

2C 35. 4. 1

LEGISLATIVE HISTORY CHECKLIST

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(Booby traps--defined as crimes)

NJSA: 2C:35-4.1

LAWS OF: 1997 CHAPTER: 185

BILL NO: A2956

SPONSOR(S): Talarico and others

DATE INTRODUCED: May 12, 1997

COMMITTEE: ASSEMBLY: Law & Public Safety

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 23, 1997

SENATE: June 26, 1997

DATE OF APPROVAL: August 4, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Recommendations referred to in statement--attached:

974.90 New Jersey. Department of Law & Public Safety.

N222 Report to update the Comprehensive Drug Reform Act of 1987.

1996 i December 9, 1996. Trenton, 1996.

[see recommendation #3--attached]

See newspaper clippings--attached:

"Drug-law bills signed by Whitman." 8-5-97, Philadelphia Inquirer.

"Whitman signs 3-bill package..." 8-5-97, Atlantic City Press.

KBP:pp

[Passed Both Houses]

ASSEMBLY, No. 2956

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# STATE OF NEW JERSEY

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INTRODUCED MAY 12, 1997

By Assemblymen TALARICO, DeSOPO, Gibson, LeFevre, Blee, Kramer, Geist, Cottrell, Kelly, T. Smith, Asselta, Corodemus, Arnone, Azzolina, Malone, Assemblywoman Heck, Assemblymen Wolfe, Holzapfel, Assemblywoman Crecco, Assemblymen Zecker, Bucco, O'Toole, Bateman and Senator Bubba

1 AN ACT concerning the use of certain devices and supplementing Title  
2 2C of the New Jersey Statutes.

3

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

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7 1. Booby traps in Manufacturing or Distribution Facilities;  
8 Fortified Premises.

9 a. As used in this section:

10 (1) "Booby trap" means any concealed or camouflaged device  
11 designed or reasonably likely to cause bodily injury when triggered by  
12 the action of a person entering a property or building or any portion  
13 thereof, or moving on the property or in the building, or by the action  
14 of another person. The term includes, but is not limited to, firearms,  
15 ammunition or destructive devices activated by a trip wire or other  
16 triggering mechanism, sharpened stakes, traps, and lines or wires with  
17 hooks, weights or other objects attached.

18 (2) "Structure" means any building, room, ship, vessel or airplane  
19 and also means any place adapted for overnight accommodation of  
20 persons, or for carrying on business therein, whether or not the person  
21 is actually present.

22 b. Any person who knowingly assembles, maintains, places or  
23 causes to be placed a booby trap on property used for the  
24 manufacture, distribution, dispensing, or possession or control with  
25 intent to manufacture, distribute or dispense, controlled dangerous  
26 substances in violation of this chapter shall be guilty of a crime of the  
27 second degree. If the booby trap causes bodily injury to any person,  
28 the defendant shall be guilty of a crime of the first degree.

29 It shall not be a defense that the device was inoperable or was not

1 actually triggered, or that its existence or location was known to a  
2 law enforcement officer or another person.

3 c. Any person who fortifies or maintains in a fortified condition a  
4 structure for the manufacture, distribution, dispensing or possession  
5 or control with intent to manufacture, distribute or dispense,  
6 controlled dangerous substances, or who violates sections 3, 4, 5, 6 or  
7 7 of chapter 35 in a structure which he owns, leases, occupies or  
8 controls, and which has been fortified, is guilty of a crime of the third  
9 degree. A structure has been fortified if steel doors, wooden planking,  
10 cross bars, alarm systems, dogs, lookouts or any other means are  
11 employed to prevent, impede, delay or provide warning of the entry  
12 into a structure or any part of a structure by law enforcement officers.

13 d. A booby trap or fortification is maintained if it remains on  
14 property or in a structure while the property or structure is owned,  
15 occupied, controlled or used by the defendant.

