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P.L. 2008, CHAPTER 81, *approved September 10, 2008*
Senate Committee Substitute for
Senate, Nos. 367 and 503

1 AN ACT concerning witness or informant tampering and amending
2 N.J.S.2C:28-5, N.J.S.2C:29-3 and N.J.S.2C:29-9.

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:28-5 is amended to read as follows:
8 2C:28-5. a. Tampering. A person commits an offense if,
9 believing that an official proceeding or investigation is pending or
10 about to be instituted or has been instituted, he knowingly **[attempts**
11 **to induce or otherwise cause]** engages in conduct which a
12 reasonable person would believe would cause a witness or
13 informant to:

- 14 (1) Testify or inform falsely;
15 (2) Withhold any testimony, information, document or thing;
16 (3) Elude legal process summoning him to testify or supply
17 evidence; **[or]**
18 (4) Absent himself from any proceeding or investigation to
19 which he has been legally summoned; or
20 (5) Otherwise obstruct, delay, prevent or impede an official
21 proceeding or investigation.

22 **[The offense]** Witness tampering is a crime of the first degree if
23 the conduct occurs in connection with an official proceeding or
24 investigation involving any crime enumerated in subsection d. of
25 section 2 of P.L.1997, c.117 (C.2C:43-7.2) and the actor employs
26 force or threat of force. Witness tampering is a crime of the second
27 degree if the actor employs force or threat of force. Otherwise it is
28 a crime of the third degree. Privileged communications may not be
29 used as evidence in any prosecution for violations of paragraph (2),
30 (3) **[or]**, (4) or (5).

31 b. Retaliation against witness or informant. A person commits
32 **[a crime of the fourth degree]** an offense if he harms another by an
33 unlawful act with purpose to retaliate for or on account of the
34 service of another as a witness or informant. The offense is a crime
35 of the second degree if the actor employs force or threat of force.
36 Otherwise it is a crime of the third degree.

37 c. Witness or informant taking bribe. A person commits a
38 crime of the third degree if he solicits, accepts or agrees to accept
39 any benefit in consideration of his doing any of the things specified
40 in subsection a. (1) through **[(4)]** (5) of this section.

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 d. Bribery of a witness or informant. A person commits a
2 crime of the second degree if he directly or indirectly offers,
3 confers or agrees to confer upon a witness or informant any benefit
4 in consideration of the witness or informant doing any of the things
5 specified in subsection a. (1) through (5) of this section.

6 e. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5
7 or any other provision of law, a conviction arising under this section
8 shall not merge with a conviction of an offense that was the subject
9 of the official proceeding or investigation and the sentence imposed
10 pursuant to this section shall be ordered to be served consecutively
11 to that imposed for any such conviction.

12 (cf: P.L.1991, c.33, s.1)

13
14 2. N.J.S.2C:29-3 is amended to read as follows:

15 2C:29-3. Hindering Apprehension or Prosecution. a. A person
16 commits an offense if, with purpose to hinder the detention,
17 apprehension, investigation, prosecution, conviction or punishment
18 of another for an offense or violation of Title 39 of the New Jersey
19 Statutes or a violation of chapter 33A of Title 17 of the Revised
20 Statutes he:

21 (1) Harbors or conceals the other;

22 (2) Provides or aids in providing a weapon, money,
23 transportation, disguise or other means of avoiding discovery or
24 apprehension or effecting escape;

25 (3) Suppresses, by way of concealment or destruction, any
26 evidence of the crime, or tampers with a witness, informant,
27 document or other source of information, regardless of its
28 admissibility in evidence, which might aid in the discovery or
29 apprehension of such person or in the lodging of a charge against
30 him;

31 (4) Warns the other of impending discovery or apprehension,
32 except that this paragraph does not apply to a warning given in
33 connection with an effort to bring another into compliance with
34 law;

35 (5) Prevents or obstructs, by means of force, intimidation or
36 deception, anyone from performing an act which might aid in the
37 discovery or apprehension of such person or in the lodging of a
38 charge against him;

39 (6) Aids such person to protect or expeditiously profit from an
40 advantage derived from such crime; or

41 (7) Gives false information to a law enforcement officer or a
42 civil State investigator assigned to the Office of the Insurance Fraud
43 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
44 16).

45 **[The]** An offense under paragraph (5) of subsection a. of this
46 section is a crime of the second degree, unless the actor is a spouse,
47 domestic partner, partner in a civil union, parent or child to the

1 person aided who is the victim of the offense, in which case the
2 offense is a crime of the fourth degree. Otherwise, the offense is a
3 crime of the third degree if the conduct which the actor knows has
4 been charged or is liable to be charged against the person aided
5 would constitute a crime of the second degree or greater, unless the
6 actor is a spouse, domestic partner, partner in a civil union, parent
7 or child of the person aided, in which case the offense is a crime of
8 the fourth degree. The offense is a crime of the fourth degree if
9 such conduct would constitute a crime of the third degree.
10 Otherwise it is a disorderly persons offense.

11 b. A person commits an offense if, with purpose to hinder his
12 own detention, apprehension, investigation, prosecution, conviction
13 or punishment for an offense or violation of Title 39 of the New
14 Jersey Statutes or a violation of chapter 33A of Title 17 of the
15 Revised Statutes, he:

16 (1) Suppresses, by way of concealment or destruction, any
17 evidence of the crime or tampers with a document or other source of
18 information, regardless of its admissibility in evidence, which might
19 aid in his discovery or apprehension or in the lodging of a charge
20 against him; or

21 (2) Prevents or obstructs by means of force or intimidation
22 anyone from performing an act which might aid in his discovery or
23 apprehension or in the lodging of a charge against him; or

24 (3) Prevents or obstructs by means of force, intimidation or
25 deception any witness or informant from providing testimony or
26 information, regardless of its admissibility, which might aid in his
27 discovery or apprehension or in the lodging of a charge against him;
28 or

29 (4) Gives false information to a law enforcement officer or a
30 civil State investigator assigned to the Office of the Insurance Fraud
31 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
32 16).

33 **[The]** An offense under paragraph (3) of subsection b. of this
34 section is a crime of the second degree. Otherwise, the offense is a
35 crime of the third degree if the conduct which the actor knows has
36 been charged or is liable to be charged against him would constitute
37 a crime of the second degree or greater. The offense is a crime of
38 the fourth degree if such conduct would constitute a crime of the
39 third degree. Otherwise it is a disorderly persons offense.

40 (cf: P.L.1999, c.297, s.1)

41

42 3. N.J.S.2C:29-9 is amended to read as follows:

43 2C:29-9. a. A person is guilty of a crime of the fourth degree if
44 he purposely or knowingly disobeys a judicial order or protective
45 order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or
46 hinders, obstructs or impedes the effectuation of a judicial order or

1 the exercise of jurisdiction over any person, thing or controversy by
2 a court, administrative body or investigative entity.

