

" 2C:20-2

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(Eluding police--increase penalties)

NJSA: 2C:20-2

LAWS OF: 1993 **CHAPTER:** 219

BILL NO: S1205

SPONSOR(S) Girgenti

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SENATE: Judiciary

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COMMITTEE STATEMENT: **ASSEMBLY:** Yes

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See newspaper clippings--attached.

KBG:pp

[FIRST REPRINT]

SENATE, No. 1205

STATE OF NEW JERSEY

INTRODUCED OCTOBER 8, 1992

By Senators GIRGENTI and Gormley

- 1 AN ACT concerning the penalties for certain motor vehicle
2 related criminal offenses and amending N.J.S.2C:1-14,
3 N.J.S.2C:12-1, N.J.S.2C:20-2, N.J.S.2C:29-2¹, N.J.S.2C:43-6¹
4 and P.L.1991, c.83.
5
6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*
8 1. N.J.S.2C:1-14 is amended to read as follows:
9 2C:1-14. In this code, unless a different meaning plainly is
10 required:
11 a. "Statute" includes the Constitution and a local law or
12 ordinance of a political subdivision of the State;
13 b. "Act" or "action" means a bodily movement whether
14 voluntary or involuntary;
15 c. "Omission" means a failure to act;
16 d. "Conduct" means an action or omission and its
17 accompanying state of mind, or, where relevant, a series of acts
18 and omissions;
19 e. "Actor" includes, where relevant, a person guilty of an
20 omission;
21 f. "Acted" includes, where relevant, "omitted to act";
22 g. "Person," "he," and "actor" include any natural person and,
23 where relevant, a corporation or an unincorporated association;
24 h. "Element of an offense" means (1) such conduct or (2) such
25 attendant circumstances or (3) such a result of conduct as
26 (a) Is included in the description of the forbidden conduct in
27 the definition of the offense;
28 (b) Establishes the required kind of culpability;
29 (c) Negatives an excuse or justification for such conduct;
30 (d) Negatives a defense under the statute of limitations; or
31 (e) Establishes jurisdiction or venue;
32 i. "Material element of an offense" means an element that
33 does not relate exclusively to the statute of limitations,
34 jurisdiction, venue or to any other matter similarly unconnected
35 with (1) the harm or evil, incident to conduct, sought to be
36 prevented by the law defining the offense, or (2) the existence of
37 a justification or excuse for such conduct;
38 j. "Reasonably believes" or "reasonable belief" designates a
39 belief the holding of which does not make the actor reckless or
40 criminally negligent;
41 k. "Offense" means a crime, a disorderly persons offense or a
42 petty disorderly persons offense unless a particular section in this

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted May 6, 1993.

1 code is intended to apply to less than all three;

2 l. (Deleted by amendment, P.L.1991, c.91).

3 m. "Amount involved," "benefit," and other terms of value.
4 Where it is necessary in this act to determine value, for purposes
5 of fixing the degree of an offense, that value shall be the fair
6 market value at the time and place of the operative act.

7 n. "Motor vehicle" shall have the meaning provided in
8 R.S.39:1-1.

9 o. "Unlawful taking of a motor vehicle" means conduct
10 prohibited under N.J.S.2C:20-10 when the means of conveyance
11 taken, operated or controlled is a motor vehicle.

12 (cf: P.L.1991, c.91, s.142)

13 2. N.J.S.2C:12-1 is amended to read as follows:

14 2C:12-1. Assault. a. Simple assault. A person is guilty of
15 assault if he:

16 (1) Attempts to cause or purposely, knowingly or recklessly
17 causes bodily injury to another; or

18 (2) Negligently causes bodily injury to another with a deadly
19 weapon; or

20 (3) Attempts by physical menace to put another in fear of
21 imminent serious bodily injury.

22 Simple assault is a disorderly persons offense unless committed
23 in a fight or scuffle entered into by mutual consent, in which case
24 it is a petty disorderly persons offense.

