

2C:39-5

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 284
NJSA: 2C:39-5 (Establishes as crime of the second degree unlawful possession of certain handguns)
BILL NO: S2431 (Substituted for A3035)

SPONSOR(S): Girgenti and others

DATE INTRODUCED: January 8, 2007

COMMITTEE: **ASSEMBLY:**
SENATE: Law and Public Safety and Veterans" Affairs

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2008
SENATE: January 3, 2008

DATE OF APPROVAL: January 13, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Senate Committee Substitute enacted)

S2431

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

(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: No

LEGISLATIVE FISCAL ESTIMATE: No

A3035

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [6-12-06 \(L & PS\)](#)
[1-3-08 \(Judiciary\)](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

IS 6/9/08

P.L. 2007, CHAPTER 284, *approved January 13, 2008*

Senate Committee Substitute for

Senate, No. 2431

1 **AN ACT** concerning the unlawful possession of firearms and
2 amending N.J.S.2C:39-5.

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

6
7 1. N.J.S.2C:39-5 is amended to read as follows:

8 2C:39-5. Unlawful Possession of Weapons.

9 a. Machine guns. Any person who knowingly has in his
10 possession a machine gun or any instrument or device adaptable for
11 use as a machine gun, without being licensed to do so as provided
12 in N.J.S.2C:58-5, is guilty of a crime of the third degree.

13 b. Handguns. Any person who knowingly has in his possession
14 any handgun, including any antique handgun without first having
15 obtained a permit to carry the same as provided in N.J.S.2C:58-4, is
16 guilty of a crime of the third degree if the handgun is in the nature
17 of an air gun, spring gun or pistol or other weapon of a similar
18 nature in which the propelling force is a spring, elastic band, carbon
19 dioxide, compressed or other gas or vapor, air or compressed air, or
20 is ignited by compressed air, and ejecting a bullet or missile smaller
21 than three-eighths of an inch in diameter, with sufficient force to
22 injure a person. Otherwise it is a crime of the second degree.

23 c. Rifles and shotguns. (1) Any person who knowingly has in
24 his possession any rifle or shotgun without having first obtained a
25 firearms purchaser identification card in accordance with the
26 provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

27 (2) Unless otherwise permitted by law, any person who
28 knowingly has in his possession any loaded rifle or shotgun is
29 guilty of a crime of the third degree.

30 d. Other weapons. Any person who knowingly has in his
31 possession any other weapon under circumstances not manifestly
32 appropriate for such lawful uses as it may have is guilty of a crime
33 of the fourth degree.

34 e. Firearms or other weapons in educational institutions.

35 (1) Any person who knowingly has in his possession any firearm
36 in or upon any part of the buildings or grounds of any school,
37 college, university or other educational institution, without the
38 written authorization of the governing officer of the institution, is
39 guilty of a crime of the third degree, irrespective of whether he
40 possesses a valid permit to carry the firearm or a valid firearms
41 purchaser identification card.

42 (2) Any person who knowingly possesses any weapon
43 enumerated in paragraphs (3) and (4) of subsection r. of
44 N.J.S.2C:39-1 or any components which can readily be assembled

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 into a firearm or other weapon enumerated in subsection r. of
2 N.J.S.2C:39-1 or any other weapon under circumstances not
3 manifestly appropriate for such lawful use as it may have, while in
4 or upon any part of the buildings or grounds of any school, college,
5 university or other educational institution without the written
6 authorization of the governing officer of the institution is guilty of a
7 crime of the fourth degree.

8 (3) Any person who knowingly has in his possession any
9 imitation firearm in or upon any part of the buildings or grounds of
10 any school, college, university or other educational institution,
11 without the written authorization of the governing officer of the
12 institution, or while on any school bus is a disorderly person,
13 irrespective of whether he possesses a valid permit to carry a
14 firearm or a valid firearms purchaser identification card.

15 f. Assault firearms. Any person who knowingly has in his
16 possession an assault firearm is guilty of a crime of the third degree
17 except if the assault firearm is licensed pursuant to N.J.S.2C:58-5;
18 registered pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12) or
19 rendered inoperable pursuant to section 12 of P.L.1990, c.32
20 (C.2C:58-13).

21 g. (1) The temporary possession of a handgun, rifle or shotgun
22 by a person receiving, possessing, carrying or using the handgun,
23 rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74
24 (C.2C:58-3.1) shall not be considered unlawful possession under
25 the provisions of subsection b. or c. of this section.

26 (2) The temporary possession of a firearm by a person receiving,
27 possessing, carrying or using the firearm under the provisions of
28 section 1 of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered
29 unlawful possession under the provisions of this section.