3 b. Except as provided below, a person is guilty of a crime of
4 the fourth degree if that person purposely or knowingly violates any
5 provision in an order entered under the provisions of the
6 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
7 (C.2C:25-17 et al.) or an order entered under the provisions of a
8 substantially similar statute under the laws of another state or the
9 United States when the conduct which constitutes the violation
10 could also constitute a crime or a disorderly persons offense. In all
11 other cases a person is guilty of a disorderly persons offense if that
12 person knowingly violates an order entered under the provisions of
13 this act or an order entered under the provisions of a substantially
14 similar statute under the laws of another state or the United States.
15 Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of
16 subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or
17 substantially similar orders entered under the laws of another state
18 or the United States shall be excluded from the provisions of this
19 subsection.

20 As used in this subsection, "state" means a state of the United
21 States, the District of Columbia, Puerto Rico, the United States
22 Virgin Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States. The term includes an Indian tribe
24 or band, or Alaskan native village, which is recognized by a federal
25 law or formally acknowledged by a state.
26 (cf: P.L.2005, c.333, s.1)

27

28 4. This act shall take effect immediately.

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33 Upgrades penalties for tampering with witnesses and informants;
34 upgrades hindering apprehension or prosecution under certain
35 circumstances.

SENATE, No. 367

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Upgrades penalties for tampering with witnesses and informants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning witness or informant tampering and amending
2 N.J.S.2C:28-5 and N.J.S.2C:29-9.

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:28-5 is amended to read as follows:

8 2C:28-5. a. Tampering. A person commits an offense if,
9 believing that an official proceeding or investigation is pending or
10 about to be instituted, he knowingly attempts to induce or otherwise
11 cause a witness or informant to:

12 (1) Testify or inform falsely;

13 (2) Withhold any testimony, information, document or thing;

14 (3) Elude legal process summoning him to testify or supply
15 evidence; **[or]**

16 (4) Absent himself from any proceeding or investigation to
17 which he has been legally summoned; or

18 (5) Otherwise obstruct, delay, prevent or impede an official
19 proceeding or investigation.

20 The offense is a crime of the second degree if the actor employs
21 force or threat of force. Otherwise it is a crime of the third degree.
22 Privileged communications may not be used as evidence in any
23 prosecution for violations of paragraph (2), (3) **[or]**, (4) or (5).

24 b. Retaliation against witness or informant. A person commits
25 **[a crime of the fourth degree]** an offense if he harms another by an
26 unlawful act with purpose to retaliate for or on account of the
27 service of another as a witness or informant. The offense is a crime
28 of the second degree if the actor employs force or threat of force.
29 Otherwise it is a crime of the third degree.

30 c. Witness or informant taking bribe. A person commits a
31 crime of the third degree if he solicits, accepts or agrees to accept
32 any benefit in consideration of his doing any of the things specified
33 in subsection a. (1) through **[(4)]** (5) of this section.

34 d. Bribery of a witness or informant. A person commits a
35 crime of the second degree if he directly or indirectly offers,
36 confers or agrees to confer upon a witness or informant any benefit
37 in consideration of the witness or informant doing any of the things
38 specified in subsection a. (1) through (5) of this section.

39 (cf: P.L.1991, c.33, s.1)

40

41 2. N.J.S.2C:29-9 is amended to read as follows:

42 2C:29-9. a. A person is guilty of a crime of the fourth degree if
43 he purposely or knowingly disobeys a judicial order or protective
44 order, pursuant to subsection 1 of P.L.1985, c.250 (C.2C:28-5.1), or

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 hinders, obstructs or impedes the effectuation of a judicial order or
2 the exercise of jurisdiction over any person, thing or controversy by
3 a court, administrative body or investigative entity.

4 b. Except as provided below, a person is guilty of a crime of
5 the fourth degree if that person purposely or knowingly violates any
6 provision in an order entered under the provisions of the
7 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
8 (C.2C:25-17 et al.) or an order entered under the provisions of a
9 substantially similar statute under the laws of another state or the
10 United States when the conduct which constitutes the violation
11 could also constitute a crime or a disorderly persons offense. In all
12 other cases a person is guilty of a disorderly persons offense if that
13 person knowingly violates an order entered under the provisions of
14 this act or an order entered under the provisions of a substantially
15 similar statute under the laws of another state or the United States.
16 Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of
17 subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or
18 substantially similar orders entered under the laws of another state
19 or the United States shall be excluded from the provisions of this
20 subsection.

21 As used in this subsection, "state" means a state of the United
22 States, the District of Columbia, Puerto Rico, the United States
23 Virgin Islands, or any territory or insular possession subject to the
24 jurisdiction of the United States. The term includes an Indian tribe
25 or band, or Alaskan native village, which is recognized by a federal
26 law or formally acknowledged by a state.
27 (cf: P.L.2005, c.333)

28

29 3. This act shall take effect immediately.

30

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STATEMENT

33

34 This bill amends tampering with a witness or informant,
35 upgrades the penalties for retaliating against a witness or informant,
36 and adds the specific crime of bribery of a witness or informant.
37 This bill also amends the contempt statute, N.J.S.A.2C:29-9, to
38 make specific reference to the protective orders set forth in
39 N.J.S.A.2C:28-5.1.

40 Currently, subsection a. of N.J.S.A.2C:28-5 makes it a crime to
41 tamper with a witness or informant if, believing that an official
42 proceeding or investigation is pending or about to be instituted, a
43 person attempts to induce or otherwise cause a witness or informant
44 to provide false testimony, withhold testimony or evidence, or avoid
45 testifying or supplying evidence required in an official proceeding
46 or investigation. Tampering is a crime of the second degree if the
47 actor employs force or threat of force; otherwise tampering is a

1 crime of the third degree. This bill includes a new (5) to subsection
2 a. to include general language concerning obstructing, delaying,
3 preventing or impeding testimony or information in an official
4 proceeding or investigation to ensure that tampering with a witness
5 or informant is applied as broadly as possible.

6 Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of
7 the fourth degree to retaliate against a witness or informant by
8 harming another by an unlawful act with purpose to retaliate for or
9 on account of the service of another as a witness or informant. This
10 bill would upgrade this crime to a crime of the second degree if the
11 actor employs force or threat of force; otherwise retaliation against
12 a witness or informant is a crime of the third degree.

13 This bill further adds a new subsection d. to N.J.S.A.2C:28-5,
14 which makes it a crime of the second degree to directly or indirectly
15 offer, confer or agree to confer upon a witness or informant any
16 benefit in consideration of the witness or informant doing any of the
17 things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

18 A crime of the second degree is punishable by a term of
19 imprisonment of five to ten years, a fine of up to \$150,000, or both.
20 A crime of the third degree is punishable by a term of imprisonment
21 of three to five years, a fine of up to \$15,000, or both.

22 The primary purpose of this statute is to promote the safety of
23 witnesses and informants who assist in official proceedings and
24 investigations and holding criminally accountable those who would
25 seek to harm or place at risk such individuals. It is a far too
26 frequent occurrence that witnesses and informants are reluctant to
27 come forward or cooperate with law enforcement over fear of
28 retribution. It is the sponsor's view that increasing the penalties for
29 these types of unlawful conduct will prove a successful deterrent to
30 actors who seek to evade justice through intimidation of,
31 interference with, improper inducement of, or retaliation against
32 witnesses or informants. This bill upgrades these crimes and adds
33 the new specific crime of bribing a witness or informant in an effort
34 to reflect the State's strong interest in promoting the integrity of the
35 criminal justice system.