25 b. Aggravated assault. A person is guilty of aggravated
26 assault if he:

27 (1) Attempts to cause serious bodily injury to another, or
28 causes such injury purposely or knowingly or under circumstances
29 manifesting extreme indifference to the value of human life
30 recklessly causes such injury; or

31 (2) Attempts to cause or purposely or knowingly causes bodily
32 injury to another with a deadly weapon; or

33 (3) Recklessly causes bodily injury to another with a deadly
34 weapon; or

35 (4) Knowingly under circumstances manifesting extreme
36 indifference to the value of human life points a firearm, as
37 defined in section 2C:39-1f., at or in the direction of another,
38 whether or not the actor believes it to be loaded; or

39 (5) Commits a simple assault as defined in subsection a. (1) and
40 (2) of this section upon:

41 (a) Any law enforcement officer acting in the performance of
42 his duties while in uniform or exhibiting evidence of his authority;
43 or

44 (b) Any paid or volunteer fireman acting in the performance of
45 his duties while in uniform or otherwise clearly identifiable as
46 being engaged in the performance of the duties of a fireman; or

47 (c) Any person engaged in emergency first-aid or medical
48 services acting in the performance of his duties while in uniform
49 or otherwise clearly identifiable as being engaged in the
50 performance of emergency first-aid or medical services; or

51 (d) Any school board member or school administrator, teacher
52 or other employee of a school board while clearly identifiable as
53 being engaged in the performance of his duties or because of his
54 status as a member or employee of a school board; or

1 (6) Causes [serious] bodily injury to another person while
2 fleeing or attempting to elude a law enforcement officer in
3 violation of subsection b. of N.J.S.2C:29-2 or while operating a
4 motor vehicle in violation of subsection c. of N.J.S.2C:20-10.
5 Notwithstanding any other provision of law to the contrary, a
6 person shall be strictly liable for a violation of this subsection
7 upon proof of a violation of subsection b. of N.J.S.2C:29-2 or
8 while operating a motor vehicle in violation of subsection c. of
9 N.J.S.2C:20-10 which resulted in [serious] bodily injury to another
10 person[; or

11 (7) Causes bodily injury to another person while fleeing or
12 attempting to elude a law enforcement officer in violation of
13 subsection b. of N.J.S.2C:29-2. Notwithstanding any other
14 provision of law to the contrary, a person shall be strictly liable
15 for a violation of this subsection upon proof of a violation of
16 subsection b. of N.J.S.2C:29-2 which resulted in bodily injury to
17 another person].

18 Aggravated assault under subsection b. (1) and b. (6) is a crime
19 of the second degree; under subsection b. (2) [and b. (7)] is a
20 crime of the third degree; under subsection b. (3) and b. (4) is a
21 crime of the fourth degree; and under subsection b. (5) is a crime
22 of the third degree if the victim suffers bodily injury, otherwise
23 it is a crime of the fourth degree.

24 c. A person is guilty of assault by auto or vessel when the
25 person drives a vehicle or vessel recklessly and causes either
26 serious bodily injury or bodily injury to another. Assault by auto
27 or vessel is a crime of the fourth degree if serious bodily injury
28 results and is a disorderly persons offense if bodily injury results.

29 As used in this section, "[auto or] vessel" means [all] a means
30 of conveyance for travel on water and propelled otherwise than
31 by muscular power.

32 d. A person who is employed by a facility as defined in section
33 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault
34 as defined in paragraph (1) or (2) of subsection a. of this section
35 upon an institutionalized elderly person as defined in section 2 of
36 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth
37 degree.

38 e. A person who commits a simple assault as defined in
39 subsection a. of this section is guilty of a crime of the fourth
40 degree if the person acted, at least in part, with ill will, hatred or
41 bias toward, and with a purpose to intimidate, an individual or
42 group of individuals because of race, color, religion, sexual
43 orientation, or ethnicity.

44 (cf: P.L.1991, c.341, s.2)

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

46 2C:20-2. Consolidation of Theft Offenses; Grading;
47 Provisions Applicable to Theft Generally. a. Consolidation of
48 Theft Offenses. Conduct denominated theft in this chapter
49 constitutes a single offense, but each episode or transaction may
50 be the subject of a separate prosecution and conviction. A
51 charge of theft may be supported by evidence that it was
52 committed in any manner that would be theft under this chapter,
53 notwithstanding the specification of a different manner in the
54 indictment or accusation, subject only to the power of the court

1 to ensure fair trial by granting a bill of particulars, discovery, a
2 continuance, or other appropriate relief where the conduct of the
3 defense would be prejudiced by lack of fair notice or by surprise.

