

2C:1-4

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:1-4 et al. ("Code of Criminal Justice"--various amendments)

LAWS ~~2001~~ 1981 CHAPTER 290

Bill No. S1537

Sponsor(s) Perskie

Date Introduced Oct. 9, 1980

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes

SUBSTITUTE
~~No~~ Senate Committee statement (2nd OCR) enacted. Amendments during passage denoted by asterisks.

Date of Passage: Assembly June 11, 1981

Senate Feb. 9, 1981

Date of approval Sept. 24, 1981

Following statements are attached if available:

Sponsor statement	Yes	No	Assembly amendments, adopted 5-14-81, with statement (attached). Senate amendments, adopted 1-29-81 (attached)
Committee Statement: Assembly	Yes	No	Assembly amendments, adopted 6-8-81 (attached)
Senate	Yes	No	
Fiscal Note	Yes	No	
Veto Message	Yes	No	
Message on signing	Yes	No	

Following were printed:

Reports	Yes	No
Hearings	Yes	No

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29 ownership of property, or if the person, if any, from whom custody
30 of the property was taken shall claim ownership, or if any other
31 person shall claim ownership, the property shall not be released
32 to any person claiming it until a hearing has been held pursuant
33 to subsection c.

34 c. The court having jurisdiction over the case in which the stolen
35 property is involved, upon application by the person from whom
36 possession was taken, or the person claiming ownership, shall re-
37 view the matter and order the property to be delivered to the per-
38 son claiming ownership, or to be retained by the law enforcement
39 agency upon a finding that the person claiming ownership of the
40 property is not entitled thereto.

1 38. This act shall take effect immediately.

STATEMENT

Section 1 of this bill is intended to make clear that the State has the right to cross-appeal with respect to adverse trial court rulings in all cases where a defendant initiates an appeal from a conviction.

Section 2 of the bill makes clear that for purposes of complying with licensing statutes or other statutory or regulatory provisions regarding disabilities resulting from convictions, the term high misdemeanor refers to crime of the first, second or third degree. The term misdemeanor applies to crimes of the fourth degree.

Section 3 of the bill makes clear that the offense of contempt remains an indictable offense and the common law offense of contempt is preserved solely for this purpose. This section also makes clear that preemption of a local ordinance by the code applies only when the ordinance conflicts with an expressed policy or specific provision therein. Therefore, it is necessary to delete that portion of 2C:1-5(d) which refers to conflicts with subject areas excluded from the code since it may erroneously result in the preemption by the code of valid and necessary ordinances merely because the code has not specifically included or has inadvertently omitted such conduct from within its provisions. As amended, preemption will occur only where the code makes it clear that certain conduct ought not to be considered a violation of the law.

Section 4 of the bill states that a judicial determination barring multiple convictions in instances where the conduct constitutes more than one offense, e. g., merger, may only occur after verdict or a finding of guilt.

Section 5 of the bill provides that non-indictable complaints may be prosecuted after the disposition of indictable offenses subject only to the Federal and State Constitutions, *e. g.*, death by auto and drunk driving.

Section 6 of the bill clarifies judicial confusion concerning 2C:4-2, and provides that evidence of mental disease or defect must be established by the defendant by a preponderance of the evidence. The incapacitation must be of such a nature as to preclude the actor from knowing the nature and quality of the act or that what he was doing was wrong. This is consistent with the law governing the insanity defense. 2C:4-1.

Section 7 of the bill provides that it is not necessary to prove an overt act in a prosecution for a conspiracy to violate the provisions of Title 24.

Section 8 of the bill provides that an attempt or conspiracy to commit a non-code offense is to be graded in accordance with the provisions of the code. It also provides that attempts or conspiracies to commit crimes of the first degree, *e. g.*, murder, shall be graded as crimes of the first degree.

Section 9 makes clear that the purposeful or knowing causation of serious bodily injury is sufficient to constitute an aggravated assault pursuant to 2C:12-1(6) and that the element of "extreme indifference to the value of human life" is only pertinent when the defendant acts recklessly.

Section 10 of the bill removes any ambiguity with regard to the guilt of an individual who causes the destruction of his own property by arson.

Section 11 of the bill clarifies the definition of the offense of criminal mischief. In order to constitute the offense the State need only prove the purposeful or knowing damage of property by the defendant. Utilization of the various means listed in 2C:17-2(a) need only be proven when the defendant acts recklessly.

Section 12 of the bill makes clear that a burglarly or arson of any vehicle, boat or airplane may be prosecuted without the necessity of proving that such place is adapted for overnight accommodation.

Section 13 of the bill deletes the requirement that the State prove the grade of the offense for which an individual burglarizes premises in order to grade the burglary. Moreover, the affirmative defense of abandonment has been deleted.

Section 14 of the bill clarifies the definition of receiving stolen property and reinstates the Title 2A statutory presumption relating to possession of stolen property within 1 year of its theft.

Section 15 of the bill includes in the offense of forgery the possession of forged instruments.

Section 16 clarifies the offense of falsifying records and includes as an offense the uttering of any false record.

Section 17 redefines the offense of issuing bad checks by grading the offense in conformity with the amount of money involved.

Section 18 makes it a crime for an individual to purposely or knowingly operate a corporation for the furtherance of any unlawful object.

Section 19 of the bill provides definitions of significant terms utilized in Chapter 21. It is felt that the definitions of "benefit" contained in Chapter 27 is not as inclusive as the definition of "benefit derived" in Section 19 of this bill. This definition permits the aggregation of illicit gains by all members of a conspiracy to defraud for purposes of grading. The offenses contained in Chapters 20 and 21 are graded on the basis of the "benefit derived." In contrast, the only threshold set forth in Chapters 27 to 30 is a \$200.00 minimum. Moreover, the harm or benefit, whichever is greater, is to be considered in the grading process.

Section 20 of the bill upgrades the offense of making a written false statement to a crime of the fourth degree.

Section 21 of the bill provides that the offense of obstruction of justice is a fourth degree crime rather than a disorderly persons offense. This comports with prior law as it existed under Title 2A.

Section 22 of the bill specifically includes in the code the offense of eluding a police officer and grades it as a disorderly persons offense.

Section 23 of the bill adds a new section which encompasses the offense of "embracery" as it was defined under prior law. While certain forms of jury tampering are already proscribed by Chapter 27 it is desirable to specifically proscribe all potential forms of this misconduct.

Section 24 of the bill grades conspiracies and attempts to violate the provisions of Title 24. It also grades all Title 24 substantive offenses to allow for sentencing of drug offenders to mandatory minimum terms (2C:43-6(b)) and extended terms (2C:43-7) pursuant to the code.

