; or
- 16 (b) A crime committed at a time when the juvenile had
17 previously been adjudicated delinquent, or convicted, on the basis
18 of any of the offenses enumerated in subsection a.(2)(a); or
- 19 (c) A crime committed at a time when the juvenile had
20 previously been sentenced and confined in an adult penal
21 institution; or
- 22 (d) An offense against a person committed in an aggressive,
23 violent and willful manner, other than an offense enumerated in
24 subsection a.(2)(a) of this section, or the unlawful possession of a
25 firearm, destructive device or other prohibited weapon, arson or
26 death by auto if the juvenile was operating the vehicle under the
27 influence of an intoxicating liquor, narcotic, hallucinogenic or habit
28 producing drug; or
- 29 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or
30 N.J.S.2C:35-5; or
- 31 (f) Crimes which are a part of a continuing criminal activity in
32 concert with two or more persons and the circumstances of the
33 crimes show the juvenile has knowingly devoted himself to criminal
34 activity as a source of livelihood; or
- 35 (g) An attempt or conspiracy to commit any of the acts
36 enumerated in paragraph (a), (d) or (e) of this subsection; or
- 37 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
38 the New Jersey Statutes; or
- 39 (i) Possession of a firearm with a purpose to use it unlawfully
40 against the person of another under subsection a. of N.J.S.2C:39-4,
41 or the crime of aggravated assault, aggravated criminal sexual
42 contact, burglary or escape if, while in the course of committing or
43 attempting to commit the crime including the immediate flight
44 therefrom, the juvenile possessed a firearm; or
- 45 (j) Computer criminal activity which would be a crime of the
46 first or second degree pursuant to section 4 or section 10 of
47 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and

1 (3) Except with respect to any of the acts enumerated in
2 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this
3 section, or with respect to any acts enumerated in subparagraph (e)
4 of paragraph (2) of subsection a. of this section which involve the
5 distribution for pecuniary gain of any controlled dangerous
6 substance or controlled substance analog while on any property
7 used for school purposes which is owned by or leased to any school
8 or school board, or within 1,000 feet of such school property or
9 while on any school bus, or any attempt or conspiracy to commit
10 any of those acts, the State has shown that the nature and
11 circumstances of the charge or the prior record of the juvenile are
12 sufficiently serious that the interests of the public require waiver.

13 b. (Deleted by amendment, P.L.1999, c.373).

14 c. An order referring a case shall incorporate therein not only
15 the alleged act or acts upon which the referral is premised, but also
16 all other delinquent acts arising out of or related to the same
17 transaction.

18 d. A motion seeking waiver shall be filed by the prosecutor
19 within 30 days of receipt of the complaint. This time limit shall not,
20 except for good cause shown, be extended.

21 e. If the juvenile can show that the probability of his
22 rehabilitation by the use of the procedures, services and facilities
23 available to the court prior to the juvenile reaching the age of 19
24 substantially outweighs the reasons for waiver, waiver shall not be
25 granted. This subsection shall not apply with respect to a juvenile
26 16 years of age or older who is charged with committing any of the
27 acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of
28 subsection a. of this section or with respect to a violation of
29 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
30 (C.2C:39-4.1).

31 f. The Attorney General shall develop for dissemination to the
32 county prosecutors those guidelines or directives deemed necessary
33 or appropriate to ensure the uniform application of this section
34 throughout the State.

35 (cf: P.L.2003, c.39, s.8)

36

37 4. N.J.S.2C:41-1 is amended to read as follows:

38 2C:41-1. For purposes of this section and N.J.S.2C:41-2 through
39 N.J.S.2C:41-6:

40 a. "Racketeering activity" means (1) any of the following
41 crimes which are crimes under the laws of New Jersey or are
42 equivalent crimes under the laws of any other jurisdiction:

43 (a) murder

44 (b) kidnapping

45 (c) gambling

46 (d) promoting prostitution

47 (e) obscenity

48 (f) robbery

- 1 (g) bribery
2 (h) extortion
3 (i) criminal usury
4 (j) violations of Title 33 of the Revised Statutes
5 (k) violations of Title 54A of the New Jersey Statutes and Title
6 54 of the Revised Statutes
7 (l) arson
8 (m) burglary
9 (n) theft and all crimes defined in chapter 20 of Title 2C of the
10 New Jersey Statutes
11 (o) forgery and fraudulent practices and all crimes defined in
12 chapter 21 of Title 2C of the New Jersey Statutes
13 (p) fraud in the offering, sale or purchase of securities
14 (q) alteration of motor vehicle identification numbers
15 (r) unlawful manufacture, purchase, use or transfer of firearms
16 (s) unlawful possession or use of destructive devices or
17 explosives
18 (t) violation of sections 112 through 116 inclusive of the
19 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-
20 116)
21 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6
22 and all crimes involving illegal distribution of a controlled
23 dangerous substance or controlled substance analog, except
24 possession of less than one ounce of marijuana
25 (v) violation of subsection b. of N.J.S.2C:24-4 except for
26 subparagraph (b) of paragraph (5) of subsection b.
27 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),
28 leader of firearms trafficking network
29 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),
30 weapons training for illegal activities
31 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),
32 terrorism [.]
33 (z) violation of section 1 of P.L.2005,c.77 (C.2C:13-8), human
34 trafficking [.]
35 (aa) violation of N.J.S.2C:12-1 requiring purposeful or knowing
36 conduct
37 (bb) violation of N.J.S.2C:12-3, terroristic threats.
38 (2) any conduct defined as "racketeering activity" under Title
39 18, U.S.C.s.1961(1)(A), (B) and (D).
40 b. "Person" includes any individual or entity or enterprise as
41 defined herein holding or capable of holding a legal or beneficial
42 interest in property.
43 c. "Enterprise" includes any individual, sole proprietorship,
44 partnership, corporation, business or charitable trust, association, or
45 other legal entity, any union or group of individuals associated in
46 fact although not a legal entity, and it includes illicit as well as licit
47 enterprises and governmental as well as other entities.
48 d. "Pattern of racketeering activity" requires

1 (1) Engaging in at least two incidents of racketeering conduct
2 one of which shall have occurred after the effective date of this act
3 and the last of which shall have occurred within 10 years (excluding
4 any period of imprisonment) after a prior incident of racketeering
5 activity; and

6 (2) A showing that the incidents of racketeering activity
7 embrace criminal conduct that has either the same or similar
8 purposes, results, participants or victims or methods of commission
9 or are otherwise interrelated by distinguishing characteristics and
10 are not isolated incidents.

11 e. "Unlawful debt" means a debt

12 (1) Which was incurred or contracted in gambling activity
13 which was in violation of the law of the United States, a state or
14 political subdivision thereof; or

15 (2) Which is unenforceable under state or federal law in whole
16 or in part as to principal or interest because of the laws relating to
17 usury.

18 f. "Documentary material" includes any book, paper,
19 document, writing, drawing, graph, chart, photograph, phonorecord,
20 magnetic or recording or video tape, computer printout, other data
21 compilation from which information can be obtained or from which
22 information can be translated into useable form or other tangible
23 item.

24 g. "Attorney General" includes the Attorney General of New
25 Jersey, his assistants and deputies. The term shall also include a
26 county prosecutor or his designated assistant prosecutor if a county
27 prosecutor is expressly authorized in writing by the Attorney
28 General to carry out the powers conferred on the Attorney General
29 by this chapter.

30 h. "Trade or commerce" shall include all economic activity
31 involving or relating to any commodity or service.

32 (cf: P.L.2005, c.77, s.3)

33
34 5. N.J.S.2C:43-6 is amended to read as follows:

35 2C:43-6 a. Except as otherwise provided, a person who has
36 been convicted of a crime may be sentenced to imprisonment, as
37 follows:

38 (1) In the case of a crime of the first degree, for a specific term
39 of years which shall be fixed by the court and shall be between 10
40 years and 20 years;

41 (2) In the case of a crime of the second degree, for a specific
42 term of years which shall be fixed by the court and shall be between
43 five years and 10 years;

44 (3) In the case of a crime of the third degree, for a specific term
45 of years which shall be fixed by the court and shall be between
46 three years and five years;

1 (4) In the case of a crime of the fourth degree, for a specific
2 term which shall be fixed by the court and shall not exceed 18
3 months.

4 b. As part of a sentence for any crime, where the court is
5 clearly convinced that the aggravating factors substantially
6 outweigh the mitigating factors, as set forth in subsections a. and b.
7 of 2C:44-1, or the court find that the aggravating factor set forth in
8 paragraph ¹【5】 (5) of subsection a. of N.J.S.2C:44-1 applies, the
9 court may fix a minimum term not to exceed one-half of the term
10 set pursuant to subsection a., or one-half of the term set pursuant to
11 a maximum period of incarceration for a crime set forth in any
12 statute other than this code, during which the defendant shall not be
13 eligible for parole; provided that no defendant shall be eligible for
14 parole at a date earlier than otherwise provided by the law
15 governing parole.

16 c. A person who has been convicted under 【2C:39-4a. of
17 possession of a firearm with intent to use it against the person of
18 another, or】 subsection b. or d. of N.J.S.2C:39-3, subsection a. of
19 N.J.S.2C:39-4, subsection a. of ¹【N.J.S.2C:39-4.1】 section 1 of
20 P.L.1998, c.26 (C.2C:39-4.1)¹, subsection a., b. or c. of
21 N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection b.
22 of ¹【N.J.S.2C:39-7】 section 6 of P.L.1979, c.179 (C.2C:39-7)¹, or
23 subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any
24 of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,
25 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the
26 course of committing or attempting to commit the crime, including
27 the immediate flight therefrom, used or was in possession of a
28 firearm as defined in 2C:39-1f., shall be sentenced to a term of
29 imprisonment by the court. The term of imprisonment shall include
30 the imposition of a minimum term. The minimum term shall be
31 fixed at, or between, one-third and one-half of the sentence imposed
32 by the court or three years, whichever is greater, or 18 months in
33 the case of a fourth degree crime, during which the defendant shall
34 be ineligible for parole.

35 The minimum terms established by this section shall not prevent
36 the court from imposing presumptive terms of imprisonment
37 pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth
38 degree.

39 A person who has been convicted of an offense enumerated by
40 this subsection and who used or possessed a firearm during its
41 commission, attempted commission or flight therefrom and who has
42 been previously convicted of an offense involving the use or
43 possession of a firearm as defined in 2C:44-3d., shall be sentenced
44 by the court to an extended term as authorized by 2C:43-7c.,
45 notwithstanding that extended terms are ordinarily discretionary
46 with the court.

1 d. The court shall not impose a mandatory sentence pursuant to
2 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the
3 ground therefor has been established at a hearing. At the hearing,
4 which may occur at the time of sentencing, the prosecutor shall
5 establish by a preponderance of the evidence that the weapon used
6 or possessed was a firearm. In making its finding, the court shall
7 take judicial notice of any evidence, testimony or information
8 adduced at the trial, plea hearing, or other court proceedings and
9 shall also consider the presentence report and any other relevant
10 information.

11 e. A person convicted of a third or subsequent offense
12 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any
13 other provision of this code, or under any of the provisions of Title
14 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,
15 as amended and supplemented, shall be sentenced to a term of
16 imprisonment by the court. This shall not preclude an application
17 for and imposition of an extended term of imprisonment under
18 N.J.S.2C:44-3 if the provisions of that section are applicable to the
19 offender.

20 f. A person convicted of manufacturing, distributing,
21 dispensing or possessing with intent to distribute any dangerous
22 substance or controlled substance analog under N.J.S.2C:35-5, of
23 maintaining or operating a controlled dangerous substance
24 production facility under N.J.S.2C:35-4, of employing a juvenile in
25 a drug distribution scheme under N.J.S.2C:35-6, leader of a
26 narcotics trafficking network under N.J.S.2C:35-3, or of
27 distributing, dispensing or possessing with intent to distribute on or
28 near school property or buses under section 1 of P.L.1987, c.101
29 (C.2C:35-7), who has been previously convicted of manufacturing,
30 distributing, dispensing or possessing with intent to distribute a
31 controlled dangerous substance or controlled substance analog,
32 shall upon application of the prosecuting attorney be sentenced by
33 the court to an extended term as authorized by subsection c. of
34 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
35 discretionary with the court. The term of imprisonment shall,
36 except as may be provided in N.J.S.2C:35-12, include the
37 imposition of a minimum term. The minimum term shall be fixed
38 at, or between, one-third and one-half of the sentence imposed by
39 the court or three years, whichever is greater, not less than seven
40 years if the person is convicted of a violation of N.J.S.2C:35-6, or
41 18 months in the case of a fourth degree crime, during which the
42 defendant shall be ineligible for parole.

43 The court shall not impose an extended term pursuant to this
44 subsection unless the ground therefor has been established at a
45 hearing. At the hearing, which may occur at the time of sentencing,
46 the prosecutor shall establish the ground therefor by a
47 preponderance of the evidence. In making its finding, the court shall
48 take judicial notice of any evidence, testimony or information

1 adduced at the trial, plea hearing, or other court proceedings and
2 shall also consider the presentence report and any other relevant
3 information.

4 For the purpose of this subsection, a previous conviction exists
5 where the actor has at any time been convicted under chapter 35 of
6 this title or Title 24 of the Revised Statutes or under any similar
7 statute of the United States, this State, or any other state for an
8 offense that is substantially equivalent to N.J.S.2C:35-3,
9 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
10 P.L.1987, c.101 (C.2C:35-7).

11 g. Any person who has been convicted under subsection a. of
12 N.J.S.2C:39-4 [of possessing a machine gun or assault firearm with
13 intent to use it against the person of another,] or of a crime under
14 any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,
15 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,
16 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5[.],
17 who, while in the course of committing or attempting to commit the
18 crime, including the immediate flight therefrom, used or was in
19 possession of a machine gun or assault firearm shall be sentenced to
20 a term of imprisonment by the court. The term of imprisonment
21 shall include the imposition of a minimum term. The minimum
22 term shall be fixed at 10 years for a crime of the first or second
23 degree, five years for a crime of the third degree, or 18 months in
24 the case of a fourth degree crime, during which the defendant shall
25 be ineligible for parole.

26 The minimum terms established by this section shall not prevent
27 the court from imposing presumptive terms of imprisonment
28 pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for
29 crimes of the first degree.

30 A person who has been convicted of an offense enumerated in
31 this subsection and who used or possessed a machine gun or assault
32 firearm during its commission, attempted commission or flight
33 therefrom and who has been previously convicted of an offense
34 involving the use or possession of any firearm as defined in
35 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
36 extended term as authorized by subsection d. of N.J.S.2C:43-7,
37 notwithstanding that extended terms are ordinarily discretionary
38 with the court.