SENATE, No. 503

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Mercer)

SYNOPSIS

Upgrades the offenses of tampering with witnesses and informants and hindering apprehension under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S503 TURNER

2

1 AN ACT concerning witness or informant intimidation or tampering
2 and amending N.J.S.2C:28-5 and N.J.S.2C:29-3.

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:28-5 is amended to read as follows:

8 2C:28-5. **【Tampering With Witnesses and Informants】** Witness
9 or Informant Intimidation or Tampering; Retaliation Against
10 Them.

11 a. **【Tampering】** Intimidation or tampering. A person **【commits**
12 **an offense】** is guilty of the crime of witness or informant
13 intimidation or tampering if, believing that an official proceeding or
14 investigation is pending or about to be instituted or has been
15 instituted, he knowingly **【attempts to induce or otherwise cause】**
16 engages in conduct which would cause a witness or informant or a
17 potential witness or informant to:

18 (1) Testify or inform falsely;

19 (2) Withhold any testimony, information, document or thing;

20 (3) Elude legal process summoning him to testify or supply
21 evidence; or

22 (4) Absent himself from any proceeding or investigation to
23 which he has been legally summoned.

24 It shall not be a defense that at the time the conduct occurred, no
25 official proceeding or investigation had commenced, if a reasonable
26 person would believe that, if the facts known to the potential
27 witness or informant were made known to others, those facts would
28 assist in an official proceeding or investigation.

29 The offense of witness or informant intimidation or tampering is
30 a crime of the **【second】** first degree if the actor employs force or
31 threat of force **【Otherwise】**. If the actor's conduct does not involve
32 force or threat of force but involves the offering or providing a
33 benefit of \$200 or more, it is a crime of the second degree. If the
34 actor's conduct does not involve force or threat of force but
35 involves offering or providing a benefit less than \$200, it is a crime
36 of the third degree, provided, however, that the presumption of non-
37 imprisonment in subsection e. of N.J.S.2C:44-1 for persons who
38 have not been previously convicted of an offense shall not apply.

39 Privileged communications may not be used as evidence in any
40 prosecution for violations of paragraph (2), (3) or (4).

41 b. Retaliation against witness or informant. A person commits a
42 crime of the **【fourth】** first degree if he harms another by an
43 unlawful act with purpose to retaliate for or on account of the
44 service of another as a witness or informant resulting in serious

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 bodily injury. A person commits a crime of the second degree if he
2 harms another by an unlawful act with purpose to retaliate for or on
3 account of the service of another as a witness or informant resulting
4 in significant bodily injury. Otherwise it is a crime of the third
5 degree, provided, however, that the presumption of non-
6 imprisonment in subsection e. of N.J.S.2C:44-1 for persons who
7 have not been previously convicted of an offense shall not apply.

8 c. Witness or informant taking bribe. A person commits a crime
9 of the ~~third~~ second degree if he solicits, accepts or agrees to
10 accept any benefit of \$200 or more in consideration of his doing
11 any of the things specified in subsection a. (1) through (4) of this
12 section. Otherwise it is a crime of the third degree; provided,
13 however, that the presumption of non-imprisonment in subsection e.
14 of N.J.S.2C:44-1 for persons who have not been previously
15 convicted of an offense shall not apply.

16 d. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-
17 5 or any other provision of law, a conviction arising under this
18 section shall not merge with a conviction of an offense that was the
19 subject of the official proceeding or investigation and the sentence
20 imposed pursuant to this section shall be ordered to be served
21 consecutively to that imposed for any such conviction.

22 (cf: P.L.1991, c.33, s.1)

23

24 2. N.J.S.2C:29-3 is amended to read as follows:

25 2C:29-3. Hindering Apprehension or Prosecution. a. A person
26 commits an offense if, with purpose to hinder the detention,
27 apprehension, investigation, prosecution, conviction or punishment
28 of another for an offense or violation of Title 39 of the New Jersey
29 Statutes or a violation of chapter 33A of Title 17 of the Revised
30 Statutes he:

31 (1) Harbors or conceals the other;

32 (2) Provides or aids in providing a weapon, money,
33 transportation, disguise or other means of avoiding discovery or
34 apprehension or effecting escape;

35 (3) Suppresses, by way of concealment or destruction, any
36 evidence of the crime, or tampers with a witness, informant,
37 document or other source of information, regardless of its
38 admissibility in evidence, which might aid in the discovery or
39 apprehension of such person or in the lodging of a charge against
40 him;

41 (4) Warns the other of impending discovery or apprehension,
42 except that this paragraph does not apply to a warning given in
43 connection with an effort to bring another into compliance with
44 law;

45 (5) Prevents or obstructs, by means of force, intimidation or
46 deception, anyone from performing an act which might aid in the
47 discovery or apprehension of such person or in the lodging of a
48 charge against him;

1 (6) Aids such person to protect or expeditiously profit from an
2 advantage derived from such crime; or

3 (7) Gives false information to a law enforcement officer or a
4 civil State investigator assigned to the Office of the Insurance Fraud
5 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
6 16).

7 **【The】** An offense under paragraph (5) of subsection a. of this
8 section is a crime of the second degree. Otherwise, the offense is a
9 crime of the third degree if the conduct which the actor knows has
10 been charged or is liable to be charged against the person aided
11 would constitute a crime of the second degree or greater, unless the
12 actor is a spouse, parent or child of the person aided, in which case
13 the offense is a crime of the fourth degree. The offense is a crime
14 of the fourth degree if such conduct would constitute a crime of the
15 third degree. Otherwise it is a disorderly persons offense.

16 b. A person commits an offense if, with purpose to hinder his
17 own detention, apprehension, investigation, prosecution, conviction
18 or punishment for an offense or violation of Title 39 of the New
19 Jersey Statutes or a violation of chapter 33A of Title 17 of the
20 Revised Statutes, he:

21 (1) Suppresses, by way of concealment or destruction, any
22 evidence of the crime or tampers with a document or other source of
23 information, regardless of its admissibility in evidence, which might
24 aid in his discovery or apprehension or in the lodging of a charge
25 against him; or

26 (2) Prevents or obstructs by means of force or intimidation
27 anyone from performing an act which might aid in his discovery or
28 apprehension or in the lodging of a charge against him; or

29 (3) Prevents or obstructs by means of force, intimidation or
30 deception any witness or informant from providing testimony or
31 information, regardless of its admissibility, which might aid in his
32 discovery or apprehension or in the lodging of a charge against him;
33 or

34 (4) Gives false information to a law enforcement officer or a
35 civil State investigator assigned to the Office of the Insurance Fraud
36 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
37 16).

38 **【The】** An offense under paragraph (3) of subsection b. of this
39 section is a crime of the second degree. Otherwise, the offense is a
40 crime of the third degree if the conduct which the actor knows has
41 been charged or is liable to be charged against him would constitute
42 a crime of the second degree or greater. The offense is a crime of
43 the fourth degree if such conduct would constitute a crime of the
44 third degree. Otherwise it is a disorderly persons offense.
45 (cf: P.L.1999, c.297)

46

47 3. This act shall take effect immediately.