30 h. A person who is convicted of a crime under subsection a., b.
31 or f. of this section shall be ineligible for participation in any
32 program of intensive supervision; provided, however, that this
33 provision shall not apply to a crime under subsection b. involving
34 only a handgun which is in the nature of an air gun, spring gun or
35 pistol or other weapon of a similar nature in which the propelling
36 force is a spring, elastic band, carbon dioxide, compressed or other
37 gas or vapor, air or compressed air, or is ignited by compressed air,
38 and ejecting a bullet or missile smaller than three-eighths of an inch
39 in diameter, with sufficient force to injure a person.

40 i. A person convicted of violating subsection a., b. or f. of this
41 section shall be sentenced by the court to a term of imprisonment,
42 which shall include the imposition of a minimum term during which
43 the defendant shall be ineligible for parole, if the court finds that
44 the aggravating circumstance set forth in paragraph (5) of
45 subsection a. of N.J.S.2C:44-1 applies. The minimum term of
46 parole ineligibility shall be fixed at five years. The sentencing
47 court shall make a finding on the record as to whether the

1 aggravating circumstances set forth in paragraph (5) of subsection
2 a. of N.J.S.2C:44-1 apply, and the court shall presume that there is a
3 substantial likelihood that the defendant is involved in organized
4 criminal activity if there is a substantial likelihood that the
5 defendant is a member of an organization or group that engages in
6 criminal activity. The prosecution at the sentencing hearing shall
7 have the initial burden of producing evidence or information
8 concerning the defendant's membership in such an organization or
9 group.

10 (cf: P.L. 1997, c.375, s.2)

11

12 2. This act shall take effect immediately.

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17 Establishes as crime of the second degree unlawful possession of
18 certain handguns.

SENATE, No. 2431

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 8, 2007

Sponsored by:

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Establishes as crime of the second degree knowingly carrying a prohibited firearm in a public place.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the unlawful carrying of certain firearms in
2 public places and supplementing chapter 39 of Title 2C of the
3 New Jersey Statutes.

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

7
8 1. a. As used in this section:

9 “Prohibited firearm” means any handgun, sawed-off shotgun,
10 assault firearm or machine gun.

11 “Public place” means any place to which the public has access,
12 including but not limited to a public street, sidewalk, bridge, alley,
13 plaza, park, boardwalk, driveway, parking lot or transportation
14 facility, educational institution, public library, shopping center or
15 mall or the doorways and entrance ways to any building which
16 fronts on any of these places, or a motor vehicle in or on any such
17 place.

18 b. Unless otherwise permitted by law, a person commits a crime
19 of the second degree if, while in or on a public place, he knowingly
20 carries a prohibited firearm on or about his person, or otherwise
21 possesses the prohibited firearm within his immediate reach or in
22 any portion of a motor vehicle in which he is traveling.

23 c. Except as provided in subsection d. of this section, a person
24 convicted of violating subsection b. of this section shall be
25 sentenced by the court to a term of imprisonment, which shall
26 include the imposition of a minimum term during which the
27 defendant shall be ineligible for parole. Except as provided in
28 subsection d., the minimum term of parole ineligibility shall be
29 fixed at, or between, one-third and one-half of the sentence imposed
30 by the court or three years, whichever is greater, except that the
31 minimum term of parole ineligibility shall be five years if the
32 defendant is convicted of carrying or otherwise possessing an
33 assault firearm or machine gun.

34 d. If the court at sentencing after considering all relevant
35 circumstances is clearly convinced and finds on the record that the
36 interests of justice would not be served by imposing the minimum
37 term of parole ineligibility prescribed under subsection c. of this
38 section, the court may waive or reduce the minimum term of parole
39 ineligibility, or may, notwithstanding the provisions of subsection
40 d. of N.J.S.2C:44-1, place the defendant on probation pursuant to
41 paragraph (2) of subsection b. of N.J.S.2C:43-2, provided however,
42 if the aggravating circumstance set forth in paragraph (5) of
43 subsection a. of N.J.S.2C:44-1 applies, the court shall not waive or
44 reduce the term of parole ineligibility and shall not place the
45 defendant on probation unless the court further finds on the record,
46 having regard to the character and condition of the defendant, the
47 circumstances of the offense, and the impact of the crime on the
48 community in which it occurred, that imposition of the minimum

1 term of imprisonment under subsection c. of this section would
2 constitute a serious injustice which overrides the need to deter the
3 defendant and others who may be involved in organized criminal
4 activity from unlawfully carrying firearms while in or on a public
5 place.