39 h. The court shall not impose a mandatory sentence pursuant to
40 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or
41 N.J.S.2C:44-3, unless the ground therefor has been established at a
42 hearing. At the hearing, which may occur at the time of sentencing,
43 the prosecutor shall establish by a preponderance of the evidence
44 that the weapon used or possessed was a machine gun or assault
45 firearm. In making its finding, the court shall take judicial notice of
46 any evidence, testimony or information adduced at the trial, plea
47 hearing, or other court proceedings and shall also consider the
48 presentence report and any other relevant information.

1 i. A person who has been convicted under paragraph (6) of
2 subsection b. of 2C:12-1 of causing bodily injury while eluding
3 shall be sentenced to a term of imprisonment by the court. The
4 term of imprisonment shall include the imposition of a minimum
5 term. The minimum term shall be fixed at, or between one-third
6 and one-half of the sentence imposed by the court. The minimum
7 term established by this subsection shall not prevent the court from
8 imposing a presumptive term of imprisonment pursuant to
9 paragraph (1) of subsection f. of 2C:44-1.

10 (cf: P.L.1993, c.219, s.6)

11
12 6. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
13 read as follows:

14 2. a. A court imposing a sentence of incarceration for a crime
15 of the first or second degree enumerated in subsection d. of this
16 section shall fix a minimum term of 85% of the sentence imposed,
17 during which the defendant shall not be eligible for parole.

18 b. The minimum term required by subsection a. of this section
19 shall be fixed as a part of every sentence of incarceration imposed
20 upon every conviction of a crime enumerated in subsection d. of
21 this section, whether the sentence of incarceration is determined
22 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
23 other provision of law, and shall be calculated based upon the
24 sentence of incarceration actually imposed. The provisions of
25 subsection a. of this section shall not be construed or applied to
26 reduce the time that must be served before eligibility for parole by
27 an inmate sentenced to a mandatory minimum period of
28 incarceration. Solely for the purpose of calculating the minimum
29 term of parole ineligibility pursuant to subsection a. of this section,
30 a sentence of life imprisonment shall be deemed to be 75 years.

31 c. Notwithstanding any other provision of law to the contrary
32 and in addition to any other sentence imposed, a court imposing a
33 minimum period of parole ineligibility of 85 percent of the sentence
34 pursuant to this section shall also impose a five-year term of parole
35 supervision if the defendant is being sentenced for a crime of the
36 first degree, or a three-year term of parole supervision if the
37 defendant is being sentenced for a crime of the second degree. The
38 term of parole supervision shall commence upon the completion of
39 the sentence of incarceration imposed by the court pursuant to
40 subsection a. of this section unless the defendant is serving a
41 sentence of incarceration for another crime at the time he completes
42 the sentence of incarceration imposed pursuant to subsection a., in
43 which case the term of parole supervision shall commence
44 immediately upon the defendant's release from incarceration.
45 During the term of parole supervision the defendant shall remain in
46 release status in the community in the legal custody of the
47 Commissioner of the Department of Corrections and shall be
48 supervised by the State Parole Board as if on parole and shall be

1 subject to the provisions and conditions of section 3 of P.L.1997,
2 c.117 (C.30:4-123.51b).

3 d. The court shall impose sentence pursuant to subsection a. of
4 this section upon conviction of the following crimes or an attempt
5 or conspiracy to commit any of these crimes:

- 6 (1) N.J.S.2C:11-3, murder;
7 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
8 (3) N.J.S.2C:11-5, vehicular homicide;
9 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
10 (5) subsection b. of N.J.S.2C:12-11, disarming a law
11 enforcement officer;
12 (6) N.J.S.2C:13-1, kidnapping;
13 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
14 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
15 subsection c. of N.J.S.2C:14-2, sexual assault;
16 (9) N.J.S.2C:15-1, robbery;
17 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
18 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
19 arson;
20 (12) N.J.S.2C:18-2, burglary;
21 (13) subsection a. of N.J.S.2C:20-5, extortion;
22 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
23 booby traps in manufacturing or distribution facilities; **[or]**
24 (15) N.J.S.2C:35-9, strict liability for drug induced deaths²**[.]**²
25 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism; **[or]**
26 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
27 possessing chemical weapons, biological agents or nuclear or
28 radiological devices; ²**or**²
29 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
30 degree ²**[or when the racketeering activity includes any crime**
31 enumerated in this subsection;
32 (19) section 1 of P.L. , c. (C.) (pending before the
33 Legislature as this bill), gang criminality, if the underlying
34 criminality consisted of any of the crimes enumerated in this
35 subsection; or
36 (20) section 2 of P.L. , c. (C.) (pending before the
37 Legislature as this bill), promotion of organized street crime, if the
38 underlying crime consisted of any of the crimes enumerated in this
39 subsection]².

40 e. (Deleted by amendment, P.L.2001, c.129).

41 (cf: P.L.2002, c.26, s.19)

42

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

44 2C:44-1. a. In determining the appropriate sentence to be
45 imposed on a person who has been convicted of an offense, the
46 court shall consider the following aggravating circumstances:

- 1 (1) The nature and circumstances of the offense, and the role of
2 the actor therein, including whether or not it was committed in an
3 especially heinous, cruel, or depraved manner;
- 4 (2) The gravity and seriousness of harm inflicted on the victim,
5 including whether or not the defendant knew or reasonably should
6 have known that the victim of the offense was particularly
7 vulnerable or incapable of resistance due to advanced age, ill-
8 health, or extreme youth, or was for any other reason substantially
9 incapable of exercising normal physical or mental power of
10 resistance;
- 11 (3) The risk that the defendant will commit another offense;
- 12 (4) A lesser sentence will depreciate the seriousness of the
13 defendant's offense because it involved a breach of the public trust
14 under chapters 27 and 30, or the defendant took advantage of a
15 position of trust or confidence to commit the offense;
- 16 (5) There is a substantial likelihood that the defendant is
17 involved in organized criminal activity;
- 18 (6) The extent of the defendant's prior criminal record and the
19 seriousness of the offenses of which he has been convicted;
- 20 (7) The defendant committed the offense pursuant to an
21 agreement that he either pay or be paid for the commission of the
22 offense and the pecuniary incentive was beyond that inherent in the
23 offense itself;
- 24 (8) The defendant committed the offense against a police or
25 other law enforcement officer, correctional employee or fireman,
26 acting in the performance of his duties while in uniform or
27 exhibiting evidence of his authority; the defendant committed the
28 offense because of the status of the victim as a public servant; or the
29 defendant committed the offense against a sports official, athletic
30 coach or manager, acting in or immediately following the
31 performance of his duties or because of the person's status as a
32 sports official, coach or manager;
- 33 (9) The need for deterring the defendant and others from
34 violating the law;
- 35 (10) The offense involved fraudulent or deceptive practices
36 committed against any department or division of State government;
- 37 (11) The imposition of a fine, penalty or order of restitution
38 without also imposing a term of imprisonment would be perceived
39 by the defendant or others merely as part of the cost of doing
40 business, or as an acceptable contingent business or operating
41 expense associated with the initial decision to resort to unlawful
42 practices;
- 43 (12) The defendant committed the offense against a person who
44 he knew or should have known was 60 years of age or older, or
45 disabled; and
- 46 (13) The defendant, while in the course of committing or
47 attempting to commit the crime, including the immediate flight
48 therefrom, used or was in possession of a stolen motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) When imposing a sentence of imprisonment the court shall
35 consider the defendant's eligibility for release under the law
36 governing parole, including time credits awarded pursuant to Title
37 30 of the Revised Statutes, in determining the appropriate term of
38 imprisonment.

39 d. Presumption of imprisonment. The court shall deal with a
40 person who has been convicted of a crime of the first or second
41 degree ¹, or a crime of the third degree where the court finds that
42 the aggravating factor in paragraph (5) of subsection a. applies.¹ by
43 imposing a sentence of imprisonment unless, having regard to the
44 character and condition of the defendant, it is of the opinion that his
45 imprisonment would be a serious injustice which overrides the need
46 to deter such conduct by others. Notwithstanding the provisions of
47 subsection e. of this section, the court shall deal with a person who
48 has been convicted of theft of a motor vehicle or of the unlawful

1 taking of a motor vehicle and who has previously been convicted of
2 either offense by imposing a sentence of imprisonment unless,
3 having regard to the character and condition of the defendant, it is
4 of the opinion that his imprisonment would be a serious injustice
5 which overrides the need to deter such conduct by others.

6 e. The court shall deal with a person convicted of an offense
7 other than a crime of the first or second degree, who has not
8 previously been convicted of an offense, without imposing a
9 sentence of imprisonment unless, having regard to the nature and
10 circumstances of the offense and the history, character and
11 condition of the defendant, it is of the opinion that his imprisonment
12 is necessary for the protection of the public under the criteria set
13 forth in subsection a., except that this subsection shall not apply if
14 the court finds that the aggravating factor in paragraph (5) of
15 subsection a. applies or if the person is convicted of any of the
16 following crimes of the third degree: theft of a motor vehicle;
17 unlawful taking of a motor vehicle; eluding; if the person is
18 convicted of a crime of the third degree constituting use of a false
19 government document in violation of subsection c. of section 1 of
20 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
21 of the third degree constituting distribution, manufacture or
22 possession of an item containing personal identifying information
23 in violation of subsection b. of section 6 of P.L.2003, c.184
24 (C.2C:21-17.3); **[or]** if the person is convicted of a crime of the
25 third or fourth degree constituting bias intimidation in violation of
26 N.J.S.2C:16-1; or if the person is convicted of a crime of the third
27 degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the
28 person is convicted of a crime of the third or fourth degree under
29 the provisions of section 1 or 2 of P.L. , c. (C.) (pending
30 before the Legislature as this bill).

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

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

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

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

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

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

46 In imposing a minimum term pursuant to 2C:43-6b., the
47 sentencing court shall specifically place on the record the

1 aggravating factors set forth in this section which justify the
2 imposition of a minimum term.

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

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

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

29 g. Imposition of Noncustodial Sentences in Certain Cases. If
30 the court, in considering the aggravating factors set forth in
31 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),
32 or a.(12) and does not impose a custodial sentence, the court shall
33 specifically place on the record the mitigating factors which justify
34 the imposition of a noncustodial sentence.

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

40 (cf: P.L.2007, c.83, s.3)

41

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

43 2C:44-3. The court may, upon application of the prosecuting
44 attorney, sentence a person who has been convicted of a crime of
45 the first, second or third degree to an extended term of
46 imprisonment if it finds one or more of the grounds specified in
47 subsection a., b., c., or f. of this section. If the grounds specified in
48 subsection d. are found, and the person is being sentenced for

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

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

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

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

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

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

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

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

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

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

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

43 Deleted by amendment, P.L. , c. (pending before the Legislature
44 as this bill).

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

46

47 9. This act shall take effect immediately.

1

2

3

4

Creates offenses of gang criminality and promoting organized street crime.

ASSEMBLY, No. 4582

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED NOVEMBER 19, 2007

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblyman LOUIS M. MANZO

District 31 (Hudson)

SYNOPSIS

Creates offenses of gang criminality and promoting organized street crime.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2007)

1 AN ACT concerning criminal street gangs and amending and
2 supplementing various parts of the statutory law.

3

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

6

7 1. (New section) a. A person is guilty of the crime of gang
8 criminality if, while knowingly involved in criminal street gang
9 activity, he commits, attempts to commit, or conspires to commit,
10 whether as a principal or an accomplice, any offense specified in
11 chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New
12 Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39:4;
13 N.J.S.2C:39-4.1; N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is
14 committed while involved in a criminal street gang related activity
15 if the offense was committed for the benefit of, at the direction of,
16 or in association with a criminal street gang.

17 “Criminal street gang” means three or more persons associated in
18 fact. Individuals are associated in fact if: (1) two of the following
19 seven criteria that indicate criminal street gang membership apply:
20 (a) self-proclamation; (b) witness testimony or official statement;
21 (c) written or electronic correspondence; (d) paraphernalia or
22 photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia
23 of street gang activity; and (2) individually or in combination with
24 other members of a criminal street gang, while engaging in gang
25 related activity, have committed or conspired or attempted to
26 commit, within the preceding five years from the date of present
27 offense, excluding any period of imprisonment, one or more
28 offenses on separate occasions of robbery, carjacking, aggravated
29 assault, assault, aggravated sexual assault, sexual assault, arson,
30 burglary, kidnapping, extortion, tampering with witnesses and
31 informants or a violation of chapter 11, sections 3, 4, 5, 6, or 7 of
32 chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes
33 regardless of whether the prior offenses have resulted in
34 convictions.

35 b. Grading. Gang criminality is a crime of the fourth degree if
36 the underlying offense referred to in subsection a. of this section is
37 a disorderly persons offense or a petty disorderly persons offense.
38 Otherwise, gang criminality is a crime of one degree higher than the
39 most serious underlying offense referred to in subsection a. of this
40 section, except that where the underlying offense is a crime of the
41 first degree, gang criminality is a first degree crime and the
42 defendant, upon conviction, and notwithstanding the provisions of
43 paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced
44 to an ordinary term of imprisonment between 15 and 30 years. A
45 sentence imposed upon conviction of the crime of gang criminality

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 shall be ordered to be served consecutively to the sentence imposed
2 upon conviction of any underlying offense referred to in subsection
3 a. of this section.

4
5 2. (New section) a. A person promotes organized street crime if
6 he conspires with others as an organizer, supervisor, financier or
7 manager to commit any offense specified in chapters 11 through 18,
8 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;
9 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; N.J.S.2C:39-4.1;
10 N.J.S.2C:39-5; or N.J.S.2C:39-9.

11 b. Grading. Promotion of organized street crime is a crime of
12 the fourth degree if the underlying offense referred to in subsection
13 a. of this section is a disorderly persons offense or a petty disorderly
14 persons offense. Otherwise, promotion of organized street crime is
15 a crime of one degree higher than the most serious underlying
16 offense referred to in subsection a. of this section, except that where
17 the underlying offense is a crime of the first degree, promotion of
18 organized street crime is a first degree crime and the defendant,
19 upon conviction, and notwithstanding the provisions of paragraph
20 (1) of subsection a of N.J.S.2C:43-6, shall be sentenced to an
21 ordinary term of imprisonment between 15 and 30 years. A
22 sentence imposed upon conviction of the crime of promotion of
23 organized street crime shall be ordered to be served consecutively
24 to the sentence imposed upon conviction of any underlying offense
25 referred to in subsection a. of this section.