4 b. Grading of theft offenses.

5 (1) Theft constitutes a crime of the second degree if:

6 (a) The amount involved is \$75,000.00 or more;

7 (b) The property is taken by extortion; or

8 (c) The property stolen is a controlled dangerous substance or
9 controlled substance analog as defined in N.J.S.2C:35-2 and the
10 quantity is in excess of one kilogram.

11 (2) Theft constitutes a crime of the third degree if:

12 (a) The amount involved exceeds \$500.00 but is less than
13 \$75,000.00;

14 (b) The property stolen is a firearm, [automobile,] motor
15 vehicle, vessel, boat, horse or airplane;

16 (c) The property stolen is a controlled dangerous substance or
17 controlled substance analog as defined in N.J.S.2C:35-2 and the
18 amount involved is less than \$75,000.00 or is undetermined and
19 the quantity is one kilogram or less;

20 (d) It is from the person of the victim;

21 (e) It is in breach of an obligation by a person in his capacity
22 as a fiduciary;

23 (f) It is by threat not amounting to extortion; or

24 (g) It is of a public record, writing or instrument kept, filed or
25 deposited according to law with or in the keeping of any public
26 office or public servant.

27 (3) Theft constitutes a crime of the fourth degree if the
28 amount involved is at least \$200.00 but does not exceed \$500.00.
29 If the amount involved was less than \$200.00 the offense
30 constitutes a disorderly persons offense.

31 (4) The amount involved in a theft shall be determined by the
32 trier of fact. The amount shall include, but shall not be limited
33 to, the amount of any State tax avoided, evaded or otherwise
34 unpaid, improperly retained or disposed of. Amounts involved in
35 thefts committed pursuant to one scheme or course of conduct,
36 whether from the same person or several persons, may be
37 aggregated in determining the grade of the offense.

38 c. Claim of right. It is an affirmative defense to prosecution
39 for theft that the actor:

40 (1) Was unaware that the property or service was that of
41 another;

42 (2) Acted under an honest claim of right to the property or
43 service involved or that he had a right to acquire or dispose of it
44 as he did; or

45 (3) Took property exposed for sale, intending to purchase and
46 pay for it promptly, or reasonably believing that the owner, if
47 present, would have consented.

48 d. Theft from spouse. It is no defense that theft was from the
49 actor's spouse, except that misappropriation of household and
50 personal effects, or other property normally accessible to both
51 spouses, is theft only if it occurs after the parties have ceased
52 living together.

53 (cf: P.L.1987, c.106, s.5)

54 4. Section 1 of P.L.1991, c.83(C.2C:20-2.1) is amended to read

1 as follows:

2 1. a. In addition to any other disposition authorized by law, a
3 person convicted under the provisions of [N.J.S.2C:20-2] this
4 chapter of theft or unlawful taking of [an automobile] a motor
5 vehicle shall be subject:

6 (1) For the first offense, to a penalty of \$500.00 and to the
7 suspension or postponement of the person's license to operate a
8 motor vehicle over the highways of this State for a period of one
9 year.

10 (2) For a second offense, to a penalty of \$750.00 and to the
11 suspension or postponement of the person's license to operate a
12 motor vehicle over the highways of this State for a period of two
13 years.

14 (3) For a third or subsequent offense, to a penalty of
15 \$1,000.00, and to the suspension or postponement of the person's
16 license to operate a motor vehicle over the highways of this State
17 for 10 years.

18 b. The suspension or postponement of the person's license to
19 operate a motor vehicle pursuant to subsection a. of this section
20 shall commence on the day the sentence is imposed. In the case
21 of any person who at the time of the imposition of sentence is
22 less than 17 years of age, the period of the suspension of driving
23 privileges authorized herein, including a suspension of the
24 privilege of operating a motorized bicycle, shall commence on
25 the day the sentence is imposed and shall run for a period as fixed
26 by the court of one year for a first offense, two years for a
27 second offense or 10 years for a third offense calculated from the
28 day after the day the person reaches the age of 17 years. If the
29 driving privilege of any person is under revocation, suspension, or
30 postponement for a violation of any provision of this Title or
31 Title 39 of the Revised Statutes at the time of any conviction or
32 adjudication of delinquency for a violation of any offense defined
33 in this chapter or chapter 36 of this Title, the revocation,
34 suspension, or postponement period imposed herein shall
35 commence as of the date of termination of the existing
36 revocation, suspension, or postponement.