16 e. Nothing herein shall be deemed to preclude, if the evidence so  
17 warrants, an indictment and conviction for a violation of chapters 11,  
18 12, 17, and 39 of this title, or any other law. Notwithstanding the  
19 provisions of N.J.S.2C:1-8, N.J.S.2C:44-5 or any other provisions of  
20 law, a conviction arising under this section shall not merge with a  
21 conviction for a violation of any section of chapter 35 of Title 2C of  
22 the New Jersey Statutes, or for conspiring or attempting to violate  
23 any section of chapter 35 of Title 2C of the New Jersey Statutes, and  
24 the sentence imposed upon a violation of this section shall be ordered  
25 to be served consecutively to that imposed for any other conviction  
26 arising under any section of chapter 35 of Title 2C of the New Jersey  
27 Statutes or for conspiracy or attempt to violate any section of chapter  
28 35 of Title 2C of the New Jersey Statutes, unless the court, in  
29 consideration of the character and circumstances of the defendant,  
30 finds that imposition of consecutive sentences would be a serious  
31 injustice which overrides the need to deter such conduct by others. If  
32 the court does not impose a consecutive sentence, the sentence shall  
33 not become final for 10 days in order to permit the appeal of such  
34 sentence by the prosecution.

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36 2. This act shall take effect immediately.

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#### STATEMENT

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41 Police officers in New Jersey are confronted by devices that are  
42 intended to impede and harm the officers as they attempt to execute  
43 search warrants and arrest drug dealers.

44 This bill would make it a crime of the second degree for any person  
45 to knowingly assemble, maintain, place or cause to be placed a booby  
46 trap on property which is used for the manufacturing, dispensing, or

1 distributing of drugs. The crime of placing a booby trap would be  
2 upgraded to a crime of the first degree if the booby trap causes bodily  
3 injury.

4 In addition, the bill would make it a crime of the third degree for  
5 any person to fortify or maintain in a fortified condition a structure in  
6 which drugs are manufactured or distributed.

7 The bill also provides that the sentence imposed for violating the  
8 provisions of the bill concerning booby trapping or fortifying be served  
9 consecutively to any sentence for violating any other provision of  
10 chapter 35 of Title 2C, unless imposing a consecutive sentence would  
11 be a serious injustice outweighing the need to deter such conduct.

12 This bill embodies Recommendation No. 3 of the "Report to the  
13 Governor by the Attorney General on the Need to Update The  
14 Comprehensive Drug Reform Act of 1987", issued December 9, 1996.

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19 Prohibits the use of booby traps and fortification of structures under  
20 certain circumstances.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2956

# STATE OF NEW JERSEY

DATED: JUNE 9, 1997

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 2956.

Assembly Bill No. 2956 supplements Title 2C of the New Jersey Statutes to establish as a crime the use of booby traps or fortifications on property which is used for the manufacturing, storing, dispensing or distributing of controlled dangerous substances.

Under the provisions of the bill, it is a crime of the second degree for a person to knowingly assemble, maintain, place or cause to be placed a booby trap on property used for the manufacture, distribution, dispensing or possession of controlled dangerous substances. If the booby trap causes bodily injury to any person, the defendant is guilty of a crime of the first degree. A booby trap is defined as any concealed or camouflaged device designed or reasonably likely to cause bodily injury when triggered by the action of a person entering a property or building, or moving on that property or in that building, or by the action of another person. The term includes, but is not limited to, firearms, ammunition, or destructive devices activated by a trip wire or other triggering mechanism, sharpened stakes, traps, and lines or wires with hooks, weights or other objects attached. A crime of the second degree is punishable by a fine of not more than \$100,000, a term of imprisonment between five and ten years, or both. A crime of the first degree is punishable by a fine of not more than \$100,00, a term of imprisonment between 10 and 20 years, or both.

A person who fortifies, or maintains in a fortified condition, a structure for the manufacture, distribution, dispensing or possession of controlled dangerous substances is guilty of a crime of the third degree. A structure is deemed "fortified" if steel doors, wooden planking, cross bars, alarm systems, dogs, lookouts or any other means are employed to prevent, impede, delay or provide warning of the entry into the structure by law enforcement officers. A crime of the third degree is punishable by a fine of not more \$7,500, a term of imprisonment between three and five years, or both.

Finally, the bill provides that a sentence imposed for a violation of its provisions is to be served consecutively to any sentence imposed for violating any other provision of the "Comprehensive Drug Reform Act of 1987" (P.L.1987, c.106; C.2C:35-1 et seq.), unless the court,

in consideration of the character and circumstances of the defendant, finds that the imposition of consecutive sentences would be a serious injustice which overrides the need to deter such conduct by others.

The provisions of this bill embody the proposals set forth in Recommendation No. 3 of the "Report to the Governor by the Attorney General on the Need to Update The Comprehensive Drug Reform Act of 1987," issued December 9, 1996.