6 The sentencing court shall make a finding on the record whether
7 the aggravating circumstance set forth in paragraph (5) of
8 subsection a. of N.J.S.2C:44-1 applies, and the court shall presume
9 that there is a substantial likelihood that the defendant is involved in
10 organized criminal activity if there is a substantial likelihood that
11 the defendant is a member of an organization or group that engages
12 in criminal activity, including but not limited to a criminal street
13 gang, crew, set, or posse; a motorcycle gang; a hate group; or a La
14 Cosa Nostra or other organized crime family. The prosecution at
15 the sentencing hearing shall have the initial burden of producing
16 evidence or information concerning the defendant's membership in
17 such an organization or group.

18 In making its findings, the sentencing court shall consider all
19 relevant circumstances and shall take judicial notice of any
20 evidence, testimony or information adduced at the trial, plea
21 hearing, or other court proceedings and shall also consider the
22 presentence report and any other relevant information. The court
23 may rely upon expert opinion in the form of live testimony or by
24 affidavit, or by such other means as the sentencing court deems
25 appropriate. The prosecution may provide the court with statements
26 by members of the affected community or other information
27 concerning the nature and extent of gun-related violence and the
28 impact of the crime on the community in which it occurred.

29 Nothing in this subsection shall be construed to establish a basis
30 for not imposing a term of imprisonment or term of parole
31 ineligibility authorized or required to be imposed upon conviction
32 for a crime other than the offense set forth in subsection b. of this
33 section.

34 e. If the court at sentencing elects not to impose a minimum
35 term of imprisonment and parole ineligibility under subsection c. of
36 this section, or the court imposes a term of parole ineligibility less
37 than the minimum term prescribed in subsection c., the sentence
38 shall not become final for ten days in order to permit the
39 prosecution to appeal the court's findings and the sentence imposed.

40 f. When a person who is charged with an offense under this
41 section is released from custody before trial on bail or personal
42 recognizance, the court authorizing the release shall issue an order
43 prohibiting the person from possessing any firearm pending final
44 resolution of the charge unless the court is clearly convinced and
45 finds on the record that no public safety interest would be served by
46 issuing such an order. The court also may order the search for and
47 seizure of any firearm that may be owned or possessed by the

1 person at any location where the judge has probable cause to
2 believe that any such weapon is located.

3 When a person is convicted of or adjudicated delinquent for a
4 violation of an offense under this section, the court at sentencing
5 shall issue an order permanently prohibiting the person from
6 possessing any firearm.

7 g. A person who knowingly possesses a firearm in violation of
8 an order issued pursuant to subsection f. of this section is guilty of a
9 crime of the second degree. Notwithstanding the provisions of
10 N.J.S.2C:44-5 or any other provision of law, the sentence imposed
11 upon conviction for a violation of the offense set forth in this
12 subsection shall be ordered to be served consecutively to the
13 sentence imposed upon a conviction for violation of the offense set
14 forth in subsection b. of this section. Nothing herein shall be
15 construed to preclude a prosecution or conviction for contempt in
16 violation of N.J.S.2C:29-9, or any other law.

17

18 2. This act shall take effect immediately.

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STATEMENT

22

23 This bill is intended to address the growing problem of gang-
24 related gun violence by establishing the second degree crime of
25 knowingly carrying a prohibited firearm in a public place.
26 Specifically, it would be a crime under the bill for a person who is
27 in or on a public place to knowingly carry a prohibited firearm on
28 or about his person or to otherwise possess the prohibited firearm
29 within his immediate reach or anywhere within a motor vehicle.

30 Current law generally does not distinguish between the
31 constructive possession of a firearm and the immediate personal
32 possession of a firearm, where the weapon is essentially being
33 carried on or about the person, possibly concealed in the person's
34 clothing or in a handbag or similar container, or is otherwise
35 accessible to the person at a moment's notice to commit a crime on
36 a public street or place. This bill supplements current gun laws by
37 creating this new second-degree crime of carrying a prohibited
38 firearm in a public place.

39 The bill defines a prohibited firearm as a handgun, sawed-off
40 shotgun, assault firearm or machine gun. These are often gang
41 members' weapons of choice as they are either high-powered or
42 easily concealed. A public place is defined in the bill as any place
43 to which the public has access, such as public streets, sidewalks,
44 bridges, alleys, plazas, parks, boardwalks, driveways, parking lots,
45 transportation facilities, schools, libraries, shopping centers or
46 malls, doorways and entranceways to these places, and motor
47 vehicles.