Section 25 of the bill makes clear that the amount of restitution ordered for any offense is not subject to the statutory limits placed on the amount of fine which may be ordered.

Section 26 of the bill provides that the court may impose a sentence with a mandatory minimum term without parole eligibility for the commission of any crime regardless of its degree or inclusion in the code. At present such a term may only be imposed in crimes of the first or second degree. The new Parole Act makes this amendment necessary in view of its deletion of multiple offender status as a means of calculating parole eligibility.

Section 27 of the bill deletes unnecessary language and defers to the law governing parole (the Parole Act of 1979) for the purposes of determining parole eligibility and revocation.

Section 28 of the bill makes clear that a court may consider the fact of a guilty plea in determining the quantum of sentence to be imposed. It also completes the section on presumptive sentences by providing for such sentences in those cases where extended terms are to be imposed.

Section 29 of the bill provides a tolling period in the event of the initiation of parole revocation proceedings.

Section 30 of the bill provides that an individual serving a term in the adult diagnostic and treatment center shall serve any consecutive term prior to the sex offender term and service of any concurrent term shall be served in the discretion of the commissioner. The intent being that the sex offender term should be served at the completion of any other term in order to maximize its rehabilitative effect.

Section 31 provides that the State Treasurer rather than the Secretary of State shall maintain a list of all corporations barred from conducting business in this State.

Section 32 of this bill makes clear that in 2C:64-1a that "any" interest in prima facie contraband may be forfeited is intended to cover the situation where no criminal action is pending and, thus, there is no defendant. However, prima facie contraband which is rightfully owned and traceable (for example, controlled dangerous substances owned by a pharmacist which is found in the hands of a thief) will not be forfeited because disposition of prima facie contraband is subject to the rights of lawful owners. Further, the amendment makes clear that contraband may be held as evidence pending a criminal prosecution and that seizure with

process is necessary only when a criminal proceeding has not been instituted. The provision pertaining to exception to forfeiture is deleted from N. J. S. 2C:64-1 because the exceptions more properly should appear in N. J. S. 2C:64-5.

Section 33 of this bill deletes the requirement that a forfeiture action be instituted against prima facie contraband where no conviction is obtained. Due to the nature of prima facie contraband it should be automatically forfeited subject only to the rights of owners and other innocent interest holders.

Section 34 of the bill extends the period for institution of a forfeiture action from 30 to 90 days since experience has proven that the 30 day period does not permit the State enough time to determine if, in fact, action should be brought. Further, it is made clear that the forfeiture action should be brought by the State, which term is intended to include actions brought by the State or county authorities. Also, the requirement that a notice of intention to forfeit be filed upon the filing of an indictment is deleted because it is unnecessary since all interested parties must receive notice pursuant to other portions of the same section of the statute.

Section 35 of the bill makes clear that following an acquittal, the State may bring a separate forfeiture proceeding in any case involving seized property. Also, the automatic feature regarding prima facie contraband is deleted since it is provided for in the amendments to section 33 of this bill.

Section 36 of the bill preserves the right of an innocent owner but makes clear that a person who loans his property to another who knowingly permits it to be used in violation of this chapter will suffer forfeiture. Further, it makes clear that the exception to forfeiture is available to a secured party who has a perfected security interest in property and to a lessor. The distinction between a lease situation and a loan situation is justifiable since loaning is often a method of avoidance of forfeiture.

Section 37 of the bill makes clear that stolen property may be returned to its rightful owner without the necessity of a 10-day waiting period or court proceeding where proof of ownership is not in dispute.

Section 38 provides that the bill shall be effective immediately.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1537

STATE OF NEW JERSEY

DATED: JANUARY 2, 1981

The committee substitute for Senate Bill No. 1537 proposes a series of amendments to Title 2C, the Code of Criminal Justice. The following is a section by section description of those amendments:

Section 1

Section 1 is intended to make clear that the State has the right to cross-appeal with respect to adverse trial court rulings in all cases where a defendant initiates an appeal from a conviction.

Section 2

Section 2 makes clear that for purposes of licensing statutes and other statutory or regulatory provisions regarding disabilities resulting from criminal convictions, that the term "high misdemeanor" refers to crimes of the first, second or third degree and that the term "misdemeanor" refers to all crimes.

Section 3

2C:1-8 provides that when a defendant's conduct constitutes the commission of more than one criminal offense, the defendant may be prosecuted for each offense. The defendant may not be convicted of more than one offense, however, if a lesser offense is a lesser included offense of a more serious offense if one offense consists of a conspiracy or an attempt to commit another offense; if inconsistent findings of fact are required to establish the commission of the offenses, or if the offenses differ only in that one prohibits certain conduct generally and the other does so specifically. In order to allow the prosecution the widest latitude in introducing evidence, the amendment in section 3 states that no judicial determination barring multiple convictions on any of the grounds described shall be made until after a verdict or finding of guilt.

Section 4

Section 4 amends 2C:1-10, which establishes circumstances when prosecution is barred by a former prosecution for a different offense. The amendment states that nothing in 2C:1-10 shall bar the disposition of a non-indictable complaint after disposition of an indictable complaint. An example of the type of situation where this provision might be applicable is the disposition of nonindictable offenses such as drunk driving after disposition of an indictable offense such as death by auto.

Section 5

In order to be guilty of a criminal offense, a person must have had the required state of mind, mens rea, for that offense. Under the code that means a person must have acted either "purposely," "knowingly," "recklessly" or "negligently". Section 5 clarifies that if no mens rea element is specifically indicated by a code offense then "knowingly" will be presumed to be the required state of mind for that offense.

Section 6

2C:3-7 describes the circumstances under which law enforcement officers are justified in employing deadly force and includes among them preventing burglary of an occupied dwelling. It is feared, however, that the phrase "occupied dwelling" could be interpreted as meaning only places where people are actually present rather than places normally used as dwellings. Therefore the amendment in section 6 would delete the word "occupied."

Section 7

As originally drafted, justification defenses (i.e. self-defense) under the code were available to a defendant if his belief in the necessity of the use of force was honestly held. In conjunction with this provision, the code also provided in 2C:3-9b that if the defendant was reckless or negligent in forming that belief, he could be convicted of a crime for which recklessness or negligence was the required mental element. As enacted, however, the code requires not only that a defendant's belief be honestly held but also that his belief in the necessity to use force be reasonable. This requirement that a defendant's belief be both honest and reasonable vis a vis a justification defense obviates the necessity for the provision in 2C:3-9b that the reckless or negligent use of force can establish criminal liability. Therefore, the amendment in section 7 would delete this provision.