## OFFICE OF THE GOVERNOR NEWS RELEASE

PO BOX-004

TRENTON, NJ 08625

CONTACT: Jayne O'Connor  
Rita Malley  
609-777-2600

RELEASE: MONDAY  
Aug. 4, 1997

### **Gov. Whitman to Sign Booby Trap Legislation and a Law that will Stiffen Penalties for Dealers who Distribute Large Quantities of Drugs**

Today Gov. Christie Whitman escalates the war against drug dealers by signing bills that increase penalties for drug dealers and better protect law enforcement officers on the street.

In Paterson she signs A-2957, the bill that increases the penalties for drug dealers who distribute large quantities of marijuana and methamphetamine. The new law will make it a first-degree crime to sell marijuana and methamphetamine in bulk. Additionally, during that ceremony, she will sign A-2958, a bill that imposes an anti-drug profiteering penalty against drug dealers.

In Camden, she signs A-2956, which outlaws the use of booby traps and fortification structures that are commonly used to injure law enforcement officers during drug busts.

"Last month I announced that crime rates had dropped dramatically in 1996, the sharpest drop in the past decade. Our neighborhoods are safer and law enforcement is armed with some of the toughest laws in the country," said Gov. Whitman. "But we can't stop now. Drug use among young people is on the rise. The bills that I am signing today will continue the war on drugs and help combat that disturbing trend."

"The increased penalties that we are putting into place will send a clear message to drug dealers: endanger a law enforcement officer or impede a search and you will pay dearly," said Gov. Whitman. "From now on, major dealers of marijuana and methamphetamine will be treated like the major criminals they are. And, the illegal profits of convicted drug dealers are now fair game for seizure by state authorities."

The bills being signed today implement recommendations made by the Governor in the "Governor's Drug Enforcement, Education and Awareness Program" last October. The legislation was also part of Attorney General Peter Verniero's *Report to the Governor on the Need to Update the Comprehensive Drug Reform Act of 1987*.

"These new laws play a critical role in our overall efforts to further strengthen the state's drug laws," said Verniero. "These tougher penalties not only punish the most culpable drug offenders, but also ensure that our law enforcement community is not put at risk while trying to protect New Jersey."

The booby trap bill, A-2956, sponsored by Assembly Members Guy Talarico (R-Bergen) and Carmine DeSopo (R-Burlington/Camden), steps up the punishment for drug dealers who set booby traps that can harm officers as they attempt to execute search warrants or make arrests. The law makes it a crime of the second

degree to knowingly place a booby trap on property used for the manufacture, distribution, dispensing or possession of controlled dangerous substances.

If the booby trap causes bodily injury to a law enforcement officer, the defendant would be guilty of a crime of the first degree. For a first-degree crime, the maximum sentence is 20 years imprisonment. Second degree crimes carry a maximum penalty of 10 years in prison.

The bill also makes it a third-degree offense to fortify a structure with steel doors, wooden planking, cross bars, alarm systems, dogs or any other means designed to prevent or delay police officers' entry into a building. A third-degree crime carries a maximum penalty of five years of imprisonment.

While in Camden, the Governor also highlighted her administration's efforts to clean up and demolish abandoned buildings in the city which are an invitation to criminal activity and drug transactions. The National Guard, in conjunction with the Departments of Community Affairs and Corrections, has boarded up more than 150 such sites in the area. Gov. Whitman in June signed legislation to create a \$20 million revolving loan program to assist municipalities with the costs associated with the demolition and disposal of unsafe buildings in urban and rural centers.

The drug distribution bill, A-2957, sponsored by Assembly Members Francis J. Blee (R-Atlantic), Joseph Azzolina (R-Middlesex/ Monmouth), increases penalties for the distribution of large quantities of marijuana and methamphetamine to a crime of the first degree.

Now it will be a first degree crime to manufacture, distribute or dispense 25 pounds or more of marijuana, 50 or more marijuana plants, five pounds or more of hashish and more than five ounces of methamphetamine or P2P. Hashish is an extract of the marijuana plant; P2P is an immediate chemical precursor to methamphetamine.

The bill also incorporates the grading of marijuana offenses by the number of live, growing plants into the New Jersey Criminal Code. This enables law enforcement officers to seize young, growing marijuana plants before they are mature. The Division of Criminal Justice reports that each marijuana plant has the potential to produce between one-half and two pounds of marijuana.