1 Second degree crimes are generally punishable by imprisonment
2 of between five and 10 years, a fine of up to \$150,000, or both.
3 Under the bill, a person convicted of knowingly carrying a
4 prohibited handgun or sawed-off shotgun in a public place would
5 have to serve a mandatory minimum of one-third to one-half of the
6 sentence imposed, or three years, whichever is greater. If the
7 prohibited weapon is an assault firearm or machine gun, the person
8 must serve a mandatory minimum of five years. But the bill grants
9 the court discretion to waive or reduce the mandatory minimum or
10 place the defendant on probation if it is clearly convinced and finds
11 on the record that the interests of justice would not be served by
12 imposing the mandatory term. Such waiver or reduction would not
13 be available to defendants who are involved in organized criminal
14 activity, unless the court finds imposing the mandatory minimum
15 would constitute a serious injustice which overrides the need to
16 deter the defendant and others involved in this activity.

17 The bill directs the sentencing court to presume that there is a
18 substantial likelihood that a defendant is involved in organized
19 criminal activity if there is a substantial likelihood that the
20 defendant is a member of an organization or group that engages in
21 criminal activity, such as a criminal street gang, crew, set or posse;
22 a motorcycle gang; a hate group; or a La Cosa Nostra or other
23 organized crime family. The prosecution has the initial burden to
24 produce evidence of such membership. The prosecution is allotted
25 10 days to appeal a court's decision not to impose a mandatory
26 minimum for illegally carrying a prohibited firearm in a public
27 place.

28 Under the bill, a person convicted of carrying a prohibited
29 weapon in a public place would be permanently prohibited from
30 possessing a firearm. The bill also prohibits defendants charged
31 with the offense from possessing a firearm during the period after
32 they are released from custody, but before trial. The court also may
33 order a search for and seizure of a firearm in a particular place if
34 there is probable cause to believe a firearm owned or possessed is
35 located there. A violation of these provisions constitutes a crime of
36 the second degree and any term of imprisonment imposed must be
37 served consecutively to a term of imprisonment imposed for
38 carrying a prohibited weapon in a public place.

39 According to the sponsor, this bill supplements existing law to
40 advance the goal of general deterrence by enhancing the likelihood
41 of a successful prosecution, considering that gang members today
42 believe that they can avoid conviction by intimidating witnesses.
43 Because this new offense is a simple possession crime, the
44 prosecution would not need to rely on the cooperation of a civilian
45 witness who might be reticent to testify against a gang member for
46 fear of violent reprisal. Rather, the State's proofs in a prosecution
47 for a violation of this new crime could be based on the testimony of
48 a law enforcement officer who found and seized the firearm.

S2431 GIRGENTI, SARLO

1 Accordingly, persons who choose to carry weapons would know
2 that they would now face a greater likelihood of conviction upon
3 their apprehension by police. The sponsor also notes that the bill
4 restores judicial sentencing discretion by authorizing the court to
5 waive or reduce the prescribed term of parole ineligibility, or even
6 to place the defendant on probation notwithstanding the
7 presumption of imprisonment that ordinarily applies to second-
8 degree crimes. Rather than unduly restricting the exercise of
9 judicial discretion by imposing inflexible mandates, the bill would
10 instead channel sentencing discretion by requiring the court to state
11 on the record its reasons for not imposing the minimum term, and
12 by affording the prosecution the right to appeal the sentencing
13 court's findings.

SENATE LAW AND PUBLIC SAFETY AND VETERANS
AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2431

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2007

The Senate Law and Public Safety and Veteran's Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2431.

This committee substitute is intended to address the growing problem of gang-related gun violence by establishing as a crime of the second degree knowingly carrying certain handguns without a permit.

Under the provisions of the substitute, a person is guilty of a crime of the third degree if the person knowingly has in his possession a handgun, including an antique handgun, which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person. Third degree crimes are punishable by a fine of up to \$15,000, imprisonment for three to five years, or both.

Knowingly possessing any other type of handgun is a crime of the second degree under the substitute. Second degree crimes are generally punishable by imprisonment of between five and 10 years, a fine of up to \$150,000, or both.

Under the provisions of the substitute, a person who is convicted of unlawful possession of a machine gun, handgun or assault firearm would be ineligible for participation in any program of intensive supervision. An exception is made for persons convicted of a crime involving only a handgun which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

A person convicted of unlawful possession of a machine gun, handgun or assault firearm would be sentenced by the court to a term of imprisonment, which would include the imposition of a minimum term during which the defendant is ineligible for parole, if the court

finds a substantial likelihood that the person is involved in organized criminal activity. The minimum term of parole ineligibility is to be fixed at five years. The bill directs the sentencing court to presume that there is a substantial likelihood that a defendant is involved in organized criminal activity if there is a substantial likelihood that the defendant is a member of an organization or group that engages in criminal activity. Examples of such organizations or groups are a criminal street gang, crew, set or posse; a motorcycle gang; a hate group; or a La Cosa Nostra or other organized crime family. The prosecution has the initial burden to produce evidence of such membership.