Section 8

In conjunction with the amendment made in section 6, this amendment clarifies that when the term "dwelling" is used in connection with the use of force by a law enforcement officer that the dwelling need not be the officer's own dwelling.

Section 9

The general rule in criminal law is that in order to secure a conviction the prosecution must prove all elements of an offense beyond a reasonable doubt. However, the code shifts the burden of producing evidence and proving certain facts to the defendant. These circumstances are termed "affirmative defenses" and must be proved by a defendant by a preponderance of the evidence. The rationale for placing the burden

of proof on the defendant is that the circumstances or facts needed to establish the defense are uniquely within the knowledge of the defendant. Insanity is an example of an affirmative defense. Section 9 clarifies that other types of mental disease or defect not constituting insanity (i.e. amnesia) are also affirmative defenses which must be proved by the defendant by a preponderance of the evidence.

Section 10

Under the law governing civil commitment, a person may not be involuntarily committed unless it is shown by clear and convincing evidence that he is a danger to himself or others. It is also required that involuntary commitments be reviewed every 6 months. The test applied again is clear and convincing evidence of danger to himself or others. Section 10 provides that, when a person is found not guilty by reason of insanity, the standard for his commitment and any review of that commitment during the length of the ordinary term of imprisonment for the offense with which he was charged be by the lower standard a preponderance of the evidence, rather than by clear and convincing evidence.

Section 11

Presently under the code, a person can only be found guilty of an attempt to commit a crime. The amendment in section 11 would permit a person to be found guilty of an attempt to commit a disorderly or petty disorderly persons offense.

Section 12

Under the code, the general rule is that a person may not be convicted of conspiracy to commit a crime unless the prosecution shows that an overt act in pursuance of the conspiracy occurred. No overt act is required, however, with regard to conspiracies to commit crimes of the first or second degree. The purpose of the amendment in section 12 is to include crimes defined under the Controlled Dangerous Substances Act among those exempt from the "overt act" rule.

Section 13

Section 13 contains a technical amendment providing that conspiracies to commit crimes defined outside the code are to be graded as crimes of the degree assigned to that non-code offense by Title 2C.

Section 14

Under 2C:11-3, a person committing a serious crime (i.e. robbery or arson) is guilty of murder if during the course and in furtherance of that crime a homicide occurs. This is what is commonly referred to as the "felony-murder" doctrine. The felony-murder provision is only intended to prohibit murder prosecutions in cases where the victim is a co-felon. However, including in this definition the phrase "in furtherance of" could be read to preclude prosecution for murder in certain

circumstances. For instance, when during a robbery, the shopkeeper fires at the robber but instead kills an innocent bystander, the robber might not be charged with murder because, although the killing occurred during the course of the robbery, the killing was not in furtherance of the robbery. Therefore, in order to clarify that a robber could be charged with murder under such circumstances, section 14 would delete the phrase "in furtherance of" from 2C:11-3.

Section 15

As presently defined, homicide constitutes aggravated manslaughter when an actor other than purposely or knowingly causes death under circumstances manifesting extreme indifference to human life. Besides "purposely or knowingly," the code defines two other mental states: "recklessly" and "negligently". Therefore, the present definition of aggravated manslaughter seems to cover deaths under circumstances manifesting extreme indifference to human life if the person acted either "recklessly" or "negligently". However, since the original intent was to cover only those persons acting "recklessly", the amendment in section 15 deletes the phrase "other than purposely or knowingly" and substitutes "recklessly."

Section 16

Section 16 clarifies the definition of aggravated assault in that the element of "extreme indifference to the value of human life" is only pertinent when the defendant acts recklessly.

Section 17

In an attempt to deal with the question of threats which technically do not constitute assaults, section 17 makes it a specific offense for a person to threaten to kill another under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out. This offense would constitute a crime of the third degree.

Section 18

The amendment in section 18 seeks to delete the phrase "of another" from the definition. The rationale of the amendment is that if a person sets fire to his own building, he should be charged with arson even if the fire is not set to collect insurance and poses no threat to lives or to the property of another.

Section 19

Section 19 clarifies the definition of criminal mischief under 2C:17-3. As amended, in order to secure a conviction for criminal mischief, the prosecution must show that the defendant purposefully or knowingly damaged property or that the defendant's reckless or negligent use of fire, explosives or other dangerous means resulted in damage to property.

Section 20

The proposed amendment in section 20 would delete a provision of 2C:18-2 which permits a defense to a charge of burglary if the defendant can show that the structure was abandoned and the defendant's purpose was not to commit a criminal offense

Section 21

Presently under 2C:20-7, a person is guilty of receiving stolen property if he "purposely receives or brings into this State" stolen property. The first part of the amendment contained in section 21 would change 2C:20-7 so that a person would be guilty of receiving stolen property if he "knowingly receives or brings into the State" stolen property.

The second part of the amendment in section 21 modifies one of the present statutory presumptions with regard to receiving stolen property. Presently a person is presumed to know that property is stolen if he is found in possession or control of two or more items of property stolen on two occasions. The amendment would change that presumption so that knowledge that property is stolen will be presumed if a person is found in possession or control of stolen property within 1 year of its theft.

Section 22

Section 22 modifies the definition of forgery. Presently a person is guilty of forgery if he alters or changes any writing of another without his authorization or ratification. The amendment is intended to prevent a person charged with forgery from offering to pay the person whose writing was changed to ratify the change and thus frustrate prosecution.

Section 23

Section 23 broadens the offense of falsifying records. Presently 2C:21-4a provides that a person is guilty of falsifying records if

"knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing."

The proposed amendment deletes the phrase "knowing that he has no privilege to do so" and adds the phrases "makes any false or misleading statement or entry" and "utters any writing or record knowing it contains a false statement or information."

Section 24

Under 2C:21-5, a person is guilty of issuing a bad check if payment is refused for lack of funds and the person fails to make good within 10 days after receiving notice of that refusal. The amendment in section 24 adds language indicating that such notice of refusal may be given orally or in writing in any reasonable manner by any person. This is intended to permit the person receiving the bad check as well as the bank to give notice.

Section 25

Chapter 21 deals with forgery and fraudulent practices. The penalties for some of the offenses defined in chapter 21 (misconduct by a corporate official; commercial bribery; rigging a public exhibition contest; fraud in insolvency and misapplication of entrusted property) are determined on the amount of benefit derived "by the perpetrator."

The purpose of the amendment in section 25 is to define the term "benefit derived" as used in chapter 21. The definition would allow for the aggregation of illicit gains by all members of a conspiracy to defraud for purposes of grading and for the harm or benefit which results from the crime, whichever is greater, to be considered in the grading process.