STATEMENT

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This bill amends and upgrades the penalties for the following offenses: tampering with a witness or informant, retaliating against a witness or informant, and witnesses or informants who take bribes. This bill also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3.

Witness or Informant Intimidation or Tampering. Currently, subsection a. of N.J.S.A.2C:28-5 makes it a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted, a person attempts to induce or otherwise cause a witness or informant to provide false testimony, withhold testimony or evidence, or avoid testifying or supplying evidence required in an official proceeding or investigation. Tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree.

This bill would upgrade the penalties for witness or informant intimidation or tampering as follows: it would be a crime of the first degree if the actor employs force or threat of force; if the actor's conduct does not involve force or threat of force but involves the offering or providing a benefit of \$200 or more, it would be a crime of the second degree; and if the actor's conduct does not involve force or threat of force but involves offering or providing a benefit less than \$200, it would be a crime of the third degree, provided, however, that there would be no presumption of non-imprisonment for the third degree crime.

This bill also amends subsection a. by adding potential witnesses or informants to the list of people encompassed by this statute.

Subsection a. would also be amended to provide that it would not be a defense that no official proceeding had commenced at the time of the alleged tampering or intimidating, if a reasonable person would have believed that, if the facts known to the potential witness or informant were known to others, those facts would assist the prosecution in an official proceeding or investigation.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This bill would upgrade the penalties for the crime of retaliation against a witness as follows: it would be a crime of the first degree if the actor's conduct results in serious bodily injury; it would be a crime of the second degree if the actor's conduct results in significant bodily injury; otherwise it is a crime of the third degree, provided, however, that there would be no presumption of non-imprisonment for the third degree crime.

1 Subsection c. of N.J.S.A.2C:28-5 currently makes it a crime of
2 the third degree for a witness or informant to solicit, accept, or
3 agree to accept any benefit in consideration of his doing any of the
4 things specified in subsection a. (1) through (4) of this section.
5 This bill would upgrade the penalties as follows: it would be a
6 crime of the second degree for a witness or informant to solicit,
7 accept, or agree to accept any benefit of \$200 or more in
8 consideration of his doing any of the things specified in subsection
9 a. (1) through (4) of this section; otherwise it would be a crime of
10 the third degree, provided, however, that there would be no
11 presumption of non-imprisonment for the third degree crime.

12 This bill further adds a new subsection d. to N.J.S.A.2C:28-5,
13 which is a non-merger provision and requires the sentence for
14 tampering to be served consecutively to the sentence for the
15 underlying offense.

16 *Hindering Apprehension or Prosecution.* This bill also amends
17 the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties
18 set forth therein. Currently, hindering the detention, apprehension,
19 investigation, prosecution, conviction or punishment of another
20 under subsection a. of N.J.S.A.2C:29-3 is a crime of the third
21 degree if the conduct which the actor knows has been charged or is
22 liable to be charged against the person aided would constitute a
23 crime of the second degree or greater, unless the actor is a spouse,
24 parent or child of the person aided, in which case the offense is a
25 crime of the fourth degree. The offense is a crime of the fourth
26 degree if such conduct would constitute a crime of the third degree.
27 Otherwise it is a disorderly persons offense. This bill would make
28 it a crime of the second degree for a person to prevent or obstruct,
29 by means of force, intimidation or deception, anyone from
30 performing an act which might aid in the discovery or apprehension
31 of such person or in the lodging of a charge against him, pursuant to
32 paragraph (5) of subsection a. of N.J.S.A.2C:29-3.

33 Currently, hindering a person's own detention, apprehension,
34 investigation, prosecution, conviction or punishment under
35 subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the
36 conduct which the actor knows has been charged or is liable to be
37 charged against him would constitute a crime of the second degree
38 or greater. The offense is a crime of the fourth degree if such
39 conduct would constitute a crime of the third degree. Otherwise it is
40 a disorderly persons offense. This bill would also make it a crime
41 of the second degree for a person to prevent or obstruct by means of
42 force, intimidation or deception any witness or informant from
43 providing testimony or information, regardless of its admissibility,
44 which might aid in his discovery or apprehension or in the lodging
45 of a charge against him, pursuant to paragraph (3) of subsection b.
46 of N.J.S.A.2C:29-3.

47 The primary purpose of this bill is to promote the safety of
48 witnesses and informants who assist in official proceedings and

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- 1 investigations and holding criminally accountable those who would
- 2 seek to harm such individuals or place them at risk.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 367 and 503**

STATE OF NEW JERSEY

DATED: JUNE 5, 2008

The Assembly Appropriations Committee reports favorably Senate Bill No. 367/503 (SCS).

The bill amends current law regarding tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This bill also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this bill amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The bill provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This bill would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This bill would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This bill also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in

consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This bill further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This bill also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This bill would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This bill would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

As reported, this bill is identical to Assembly Bill No. 1772/1598 (ACS), as also reported by the committee.

FISCAL IMPACT:

Administrative Office of the Courts (Trial Costs):

The Administrative Office of the Courts (AOC) states that during CY 2007, 345 defendants were convicted under the statutes affected by this bill. Eighteen of those defendants (5 percent), were convicted after trials, while the remaining 327 were convicted as the result of guilty pleas. The AOC notes that it seems logical that broadening the reach of these statutes would result in a greater number of convictions, and that the increased penalties could significantly reduce a defendant's incentive to plead guilty. As a result, the trial rate could increase and there could be an effect on judicial resources; however, the AOC is unable to accurately determine the fiscal impact of these changes.

Department of Corrections (Incarceration costs):

Currently, nine individuals are incarcerated by Department of Corrections (DOC) for tampering with witnesses violations. Seven inmate convictions are second-degree and two inmate convictions are for third-degree offenses. There were five admissions for violation of the same statutes during CY 2006 of which one is a second-degree offense and the other four are third-degree offenses.

The number of additional convictions as a result of this bill cannot be determined at this time; however, a significant increase in operational cost is not anticipated based on the existing number of convictions. Moreover, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders.

However, should an offender be convicted and sentenced to a State prison, data obtained from the DOC 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.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 367 and 503**

STATE OF NEW JERSEY

DATED: JANUARY 24, 2008

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 367 and 503.

This substitute amends tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The substitute provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation. This substitute adds new language concerning an official proceeding or investigation that has been instituted, new language concerning a reasonable person, and a new paragraph (5) to subsection a. to include general language concerning obstructing, delaying, preventing or impeding testimony or information in an official proceeding or investigation to ensure that tampering with a witness or informant is applied as broadly as possible.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This substitute would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This substitute

would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This substitute also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This substitute further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This substitute also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge

against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 367 and 503**

STATE OF NEW JERSEY

DATED: FEBRUARY 21, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill Nos. 367 and 503 (SCS).