ASSEMBLY, No. 3035

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 15, 2006

Sponsored by:

Assemblyman **PETER J. BARNES, JR.**

District 18 (Middlesex)

Assemblyman **GORDON M. JOHNSON**

District 37 (Bergen)

Assemblyman **LOUIS M. MANZO**

District 31 (Hudson)

Assemblyman **ROBERT M. GORDON**

District 38 (Bergen)

Co-Sponsored by:

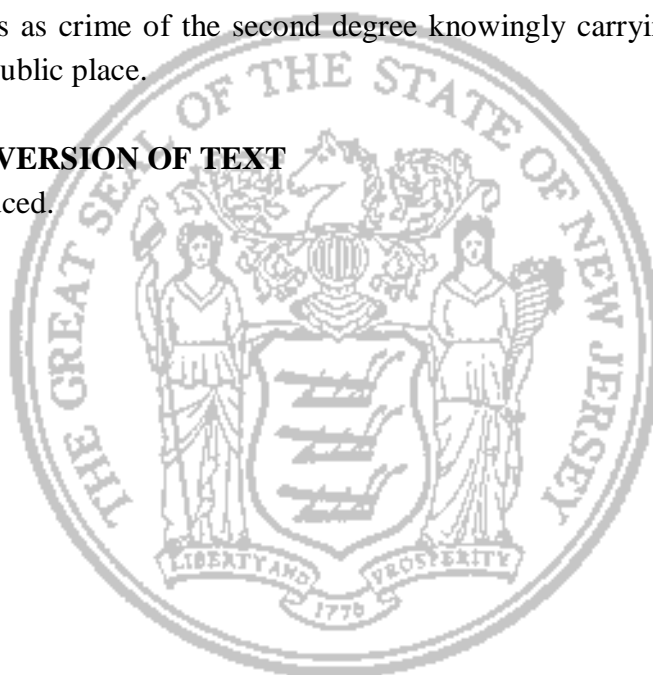
Assemblyman **Connors**

SYNOPSIS

Establishes as crime of the second degree knowingly carrying a prohibited firearm in a public place.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/16/2006)

1 AN ACT concerning the unlawful carrying of certain firearms in
2 public places and supplementing chapter 39 of Title 2C of the
3 New Jersey Statutes.

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

7
8 1. a. As used in this section:

9 “Prohibited firearm” means any handgun, sawed-off shotgun,
10 assault firearm or machine gun.

11 “Public place” means any place to which the public has access,
12 including but not limited to a public street, sidewalk, bridge, alley,
13 plaza, park, boardwalk, driveway, parking lot or transportation
14 facility, educational institution, public library, shopping center or
15 mall or the doorways and entrance ways to any building which
16 fronts on any of these places, or a motor vehicle in or on any such
17 place.

18 b. Unless otherwise permitted by law, a person commits a crime
19 of the second degree if, while in or on a public place, he knowingly
20 carries a prohibited firearm on or about his person, or otherwise
21 possesses the prohibited firearm within his immediate reach or in
22 any portion of a motor vehicle in which he is traveling.

23 c. Except as provided in subsection d. of this section, a person
24 convicted of violating subsection b. of this section shall be
25 sentenced by the court to a term of imprisonment, which shall
26 include the imposition of a minimum term during which the
27 defendant shall be ineligible for parole. Except as provided in
28 subsection d., the minimum term of parole ineligibility shall be
29 fixed at, or between, one-third and one-half of the sentence imposed
30 by the court or three years, whichever is greater, except that the
31 minimum term of parole ineligibility shall be five years if the
32 defendant is convicted of carrying or otherwise possessing an
33 assault firearm or machine gun.

34 d. If the court at sentencing after considering all relevant
35 circumstances is clearly convinced and finds on the record that the
36 interests of justice would not be served by imposing the minimum
37 term of parole ineligibility prescribed under subsection c. of this
38 section, the court may waive or reduce the minimum term of parole
39 ineligibility, or may, notwithstanding the provisions of subsection
40 d. of N.J.S. 2C:44-1, place the defendant on probation pursuant to
41 paragraph (2) of subsection b. of N.J.S. 2C:43-2, provided however,
42 if the aggravating circumstance set forth in paragraph (5) of
43 subsection a. of N.J.S. 2C:44-1 applies, the court shall not waive or
44 reduce the term of parole ineligibility and shall not place the
45 defendant on probation unless the court further finds on the record,
46 having regard to the character and condition of the defendant, the
47 circumstances of the offense, and the impact of the crime on the
48 community in which it occurred, that imposition of the minimum

1 term of imprisonment under subsection c. of this section would
2 constitute a serious injustice which overrides the need to deter the
3 defendant and others who may be involved in organized criminal
4 activity from unlawfully carrying firearms while in or on a public
5 place.

