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**OTHER:** Yes

Draft final report relating to the definition of "victim of domestic violence" in N.J.S. 2C: 25-19d: December 10, 2015/ State of New Jersey, New Jersey Law Revision Commission.  
By New Jersey Law Revision Commission. Author.  
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**NEWSPAPER ARTICLES:** Yes

"'Ray Rice' law limits PTI in cases like his," The Press of Atlantic City, 8-11-2015  
"Christie signs bill to crack down on domestic violence," Associated Press State Wire, 8-10-2015

LAW/RWH

P.L.2015, CHAPTER 98, *approved August 10, 2015*  
Senate, No. 2559 (*First Reprint*)

1 AN ACT concerning domestic violence <sup>1</sup>**[and]**<sup>1</sup> pretrial  
2 intervention <sup>1</sup>, and criminal coercion<sup>1</sup> and amending various parts of  
3 the statutory law.

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

7  
8 1. N.J.S.2C:12-1 is amended to read as follows:

9 2C:12-1. Assault. a. Simple assault. A person is guilty of  
10 assault if he:

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

13 (2) Negligently causes bodily injury to another with a deadly  
14 weapon; or

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

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

20 b. Aggravated assault. A person is guilty of aggravated assault  
21 if he:

22 (1) Attempts to cause serious bodily injury to another, or causes  
23 such injury purposely or knowingly or under circumstances  
24 manifesting extreme indifference to the value of human life  
25 recklessly causes such injury; or

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

28 (3) Recklessly causes bodily injury to another with a deadly  
29 weapon; or  
30 (4) Knowingly under circumstances manifesting extreme  
31 indifference to the value of human life points a firearm, as defined  
32 in **[section 2C:39-1f.] subsection f. of N.J.S.2C:39-1**, at or in the  
33 direction of another, whether or not the actor believes it to be  
34 loaded; or

35 (5) Commits a simple assault as defined in paragraph (1), (2) or  
36 (3) of subsection a. [(1), (2) or (3)] of this section upon:

37 (a) Any law enforcement officer acting in the performance of  
38 his duties while in uniform or exhibiting evidence of his authority  
39 or because of his status as a law enforcement officer; or

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

43 (c) Any person engaged in emergency first-aid or medical  
44 services acting in the performance of his duties while in uniform or  
45 otherwise clearly identifiable as being engaged in the performance  
46 of emergency first-aid or medical services; or

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SJU committee amendments adopted June 11, 2015.

- 1 (d) Any school board member, school administrator, teacher,  
2 school bus driver or other employee of a public or nonpublic school  
3 or school board while clearly identifiable as being engaged in the  
4 performance of his duties or because of his status as a member or  
5 employee of a public or nonpublic school or school board or any  
6 school bus driver employed by an operator under contract to a  
7 public or nonpublic school or school board while clearly  
8 identifiable as being engaged in the performance of his duties or  
9 because of his status as a school bus driver; or
- 10 (e) Any employee of the Division of Child Protection and  
11 Permanency while clearly identifiable as being engaged in the  
12 performance of his duties or because of his status as an employee of  
13 the division; or
- 14 (f) Any justice of the Supreme Court, judge of the Superior  
15 Court, judge of the Tax Court or municipal judge while clearly  
16 identifiable as being engaged in the performance of judicial duties  
17 or because of his status as a member of the judiciary; or
- 18 (g) Any operator of a motorbus or the operator's supervisor or  
19 any employee of a rail passenger service while clearly identifiable  
20 as being engaged in the performance of his duties or because of his  
21 status as an operator of a motorbus or as the operator's supervisor or  
22 as an employee of a rail passenger service; or
- 23 (h) Any Department of Corrections employee, county  
24 corrections officer, juvenile corrections officer, State juvenile  
25 facility employee, juvenile detention staff member, juvenile  
26 detention officer, probation officer or any sheriff, undersheriff, or  
27 sheriff's officer acting in the performance of his duties while in  
28 uniform or exhibiting evidence of his authority; or
- 29 (i) Any employee, including any person employed under  
30 contract, of a utility company as defined in section 2 of P.L.1971,  
31 c.224 (C.2A:42-86) or a cable television company subject to the  
32 provisions of the "Cable Television Act," P.L.1972, c.186  
33 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in  
34 the performance of his duties in regard to connecting, disconnecting  
35 or repairing or attempting to connect, disconnect or repair any gas,  
36 electric or water utility, or cable television or telecommunication  
37 service; or
- 38 (j) Any health care worker employed by a licensed health care  
39 facility to provide direct patient care, any health care professional  
40 licensed or otherwise authorized pursuant to Title 26 or Title 45 of  
41 the Revised Statutes to practice a health care profession, except a  
42 direct care worker at a State or county psychiatric hospital or State  
43 developmental center or veterans' memorial home, while clearly  
44 identifiable as being engaged in the duties of providing direct  
45 patient care or practicing the health care profession; or
- 46 (k) Any direct care worker at a State or county psychiatric  
47 hospital or State developmental center or veterans' memorial home,  
48 while clearly identifiable as being engaged in the duties of  
49 providing direct patient care or practicing the health care

1 profession, provided that the actor is not a patient or resident at the  
2 facility who is classified by the facility as having a mental illness or  
3 developmental disability; or

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

13 (7) Attempts to cause significant bodily injury to another or  
14 causes significant bodily injury purposely or knowingly or, under  
15 circumstances manifesting extreme indifference to the value of  
16 human life recklessly causes such significant bodily injury; or

17 (8) Causes bodily injury by knowingly or purposely starting a  
18 fire or causing an explosion in violation of N.J.S.2C:17-1 which  
19 results in bodily injury to any emergency services personnel  
20 involved in fire suppression activities, rendering emergency  
21 medical services resulting from the fire or explosion or rescue  
22 operations, or rendering any necessary assistance at the scene of the  
23 fire or explosion, including any bodily injury sustained while  
24 responding to the scene of a reported fire or explosion. For  
25 purposes of this **【subsection】 paragraph**, "emergency services  
26 personnel" shall include, but not be limited to, any paid or volunteer  
27 fireman, any person engaged in emergency first-aid or medical  
28 services and any law enforcement officer. Notwithstanding any  
29 other provision of law to the contrary, a person shall be strictly  
30 liable for a violation of this paragraph upon proof of a violation of  
31 N.J.S.2C:17-1 which resulted in bodily injury to any emergency  
32 services personnel; or

33 (9) Knowingly, under circumstances manifesting extreme  
34 indifference to the value of human life, points or displays a firearm,  
35 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of  
36 a law enforcement officer; or

37 (10) Knowingly points, displays or uses an imitation firearm, as  
38 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a  
39 law enforcement officer with the purpose to intimidate, threaten or  
40 attempt to put the officer in fear of bodily injury or for any unlawful  
41 purpose; or

42 (11) Uses or activates a laser sighting system or device, or a  
43 system or device which, in the manner used, would cause a  
44 reasonable person to believe that it is a laser sighting system or  
45 device, against a law enforcement officer acting in the performance  
46 of his duties while in uniform or exhibiting evidence of his  
47 authority. As used in this paragraph, "laser sighting system or  
48 device" means any system or device that is integrated with or

1 affixed to a firearm and emits a laser light beam that is used to  
2 assist in the sight alignment or aiming of the firearm;

3 (12) Attempts to cause significant bodily injury or causes  
4 significant bodily injury purposely or knowingly or, under  
5 circumstances manifesting extreme indifference to the value of  
6 human life, recklessly causes significant bodily injury to a person  
7 who, with respect to the actor, meets the definition of a victim of  
8 domestic violence, as defined in subsection d. of section 3 of  
9 P.L.1991, c. 261 (C.2C:25-19).

10 Aggravated assault under **【subsections b. (1) and b. (6)】**  
11 paragraphs (1) and (6) of subsection b. of this section is a crime of  
12 the second degree; under **【subsections b. (2), b. (7), b. (9) and b.**  
13 **(10)】** paragraphs (2), (7), (9) and (10) of subsection b. of this  
14 section is a crime of the third degree; under **【subsections b. (3) and**  
15 **b. (4)】** paragraphs (3) and (4) of subsection b. of this section is a  
16 crime of the fourth degree; and under **【subsection b. (5)】** paragraph  
17 (5) of subsection b. of this section is a crime of the third degree if  
18 the victim suffers bodily injury, otherwise it is a crime of the fourth  
19 degree. Aggravated assault under **【subsection b.(8)】** paragraph (8)  
20 of subsection b. of this section is a crime of the third degree if the  
21 victim suffers bodily injury; if the victim suffers significant bodily  
22 injury or serious bodily injury it is a crime of the second degree.  
23 Aggravated assault under **【subsection b. (11)】** paragraph (11) of  
24 subsection b. of this section is a crime of the third degree.  
25 Aggravated assault under paragraph (12) of subsection b. of this  
26 section is a crime of the third degree but the presumption of non-  
27 imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first  
28 offense of a crime of the third degree shall not apply.

29 c. (1) A person is guilty of assault by auto or vessel when the  
30 person drives a vehicle or vessel recklessly and causes either  
31 serious bodily injury or bodily injury to another. Assault by auto or  
32 vessel is a crime of the fourth degree if serious bodily injury results  
33 and is a disorderly persons offense if bodily injury results. Proof  
34 that the defendant was operating a hand-held wireless telephone  
35 while driving a motor vehicle in violation of section 1 of P.L.2003,  
36 c.310 (C.39:4-97.3) may give rise to an inference that the defendant  
37 was driving recklessly.

38 (2) Assault by auto or vessel is a crime of the third degree if the  
39 person drives the vehicle while in violation of R.S.39:4-50 or  
40 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily  
41 injury results and is a crime of the fourth degree if the person drives  
42 the vehicle while in violation of R.S.39:4-50 or section 2 of  
43 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

44 (3) Assault by auto or vessel is a crime of the second degree if  
45 serious bodily injury results from the defendant operating the auto  
46 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,  
47 c.512 (C.39:4-50.4a) while:

- 1 (a) on any school property used for school purposes which is  
2 owned by or leased to any elementary or secondary school or school  
3 board, or within 1,000 feet of such school property;
- 4 (b) driving through a school crossing as defined in R.S.39:1-1 if  
5 the municipality, by ordinance or resolution, has designated the  
6 school crossing as such; or
- 7 (c) driving through a school crossing as defined in R.S.39:1-1  
8 knowing that juveniles are present if the municipality has not  
9 designated the school crossing as such by ordinance or resolution.
- 10 Assault by auto or vessel is a crime of the third degree if bodily  
11 injury results from the defendant operating the auto or vessel in  
12 violation of this paragraph.
- 13 A map or true copy of a map depicting the location and  
14 boundaries of the area on or within 1,000 feet of any property used  
15 for school purposes which is owned by or leased to any elementary  
16 or secondary school or school board produced pursuant to section 1  
17 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under  
18 subparagraph (a) of paragraph (3) of this subsection.
- 19 It shall be no defense to a prosecution for a violation of  
20 subparagraph (a) or (b) of paragraph (3) of this subsection that the  
21 defendant was unaware that the prohibited conduct took place while  
22 on or within 1,000 feet of any school property or while driving  
23 through a school crossing. Nor shall it be a defense to a prosecution  
24 under subparagraph (a) or (b) of paragraph (3) of this subsection  
25 that no juveniles were present on the school property or crossing  
26 zone at the time of the offense or that the school was not in session.
- 27 (4) Assault by auto or vessel is a crime of the third degree if the  
28 person purposely drives a vehicle in an aggressive manner directed  
29 at another vehicle and serious bodily injury results and is a crime of  
30 the fourth degree if the person purposely drives a vehicle in an  
31 aggressive manner directed at another vehicle and bodily injury  
32 results. For purposes of this paragraph, "driving a vehicle in an  
33 aggressive manner" shall include, but is not limited to,  
34 unexpectedly altering the speed of the vehicle, making improper or  
35 erratic traffic lane changes, disregarding traffic control devices,  
36 failing to yield the right of way, or following another vehicle too  
37 closely.
- 38 As used in this **[section]** subsection, "vessel" means a means of  
39 conveyance for travel on water and propelled otherwise than by  
40 muscular power.
- 41 d. A person who is employed by a facility as defined in section  
42 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as  
43 defined in paragraph (1) or (2) of subsection a. of this section upon  
44 an institutionalized elderly person as defined in section 2 of  
45 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth  
46 degree.
- 47 e. (Deleted by amendment, P.L.2001, c.443).
- 48 f. A person who commits a simple assault as defined in  
49 paragraph (1), (2) or (3) of subsection a. of this section in the

1 presence of a child under 16 years of age at a school or community  
2 sponsored youth sports event is guilty of a crime of the fourth  
3 degree. The defendant shall be strictly liable upon proof that the  
4 offense occurred, in fact, in the presence of a child under 16 years  
5 of age. It shall not be a defense that the defendant did not know  
6 that the child was present or reasonably believed that the child was  
7 16 years of age or older. The provisions of this subsection shall not  
8 be construed to create any liability on the part of a participant in a  
9 youth sports event or to abrogate any immunity or defense available  
10 to a participant in a youth sports event. As used in this act, "school  
11 or community sponsored youth sports event" means a competition,  
12 practice or instructional event involving one or more interscholastic  
13 sports teams or youth sports teams organized pursuant to a  
14 nonprofit or similar charter or which are member teams in a youth  
15 league organized by or affiliated with a county or municipal  
16 recreation department and shall not include collegiate, semi-  
17 professional or professional sporting events.