Crimes of the second degree would apply to five pounds or more but less than 25 pounds of marijuana, ten plants or more but fewer than 50 marijuana plants, one pound or more but less than five pounds of hashish and one-half ounce or more but less than five ounces of methamphetamine or P2P.

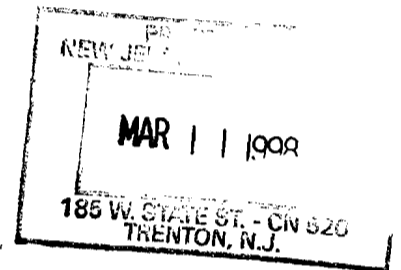
The third bill signed by the Governor, A-2598, was sponsored by Assembly Members Ken LeFevre (R-Atlantic) and Paul Kramer (R-Mercer/Middlesex) and Senator Dick LaRossa (R-Mercer). The bill allows the state to execute a penalty against the assets of a defendant who has been convicted of drug charges whether or not the assets can be directly traced to illegal drug profits. The bill is aimed at further removing the profit motive from illegal drug trafficking. Drug traffickers often convert drug profits into other types of assets to eliminate a possible trace to illegal activity.

As part of her overall strategy to combat drug use and related crimes, Gov. Whitman has also stressed the importance of prevention and education. Education Commissioner Leo Klagholz is working with schools throughout the state to strengthen efforts to keep drugs out of schools and teach students the deadly dangers of substance abuse. At the Governor's direction, the drug education section of the Core Curriculum education standards was fast tracked to ensure that it will be implemented by September. Drug education is one of the components of the Governor's curriculum standards which are currently being implemented by the state's school system.





**REPORT TO THE GOVERNOR  
 BY THE ATTORNEY GENERAL  
 ON THE NEED TO UPDATE  
 THE COMPREHENSIVE  
 DRUG REFORM ACT OF 1987**



**Christine Todd Whitman, Governor**

**Peter Verniero, Attorney General  
 Department of Law & Public Safety**

**December 9, 1996**

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**REPORT TO THE GOVERNOR BY THE ATTORNEY GENERAL ON THE NEED TO  
UPDATE THE COMPREHENSIVE DRUG REFORM ACT OF 1987**

**EXECUTIVE SUMMARY**

This Report is comprised of four parts. Section 1, an Introduction and Overview, discusses the historical origins of the Comprehensive Drug Reform Act of 1987 and explains how New Jersey's drug problem has evolved since that statute was enacted. Section 2 discusses the recommendations for amending New Jersey's drug laws that were first suggested in Governor Whitman's Drug Enforcement, Education and Awareness Program ("Governor's Program"). Section 3 discusses additional recommendations that may be considered as part of a comprehensive effort to update and revise New Jersey's criminal drug laws. The fourth part, the Appendix, includes the specific revisions which are recommended to Title 2C and Title 24 of the Revised Statutes.

**Specific Recommendations Suggested in the Governor's Program**

1. Large-scale distributors of marijuana and methamphetamine should be appropriately punished. New first degree crimes should be established for persons who distribute or possess with intent to distribute more than five ounces of methamphetamine, 25 pounds or more of marijuana, or 50 or more marijuana plants.

2. The differences between heroin and cocaine should be reflected in the statutory scheme for grading the seriousness of drug distribution offenses. The distribution or possession with intent to distribute one ounce or more of heroin (rather than the current five or more ounces) should be graded as a crime of the first degree. The distribution or possession with intent to distribute one-quarter ounce (rather than the current one-half ounce) should suffice for guilt of a second degree crime.

3. We must deter attempts by those engaged in the illicit drug trade to endanger and impede law enforcement officers. Accordingly, a new second degree crime should be created for persons who place booby traps. The offense should be upgraded to a first degree crime if the device inflicts bodily injury. Fortifying a structure in which drugs are manufactured or distributed should be made a crime of the third degree. Sentences imposed upon conviction of these new offenses should be served consecutively to the sentences imposed for violating any other drug offense.

**3. We must deter attempts by those engaged in the illicit drug trade to endanger and impede law enforcement officers.**

Police officers in New Jersey are confronted by devices that are intended to impede and harm the officers as they attempt to execute search warrants and arrest drug dealers. An ordered society simply cannot tolerate activity that amounts to the waging of a war against those who are sworn to enforce the law.