Section 26

Section 26 expands the scope of 2C:21-9 (misconduct by a corporate official) to cover the knowing or purposeful operation of a corporation for the furtherance or promotion of any criminal object.

Section 27

As presently worded, 2C:21-19 (wrongful credit practices) seems to criminalize the failure to make a false or inaccurate credit statement. The amendment in section 27 is intended to clarify that only the making of a false or inaccurate credit statement subjects a person to criminal liability.

Section 28

Section 28 raises the penalty for retaliation against a public servant for an official action from a crime of the fourth degree to a crime of the third degree.

Section 29

Section 29 raises the penalty for making a false written statement from a disorderly persons offense to a crime of the fourth degree. Section 29 also upgrades the offense of misleading a public servant from a petty disorderly persons offense to a disorderly persons offense.

Section 30

Section 30 raises the penalty for tampering with witnesses when force is involved from a crime of the third degree to a crime of the second degree. The penalty for other types of tampering not already classified as a crime of the third degree is raised from a crime of the fourth degree to a crime of the third degree.

Section 30

Section 30 raises the penalty for tampering with witnesses when force, threat, deception or bribery is involved from a crime of the third degree to a crime of the second degree. The penalty for other types of tampering is raised from a crime of the fourth degree to a crime of the third degree.

Section 31

Section 31 would include eluding a police officer as a disorderly persons offense. Eluding a police officer had been an offense under Title 2A. It is unclear whether the present wording of 2C:29-2 (resisting arrest) covers eluding. The amendment in section 31 also clarifies that 2C:29-2 is intended to cover resistance to lawful detention as well as resistance to arrest.

Section 32

2C:29-3 prohibits acts which might hinder the apprehension of a criminal or the prosecution of a criminal case. It covers acts such as the suppression or concealment of evidence, the aiding or harboring of a fugitive and the volunteering of false information. However, it is unclear from the way in which 2C:29-3 is worded whether it reaches, for example, a situation in which a person conceals evidence of a crime which he himself committed. The amendment in section 32 adds language to 2C:29-3 to clarify that 2C:29-3 is intended to cover situations where a person commits an act which hinders his own apprehension or prosecution.

Section 33

Presently, escape is graded as a crime of the third degree if the person was under arrest for a crime; if force or a deadly weapon was used or if a prison guard or other public officials facilitates the escape. All other escapes are classified as a crime of the fourth degree. The amendment in section 33 would raise the classification of escape if force or a deadly weapon is used to a crime of a second degree. All other escapes would be classified as crimes of the third degree.

Section 34

Presently any person bringing any means of escape into a detention facility is guilty of a crime of the fourth degree, except that when he brings a weapon he is guilty of a crime of the third degree. The amendment in section 35 raises these offenses to crimes of the third and second degree.

Section 35

Section 35 clarifies that 2C:29-7 (bail jumping and defaults in required appearances) is intended to cover situations where a person fails to appear after being issued a summons.

Section 36

Section 36 would add to the code the specific offense of corrupting or influencing a jury. Certain forms of jury tampering are presently proscribed by chapter 27 (bribery). The Division of Criminal Justice feels, however, that chapter 27 may not be broad enough to cover all potential forms of jury tampering. Jury tampering would be classified as a crime of the third degree.

Section 37

Section 37 would add the specific offense of contempt to the code. Contempt would be classified as a crime of the fourth degree and would cover the disobedience or obstruction of a judicial order and the obstruction of the exercise of jurisdiction by a court, administrative body or investigative entity.

Section 38

Section 38 would upgrade riot from a crime of the fourth degree to a crime of the third degree if a firearm or other weapon is involved.

Section 39

Presently, requiring an employee to submit to a lie detector test as a condition of employment is prohibited as a disorderly persons offense. The purpose of section 39 is to exempt from this prohibition law enforcement agencies and employers authorized to manufacture, distribute or dispense narcotics and other controlled dangerous substances. It is felt that employment in law enforcement agencies and the drug industry is of such a sensitive nature that the use of lie detectors should be permitted.

Section 40

Section 40 clarifies that the amount of restitution ordered for any offense is not subject to the statutory limits placed on the amount of fine which may be ordered.

Section 41

Section 41 provides that the court may impose a sentence with a mandatory minimum term of parole ineligibility for the commission of any crime regardless of its degree or inclusion in the code. At present such a term may only be imposed in connection with crimes of the first or second degree.

Section 42

In recognition of the enactment of the Parole Act of 1979, section 27 deletes unnecessary language in the code with regard to parole eligibility and revocation.

Section 43

Section 43 contains several amendments. The first amendment states that a court shall not consider a defendant's failure to plead guilty in determining whether to withhold or impose a sentence of imprisonment. Presently, the code provides that a court shall consider neither a plea of guilty or a failure to plead to determining a term of imprisonment. The purpose of the amendment is to enhance the ability of the prosecution to plea bargain.

The second amendment in section 43 clarifies that the code does set a presumption of imprisonment for crimes of the first or second degree.

The third amendment in section 43 requires that in setting a term of parole ineligibility the court shall place on the record any aggravating factors, including any aggravating factor not listed specifically in the code, which justifies the imposition of such a term. This requirement would be applicable when the term of parole ineligibility is given in connection with either an ordinary or extended term of imprisonment.

The fourth amendment sets presumptive sentences for extended terms. Presently the extended sentence for murder is between 30 years and life imprisonment. The amendment sets the presumptive sentence at life imprisonment. The extended term for crimes of the first degree is between 20 years and life imprisonment. The amendment sets the presumptive sentence at 50 years. The extended term for crimes of the second degree is between 10 and 20 years and the extended sentence for crimes of the third degree is between 5 and 10 years. The amendment sets the presumptive term for crimes of the second degree at 15 years and for crimes of the third degree at 7 years.

Section 44

Section 44 provides that the commencement of a probation revocation proceeding shall toll the probationary period until the termination of such proceedings.

Section 45

Section 45 provides that the State Treasurer rather than the Secretary of State shall maintain a list of all corporations barred from conducting business in this State because of criminal convictions.

Section 46

Presently, a person convicted of certain crimes may have the record of that crime expunged after 10 years if he has not been convicted of another crime or adjudged a disorderly or petty disorderly person on more than two occasions. A person convicted of a disorderly or petty disorderly persons offense may have his record expunged if after 5 years he has not been convicted of a crime or adjudged a disorderly or petty disorderly person on more than two occasions. Thus, with regard to subsequent convictions for nonindictable offenses, a person seeking expungement of a disorderly or petty disorderly persons conviction is in the same position as a person seeking expungement of an indictable conviction. Considering the relative seriousness of a conviction for an indictable offense as compared to a disorderly or petty disorderly persons offense, it is felt that this creates an unfair situation. Therefore, section 46 would allow a person convicted of a disorderly or petty disorderly persons offense to have that conviction expunged if after 5 years he has not been convicted of a crime or adjudged a disorderly or petty disorderly persons offense on more than three occasions.