18 (cf: P.L.2012, c.22, s.2)

19

20 2. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to  
21 read as follows:

22 3. As used in this act:

23 a. "Domestic violence" means the occurrence of one or more of  
24 the following acts inflicted upon a person protected under this act  
25 by an adult or an emancipated minor:

26 (1) Homicide N.J.S.2C:11-1 et seq.

27 (2) Assault N.J.S.2C:12-1

28 (3) Terroristic threats N.J.S.2C:12-3

29 (4) Kidnapping N.J.S.2C:13-1

30 (5) Criminal restraint N.J.S.2C:13-2

31 (6) False imprisonment N.J.S.2C:13-3

32 (7) Sexual assault N.J.S.2C:14-2

33 (8) Criminal sexual contact N.J.S.2C:14-3

34 (9) Lewdness N.J.S.2C:14-4

35 (10) Criminal mischief N.J.S.2C:17-3

36 (11) Burglary N.J.S.2C:18-2

37 (12) Criminal trespass N.J.S.2C:18-3

38 (13) Harassment N.J.S.2C:33-4

39 (14) Stalking P.L.1992, c.209 (C.2C:12-10)

40 (15) Criminal coercion N.J.S.2C:13-5

41 (16) Robbery N.J.S.2C:15-1

42 (17) Contempt of a domestic violence order pursuant to  
43 subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly  
44 persons offense

45 (18) Any other crime involving risk of death or serious bodily  
46 injury to a person protected under the "Prevention of Domestic  
47 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.)

48 When one or more of these acts is inflicted by an unemancipated  
49 minor upon a person protected under this act, the occurrence shall



1 not constitute "domestic violence," but may be the basis for the  
2 filing of a petition or complaint pursuant to the provisions of  
3 section 11 of P.L.1982, c.77 (C.2A:4A-30).

4 b. "Law enforcement agency" means a department, division,  
5 bureau, commission, board or other authority of the State or of any  
6 political subdivision thereof which employs law enforcement  
7 officers.

8 c. "Law enforcement officer" means a person whose public  
9 duties include the power to act as an officer for the detection,  
10 apprehension, arrest and conviction of offenders against the laws of  
11 this State.

12 d. "Victim of domestic violence" means a person protected  
13 under this act and shall include any person who is 18 years of age or  
14 older or who is an emancipated minor and who has been subjected  
15 to domestic violence by a spouse, former spouse, or any other  
16 person who is a present household member or **【former】** was at any  
17 time a household member. "Victim of domestic violence" also  
18 includes any person, regardless of age, who has been subjected to  
19 domestic violence by a person with whom the victim has a child in  
20 common, or with whom the victim anticipates having a child in  
21 common, if one of the parties is pregnant. "Victim of domestic  
22 violence" also includes any person who has been subjected to  
23 domestic violence by a person with whom the victim has had a  
24 dating relationship.

25 e. "Emancipated minor" means a person who is under 18 years  
26 of age but who has been married, has entered military service, has a  
27 child or is pregnant or has been previously declared by a court or an  
28 administrative agency to be emancipated.

29 (cf: P.L.1994, c.94, s.1)

30

31 3. N.J.S.2C:13-5 is amended to read as follows:

32 2C:13-5. Criminal Coercion.

33 a. Offense defined. A person is guilty of criminal coercion if,  
34 with purpose unlawfully to restrict another's freedom of action to  
35 engage or refrain from engaging in conduct, he threatens to:

36 (1) Inflict bodily injury on anyone or commit any other offense,  
37 regardless of the immediacy of the threat;

38 (2) Accuse anyone of an offense;

39 (3) Expose any secret which would tend to subject any person to  
40 hatred, contempt or ridicule, or to impair his credit or business  
41 repute;

42 (4) Take or withhold action as an official, or cause an official to  
43 take or withhold action;

44 (5) Bring about or continue a strike, boycott or other collective  
45 action, except that such a threat shall not be deemed coercive when  
46 the restriction compelled is demanded in the course of negotiation  
47 for the benefit of the group in whose interest the actor acts;

48 (6) Testify or provide information or withhold testimony or  
49 information with respect to another's legal claim or defense; or

1 (7) Perform any other act which would not in itself substantially  
2 benefit the actor but which is calculated to substantially harm  
3 another person with respect to his health, safety, business, calling,  
4 career, financial condition, reputation or personal relationships.

5 It is an affirmative defense to prosecution based on paragraphs  
6 (2), (3), (4), (6) and (7) that the actor believed the accusation or  
7 secret to be true or the proposed official action justified and that  
8 his purpose was limited to compelling the other to behave in a way  
9 reasonably related to the circumstances which were the subject of  
10 the accusation, exposure or proposed official action, as by desisting  
11 from further misbehavior, making good a wrong done, or refraining  
12 from taking any action or responsibility for which the actor  
13 believes the other disqualified.

14 b. Grading. Criminal coercion is a crime of the fourth degree  
15 unless the threat is to commit a crime more serious than one of the  
16 fourth degree or the actor's purpose is criminal, in which cases the  
17 offense is a crime of the third degree.

18 (cf: P.L.1978, c.95, s.2C:13-5)

19  
20 4. N.J.S.2C:43-12 is amended to read as follows:

21 2C:43-12. Supervisory Treatment--Pretrial Intervention.

22 a. Public policy. The purpose of N.J.S.2C:43-12 through  
23 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial  
24 Intervention. It is the policy of the State of New Jersey that  
25 supervisory treatment should ordinarily be limited to persons who  
26 have not previously been convicted of any criminal offense under  
27 the laws of New Jersey, or under any criminal law of the United  
28 States, or any other state when supervisory treatment would:

29 (1) Provide applicants, on an equal basis, with opportunities to  
30 avoid ordinary prosecution by receiving early rehabilitative services  
31 or supervision, when such services or supervision can reasonably be  
32 expected to deter future criminal behavior by an applicant, and  
33 when there is apparent causal connection between the offense  
34 charged and the rehabilitative or supervisory need, without which  
35 cause both the alleged offense and the need to prosecute might not  
36 have occurred; or

37 (2) Provide an alternative to prosecution for applicants who  
38 might be harmed by the imposition of criminal sanctions as  
39 presently administered, when such an alternative can be expected to  
40 serve as sufficient sanction to deter criminal conduct; or

41 (3) Provide a mechanism for permitting the least burdensome  
42 form of prosecution possible for defendants charged with  
43 "victimless" offenses, other than defendants who were public  
44 officers or employees charged with offenses that involved or  
45 touched their office or employment; or

46 (4) Provide assistance to criminal calendars in order to focus  
47 expenditure of criminal justice resources on matters involving  
48 serious criminality and severe correctional problems; or

1 (5) Provide deterrence of future criminal or disorderly behavior  
2 by an applicant in a program of supervisory treatment.

3 b. <sup>1</sup>(1)<sup>1</sup> Admission of an applicant into a program of supervisory  
4 treatment shall be measured according to the applicant's amenability  
5 to correction, responsiveness to rehabilitation and the nature of the  
6 offense.

7 <sup>1</sup>(2)<sup>1</sup> There shall be a presumption against admission into a  
8 program of supervisory treatment for <sup>1</sup>;

9 (a)<sup>1</sup> a defendant who was a public officer or employee whose  
10 offense involved or touched upon his public office or employment  
11 <sup>1</sup>; and

12 (b) a defendant charged with any crime or offense involving  
13 domestic violence, as defined in subsection a. of section 3 of  
14 P.L.1991, c.261 (C.2C:25-19) if the defendant committed the crime  
15 or offense while subject to a temporary or permanent restraining  
16 order issued pursuant to the provisions of the "Prevention of  
17 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et  
18 al.) or if the crime or offense charged involved violence or the  
19 threat of violence. For purposes of this subparagraph, a crime or  
20 offense involves violence or the threat of violence if the victim  
21 sustains serious or significant bodily injury as defined in subsection  
22 b. or d. of N.J.S.2C:11-1, or the actor is armed with and uses a  
23 deadly weapon or threatens by word or gesture to use a deadly  
24 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to  
25 inflict serious or significant bodily injury<sup>1</sup> .

26 c. The decision and reasons therefor made by the designated  
27 judges (or assignment judges), prosecutors and program directors in  
28 granting or denying applications for supervisory treatment, in  
29 recommending and ordering termination from the program or  
30 dismissal of charges, in all cases shall be reduced to writing and  
31 disclosed to the applicant.

32 d. If an applicant desires to challenge the decision of the  
33 prosecutor or program director not to recommend enrollment in a  
34 program of supervisory treatment the proceedings prescribed under  
35 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be  
36 followed.

37 e. Referral. At any time prior to trial but after the filing of a  
38 criminal complaint, or the filing of an accusation or the return of an  
39 indictment, with the consent of the prosecutor and upon written  
40 recommendation of the program director, the assignment judge or a  
41 judge designated by him may postpone all further proceedings  
42 against an applicant and refer said applicant to a program of  
43 supervisory treatment approved by the Supreme Court. Prosecutors  
44 and program directors shall consider in formulating their  
45 recommendation of an applicant's participation in a supervisory  
46 treatment program, among others, the following criteria:

47 (1) The nature of the offense;

48 (2) The facts of the case;

- 1 (3) The motivation and age of the defendant;
  - 2 (4) The desire of the complainant or victim to forego  
3 prosecution;
  - 4 (5) The existence of personal problems and character traits  
5 which may be related to the applicant's crime and for which services  
6 are unavailable within the criminal justice system, or which may be  
7 provided more effectively through supervisory treatment and the  
8 probability that the causes of criminal behavior can be controlled by  
9 proper treatment;
  - 10 (6) The likelihood that the applicant's crime is related to a  
11 condition or situation that would be conducive to change through  
12 his participation in supervisory treatment;
  - 13 (7) The needs and interests of the victim and society;
  - 14 (8) The extent to which the applicant's crime constitutes part of  
15 a continuing pattern of anti-social behavior;
  - 16 (9) The applicant's record of criminal and penal violations and  
17 the extent to which he may present a substantial danger to others;
  - 18 (10) Whether or not the crime is of an assaultive or violent  
19 nature, whether in the criminal act itself or in the possible injurious  
20 consequences of such behavior;
  - 21 (11) Consideration of whether or not prosecution would  
22 exacerbate the social problem that led to the applicant's criminal  
23 act;
  - 24 (12) The history of the use of physical violence toward others;
  - 25 (13) Any involvement of the applicant with organized crime;
  - 26 (14) Whether or not the crime is of such a nature that the value  
27 of supervisory treatment would be outweighed by the public need  
28 for prosecution;
  - 29 (15) Whether or not the applicant's involvement with other  
30 people in the crime charged or in other crime is such that the  
31 interest of the State would be best served by processing his case  
32 through traditional criminal justice system procedures;
  - 33 (16) Whether or not the applicant's participation in pretrial  
34 intervention will adversely affect the prosecution of codefendants;  
35 and
  - 36 (17) Whether or not the harm done to society by abandoning  
37 criminal prosecution would outweigh the benefits to society from  
38 channeling an offender into a supervisory treatment program.
- 39 The prosecutor and the court, in formulating their  
40 recommendations or decisions regarding an applicant's participation  
41 in a supervisory treatment program, shall give <sup>1</sup>**[added weight]** due  
42 consideration<sup>1</sup> to the victim's position on whether the defendant  
43 should be admitted.
- 44 f. Review of Supervisory Treatment Applications; Procedure  
45 Upon Denial. Each applicant for supervisory treatment shall be  
46 entitled to full and fair consideration of his application. If an  
47 application is denied, the program director or the prosecutor shall  
48 precisely state his findings and conclusion which shall include the  
49 facts upon which the application is based and the reasons offered

1 for the denial. If the applicant desires to challenge the decision of a  
2 program director not to recommend, or of a prosecutor not to  
3 consent to, enrollment into a supervisory treatment program, a  
4 motion shall be filed before the designated judge (or assignment  
5 judge) authorized pursuant to the <sup>1</sup>**【rules of court】** Rules of Court<sup>1</sup>  
6 to enter orders.

7 g. Limitations. (1) Supervisory treatment may occur only once  
8 with respect to any defendant and any person who has previously  
9 received supervisory treatment under section 27 of P.L.1970, c.226  
10 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1,  
11 or a conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-  
12 13.1 et al.) shall not be eligible for supervisory treatment under this  
13 section.