37 Upon conviction the court shall collect forthwith the New
38 Jersey driver's licenses of the person and forward such license or
39 licenses to the Director of the [division] Division of Motor
40 Vehicles along with a report indicating the first and last day of
41 the suspension or postponement period imposed by the court
42 pursuant to this section. If the court is for any reason unable to
43 collect the license or licenses of the person, the court shall cause
44 a report of the conviction or adjudication of delinquency to be
45 filed with the Director. That report shall include the complete
46 name, address, date of birth, eye color, and sex of the person and
47 shall indicate the first and last day of the suspension or
48 postponement period imposed by the court pursuant to this
49 section. The court shall inform the person orally and in writing
50 that if the person is convicted of personally operating a motor
51 vehicle during the period of license suspension or postponement
52 imposed pursuant to this section the person shall, upon
53 conviction, be subject to the penalties set forth in R.S.39:3-40.
54 A person shall be required to acknowledge receipt of the written

1 notice in writing. Failure to receive a written notice or failure to
2 acknowledge in writing the receipt of a written notice shall not
3 be a defense to a subsequent charge of a violation of
4 R.S.39:3-40. If the person is the holder of a driver's license from
5 another jurisdiction, the court shall not collect the license but
6 shall notify the Director who shall notify the appropriate officials
7 in the licensing jurisdiction. The court shall, however, in
8 accordance with the provisions of this section, revoke the
9 person's non-resident driving privileges in this State.

10 c. All penalties provided for in this section shall be collected
11 as provided for the collection of fines and restitutions in section
12 3 of P.L.1979, c.396 (C.2C:46-4), and shall be distributed in
13 accordance with the provisions of N.J.S.2C:64-6 as if the
14 collected monies were the proceeds of property forfeited
15 pursuant to the provisions of chapter 64. However, the distributed
16 monies are to be used for law enforcement activities related to
17 auto theft.

18 (cf: P.L.1991, c.83, s.1)

19 5. N.J.S.2C:29-2 is amended to read as follows:

20 2C:29-2. Resisting Arrest; Eluding Officer.

21 a. A person is guilty of a disorderly persons offense if he
22 purposely prevents a law enforcement officer from effecting a
23 lawful arrest, except that he is guilty of a crime of the fourth
24 degree if he:

25 1. Uses or threatens to use physical force or violence against
26 the law enforcement officer or another; or

27 2. Uses any other means to create a substantial risk of causing
28 physical injury to the public servant or another.

29 It is not a defense to a prosecution under this subsection that
30 the law enforcement officer was acting unlawfully in making the
31 arrest, provided he was acting under color of his official
32 authority and provided the law enforcement officer announces his
33 intention to arrest prior to the resistance.

34 b. Any person, while operating a motor vehicle on any street
35 or highway in this State, who knowingly flees or attempts to
36 elude any police or law enforcement officer after having received
37 any signal from such officer to bring the vehicle to a full stop [is
38 a disorderly person] commits a crime of the third degree; except
39 that, a person is guilty of a crime of the [fourth] second degree if
40 the flight or attempt to elude creates a risk of death or injury to
41 any person. For purposes of this [section] subsection, there shall
42 be a permissive inference that the [person's conduct during a]
43 flight or attempt to elude creates a risk of death or injury to any
44 person if the person's conduct involves a violation of chapter 4 of
45 Title 39 of the Revised Statutes. In addition to the penalty
46 prescribed under this subsection or any other section of law, the
47 court shall order the suspension of that person's driver's license
48 for a period of not less than six months or more than two years.
49 [If that license is suspended at the time such order is issued, the
50 suspension so ordered shall commence on the date of the
51 termination of the existing suspension.