6 The sentencing court shall make a finding on the record whether
7 the aggravating circumstance set forth in paragraph (5) of
8 subsection a. of N.J.S. 2C:44-1 applies, and the court shall presume
9 that there is a substantial likelihood that the defendant is involved in
10 organized criminal activity if there is a substantial likelihood that
11 the defendant is a member of an organization or group that engages
12 in criminal activity, including but not limited to a criminal street
13 gang, crew, set, or posse; a motorcycle gang; a hate group; or a La
14 Cosa Nostra or other organized crime family. The prosecution at
15 the sentencing hearing shall have the initial burden of producing
16 evidence or information concerning the defendant's membership in
17 such an organization or group.

18 In making its findings, the sentencing court shall consider all
19 relevant circumstances and shall take judicial notice of any
20 evidence, testimony or information adduced at the trial, plea
21 hearing, or other court proceedings and shall also consider the
22 presentence report and any other relevant information. The court
23 may rely upon expert opinion in the form of live testimony or by
24 affidavit, or by such other means as the sentencing court deems
25 appropriate. The prosecution may provide the court with statements
26 by members of the affected community or other information
27 concerning the nature and extent of gun-related violence and the
28 impact of the crime on the community in which it occurred.

29 Nothing in this subsection shall be construed to establish a basis
30 for not imposing a term of imprisonment or term of parole
31 ineligibility authorized or required to be imposed upon conviction
32 for a crime other than the offense set forth in subsection b. of this
33 section.

34 e. If the court at sentencing elects not to impose a minimum
35 term of imprisonment and parole ineligibility under subsection c. of
36 this section, or the court imposes a term of parole ineligibility less
37 than the minimum term prescribed in subsection c., the sentence
38 shall not become final for ten days in order to permit the
39 prosecution to appeal the court's findings and the sentence imposed.

40 f. When a person who is charged with an offense under this
41 section is released from custody before trial on bail or personal
42 recognizance, the court authorizing the release shall issue an order
43 prohibiting the person from possessing any firearm pending final
44 resolution of the charge unless the court is clearly convinced and
45 finds on the record that no public safety interest would be served by
46 issuing such an order. The court also may order the search for and
47 seizure of any firearm that may be owned or possessed by the

1 person at any location where the judge has probable cause to
2 believe that any such weapon is located.

3 When a person is convicted of or adjudicated delinquent for a
4 violation of an offense under this section, the court at sentencing
5 shall issue an order permanently prohibiting the person from
6 possessing any firearm.

7 g. A person who knowingly possesses a firearm in violation of
8 an order issued pursuant to subsection f. of this section is guilty of a
9 crime of the second degree. Notwithstanding the provisions of
10 N.J.S. 2C:44-5 or any other provision of law, the sentence imposed
11 upon conviction for a violation of the offense set forth in this
12 subsection shall be ordered to be served consecutively to the
13 sentence imposed upon a conviction for violation of the offense set
14 forth in subsection b. of this section. Nothing herein shall be
15 construed to preclude a prosecution or conviction for contempt in
16 violation of N.J.S. 2C:29-9, or any other law.

17

18 2. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill is intended to address the growing problem of gang-
24 related gun violence by establishing the second degree crime of
25 knowingly carrying a prohibited firearm in a public place.
26 Specifically, it would be a crime under the bill for a person who is
27 in or on a public place to knowingly carry a prohibited firearm on
28 or about his person or to otherwise possess the prohibited firearm
29 within his immediate reach or anywhere within a motor vehicle.

30 Current law generally does not distinguish between the
31 constructive possession of a firearm and the immediate personal
32 possession of a firearm, where the weapon is essentially being
33 carried on or about the person, possibly concealed in the person's
34 clothing or in a handbag or similar container, or is otherwise
35 accessible to the person at a moment's notice to commit a crime on
36 a public street or place. This bill supplements current gun laws by
37 creating this new second-degree crime of carrying a prohibited
38 firearm in a public place.

39 The bill defines a prohibited firearm as a handgun, sawed-off
40 shotgun, assault firearm or machine gun. These are often gang
41 members' weapons of choice as they are either high-powered or
42 easily concealed. A public place is defined in the bill as any place
43 to which the public has access, such as public streets, sidewalks,
44 bridges, alleys, plazas, parks, boardwalks, driveways, parking lots,
45 transportation facilities, schools, libraries, shopping centers or
46 malls, doorways and entranceways to these places, and motor
47 vehicles.