14 **【However,】** (2) Except as otherwise provided in paragraph (3)  
15 of this subsection, supervisory treatment, as provided herein, shall  
16 be available to a defendant irrespective of whether the defendant  
17 contests his guilt of the charge or charges against him.

18 (3) Admission into supervisory treatment shall be available to  
19 the following defendants only upon entering a plea of guilty: (a) a  
20 defendant charged with a first or second degree crime; (b) a  
21 defendant charged with any crime if the defendant had previously  
22 been convicted of a first or second degree crime; (c) a defendant  
23 charged with a third or fourth degree crime involving domestic  
24 violence, as defined in subsection a. of section 3 of P.L.1991, c.261  
25 (C.2C:25-19); <sup>1</sup>or<sup>1</sup> (d) a defendant charged with any <sup>1</sup>**【crime or】**  
26 disorderly persons or petty disorderly persons<sup>1</sup> offense involving  
27 domestic violence, as defined in subsection a. of section 3 of  
28 P.L.1991, c.261 (C.2C:25-19) if the defendant committed the  
29 <sup>1</sup>**【crime or】<sup>1</sup>** offense while subject to a temporary or permanent  
30 restraining order issued pursuant to the provisions of the  
31 “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261  
32 (C.2C:25-17 et al) <sup>1</sup>**【;** or (e) a defendant charged with a fourth  
33 degree crime of contempt pursuant to subsection b. of N.J.S.2C:29-  
34 9<sup>1</sup> . For any such defendant, following the plea of guilty the plea  
35 shall be held in an inactive status pending termination of  
36 supervisory treatment pursuant to subsection d. or e. of  
37 N.J.S.2C:43-13. Upon successful completion of the program of  
38 supervisory treatment the charges shall be dismissed.

39 h. Termination. Termination of supervisory treatment under  
40 this section shall be immediately reported to the assignment judge  
41 of the county who shall forward such information to the  
42 Administrative Director of the Courts.

43 i. Appointment of Program Directors; Authorized Referrals.  
44 Programs of supervisory treatment and appointment of the program  
45 directors require approval by the Supreme Court with the consent of  
46 the assignment judge and prosecutor. Referrals of participants from  
47 supervisory treatment programs may be to any public or private  
48 office or agency, including but not limited to, programs within the

1 probation service of the court, offering counseling or any other  
2 social service likely to aid in the rehabilitation of the participant  
3 and to deter the commission of other offenses.

4 j. Health Care Professional Licensing Board Notification. The  
5 program director shall promptly notify the State Board of Medical  
6 Examiners when a State licensed physician or podiatrist has been  
7 enrolled in a supervisory treatment program after he has been  
8 charged with an offense involving drugs or alcohol.

9 <sup>1</sup>The Attorney General shall develop guidelines to ensure the  
10 uniform exercise of discretion by prosecutors in formulating their  
11 recommendations on participation in a supervisory treatment  
12 program by an applicant charged with a crime or offense involving  
13 domestic violence, as defined in subsection a. of section 3 of  
14 P.L.1991, c.261 (C.2C:25-19).<sup>1</sup>

15 (cf: P.L.2013, c.158, s.11)

16

17 5. N.J.S.2C:44-1 is amended to read as follows:

18 2C:44-1. a. In determining the appropriate sentence to be  
19 imposed on a person who has been convicted of an offense, the  
20 court shall consider the following aggravating circumstances:

21 (1) The nature and circumstances of the offense, and the role of  
22 the actor therein, including whether or not it was committed in an  
23 especially heinous, cruel, or depraved manner;

24 (2) The gravity and seriousness of harm inflicted on the victim,  
25 including whether or not the defendant knew or reasonably should  
26 have known that the victim of the offense was particularly  
27 vulnerable or incapable of resistance due to advanced age, ill-  
28 health, or extreme youth, or was for any other reason substantially  
29 incapable of exercising normal physical or mental power of  
30 resistance;

31 (3) The risk that the defendant will commit another offense;

32 (4) A lesser sentence will depreciate the seriousness of the  
33 defendant's offense because it involved a breach of the public trust  
34 under chapters 27 and 30, or the defendant took advantage of a  
35 position of trust or confidence to commit the offense;

36 (5) There is a substantial likelihood that the defendant is  
37 involved in organized criminal activity;

38 (6) The extent of the defendant's prior criminal record and the  
39 seriousness of the offenses of which he has been convicted;

40 (7) The defendant committed the offense pursuant to an  
41 agreement that he either pay or be paid for the commission of the  
42 offense and the pecuniary incentive was beyond that inherent in the  
43 offense itself;

44 (8) The defendant committed the offense against a police or  
45 other law enforcement officer, correctional employee or fireman,  
46 acting in the performance of his duties while in uniform or  
47 exhibiting evidence of his authority; the defendant committed the  
48 offense because of the status of the victim as a public servant; or the  
49 defendant committed the offense against a sports official, athletic

1 coach or manager, acting in or immediately following the  
2 performance of his duties or because of the person's status as a  
3 sports official, coach or manager;

4 (9) The need for deterring the defendant and others from  
5 violating the law;

6 (10) The offense involved fraudulent or deceptive practices  
7 committed against any department or division of State government;

8 (11) The imposition of a fine, penalty or order of restitution  
9 without also imposing a term of imprisonment would be perceived  
10 by the defendant or others merely as part of the cost of doing  
11 business, or as an acceptable contingent business or operating  
12 expense associated with the initial decision to resort to unlawful  
13 practices;

14 (12) The defendant committed the offense against a person who  
15 he knew or should have known was 60 years of age or older, or  
16 disabled; **[and]**

17 (13) The defendant, while in the course of committing or  
18 attempting to commit the crime, including the immediate flight  
19 therefrom, used or was in possession of a stolen motor vehicle;

20 (14) The offense involved an act of domestic violence, as that  
21 term is defined in subsection a. of section 3 of P.L.1991, c. 261  
22 (C.2C:25-19), committed in the presence of a child under 16 years  
23 of age; and

24 (15) The offense involved an act of domestic violence, as that  
25 term is defined in subsection a. of section 3 of P.L.1991, c. 261  
26 (C.2C:25-19) and the defendant committed at least one act of  
27 domestic violence on more than one occasion.

28 b. In determining the appropriate sentence to be imposed on a  
29 person who has been convicted of an offense, the court may  
30 properly consider the following mitigating circumstances:

31 (1) The defendant's conduct neither caused nor threatened  
32 serious harm;

33 (2) The defendant did not contemplate that his conduct would  
34 cause or threaten serious harm;

35 (3) The defendant acted under a strong provocation;

36 (4) There were substantial grounds tending to excuse or justify  
37 the defendant's conduct, though failing to establish a defense;

38 (5) The victim of the defendant's conduct induced or facilitated  
39 its commission;

40 (6) The defendant has compensated or will compensate the  
41 victim of his conduct for the damage or injury that he sustained, or  
42 will participate in a program of community service;

43 (7) The defendant has no history of prior delinquency or  
44 criminal activity or has led a law-abiding life for a substantial  
45 period of time before the commission of the present offense;

46 (8) The defendant's conduct was the result of circumstances  
47 unlikely to recur;

48 (9) The character and attitude of the defendant indicate that he is  
49 unlikely to commit another offense;

- 1 (10) The defendant is particularly likely to respond affirmatively  
2 to probationary treatment;
- 3 (11) The imprisonment of the defendant would entail excessive  
4 hardship to himself or his dependents;
- 5 (12) The willingness of the defendant to cooperate with law  
6 enforcement authorities;
- 7 (13) The conduct of a youthful defendant was substantially  
8 influenced by another person more mature than the defendant.
- 9 c. (1) A plea of guilty by a defendant or failure to so plead shall  
10 not be considered in withholding or imposing a sentence of  
11 imprisonment.
- 12 (2) When imposing a sentence of imprisonment the court shall  
13 consider the defendant's eligibility for release under the law  
14 governing parole, including time credits awarded pursuant to Title  
15 30 of the Revised Statutes, in determining the appropriate term of  
16 imprisonment.
- 17 d. Presumption of imprisonment. The court shall deal with a  
18 person who has been convicted of a crime of the first or second  
19 degree, or a crime of the third degree where the court finds that the  
20 aggravating factor in paragraph (5), (14) or (15) of subsection a.  
21 applies, by imposing a sentence of imprisonment unless, having  
22 regard to the character and condition of the defendant, it is of the  
23 opinion that his imprisonment would be a serious injustice which  
24 overrides the need to deter such conduct by others.  
25 Notwithstanding the provisions of subsection e. of this section, the  
26 court shall deal with a person who has been convicted of theft of a  
27 motor vehicle or of the unlawful taking of a motor vehicle and who  
28 has previously been convicted of either offense by imposing a  
29 sentence of imprisonment unless, having regard to the character and  
30 condition of the defendant, it is of the opinion that his imprisonment  
31 would be a serious injustice which overrides the need to deter such  
32 conduct by others.
- 33 e. The court shall deal with a person convicted of an offense  
34 other than a crime of the first or second degree, who has not  
35 previously been convicted of an offense, without imposing a  
36 sentence of imprisonment unless, having regard to the nature and  
37 circumstances of the offense and the history, character and  
38 condition of the defendant, it is of the opinion that his imprisonment  
39 is necessary for the protection of the public under the criteria set  
40 forth in subsection a., except that this subsection shall not apply if  
41 the court finds that the aggravating factor in paragraph (5), (14) or  
42 (15) of subsection a. applies or if the person is convicted of any of  
43 the following crimes of the third degree: theft of a motor vehicle;  
44 unlawful taking of a motor vehicle; eluding; if the person is  
45 convicted of a crime of the third degree constituting use of a false  
46 government document in violation of subsection c. of section 1 of  
47 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime  
48 of the third degree constituting distribution, manufacture or  
49 possession of an item containing personal identifying information in



1 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-  
2 17.3); if the person is convicted of a crime of the third or fourth  
3 degree constituting bias intimidation in violation of N.J.S.2C:16-1;  
4 if the person is convicted of a crime of the third degree under  
5 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of  
6 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a  
7 crime of the third or fourth degree under the provisions of section 1  
8 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

9 f. Presumptive Sentences. (1) Except for the crime of murder,  
10 unless the preponderance of aggravating or mitigating factors, as set  
11 forth in subsections a. and b., weighs in favor of a higher or lower  
12 term within the limits provided in N.J.S.2C:43-6, when a court  
13 determines that a sentence of imprisonment is warranted, it shall  
14 impose sentence as follows:

15 (a) To a term of 20 years for aggravated manslaughter or  
16 kidnapping pursuant to paragraph (1) of subsection c. of  
17 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
18 degree;

19 (b) Except as provided in **[paragraph]** subparagraph (a) of this  
20 **[subsection]** paragraph to a term of 15 years for a crime of the first  
21 degree;

22 (c) To a term of seven years for a crime of the second degree;

23 (d) To a term of four years for a crime of the third degree; and

24 (e) To a term of nine months for a crime of the fourth degree.

25 In imposing a minimum term pursuant to **[2C:43-6b.]** subsection  
26 b. of N.J.S.2C:43-6, the sentencing court shall specifically place on  
27 the record the aggravating factors set forth in this section which  
28 justify the imposition of a minimum term.

29 Unless the preponderance of mitigating factors set forth in  
30 subsection b. weighs in favor of a lower term within the limits  
31 authorized, sentences imposed pursuant to **[2C:43-7a.(1)]**  
32 paragraph (1) of subsection a. of N.J.S.2C:43-7 shall have a  
33 presumptive term of life imprisonment. Unless the preponderance  
34 of aggravating and mitigating factors set forth in subsections a. and  
35 b. weighs in favor of a higher or lower term within the limits  
36 authorized, sentences imposed pursuant to **[2C:43-7a.(2)]**  
37 paragraph (2) of subsection a. of N.J.S.2C:43-7 shall have a  
38 presumptive term of 50 years' imprisonment; sentences imposed  
39 pursuant to **[2C:43-7a.(3)]** paragraph (3) of subsection a. of  
40 N.J.S.2C:43-7 shall have a presumptive term of 15 years'  
41 imprisonment; and sentences imposed pursuant to **[2C:43-7a.(4)]**  
42 paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a  
43 presumptive term of seven years' imprisonment.

44 In imposing a minimum term pursuant to **[2C:43-7b.]** subsection  
45 b. of N.J.S.2C43-7, the sentencing court shall specifically place on  
46 the record the aggravating factors set forth in this section which  
47 justify the imposition of a minimum term.

1 (2) In cases of convictions for crimes of the first or second  
2 degree where the court is clearly convinced that the mitigating  
3 factors substantially outweigh the aggravating factors and where the  
4 interest of justice demands, the court may sentence the defendant to  
5 a term appropriate to a crime of one degree lower than that of the  
6 crime for which he was convicted. If the court does impose  
7 sentence pursuant to this paragraph, or if the court imposes a  
8 noncustodial or probationary sentence upon conviction for a crime  
9 of the first or second degree, such sentence shall not become final  
10 for 10 days in order to permit the appeal of such sentence by the  
11 prosecution.