It is, therefore, recommended that the Legislature create new offenses to deal specifically with booby traps and fortifications. The offense of placing a booby trap should be graded as a second degree crime, with an upgrade to a first degree crime if the device inflicts bodily injury upon any person. Fortifying a structure in which drugs are manufactured or distributed would be a crime of the third degree.

Included in the report is a provision, modeled after N.J.S.A. 2C:44-5b (consecutive sentence for offense committed while released pending disposition of another offense), which would require that the sentence imposed for booby trapping or fortifying be served consecutively to any sentence for violating any other provision of Chapter 35, unless imposing a consecutive sentence would be a serious injustice outweighing the need to deter such conduct. This provision is necessary because we must ensure that there is additional stern punishment for those who pose so much danger to law enforcement officers.

to this Section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

14. (New section).

**2C:35-24. Booby traps in Manufacturing or Distribution Facilities; Fortified Premises.**

a. Any person who knowingly assembles, maintains, places or causes to be placed a booby trap on property used for the manufacture, distribution, dispensing, or possession of controlled dangerous substances in violation of this chapter shall be guilty of a crime of the second degree. If the booby trap causes bodily injury to any person, the defendant shall be guilty of a crime of the first degree.

For the purposes of this section, the term "booby trap" means any concealed or camouflaged device designed or reasonably likely to cause bodily injury when triggered by the action of a person entering a property or building or any portion thereof, or moving on the property or in the building, or by the action of another person. The term includes, but is not limited to, firearms, ammunition or destructive devices activated by a trip wire or other triggering mechanism, sharpened stakes, traps, and lines or wires with hooks, weights or other objects attached. It shall not be a defense that the device was inoperable or was not actually triggered, or that its existence or location was known to a law enforcement officer or another person.

b. Any person who fortifies or maintains in a fortified condition a structure for the manufacture, distribution, dispensing or possession of controlled dangerous substances,

or who violates sections 3, 4, 5, 6 or 7 of this chapter in a structure which he owns, leases, occupies or controls, and which has been fortified, is guilty of a crime of the third degree. A structure has been fortified if steel doors, wooden planking, cross bars, alarm systems, dogs, lookouts or any other means are employed to prevent, impede, delay or provide warning of the entry into a structure or any part of a structure by law enforcement officers.

c. A booby trap or fortification is maintained if it remains on property or in a structure while the property or structure is owned, occupied, controlled or used by the defendant.

d. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation of chapters 11, 12, 17, and 39 of this title, or any other law. Notwithstanding the provisions of N.J.S. 2C:1-8, N.J.S. 2C:44-5 or any other provisions of law, a conviction arising under subsection a. or b. of this section shall not merge with a conviction for a violation of any other section of this chapter, or for conspiring or attempting to violate any section of this chapter, and the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed for any other conviction arising under any other sections of this chapter or for conspiracy or attempt to violate any of the sections of this chapter, unless the court, in consideration of the character and circumstances of the defendant, finds that imposition of consecutive sentences would be a serious injustice which overrides the need to deter such conduct by others. If the court does not impose a consecutive sentence, the sentence shall not become final for 10 days in order to permit the appeal of such sentence by the

prosecution.

15. (New section)

**2C:35-25. Possession of a Firearm While Committing Certain Offenses**

A person who has been convicted of a crime under N.J.S. 2C:35-3, 2C:35-4, 2C:35-5, 2C:35-7, 2C:35-11, or section 29 of P.L. c. (now pending before the Legislature as this bill) (N.J.S. 2C:5-8, smuggling conveyances) or an attempt or conspiracy to commit such crime, who, while in the course of committing the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in N.J.S. 2C:39-1f., in violation of section 3, 4, 5 or 7 of chapter 39 of this title, shall be ordered to be serve the sentence imposed upon the firearm violation consecutively to that imposed for any conviction arising under any sections of this chapter or for conspiracy or attempt to violate any of the sections of this chapter, unless the court, in consideration of the character and conditions of the defendant, finds that the imposition of a consecutive sentence would be a serious injustice which overrides the need to deter such conduct by others. The court need not impose a consecutive sentence pursuant to this section if the defendant demonstrates by clear and convincing evidence that the firearm was not accessible to the defendant at any time during the course of committing the crime. If the court, for any reason, does not impose a consecutive sentence, the sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

The court shall not impose more than one consecutive sentence pursuant to this