52 The court shall collect the license which is being suspended and
53 forward it to the Division of Motor Vehicles along with a report
54 of the suspension. If the court is unable to collect the license,

1 the court shall nevertheless forward the report to the division.
2 The report from the court to the division shall include the
3 complete name, address, date of birth, eye color, sex and driver's
4 license number, if known, of the person whose license has been
5 suspended and shall indicate the first and last calendar day of the
6 suspension period ordered by the court under this subsection. If
7 the person is the holder of a license from another jurisdiction, the
8 court shall not collect the license but shall notify the division and
9 the division shall notify the appropriate officials in the licensing
10 state. The court, however, shall in accordance with the
11 provisions of this subsection, suspend the person's non-resident
12 driving privileges.] In the case of person who is at the time of
13 the imposition of sentence less than 17 years of age, the period of
14 the suspension of driving privileges authorized herein, including a
15 suspension of the privilege of operating a motorized bicycle,
16 shall commence on the day the sentence is imposed and shall run
17 for a period as fixed by the court. If the driving privilege of any
18 person is under revocation, suspension, or postponement for a
19 violation of any provision of this Title or Title 39 of the Revised
20 Statutes at the time of any conviction or adjudication of
21 delinquency for a violation of any offense defined in this chapter
22 or chapter 36 of this Title, the revocation, suspension, or
23 postponement period imposed herein shall commence as of the
24 date of termination of the existing revocation, suspension, or
25 postponement.

26 Upon conviction the court shall collect forthwith the New
27 Jersey driver's licenses of the person and forward such license or
28 licenses to the Director of the Division of Motor Vehicle along
29 with a report indicating the first and last day of the suspension or
30 postponement period imposed by the court pursuant to this
31 section. If the court is for any reason unable to collect the
32 license or licenses of the person, the court shall cause a report of
33 the of the conviction or adjudication of delinquency to be filed
34 with the Director. That report shall include the complete name,
35 address, date of birth, eye color, and sex of the person and shall
36 indicate the first and last day of the suspension or postponement
37 period imposed by the court pursuant to this section. The court
38 shall inform the person orally and in writing that if the person is
39 convicted of personally operating a motor vehicle during the
40 period of license suspension or postponement imposed pursuant to
41 this section the person shall, upon conviction, be subject to the
42 penalties set forth in R.S.39:3-40. A person shall be required to
43 acknowledge receipt of the written notice in writing. Failure to
44 receive a written notice or failure to acknowledge in writing the
45 receipt of a written notice shall not be a defense to a subsequent
46 charge of violation of R.S.39:3-40. If the person is the holder of
47 a driver's license from another jurisdiction, the court shall not
48 collect the license but shall notify the Director who shall notify
49 the appropriate officials in the licensing jurisdiction. The court
50 shall, however, in accordance with the provision of this section,
51 revoke the person's non-resident driving privileges in this State.

52 For the purposes of this subsection, it shall be a rebuttable
53 presumption that the owner of a vehicle was the operator of the
54 vehicle at the time of the offense.

55 (cf: P.L.1991, c.341, s.3)

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

2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary
3 Terms; Mandatory Terms. a. Except as otherwise provided, a
4 person who has been convicted of a crime may be sentenced to
5 imprisonment, as follows:

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

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

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

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

18 b. As part of a sentence for any crime, where the court is
19 clearly convinced that the aggravating factors substantially
20 outweigh the mitigating factors, as set forth in subsections a. and
21 b. of 2C:44-1, the court may fix a minimum term not to exceed
22 one-half of the term set pursuant to subsection a., or one-half of
23 the term set pursuant to a maximum period of incarceration for a
24 crime set forth in any statute other than this code, during which
25 the defendant shall not be eligible for parole; provided that no
26 defendant shall be eligible for parole at a date earlier than
27 otherwise provided by the law governing parole.

28 c. A person who has been convicted under 2C:39-4a. of
29 possession of a firearm with intent to use it against the person of
30 another, or of a crime under any of the following sections:
31 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
32 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of
33 committing or attempting to commit the crime, including the
34 immediate flight therefrom, used or was in possession of a
35 firearm as defined in 2C:39-1f., shall be sentenced to a term of
36 imprisonment by the court. The term of imprisonment shall
37 include the imposition of a minimum term. The minimum term
38 shall be fixed at, or between, one-third and one-half of the
39 sentence imposed by the court or three years, whichever is
40 greater, or 18 months in the case of a fourth degree crime, during
41 which the defendant shall be ineligible for parole.