Section 47

Section 47 would clarify that a juvenile against whom a charge of delinquency did not result in an adjudication of delinquency may have the record of that charge expunged under the same conditions as an adult whose arrest did not result in a conviction.

Section 48

Presently, any person whose record has been expunged does not have to reveal that information to a prospective employer except if he is seeking employment within the judicial branch or with a law enforcement agency. Section 47 would add corrections agencies to those prospective employers to whom expunged records must be divulged.

Section 49

Presently, 2C:64-1 provides that the defendant's interest in prima facie contraband (i.e. controlled dangerous substances) is subject to forfeiture. The amendment makes clear that "any" interest in prima facie contraband may be forfeited. This is intended to cover the situation where no criminal action is pending and there is no defendant. However, prima facie contraband which is rightfully owned and traceable (for example, controlled dangerous substances owned by a pharmacist which is found in the hands of a thief) will not be forfeited because disposition of prima facie contraband is subject to the rights of lawful owner. Further, the amendment makes clear that contraband may be held as evidence pending a criminal prosecution and that seizure with process is necessary only when a criminal proceeding has not been instituted.

The amendment in section 49 also deletes some unnecessary language in 2C:64-1 dealing with exceptions to forfeiture which are more properly set forth in 2C:64-5.

Section 50

Section 50 deletes the requirement that a forfeiture action be instituted against prima facie contraband where no conviction is obtained. Due to the nature of prima facie contraband it should be automatically forfeited subject only to the rights of owners and other innocent interest holders.

Section 51

Section 51 extends the period for institution of a forfeiture action from 30 to 90 days since experience has proven that the 30-day period does not permit the State enough time to determine if, in fact, action should be brought. Further, it makes clear that the forfeiture action should be brought by the State, which term is intended to include actions brought by the State or county authorities. Also, it deletes the unnecessary requirement that a notice of intention to forfeit be filed upon the

filing of an indictment because all interested parties must receive notice pursuant to other portions of the same section of the statute.

Section 52

Section 52 makes clear that following an acquittal, the State may bring a separate forfeiture proceeding in any case involving seized property. Also, the automatic feature regarding prima facie contraband is deleted since it is provided for in the amendments to section 50 of this bill.

Section 53

Section 53 while preserving the right of an innocent owner, makes clear that a person who loans his property to another and who knowingly permits it to be used in violation of this chapter will suffer forfeiture. Further, it makes clear that the exception to forfeiture is available to a secured party who has a perfected security interest in property and to a lessor. The distinction between a lease situation and a loan situation is justifiable since loaning is often a method of avoiding forfeiture.

Section 54

Section 54 makes clear that stolen property may be returned to its rightful owner without the necessity of a 10-day waiting period or court proceeding where proof of ownership is not in dispute.

Section 55

Section 55 repeals the existing statute, replaced by section 40 of this bill, that prohibits an employer from requiring an employee to submit to a lie detector test.

Section 56

Section 56 provides that the bill will take effect immediately.

SENATE AMENDMENTS TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1537

STATE OF NEW JERSEY

ADOPTED JANUARY 29, 1981

Amend page 31, section 41, line 2, after "Terms", insert "; Mandatory Terms".

Amend page 32, section 41, line 20, after "subsection a.", insert ", or one-half of the term set pursuant to a maximum period of incarceration for a crime set forth in any statute other than this code."

Amend page 32, section 41, after line 23, insert new subsections c. and d. as follows:

"c. A person who has been convicted under 2C:39-4a. or of a crime under any of the following sections: 2C:11-3; 2C:11-4; 2C:12-1b.; 2C:13-1; 2C:14-2a.; 2C:14-3a.; 2C:15-1; 2C:18-2; 2C:29-5 who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in 2C:39-1f., shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or 3 years, whichever is greater, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole. The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to 2C:44-1f.(1) except in cases of crimes of the fourth degree. A person who has been convicted of an offense enumerated by this subsection and who used or possessed a firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of a firearm as defined in 2C:44-3d., shall be sentenced by the court to an extended term as authorized by 2C:43-7c., notwithstanding that extended terms are ordinarily discretionary with the court.

d. The court shall not impose a mandatory sentence pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the ground

therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a firearm. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.”

STATEMENT

The purpose of these amendments is to conform Senate Bill No. 1537 with the provisions of Senate Bill No. 3057 which established a mandatory parole ineligibility term as part of the sentence on anyone who commits certain crimes while in possession of a firearm.

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EXPLAN

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

SENATE ~~ASSEMBLY~~, No. 1537

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: APRIL 27, 1981

The Assembly committee amendments propose a series of changes and clarifications to Title 2C, the Code of Criminal Justice. A description of the substantive amendments of the various sections follows:

Section 11. Section 11 would have permitted a person to be guilty of a disorderly or petty disorderly persons offense. The amendment of this section restores this section to the present law.

Section 12. This amendment holds the language that "distribution and possession with intent to distribute a controlled dangerous substance" is required for a person to be convicted of conspiracy where there has been no overt act.

Section 17. This amendment adds language that it is a specific offense to threaten to kill another if done "with purpose to put him in imminent fear of death."

Section 18. This amendment restores the phrase "of another" which, if deleted as proposed, may have given this section too broad a meaning with regard to lawful demolition.

Section 21. By this amendment, this section remains as is presently the law leaving the current presumption of guilt the same.

Section 23. This amendment deletes the language "or makes any false or misleading statement or entry in."

Section 24. This amendment provides that the degree of the crime for passing bad checks would now be determined by the amount of the check passed.

Section 25. This amendment clarifies the present language dealing with the sale of kosher foods.

Section 32. The purpose of this amendment is to clarify the type acts constituting hindering a person's own apprehension or prosecution.

Section 39. The amendment deletes law enforcement agencies as an employer who may require the lie detector test as a condition of employment.

Section 43. The amendments of subsection c. would restore consideration of a plea of guilty to the language of the present law; subsection

f. deletes the use of aggravating factors beyond those specified by the code.

Section 44. This section tolls the probation period during a probation revocation proceeding. The amendment adds language that in the event that the court does not find a violation of probation, the probationary period would not toll.

