

2C: 29-5

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 2C:29-5

(Criminals--
Intensive
Supervisions)

LAWS OF: 1991

CHAPTER: 34

Bill No: S2662

Sponsor(s): Bennett

Date Introduced: May 17, 1990

Committee: Assembly: -----

Senate: Judiciary

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: January 17, 1991

Senate: December 13, 1990

Date of Approval: February 25, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

[FIRST REPRINT]

SENATE, No. 2662

STATE OF NEW JERSEY

INTRODUCED MAY 17, 1990

By Senator BENNETT

1 AN ACT concerning persons admitted to the Intensive Supervision
2 Program and the crime of escape and amending N.J.S.2C:29-5.

3

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

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

7 2C:29-5. Escape. a. Escape. A person commits an offense if
8 he without lawful authority removes himself from official
9 detention or fails to return to official detention following
10 temporary leave granted for a specific purpose or limited period.
11 "Official detention" means arrest, detention in any facility for
12 custody of persons under charge or conviction of a crime or
13 offense, or committed pursuant to chapter 4 of this Title, or
14 alleged or found to be delinquent, detention for extradition or
15 deportation, [or] ¹or¹ any other detention for law enforcement
16 purposes ¹[or participation in the Intensive Supervision Program
17 (ISP) established pursuant to the Rules Governing the Courts of
18 the State of New Jersey]¹; but "official detention" does not
19 include supervision of probation or parole, or constraint
20 incidental to release on bail.

21 ¹b. Absconding from parole. A person subject to parole
22 commits a crime of the third degree if the person goes into hiding
23 or leaves the State with a purpose of avoiding supervision. As
24 used in this subsection, "parole" includes participation in the
25 Intensive Supervision Program (ISP) established pursuant to the
26 Rules Governing the Courts of the State of New Jersey.
27 Abandoning a place of residence without the prior permission of
28 or notice to the appropriate supervising authority shall constitute
29 prima facie evidence that the person intended to avoid such
30 supervision.¹

31 ¹[b.] c.¹ Permitting or facilitating escape. A public servant
32 concerned in detention commits an offense if he knowingly or
33 recklessly permits an escape. Any person who knowingly causes
34 or facilitates an escape commits an offense.

35 ¹[c.] d.¹ Effect of legal irregularity in detention. Irregularity
36 in bringing about or maintaining detention, or lack of jurisdiction
37 of the committing or detaining authority, shall not be a defense
38 to prosecution under this section if the escape is from a prison or
39 other custodial facility or from detention pursuant to

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 Senate SJU committee amendments adopted June 7, 1990.

1 commitment by official proceedings. In the case of other
2 detentions, irregularity or lack of jurisdiction shall be a defense
3 only if:

4 (1) The escape involved no substantial risk of harm to the
5 person or property of anyone other than the detainee; or

6 (2) The detaining authority did not act in good faith under
7 color of law.

8 ¹[d.] e.¹ Grading of offenses. An offense under ¹subsection a.
9 or c. of¹ this section is a crime of the second degree where the
10 actor employs force, threat, deadly weapon or other dangerous
11 instrumentality to effect the escape. Otherwise it is a crime of
12 the third degree.

13 (cf: P.L.1981, c.290, s.30)

14 2. This act shall take effect immediately.

15

16

17 CRIMINAL JUSTICE

18

19 Establishes crime of absconding from parole including
20 participation in the Intensive Supervision Program.

1 threat, deadly weapon or other dangerous instrumentality to
2 effect the escape. Otherwise it is a crime of the third degree.
3 (cf: P.L.1981, c.290, s.30)

4 2. This act shall take effect immediately.

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6
7 *SPONSOR'S* STATEMENT
8

9 This bill classifies participation in the Intensive Supervision
10 Program (ISP) as official detention for the purpose of the
11 applicability of the crime of escape if a program participant
12 absconds from this State. The bill is a response to a recent New
13 Jersey Supreme Court decision State v. Jiminez decided April 3,
14 1990 (A-122-89) which held that a participant's departure while
15 in ISP was not an escape within the meaning of N.J.S.A.2C:29-5.

16 The ISP program is established by court rule but is a hybrid
17 between probation and parole. However, participation in ISP is
18 much more burdensome on the defendant than having sentence
19 suspended and being placed on probation. A convicted defendant
20 makes a motion for a change of custodial sentence and entry into
21 ISP to a three-judge panel. The program is designed for
22 non-violent offenders and the participants are carefully
23 screened. The participant is diverted back to the community so
24 he is not "detained" in a traditional sense. Presumably if the
25 participant does not qualify for ISP then he would be
26 incarcerated. The sponsor feels that participating in ISP is a
27 form of detention and that ISP is such a novel program and
28 represents such a benefit to the defendant who is permitted to
29 participate that violating the rules of ISP by fleeing the State
30 warrants the potential sanction of escape charges. This sanction
31 may serve the deterrent goals of the program as well.

32
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34 CRIMINAL JUSTICE
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36 Permits participant in Intensive Supervision Program to be
37 charged with the crime of escape.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2662

STATE OF NEW JERSEY

DATED: JUNE 7, 1990

The Senate Judiciary Committee reports favorably Senate Bill No. 2662.

In State v. Clay, 230 N.J. Super. 504 (App. Div. 1989), the court ruled that a participant in the Intensive Supervision Program (ISP) who left New Jersey without permission did not commit the crime of escape under the provisions of N.J.S.2C:29-5. In order to address the holding in Clay, the bill as originally drafted would have classified unauthorized leaves from the ISP program as a form of escape. At the suggestion of the Division of Criminal Justice, the committee adopted amendments establishing a new offense, "absconding from parole." A person on parole, defined as including participation in ISP, would be guilty of this offense if the person goes into hiding or leaves the State for the purpose of avoiding supervision. Abandoning a place of residence without notice to and permission of the supervising authority would constitute prima facie evidence that the person intended to avoid supervision. Absconding from parole would be graded as a crime of the third degree (between 3 to 5 years imprisonment; or a fine of up to \$7,500.00, or both).