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

46 A person who has been convicted of an offense enumerated by
47 this subsection and who used or possessed a firearm during its
48 commission, attempted commission or flight therefrom and who
49 has been previously convicted of an offense involving the use or
50 possession of a firearm as defined in 2C:44-3d., shall be
51 sentenced by the court to an extended term as authorized by
52 2C:43-7c., notwithstanding that extended terms are ordinarily
53 discretionary with the court.

54 d. The court shall not impose a mandatory sentence pursuant

1 to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless
2 the ground therefor has been established at a hearing. At the
3 hearing, which may occur at the time of sentencing, the
4 prosecutor shall establish by a preponderance of the evidence
5 that the weapon used or possessed was a firearm. In making its
6 finding, the court shall take judicial notice of any evidence,
7 testimony or information adduced at the trial, plea hearing, or
8 other court proceedings and shall also consider the presentence
9 report and any other relevant information.

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

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

43 The court shall not impose an extended term pursuant to this
44 subsection unless the ground therefor has been established at a
45 hearing. At the hearing, which may occur at the time of
46 sentencing, the prosecutor shall establish the ground therefor by
47 a preponderance of the evidence. In making its finding, the court
48 shall take judicial notice of any evidence, testimony or
49 information adduced at the trial, plea hearing, or other court
50 proceedings and shall also consider the presentence report and
51 any other relevant information.

52 For the purpose of this subsection, a previous conviction exists
53 where the actor has at any time been convicted under chapter 35
54 of this title or Title 24 of the Revised Statutes or under any

1 similar statute of the United States, this State, or any other state
2 for an offense that is substantially equivalent to N.J.S.2C:35-3,
3 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
4 P.L.1987, c.101 (C.2C:35-7).

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

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

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

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

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

53 (cf: P.L.1990, c.32, s.6)

54 ¹[6.] 7.¹ This act shall take effect immediately.

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3 Upgrades penalties for eluding and aggravated assault if the
4 illegal operation of a motor vehicle is involved.

1 6. This act shall take effect immediately.
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4 *Sponsor* STATEMENT
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6 Under present law, the offense of eluding a law enforcement
7 officer while in operation of a motor vehicle is punishable as a
8 disorderly persons offense (up to six months imprisonment, a fine
9 of up to \$1,000 or both). If the eluding results in the creation of
10 a risk of injury or death to another person, eluding is presently
11 graded as a crime of the fourth degree (up to 18 months
12 imprisonment; a fine of up to \$7,500.00 or both). This bill would
13 upgrade eluding from a disorderly persons offense to a crime of
14 the third degree (3 to 5 years imprisonment; a fine of up to
15 \$7,500.00 or both). If the offense creates a risk of injury or
16 death, the bill would grade eluding as a crime of the second
17 degree (5 to 10 years imprisonment, a fine up to \$100,000.00 or
18 both).

19 This bill also strengthens the penalties for the offense of
20 aggravated assault when the illegal operation of a motor vehicle
21 is involved. Under present law, aggravated assault is graded as a
22 crime of second degree when serious bodily injury results from an
23 attempt by a person to elude law enforcement in a motor
24 vehicle. Aggravated assault is graded as a third degree of bodily
25 injury results from an attempt to elude. This bill would eliminate
26 the requirement that serious bodily injury results in order for
27 aggravated assault involving the eluding of law enforcement
28 officers to be graded as a crime of the second degree. Any bodily
29 injury would be sufficient to support a conviction for a second
30 degree crime. The bill would also provide that a person is guilty
31 of aggravated assault when bodily injury to another results from
32 operation of motor vehicle while joyriding in a reckless manner.
33 This offense would also be graded as a crime of the second degree.

34 In addition to these enhanced penalties, the bill clarifies the
35 present mandatory license revocation procedures applicable when
36 a person is convicted of eluding. The bill also provides that the
37 term "motor vehicle" as used in Title 2C has the same meanings
38 as that term is used in Title 39.

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44 Upgrades penalties for eluding and aggravated assault if the
illegal operation of a motor vehicle is involved.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE, No. 1205

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 5, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1205.