26
27 3. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to read
28 as follows:

29 7. a. On motion of the prosecutor, the court shall, without the
30 consent of the juvenile, waive jurisdiction over a case and refer that
31 case from the Superior Court, Chancery Division, Family Part to the
32 appropriate court and prosecuting authority having jurisdiction if it
33 finds, after hearing, that:

34 (1) The juvenile was 14 years of age or older at the time of the
35 charged delinquent act; and

36 (2) There is probable cause to believe that the juvenile
37 committed a delinquent act or acts which if committed by an adult
38 would constitute:

39 (a) Criminal homicide other than death by auto, strict liability
40 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which
41 would constitute a crime of the first degree, carjacking, aggravated
42 sexual assault, sexual assault, aggravated assault which would
43 constitute a crime of the second degree, kidnapping **[or]** ,
44 aggravated arson, or gang criminality pursuant to section 1 of
45 P.L. , c. (C.) (pending before the Legislature as this bill) or
46 promotion of organized street crime pursuant to section 2 of
47 P.L. , c. (C.) (pending before the Legislature as this bill)
48 which would constitute a crime of the first or second degree; or

- 1 (b) A crime committed at a time when the juvenile had
2 previously been adjudicated delinquent, or convicted, on the basis
3 of any of the offenses enumerated in subsection a.(2)(a); or
- 4 (c) A crime committed at a time when the juvenile had
5 previously been sentenced and confined in an adult penal
6 institution; or
- 7 (d) An offense against a person committed in an aggressive,
8 violent and willful manner, other than an offense enumerated in
9 subsection a.(2)(a) of this section, or the unlawful possession of a
10 firearm, destructive device or other prohibited weapon, arson or
11 death by auto if the juvenile was operating the vehicle under the
12 influence of an intoxicating liquor, narcotic, hallucinogenic or habit
13 producing drug; or
- 14 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or N.J.S.2C:35-
15 5; or
- 16 (f) Crimes which are a part of a continuing criminal activity in
17 concert with two or more persons and the circumstances of the
18 crimes show the juvenile has knowingly devoted himself to criminal
19 activity as a source of livelihood; or
- 20 (g) An attempt or conspiracy to commit any of the acts
21 enumerated in paragraph (a), (d) or (e) of this subsection; or
- 22 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
23 the New Jersey Statutes; or
- 24 (i) Possession of a firearm with a purpose to use it unlawfully
25 against the person of another under subsection a. of N.J.S.2C:39-4,
26 or the crime of aggravated assault, aggravated criminal sexual
27 contact, burglary or escape if, while in the course of committing or
28 attempting to commit the crime including the immediate flight
29 therefrom, the juvenile possessed a firearm; or
- 30 (j) Computer criminal activity which would be a crime of the
31 first or second degree pursuant to section 4 or section 10 of
32 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and
- 33 (3) Except with respect to any of the acts enumerated in
34 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this
35 section, or with respect to any acts enumerated in subparagraph (e)
36 of paragraph (2) of subsection a. of this section which involve the
37 distribution for pecuniary gain of any controlled dangerous
38 substance or controlled substance analog while on any property
39 used for school purposes which is owned by or leased to any school
40 or school board, or within 1,000 feet of such school property or
41 while on any school bus, or any attempt or conspiracy to commit
42 any of those acts, the State has shown that the nature and
43 circumstances of the charge or the prior record of the juvenile are
44 sufficiently serious that the interests of the public require waiver.
- 45 b. (Deleted by amendment, P.L.1999, c.373).
- 46 c. An order referring a case shall incorporate therein not only
47 the alleged act or acts upon which the referral is premised, but also

1 all other delinquent acts arising out of or related to the same
2 transaction.

3 d. A motion seeking waiver shall be filed by the prosecutor
4 within 30 days of receipt of the complaint. This time limit shall not,
5 except for good cause shown, be extended.

6 e. If the juvenile can show that the probability of his
7 rehabilitation by the use of the procedures, services and facilities
8 available to the court prior to the juvenile reaching the age of 19
9 substantially outweighs the reasons for waiver, waiver shall not be
10 granted. This subsection shall not apply with respect to a juvenile
11 16 years of age or older who is charged with committing any of the
12 acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of
13 subsection a. of this section or with respect to a violation of
14 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
15 (C.2C:39-4.1).

16 f. The Attorney General shall develop for dissemination to the
17 county prosecutors those guidelines or directives deemed necessary
18 or appropriate to ensure the uniform application of this section
19 throughout the State.

20 (cf: P.L.2003, c.39, s.8)

21

22 4. N.J.S.2C:41-1 is amended to read as follows:

23 2C:41-1. For purposes of this section and N.J.S.2C:41-2 through
24 N.J.S.2C:41-6:

25 a. "Racketeering activity" means (1) any of the following crimes
26 which are crimes under the laws of New Jersey or are equivalent
27 crimes under the laws of any other jurisdiction:

28 (a) murder

29 (b) kidnapping

30 (c) gambling

31 (d) promoting prostitution

32 (e) obscenity

33 (f) robbery

34 (g) bribery

35 (h) extortion

36 (i) criminal usury

37 (j) violations of Title 33 of the Revised Statutes

38 (k) violations of Title 54A of the New Jersey Statutes and Title
39 54 of the Revised Statutes

40 (l) arson

41 (m) burglary

42 (n) theft and all crimes defined in chapter 20 of Title 2C of the
43 New Jersey Statutes

44 (o) forgery and fraudulent practices and all crimes defined in
45 chapter 21 of Title 2C of the New Jersey Statutes

46 (p) fraud in the offering, sale or purchase of securities

47 (q) alteration of motor vehicle identification numbers

48 (r) unlawful manufacture, purchase, use or transfer of firearms

- 1 (s) unlawful possession or use of destructive devices or
2 explosives
- 3 (t) violation of sections 112 through 116 inclusive of the
4 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-
5 116)
- 6 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6
7 and all crimes involving illegal distribution of a controlled
8 dangerous substance or controlled substance analog, except
9 possession of less than one ounce of marijuana
- 10 (v) violation of subsection b. of N.J.S.2C:24-4 except for
11 subparagraph (b) of paragraph (5) of subsection b.
- 12 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),
13 leader of firearms trafficking network
- 14 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),
15 weapons training for illegal activities
- 16 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),
17 terrorism [.]
- 18 (z) violation of section 1 of P.L.2005,c.77 (C.2C:13-8), human
19 trafficking [.]
- 20 (aa) violation of N.J.S.2C:12-1 requiring purposeful or knowing
21 conduct
- 22 (bb) violation of N.J.S.2C:12-3, terroristic threats.
- 23 (2) any conduct defined as "racketeering activity" under Title
24 18, U.S.C.s.1961(1)(A), (B) and (D).
- 25 b. "Person" includes any individual or entity or enterprise as
26 defined herein holding or capable of holding a legal or beneficial
27 interest in property.
- 28 c. "Enterprise" includes any individual, sole proprietorship,
29 partnership, corporation, business or charitable trust, association, or
30 other legal entity, any union or group of individuals associated in
31 fact although not a legal entity, and it includes illicit as well as licit
32 enterprises and governmental as well as other entities.
- 33 d. "Pattern of racketeering activity" requires
- 34 (1) Engaging in at least two incidents of racketeering conduct
35 one of which shall have occurred after the effective date of this act
36 and the last of which shall have occurred within 10 years (excluding
37 any period of imprisonment) after a prior incident of racketeering
38 activity; and
- 39 (2) A showing that the incidents of racketeering activity
40 embrace criminal conduct that has either the same or similar
41 purposes, results, participants or victims or methods of commission
42 or are otherwise interrelated by distinguishing characteristics and
43 are not isolated incidents.
- 44 e. "Unlawful debt" means a debt
- 45 (1) Which was incurred or contracted in gambling activity which
46 was in violation of the law of the United States, a state or political
47 subdivision thereof; or

1 (2) Which is unenforceable under state or federal law in whole
2 or in part as to principal or interest because of the laws relating to
3 usury.

4 f. "Documentary material" includes any book, paper, document,
5 writing, drawing, graph, chart, photograph, phonorecord, magnetic
6 or recording or video tape, computer printout, other data
7 compilation from which information can be obtained or from which
8 information can be translated into useable form or other tangible
9 item.

10 g. "Attorney General" includes the Attorney General of New
11 Jersey, his assistants and deputies. The term shall also include a
12 county prosecutor or his designated assistant prosecutor if a county
13 prosecutor is expressly authorized in writing by the Attorney
14 General to carry out the powers conferred on the Attorney General
15 by this chapter.

16 h. "Trade or commerce" shall include all economic activity
17 involving or relating to any commodity or service.

18 (cf: P.L.2005, c.77, s.3)

19

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

21 2C:43-6 a. Except as otherwise provided, a person who has
22 been convicted of a crime may be sentenced to imprisonment, as
23 follows:

24 (1) In the case of a crime of the first degree, for a specific term
25 of years which shall be fixed by the court and shall be between 10
26 years and 20 years;

27 (2) In the case of a crime of the second degree, for a specific
28 term of years which shall be fixed by the court and shall be between
29 five years and 10 years;

30 (3) In the case of a crime of the third degree, for a specific term
31 of years which shall be fixed by the court and shall be between
32 three years and five years;

33 (4) In the case of a crime of the fourth degree, for a specific
34 term which shall be fixed by the court and shall not exceed 18
35 months.

36 b. As part of a sentence for any crime, where the court is clearly
37 convinced that the aggravating factors substantially outweigh the
38 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,
39 or the court find that the aggravating factor set forth in paragraph 5
40 of subsection a. of N.J.S.2C:44-1 applies, the court may fix a
41 minimum term not to exceed one-half of the term set pursuant to
42 subsection a., or one-half of the term set pursuant to a maximum
43 period of incarceration for a crime set forth in any statute other than
44 this code, during which the defendant shall not be eligible for
45 parole; provided that no defendant shall be eligible for parole at a
46 date earlier than otherwise provided by the law governing parole.

47 c. A person who has been convicted under [2C:39-4a. of
48 possession of a firearm with intent to use it against the person of

1 another, or] subsection b. or d. of N.J.S.2C:39-3, subsection a. of
2 N.J.S.2C:39-4, subsection a. of N.J.S.2C:39-4.1, subsection a., b. or
3 c. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of
4 subsection b. of N.J.S.2C:39-7, or subsection a., b., e. or g. of
5 N.J.S.2C:39-9, or of a crime under any of the following sections:
6 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, who, while in the course of committing
8 or attempting to commit the crime, including the immediate flight
9 therefrom, used or was in possession of a firearm as defined in
10 2C:39-1f., shall be sentenced to a term of imprisonment by the
11 court. The term of imprisonment shall include the imposition of a
12 minimum term. The minimum term shall be fixed at, or between,
13 one-third and one-half of the sentence imposed by the court or three
14 years, whichever is greater, or 18 months in the case of a fourth
15 degree crime, during which the defendant shall be ineligible for
16 parole.

17 The minimum terms established by this section shall not prevent
18 the court from imposing presumptive terms of imprisonment
19 pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth
20 degree.

21 A person who has been convicted of an offense enumerated by
22 this subsection and who used or possessed a firearm during its
23 commission, attempted commission or flight therefrom and who has
24 been previously convicted of an offense involving the use or
25 possession of a firearm as defined in 2C:44-3d., shall be sentenced
26 by the court to an extended term as authorized by 2C:43-7c.,
27 notwithstanding that extended terms are ordinarily discretionary
28 with the court.

29 d. The court shall not impose a mandatory sentence pursuant to
30 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the
31 ground therefor has been established at a hearing. At the hearing,
32 which may occur at the time of sentencing, the prosecutor shall
33 establish by a preponderance of the evidence that the weapon used
34 or possessed was a firearm. In making its finding, the court shall
35 take judicial notice of any evidence, testimony or information
36 adduced at the trial, plea hearing, or other court proceedings and
37 shall also consider the presentence report and any other relevant
38 information.

39 e. A person convicted of a third or subsequent offense involving
40 State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any other
41 provision of this code, or under any of the provisions of Title 54 of
42 the Revised Statutes, or Title 54A of the New Jersey Statutes, as
43 amended and supplemented, shall be sentenced to a term of
44 imprisonment by the court. This shall not preclude an application
45 for and imposition of an extended term of imprisonment under
46 N.J.S.2C:44-3 if the provisions of that section are applicable to the
47 offender.

1 f. A person convicted of manufacturing, distributing, dispensing
2 or possessing with intent to distribute any dangerous substance or
3 controlled substance analog under N.J.S.2C:35-5, of maintaining or
4 operating a controlled dangerous substance production facility
5 under N.J.S.2C:35-4, of employing a juvenile in a drug distribution
6 scheme under N.J.S.2C:35-6, leader of a narcotics trafficking
7 network under N.J.S.2C:35-3, or of distributing, dispensing or
8 possessing with intent to distribute on or near school property or
9 buses under section 1 of P.L.1987, c.101 (C.2C:35-7), who has been
10 previously convicted of manufacturing, distributing, dispensing or
11 possessing with intent to distribute a controlled dangerous
12 substance or controlled substance analog, shall upon application of
13 the prosecuting attorney be sentenced by the court to an extended
14 term as authorized by subsection c. of N.J.S.2C:43-7,
15 notwithstanding that extended terms are ordinarily discretionary
16 with the court. The term of imprisonment shall, except as may be
17 provided in N.J.S.2C:35-12, include the imposition of a minimum
18 term. The minimum term shall be fixed at, or between, one-third
19 and one-half of the sentence imposed by the court or three years,
20 whichever is greater, not less than seven years if the person is
21 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case
22 of a fourth degree crime, during which the defendant shall be
23 ineligible for parole.

24 The court shall not impose an extended term pursuant to this
25 subsection unless the ground therefor has been established at a
26 hearing. At the hearing, which may occur at the time of sentencing,
27 the prosecutor shall establish the ground therefor by a
28 preponderance of the evidence. In making its finding, the court shall
29 take judicial notice of any evidence, testimony or information
30 adduced at the trial, plea hearing, or other court proceedings and
31 shall also consider the presentence report and any other relevant
32 information.

33 For the purpose of this subsection, a previous conviction exists
34 where the actor has at any time been convicted under chapter 35 of
35 this title or Title 24 of the Revised Statutes or under any similar
36 statute of the United States, this State, or any other state for an
37 offense that is substantially equivalent to N.J.S.2C:35-3,
38 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
39 P.L.1987, c.101 (C.2C:35-7).

40 g. Any person who has been convicted under subsection a. of
41 N.J.S.2C:39-4 [of possessing a machine gun or assault firearm with
42 intent to use it against the person of another,] or of a crime under
43 any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,
44 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,
45 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5[.],
46 who, while in the course of committing or attempting to commit the
47 crime, including the immediate flight therefrom, used or was in
48 possession of a machine gun or assault firearm shall be sentenced to

1 a term of imprisonment by the court. The term of imprisonment
2 shall include the imposition of a minimum term. The minimum
3 term shall be fixed at 10 years for a crime of the first or second
4 degree, five years for a crime of the third degree, or 18 months in
5 the case of a fourth degree crime, during which the defendant shall
6 be ineligible for parole.