The substitute bill amends current law regarding tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The substitute provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This substitute would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This substitute would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This substitute also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any

benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This substitute further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This substitute also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

FISCAL IMPACT:*Administrative Office of the Courts (Trial Costs):*

The Administrative Office of the Courts (AOC) states that according to data collected from PROMIS Gavel, its crime reporting database, during CY 2007, 604 defendants were convicted under the statutes affected by this substitute. Twenty-six of those defendants (4 percent), were convicted after trials, while the remaining 578 were convicted as the result of guilty pleas. The AOC notes that it seems logical that broadening the reach of these statutes would result in a greater number of convictions, and that the increased penalties could significantly reduce a defendant's incentive to plead guilty. As a result, the trial rate could increase and there could be an effect on judicial resources.

According to the AOC, assuming that this substitute would result in a 25 percent increase in convictions for witness/informant tampering, hindering apprehension and criminal contempt, and that the increased penalties would cause the trial rate to double to 8 percent, there would be approximately 151 new cases and 34 additional trials. If each trial takes an average of 3 days, it would take 102 days to handle these cases. If a judge sits 215 days a year, approximately .47 additional judge teams would be needed to handle the increased workload. This would cost the State approximately \$233,918.

The AOC states that the substitute would not add any additional revenue for the Judiciary.

Department of Corrections (Incarceration costs):

Currently, nine individuals are incarcerated by Department of Corrections (DOC) for tampering with witnesses violations. Seven inmate convictions are second-degree and two inmate convictions are for third-degree offenses. There were five admissions for violation of the same statutes during CY 2006 of which one is a second-degree offense and the other four are third-degree offenses.

The number of additional convictions as a result of this substitute cannot be determined at this time; however, a significant increase in operational cost is not anticipated based on the existing number of convictions. Moreover, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders.

However, should an offender be convicted and sentenced to a State prison, data obtained from the DOC 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.

MINORITY STATEMENT

Senate Budget and Appropriations Committee Minority members support the goals and purposes of this bill. However, we have chosen to abstain on the bill at this time and to go on record noting the bill's potential negative fiscal impact on the State. A fiscal estimate prepared by the non-partisan Office of Legislative Services is based on information provided by the Administrative Office of the Courts (Trial Costs) and the Department of Corrections:

Administrative Office of the Courts (Trial Costs)

In the first year following enactment, the costs to the State for the Administrative Office of the Court's portion of this legislation is approximately \$233,918.

Department of Corrections

Should an offender be convicted and sentenced to a State prison, data obtained from the Department of Corrections by the Office of Legislative Services, indicates that the cost of constructing one additional prison bed space ranges from 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 the offender's incarceration.

Until we are able to definitively ascertain the true costs of this bill, and until such time as Governor Corzine delivers his FY 2009 State Budget to the Legislature, neither the members of Legislature, nor the members of this committee, will be able to determine the State's financial ability to appropriate the necessary funds to adequately back this measure.

FISCAL NOTE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 367 and 503
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: FEBRUARY 20, 2008

SUMMARY

- Synopsis:** Upgrades penalties for tampering with witnesses and informants; upgrades hindering apprehension or prosecution under certain circumstances.
- 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	\$233,918	\$245,614	\$257,895
Corrections	Undetermined - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate and notes that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. The OLS also notes that should an offender be convicted and sentenced to a State Prison, data obtained from the Department of Corrections 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 committee substitute amends tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

- The Administrative Office of the Courts (AOC) states that according to data collected from PROMIS Gavel, during calendar year 2007, 604 defendants were convicted under the statutes affected by this bill. Twenty-six of those defendants, or approximately 4 percent, were convicted after trials, while the remaining 578 were convicted as the result of guilty pleas. The AOC notes that assuming that this substitute would result in 25 percent more convictions for witness/informant tampering, hindering apprehension and criminal contempt, and that the increased penalties would cause the trial rate to double to 8 percent it would cost the State approximately \$233,918, for the first year.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 367 and 503 of 2008 amends tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The substitute provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This substitute would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This substitute would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This substitute also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This substitute further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This substitute also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth

degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

The AOC states that the substitute would not add any additional revenue for the Judiciary.

The AOC states that according to data collected from PROMIS Gavel, during calendar year 2007, 604 defendants were convicted under the statutes affected by this bill. Twenty-six of those defendants, or approximately 4 percent, were convicted after trials, while the remaining 578 were convicted as the result of guilty pleas. The AOC notes that it seems logical that broadening the reach of these statutes would result in a greater number of convictions, and that the increased penalties could significantly reduce the defendant's incentive to plead guilty. As a result, the trial rate could increase and there could be an effect on judicial resources. For example, assuming that this substitute would result in 25 percent more convictions for witness/informant tampering, hindering apprehension and criminal contempt, and that the increased penalties would cause the trial rate to double to 8 percent, there would be approximately 151 new cases and 34 additional trials. If each trial takes an average of 3 days, it would take 102 days to handle these cases. If a judge sits 215 days a year, approximately .47 additional judge teams would be needed to handle the increased workload. This would cost the State approximately \$233,918.

Department of Corrections

The Department of Corrections indicates the number of additional convictions as a result of the expansion of this bill prior to enactment cannot be determined at this time. A significant increase in operational cost is not anticipated based on the existing number of convictions in admission volume, length of stay, and inmate population.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate and notes that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. The OLS also notes that should an offender be convicted and sentenced to a State Prison, data obtained from the Department of Corrections 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.).

ASSEMBLY, No. 1772

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

SYNOPSIS

Upgrades the offenses of tampering with witnesses and informants and hindering apprehension under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning witness or informant intimidation or tampering
2 and amending N.J.S.2C:28-5 and N.J.S.2C:29-3.

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:28-5 is amended to read as follows:

8 2C:28-5. **【Tampering With Witnesses and Informants】** Witness
9 or Informant Intimidation or Tampering; Retaliation Against
10 Them.

11 a. **【Tampering】** Intimidation or tampering. A person **【commits**
12 **an offense】** is guilty of the crime of witness or informant
13 intimidation or tampering if, believing that an official proceeding or
14 investigation is pending or about to be instituted or has been
15 instituted, he knowingly **【attempts to induce or otherwise cause】**
16 engages in conduct which would cause a witness or informant or a
17 potential witness or informant to:

- 18 (1) Testify or inform falsely;
19 (2) Withhold any testimony, information, document or thing;
20 (3) Elude legal process summoning him to testify or supply
21 evidence; or
22 (4) Absent himself from any proceeding or investigation to
23 which he has been legally summoned.

24 It shall not be a defense that at the time the conduct occurred, no
25 official proceeding or investigation had commenced, if a reasonable
26 person would believe that, if the facts known to the potential
27 witness or informant were made known to others, those facts would
28 assist in an official proceeding or investigation.

29 The offense of witness or informant intimidation or tampering is
30 a crime of the **【second】** first degree if the actor employs force or
31 threat of force **【Otherwise】**. If the actor's conduct does not involve
32 force or threat of force but involves the offering or providing a
33 benefit of \$200 or more, it is a crime of the second degree. If the
34 actor's conduct does not involve force or threat of force but
35 involves offering or providing a benefit less than \$200, it is a crime
36 of the third degree, provided, however, that the presumption of non-
37 imprisonment in subsection e. of N.J.S.2C:44-1 for persons who
38 have not been previously convicted of an offense shall not apply.