12 g. Imposition of Noncustodial Sentences in Certain Cases. If  
13 the court, in considering the aggravating factors set forth in  
14 subsection a., finds the aggravating factor in **¶**paragraph a.(2), a.(5),  
15 a.(10), or a.(12)**¶** paragraph (2), (5), (10), or (12) of subsection a.  
16 and does not impose a custodial sentence, the court shall  
17 specifically place on the record the mitigating factors which justify  
18 the imposition of a noncustodial sentence.

19 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-  
20 11), the presumption of imprisonment as provided in subsection d.  
21 of this section shall not preclude the admission of a person to the  
22 Intensive Supervision Program, established pursuant to the Rules  
23 Governing the Courts of the State of New Jersey.  
24 (cf: P.L.2010, c.30, s.1)

25

26 6. This act shall take effect immediately.

27

28

29

30

31 Removes presumption of nonimprisonment in certain assault  
32 cases involving domestic violence victims; expands criminal  
33 coercion statute; revises Pretrial Intervention procedures in certain  
34 criminal cases.

# SENATE, No. 2559

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 1, 2014

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator KEVIN J. O'TOOLE**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Co-Sponsored by:**

**Senators Cardinale, Lesniak and Pou**

**SYNOPSIS**

Upgrades assault against domestic violence victims; revises Pretrial Intervention procedures in domestic violence cases.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/12/2015)**

1 AN ACT concerning domestic violence and pretrial intervention and  
2 amending various parts of the statutory law.

3

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

6

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

8 2C:12-1. Assault. a. Simple assault. A person is guilty of  
9 assault if he:

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

12 (2) Negligently causes bodily injury to another with a deadly  
13 weapon; or

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

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

19 b. Aggravated assault. A person is guilty of aggravated assault  
20 if he:

21 (1) Attempts to cause serious bodily injury to another, or causes  
22 such injury purposely or knowingly or under circumstances  
23 manifesting extreme indifference to the value of human life  
24 recklessly causes such injury; or

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

27 (3) Recklessly causes bodily injury to another with a deadly  
28 weapon; or

29 (4) Knowingly under circumstances manifesting extreme  
30 indifference to the value of human life points a firearm, as defined  
31 in **[section 2C:39-1f.] subsection f. of N.J.S.2C:39-1**, at or in the  
32 direction of another, whether or not the actor believes it to be  
33 loaded; or

34 (5) Commits a simple assault as defined in paragraph (1), (2) or  
35 (3) of subsection a. [(1), (2) or (3)] of this section upon:

36 (a) Any law enforcement officer acting in the performance of  
37 his duties while in uniform or exhibiting evidence of his authority  
38 or because of his status as a law enforcement officer; or

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

42 (c) Any person engaged in emergency first-aid or medical  
43 services acting in the performance of his duties while in uniform or  
44 otherwise clearly identifiable as being engaged in the performance  
45 of emergency first-aid or medical services; or

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

**Matter underlined thus is new matter.**

1 (d) Any school board member, school administrator, teacher,  
2 school bus driver or other employee of a public or nonpublic school  
3 or school board while clearly identifiable as being engaged in the  
4 performance of his duties or because of his status as a member or  
5 employee of a public or nonpublic school or school board or any  
6 school bus driver employed by an operator under contract to a  
7 public or nonpublic school or school board while clearly  
8 identifiable as being engaged in the performance of his duties or  
9 because of his status as a school bus driver; or

10 (e) Any employee of the Division of Child Protection and  
11 Permanency while clearly identifiable as being engaged in the  
12 performance of his duties or because of his status as an employee of  
13 the division; or

14 (f) Any justice of the Supreme Court, judge of the Superior  
15 Court, judge of the Tax Court or municipal judge while clearly  
16 identifiable as being engaged in the performance of judicial duties  
17 or because of his status as a member of the judiciary; or

18 (g) Any operator of a motorbus or the operator's supervisor or  
19 any employee of a rail passenger service while clearly identifiable  
20 as being engaged in the performance of his duties or because of his  
21 status as an operator of a motorbus or as the operator's supervisor or  
22 as an employee of a rail passenger service; or

23 (h) Any Department of Corrections employee, county  
24 corrections officer, juvenile corrections officer, State juvenile  
25 facility employee, juvenile detention staff member, juvenile  
26 detention officer, probation officer or any sheriff, undersheriff, or  
27 sheriff's officer acting in the performance of his duties while in  
28 uniform or exhibiting evidence of his authority; or

29 (i) Any employee, including any person employed under  
30 contract, of a utility company as defined in section 2 of P.L.1971,  
31 c.224 (C.2A:42-86) or a cable television company subject to the  
32 provisions of the "Cable Television Act," P.L.1972, c.186  
33 (C.48:5A-1 et seq.) while clearly identifiable as being engaged in  
34 the performance of his duties in regard to connecting, disconnecting  
35 or repairing or attempting to connect, disconnect or repair any gas,  
36 electric or water utility, or cable television or telecommunication  
37 service; or

38 (j) Any health care worker employed by a licensed health care  
39 facility to provide direct patient care, any health care professional  
40 licensed or otherwise authorized pursuant to Title 26 or Title 45 of  
41 the Revised Statutes to practice a health care profession, except a  
42 direct care worker at a State or county psychiatric hospital or State  
43 developmental center or veterans' memorial home, while clearly  
44 identifiable as being engaged in the duties of providing direct  
45 patient care or practicing the health care profession; or

46 (k) Any direct care worker at a State or county psychiatric  
47 hospital or State developmental center or veterans' memorial home,  
48 while clearly identifiable as being engaged in the duties of

1 providing direct patient care or practicing the health care  
2 profession, provided that the actor is not a patient or resident at the  
3 facility who is classified by the facility as having a mental illness or  
4 developmental disability; or

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

14 (7) Attempts to cause significant bodily injury to another or  
15 causes significant bodily injury purposely or knowingly or, under  
16 circumstances manifesting extreme indifference to the value of  
17 human life recklessly causes such significant bodily injury; or

18 (8) Causes bodily injury by knowingly or purposely starting a  
19 fire or causing an explosion in violation of N.J.S.2C:17-1 which  
20 results in bodily injury to any emergency services personnel  
21 involved in fire suppression activities, rendering emergency  
22 medical services resulting from the fire or explosion or rescue  
23 operations, or rendering any necessary assistance at the scene of the  
24 fire or explosion, including any bodily injury sustained while  
25 responding to the scene of a reported fire or explosion. For  
26 purposes of this **subsection** paragraph, "emergency services  
27 personnel" shall include, but not be limited to, any paid or volunteer  
28 fireman, any person engaged in emergency first-aid or medical  
29 services and any law enforcement officer. Notwithstanding any  
30 other provision of law to the contrary, a person shall be strictly  
31 liable for a violation of this paragraph upon proof of a violation of  
32 N.J.S.2C:17-1 which resulted in bodily injury to any emergency  
33 services personnel; or

34 (9) Knowingly, under circumstances manifesting extreme  
35 indifference to the value of human life, points or displays a firearm,  
36 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of  
37 a law enforcement officer; or

38 (10) Knowingly points, displays or uses an imitation firearm, as  
39 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a  
40 law enforcement officer with the purpose to intimidate, threaten or  
41 attempt to put the officer in fear of bodily injury or for any unlawful  
42 purpose; or

43 (11) Uses or activates a laser sighting system or device, or a  
44 system or device which, in the manner used, would cause a  
45 reasonable person to believe that it is a laser sighting system or  
46 device, against a law enforcement officer acting in the performance  
47 of his duties while in uniform or exhibiting evidence of his  
48 authority. As used in this paragraph, "laser sighting system or

1 device" means any system or device that is integrated with or  
2 affixed to a firearm and emits a laser light beam that is used to  
3 assist in the sight alignment or aiming of the firearm;

4 (12) Attempts to cause significant bodily injury or causes  
5 significant bodily injury purposely or knowingly or, under  
6 circumstances manifesting extreme indifference to the value of  
7 human life, recklessly causes significant bodily injury to a person  
8 who, with respect to the actor, meets the definition of a victim of  
9 domestic violence, as defined in subsection d. of section 3 of  
10 P.L.1991, c. 261 (C.2C:25-19).

11 Aggravated assault under **【subsections b. (1) and b. (6)】**  
12 paragraphs (1) and (6) of subsection b. of this section is a crime of  
13 the second degree; under **【subsections b. (2), b. (7), b. (9) and b.**  
14 **【(10)】 paragraphs (2), (7), (9) and (10) of subsection b. of this**  
15 **section** is a crime of the third degree; under **【subsections b. (3) and**  
16 **b. (4)】 paragraphs (3) and (4) of subsection b. of this section** is a  
17 crime of the fourth degree; and under **【subsection b. (5)】 paragraph**  
18 **(5) of subsection b. of this section** is a crime of the third degree if  
19 the victim suffers bodily injury, otherwise it is a crime of the fourth  
20 degree. Aggravated assault under **【subsection b.(8)】 paragraph (8)**  
21 **of subsection b. of this section** is a crime of the third degree if the  
22 victim suffers bodily injury; if the victim suffers significant bodily  
23 injury or serious bodily injury it is a crime of the second degree.  
24 Aggravated assault under **【subsection b. (11)】 paragraph (11) of**  
25 **subsection b. of this section** is a crime of the third degree.  
26 Aggravated assault under paragraph (12) of subsection b. of this  
27 section is a crime of the third degree but the presumption of non-  
28 imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first  
29 offense of a crime of the third degree shall not apply.

30 c. (1) A person is guilty of assault by auto or vessel when the  
31 person drives a vehicle or vessel recklessly and causes either  
32 serious bodily injury or bodily injury to another. Assault by auto or  
33 vessel is a crime of the fourth degree if serious bodily injury results  
34 and is a disorderly persons offense if bodily injury results. Proof  
35 that the defendant was operating a hand-held wireless telephone  
36 while driving a motor vehicle in violation of section 1 of P.L.2003,  
37 c.310 (C.39:4-97.3) may give rise to an inference that the defendant  
38 was driving recklessly.

39 (2) Assault by auto or vessel is a crime of the third degree if the  
40 person drives the vehicle while in violation of R.S.39:4-50 or  
41 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily  
42 injury results and is a crime of the fourth degree if the person drives  
43 the vehicle while in violation of R.S.39:4-50 or section 2 of  
44 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

45 (3) Assault by auto or vessel is a crime of the second degree if  
46 serious bodily injury results from the defendant operating the auto

1 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,  
2 c.512 (C.39:4-50.4a) while:

3 (a) on any school property used for school purposes which is  
4 owned by or leased to any elementary or secondary school or school  
5 board, or within 1,000 feet of such school property;

6 (b) driving through a school crossing as defined in R.S.39:1-1 if  
7 the municipality, by ordinance or resolution, has designated the  
8 school crossing as such; or

9 (c) driving through a school crossing as defined in R.S.39:1-1  
10 knowing that juveniles are present if the municipality has not  
11 designated the school crossing as such by ordinance or resolution.

12 Assault by auto or vessel is a crime of the third degree if bodily  
13 injury results from the defendant operating the auto or vessel in  
14 violation of this paragraph.

15 A map or true copy of a map depicting the location and  
16 boundaries of the area on or within 1,000 feet of any property used  
17 for school purposes which is owned by or leased to any elementary  
18 or secondary school or school board produced pursuant to section 1  
19 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under  
20 subparagraph (a) of paragraph (3) of this subsection.

21 It shall be no defense to a prosecution for a violation of  
22 subparagraph (a) or (b) of paragraph (3) of this subsection that the  
23 defendant was unaware that the prohibited conduct took place while  
24 on or within 1,000 feet of any school property or while driving  
25 through a school crossing. Nor shall it be a defense to a prosecution  
26 under subparagraph (a) or (b) of paragraph (3) of this subsection  
27 that no juveniles were present on the school property or crossing  
28 zone at the time of the offense or that the school was not in session.

29 (4) Assault by auto or vessel is a crime of the third degree if the  
30 person purposely drives a vehicle in an aggressive manner directed  
31 at another vehicle and serious bodily injury results and is a crime of  
32 the fourth degree if the person purposely drives a vehicle in an  
33 aggressive manner directed at another vehicle and bodily injury  
34 results. For purposes of this paragraph, "driving a vehicle in an  
35 aggressive manner" shall include, but is not limited to,  
36 unexpectedly altering the speed of the vehicle, making improper or  
37 erratic traffic lane changes, disregarding traffic control devices,  
38 failing to yield the right of way, or following another vehicle too  
39 closely.

40 As used in this **[section]** subsection, "vessel" means a means of  
41 conveyance for travel on water and propelled otherwise than by  
42 muscular power.

43 d. A person who is employed by a facility as defined in section  
44 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as  
45 defined in paragraph (1) or (2) of subsection a. of this section upon  
46 an institutionalized elderly person as defined in section 2 of  
47 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth  
48 degree.



1 e. (Deleted by amendment, P.L.2001, c.443).