7 The minimum terms established by this section shall not prevent
8 the court from imposing presumptive terms of imprisonment
9 pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for
10 crimes of the first degree.

11 A person who has been convicted of an offense enumerated in
12 this subsection and who used or possessed a machine gun or assault
13 firearm during its commission, attempted commission or flight
14 therefrom and who has been previously convicted of an offense
15 involving the use or possession of any firearm as defined in
16 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
17 extended term as authorized by subsection d. of N.J.S.2C:43-7,
18 notwithstanding that extended terms are ordinarily discretionary
19 with the court.

20 h. The court shall not impose a mandatory sentence pursuant to
21 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or
22 N.J.S.2C:44-3, unless the ground therefor has been established at a
23 hearing. At the hearing, which may occur at the time of sentencing,
24 the prosecutor shall establish by a preponderance of the evidence
25 that the weapon used or possessed was a machine gun or assault
26 firearm. In making its finding, the court shall take judicial notice of
27 any evidence, testimony or information adduced at the trial, plea
28 hearing, or other court proceedings and shall also consider the
29 presentence report and any other relevant information.

30 i. A person who has been convicted under paragraph (6) of
31 subsection b. of 2C:12-1 of causing bodily injury while eluding
32 shall be sentenced to a term of imprisonment by the court. The
33 term of imprisonment shall include the imposition of a minimum
34 term. The minimum term shall be fixed at, or between one-third
35 and one-half of the sentence imposed by the court. The minimum
36 term established by this subsection shall not prevent the court from
37 imposing a presumptive term of imprisonment pursuant to
38 paragraph (1) of subsection f. of 2C:44-1.

39 (cf: P.L.1993, c.219, s.6)

40

41 6. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
42 read as follows:

43 2. a. A court imposing a sentence of incarceration for a crime of
44 the first or second degree enumerated in subsection d. of this
45 section shall fix a minimum term of 85% of the sentence imposed,
46 during which the defendant shall not be eligible for parole.

47 b. The minimum term required by subsection a. of this section
48 shall be fixed as a part of every sentence of incarceration imposed

1 upon every conviction of a crime enumerated in subsection d. of
2 this section, whether the sentence of incarceration is determined
3 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
4 other provision of law, and shall be calculated based upon the
5 sentence of incarceration actually imposed. The provisions of
6 subsection a. of this section shall not be construed or applied to
7 reduce the time that must be served before eligibility for parole by
8 an inmate sentenced to a mandatory minimum period of
9 incarceration. Solely for the purpose of calculating the minimum
10 term of parole ineligibility pursuant to subsection a. of this section,
11 a sentence of life imprisonment shall be deemed to be 75 years.

12 c. Notwithstanding any other provision of law to the contrary
13 and in addition to any other sentence imposed, a court imposing a
14 minimum period of parole ineligibility of 85 percent of the sentence
15 pursuant to this section shall also impose a five-year term of parole
16 supervision if the defendant is being sentenced for a crime of the
17 first degree, or a three-year term of parole supervision if the
18 defendant is being sentenced for a crime of the second degree. The
19 term of parole supervision shall commence upon the completion of
20 the sentence of incarceration imposed by the court pursuant to
21 subsection a. of this section unless the defendant is serving a
22 sentence of incarceration for another crime at the time he completes
23 the sentence of incarceration imposed pursuant to subsection a., in
24 which case the term of parole supervision shall commence
25 immediately upon the defendant's release from incarceration.
26 During the term of parole supervision the defendant shall remain in
27 release status in the community in the legal custody of the
28 Commissioner of the Department of Corrections and shall be
29 supervised by the State Parole Board as if on parole and shall be
30 subject to the provisions and conditions of section 3 of P.L.1997,
31 c.117 (C.30:4-123.51b).

32 d. The court shall impose sentence pursuant to subsection a. of
33 this section upon conviction of the following crimes or an attempt
34 or conspiracy to commit any of these crimes:

- 35 (1) N.J.S.2C:11-3, murder;
- 36 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 37 (3) N.J.S.2C:11-5, vehicular homicide;
- 38 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 39 (5) subsection b. of N.J.S.2C:12-11, disarming a law
40 enforcement officer;
- 41 (6) N.J.S.2C:13-1, kidnapping;
- 42 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 43 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
44 subsection c. of N.J.S.2C:14-2, sexual assault;
- 45 (9) N.J.S.2C:15-1, robbery;
- 46 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 47 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
48 arson;

1 (12) N.J.S.2C:18-2, burglary;

2 (13) subsection a. of N.J.S.2C:20-5, extortion;

3 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
4 booby traps in manufacturing or distribution facilities; **[or]**

5 (15) N.J.S.2C:35-9, strict liability for drug induced deaths.

6 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism; **[or]**

7 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
8 possessing chemical weapons, biological agents or nuclear or
9 radiological devices;

10 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
11 degree or when the racketeering activity includes any crime
12 enumerated in this subsection;

13 (19) section 1 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), gang criminality, if the underlying
15 criminality consisted of any of the crimes enumerated in this
16 subsection; or

17 (20) section 2 of P.L. , c. (C.) (pending before the
18 Legislature as this bill), promotion of organized street crime, if the
19 underlying crime consisted of any of the crimes enumerated in this
20 subsection.

21 e. (Deleted by amendment, P.L.2001, c.129).

22 (cf: P.L.2002, c.26, s.19)

23

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

25 2C:44-1. a. In determining the appropriate sentence to be
26 imposed on a person who has been convicted of an offense, the
27 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

47 (7) The defendant committed the offense pursuant to an
48 agreement that he either pay or be paid for the commission of the

1 offense and the pecuniary incentive was beyond that inherent in the
2 offense itself;

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

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

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

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

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
30 properly consider the following mitigating circumstances:

31 (1) The defendant's conduct neither caused nor threatened
32 serious 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
37 the defendant's conduct, though failing to establish a defense;

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

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

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

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

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

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

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

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

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

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

14 (2) When imposing a sentence of imprisonment the court shall
15 consider the defendant's eligibility for release under the law
16 governing parole, including time credits awarded pursuant to Title
17 30 of the Revised Statutes, in determining the appropriate term of
18 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
21 degree by imposing a sentence of imprisonment unless, having
22 regard to the character and condition of the defendant, it is of the
23 opinion that his imprisonment would be a serious injustice which
24 overrides the need to deter such conduct by others. Notwithstanding
25 the provisions of subsection e. of this section, the court shall deal
26 with a person who has been convicted of theft of a motor vehicle or
27 of the unlawful taking of a motor vehicle and who has previously
28 been convicted of either offense by imposing a sentence of
29 imprisonment unless, having regard to the character and condition
30 of the defendant, it is of the opinion that his imprisonment would be
31 a serious injustice which overrides the need to deter such conduct
32 by others.

33 e. The court shall deal with a person convicted of an offense
34 other than a crime of the first or second degree, who has not
35 previously been convicted of an offense, without imposing a
36 sentence of imprisonment unless, having regard to the nature and
37 circumstances of the offense and the history, character and
38 condition of the defendant, it is of the opinion that his imprisonment
39 is necessary for the protection of the public under the criteria set
40 forth in subsection a., except that this subsection shall not apply if
41 the court finds that the aggravating factor in paragraph (5) of
42 subsection a. applies or if the person is convicted of any of the
43 following crimes of the third degree: theft of a motor vehicle;
44 unlawful taking of a motor vehicle; eluding; if the person is
45 convicted of a crime of the third degree constituting use of a false
46 government document in violation of subsection c. of section 1 of
47 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
48 of the third degree constituting distribution, manufacture or

1 possession of an item containing personal identifying information
2 in violation of subsection b. of section 6 of P.L.2003, c.184
3 (C.2C:21-17.3); **[or]** if the person is convicted of a crime of the
4 third or fourth degree constituting bias intimidation in violation of
5 N.J.S.2C:16-1; or if the person is convicted of a crime of the third
6 degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the
7 person is convicted of a crime of the third or fourth degree under
8 the provisions of section 1 or 2 of P.L. , c. (C.) (pending
9 before the Legislature as this bill).

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

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

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

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

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

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

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

29 Unless the preponderance of mitigating factors set forth in
30 subsection b. weighs in favor of a lower term within the limits
31 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
32 presumptive term of life imprisonment. Unless the preponderance
33 of aggravating and mitigating factors set forth in subsections a. and
34 b. weighs in favor of a higher or lower term within the limits
35 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
36 presumptive term of 50 years' imprisonment; sentences imposed
37 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
38 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
39 shall have a presumptive term of seven years' imprisonment.

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

44 (2) In cases of convictions for crimes of the first or second
45 degree where the court is clearly convinced that the mitigating
46 factors substantially outweigh the aggravating factors and where the
47 interest of justice demands, the court may sentence the defendant to
48 a term appropriate to a crime of one degree lower than that of the

1 crime for which he was convicted. If the court does impose
2 sentence pursuant to this paragraph, or if the court imposes a
3 noncustodial or probationary sentence upon conviction for a crime
4 of the first or second degree, such sentence shall not become final
5 for 10 days in order to permit the appeal of such sentence by the
6 prosecution.

7 g. Imposition of Noncustodial Sentences in Certain Cases. If the
8 court, in considering the aggravating factors set forth in subsection
9 a., finds the aggravating factor in paragraph a.(2), a.(5), or a.(12)
10 and does not impose a custodial sentence, the court shall
11 specifically place on the record the mitigating factors which justify
12 the imposition of a noncustodial sentence.

13 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
14 11), the presumption of imprisonment as provided in subsection d.
15 of this section shall not preclude the admission of a person to the
16 Intensive Supervision Program, established pursuant to the Rules
17 Governing the Courts of the State of New Jersey.
18 (cf: P.L.2007, c.83, s.3)

19

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

21 2C:44-3. The court may, upon application of the prosecuting
22 attorney, sentence a person who has been convicted of a crime of
23 the first, second or third degree to an extended term of
24 imprisonment if it finds one or more of the grounds specified in
25 subsection a., b., c., or f. of this section. If the grounds specified in
26 subsection d. are found, and the person is being sentenced for
27 commission of any of the offenses enumerated in N.J.S.2C:43-6c.
28 or N.J.S.2C:43-6g., the court shall sentence the defendant to an
29 extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g.,
30 and application by the prosecutor shall not be required. The court
31 shall, upon application of the prosecuting attorney, sentence a
32 person who has been convicted of a crime under N.J.S.2C:14-2 or
33 N.J.S.2C:14-3 to an extended term of imprisonment if the grounds
34 specified in subsection g. of this section are found. **[**The court
35 shall, upon application of the prosecuting attorney, sentence a
36 person who has been convicted of a crime to an extended term of
37 imprisonment if the grounds specified in subsection h. of this
38 section are found.**]** The court shall, upon application of the
39 prosecuting attorney, sentence a person to an extended term if the
40 imposition of such term is required pursuant to the provisions of
41 section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the
42 court shall be incorporated in the record.

43 a. The defendant has been convicted of a crime of the first,
44 second or third degree and is a persistent offender. A persistent
45 offender is a person who at the time of the commission of the crime
46 is 21 years of age or over, who has been previously convicted on at
47 least two separate occasions of two crimes, committed at different
48 times, when he was at least 18 years of age, if the latest in time of

1 these crimes or the date of the defendant's last release from
2 confinement, whichever is later, is within 10 years of the date of the
3 crime for which the defendant is being sentenced.

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

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

16 d. Second offender with a firearm. The defendant is at least 18
17 years of age and has been previously convicted of any of the
18 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-
19 2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been
20 previously convicted of an offense under Title 2A of the New
21 Jersey Statutes or under any statute of the United States or any other
22 state which is substantially equivalent to the offenses enumerated in
23 this subsection and he used or possessed a firearm, as defined in
24 2C:39-1f., in the course of committing or attempting to commit any
25 of these crimes, including the immediate flight therefrom.

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

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

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

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

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

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

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

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

24

25 9. This act shall take effect immediately.

26

27

28

STATEMENT

29

30 This bill creates the new offenses of gang criminality and
31 promoting organized street crime. The bill also expands the
32 statutory definition of “criminal street gang.”

33 A person is guilty of the crime of gang criminality if, while
34 knowingly involved in criminal street gang activity, he commits,
35 attempts to commit, or conspires to commit, whether as a principal
36 or an accomplice, any offense specified in chapters 11 through 18,
37 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes;
38 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39:4; N.J.S.2C:39-4.1;
39 N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while
40 involved in a criminal street gang related activity if the offense was
41 committed for the benefit of, at the direction of, or in association
42 with a criminal street gang. The revised definition expands the
43 criteria used to identify a “criminal street gang.”

44 The bill provides that gang criminality is a crime of the fourth
45 degree if the underlying offense is a disorderly persons offense or a
46 petty disorderly persons offense. Otherwise, gang criminality is a
47 crime of one degree higher than the most serious underlying
48 offense. Where the underlying offense is a crime of the first degree,

1 however, gang criminality is a first degree crime and the the
2 defendant is to be sentenced to a term of 15 to 30 years
3 imprisonment. A sentence imposed upon conviction of the crime of
4 gang criminality is to be served consecutively to the sentence
5 imposed for conviction of the underlying offense.

6 The bill provides that a person promotes organized street crime if
7 he conspires with others as an organizer, supervisor, financier or
8 manager to commit any offense specified in chapters 11 through 18,
9 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;
10 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; N.J.S.2C:39-4.1;
11 N.J.S.2C:39-5; or N.J.S.2C:39-9.

12 Promotion of organized street crime is a crime of the fourth
13 degree if the underlying offense is a disorderly persons offense or a
14 petty disorderly persons offense. Otherwise, promotion of
15 organized street crime is a crime of one degree higher than the most
16 serious underlying offense. Where the underlying offense is a
17 crime of the first degree, however, promotion of organized street
18 crime is a first degree crime and the defendant is to be sentenced to
19 a term of 15 to 30 years imprisonment. A sentence imposed upon
20 conviction of the crime of promotion of organized street crime is to
21 be served consecutively to the sentence imposed upon conviction of
22 any underlying offense.

23 The bill further provides that a juvenile who commits an act of
24 gang criminality or organized street crime may be tried as an adult.

25 Under the provisions of the bill, persons who commit the offense
26 of gang criminality or promotion of organized street crime would be
27 required to serve 85% of the sentence imposed if they would be
28 required to serve 85% of any sentence imposed for the underlying
29 crime. In addition, the presumption of nonincarceration would not
30 apply to persons who commit third or fourth degree gang
31 criminality or promotion of organized street crime as well as
32 persons whose crime involved organized criminal activity.