1 Second degree crimes are generally punishable by imprisonment
2 of between five and 10 years, a fine of up to \$150,000, or both.
3 Under the bill, a person convicted of knowingly carrying a
4 prohibited handgun or sawed-off shotgun in a public place would
5 have to serve a mandatory minimum of one-third to one-half of the
6 sentence imposed, or three years, whichever is greater. If the
7 prohibited weapon is an assault firearm or machine gun, the person
8 must serve a mandatory minimum of five years. But the bill grants
9 the court discretion to waive or reduce the mandatory minimum or
10 place the defendant on probation if it is clearly convinced and finds
11 on the record that the interests of justice would not be served by
12 imposing the mandatory term. Such waiver or reduction would not
13 be available to defendants who are involved in organized criminal
14 activity, unless the court finds imposing the mandatory minimum
15 would constitute a serious injustice which overrides the need to
16 deter the defendant and others involved in this activity.

17 The bill directs the sentencing court to presume that there is a
18 substantial likelihood that a defendant is involved in organized
19 criminal activity if there is a substantial likelihood that the
20 defendant is a member of an organization or group that engages in
21 criminal activity, such as a criminal street gang, crew, set or posse;
22 a motorcycle gang; a hate group; or a La Cosa Nostra or other
23 organized crime family. The prosecution has the initial burden to
24 produce evidence of such membership. The prosecution is allotted
25 10 days to appeal a court's decision not to impose a mandatory
26 minimum for illegally carrying a prohibited firearm in a public
27 place.

28 Under the bill, a person convicted of carrying a prohibited
29 weapon in a public place would be permanently prohibited from
30 possessing a firearm. The bill also prohibits defendants charged
31 with the offense from possessing a firearm during the period after
32 they are released from custody, but before trial. The court also may
33 order a search for and seizure of a firearm in a particular place if
34 there is probable cause to believe a firearm owned or possessed is
35 located there. A violation of these provisions constitutes a crime of
36 the second degree and any term of imprisonment imposed must be
37 served consecutively to a term of imprisonment imposed for
38 carrying a prohibited weapon in a public place.

39 According to the sponsor, this bill supplements existing law to
40 advance the goal of general deterrence by enhancing the likelihood
41 of a successful prosecution, considering that gang members today
42 believe that they can avoid conviction by intimidating witnesses.
43 Because this new offense is a simple possession crime, the
44 prosecution would not need to rely on the cooperation of a civilian
45 witness who might be reticent to testify against a gang member for
46 fear of violent reprisal. Rather, the State's proofs in a prosecution
47 for a violation of this new crime could be based on the testimony of
48 a law enforcement officer who found and seized the firearm.

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1 Accordingly, persons who choose to carry weapons would know
2 that they would now face a greater likelihood of conviction upon
3 their apprehension by police. The sponsor also notes that the bill
4 restores judicial sentencing discretion by authorizing the court to
5 waive or reduce the prescribed term of parole ineligibility, or even
6 to place the defendant on probation notwithstanding the
7 presumption of imprisonment that ordinarily applies to second-
8 degree crimes. Rather than unduly restricting the exercise of
9 judicial discretion by imposing inflexible mandates, the bill would
10 instead channel sentencing discretion by requiring the court to state
11 on the record its reasons for not imposing the minimum term, and
12 by affording the prosecution the right to appeal the sentencing
13 court's findings.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3035

STATE OF NEW JERSEY

DATED: JUNE 12, 2006

The Assembly Law and Public Safety Committee reports favorably on Assembly Bill No. 3035.

Assembly Bill No. 3035 is intended to address the growing problem of gang-related gun violence by establishing the second degree crime of knowingly carrying a prohibited firearm in a public place. Specifically, it would be a crime under the bill for a person who is in or on a public place to knowingly carry a prohibited firearm on or about his person or to otherwise possess the prohibited firearm within his immediate reach or anywhere within a motor vehicle.

Current law generally does not distinguish between the constructive possession of a firearm and the immediate personal possession of a firearm, where the weapon is essentially being carried on or about the person, possibly concealed in the person's clothing or in a handbag or similar container, or is otherwise accessible to the person at a moment's notice to commit a crime on a public street or place. This bill supplements current gun laws by creating this new second-degree crime of carrying a prohibited firearm in a public place.

The bill defines a prohibited firearm as a handgun, sawed-off shotgun, assault firearm or machine gun. These are often gang members' weapons of choice as they are either high-powered or easily concealed. A public place is defined in the bill as any place to which the public has access, such as public streets, sidewalks, bridges, alleys, plazas, parks, boardwalks, driveways, parking lots, transportation facilities, schools, libraries, shopping centers or malls, doorways and entranceways to these places, and motor vehicles.