39 Privileged communications may not be used as evidence in any
40 prosecution for violations of paragraph (2), (3) or (4).

41 b. Retaliation against witness or informant. A person commits a
42 crime of the **【fourth】** first degree if he harms another by an
43 unlawful act with purpose to retaliate for or on account of the
44 service of another as a witness or informant resulting in serious

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 bodily injury. A person commits a crime of the second degree if he
2 harms another by an unlawful act with purpose to retaliate for or on
3 account of the service of another as a witness or informant resulting
4 in significant bodily injury. Otherwise it is a crime of the third
5 degree, provided, however, that the presumption of non-
6 imprisonment in subsection e. of N.J.S.2C:44-1 for persons who
7 have not been previously convicted of an offense shall not apply.

8 c. Witness or informant taking bribe. A person commits a crime
9 of the ~~third~~ second degree if he solicits, accepts or agrees to
10 accept any benefit of \$200 or more in consideration of his doing
11 any of the things specified in subsection a. (1) through (4) of this
12 section. Otherwise it is a crime of the third degree; provided,
13 however, that the presumption of non-imprisonment in subsection e.
14 of N.J.S.2C:44-1 for persons who have not been previously
15 convicted of an offense shall not apply.

16 d. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-
17 5 or any other provision of law, a conviction arising under this
18 section shall not merge with a conviction of an offense that was the
19 subject of the official proceeding or investigation and the sentence
20 imposed pursuant to this section shall be ordered to be served
21 consecutively to that imposed for any such conviction.

22 (cf: P.L.1991, c.33, s.1)

23

24 2. N.J.S.2C:29-3 is amended to read as follows:

25 2C:29-3. Hindering Apprehension or Prosecution. a. A person
26 commits an offense if, with purpose to hinder the detention,
27 apprehension, investigation, prosecution, conviction or punishment
28 of another for an offense or violation of Title 39 of the New Jersey
29 Statutes or a violation of chapter 33A of Title 17 of the Revised
30 Statutes he:

31 (1) Harbors or conceals the other;

32 (2) Provides or aids in providing a weapon, money,
33 transportation, disguise or other means of avoiding discovery or
34 apprehension or effecting escape;

35 (3) Suppresses, by way of concealment or destruction, any
36 evidence of the crime, or tampers with a witness, informant,
37 document or other source of information, regardless of its
38 admissibility in evidence, which might aid in the discovery or
39 apprehension of such person or in the lodging of a charge against
40 him;

41 (4) Warns the other of impending discovery or apprehension,
42 except that this paragraph does not apply to a warning given in
43 connection with an effort to bring another into compliance with
44 law;

45 (5) Prevents or obstructs, by means of force, intimidation or
46 deception, anyone from performing an act which might aid in the

1 discovery or apprehension of such person or in the lodging of a
2 charge against him;

3 (6) Aids such person to protect or expeditiously profit from an
4 advantage derived from such crime; or

5 (7) Gives false information to a law enforcement officer or a
6 civil State investigator assigned to the Office of the Insurance Fraud
7 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
8 16).

9 **【The】** An offense under paragraph (5) of subsection a. of this
10 section is a crime of the second degree. Otherwise, the offense is a
11 crime of the third degree if the conduct which the actor knows has
12 been charged or is liable to be charged against the person aided
13 would constitute a crime of the second degree or greater, unless the
14 actor is a spouse, parent or child of the person aided, in which case
15 the offense is a crime of the fourth degree. The offense is a crime
16 of the fourth degree if such conduct would constitute a crime of the
17 third degree. Otherwise it is a disorderly persons offense.

18 b. A person commits an offense if, with purpose to hinder his
19 own detention, apprehension, investigation, prosecution, conviction
20 or punishment for an offense or violation of Title 39 of the New
21 Jersey Statutes or a violation of chapter 33A of Title 17 of the
22 Revised Statutes, he:

23 (1) Suppresses, by way of concealment or destruction, any
24 evidence of the crime or tampers with a document or other source of
25 information, regardless of its admissibility in evidence, which might
26 aid in his discovery or apprehension or in the lodging of a charge
27 against him; or

28 (2) Prevents or obstructs by means of force or intimidation
29 anyone from performing an act which might aid in his discovery or
30 apprehension or in the lodging of a charge against him; or

31 (3) Prevents or obstructs by means of force, intimidation or
32 deception any witness or informant from providing testimony or
33 information, regardless of its admissibility, which might aid in his
34 discovery or apprehension or in the lodging of a charge against him;
35 or

36 (4) Gives false information to a law enforcement officer or a
37 civil State investigator assigned to the Office of the Insurance Fraud
38 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
39 16).

40 **【The】** An offense under paragraph (3) of subsection b. of this
41 section is a crime of the second degree. Otherwise, the offense is a
42 crime of the third degree if the conduct which the actor knows has
43 been charged or is liable to be charged against him would constitute
44 a crime of the second degree or greater. The offense is a crime of
45 the fourth degree if such conduct would constitute a crime of the
46 third degree. Otherwise it is a disorderly persons offense.

47 (cf: P.L.1999, c.297)

1 bodily injury; otherwise it is a crime of the third degree, provided,
2 however, that there would be no presumption of non-imprisonment
3 for the third degree crime.

4 Subsection c. of N.J.S.A.2C:28-5 currently makes it a crime of
5 the third degree for a witness or informant to solicit, accept, or
6 agree to accept any benefit in consideration of his doing any of the
7 things specified in subsection a. (1) through (4) of this section.
8 This bill would upgrade the penalties as follows: it would be a
9 crime of the second degree for a witness or informant to solicit,
10 accept, or agree to accept any benefit of \$200 or more in
11 consideration of his doing any of the things specified in subsection
12 a. (1) through (4) of this section; otherwise it would be a crime of
13 the third degree, provided, however, that there would be no
14 presumption of non-imprisonment for the third degree crime.

15 This bill further adds a new subsection d. to N.J.S.A.2C:28-5,
16 which is a non-merger provision and requires the sentence for
17 tampering to be served consecutively to the sentence for the
18 underlying offense.

19 *Hindering Apprehension or Prosecution.* This bill also amends
20 the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties
21 set forth therein. Currently, hindering the detention, apprehension,
22 investigation, prosecution, conviction or punishment of another
23 under subsection a. of N.J.S.A.2C:29-3 is a crime of the third
24 degree if the conduct which the actor knows has been charged or is
25 liable to be charged against the person aided would constitute a
26 crime of the second degree or greater, unless the actor is a spouse,
27 parent or child of the person aided, in which case the offense is a
28 crime of the fourth degree. The offense is a crime of the fourth
29 degree if such conduct would constitute a crime of the third degree.
30 Otherwise it is a disorderly persons offense. This bill would make
31 it a crime of the second degree for a person to prevent or obstruct,
32 by means of force, intimidation or deception, anyone from
33 performing an act which might aid in the discovery or apprehension
34 of such person or in the lodging of a charge against him, pursuant to
35 paragraph (5) of subsection a. of N.J.S.A.2C:29-3.