2 f. A person who commits a simple assault as defined in  
3 paragraph (1), (2) or (3) of subsection a. of this section in the  
4 presence of a child under 16 years of age at a school or community  
5 sponsored youth sports event is guilty of a crime of the fourth  
6 degree. The defendant shall be strictly liable upon proof that the  
7 offense occurred, in fact, in the presence of a child under 16 years  
8 of age. It shall not be a defense that the defendant did not know  
9 that the child was present or reasonably believed that the child was  
10 16 years of age or older. The provisions of this subsection shall not  
11 be construed to create any liability on the part of a participant in a  
12 youth sports event or to abrogate any immunity or defense available  
13 to a participant in a youth sports event. As used in this act, "school  
14 or community sponsored youth sports event" means a competition,  
15 practice or instructional event involving one or more interscholastic  
16 sports teams or youth sports teams organized pursuant to a  
17 nonprofit or similar charter or which are member teams in a youth  
18 league organized by or affiliated with a county or municipal  
19 recreation department and shall not include collegiate, semi-  
20 professional or professional sporting events.

21 (cf: P.L.2012, c.22, s.2)

22

23 2. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to  
24 read as follows:

25 3. As used in this act:

26 a. "Domestic violence" means the occurrence of one or more of  
27 the following acts inflicted upon a person protected under this act  
28 by an adult or an emancipated minor:

29 (1) Homicide N.J.S.2C:11-1 et seq.

30 (2) Assault N.J.S.2C:12-1

31 (3) Terroristic threats N.J.S.2C:12-3

32 (4) Kidnapping N.J.S.2C:13-1

33 (5) Criminal restraint N.J.S.2C:13-2

34 (6) False imprisonment N.J.S.2C:13-3

35 (7) Sexual assault N.J.S.2C:14-2

36 (8) Criminal sexual contact N.J.S.2C:14-3

37 (9) Lewdness N.J.S.2C:14-4

38 (10) Criminal mischief N.J.S.2C:17-3

39 (11) Burglary N.J.S.2C:18-2

40 (12) Criminal trespass N.J.S.2C:18-3

41 (13) Harassment N.J.S.2C:33-4

42 (14) Stalking P.L.1992, c.209 (C.2C:12-10)

43 (15) Criminal coercion N.J.S.2C:13-5

44 (16) Robbery N.J.S.2C:15-1

45 (17) Contempt of a domestic violence order pursuant to  
46 subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly  
47 persons offense

1       (18) Any other crime involving risk of death or serious bodily  
2 injury to a person protected under the "Prevention of Domestic  
3 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.)

4       When one or more of these acts is inflicted by an unemancipated  
5 minor upon a person protected under this act, the occurrence shall  
6 not constitute "domestic violence," but may be the basis for the  
7 filing of a petition or complaint pursuant to the provisions of  
8 section 11 of P.L.1982, c.77 (C.2A:4A-30).

9       b. "Law enforcement agency" means a department, division,  
10 bureau, commission, board or other authority of the State or of any  
11 political subdivision thereof which employs law enforcement  
12 officers.

13       c. "Law enforcement officer" means a person whose public  
14 duties include the power to act as an officer for the detection,  
15 apprehension, arrest and conviction of offenders against the laws of  
16 this State.

17       d. "Victim of domestic violence" means a person protected  
18 under this act and shall include any person who is 18 years of age or  
19 older or who is an emancipated minor and who has been subjected  
20 to domestic violence by a spouse, former spouse, or any other  
21 person who is a present household member or **【former】** was at any  
22 time a household member. "Victim of domestic violence" also  
23 includes any person, regardless of age, who has been subjected to  
24 domestic violence by a person with whom the victim has a child in  
25 common, or with whom the victim anticipates having a child in  
26 common, if one of the parties is pregnant. "Victim of domestic  
27 violence" also includes any person who has been subjected to  
28 domestic violence by a person with whom the victim has had a  
29 dating relationship.

30       e. "Emancipated minor" means a person who is under 18 years  
31 of age but who has been married, has entered military service, has a  
32 child or is pregnant or has been previously declared by a court or an  
33 administrative agency to be emancipated.

34 (cf: P.L.1994, c.94, s.1)

35  
36       3. N.J.S.2C:13-5 is amended to read as follows:

37       2C:13-5. Criminal Coercion.

38       a. Offense defined. A person is guilty of criminal coercion if,  
39 with purpose unlawfully to restrict another's freedom of action to  
40 engage or refrain from engaging in conduct, he threatens to:

41       (1) Inflict bodily injury on anyone or commit any other offense,  
42 regardless of the immediacy of the threat;

43       (2) Accuse anyone of an offense;

44       (3) Expose any secret which would tend to subject any person to  
45 hatred, contempt or ridicule, or to impair his credit or business  
46 repute;

47       (4) Take or withhold action as an official, or cause an official to  
48 take or withhold action;

1 (5) Bring about or continue a strike, boycott or other collective  
2 action, except that such a threat shall not be deemed coercive when  
3 the restriction compelled is demanded in the course of negotiation  
4 for the benefit of the group in whose interest the actor acts;

5 (6) Testify or provide information or withhold testimony or  
6 information with respect to another's legal claim or defense; or

7 (7) Perform any other act which would not in itself substantially  
8 benefit the actor but which is calculated to substantially harm  
9 another person with respect to his health, safety, business, calling,  
10 career, financial condition, reputation or personal relationships.

11 It is an affirmative defense to prosecution based on paragraphs  
12 (2), (3), (4), (6) and (7) that the actor believed the accusation or  
13 secret to be true or the proposed official action justified and that  
14 his purpose was limited to compelling the other to behave in a way  
15 reasonably related to the circumstances which were the subject of  
16 the accusation, exposure or proposed official action, as by desisting  
17 from further misbehavior, making good a wrong done, or refraining  
18 from taking any action or responsibility for which the actor  
19 believes the other disqualified.

20 b. Grading. Criminal coercion is a crime of the fourth degree  
21 unless the threat is to commit a crime more serious than one of the  
22 fourth degree or the actor's purpose is criminal, in which cases the  
23 offense is a crime of the third degree.

24 (cf: P.L.1978, c.95, s.2C:13-5)

25

26 4. N.J.S.2C:43-12 is amended to read as follows:

27 2C:43-12. Supervisory Treatment--Pretrial Intervention.

28 a. Public policy. The purpose of N.J.S.2C:43-12 through  
29 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial  
30 Intervention. It is the policy of the State of New Jersey that  
31 supervisory treatment should ordinarily be limited to persons who  
32 have not previously been convicted of any criminal offense under  
33 the laws of New Jersey, or under any criminal law of the United  
34 States, or any other state when supervisory treatment would:

35 (1) Provide applicants, on an equal basis, with opportunities to  
36 avoid ordinary prosecution by receiving early rehabilitative services  
37 or supervision, when such services or supervision can reasonably be  
38 expected to deter future criminal behavior by an applicant, and  
39 when there is apparent causal connection between the offense  
40 charged and the rehabilitative or supervisory need, without which  
41 cause both the alleged offense and the need to prosecute might not  
42 have occurred; or

43 (2) Provide an alternative to prosecution for applicants who  
44 might be harmed by the imposition of criminal sanctions as  
45 presently administered, when such an alternative can be expected to  
46 serve as sufficient sanction to deter criminal conduct; or

47 (3) Provide a mechanism for permitting the least burdensome  
48 form of prosecution possible for defendants charged with

1 "victimless" offenses, other than defendants who were public  
2 officers or employees charged with offenses that involved or  
3 touched their office or employment; or

4 (4) Provide assistance to criminal calendars in order to focus  
5 expenditure of criminal justice resources on matters involving  
6 serious criminality and severe correctional problems; or

7 (5) Provide deterrence of future criminal or disorderly behavior  
8 by an applicant in a program of supervisory treatment.

9 b. Admission of an applicant into a program of supervisory  
10 treatment shall be measured according to the applicant's amenability  
11 to correction, responsiveness to rehabilitation and the nature of the  
12 offense. There shall be a presumption against admission into a  
13 program of supervisory treatment for a defendant who was a public  
14 officer or employee whose offense involved or touched upon his  
15 public office or employment.

16 c. The decision and reasons therefor made by the designated  
17 judges (or assignment judges), prosecutors and program directors in  
18 granting or denying applications for supervisory treatment, in  
19 recommending and ordering termination from the program or  
20 dismissal of charges, in all cases shall be reduced to writing and  
21 disclosed to the applicant.

22 d. If an applicant desires to challenge the decision of the  
23 prosecutor or program director not to recommend enrollment in a  
24 program of supervisory treatment the proceedings prescribed under  
25 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be  
26 followed.

27 e. Referral. At any time prior to trial but after the filing of a  
28 criminal complaint, or the filing of an accusation or the return of an  
29 indictment, with the consent of the prosecutor and upon written  
30 recommendation of the program director, the assignment judge or a  
31 judge designated by him may postpone all further proceedings  
32 against an applicant and refer said applicant to a program of  
33 supervisory treatment approved by the Supreme Court. Prosecutors  
34 and program directors shall consider in formulating their  
35 recommendation of an applicant's participation in a supervisory  
36 treatment program, among others, the following criteria:

37 (1) The nature of the offense;

38 (2) The facts of the case;

39 (3) The motivation and age of the defendant;

40 (4) The desire of the complainant or victim to forego  
41 prosecution;

42 (5) The existence of personal problems and character traits  
43 which may be related to the applicant's crime and for which services  
44 are unavailable within the criminal justice system, or which may be  
45 provided more effectively through supervisory treatment and the  
46 probability that the causes of criminal behavior can be controlled by  
47 proper treatment;

- 1 (6) The likelihood that the applicant's crime is related to a
- 2 condition or situation that would be conducive to change through
- 3 his participation in supervisory treatment;
- 4 (7) The needs and interests of the victim and society;
- 5 (8) The extent to which the applicant's crime constitutes part of
- 6 a continuing pattern of anti-social behavior;
- 7 (9) The applicant's record of criminal and penal violations and
- 8 the extent to which he may present a substantial danger to others;
- 9 (10) Whether or not the crime is of an assaultive or violent
- 10 nature, whether in the criminal act itself or in the possible injurious
- 11 consequences of such behavior;
- 12 (11) Consideration of whether or not prosecution would
- 13 exacerbate the social problem that led to the applicant's criminal
- 14 act;
- 15 (12) The history of the use of physical violence toward others;
- 16 (13) Any involvement of the applicant with organized crime;
- 17 (14) Whether or not the crime is of such a nature that the value
- 18 of supervisory treatment would be outweighed by the public need
- 19 for prosecution;
- 20 (15) Whether or not the applicant's involvement with other
- 21 people in the crime charged or in other crime is such that the
- 22 interest of the State would be best served by processing his case
- 23 through traditional criminal justice system procedures;
- 24 (16) Whether or not the applicant's participation in pretrial
- 25 intervention will adversely affect the prosecution of codefendants;
- 26 and
- 27 (17) Whether or not the harm done to society by abandoning
- 28 criminal prosecution would outweigh the benefits to society from
- 29 channeling an offender into a supervisory treatment program.
- 30 The prosecutor and the court, in formulating their
- 31 recommendations or decisions regarding an applicant's participation
- 32 in a supervisory treatment program, shall give added weight to the
- 33 victim's position on whether the defendant should be admitted.
- 34 f. Review of Supervisory Treatment Applications; Procedure
- 35 Upon Denial. Each applicant for supervisory treatment shall be
- 36 entitled to full and fair consideration of his application. If an
- 37 application is denied, the program director or the prosecutor shall
- 38 precisely state his findings and conclusion which shall include the
- 39 facts upon which the application is based and the reasons offered
- 40 for the denial. If the applicant desires to challenge the decision of a
- 41 program director not to recommend, or of a prosecutor not to
- 42 consent to, enrollment into a supervisory treatment program, a
- 43 motion shall be filed before the designated judge (or assignment
- 44 judge) authorized pursuant to the rules of court to enter orders.
- 45 g. Limitations. (1) Supervisory treatment may occur only once
- 46 with respect to any defendant and any person who has previously
- 47 received supervisory treatment under section 27 of P.L.1970, c.226
- 48 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1,

1 or a conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-  
2 13.1 et al.) shall not be eligible for supervisory treatment under this  
3 section.

4 **【However,】** (2) Except as otherwise provided in paragraph (3) of  
5 this subsection, supervisory treatment, as provided herein, shall be  
6 available to a defendant irrespective of whether the defendant  
7 contests his guilt of the charge or charges against him.