33 The bill amends the definition of "racketeering activity" in New
34 Jersey's RICO (racketeering influenced and corrupt organizations)
35 statute, N.J.S.2C:41-1 et seq., to include assaults requiring
36 purposeful or knowing conduct and terroristic threats, which are
37 offenses commonly committed by gang members. The bill also
38 requires 85% of the sentence to be served by persons who commit
39 first degree racketeering or for any racketeering activity which
40 includes the commission of certain crimes for which 85% of the
41 sentence imposed must be served.

42 Finally, the bill provides enhanced penalties for persons involved
43 in organized criminal activity. It also expands the Graves Act
44 mandatory minimum sentencing provisions to include certain
45 firearms-related crimes, including possession of a sawed-off
46 shotgun or defaced firearm; possession of a firearm to use
47 unlawfully against property; possession of a firearm while
48 committing certain drug-related offenses or bias intimidation;

1 unlawful possession of a machine gun, handgun or shotgun;
2 possession of firearms by certain persons who are prohibited from
3 such possession; and unlawful manufacturing of firearms. It further
4 extends the mandatory minimum sentencing provisions for
5 possession of a machine gun or assault firearm for unlawful use
6 against a person to unlawful use against property.

7 This bill embodies recommendations of the Governor's *Strategy*
8 *for Safe Streets and Neighborhoods*, announced earlier this year.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4582

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2007

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 4582.

As amended and reported by the committee, Assembly Bill No. 4582 creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of "criminal street gang."

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any offense specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. The revised definition expands the criteria used to identify a "criminal street gang."

The bill provides that gang criminality is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, gang criminality is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, gang criminality is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of gang criminality is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill provides that a person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any offense specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

Promotion of organized street crime is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty

disorderly persons offense. Otherwise, promotion of organized street crime is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, promotion of organized street crime is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of promotion of organized street crime is to be served consecutively to the sentence imposed upon conviction of any underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult.

Under the provisions of the bill, persons who commit the offense of gang criminality or promotion of organized street crime would be required to serve 85% of the sentence imposed if they would be required to serve 85% of any sentence imposed for the underlying crime. In addition, the presumption of nonincarceration would not apply to persons who commit third or fourth degree gang criminality or promotion of organized street crime as well as persons whose crime involved organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, N.J.S.2C:41-1 et seq., to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members. The bill also requires 85% of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85% of the sentence imposed must be served.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain firearms-related crimes, including possession of a sawed-off shotgun or defaced firearm; possession of a firearm to use unlawfully against property; possession of a firearm while committing certain drug-related offenses or bias intimidation; unlawful possession of a machine gun, handgun or shotgun; possession of firearms by certain persons who are prohibited from such possession; and unlawful manufacturing of firearms. It further extends the mandatory minimum sentencing provisions for possession of a machine gun or assault firearm for unlawful use against a person to unlawful use against property.

The committee amendments clarify that there is a presumption of incarceration for a third degree crime where the court finds the aggravating factor of a substantial likelihood that the defendant was involved in organized criminal activity. The amendments also correct technical errors in citations.

As amended and reported by the committee, this bill is identical to Senate Bill No. 2940 (1R), which was reported by the Senate Law and Public Safety Committee on November 29, 2007.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 4582

with Assembly Floor Amendments
(Proposed By Assemblywoman WATSON COLEMAN)

ADOPTED: DECEMBER 13, 2007

Assembly Bill No. 4582 (1R) creates the new offenses of gang criminality and promoting organized street crime.

These Assembly amendments clarify that a person must commit a crime while knowingly involved in criminal street gang activity in order to be guilty of the crime of gang criminality. A person who commits a disorderly persons or petty disorderly persons offense while involved in criminal street gang activity would not be guilty of gang criminality under these amendments. Similarly, under these amendments, a person must commit a crime, not a disorderly persons or petty disorderly persons offense, to be convicted of promoting organized street crime. Under the amendments, minor offenses would not be upgraded to fourth degree crimes.

Assembly Bill No. 4582 (1R) also provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult. These Assembly amendments clarify that a juvenile who commits an act of gang criminality may only be waived to adult court if the underlying crime is a crime for which the juvenile can be waived under current law, such as criminal homicide, first degree robbery, carjacking, aggravated sexual assault or sexual assault, kidnapping, or aggravated arson. A juvenile who commits the crime of promoting organized street crime may only be waived to adult court under the amendments if the underlying crime is a crime of the first or second degree for which the juvenile could be waived under current law.

Under Assembly Bill No. 4582 (1R), the two new crimes of gang criminality and promoting organized street crime were included as No Early Release Act (NERA) crimes for which a person must serve 85 percent of his term before being eligible for parole if the underlying crime was a NERA crime. First degree racketeering and racketeering activity that included a NERA crime also were included under the bill. As such, a person convicted of any of these crimes would be sentenced to two consecutive terms to which the 85 percent would apply. These amendments keep first degree racketeering as a NERA crime, but remove the other crimes.

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 4582

with Senate Floor Amendments
(Proposed By Senator GIRGENTI)

ADOPTED: JANUARY 7, 2008

Assembly Bill No. 4582 (2R) creates the new offenses of gang criminality and promoting organized street crime. A person is guilty of gang criminality under the bill if he or she, while knowingly involved in criminal street gang activity, commits certain other crimes. The bill defines criminal street gang as “. . .three or more persons associated in fact.” Under the bill, to be associated in fact, two of seven criteria must be met and the person must have committed certain offenses while engaged in gang related activity “. . .regardless of whether the prior offenses have resulted in convictions.” These Senate amendments remove this language to clarify that a person must be convicted of the underlying offense in order to be convicted under the new gang criminality offense.

These Senate amendments make this bill identical to Senate Bill No. 2940 (2R).

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 4582
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JANUARY 10, 2008

SUMMARY

Synopsis: Creates offenses of gang criminality and promoting organized street crime.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Department of Corrections

Executive Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|--------------------|---|---------------|---------------|
| Cost | | | |
| Judiciary | \$1,197,302 | \$1,041,648 | \$1,093,730 |
| Corrections | Cannot be determined - See comments below | | |

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.
- The bill creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of “criminal street gang.”
- The Administrative Office of the Courts (AOC) states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. However, the AOC notes that it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

- The AOC notes that if the trial rate increased to 5 percent as a result of this bill, there would be 153 trials requiring two new judge teams.
- The AOC notes that total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year.

BILL DESCRIPTION

Assembly Bill No. 4582 (2R) of 2007 creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of "criminal street gang."

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any offense specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. The revised definition expands the criteria used to identify a "criminal street gang."

The bill provides that gang criminality is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, gang criminality is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, gang criminality is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of gang criminality is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill provides that a person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any offense specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

Promotion of organized street crime is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, promotion of organized street crime is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, promotion of organized street crime is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of promotion of organized street crime is to be served consecutively to the sentence imposed upon conviction of any underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult if the underlying crime is a crime for which the juvenile can be waived under current law.

Under the provisions of the bill, persons who commit the offense of gang criminality or promotion of organized street crime would be required to serve 85 percent of the sentence imposed if they would be required to serve 85 percent of any sentence imposed for the underlying crime. In addition, the presumption of nonincarceration would not apply to persons

who commit third or fourth degree gang criminality or promotion of organized street crime as well as persons whose crime involved organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, N.J.S.2C:41-1 et seq., to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members. The bill also requires 85 percent of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85 percent of the sentence imposed must be served.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain firearms-related crimes, including possession of a sawed-off shotgun or defaced firearm; possession of a firearm to use unlawfully against property; possession of a firearm while committing certain drug-related offenses or bias intimidation; unlawful possession of a machine gun, handgun or shotgun; possession of firearms by certain persons who are prohibited from such possession; and unlawful manufacturing of firearms. It further extends the mandatory minimum sentencing provisions for possession of a machine gun or assault firearm for unlawful use against a person to unlawful use against property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

The AOC states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. In this regard, the Judiciary cannot with any confidence estimate the impact this bill would have on the judicial resources. Although the Judiciary does not maintain data on whether a crime was related to gang activity, it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

The AOC notes that for the period from July 1, 2006 through June 30, 2007, there were 30,596 people convicted of the offenses specified by this bill. Of the 30,596 people convicted of the specified offenses during the 2007 court year, only 567, or approximately 2 percent, were convicted after a trial. If it is assumed that 10 percent, or 3,060 of the people convicted of the offenses specified by this bill during the 2007 court year were involved in gang-related crimes and proceeded to trial, approximately 57 trials were conducted. If the trial rate increased to 5 percent as a result of this bill, there would be 153 trials. If a trial lasts an average of three days, it would take 459 days to dispose of those cases (153 trials x 3 days). Assuming a judge sits for 215 days a year, there would be two new judge teams needed.

According to the AOC, each judge team consists of a Superior Court Judge, a Judge's Secretary, a Law Clerk, a Court Clerk, and an Official Court Reporter costing \$432,242 in salary expenses in the first full year after enactment. Second and third year salary costs would total \$453,854 and \$476,547, respectively.

The AOC notes that one-time start-up costs of \$102,628 would be generated to fund office furniture, video court room capability, computers, law books, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$13,781 during the first year of operation. Second- and third year program costs would total \$14,470 and \$15,194. In addition, the AOC noted that although not included in the cost projection as it is beyond the projection period, after 2 years, the maintenance of the video court capability is approximately \$3,675 per year.

Finally, the AOC states that for the purpose of this fiscal note, it is assumed that the Judiciary would have to rent 100 percent of the office and courtroom space necessary to facilitate the judge team. Assuming that a 2,000 square foot space is necessary, at a cost of \$25 per square foot, the annual facility rental cost would total \$50,000 in the first year, \$52,500 in the second year, and \$55,125 in the third year after implementation.

Total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year after the bill's enactment.

Department of Corrections

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate.

The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 4582
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: JANUARY 14, 2008

SUMMARY

Synopsis: Creates offenses of gang criminality and promoting organized street crime.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Department of Corrections

Executive Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|--------------------|---|---------------|---------------|
| Cost | | | |
| Judiciary | \$1,197,302 | \$1,041,648 | \$1,093,730 |
| Corrections | Cannot be determined - See comments below | | |

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.
- The bill creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of “criminal street gang.”
- The Administrative Office of the Courts (AOC) states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. However, the AOC notes that it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

- The AOC notes that if the trial rate increased to 5 percent as a result of this bill, there would be 153 trials requiring two new judge teams.
- The AOC notes that total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year.

BILL DESCRIPTION

Assembly Bill No. 4582 (2R) of 2007 creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of "criminal street gang."

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any offense specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. The revised definition expands the criteria used to identify a "criminal street gang."

The bill provides that gang criminality is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, gang criminality is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, gang criminality is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of gang criminality is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill provides that a person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any offense specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

Promotion of organized street crime is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, promotion of organized street crime is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, promotion of organized street crime is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of promotion of organized street crime is to be served consecutively to the sentence imposed upon conviction of any underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult if the underlying crime is a crime for which the juvenile can be waived under current law.

Under the provisions of the bill, persons who commit the offense of gang criminality or promotion of organized street crime would be required to serve 85 percent of the sentence imposed if they would be required to serve 85 percent of any sentence imposed for the underlying crime. In addition, the presumption of nonincarceration would not apply to persons

who commit third or fourth degree gang criminality or promotion of organized street crime as well as persons whose crime involved organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, N.J.S.2C:41-1 et seq., to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members. The bill also requires 85 percent of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85 percent of the sentence imposed must be served.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain firearms-related crimes, including possession of a sawed-off shotgun or defaced firearm; possession of a firearm to use unlawfully against property; possession of a firearm while committing certain drug-related offenses or bias intimidation; unlawful possession of a machine gun, handgun or shotgun; possession of firearms by certain persons who are prohibited from such possession; and unlawful manufacturing of firearms. It further extends the mandatory minimum sentencing provisions for possession of a machine gun or assault firearm for unlawful use against a person to unlawful use against property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

The AOC states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. In this regard, the Judiciary cannot with any confidence estimate the impact this bill would have on the judicial resources. Although the Judiciary does not maintain data on whether a crime was related to gang activity, it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

The AOC notes that for the period from July 1, 2006 through June 30, 2007, there were 30,596 people convicted of the offenses specified by this bill. Of the 30,596 people convicted of the specified offenses during the 2007 court year, only 567, or approximately 2 percent, were convicted after a trial. If it is assumed that 10 percent, or 3,060 of the people convicted of the offenses specified by this bill during the 2007 court year were involved in gang-related crimes and proceeded to trial, approximately 57 trials were conducted. If the trial rate increased to 5 percent as a result of this bill, there would be 153 trials. If a trial lasts an average of three days, it would take 459 days to dispose of those cases (153 trials x 3 days). Assuming a judge sits for 215 days a year, there would be two new judge teams needed.

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Department of Corrections

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OFFICE OF LEGISLATIVE SERVICES

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The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 2940

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED NOVEMBER 8, 2007

Sponsored by:

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Creates offenses of gang criminality and promoting organized street crime.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/30/2007)

S2940 GIRGENTI, SARLO

2

1 AN ACT concerning criminal street gangs and amending and
2 supplementing various parts of the statutory law.

3

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

6

7 1. (New section) a. A person is guilty of the crime of gang
8 criminality if, while knowingly involved in criminal street gang
9 activity, he commits, attempts to commit, or conspires to commit,
10 whether as a principal or an accomplice, any offense specified in
11 chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New
12 Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39:4;
13 N.J.S.2C:39-4.1; N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is
14 committed while involved in a criminal street gang related activity
15 if the offense was committed for the benefit of, at the direction of,
16 or in association with a criminal street gang.

17 “Criminal street gang” means three or more persons associated in
18 fact. Individuals are associated in fact if: (1) two of the following
19 seven criteria that indicate criminal street gang membership apply:
20 (a) self-proclamation; (b) witness testimony or official statement;
21 (c) written or electronic correspondence; (d) paraphernalia or
22 photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia
23 of street gang activity; and (2) individually or in combination with
24 other members of a criminal street gang, while engaging in gang
25 related activity, have committed or conspired or attempted to
26 commit, within the preceding five years from the date of present
27 offense, excluding any period of imprisonment, one or more
28 offenses on separate occasions of robbery, carjacking, aggravated
29 assault, assault, aggravated sexual assault, sexual assault, arson,
30 burglary, kidnapping, extortion, tampering with witnesses and
31 informants or a violation of chapter 11, sections 3, 4, 5, 6, or 7 of
32 chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes
33 regardless of whether the prior offenses have resulted in
34 convictions.