36 Currently, hindering a person's own detention, apprehension,
37 investigation, prosecution, conviction or punishment under
38 subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the
39 conduct which the actor knows has been charged or is liable to be
40 charged against him would constitute a crime of the second degree
41 or greater. The offense is a crime of the fourth degree if such
42 conduct would constitute a crime of the third degree. Otherwise it is
43 a disorderly persons offense. This bill would also make it a crime
44 of the second degree for a person to prevent or obstruct by means of
45 force, intimidation or deception any witness or informant from
46 providing testimony or information, regardless of its admissibility,
47 which might aid in his discovery or apprehension or in the lodging

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1 of a charge against him, pursuant to paragraph (3) of subsection b.
2 of N.J.S.A.2C:29-3.

3 The primary purpose of this bill is to promote the safety of
4 witnesses and informants who assist in official proceedings and
5 investigations and holding criminally accountable those who would
6 seek to harm such individuals or place them at risk.

ASSEMBLY, No. 1598

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblywoman MARCIA A. KARROW

District 23 (Warren and Hunterdon)

SYNOPSIS

Upgrades penalties for tampering with witnesses and informants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning witness or informant tampering and amending
2 N.J.S.2C:28-5 and N.J.S.2C:29-9.

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:28-5 is amended to read as follows:

8 2C:28-5. a. Tampering. A person commits an offense if,
9 believing that an official proceeding or investigation is pending or
10 about to be instituted or has been instituted, he knowingly attempts
11 to induce or otherwise cause a witness or informant to:

12 (1) Testify or inform falsely;

13 (2) Withhold any testimony, information, document or thing;

14 (3) Elude legal process summoning him to testify or supply
15 evidence; **[or]**

16 (4) Absent himself from any proceeding or investigation to
17 which he has been legally summoned; or

18 (5) Otherwise obstruct, delay, prevent or impede an official
19 proceeding or investigation.

20 The offense is a crime of the second degree if the actor employs
21 force or threat of force. Otherwise it is a crime of the third degree.
22 Privileged communications may not be used as evidence in any
23 prosecution for violations of paragraph (2), (3) **[or]**, (4) or (5).

24 b. Retaliation against witness or informant. A person commits
25 **[a crime of the fourth degree]** an offense if he harms another by an
26 unlawful act with purpose to retaliate for or on account of the
27 service of another as a witness or informant. The offense is a crime
28 of the second degree if the actor employs force or threat of force.
29 Otherwise it is a crime of the third degree.

30 c. Witness or informant taking bribe. A person commits a crime
31 of the third degree if he solicits, accepts or agrees to accept any
32 benefit in consideration of his doing any of the things specified in
33 subsection a. (1) through **[(4)]** (5) of this section.

34 d. Bribery of a witness or informant. A person commits a crime
35 of the second degree if he directly or indirectly offers, confers or
36 agrees to confer upon a witness or informant any benefit in
37 consideration of the witness or informant doing any of the things
38 specified in subsection a. (1) through (5) of this section.

39 (cf: P.L.1991, c.33, s.1)

40

41 2. N.J.S.2C:29-9 is amended to read as follows:

42 2C:29-9. a. A person is guilty of a crime of the fourth degree if
43 he purposely or knowingly disobeys a judicial order or protective
44 order, pursuant to subsection 1 of P.L.1985, c.250 (C.2C:28-5.1), or

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 hinders, obstructs or impedes the effectuation of a judicial order or
2 the exercise of jurisdiction over any person, thing or controversy by
3 a court, administrative body or investigative entity.

4 b. Except as provided below, a person is guilty of a crime of the
5 fourth degree if that person purposely or knowingly violates any
6 provision in an order entered under the provisions of the
7 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
8 (C.2C:25-17 et al.) or an order entered under the provisions of a
9 substantially similar statute under the laws of another state or the
10 United States when the conduct which constitutes the violation
11 could also constitute a crime or a disorderly persons offense. In all
12 other cases a person is guilty of a disorderly persons offense if that
13 person knowingly violates an order entered under the provisions of
14 this act or an order entered under the provisions of a substantially
15 similar statute under the laws of another state or the United States.
16 Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of
17 subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or
18 substantially similar orders entered under the laws of another state
19 or the United States shall be excluded from the provisions of this
20 subsection.

21 As used in this subsection, "state" means a state of the United
22 States, the District of Columbia, Puerto Rico, the United States
23 Virgin Islands, or any territory or insular possession subject to the
24 jurisdiction of the United States. The term includes an Indian tribe
25 or band, or Alaskan native village, which is recognized by a federal
26 law or formally acknowledged by a state.
27 (cf: P.L.2005, c.333)

28

29 3. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill amends tampering with a witness or informant,
35 upgrades the penalties for retaliating against a witness or informant,
36 and adds the specific crime of bribery of a witness or informant.
37 This bill also amends the contempt statute, N.J.S.A.2C:29-9, to
38 make specific reference to the protective orders set forth in
39 N.J.S.A.2C:28-5.1.

40 Currently, subsection a. of N.J.S.A.2C:28-5 makes it a crime to
41 tamper with a witness or informant if, believing that an official
42 proceeding or investigation is pending or about to be instituted, a
43 person attempts to induce or otherwise cause a witness or informant
44 to provide false testimony, withhold testimony or evidence, or avoid
45 testifying or supplying evidence required in an official proceeding
46 or investigation. Tampering is a crime of the second degree if the
47 actor employs force or threat of force; otherwise tampering is a

1 crime of the third degree. This bill includes a new (5) to subsection
2 a. to include general language concerning obstructing, delaying,
3 preventing or impeding testimony or information in an official
4 proceeding or investigation to ensure that tampering with a witness
5 or informant is applied as broadly as possible.

6 Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of
7 the fourth degree to retaliate against a witness or informant by
8 harming another by an unlawful act with purpose to retaliate for or
9 on account of the service of another as a witness or informant. This
10 bill would upgrade this crime to a crime of the second degree if the
11 actor employs force or threat of force; otherwise retaliation against
12 a witness or informant is a crime of the third degree.

13 This bill further adds a new subsection d. to N.J.S.A.2C:28-5,
14 which makes it a crime of the second degree to directly or indirectly
15 offer, confer or agree to confer upon a witness or informant any
16 benefit in consideration of the witness or informant doing any of the
17 things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

18 A crime of the second degree is punishable by a term of
19 imprisonment of five to ten years, a fine of up to \$150,000, or both.
20 A crime of the third degree is punishable by a term of imprisonment
21 of three to five years, a fine of up to \$15,000, or both.

22 The primary purpose of this statute is to promote the safety of
23 witnesses and informants who assist in official proceedings and
24 investigations and holding criminally accountable those who would
25 seek to harm or place at risk such individuals. It is a far too
26 frequent occurrence that witnesses and informants are reluctant to
27 come forward or cooperate with law enforcement over fear of
28 retribution. It is the sponsor's view that increasing the penalties for
29 these types of unlawful conduct will prove a successful deterrent to
30 actors who seek to evade justice through intimidation of,
31 interference with, improper inducement of, or retaliation against
32 witnesses or informants. This bill upgrades these crimes and adds
33 the new specific crime of bribing a witness or informant in an effort
34 to reflect the State's strong interest in promoting the integrity of the
35 criminal justice system.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1772 and 1598

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2008

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill Nos. 1772 and 1598.