8 (3) Admission into supervisory treatment shall be available to  
9 the following defendants only upon entering a plea of guilty: (a) a  
10 defendant charged with a first or second degree crime; (b) a  
11 defendant charged with any crime if the defendant had previously  
12 been convicted of a first or second degree crime; (c) a defendant  
13 charged with a third or fourth degree crime involving domestic  
14 violence, as defined in subsection a. of section 3 of P.L.1991, c.261  
15 (C.2C:25-19); (d) a defendant charged with any crime or offense  
16 involving domestic violence, as defined in subsection a. of section 3  
17 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the  
18 crime or offense while subject to a temporary or permanent  
19 restraining order issued pursuant to the provisions of the  
20 “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261  
21 (C.2C:25-17 et al); or (e) a defendant charged with a fourth degree  
22 crime of contempt pursuant to subsection b. of N.J.S.2C:29-9. For  
23 any such defendant, following the plea of guilty the plea shall be  
24 held in an inactive status pending termination of supervisory  
25 treatment pursuant to subsection d. or e. of N.J.S.2C:43-13. Upon  
26 successful completion of the program of supervisory treatment the  
27 charges shall be dismissed.

28 h. Termination. Termination of supervisory treatment under  
29 this section shall be immediately reported to the assignment judge  
30 of the county who shall forward such information to the  
31 Administrative Director of the Courts.

32 i. Appointment of Program Directors; Authorized Referrals.  
33 Programs of supervisory treatment and appointment of the program  
34 directors require approval by the Supreme Court with the consent of  
35 the assignment judge and prosecutor. Referrals of participants from  
36 supervisory treatment programs may be to any public or private  
37 office or agency, including but not limited to, programs within the  
38 probation service of the court, offering counseling or any other  
39 social service likely to aid in the rehabilitation of the participant  
40 and to deter the commission of other offenses.

41 j. Health Care Professional Licensing Board Notification. The  
42 program director shall promptly notify the State Board of Medical  
43 Examiners when a State licensed physician or podiatrist has been  
44 enrolled in a supervisory treatment program after he has been  
45 charged with an offense involving drugs or alcohol.

46 (cf: P.L.2013, c.158, s.11)

47

48 5. N.J.S.2C:44-1 is amended to read as follows:

- 1       2C:44-1. a. In determining the appropriate sentence to be  
2 imposed on a person who has been convicted of an offense, the  
3 court shall consider the following aggravating circumstances:
- 4       (1) The nature and circumstances of the offense, and the role of  
5 the actor therein, including whether or not it was committed in an  
6 especially heinous, cruel, or depraved manner;
- 7       (2) The gravity and seriousness of harm inflicted on the victim,  
8 including whether or not the defendant knew or reasonably should  
9 have known that the victim of the offense was particularly  
10 vulnerable or incapable of resistance due to advanced age, ill-  
11 health, or extreme youth, or was for any other reason substantially  
12 incapable of exercising normal physical or mental power of  
13 resistance;
- 14       (3) The risk that the defendant will commit another offense;
- 15       (4) A lesser sentence will depreciate the seriousness of the  
16 defendant's offense because it involved a breach of the public trust  
17 under chapters 27 and 30, or the defendant took advantage of a  
18 position of trust or confidence to commit the offense;
- 19       (5) There is a substantial likelihood that the defendant is  
20 involved in organized criminal activity;
- 21       (6) The extent of the defendant's prior criminal record and the  
22 seriousness of the offenses of which he has been convicted;
- 23       (7) The defendant committed the offense pursuant to an  
24 agreement that he either pay or be paid for the commission of the  
25 offense and the pecuniary incentive was beyond that inherent in the  
26 offense itself;
- 27       (8) The defendant committed the offense against a police or  
28 other law enforcement officer, correctional employee or fireman,  
29 acting in the performance of his duties while in uniform or  
30 exhibiting evidence of his authority; the defendant committed the  
31 offense because of the status of the victim as a public servant; or the  
32 defendant committed the offense against a sports official, athletic  
33 coach or manager, acting in or immediately following the  
34 performance of his duties or because of the person's status as a  
35 sports official, coach or manager;
- 36       (9) The need for deterring the defendant and others from  
37 violating the law;
- 38       (10) The offense involved fraudulent or deceptive practices  
39 committed against any department or division of State government;
- 40       (11) The imposition of a fine, penalty or order of restitution  
41 without also imposing a term of imprisonment would be perceived  
42 by the defendant or others merely as part of the cost of doing  
43 business, or as an acceptable contingent business or operating  
44 expense associated with the initial decision to resort to unlawful  
45 practices;
- 46       (12) The defendant committed the offense against a person who  
47 he knew or should have known was 60 years of age or older, or  
48 disabled; **[and]**

1 (13) The defendant, while in the course of committing or  
2 attempting to commit the crime, including the immediate flight  
3 therefrom, used or was in possession of a stolen motor vehicle;

4 (14) The offense involved an act of domestic violence, as that  
5 term is defined in subsection a. of section 3 of P.L.1991, c. 261  
6 (C.2C:25-19), committed in the presence of a child under 16 years  
7 of age; and

8 (15) The offense involved an act of domestic violence, as that  
9 term is defined in subsection a. of section 3 of P.L.1991, c. 261  
10 (C.2C:25-19) and the defendant committed at least one act of  
11 domestic violence on more than one occasion.

12 b. In determining the appropriate sentence to be imposed on a  
13 person who has been convicted of an offense, the court may  
14 properly consider the following mitigating circumstances:

15 (1) The defendant's conduct neither caused nor threatened  
16 serious harm;

17 (2) The defendant did not contemplate that his conduct would  
18 cause or threaten serious harm;

19 (3) The defendant acted under a strong provocation;

20 (4) There were substantial grounds tending to excuse or justify  
21 the defendant's conduct, though failing to establish a defense;

22 (5) The victim of the defendant's conduct induced or facilitated  
23 its commission;

24 (6) The defendant has compensated or will compensate the  
25 victim of his conduct for the damage or injury that he sustained, or  
26 will participate in a program of community service;

27 (7) The defendant has no history of prior delinquency or  
28 criminal activity or has led a law-abiding life for a substantial  
29 period of time before the commission of the present offense;

30 (8) The defendant's conduct was the result of circumstances  
31 unlikely to recur;

32 (9) The character and attitude of the defendant indicate that he is  
33 unlikely to commit another offense;

34 (10) The defendant is particularly likely to respond affirmatively  
35 to probationary treatment;

36 (11) The imprisonment of the defendant would entail excessive  
37 hardship to himself or his dependents;

38 (12) The willingness of the defendant to cooperate with law  
39 enforcement authorities;

40 (13) The conduct of a youthful defendant was substantially  
41 influenced by another person more mature than the defendant.

42 c. (1) A plea of guilty by a defendant or failure to so plead shall  
43 not be considered in withholding or imposing a sentence of  
44 imprisonment.

45 (2) When imposing a sentence of imprisonment the court shall  
46 consider the defendant's eligibility for release under the law  
47 governing parole, including time credits awarded pursuant to Title



1 30 of the Revised Statutes, in determining the appropriate term of  
2 imprisonment.

3 d. Presumption of imprisonment. The court shall deal with a  
4 person who has been convicted of a crime of the first or second  
5 degree, or a crime of the third degree where the court finds that the  
6 aggravating factor in paragraph (5), (14) or (15) of subsection a.  
7 applies, by imposing a sentence of imprisonment unless, having  
8 regard to the character and condition of the defendant, it is of the  
9 opinion that his imprisonment would be a serious injustice which  
10 overrides the need to deter such conduct by others.  
11 Notwithstanding the provisions of subsection e. of this section, the  
12 court shall deal with a person who has been convicted of theft of a  
13 motor vehicle or of the unlawful taking of a motor vehicle and who  
14 has previously been convicted of either offense by imposing a  
15 sentence of imprisonment unless, having regard to the character and  
16 condition of the defendant, it is of the opinion that his imprisonment  
17 would be a serious injustice which overrides the need to deter such  
18 conduct by others.

19 e. The court shall deal with a person convicted of an offense  
20 other than a crime of the first or second degree, who has not  
21 previously been convicted of an offense, without imposing a  
22 sentence of imprisonment unless, having regard to the nature and  
23 circumstances of the offense and the history, character and  
24 condition of the defendant, it is of the opinion that his imprisonment  
25 is necessary for the protection of the public under the criteria set  
26 forth in subsection a., except that this subsection shall not apply if  
27 the court finds that the aggravating factor in paragraph (5), (14) or  
28 (15) of subsection a. applies or if the person is convicted of any of  
29 the following crimes of the third degree: theft of a motor vehicle;  
30 unlawful taking of a motor vehicle; eluding; if the person is  
31 convicted of a crime of the third degree constituting use of a false  
32 government document in violation of subsection c. of section 1 of  
33 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime  
34 of the third degree constituting distribution, manufacture or  
35 possession of an item containing personal identifying information in  
36 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-  
37 17.3); if the person is convicted of a crime of the third or fourth  
38 degree constituting bias intimidation in violation of N.J.S.2C:16-1;  
39 if the person is convicted of a crime of the third degree under  
40 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of  
41 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a  
42 crime of the third or fourth degree under the provisions of section 1  
43 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

44 f. Presumptive Sentences. (1) Except for the crime of murder,  
45 unless the preponderance of aggravating or mitigating factors, as set  
46 forth in subsections a. and b., weighs in favor of a higher or lower  
47 term within the limits provided in N.J.S.2C:43-6, when a court

1 determines that a sentence of imprisonment is warranted, it shall  
2 impose sentence as follows:

3 (a) To a term of 20 years for aggravated manslaughter or  
4 kidnapping pursuant to paragraph (1) of subsection c. of  
5 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
6 degree;

7 (b) Except as provided in **[paragraph]** subparagraph (a) of this  
8 **[subsection]** paragraph to a term of 15 years for a crime of the first  
9 degree;

10 (c) To a term of seven years for a crime of the second degree;

11 (d) To a term of four years for a crime of the third degree; and

12 (e) To a term of nine months for a crime of the fourth degree.

13 In imposing a minimum term pursuant to **[2C:43-6b.]** subsection  
14 b. of N.J.S.2C:43-6, the sentencing court shall specifically place on  
15 the record the aggravating factors set forth in this section which  
16 justify the imposition of a minimum term.

17 Unless the preponderance of mitigating factors set forth in  
18 subsection b. weighs in favor of a lower term within the limits  
19 authorized, sentences imposed pursuant to **[2C:43-7a.(1)]**  
20 paragraph (1) of subsection a. of N.J.S.2C:43-7 shall have a  
21 presumptive term of life imprisonment. Unless the preponderance  
22 of aggravating and mitigating factors set forth in subsections a. and  
23 b. weighs in favor of a higher or lower term within the limits  
24 authorized, sentences imposed pursuant to **[2C:43-7a.(2)]**  
25 paragraph (2) of subsection a. of N.J.S.2C:43-7 shall have a  
26 presumptive term of 50 years' imprisonment; sentences imposed  
27 pursuant to **[2C:43-7a.(3)]** paragraph (3) of subsection a. of  
28 N.J.S.2C:43-7 shall have a presumptive term of 15 years'  
29 imprisonment; and sentences imposed pursuant to **[2C:43-7a.(4)]**  
30 paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a  
31 presumptive term of seven years' imprisonment.

32 In imposing a minimum term pursuant to **[2C:43-7b.]** subsection  
33 b. of N.J.S.2C43-7, the sentencing court shall specifically place on  
34 the record the aggravating factors set forth in this section which  
35 justify the imposition of a minimum term.

36 (2) In cases of convictions for crimes of the first or second  
37 degree where the court is clearly convinced that the mitigating  
38 factors substantially outweigh the aggravating factors and where the  
39 interest of justice demands, the court may sentence the defendant to  
40 a term appropriate to a crime of one degree lower than that of the  
41 crime for which he was convicted. If the court does impose  
42 sentence pursuant to this paragraph, or if the court imposes a  
43 noncustodial or probationary sentence upon conviction for a crime  
44 of the first or second degree, such sentence shall not become final  
45 for 10 days in order to permit the appeal of such sentence by the  
46 prosecution.

1 g. Imposition of Noncustodial Sentences in Certain Cases. If  
2 the court, in considering the aggravating factors set forth in  
3 subsection a., finds the aggravating factor in **【**paragraph a.(2), a.(5),  
4 a.(10), or a.(12)**】** paragraph (2), (5), (10), or (12) of subsection a.  
5 and does not impose a custodial sentence, the court shall  
6 specifically place on the record the mitigating factors which justify  
7 the imposition of a noncustodial sentence.

8 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-  
9 11), the presumption of imprisonment as provided in subsection d.  
10 of this section shall not preclude the admission of a person to the  
11 Intensive Supervision Program, established pursuant to the Rules  
12 Governing the Courts of the State of New Jersey.  
13 (cf: P.L.2010, c.30, s.1)

14  
15 6. This act shall take effect immediately.