35 b. Grading. Gang criminality is a crime of the fourth degree if
36 the underlying offense referred to in subsection a. of this section is
37 a disorderly persons offense or a petty disorderly persons offense.
38 Otherwise, gang criminality is a crime of one degree higher than the
39 most serious underlying offense referred to in subsection a. of this
40 section, except that where the underlying offense is a crime of the
41 first degree, gang criminality is a first degree crime and the
42 defendant, upon conviction, and notwithstanding the provisions of
43 paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced
44 to an ordinary term of imprisonment between 15 and 30 years. A
45 sentence imposed upon conviction of the crime of gang criminality

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 shall be ordered to be served consecutively to the sentence imposed
2 upon conviction of any underlying offense referred to in subsection
3 a. of this section.

4
5 2. (New section) a. A person promotes organized street crime if
6 he conspires with others as an organizer, supervisor, financier or
7 manager to commit any offense specified in chapters 11 through 18,
8 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;
9 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; N.J.S.2C:39-4.1;
10 N.J.S.2C:39-5; or N.J.S.2C:39-9.

11 b. Grading. Promotion of organized street crime is a crime of
12 the fourth degree if the underlying offense referred to in subsection
13 a. of this section is a disorderly persons offense or a petty disorderly
14 persons offense. Otherwise, promotion of organized street crime is
15 a crime of one degree higher than the most serious underlying
16 offense referred to in subsection a. of this section, except that where
17 the underlying offense is a crime of the first degree, promotion of
18 organized street crime is a first degree crime and the defendant,
19 upon conviction, and notwithstanding the provisions of paragraph
20 (1) of subsection a of N.J.S.2C:43-6, shall be sentenced to an
21 ordinary term of imprisonment between 15 and 30 years. A
22 sentence imposed upon conviction of the crime of promotion of
23 organized street crime shall be ordered to be served consecutively
24 to the sentence imposed upon conviction of any underlying offense
25 referred to in subsection a. of this section.

26
27 3. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to read
28 as follows:

29 7. a. On motion of the prosecutor, the court shall, without the
30 consent of the juvenile, waive jurisdiction over a case and refer that
31 case from the Superior Court, Chancery Division, Family Part to the
32 appropriate court and prosecuting authority having jurisdiction if it
33 finds, after hearing, that:

34 (1) The juvenile was 14 years of age or older at the time of the
35 charged delinquent act; and

36 (2) There is probable cause to believe that the juvenile
37 committed a delinquent act or acts which if committed by an adult
38 would constitute:

39 (a) Criminal homicide other than death by auto, strict liability
40 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which
41 would constitute a crime of the first degree, carjacking, aggravated
42 sexual assault, sexual assault, aggravated assault which would
43 constitute a crime of the second degree, kidnapping **[or]** ,
44 aggravated arson, or gang criminality pursuant to section 1 of
45 P.L. , c. (C.) (pending before the Legislature as this bill) or
46 promotion of organized street crime pursuant to section 2 of P.L. ,
47 c. (C.) (pending before the Legislature as this bill) which
48 would constitute a crime of the first or second degree; or

1 (b) A crime committed at a time when the juvenile had
2 previously been adjudicated delinquent, or convicted, on the basis
3 of any of the offenses enumerated in subsection a.(2)(a); or

4 (c) A crime committed at a time when the juvenile had
5 previously been sentenced and confined in an adult penal
6 institution; or

7 (d) An offense against a person committed in an aggressive,
8 violent and willful manner, other than an offense enumerated in
9 subsection a.(2)(a) of this section, or the unlawful possession of a
10 firearm, destructive device or other prohibited weapon, arson or
11 death by auto if the juvenile was operating the vehicle under the
12 influence of an intoxicating liquor, narcotic, hallucinogenic or habit
13 producing drug; or

14 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or N.J.S.2C:35-
15 5; or

16 (f) Crimes which are a part of a continuing criminal activity in
17 concert with two or more persons and the circumstances of the
18 crimes show the juvenile has knowingly devoted himself to criminal
19 activity as a source of livelihood; or

20 (g) An attempt or conspiracy to commit any of the acts
21 enumerated in paragraph (a), (d) or (e) of this subsection; or

22 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of
23 the New Jersey Statutes; or

24 (i) Possession of a firearm with a purpose to use it unlawfully
25 against the person of another under subsection a. of N.J.S.2C:39-4,
26 or the crime of aggravated assault, aggravated criminal sexual
27 contact, burglary or escape if, while in the course of committing or
28 attempting to commit the crime including the immediate flight
29 therefrom, the juvenile possessed a firearm; or

30 (j) Computer criminal activity which would be a crime of the
31 first or second degree pursuant to section 4 or section 10 of
32 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and

33 (3) Except with respect to any of the acts enumerated in
34 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this
35 section, or with respect to any acts enumerated in subparagraph (e)
36 of paragraph (2) of subsection a. of this section which involve the
37 distribution for pecuniary gain of any controlled dangerous
38 substance or controlled substance analog while on any property
39 used for school purposes which is owned by or leased to any school
40 or school board, or within 1,000 feet of such school property or
41 while on any school bus, or any attempt or conspiracy to commit
42 any of those acts, the State has shown that the nature and
43 circumstances of the charge or the prior record of the juvenile are
44 sufficiently serious that the interests of the public require waiver.

45 b. (Deleted by amendment, P.L.1999, c.373).

46 c. An order referring a case shall incorporate therein not only
47 the alleged act or acts upon which the referral is premised, but also
48 all other delinquent acts arising out of or related to the same
49 transaction.

- 1 d. A motion seeking waiver shall be filed by the prosecutor
2 within 30 days of receipt of the complaint. This time limit shall not,
3 except for good cause shown, be extended.
- 4 e. If the juvenile can show that the probability of his
5 rehabilitation by the use of the procedures, services and facilities
6 available to the court prior to the juvenile reaching the age of 19
7 substantially outweighs the reasons for waiver, waiver shall not be
8 granted. This subsection shall not apply with respect to a juvenile
9 16 years of age or older who is charged with committing any of the
10 acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of
11 subsection a. of this section or with respect to a violation of
12 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26
13 (C.2C:39-4.1).
- 14 f. The Attorney General shall develop for dissemination to the
15 county prosecutors those guidelines or directives deemed necessary
16 or appropriate to ensure the uniform application of this section
17 throughout the State.
18 (cf: P.L.2003, c.39, s.8)
19
- 20 4. N.J.S.2C:41-1 is amended to read as follows:
21 2C:41-1. For purposes of this section and N.J.S.2C:41-2 through
22 N.J.S.2C:41-6:
- 23 a. "Racketeering activity" means (1) any of the following crimes
24 which are crimes under the laws of New Jersey or are equivalent
25 crimes under the laws of any other jurisdiction:
- 26 (a) murder
 - 27 (b) kidnapping
 - 28 (c) gambling
 - 29 (d) promoting prostitution
 - 30 (e) obscenity
 - 31 (f) robbery
 - 32 (g) bribery
 - 33 (h) extortion
 - 34 (i) criminal usury
 - 35 (j) violations of Title 33 of the Revised Statutes
 - 36 (k) violations of Title 54A of the New Jersey Statutes and Title
37 54 of the Revised Statutes
 - 38 (l) arson
 - 39 (m) burglary
 - 40 (n) theft and all crimes defined in chapter 20 of Title 2C of the
41 New Jersey Statutes
 - 42 (o) forgery and fraudulent practices and all crimes defined in
43 chapter 21 of Title 2C of the New Jersey Statutes
 - 44 (p) fraud in the offering, sale or purchase of securities
 - 45 (q) alteration of motor vehicle identification numbers
 - 46 (r) unlawful manufacture, purchase, use or transfer of firearms
 - 47 (s) unlawful possession or use of destructive devices or
48 explosives

- 1 (t) violation of sections 112 through 116 inclusive of the
2 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-
3 116)
- 4 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6
5 and all crimes involving illegal distribution of a controlled
6 dangerous substance or controlled substance analog, except
7 possession of less than one ounce of marijuana
- 8 (v) violation of subsection b. of N.J.S.2C:24-4 except for
9 subparagraph (b) of paragraph (5) of subsection b.
- 10 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),
11 leader of firearms trafficking network
- 12 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),
13 weapons training for illegal activities
- 14 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),
15 terrorism [.]
- 16 (z) violation of section 1 of P.L.2005,c.77 (C.2C:13-8), human
17 trafficking [.]
- 18 (aa) violation of N.J.S.2C:12-1 requiring purposeful or knowing
19 conduct
- 20 (bb) violation of N.J.S.2C:12-3, terroristic threats.
- 21 (2) any conduct defined as "racketeering activity" under Title
22 18, U.S.C.s.1961(1)(A), (B) and (D).
- 23 b. "Person" includes any individual or entity or enterprise as
24 defined herein holding or capable of holding a legal or beneficial
25 interest in property.
- 26 c. "Enterprise" includes any individual, sole proprietorship,
27 partnership, corporation, business or charitable trust, association, or
28 other legal entity, any union or group of individuals associated in
29 fact although not a legal entity, and it includes illicit as well as licit
30 enterprises and governmental as well as other entities.
- 31 d. "Pattern of racketeering activity" requires
- 32 (1) Engaging in at least two incidents of racketeering conduct
33 one of which shall have occurred after the effective date of this act
34 and the last of which shall have occurred within 10 years (excluding
35 any period of imprisonment) after a prior incident of racketeering
36 activity; and
- 37 (2) A showing that the incidents of racketeering activity embrace
38 criminal conduct that has either the same or similar purposes,
39 results, participants or victims or methods of commission or are
40 otherwise interrelated by distinguishing characteristics and are not
41 isolated incidents.
- 42 e. "Unlawful debt" means a debt
- 43 (1) Which was incurred or contracted in gambling activity which
44 was in violation of the law of the United States, a state or political
45 subdivision thereof; or
- 46 (2) Which is unenforceable under state or federal law in whole
47 or in part as to principal or interest because of the laws relating to
48 usury.

1 f. "Documentary material" includes any book, paper, document,
2 writing, drawing, graph, chart, photograph, phonorecord, magnetic
3 or recording or video tape, computer printout, other data
4 compilation from which information can be obtained or from which
5 information can be translated into useable form or other tangible
6 item.

7 g. "Attorney General" includes the Attorney General of New
8 Jersey, his assistants and deputies. The term shall also include a
9 county prosecutor or his designated assistant prosecutor if a county
10 prosecutor is expressly authorized in writing by the Attorney
11 General to carry out the powers conferred on the Attorney General
12 by this chapter.

13 h. "Trade or commerce" shall include all economic activity
14 involving or relating to any commodity or service.
15 (cf: P.L.2005, c.77, s.3)

16

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

18 2C:43-6 a. Except as otherwise provided, a person who has
19 been convicted of a crime may be sentenced to imprisonment, as
20 follows:

21 (1) In the case of a crime of the first degree, for a specific term
22 of years which shall be fixed by the court and shall be between 10
23 years and 20 years;

24 (2) In the case of a crime of the second degree, for a specific
25 term of years which shall be fixed by the court and shall be between
26 five years and 10 years;

27 (3) In the case of a crime of the third degree, for a specific term
28 of years which shall be fixed by the court and shall be between
29 three years and five years;

30 (4) In the case of a crime of the fourth degree, for a specific
31 term which shall be fixed by the court and shall not exceed 18
32 months.

33 b. As part of a sentence for any crime, where the court is clearly
34 convinced that the aggravating factors substantially outweigh the
35 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,
36 or the court find that the aggravating factor set forth in paragraph 5
37 of subsection a. of N.J.S.2C:44-1 applies, the court may fix a
38 minimum term not to exceed one-half of the term set pursuant to
39 subsection a., or one-half of the term set pursuant to a maximum
40 period of incarceration for a crime set forth in any statute other than
41 this code, during which the defendant shall not be eligible for
42 parole; provided that no defendant shall be eligible for parole at a
43 date earlier than otherwise provided by the law governing parole.

44 c. A person who has been convicted under [2C:39-4a. of
45 possession of a firearm with intent to use it against the person of
46 another, or] subsection b. or d. of N.J.S.2C:39-3, subsection a. of
47 N.J.S.2C:39-4, subsection a. of N.J.S.2C:39-4.1, subsection a., b. or
48 c. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of
49 subsection b. of N.J.S.2C:39-7, or subsection a., b., e. or g. of

1 N.J.S.2C:39-9, or of a crime under any of the following sections:
2 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
3 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of committing
4 or attempting to commit the crime, including the immediate flight
5 therefrom, used or was in possession of a firearm as defined in
6 2C:39-1f., shall be sentenced to a term of imprisonment by the
7 court. The term of imprisonment shall include the imposition of a
8 minimum term. The minimum term shall be fixed at, or between,
9 one-third and one-half of the sentence imposed by the court or three
10 years, whichever is greater, or 18 months in the case of a fourth
11 degree crime, during which the defendant shall be ineligible for
12 parole.

13 The minimum terms established by this section shall not prevent
14 the court from imposing presumptive terms of imprisonment
15 pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth
16 degree.

17 A person who has been convicted of an offense enumerated by
18 this subsection and who used or possessed a firearm during its
19 commission, attempted commission or flight therefrom and who has
20 been previously convicted of an offense involving the use or
21 possession of a firearm as defined in 2C:44-3d., shall be sentenced
22 by the court to an extended term as authorized by 2C:43-7c.,
23 notwithstanding that extended terms are ordinarily discretionary
24 with the court.

25 d. The court shall not impose a mandatory sentence pursuant to
26 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the
27 ground therefor has been established at a hearing. At the hearing,
28 which may occur at the time of sentencing, the prosecutor shall
29 establish by a preponderance of the evidence that the weapon used
30 or possessed was a firearm. In making its finding, the court shall
31 take judicial notice of any evidence, testimony or information
32 adduced at the trial, plea hearing, or other court proceedings and
33 shall also consider the presentence report and any other relevant
34 information.

35 e. A person convicted of a third or subsequent offense involving
36 State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any other
37 provision of this code, or under any of the provisions of Title 54 of
38 the Revised Statutes, or Title 54A of the New Jersey Statutes, as
39 amended and supplemented, shall be sentenced to a term of
40 imprisonment by the court. This shall not preclude an application
41 for and imposition of an extended term of imprisonment under
42 N.J.S.2C:44-3 if the provisions of that section are applicable to the
43 offender.

44 f. A person convicted of manufacturing, distributing, dispensing
45 or possessing with intent to distribute any dangerous substance or
46 controlled substance analog under N.J.S.2C:35-5, of maintaining or
47 operating a controlled dangerous substance production facility
48 under N.J.S.2C:35-4, of employing a juvenile in a drug distribution
49 scheme under N.J.S.2C:35-6, leader of a narcotics trafficking

1 network under N.J.S.2C:35-3, or of distributing, dispensing or
2 possessing with intent to distribute on or near school property or
3 buses under section 1 of P.L.1987, c.101 (C.2C:35-7), who has been
4 previously convicted of manufacturing, distributing, dispensing or
5 possessing with intent to distribute a controlled dangerous
6 substance or controlled substance analog, shall upon application of
7 the prosecuting attorney be sentenced by the court to an extended
8 term as authorized by subsection c. of N.J.S.2C:43-7,
9 notwithstanding that extended terms are ordinarily discretionary
10 with the court. The term of imprisonment shall, except as may be
11 provided in N.J.S.2C:35-12, include the imposition of a minimum
12 term. The minimum term shall be fixed at, or between, one-third
13 and one-half of the sentence imposed by the court or three years,
14 whichever is greater, not less than seven years if the person is
15 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case
16 of a fourth degree crime, during which the defendant shall be
17 ineligible for parole.