Under present law, the offense of eluding a law enforcement officer while in operation of a motor vehicle is punishable as a disorderly persons offense (up to six months imprisonment, a fine of up to \$1,000 or both). If the eluding results in the creation of a risk of injury or death to another person, eluding is presently graded as a crime of the fourth degree (up to 18 months imprisonment; a fine of up to \$7,500.00 or both). This bill would upgrade eluding from a disorderly persons offense to a crime of the third degree (3 to 5 years imprisonment; a fine of up to \$7,500.00 or both). If the offense creates a risk of injury or death, the bill would grade eluding as a crime of the second degree (5 to 10 years imprisonment, a fine up to \$100,000.00 or both).

This bill also strengthens the penalties for the offense of aggravated assault when the illegal operation of a motor vehicle is involved. Under present law, aggravated assault is graded as a crime of second degree when serious bodily injury results from an attempt by a person to elude law enforcement in a motor vehicle. Aggravated assault is graded as a third degree if bodily injury results from an attempt to elude. This bill would eliminate the requirement that serious bodily injury results in order for aggravated assault involving the eluding of law enforcement officers to be graded as a crime of the second degree. Any bodily injury would be sufficient to support a conviction for a second degree crime. The bill would also provide that a person is guilty of aggravated assault when bodily injury to another results from operation of motor vehicle while joyriding in a reckless manner. This offense would also be graded as a crime of the second degree.

In addition to these enhanced penalties, the bill clarifies the present mandatory license revocation procedures applicable when a person is convicted of eluding. The bill also provides that the term "motor vehicle" as used in Title 2C has the same meanings as that term is used in Title 39.

The committee amended the bill to add a new section 6 amending N.J.S. 2C:43-6 to provide that a person who has been convicted under paragraph (6) of subsection b. of 2C:12-1 of causing bodily injury while eluding 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. The minimum term established by this subsection shall not prevent the court from imposing a presumptive term of imprisonment pursuant to paragraph (1) of subsection f. of 2C:44-1.

As amended, this bill is identical to Assembly Committee Substitute for Assembly Nos. 45, 1823 and 1821.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1205

STATE OF NEW JERSEY

DATED: OCTOBER 8, 1992

The Senate Judiciary Committee reports favorably Senate Bill No. 1205.

Under present law, the offense of eluding a law enforcement officer while in operation of a motor vehicle is punishable as a disorderly persons offense (up to six months imprisonment, a fine of up to \$1,000 or both). If the eluding results in the creation of a risk of injury or death to another person, eluding is presently graded as a crime of the fourth degree (up to 18 months imprisonment; a fine of up to \$7,500.00 or both). This bill would upgrade eluding from a disorderly persons offense to a crime of the third degree (3 to 5 years imprisonment; a fine of up to \$7,500.00 or both). If the offense creates a risk of injury or death, the bill would grade eluding as a crime of the second degree (5 to 10 years imprisonment, a fine up to \$100,000.00 or both).

This bill also strengthens the penalties for the offense of aggravated assault when the illegal operation of a motor vehicle is involved. Under present law, aggravated assault is graded as a crime of second degree when serious bodily injury results from an attempt by a person to elude law enforcement in a motor vehicle. Aggravated assault is graded as a third degree of bodily injury results from an attempt to elude. This bill would eliminate the requirement that serious bodily injury results in order for aggravated assault involving the eluding of law enforcement officers to be graded as a crime of the second degree. Any bodily injury would be sufficient to support a conviction for a second degree crime. The bill would also provide that a person is guilty of aggravated assault when bodily injury to another results from operation of motor vehicle while joyriding in a reckless manner. This offense would also be graded as a crime of the second degree.

In addition to these enhanced penalties, the bill clarifies the present mandatory license revocation procedures applicable when a person is convicted of eluding. The bill also provides that the term "motor vehicle" as used in Title 2C has the same definition as in Title 39.



A5/S1837
✓S1805/A45/A1823/F 521

OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001
Contact:**

**TRENTON, N.J. 08625
Release:**

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Monday
August 2, 1993

GOVERNOR SIGNS BILL PUTTING MORE POLICE ON NEIGHBORHOOD STREETS

CLIFTON -- One thousand new police officers will hit the streets in towns across the state under legislation signed today by Governor Jim Florio, which also beefs up police departments with the equipment they need to fight crime. The Governor also signed a bill toughening penalties for eluding police in a stolen vehicle.