16  
17  
18 STATEMENT

19  
20 This bill would upgrade assault against a victim of domestic  
21 violence under certain circumstances. Under current law, it is a  
22 crime of the third degree to attempt to cause significant bodily  
23 injury to another; to cause significant bodily injury purposely or  
24 knowingly; or, under circumstances manifesting extreme  
25 indifference to the value of human life, to recklessly cause such  
26 significant bodily injury. A crime of the third degree is ordinarily  
27 punishable by a term of imprisonment of three to five years, a fine  
28 of up to \$15,000, or both. Under N.J.S.2C:44-1 there is a  
29 presumption of non-imprisonment for a first offense of a crime of  
30 the third degree. Under the bill, if the victim, with respect to the  
31 actor, meets the definition of a victim of domestic violence, as  
32 defined in subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-  
33 19), there would be no presumption of non-imprisonment.

34 In addition, this bill would add to the list of predicate offenses  
35 enumerated in the "Prevention of Domestic Violence Act of 1991,"  
36 P.L.1991, c.261(C.2C:25-17 et al) the following: criminal coercion  
37 (N.J.S.2C:13-5); robbery (N.J.S.2C:15-1); contempt of a domestic  
38 violence order (subsection b. of N.J.S.2C:29-9) where the contempt  
39 would constitute a crime or disorderly persons offense; and any  
40 other crime involving a risk of death or serious bodily injury to a  
41 domestic violence victim.

42 The bill would also expand the offense of criminal coercion,  
43 pursuant to N.J.S.2C:13-5, to include threatening to inflict bodily  
44 injury on anyone or commit any other offense regardless of the  
45 immediacy of the threat.

46 The bill provides that additional weight should be given by the  
47 prosecutor and the court to a domestic violence victim's position on

1 the proposed admission of a defendant for participation in Pretrial  
2 Intervention (PTI), also known as supervisory treatment.

3 In addition, the bill provides that admission into supervisory  
4 treatment would be made available to certain defendants only upon  
5 entering a plea of guilty: (a) a defendant charged with a first or  
6 second crime; (b) a defendant charged with any crime if the  
7 defendant had previously been convicted of a first or second degree  
8 crime; (c) a defendant charged with a third or fourth degree crime  
9 involving domestic violence; (d) a defendant charged with any  
10 crime or offense involving domestic violence, if the defendant  
11 committed the crime or offense while subject to a domestic violence  
12 temporary or permanent restraining order; or (e) a defendant  
13 charged with a fourth degree crime of contempt of a domestic  
14 violence order. For any such defendant, following the plea of guilty  
15 the plea would be held in an inactive status pending termination of  
16 supervisory treatment pursuant to subsection d. or e. of  
17 N.J.S.2C:43-13. Upon successful completion of the program of the  
18 supervisory treatment the charges would be dismissed.

19 The bill would also add two new aggravating factors for the  
20 court to consider in imposing a sentence pursuant to N.J.S.2C:44-1:  
21 (a) the offense involved an act of domestic violence committed in  
22 the presence of a child under 16 years of age; and (b) the offense  
23 involved an act of domestic violence and the defendant committed  
24 at least one act of domestic violence on more than one occasion.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2559**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 11, 2015

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2559.

This bill, as amended, concerns the State's prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill's provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al.; (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

First, the statutory definition of "domestic violence" under the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al. would be expanded to include: robbery (N.J.S.2C:15-1); criminal coercion (N.J.S.2C:13-5); contempt of a court order entered under the act (N.J.S.2C:29-9, subsection b.), when the contempt violation itself constitutes the commission of a crime or disorderly persons offense; and any other crime involving risk of death or serious bodily injury to a domestic violence victim. These crimes would be added to the existing crimes or offenses, such as assault, terroristic threat, false imprisonment, and criminal trespass, which collectively constitute acts of domestic violence for which a victim may seek additional protections and relief from an abuser under the law.

Criminal coercion, referenced above, would also be clarified to provide domestic violence victims and other victims better protections from such acts. Specifically, the bill would indicate that there was no immediacy of harm requirement necessary in order to prosecute a person who threatened to inflict bodily injury on anyone or commit any other offense with the purpose of unlawfully restricting another's freedom of action, recognizing that such threats of coercion may not always involve an immediacy of harm.

As to the increased likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury, the bill would take this crime, graded as a crime of the third degree, and remove the statutory presumption of non-imprisonment, set forth in subsection e. of N.J.S.2C:44-1, ordinarily associated with sentencing for this and other third degree crimes. Thus, absent the presumption, the court would engage in the weighing of the aggravating and mitigating sentencing factors set forth in subsections a. and b. of N.J.S.2C:44-1 in order to determine the appropriateness for a prison sentence and, if imposed, the length of such sentence, which would ordinarily be between three to five years. A third-degree aggravated assault is also punishable by a fine of up to \$15,000.

As to the increased likelihood of prison time for other crimes or offenses committed against domestic violence victims, the bill would establish a presumption of imprisonment for the following:

- any act of domestic violence committed in the presence of a child under 16 years of age; and
- any act of domestic violence, when the abuser committed at least one act of domestic violence on more than one occasion.

Both categories would also be established as aggravating factors for the court to consider when determining the possible length of the prison sentence imposed.

Finally, the bill presents several alterations to the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program (PTI) for supervisory treatment.

Specific to domestic violence offenders, the bill would establish a presumption against admission into the program, if the crime or offense:

- was committed while subject to a domestic violence temporary or permanent restraining order; or
- involved violence or the threat of violence against the victim – meaning the victim sustained serious or significant bodily injury, or the offender is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon, or threatens to inflict serious or significant bodily injury.

Also, the Attorney General would be responsible for developing guidelines to ensure the uniform exercise of discretion by prosecutors in formulating recommendations on participation in PTI for domestic violence offenders.

For all criminal offenders, even those domestic violence offenders presumed to not be admitted to the program, the bill provides that when a prosecutor and court consider an application for admission, both would “give due consideration to the victim's position” on whether the defendant should be admitted. The bill also provides that PTI admission would require entry of a plea of guilty for any person charged with:

- a first or second degree crime;

- any crime, if the person was previously convicted of a first or second degree crime;
- a third or fourth degree crime involving domestic violence; or
- any disorderly or petty disorderly persons offense involving domestic violence, if the defendant committed the offense while subject to a domestic violence temporary or permanent restraining order.

For any such person, the guilty plea would be held in an inactive status pending the outcome of supervisory treatment under the program. If the person successfully completed the program, the person's charges would be dismissed. If the person was discharged without successfully completing the program, the person's charges could be reactivated and criminal proceedings continued as through no supervisory treatment had been commenced.

The committee amendments to the bill:

- establish a presumption against admission into PTI supervisory treatment for domestic violence offenders, if the offender committed the crime or offense while subject to a domestic violence temporary or permanent restraining order, or that crime or offense involved violence or the threat of violence against the victim;
- require the Attorney General develop guidelines to ensure the uniform exercise of discretion by prosecutors in formulating recommendations on domestic violence offenders' participation in PTI;
- require that prosecutors and the courts, when considering applications for admission into PTI, "give *due consideration* to the victim's position on whether the defendant should be admitted" instead of requiring that they give "*added weight*" to the victim's position;
- clarify that an offender would be required to plead guilty for admission into PTI for any disorderly or petty disorderly persons offense involving domestic violence, if the defendant committed the offense while subject to a domestic violence temporary or permanent restraining order – if such offender was instead charged with a crime, the offender would be required to plead guilty as a condition of admission as covered under another category presented in the bill;
- remove, as redundant, the category of persons required to plead guilty for committing a fourth degree crime of contempt of an order entered under the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al., since pleading to this fourth degree crime as a condition of admission into PTI is already covered under another category presented in the bill; and
- update the bill's title and synopsis to better reflect the provisions of the bill and the changes made by the amendments.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 2559**

# **STATE OF NEW JERSEY**

DATED: JUNE 23, 2015

The Senate Budget and Appropriations Committee reports favorably, Senate Bill No. 2559 (1R).

This bill concerns the State's prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill's provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al.; (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

First, the statutory definition of "domestic violence" under the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al. would be expanded to include: robbery (N.J.S.2C:15-1); criminal coercion (N.J.S.2C:13-5); contempt of a court order entered under the act (N.J.S.2C:29-9, subsection b.), when the contempt violation itself constitutes the commission of a crime or disorderly persons offense; and any other crime involving risk of death or serious bodily injury to a domestic violence victim. These crimes would be added to the existing crimes or offenses, such as assault, terroristic threat, false imprisonment, and criminal trespass, which collectively constitute acts of domestic violence for which a victim may seek additional protections and relief from an abuser under the law.

Criminal coercion, referenced above, would also be clarified to provide domestic violence victims and other victims better protections from such acts. Specifically, the bill would indicate that there was no immediacy of harm requirement necessary in order to prosecute a person who threatened to inflict bodily injury on anyone or commit any other offense with the purpose of unlawfully restricting another's



freedom of action, recognizing that such threats of coercion may not always involve an immediacy of harm.

As to the increased likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury, the bill would take this crime, graded as a crime of the third degree, and remove the statutory presumption of non-imprisonment, set forth in subsection e. of N.J.S.2C:44-1, ordinarily associated with sentencing for this and other third degree crimes. Thus, absent the presumption, the court would engage in the weighing of the aggravating and mitigating sentencing factors set forth in subsections a. and b. of N.J.S.2C:44-1 in order to determine the appropriateness for a prison sentence and, if imposed, the length of such sentence, which would ordinarily be between three to five years. A third-degree aggravated assault is also punishable by a fine of up to \$15,000.

As to the increased likelihood of prison time for other crimes or offenses committed against domestic violence victims, the bill would establish a presumption of imprisonment for the following:

- any act of domestic violence committed in the presence of a child under 16 years of age; and
- any act of domestic violence, when the abuser committed at least one act of domestic violence on more than one occasion.

Both categories would also be established as aggravating factors for the court to consider when determining the possible length of the prison sentence imposed.

Finally, the bill presents several alterations to the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program (PTI) for supervisory treatment.

Specific to domestic violence offenders, the bill would establish a presumption against admission into the program, if the crime or offense:

- was committed while subject to a domestic violence temporary or permanent restraining order; or
- involved violence or the threat of violence against the victim – meaning the victim sustained serious or significant bodily injury, or the offender is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon, or threatens to inflict serious or significant bodily injury.

Also, the Attorney General would be responsible for developing guidelines to ensure the uniform exercise of discretion by prosecutors in formulating recommendations on participation in PTI for domestic violence offenders.

For all criminal offenders, even those domestic violence offenders presumed to not be admitted to the program, the bill provides that when a prosecutor and court consider an application for admission, both would “give due consideration to the victim's position” on

whether the defendant should be admitted. The bill also provides that PTI admission would require entry of a plea of guilty for any person charged with:

- a first or second degree crime;
- any crime, if the person was previously convicted of a first or second degree crime;
- a third or fourth degree crime involving domestic violence; or
- any disorderly or petty disorderly persons offense involving domestic violence, if the defendant committed the offense while subject to a domestic violence temporary or permanent restraining order.

For any such person, the guilty plea would be held in an inactive status pending the outcome of supervisory treatment under the program. If the person successfully completed the program, the person's charges would be dismissed. If the person was discharged without successfully completing the program, the person's charges could be reactivated and criminal proceedings continued as through no supervisory treatment had been commenced.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) in the Legislative Fiscal estimate for this bill notes that while the cost to the Department of Corrections (DOC) would be indeterminate, and that for every offender who is incarcerated under the bill, the DOC would incur additional expenses for housing that individual. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility totals \$45,000. However, due to fixed costs, the cost may not necessarily total this amount. The OLS notes that the marginal cost of providing food, wages and clothing for each inmate would total \$7.15 per day, or \$2,609.75 annually.

The OLS adds that the Judiciary and county prosecutors would incur an undetermined cost to implement the amended procedures for individuals seeking admission into the State's Pretrial Intervention Program.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 2559**

## **STATE OF NEW JERSEY 216th LEGISLATURE**

DATED: JUNE 26, 2015

### SUMMARY

- Synopsis:** Removes presumption of nonimprisonment in certain assault cases involving domestic violence victims; expands criminal coercion statute; revises Pretrial Intervention procedures in certain criminal cases.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Correction, County Prosecutors, Judiciary

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate – See comments below		
<b>Local Cost</b>	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) notes that while the cost to the Department of Corrections (DOC) would be indeterminate, for every offender who is incarcerated under the bill, the DOC would incur additional expenses for housing that individual. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility totals \$45,000. However, due to fixed costs, the cost may not necessarily total this amount. The OLS notes that the marginal cost of providing food, wages and clothing for each inmate would total \$7.15 per day, or \$2,609.75 annually.
- The bill concerns the State’s prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill’s provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the “Prevention of Domestic Violence Act of 1991,” (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State’s Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

- Information obtained informally from the Department of Corrections (DOC) indicates that there is no available information that would provide supporting statistics to determine the number of individuals that would be convicted of these offenses. As a result, the DOC is unable to calculate the fiscal impact resulting from the enactment of this legislation.