18 The court shall not impose an extended term pursuant to this
19 subsection unless the ground therefor has been established at a
20 hearing. At the hearing, which may occur at the time of sentencing,
21 the prosecutor shall establish the ground therefor by a
22 preponderance of the evidence. In making its finding, the court shall
23 take judicial notice of any evidence, testimony or information
24 adduced at the trial, plea hearing, or other court proceedings and
25 shall also consider the presentence report and any other relevant
26 information.

27 For the purpose of this subsection, a previous conviction exists
28 where the actor has at any time been convicted under chapter 35 of
29 this title or Title 24 of the Revised Statutes or under any similar
30 statute of the United States, this State, or any other state for an
31 offense that is substantially equivalent to N.J.S.2C:35-3,
32 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
33 P.L.1987, c.101 (C.2C:35-7).

34 g. Any person who has been convicted under subsection a. of
35 N.J.S.2C:39-4 [of possessing a machine gun or assault firearm with
36 intent to use it against the person of another,] or of a crime under
37 any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,
38 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5[.],
40 who, while in the course of committing or attempting to commit the
41 crime, including the immediate flight therefrom, used or was in
42 possession of a machine gun or assault firearm shall be sentenced to
43 a term of imprisonment by the court. The term of imprisonment
44 shall include the imposition of a minimum term. The minimum
45 term shall be fixed at 10 years for a crime of the first or second
46 degree, five years for a crime of the third degree, or 18 months in
47 the case of a fourth degree crime, during which the defendant shall
48 be ineligible for parole.

1 The minimum terms established by this section shall not prevent
2 the court from imposing presumptive terms of imprisonment
3 pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for
4 crimes of the first degree.

5 A person who has been convicted of an offense enumerated in
6 this subsection and who used or possessed a machine gun or assault
7 firearm during its commission, attempted commission or flight
8 therefrom and who has been previously convicted of an offense
9 involving the use or possession of any firearm as defined in
10 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
11 extended term as authorized by subsection d. of N.J.S.2C:43-7,
12 notwithstanding that extended terms are ordinarily discretionary
13 with the court.

14 h. The court shall not impose a mandatory sentence pursuant to
15 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or
16 N.J.S.2C:44-3, unless the ground therefor has been established at a
17 hearing. At the hearing, which may occur at the time of sentencing,
18 the prosecutor shall establish by a preponderance of the evidence
19 that the weapon used or possessed was a machine gun or assault
20 firearm. In making its finding, the court shall take judicial notice of
21 any evidence, testimony or information adduced at the trial, plea
22 hearing, or other court proceedings and shall also consider the
23 presentence report and any other relevant information.

24 i. A person who has been convicted under paragraph (6) of
25 subsection b. of 2C:12-1 of causing bodily injury while eluding
26 shall be sentenced to a term of imprisonment by the court. The
27 term of imprisonment shall include the imposition of a minimum
28 term. The minimum term shall be fixed at, or between one-third
29 and one-half of the sentence imposed by the court. The minimum
30 term established by this subsection shall not prevent the court from
31 imposing a presumptive term of imprisonment pursuant to
32 paragraph (1) of subsection f. of 2C:44-1.

33 (cf: P.L.1993, c.219, s.6)

34

35 6. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
36 read as follows:

37 2. a. A court imposing a sentence of incarceration for a crime of
38 the first or second degree enumerated in subsection d. of this
39 section shall fix a minimum term of 85% of the sentence imposed,
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section
42 shall be fixed as a part of every sentence of incarceration imposed
43 upon every conviction of a crime enumerated in subsection d. of
44 this section, whether the sentence of incarceration is determined
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
46 other provision of law, and shall be calculated based upon the
47 sentence of incarceration actually imposed. The provisions of
48 subsection a. of this section shall not be construed or applied to
49 reduce the time that must be served before eligibility for parole by

1 an inmate sentenced to a mandatory minimum period of
2 incarceration. Solely for the purpose of calculating the minimum
3 term of parole ineligibility pursuant to subsection a. of this section,
4 a sentence of life imprisonment shall be deemed to be 75 years.

5 c. Notwithstanding any other provision of law to the contrary
6 and in addition to any other sentence imposed, a court imposing a
7 minimum period of parole ineligibility of 85 percent of the sentence
8 pursuant to this section shall also impose a five-year term of parole
9 supervision if the defendant is being sentenced for a crime of the
10 first degree, or a three-year term of parole supervision if the
11 defendant is being sentenced for a crime of the second degree. The
12 term of parole supervision shall commence upon the completion of
13 the sentence of incarceration imposed by the court pursuant to
14 subsection a. of this section unless the defendant is serving a
15 sentence of incarceration for another crime at the time he completes
16 the sentence of incarceration imposed pursuant to subsection a., in
17 which case the term of parole supervision shall commence
18 immediately upon the defendant's release from incarceration.
19 During the term of parole supervision the defendant shall remain in
20 release status in the community in the legal custody of the
21 Commissioner of the Department of Corrections and shall be
22 supervised by the State Parole Board as if on parole and shall be
23 subject to the provisions and conditions of section 3 of P.L.1997,
24 c.117 (C.30:4-123.51b).

25 d. The court shall impose sentence pursuant to subsection a. of
26 this section upon conviction of the following crimes or an attempt
27 or conspiracy to commit any of these crimes:

- 28 (1) N.J.S.2C:11-3, murder;
- 29 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 30 (3) N.J.S.2C:11-5, vehicular homicide;
- 31 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 32 (5) subsection b. of N.J.S.2C:12-11, disarming a law
33 enforcement officer;
- 34 (6) N.J.S.2C:13-1, kidnapping;
- 35 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 36 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
37 subsection c. of N.J.S.2C:14-2, sexual assault;
- 38 (9) N.J.S.2C:15-1, robbery;
- 39 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 40 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
41 arson;
- 42 (12) N.J.S.2C:18-2, burglary;
- 43 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 44 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
45 booby traps in manufacturing or distribution facilities; **[or]**
- 46 (15) N.J.S.2C:35-9, strict liability for drug induced deaths.
- 47 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism; **[or]**

1 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
2 possessing chemical weapons, biological agents or nuclear or
3 radiological devices;

4 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
5 degree or when the racketeering activity includes any crime
6 enumerated in this subsection;

7 (19) section 1 of P.L. , c. (C.) (pending before the
8 Legislature as this bill), gang criminality, if the underlying
9 criminality consisted of any of the crimes enumerated in this
10 subsection; or

11 (20) section 2 of P.L. , c. (C.) (pending before the
12 Legislature as this bill), promotion of organized street crime, if the
13 underlying crime consisted of any of the crimes enumerated in this
14 subsection.

15 e. (Deleted by amendment, P.L.2001, c.129).

16 (cf: P.L.2002, c.26, s.19)

17

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

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

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

25 (2) The gravity and seriousness of harm inflicted on the victim,
26 including whether or not the defendant knew or reasonably should
27 have known that the victim of the offense was particularly
28 vulnerable or incapable of resistance due to advanced age, ill-
29 health, or extreme youth, or was for any other reason substantially
30 incapable of exercising normal physical or mental power of
31 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
38 involved 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
42 agreement that he either pay or be paid for the commission of the
43 offense and the pecuniary incentive was beyond that inherent in the
44 offense itself;

45 (8) The defendant committed the offense against a police or
46 other law enforcement officer, correctional employee or fireman,
47 acting in the performance of his duties while in uniform or
48 exhibiting evidence of his authority; the defendant committed the
49 offense because of the status of the victim as a public servant; or the

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

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

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

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

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
23 properly consider the following mitigating circumstances:

24 (1) The defendant's conduct neither caused nor threatened
25 serious 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
30 the defendant's conduct, though failing to establish a defense;

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

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

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

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

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

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

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

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

25 e. The court shall deal with a person convicted of an offense
26 other than a crime of the first or second degree, who has not
27 previously been convicted of an offense, without imposing a
28 sentence of imprisonment unless, having regard to the nature and
29 circumstances of the offense and the history, character and
30 condition of the defendant, it is of the opinion that his imprisonment
31 is necessary for the protection of the public under the criteria set
32 forth in subsection a., except that this subsection shall not apply if
33 the court finds that the aggravating factor in paragraph (5) of
34 subsection a. applies or if the person is convicted of any of the
35 following crimes of the third degree: theft of a motor vehicle;
36 unlawful taking of a motor vehicle; eluding; if the person is
37 convicted of a crime of the third degree constituting use of a false
38 government document in violation of subsection c. of section 1 of
39 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
40 of the third degree constituting distribution, manufacture or
41 possession of an item containing personal identifying information
42 in violation of subsection b. of section 6 of P.L.2003, c.184
43 (C.2C:21-17.3); **[or]** if the person is convicted of a crime of the
44 third or fourth degree constituting bias intimidation in violation of
45 N.J.S.2C:16-1; or if the person is convicted of a crime of the third
46 degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the
47 person is convicted of a crime of the third or fourth degree under
48 the provisions of section 1 or 2 of P.L. , c. (C.) (pending
49 before the Legislature as this bill).

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

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

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

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

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

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

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

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

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

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

46 g. Imposition of Noncustodial Sentences in Certain Cases. If the
47 court, in considering the aggravating factors set forth in subsection
48 a., finds the aggravating factor in paragraph a.(2), a.(5), or a.(12)
49 and does not impose a custodial sentence, the court shall

1 specifically place on the record the mitigating factors which justify
2 the imposition of a noncustodial sentence.

3 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
4 11), the presumption of imprisonment as provided in subsection d.
5 of this section shall not preclude the admission of a person to the
6 Intensive Supervision Program, established pursuant to the Rules
7 Governing the Courts of the State of New Jersey.
8 (cf: P.L.2007, c.83, s.3)

9
10 8. N.J.S.2C:44-3 is amended to read as follows:

11 2C:44-3. The court may, upon application of the prosecuting
12 attorney, sentence a person who has been convicted of a crime of
13 the first, second or third degree to an extended term of
14 imprisonment if it finds one or more of the grounds specified in
15 subsection a., b., c., or f. of this section. If the grounds specified in
16 subsection d. are found, and the person is being sentenced for
17 commission of any of the offenses enumerated in N.J.S.2C:43-6c.
18 or N.J.S.2C:43-6g., the court shall sentence the defendant to an
19 extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g.,
20 and application by the prosecutor shall not be required. The court
21 shall, upon application of the prosecuting attorney, sentence a
22 person who has been convicted of a crime under N.J.S.2C:14-2 or
23 N.J.S.2C:14-3 to an extended term of imprisonment if the grounds
24 specified in subsection g. of this section are found. [The court
25 shall, upon application of the prosecuting attorney, sentence a
26 person who has been convicted of a crime to an extended term of
27 imprisonment if the grounds specified in subsection h. of this
28 section are found.] The court shall, upon application of the
29 prosecuting attorney, sentence a person to an extended term if the
30 imposition of such term is required pursuant to the provisions of
31 section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the
32 court shall be incorporated in the record.

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

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

48 c. The defendant has been convicted of a crime of the first,
49 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
3 crime or he procured the commission of the offense by payment or
4 promise 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
7 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-
8 2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been
9 previously convicted of an offense under Title 2A of the New
10 Jersey Statutes or under any statute of the United States or any other
11 state which is substantially equivalent to the offenses enumerated in
12 this subsection and he used or possessed a firearm, as defined in
13 2C:39-1f., in the course of committing or attempting to commit any
14 of these crimes, including the immediate flight therefrom.

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

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

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

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

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

1 Statutes regardless of whether the prior offenses have resulted in
2 convictions.

3 The court shall not impose a sentence pursuant to this subsection
4 unless the ground therefore has been established by a
5 preponderance of the evidence established at a hearing, which may
6 occur at the time of sentencing. In making its finding, the court
7 shall take judicial notice of any testimony or information adduced at
8 the trial, plea hearing or other court proceedings and also shall
9 consider the presentence report and any other relevant information.]
10 Deleted by amendment, P.L. , c. (pending before the Legislature
11 as this bill).

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

13

14 9. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 This bill creates the new offenses of gang criminality and
20 promoting organized street crime. The bill also expands the
21 statutory definition of “criminal street gang.”

22 A person is guilty of the crime of gang criminality if, while
23 knowingly involved in criminal street gang activity, he commits,
24 attempts to commit, or conspires to commit, whether as a principal
25 or an accomplice, any offense specified in chapters 11 through 18,
26 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes;
27 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; N.J.S.2C:39-4.1;
28 N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while
29 involved in a criminal street gang related activity if the offense was
30 committed for the benefit of, at the direction of, or in association
31 with a criminal street gang. The revised definition expands the
32 criteria used to identify a “criminal street gang.”

33 The bill provides that gang criminality is a crime of the fourth
34 degree if the underlying offense is a disorderly persons offense or a
35 petty disorderly persons offense. Otherwise, gang criminality is a
36 crime of one degree higher than the most serious underlying
37 offense. Where the underlying offense is a crime of the first degree,
38 however, gang criminality is a first degree crime and the the
39 defendant is to be sentenced to a term of 15 to 30 years
40 imprisonment. A sentence imposed upon conviction of the crime of
41 gang criminality is to be served consecutively to the sentence
42 imposed for conviction of the underlying offense.

43 The bill provides that a person promotes organized street crime if
44 he conspires with others as an organizer, supervisor, financier or
45 manager to commit any offense specified in chapters 11 through 18,
46 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;
47 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; N.J.S.2C:39-4.1;
48 N.J.S.2C:39-5; or N.J.S.2C:39-9.

1 Promotion of organized street crime is a crime of the fourth
2 degree if the underlying offense is a disorderly persons offense or a
3 petty disorderly persons offense. Otherwise, promotion of
4 organized street crime is a crime of one degree higher than the most
5 serious underlying offense. Where the underlying offense is a
6 crime of the first degree, however, promotion of organized street
7 crime is a first degree crime and the defendant is to be sentenced to
8 a term of 15 to 30 years imprisonment. A sentence imposed upon
9 conviction of the crime of promotion of organized street crime is to
10 be served consecutively to the sentence imposed upon conviction of
11 any underlying offense.

12 The bill further provides that a juvenile who commits an act of
13 gang criminality or organized street crime may be tried as an adult.