Section 50. This amendment would not permit the destruction of large quantities of controlled dangerous substances. Although this would promote closer control and management of such substances, its potential value as evidence in certain cases may be vital.

Section 54. The amendment replaces the proposed section with almost identical language of a bill previously released by the committee concerning the returning of stolen property.

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ASSEMBLY COMMITTEE AMENDMENTS TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1537

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED APRIL 27, 1981

Amend page 5, section 4, lines 33-34, omit "a nondictable", insert "an indictable".

Amend pages 11-12, section 11, lines 1-48, omit in their entirety, renumber sections "12" through "27", as "11" through "26".

Amend page 13, section 12, lines 27-28, omit "a crime", insert "distribution and possession with intent to distribute a controlled dangerous substance as".

Amend page 17, section 17, line 9, after "another", insert "with purpose to put him in imminent fear of death".

Amend page 17, section 18, line 9, after "[of another]", insert "of another".

Amend page 17, section 18, line 19, after "[of another]", insert "of another".

Amend page 19, section 21, lines 12-13, omit "stolen property within 1 year of it's theft", insert "two or more items of property stolen on two or more separate occasions".

Amend page 20, section 23, lines 5-6, omit "or makes any false or misleading statement or entry in".

Amend page 21, section 24, line 4, omit "a disorderly persons offense", insert "an offense as provided for in subsection c. of this section".

Amend page 21, section 24, line 13, after "refusal", insert "or after notice has been sent to the issuer's last known address".

Amend page 21, section 24, after line 15, insert new subsection as follows:

"c. An offense under this section is:

(1) a crime of the second degree if the check or money order is \$75,000.00 or more;

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

(2) a crime of the third degree if the check or money order is \$1,000.00 or more but is less than \$75,000.00;

(3) a crime of the fourth degree if the check or money order is \$200.00 or more but is less than \$1,000.00;

(4) a disorderly persons offense if the check or money order is less than \$200.00."

Amend page 21, section 25, after line 15, insert new sections 24A and 24B as follows:

"24A. N. J. S. 2C:21-7 is amended to read as follows:

2C:21-7. Deceptive Business Practices. A person commits an offense if in the course of business he:

a. Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

b. Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

c. Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

d. Sells, offers or exposes for sale adulterated or mislabeled commodities;

e. Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services;

f. [Sells, offers or exposes for sale in any restaurant, hotel or other place where food products are sold, any article of food which is falsely represented to be kosher, either:

(1) By direct statements, orally or in writing which are untrue, deceptive or misleading; or

(2) By the display of the word "kosher" in English or Hebrew letters, or by the display of any sign or mark in simulation of that word; or

(3) By having or permitting to be inscribed on any food product, or on any package or container or its contents, the word "kosher" in any language; or

(4) By display of any insignia, 6-pointed star, or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food exposed for sale or sold is kosher, or prepared in accordance with Orthodox Hebrew religious requirements.

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(1) Any meat or meat preparation, whether the same be raw or prepared for human consumption, and falsely represent the same to be kosher, or as having been prepared under and of a product or products sanctioned by the Orthodox Hebrew religious requirements; or

(2) In the same place of business, both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless he shall indicate on his window signs and all display advertising, in block letters at least 4 inches in height, "kosher and nonkosher meat sold here"; or

(3) In any show window or place of business both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, unless he shall display over each kind of meat or meat preparation so exposed a sign in block letters at least 4 inches in height, reading "kosher" or "nonkosher", as the case may be.] Deleted by Amendment

h. Makes a false or misleading written statement for the purpose of obtaining property or credit; or

i. Makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

The offense is a crime of the fourth degree if subsection h. or i. is violated. Otherwise it is a disorderly persons offense.

It is an affirmative defense to prosecution under this section if the defendant proves by a preponderance of the evidence that his conduct was not knowingly or recklessly deceptive.

"Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. "Mislabelled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage."

"24B. (New section) a. A person commits a disorderly persons offense if in the course of business he:

(1) Sells or exposes for sale any meat or meat preparations, article of food or food products, and falsely represents the same to be kosher or kosher for Passover, whether such meat or meat preparations, article of food or food products, be raw or prepared for human consumption, or as having been prepared under, or from a product or products sanctioned by, the Orthodox Hebrew religious requirements, or falsely represents any food products or the contents of any package or container to be so constituted and prepared, by having or permitting to

be inscribed thereon the word "kosher" or "kosher-style" in any language; or

(2) Sells or exposes for sale a non-kosher meat or meat preparation, or food or food product, which is labeled or advertised with the words "Jewish" or "Hebrew", either alone or in conjunction with the words "style" or "type" or any similar expression, unless the word "non-kosher" is displayed in English letters, of at least the same size as the words "Jewish" or "Hebrew", either alone or in conjunction with the words "style" or "type" or any similar expression; or

(3) Sells or exposes for sale in the same place of business both kosher and non-kosher food or food products, either raw or prepared for human consumption, and fails to indicate on his window signs and all display advertising, in block letters at least 4 inches in height, "kosher and non-kosher meat sold here" or "kosher and non-kosher meat sold here" or "kosher and non-kosher food sold here";

(4) Exposes for sale in any show window or place of business both kosher and non-kosher meat or meat preparations, or kosher and non-kosher food or food products, either raw or prepared for human consumption, and fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least 4 inches in height reading "kosher meat", or "non-kosher meat", as the case may be, or displays on his window, door, or in his place of business, or in hand-bills or other printed matters distributed in or outside of his place of business; words or letters in Hebraic characters other than the word "kosher," or any sign, emblem, insignia, six-pointed star, symbol, or mark in simulation of same, without displaying in conjunction therewith in English letters of at least the same size as such characters, signs, emblems, insignia, symbols, or marks, the words "we sell kosher meat and food only," or "we sell non-kosher meat and food only," or "we sell both kosher and non-kosher meat and food," as the case may be; or

(5) Exposes for sale at retail fresh meat or poultry as kosher without indicating on the label when packaged or by a sign when not packaged, the words "soaked and salted" as the case may be, in letter at least as large as the letters of the words on the label or sign designating such meat and poultry as kosher.

Possession of non-kosher meat and food in any place of business advertising the sale of kosher meat and food only is presumptive evidence that the person in possession exposes the same for sale in violation of the provisions of this section.