Second degree crimes are generally punishable by imprisonment of between five and 10 years, a fine of up to \$150,000, or both. Under the bill, a person convicted of knowingly carrying a prohibited handgun or sawed-off shotgun in a public place would have to serve a mandatory minimum of one-third to one-half of the sentence imposed, or three years, whichever is greater. If the prohibited weapon is an assault firearm or machine gun, the person must serve a mandatory minimum of five years. But the bill grants the court discretion to waive or reduce the mandatory minimum or place the defendant on probation if it is clearly convinced and finds on the record that the interests of justice would not be served by imposing the mandatory term. Such waiver or reduction would not be available to defendants

who are involved in organized criminal activity, unless the court finds imposing the mandatory minimum would constitute a serious injustice which overrides the need to deter the defendant and others involved in this activity.

The bill directs the sentencing court to presume that there is a substantial likelihood that a defendant is involved in organized criminal activity if there is a substantial likelihood that the defendant is a member of an organization or group that engages in criminal activity, such as a criminal street gang, crew, set or posse; a motorcycle gang; a hate group; or a La Cosa Nostra or other organized crime family. The prosecution has the initial burden to produce evidence of such membership. The prosecution is allotted 10 days to appeal a court's decision not to impose a mandatory minimum for illegally carrying a prohibited firearm in a public place.

Under the bill, a person convicted of carrying a prohibited weapon in a public place would be permanently prohibited from possessing a firearm. The bill also prohibits defendants charged with the offense from possessing a firearm during the period after they are released from custody, but before trial. The court also may order a search for and seizure of a firearm in a particular place if there is probable cause to believe a firearm owned or possessed is located there. A violation of these provisions constitutes a crime of the second degree and any term of imprisonment imposed must be served consecutively to a term of imprisonment imposed for carrying a prohibited weapon in a public place.

According to the sponsor, this bill supplements existing law to advance the goal of general deterrence by enhancing the likelihood of a successful prosecution, considering that gang members today believe that they can avoid conviction by intimidating witnesses. Because this new offense is a simple possession crime, the prosecution would not need to rely on the cooperation of a civilian witness who might be reticent to testify against a gang member for fear of violent reprisal. Rather, the State's proofs in a prosecution for a violation of this new crime could be based on the testimony of a law enforcement officer who found and seized the firearm. Accordingly, persons who choose to carry weapons would know that they would now face a greater likelihood of conviction upon their apprehension by police. The sponsor also notes that the bill restores judicial sentencing discretion by authorizing the court to waive or reduce the prescribed term of parole ineligibility, or even to place the defendant on probation notwithstanding the presumption of imprisonment that ordinarily applies to second-degree crimes. Rather than unduly restricting the exercise of judicial discretion by imposing inflexible mandates, the bill would instead channel sentencing discretion by requiring the court to state on the record its reasons for not imposing the minimum term, and by affording the prosecution the right to appeal the sentencing court's findings.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3035

STATE OF NEW JERSEY

DATED: JANUARY 3, 2008

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill No. 3035.

This committee substitute is intended to address the growing problem of gang-related gun violence by establishing as a crime of the second degree knowingly carrying certain handguns without a permit.

Under the provisions of the substitute, a person is guilty of a crime of the third degree if the person knowingly has in his possession without a permit a handgun, including an antique handgun, which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person. Third degree crimes are punishable by a fine of up to \$15,000, imprisonment for three to five years, or both.

Knowingly possessing any other type of handgun without a permit is a crime of the second degree under the substitute. Second degree crimes are generally punishable by imprisonment of between five and 10 years, a fine of up to \$150,000, or both.

Under the provisions of the substitute, a person who is convicted of unlawful possession of a machine gun, handgun or assault firearm would be ineligible for participation in any program of intensive supervision. An exception is made for persons convicted of a crime involving only a handgun which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

A person convicted of unlawful possession of a machine gun, handgun or assault firearm would be sentenced by the court to a term of imprisonment, which would include the imposition of a minimum term during which the defendant is ineligible for parole, if the court finds a substantial likelihood that the person is involved in organized criminal activity. The minimum term of parole ineligibility is be fixed

at five years. The substitute directs the sentencing court to presume that there is a substantial likelihood that a defendant is involved in organized criminal activity if there is a substantial likelihood that the defendant is a member of an organization or group that engages in criminal activity. Examples of such organizations or groups are a criminal street gang, crew, set or posse; a motorcycle gang; a hate group; or a La Cosa Nostra or other organized crime family. The prosecution has the initial burden to produce evidence of such membership.

This committee substitute is identical to SCS for S2431.