14 Under the provisions of the bill, persons who commit the offense
15 of gang criminality or promotion of organized street crime would be
16 required to serve 85% of the sentence imposed if they would be
17 required to serve 85% of any sentence imposed for the underlying
18 crime. In addition, the presumption of nonincarceration would not
19 apply to persons who commit third or fourth degree gang
20 criminality or promotion of organized street crime as well as
21 persons whose crime involved organized criminal activity.

22 The bill amends the definition of "racketeering activity" in New
23 Jersey's RICO (racketeering influenced and corrupt organizations)
24 statute, N.J.S.2C:41-1 et seq., to include assaults requiring
25 purposeful or knowing conduct and terroristic threats, which are
26 offenses commonly committed by gang members. The bill also
27 requires 85% of the sentence to be served by persons who commit
28 first degree racketeering or for any racketeering activity which
29 includes the commission of certain crimes for which 85% of the
30 sentence imposed must be served.

31 Finally, the bill provides enhanced penalties for persons involved
32 in organized criminal activity. It also expands the Graves Act
33 mandatory minimum sentencing provisions to include certain
34 firearms-related crimes, including possession of a sawed-off
35 shotgun or defaced firearm; possession of a firearm to use
36 unlawfully against property; possession of a firearm while
37 committing certain drug-related offenses or bias intimidation;
38 unlawful possession of a machine gun, handgun or shotgun;
39 possession of firearms by certain persons who are prohibited from
40 such possession; and unlawful manufacturing of firearms. It further
41 extends the mandatory minimum sentencing provisions for
42 possession of a machine gun or assault firearm for unlawful use
43 against a person to unlawful use against property.

44 This bill embodies recommendations of the Governor's *Strategy*
45 *for Safe Streets and Neighborhoods*, announced earlier this year.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2940

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 29, 2007

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably and with committee amendments Senate Bill No. 2940.

This bill creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of "criminal street gang."

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any offense specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. The revised definition expands the criteria used to identify a "criminal street gang."

The bill provides that gang criminality is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, gang criminality is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, gang criminality is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of gang criminality is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill provides that a person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any offense specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

Promotion of organized street crime is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, promotion of organized street crime is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, promotion of organized street crime is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of promotion of organized street crime is to be served consecutively to the sentence imposed upon conviction of any underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult.

Under the provisions of the bill, persons who commit the offense of gang criminality or promotion of organized street crime would be required to serve 85% of the sentence imposed if they would be required to serve 85% of any sentence imposed for the underlying crime. In addition, the presumption of nonincarceration would not apply to persons who commit third or fourth degree gang criminality or promotion of organized street crime as well as persons whose crime involved organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, N.J.S.2C:41-1 et seq., to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members. The bill also requires 85% of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85% of the sentence imposed must be served.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain firearms-related crimes, including possession of a sawed-off shotgun or defaced firearm; possession of a firearm to use unlawfully against property; possession of a firearm while committing certain drug-related offenses or bias intimidation; unlawful possession of a machine gun, handgun or shotgun; possession of firearms by certain persons who are prohibited from such possession; and unlawful manufacturing of firearms. It further extends the mandatory minimum sentencing provisions for possession of a machine gun or assault firearm for unlawful use against a person to unlawful use against property.

The committee amendments clarify that there is a presumption of incarceration for a third degree crime where the court finds the aggravating factor of a substantial likelihood that the defendant was involved in organized criminal activity. The amendments also correct technical errors in citations.

This bill embodies recommendations of the Governor's *Strategy for Safe Streets and Neighborhoods*, announced earlier this year.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2940

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2940 (1R).

Senate Bill No. 2940 (1R) creates the new offenses of (1) gang criminality and (2) promoting organized street crime.

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any of a number of specified offenses. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. A definition expands the criteria used to identify a "criminal street gang" under this offense.

A person is guilty of promoting organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any of a number of specified offenses.

The grading of the degree of these new offenses, and the sentences mandated thereunder, are enhanced one degree higher than the most serious underlying offense. If the underlying offense is a crime of the first degree, however, the new offense is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the new offense is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or promoting of organized street crime may be tried as an adult.

The bill also extends the law mandating fixed minimum terms of incarceration without parole eligibility (for 85% of the sentence imposed) to the offense of gang criminality and promotion of organized street crime if the minimum term of parole ineligibility is mandated for the underlying crime which is of the first or second degree. The bill also requires 85% of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85% of the sentence imposed must be served.

In addition, the bill eliminates the presumption of nonincarceration that would otherwise apply to third or fourth degree gang criminality, promotion of organized street crime and crimes involving organized criminal activity. The bill also clarifies the presumption of incarceration for a third degree crime if the court finds the aggravating factor of a substantial likelihood that the defendant was involved in organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain additional specified firearms-related crimes.

This bill embodies recommendations of the Governor’s *Strategy for Safe Streets and Neighborhoods*, announced earlier this year.

FISCAL IMPACT:

In a Fiscal Note on the bill, the Administrative Office of the Courts (AOC) states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. In this regard, the Judiciary cannot with any confidence estimate the impact this bill would have on the judicial resources. Although the Judiciary does not maintain data on whether a crime was related to gang activity, it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

The AOC notes that for the period from July 1, 2006 through June 30, 2007, there were 30,596 people convicted of the offenses specified by this bill. Of the 30,596 people convicted of the specified offenses during the 2007 court year, only 567, or approximately 2%, were convicted after a trial. If it is assumed that 10%, or 3,060 of the people convicted of the offenses specified by this bill during the 2007 court year were involved in gang-related crimes and proceeded to trial, approximately 57 trials were conducted. If the trial rate increased to 5% as a result of this bill, there would be 153 trials. If a trial lasts an average of three days, it would take 459 days to dispose of those cases (153 trials x 3 days). Assuming a judge sits for 215 days a year, there would be two new judge teams needed.

According to the AOC, each judge team consists of a Superior Court Judge, a Judge's Secretary, a Law Clerk, a Court Clerk, and an Official Court Reporter costing \$432,242 in salary expenses in the first full year after enactment. Second and third year salary costs would total \$453,854 and \$476,547, respectively.

The AOC notes that one-time start-up costs of \$102,628 would be generated to fund office furniture, video court room capability, computers, law books, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$13,781 during the first year of operation. Second- and third year program costs would total \$14,470 and \$15,194. In addition, the AOC noted that although not included in the cost projection as it is beyond the projection period, after 2 years, the maintenance of the video court capability is approximately \$3,675 per year.

Finally, the AOC states that for the purpose of this fiscal note, it is assumed that the Judiciary would have to rent 100% of the office and courtroom space necessary to facilitate the judge team. Assuming that a 2,000 square foot space is necessary, at a cost of \$25 per square foot, the annual facility rental cost would total \$50,000 in the first year, \$52,500 in the second year, and \$55,125 in the third year after implementation.

Total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year after the bill's enactment.

The Office of Legislative Services (OLS) concurs with the Judiciary estimate.

The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.

FISCAL NOTE
 [First Reprint]
SENATE, No. 2940
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: DECEMBER 13, 2007

SUMMARY

Synopsis: Creates offenses of gang criminality and promoting organized street crime.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Department of Corrections

Executive Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|--------------------|---|---------------|---------------|
| Cost | | | |
| Judiciary | \$1,197,302 | \$1,041,648 | \$1,093,730 |
| Corrections | Cannot be determined - See comments below | | |

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.
- The bill creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of “criminal street gang.”
- The Administrative Office of the Courts (AOC) states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. However, the AOC notes that it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

- The AOC notes that if the trial rate increased to 5% as a result of this bill, there would be 153 trials requiring two new judge teams.
- The AOC notes that total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year.

BILL DESCRIPTION

Senate Bill No. 2940 (1R) of 2007 creates the new offenses of gang criminality and promoting organized street crime. The bill also expands the statutory definition of "criminal street gang."

A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any offense specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. An offense is committed while involved in a criminal street gang related activity if the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. The revised definition expands the criteria used to identify a "criminal street gang."

The bill provides that gang criminality is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, gang criminality is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, gang criminality is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of gang criminality is to be served consecutively to the sentence imposed for conviction of the underlying offense.

The bill provides that a person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any offense specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

Promotion of organized street crime is a crime of the fourth degree if the underlying offense is a disorderly persons offense or a petty disorderly persons offense. Otherwise, promotion of organized street crime is a crime that is one degree higher than the most serious underlying offense. Where the underlying offense is a crime of the first degree, however, promotion of organized street crime is a first degree crime and the defendant is to be sentenced to a term of 15 to 30 years imprisonment. A sentence imposed upon conviction of the crime of promotion of organized street crime is to be served consecutively to the sentence imposed upon conviction of any underlying offense.

The bill further provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult.

Under the provisions of the bill, persons who commit the offense of gang criminality or promotion of organized street crime would be required to serve 85 percent of the sentence imposed if they would be required to serve 85 percent of any sentence imposed for the underlying crime. In addition, the presumption of nonincarceration would not apply to persons

who commit third or fourth degree gang criminality or promotion of organized street crime as well as persons whose crime involved organized criminal activity.

The bill amends the definition of “racketeering activity” in New Jersey’s RICO (racketeering influenced and corrupt organizations) statute, N.J.S.2C:41-1 et seq., to include assaults requiring purposeful or knowing conduct and terroristic threats, which are offenses commonly committed by gang members. The bill also requires 85 percent of the sentence to be served by persons who commit first degree racketeering or for any racketeering activity which includes the commission of certain crimes for which 85 percent of the sentence imposed must be served.

Finally, the bill provides enhanced penalties for persons involved in organized criminal activity. It also expands the Graves Act mandatory minimum sentencing provisions to include certain firearms-related crimes, including possession of a sawed-off shotgun or defaced firearm; possession of a firearm to use unlawfully against property; possession of a firearm while committing certain drug-related offenses or bias intimidation; unlawful possession of a machine gun, handgun or shotgun; possession of firearms by certain persons who are prohibited from such possession; and unlawful manufacturing of firearms. It further extends the mandatory minimum sentencing provisions for possession of a machine gun or assault firearm for unlawful use against a person to add unlawful use against property.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

The Administrative Office of the Courts (AOC) states that it is not known how many defendants would be subject to the offenses specified in the proposed legislation. In this regard, the Judiciary cannot with any confidence estimate the impact this bill would have on the judicial resources. Although the Judiciary does not maintain data on whether a crime was related to gang activity, it seems logical that the new crimes and increased sentences required under the bill would have an effect on the trial rate, which would have an impact on judicial resources.

The AOC notes that for the period from July 1, 2006 through June 30, 2007, there were 30,596 people convicted of the offenses specified by this bill. Of the 30,596 people convicted of the specified offenses during the 2007 court year, only 567, or approximately 2 percent, were convicted after a trial. If it is assumed that 10 percent, or 3,060 of the people convicted of the offenses specified by this bill during the 2007 court year were involved in gang-related crimes and proceeded to trial, approximately 57 trials were conducted. If the trial rate increased to 5 percent as a result of this bill, there would be 153 trials. If a trial lasts an average of three days, it would take 459 days to dispose of those cases (153 trials x 3 days). Assuming a judge sits for 215 days a year, there would be two new judge teams needed.

According to the AOC, each judge team consists of a Superior Court Judge, a Judge's Secretary, a Law Clerk, a Court Clerk, and an Official Court Reporter costing \$432,242 in salary expenses in the first full year after enactment. Second and third year salary costs would total \$453,854 and \$476,547, respectively.

The AOC notes that one-time start-up costs of \$102,628 would be generated to fund office furniture, video court room capability, computers, law books, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$13,781 during the first year of operation. Second- and third year program costs would total \$14,470 and \$15,194. In addition, the AOC noted that although not included in the cost projection as it is beyond the projection period, after 2 years, the maintenance of the video court capability is approximately \$3,675 per year.

Finally, the AOC states that for the purpose of this fiscal note, it is assumed that the Judiciary would have to rent 100 percent of the office and courtroom space necessary to facilitate the judge team. Assuming that a 2,000 square foot space is necessary, at a cost of \$25 per square foot, the annual facility rental cost would total \$50,000 in the first year, \$52,500 in the second year, and \$55,125 in the third year after implementation.

Total annual costs to the Judiciary for each judge team would be \$598,651 in the first year after the bill's enactment, \$520,824 in the second year, and \$546,865 in the third year. The cost of two judge teams would total \$1,197,302 in the first year, \$1,041,648 in the second year and \$1,093,730 in the third year after the bill's enactment.

Department of Corrections

None Received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate.

The OLS adds that since the bill imposes mandatory minimum sentences and eliminates the presumption of nonincarceration for certain offenses, convicted offenders would be sent to a State prison facility, generating the need for additional bed spaces within the Department of Corrections. The OLS notes that Department of Corrections data indicate that the cost of constructing one additional prison bed space ranges between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operating expenses of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

STATEMENT TO
[First Reprint]
SENATE, No. 2940

with Senate Floor Amendments
(Proposed By Senator GIRGENTI)

ADOPTED: JANUARY 3, 2008

Senate No. 2940 (1R) creates the new offenses of gang criminality and promoting organized street crime.

These Senate amendments clarify that a person must commit a crime while knowingly involved in criminal street gang activity in order to be guilty of the crime of gang criminality. A person who commits a disorderly persons or petty disorderly persons offense while involved in criminal street gang activity would not be guilty of gang criminality under these amendments. Similarly, under these amendments, a person must commit a crime, not a disorderly persons or petty disorderly persons offense, to be convicted of promoting organized street crime. Under the amendments, minor offenses would not be upgraded to fourth degree crimes.

These Senate amendments also clarify that a person must be convicted of the underlying (“prior”) offense in order to be convicted under the new gang criminality offense.

Senate Bill No. 2940 (1R) also provides that a juvenile who commits an act of gang criminality or organized street crime may be tried as an adult. These Senate amendments clarify that a juvenile who commits an act of gang criminality may only be waived to adult court if the underlying crime is a crime for which the juvenile can be waived under current law, such as criminal homicide, first degree robbery, carjacking, aggravated sexual assault or sexual assault, kidnapping, or aggravated arson. A juvenile who commits the crime of promoting organized street crime may only be waived to adult court under the amendments if the underlying crime is a crime of the first or second degree for which the juvenile could be waived under current law.

Under Senate Bill No. 2940 (1R), the two new crimes of gang criminality and promoting organized street crime were included as No Early Release Act (NERA) crimes for which a person must serve 85 percent of his term before being eligible for parole if the underlying crime was a NERA crime. First degree racketeering and racketeering activity that included a NERA crime also were included under the bill. As such, a person convicted of any of these crimes would be sentenced to two consecutive terms to which the 85 percent would apply. These amendments keep first degree racketeering as a NERA crime, but remove the other crimes.