As used in this section, fresh meat and poultry means meat that has not been processed except for salting and soaking.

b. A person commits a disorderly persons offense if he, in any hotel, restaurant, or other place where food products are sold for consumption on or off the premises:

(1) Sells or exposes for sale any meat or meat preparation, article of food or food products, and falsely represents the same to be kosher or kosher for Passover, whether such meat or meat preparations, article of food or food products be raw or prepared for human consumption, or as having been prepared under, and of a product or products sanctioned by, the Orthodox Hebrew religious requirements, either by direct statement orally, or in writing, which might reasonably be calculated to deceive or lead a reasonable man to believe that a representation is being made that such food is kosher or prepared in accordance with the Orthodox Hebrew religious requirements, or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" or "kosher-style" in any language;

(2) Sells or exposes for sale a non-kosher meat or meat preparation, or food or food product, which is labeled or advertised with the words "Jewish" or "Hebrew," either alone or in conjunction with the words "style" or "type" or any similar expression, unless the word "non-kosher" is displayed in English letters, of at least the same size as the words "Jewish" or "Hebrew," either alone or in conjunction with the words "style" or "type" or any similar expression; or

(3) Sells or exposes for sale in the same place of business both kosher and non-kosher meat or meat preparations, or both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, and fails to indicate on his window signs and all display advertising, in block letters at least 4 inches in height, "kosher and non-kosher food sold here"; or

(4) Exposes for sale in any show window or place of business both kosher and non-kosher food or food products, either raw or prepared for human consumption, and fails to display over each kind of food or food preparation so exposed "kosher food" or "non-kosher food," as the case may be; or

(5) Displays on his window, door, or in his place of business, or in handbills or other printed matter distributed in or outside of his place of business, words or letters in Hebraic characters other than the word "kosher" or any sign, emblem, insignia, six-pointed star, symbol, or mark in simulation of same, without displaying in conjunction therewith in English letters of at least the same size as such characters, signs, emblems, insignia, symbols or marks the words "we sell kosher food

only," or "we sell non-kosher food only," or "we sell both kosher and non-kosher food" as the case may be.

c. A person commits a disorderly persons offense if he:

(1) Marks, stamps, tags, labels, or in any other way or by any other means of identification, represents or causes to be marked, stamped, tagged, branded, labeled, or represented as kosher or kosher style or as having been prepared in accordance with the Hebrew Orthodox religious requirements food or foods products not kosher or not so prepared, or

(2) Removes, defaces, obliterates, covers, alters, or destroys or causes to be removed, defaced, obliterated, covered, altered or destroyed the original means of identification affixed to foods or food products to indicate that such food or food products are kosher or have been prepared in accordance with the Hebrew Orthodox religious requirements, or

(3) Sells, disposes of or has in his possession, for the purpose of resale to any person as kosher, and food or food products not having affixed thereto the original slaughter house plumba or any other mark, stamp, tag, brand, label or other means of identification employed to indicate that such food or food products to which such plumba, mark, stamp, tag, brand, label or other means of identification has or have been fraudently affixed.

d. (1) All articles of food or food products, both liquid and solid, sold as kosher or kosher for Passover in any container shall have a kosher or kosher for Passover identification securely affixed on the outside of such container only by the manufacturer, or packer at his premises. No person other than such manufacturer or packer shall possess or affix such marks of identification.

(2) All articles of food or food products, which are not packaged in a container and are sold as kosher or kosher for Passover shall have a kosher or kosher for Passover identification securely affixed thereto by the manufacturer at his premises. No person other than such manufacturer or packer shall possess or affix such marks of identification.

For the purposes of this section the term "food commodity in package form" shall be construed to mean a food commodity put up or packaged in any manner in advance of sale in units suitable for retail sale and which is not intended for consumption at point of manufacture.

Any person who violates this section is guilty of a disorderly persons offense."

Amend page 24, section 28, lines 1-5, omit in their entirety, renumber sections "29" through "56", as "27" through "54".

Amend page 27, section 32, line 36, omit "witness, informant,".

Amend page 27, section 32, lines 40-41, after "force", omit ",", insert "or"; after "intimidation", omit "or deception."

Amend page 27, section 32, after line 43, insert new subsection (3) as follows:

"(3) Prevents or obstructs 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; or".

Amend page 27, section 32, line 44, omit "(3)", insert "(4)".

Amend page 30, section 39, line 9, omit "a law enforcement agency or is".

Amend page 35, section 43, lines 70-72, omit in entirety, insert "A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment."

Amend page 36, section 43, lines 109-110, omit ", or other aggravating factors not included in this section,".

Amend page 36, section 43, lines 125-126, omit ", or other aggravating factors not included in this section,".

Amend page 37, section 44, line 28, after "proceedings," insert "In the event that the court does not find a violation of probation, this subsection shall not operate to toll the probationary period."

Amend page 41, section 50, line 5, omit "except that in a case".

Amend page 41, section 50, lines 6-8, omit.

Amend page 41, section 50, line 9, omit "agency with notice to the defendant".

Amend page 43, section 53, line 3, omit "a."

Amend page 44, section 53, line 13, omit "Property seized under this chapter shall not".

Amend page 44, section 53, lines 14-18, omit.

Amend page 44, section 53, line 19, omit "b."

Amend page 45, section 54, lines 24-33, omit, insert new paragraph as follows:

"Nothing in this section shall prohibit a law enforcement agency from immediately returning property to its rightful owner where the agency is satisfied that there is no colorable dispute as to ownership; provided, however, that where the law enforcement agency has reason to believe that there is a dispute concerning ownership of property, or if the person from whom custody of the property was taken shall claim ownership, or if any other person shall claim ownership, the property shall not be released to any person claiming it until a hearing has been held pursuant to subsection c."

ASSEMBLY AMENDMENTS TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1537

[ASSEMBLY REPRINT]
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED MAY 14, 1981

Amend pages 1-2, section 1, lines 1-52, omit in entirety.

Amend pages 2-51, renumber as sections "1", through "53".

Amend page 13, section 11, line 27, after "crime", insert "a crime".

Amend page 13, section 11, lines 27-28, omit "distribution and possession with intent to distribute a controlled dangerous substance as".

Amend page 13, section 11, line 29, omit "a crime", insert "distribution and possession with intent to distribute a controlled dangerous substance as".

STATEMENT

The first section was deleted at the request of the Attorney General's office. This section dealt with the Appellate Court's authority to hear and decide issues raised by the State on appeal.

The second section which was amended was a technical amendment.

ASSEMBLY AMENDMENTS TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1537

[SECOND ASSEMBLY REPRINT]
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED JUNE 8, 1981

Amend page 5, section 3, line 34, omit "an indictable", insert "a non-indictable".

Amend page 13, section 10, line 30, omit "and", insert "or".

Amend page 29, section 25, after line 10, insert:

"For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties to the transaction, any loan or forbearance with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation any rate not in excess of 50% per annum shall be a rate authorized or permitted by law."