This substitute amends tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The substitute provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation. This substitute adds new language concerning an official proceeding or investigation that has been instituted; new language concerning a “reasonable person,” and a new paragraph (5) to subsection a. to include general language concerning obstructing, delaying, preventing or impeding testimony or information in an official proceeding or investigation to ensure that tampering with a witness or informant is applied as broadly as possible.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This substitute would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with the purpose to retaliate for or on

account of the service of another as a witness or informant. This substitute would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This substitute also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This substitute further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This substitute also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

This Assembly Committee Substitute is identical to SCS for Senate Bill Nos. 367/503.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1772 and 1598

STATE OF NEW JERSEY

DATED: JUNE 5, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1772/1598 (ACS).

The bill amends current law regarding tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This bill also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this bill amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The bill provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This bill would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This bill would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This bill also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in

consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This bill further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This bill also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This bill would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This bill would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

As reported, this bill is identical to Senate Bill No. 367/503 (SCS), as also reported by the committee.

FISCAL IMPACT:

Administrative Office of the Courts (Trial Costs):

The Administrative Office of the Courts (AOC) states that during CY 2007, 345 defendants were convicted under the statutes affected by this bill. Eighteen of those defendants (5 percent), were convicted after trials, while the remaining 327 were convicted as the result of guilty pleas. The AOC notes that it seems logical that broadening the reach of these statutes would result in a greater number of convictions, and that the increased penalties could significantly reduce a defendant's incentive to plead guilty. As a result, the trial rate could increase and there could be an effect on judicial resources; however, the AOC is unable to accurately determine the fiscal impact of these changes.

Department of Corrections (Incarceration costs):

Currently, nine individuals are incarcerated by Department of Corrections (DOC) for tampering with witnesses violations. Seven inmate convictions are second-degree and two inmate convictions are for third-degree offenses. There were five admissions for violation of the same statutes during CY 2006 of which one is a second-degree offense and the other four are third-degree offenses.

The number of additional convictions as a result of this bill cannot be determined at this time; however, a significant increase in operational cost is not anticipated based on the existing number of convictions. Moreover, convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders.

However, should an offender be convicted and sentenced to a State prison, data obtained from the DOC 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
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1772 and 1598
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 9, 2008

SUMMARY

- Synopsis:** Upgrades penalties for tampering with witnesses and informants; upgrades hindering apprehension or prosecution under certain circumstances.
- 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>
Judiciary Cost	\$233,918	\$233,918	\$233,918
Department of Corrections Cost	Undetermined - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate and notes that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders. The OLS also notes that should an offender be convicted and sentenced to a State Prison, data obtained from the Department of Corrections 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 committee substitute amends the statutes for tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.
- The Administrative Office of the Courts (AOC) states that according to data collected from PROMIS Gavel, during calendar year 2007, 604 defendants were convicted under the statutes

affected by this bill. Twenty-six of those defendants, or approximately 4 percent, were convicted after trials, while the remaining 578 were convicted as the result of guilty pleas. The AOC notes that assuming that this substitute would result in 25 percent more convictions for witness/informant tampering, hindering apprehension and criminal contempt, and that the increased penalties would cause the trial rate to double to 8 percent it would cost the State approximately \$233,918.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill Nos. 1772 and 1598 of 2008 amends the statutes for tampering with a witness or informant, upgrades the penalties for retaliating against a witness or informant, and adds the specific crime of bribery of a witness or informant. This substitute also upgrades the penalties for the offense of hindering apprehension or prosecution, N.J.S.A.2C:29-3. Lastly, this substitute amends the contempt statute, N.J.S.A.2C:29-9, to make specific reference to the protective orders set forth in N.J.S.A.2C:28-5.1.

Witness Tampering. The substitute provides that it is a crime to tamper with a witness or informant if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, a person knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence required in an official proceeding or investigation, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

Currently, tampering is a crime of the second degree if the actor employs force or threat of force; otherwise tampering is a crime of the third degree. This substitute would also upgrade witness tampering to a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving a NERA (“No Early Release Act”) crime and the actor employs force or threat of force.

Subsection b. of N.J.S.A.2C:28-5 currently makes it a crime of the fourth degree to retaliate against a witness or informant by harming another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. This substitute would upgrade this crime to a crime of the second degree if the actor employs force or threat of force; otherwise retaliation against a witness or informant is a crime of the third degree.

This substitute also adds a new subsection d. to N.J.S.A.2C:28-5, which makes it a crime of the second degree to directly or indirectly offer, confer or agree to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of N.J.S.A.2C:28-5.

This substitute further adds a new subsection e. to N.J.S.A.2C:28-5, which is a non-merger provision and requires the sentence for tampering to be served consecutively to the sentence for the underlying offense.

Hindering Apprehension or Prosecution. This substitute also amends the hindering statute, N.J.S.A.2C:29-3, by upgrading the penalties set forth therein. Currently, hindering the detention, apprehension, investigation, prosecution, conviction or punishment of another under subsection a. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would make it a crime of the second degree for a person to prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act

which might aid in the discovery or apprehension of such person or in the lodging of a charge against him, pursuant to paragraph (5) of subsection a. of N.J.S.A.2C:29-3, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. Also, new language concerning domestic partners and partners in a civil union has been added to this subsection in order to bring the statute up to date with current law.

Currently, hindering a person's own detention, apprehension, investigation, prosecution, conviction or punishment under subsection b. of N.J.S.A.2C:29-3 is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense. This substitute would also make it a crime of the second degree for a person to prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him, pursuant to paragraph (3) of subsection b. of N.J.S.A.2C:29-3.

A crime of the second degree is punishable by a term of imprisonment of five to ten years, a fine of up to \$150,000, or both. A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

The AOC states that the substitute would not add any additional revenue for the Judiciary.

The AOC states that according to data collected from PROMIS Gavel, during calendar year 2007, 604 defendants were convicted under the statutes affected by this bill. Twenty-six of those defendants, or approximately 4 percent, were convicted after trials, while the remaining 578 were convicted as the result of guilty pleas. The AOC notes that it seems logical that broadening the reach of these statutes would result in a greater number of convictions, and that the increased penalties could significantly reduce the defendant's incentive to plead guilty. As a result, the trial rate could increase and there could be an effect on judicial resources. For example, assuming that this substitute would result in 25 percent more convictions for witness/informant tampering, hindering apprehension and criminal contempt, and that the increased penalties would cause the trial rate to double to 8 percent, there would be approximately 151 new cases and 34 additional trials. If each trial takes an average of 3 days, it would take 102 days to handle these cases. If a judge sits 215 days a year, approximately .47 additional judge teams would be needed to handle the increased workload. This would cost the State approximately \$233,918.

Department of Corrections

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate and notes that convictions for third and fourth degree offenses carry with them the presumption of non-incarceration for first time offenders.

The OLS also notes that should an offender be convicted and sentenced to a State Prison, data obtained from the Department of Corrections 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

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