"The Safe and Secure Communities Program will increase the number of police who walk the beat. That used to be considered old fashioned, but I believe it's the wave of the future. It's what works," said Governor Florio, who signed the bill at Sullivan Square. "We're targeting communities where criminal activity is heaviest. Foot patrols will strengthen the bonds of trust and keep the bad guys moving so they never get the chance to burrow in and rot the fabric of life in our neighborhoods."

"In New Jersey, we mean it when we say crime doesn't pay. We'll take the money out of lawbreakers' hides and use it to help pay for the cop on the beat and the best equipment money can buy," the Governor said.

The "Safe and Secure Communities Program" will provide grants to towns to hire 1,000 additional police in high crime areas and buy police equipment. An additional 1,000 police officers are expected to be hired next year. A municipality would be eligible for the grants to hire additional officers if the number of reported crimes per police officer exceeds 70 percent of the statewide average of municipal crimes as per the 1991 Uniform Crime Report.

Funding for the program would be supported in part by an additional penalty imposed on offenders and deposited in a Safe Neighborhood Services Fund. Fines assessed with convictions will be increased by \$75 - \$150, depending on the offense. Eligible towns could receive grants of up to \$200,000 for police officers and \$50,000 for equipment under the legislation.

- more -

Grants to hire police officers would be awarded to municipalities with carefully designed projects that focus the efforts of the officers on particular community needs. A major goal of the program is to foster community-policing, which emphasizes foot patrols, interaction between police and residents, and crime prevention.

Seventy-five percent of the funding would be available to hire police officers. Municipalities would be required to match funding by providing for the officer's benefits. The remaining 25 percent would be reserved for grants to purchase police equipment such as police cars, weapons, body armor and radios.

"We know that when citizens and police work as partners, crime goes down. Parks and playgrounds open up. Streets become neighborhoods again. Business prospers and most important, people regain their dignity and sense of hope," Governor Florio said. "That's the New Jersey we all want to see today and especially for our children."

A 5/S 1837 was sponsored by Assemblypersons Lee Solomon, Tom Smith and William Pascrell, and Senators Bradford Smith and John Scott.

BOOSTING PENALTIES FOR CAR THEFTS

Governor Florio also signed a bill which upgrades penalties for eluding police and aggravated assault using a stolen vehicle.

Up until now, the penalty for eluding police while operating a stolen vehicle was punishable as a disorderly persons offense with up to six months in jail and/or up to a \$1,000 fine. If eluding creates a risk of injury or death, it was graded as a fourth-degree crime resulting in up to 18 months in jail and/or a fine of up to \$7,500.

Under the new law:

- eluding is a third-degree crime, carrying a jail term of three to five years and/or a fine of up to \$7,500.
- if the offense creates a risk of injury or death, it becomes a second-degree crime under the new law, carrying a prison term of five to ten years and/or a fine up to \$100,000. There is a presumption in favor of jail time for all second-degree offenses, even for first-time offenders.

The new law also boosts the penalties for aggravated assault while using a stolen vehicle. Until now, aggravated assault was graded as a second-degree crime when serious bodily injury occurred as a result of a person's attempt to elude police. It was graded as a third-degree crime if bodily injury resulted from an attempt to elude.

The new law eliminates the requirement that there be a serious bodily injury in order for the crime to be graded as second-degree. Any bodily injury

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would be sufficient to support a conviction for a second-degree crime. The bill also provides that a person is guilty of aggravated assault when bodily injury to another results from operating a stolen vehicle while joyriding in a reckless manner and makes it a second-degree crime.

"This bill puts the brakes on a frightening and dangerous act. Suspects who lead police on high speed chases put everyone around them at risk of injury or death," Governor Florio said. "Now, they'll face mandatory sentences for turning a motor vehicle into a deadly weapon."

Governor Florio noted that last week, the state Supreme Court ruled that police can pursue criminals trying to escape the law in a motor vehicle. In addition, he pointed out that the Federal Bureau of Investigation had called New Jersey's police pursuit guidelines the best in the nation.

"Sometimes, the police have no other choice, but the decision to pursue is done with the gravest sense of responsibility. I know that law enforcement, from the Attorney General on down to each officer in a police car, welcomes this law," Governor Florio said.

S 1205/A 45/1823/1821 was sponsored by Senator John Girgenti, and Assemblypersons Frank Catania, Robert Brown and Anthony Impreveduto.

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