STATEMENT

The first two amendments make technical corrections.

The third amendment conforms the section in this bill on criminal usury to the amendment made to that section of the law by P. L. 1981, c. 104.

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

SEPTEMBER 24, 1981

DAVE DE MAIO

Acting Governor Joseph P. Merlino today signed into law S-1537, the Omnibus Amendments to the Penal Code sponsored by Senator Steven P. Perskie (D-Atlantic), at a ceremony in Atlantic City.

The bill was designed as a supplemental, and in some cases corrective, addition to the State's existing Penal Code, enacted in September of 1979. The Amendments strengthen some provisions, including increasing punishments, weaken other provisions, and make technical changes in still other areas.

A list of the 28 major provisions of the Omnibus Amendments follows:

-- Changes the existing law, allowing police officers to use "deadly force" if necessary when arresting burglars of occupied dwellings, to allow the use of deadly force, if necessary, in subduing burglars of unoccupied dwellings. Also, the peace officer is under the constraint to use deadly force only where his own life is threatened, or where he believes there is no substantial risk to innocent bystanders.

-- Immunizes the officer mentioned above against prosecutions for negligence if the officer followed the existing required steps in making his judgment to use deadly force.

-- Mandates that the proof in a defense involving claims of mental incompetency or deficiency be by a "preponderance of evidence," and that the burden of proof in such claims falls on the defendant.

-- For persons found not guilty by reason of insanity and committed to mental institutions, justification for their continuing institutionalization must be by a showing of either a danger to themselves or to others, and must be by the "preponderance of the evidence."

-- Proof of "conspiracies to distribute" narcotics are no longer dependent on an overt act of evidence. Current law requires proof of an overt act of conspiracy for all but first and second degree crimes.

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-- Conspiracy to commit a crime, or an attempted crime, will be the same degree offense as the actual crime.

-- Clarifies the felony murder statutes to permit charging a person with murder if a death occurs "during the course" of certain crimes. For example, if a storeowner, during the course of a robbery, kills an innocent bystanding customer, the robber can be charged with the murder.

-- Makes a death threat -- delivered with the purpose of putting someone in imminent fear of their life -- a crime of the third degree if the victim has sufficient reason to believe the threat will be carried out.

-- Eliminates the provision limiting arson to only "occupied" buildings, opening prosecutions for arson for the torching of any building.

-- Eliminates the defense that burglary is not criminal where the premises entered is abandoned property.

-- Strengthens the existing law against "purposely" receiving stolen property to include "knowingly" receiving stolen goods. In addition, the law will presume a person "knowingly" accepted stolen goods if that person possesses two or more items stolen on two or more separate occasions.

-- Requires that forgeries are only defensible where a written or spoken authorization from the person was given, eliminating the popular defense that a tacit, unspoken approval was given.

-- Increases the punishment for issuing bad checks to correspond to the amount of money involved: Over \$75,000 is a second degree crime; \$1,000 to \$75,000, a third degree crime; \$200 to \$1,000, fourth degree; and under \$200, a disorderly persons offense. Under current law, passing bad checks in any amount is a disorderly persons offense.

-- Clarifies deceptive business practices involving the sale of kosher food. Misrepresenting food as "kosher," labeling food as "Jewish" or "Hebrew" without the word "non-kosher," failure to advertise kosher meat without a sign stating "soaked and salted," or failure to inform the public if kosher and non-kosher food is sold on the same premises are disorderly persons offenses. The statute applies to hotels, restaurants and other places where food is sold.

-- Eliminates the requirement that misconduct by a corporate official is punishable only if the official is an officer of a stock corporation. Under the new law, an official of any corporation is subject to punishment for misconduct.

-- Revises the usury amounts to criminalize loans to individuals with interest exceeding 30-percent and corporations exceeding 50-percent. Current law sets usury ceilings at 50-percent interest.

-- Increases from a disorderly persons offense to a fourth degree crime the act of making a written false statement on a form explicitly stating that such false statements are punishable. A false written statement with the purpose of misleading a public servant is increased to a disorderly persons offense from a petty disorderly persons offense.

-- Increases from a third to a second degree offense any act using force to try to tamper with a witness' testimony.

-- Creates a new disorderly persons offense for any driver who knowingly ignores a police officer's direction to stop his vehicle, or who attempts to elude the officer after receiving a signal to stop.

-- Establishes a new crime for any person who attempts to hinder his own apprehension, prosecution or conviction by concealing evidence, intimidating witnesses or by giving false information to a police officer. The offense is graded one degree below the nature of the crime. For example, hindering the prosecution of a second degree crime would be a third degree offense.

-- Increases the penalties for inmate escape attempts and weapons smuggling. Any prison escape attempt where force is used is raised from a third to a second degree crime. Bringing a weapon or tool into a correctional facility for the purpose of escape is also raised from a third to a second degree crime.

-- Establishes as a second degree crime the act of attempting to corrupt or influence a jury.

-- Codifies "contempt of court" holdings as a fourth degree offense.

-- Makes rioting while in possession of a weapon a crime of the third degree. Otherwise, as under current law, rioting is a fourth degree crime.

-- Lengthens presumptive sentences (minimum terms) for murderers, persistent offenders and professional criminals as follows:

Murder, now carrying a sentence of 30 years to life, would have a presumptive sentence of life imprisonment;

First degree crimes, now 20 years to life, would have a presumptive sentence of 50 years in prison;

Second degree crimes, now 10 to 20 years, would have a presumptive sentence of 15 years imprisonment; and

Third degree crimes, now 5 to 10 years, would have a presumptive sentence of 7 years imprisonment.

Presumptive sentences in each of these categories could be overlooked in the event of mitigating circumstances.

Also, the same amendment prohibits a court from considering whether the accused pleaded "guilty" or "not guilty" when considering his or her sentence.

-- Clarifies that stolen property need not be held for a 10-day waiting period or court proceeding where the ownership of the property is not in dispute. The original provision of the Penal Code had been mininterpreted, and police departments were consequently holding all stolen property regardless of whether there was a dispute as to its ownership.

-- Allows for expunging disorderly persons offenses from individuals' records after 5 years if no more than three similar offenses occurred during that period. Current law allows for only two other offenses. The amendments also provide for the erasing of a delinquency charge which has been dismissed, but allows for information on expunged records to be used if a person is seeking employment with the judicial branch of government or with a law enforcement or correctional agency.

-- Tightens the restrictions on the use of lie detector tests as a condition of employment. Under the new amendments only manufacturers or distributors of narcotics or controlled dangerous substances can require the taking of a lie detector test as a condition of employment.

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