## **BILL DESCRIPTION**

Senate Bill No. 2559 (1R) of 2014 concerns the State's prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill's provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al.; (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

First, the statutory definition of "domestic violence" under the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al. would be expanded to include: robbery (N.J.S.2C:15-1); criminal coercion (N.J.S.2C:13-5); contempt of a court order entered under the act (N.J.S.2C:29-9, subsection b.), when the contempt violation itself constitutes the commission of a crime or disorderly persons offense; and any other crime involving risk of death or serious bodily injury to a domestic violence victim. These crimes would be added to the existing crimes or offenses, such as assault, terroristic threat, false imprisonment, and criminal trespass, which collectively constitute acts of domestic violence for which a victim may seek additional protections and relief from an abuser under the law.

Criminal coercion, referenced above, would also be clarified to provide domestic violence victims and other victims better protections from such acts. Specifically, the bill would indicate that there was no immediacy of harm requirement necessary in order to prosecute a person who threatened to inflict bodily injury on anyone or commit any other offense with the purpose of unlawfully restricting another's freedom of action, recognizing that such threats of coercion may not always involve an immediacy of harm.

As to the increased likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury, the bill would take this crime, graded as a crime of the third degree, and remove the statutory presumption of non-imprisonment, set forth in subsection e. of N.J.S.2C:44-1, ordinarily associated with sentencing for this and other third degree crimes. Thus, absent the presumption, the court would engage in the weighing of the aggravating and mitigating sentencing factors set forth in subsections a. and b. of N.J.S.2C:44-1 in order to determine the appropriateness for a prison sentence and, if imposed, the length of such sentence, which would ordinarily be between three to five years. A third-degree aggravated assault is also punishable by a fine of up to \$15,000.

As to the increased likelihood of prison time for other crimes or offenses committed against domestic violence victims, the bill would establish a presumption of imprisonment for the following:

- any act of domestic violence committed in the presence of a child under 16 years of age;
- and

- any act of domestic violence, when the abuser committed at least one act of domestic violence on more than one occasion.

Both categories would also be established as aggravating factors for the court to consider when determining the possible length of the prison sentence imposed.

Finally, the bill presents several alterations to the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program (PTI) for supervisory treatment.

Specific to domestic violence offenders, the bill would establish a presumption against admission into the program, if the crime or offense:

- was committed while subject to a domestic violence temporary or permanent restraining order; or

- involved violence or the threat of violence against the victim – meaning the victim sustained serious or significant bodily injury, or the offender is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon, or threatens to inflict serious or significant bodily injury.

Also, the Attorney General would be responsible for developing guidelines to ensure the uniform exercise of discretion by prosecutors in formulating recommendations on participation in PTI for domestic violence offenders.

For all criminal offenders, even those domestic violence offenders presumed to not be admitted to the program, the bill provides that when a prosecutor and court consider an application for admission, both would “give due consideration to the victim's position” on whether the defendant should be admitted. The bill also provides that PTI admission would require entry of a plea of guilty for any person charged with:

- a first or second degree crime;

- any crime, if the person was previously convicted of a first or second degree crime;

- a third or fourth degree crime involving domestic violence; or

- any disorderly or petty disorderly persons offense involving domestic violence, if the defendant committed the offense while subject to a domestic violence temporary or permanent restraining order.

For any such person, the guilty plea would be held in an inactive status pending the outcome of supervisory treatment under the program. If the person successfully completed the program, the person's charges would be dismissed. If the person was discharged without successfully completing the program, the person's charges could be reactivated and criminal proceedings continued as through no supervisory treatment had been commenced.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

Information obtained informally from the DOC indicates that under the law, there is a presumption of non-imprisonment for a first time offense of a crime of the third degree. The bill provides that if a victim of an offense meets the definition of a victim of domestic violence, there would be no presumption of non-incarceration for first time offenders. The offender would still be sentenced to a third degree crime punishable by a term of imprisonment between three to five years, and most likely be required to serve their time at the DOC. Based on these provisions, there is no statistical data to calculate the number of first time offender cases that would meet the criteria.

The DOC has also indicated that the bill provides that admission into supervisory treatment would be made available to certain defendants only upon entering a plea of guilty. The plea agreement would be held in an inactive status pending termination of supervisory treatment. Upon successful completion of the supervisory treatment, the charges would be dismissed. This provision would potentially reduce the inmate population, however, there are no statistics to calculate the number of cases that would meet the criteria.

The bill adds criminal coercion, robbery, contempt of a domestic violence order pursuant to subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly persons offense, and any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act of 1991." The Act allows the victim to request a restraining order and/or file a criminal complaint arising from the same incident. The DOC is unable to determine the number of cases that would receive an additional sentence based on these provisions.

The DOC further noted that the bill expands the offense of criminal coercion to include threatening to inflict bodily injury on anyone or commit any other offense regardless of the immediacy of the threat. There is no supporting statistics to determine the number of additional convictions based on these provisions of the proposed legislation.

In summary, according to information obtained from the DOC, there is no available information that would provide supporting statistics to determine the number of individuals that would be convicted of these offenses and the resulting fiscal impact is indeterminate.

**Administrative Office of the Courts**

None received.

**County Prosecutors**

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that while the cost to the DOC would be indeterminate, for every offender who is incarcerated under the bill, the DOC would incur additional expenses for housing that individual. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility totals \$45,000. However, due to fixed costs, the cost may not necessarily total this amount. The OLS notes that the marginal cost of providing food, wages and clothing for each inmate would total \$7.15 per day, or \$2,609.75 annually.

The OLS adds that the Judiciary and county prosecutors would incur an undetermined cost to implement the amended procedures for individuals seeking admission into the State's Pretrial Intervention Program.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 4016

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 15, 2014

**Sponsored by:**

**Assemblyman JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**Assemblywoman GABRIELA M. MOSQUERA**

**District 4 (Camden and Gloucester)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**SYNOPSIS**

Upgrades assault against domestic violence victims; revises Pretrial Intervention procedures in domestic violence cases.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning domestic violence and pretrial intervention and  
2 amending various parts of the statutory law.

3

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

6

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

8 2C:12-1. Assault. a. Simple assault. A person is guilty of  
9 assault if he:

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

12 (2) Negligently causes bodily injury to another with a deadly  
13 weapon; or

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

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

19 b. Aggravated assault. A person is guilty of aggravated assault  
20 if he:

21 (1) Attempts to cause serious bodily injury to another, or causes  
22 such injury purposely or knowingly or under circumstances  
23 manifesting extreme indifference to the value of human life  
24 recklessly causes such injury; or

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

27 (3) Recklessly causes bodily injury to another with a deadly  
28 weapon; or

29 (4) Knowingly under circumstances manifesting extreme  
30 indifference to the value of human life points a firearm, as defined  
31 in **[section 2C:39-1f.] subsection f. of N.J.S.2C:39-1**, at or in the  
32 direction of another, whether or not the actor believes it to be  
33 loaded; or

34 (5) Commits a simple assault as defined in paragraph (1), (2) or  
35 (3) of subsection a. [(1), (2) or (3)] of this section upon:

36 (a) Any law enforcement officer acting in the performance of  
37 his duties while in uniform or exhibiting evidence of his authority  
38 or because of his status as a law enforcement officer; or

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

42 (c) Any person engaged in emergency first-aid or medical  
43 services acting in the performance of his duties while in uniform or  
44 otherwise clearly identifiable as being engaged in the performance  
45 of emergency first-aid or medical services; or

46 (d) Any school board member, school administrator, teacher,

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

Matter underlined thus is new matter.



1 school bus driver or other employee of a public or nonpublic school  
2 or school board while clearly identifiable as being engaged in the  
3 performance of his duties or because of his status as a member or  
4 employee of a public or nonpublic school or school board or any  
5 school bus driver employed by an operator under contract to a  
6 public or nonpublic school or school board while clearly  
7 identifiable as being engaged in the performance of his duties or  
8 because of his status as a school bus driver; or

9 (e) Any employee of the Division of Child Protection and  
10 Permanency while clearly identifiable as being engaged in the  
11 performance of his duties or because of his status as an employee of  
12 the division; or

13 (f) Any justice of the Supreme Court, judge of the Superior  
14 Court, judge of the Tax Court or municipal judge while clearly  
15 identifiable as being engaged in the performance of judicial duties  
16 or because of his status as a member of the judiciary; or

17 (g) Any operator of a motorbus or the operator's supervisor or  
18 any employee of a rail passenger service while clearly identifiable  
19 as being engaged in the performance of his duties or because of his  
20 status as an operator of a motorbus or as the operator's supervisor or  
21 as an employee of a rail passenger service; or

22 (h) Any Department of Corrections employee, county  
23 corrections officer, juvenile corrections officer, State juvenile  
24 facility employee, juvenile detention staff member, juvenile  
25 detention officer, probation officer or any sheriff, undersheriff, or  
26 sheriff's officer acting in the performance of his duties while in  
27 uniform or exhibiting evidence of his authority; or

28 (i) Any employee, including any person employed under  
29 contract, of a utility company as defined in section 2 of P.L.1971,  
30 c.224 (C.2A:42-86) or a cable television company subject to the  
31 provisions of the "Cable Television Act," P.L.1972,  
32 c.186 (C.48:5A-1 et seq.) while clearly identifiable as being  
33 engaged in the performance of his duties in regard to connecting,  
34 disconnecting or repairing or attempting to connect, disconnect or  
35 repair any gas, electric or water utility, or cable television or  
36 telecommunication service; or

37 (j) Any health care worker employed by a licensed health care  
38 facility to provide direct patient care, any health care professional  
39 licensed or otherwise authorized pursuant to Title 26 or Title 45 of  
40 the Revised Statutes to practice a health care profession, except a  
41 direct care worker at a State or county psychiatric hospital or State  
42 developmental center or veterans' memorial home, while clearly  
43 identifiable as being engaged in the duties of providing direct  
44 patient care or practicing the health care profession; or

45 (k) Any direct care worker at a State or county psychiatric  
46 hospital or State developmental center or veterans' memorial home,  
47 while clearly identifiable as being engaged in the duties of  
48 providing direct patient care or practicing the health care

1 profession, provided that the actor is not a patient or resident at the  
2 facility who is classified by the facility as having a mental illness or  
3 developmental disability; or

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

13 (7) Attempts to cause significant bodily injury to another or  
14 causes significant bodily injury purposely or knowingly or, under  
15 circumstances manifesting extreme indifference to the value of  
16 human life recklessly causes such significant bodily injury; or

17 (8) Causes bodily injury by knowingly or purposely starting a  
18 fire or causing an explosion in violation of N.J.S.2C:17-1 which  
19 results in bodily injury to any emergency services personnel  
20 involved in fire suppression activities, rendering emergency  
21 medical services resulting from the fire or explosion or rescue  
22 operations, or rendering any necessary assistance at the scene of the  
23 fire or explosion, including any bodily injury sustained while  
24 responding to the scene of a reported fire or explosion. For  
25 purposes of this **【subsection】** paragraph, "emergency services  
26 personnel" shall include, but not be limited to, any paid or volunteer  
27 fireman, any person engaged in emergency first-aid or medical  
28 services and any law enforcement officer. Notwithstanding any  
29 other provision of law to the contrary, a person shall be strictly  
30 liable for a violation of this paragraph upon proof of a violation of  
31 N.J.S.2C:17-1 which resulted in bodily injury to any emergency  
32 services personnel; or

33 (9) Knowingly, under circumstances manifesting extreme  
34 indifference to the value of human life, points or displays a firearm,  
35 as defined in subsection f. of N.J.S.2C:39-1, at or in the direction of  
36 a law enforcement officer; or

37 (10) Knowingly points, displays or uses an imitation firearm, as  
38 defined in subsection v. of N.J.S.2C:39-1, at or in the direction of a  
39 law enforcement officer with the purpose to intimidate, threaten or  
40 attempt to put the officer in fear of bodily injury or for any unlawful  
41 purpose; or

42 (11) Uses or activates a laser sighting system or device, or a  
43 system or device which, in the manner used, would cause a  
44 reasonable person to believe that it is a laser sighting system or  
45 device, against a law enforcement officer acting in the performance  
46 of his duties while in uniform or exhibiting evidence of his  
47 authority. As used in this paragraph, "laser sighting system or  
48 device" means any system or device that is integrated with or

1 affixed to a firearm and emits a laser light beam that is used to  
2 assist in the sight alignment or aiming of the firearm;

3 (12) Attempts to cause significant bodily injury or causes  
4 significant bodily injury purposely or knowingly or, under  
5 circumstances manifesting extreme indifference to the value of  
6 human life, recklessly causes significant bodily injury to a person  
7 who, with respect to the actor, meets the definition of a victim of  
8 domestic violence, as defined in subsection d. of section 3 of  
9 P.L.1991, c. 261 (C.2C:25-19).

10 Aggravated assault under **【subsections b. (1) and b. (6)】**  
11 paragraphs (1) and (6) of subsection b. of this section is a crime of  
12 the second degree; under **【subsections b. (2), b. (7), b. (9) and b.**  
13 **(10)】** paragraphs (2), (7), (9) and (10) of subsection b. of this  
14 section is a crime of the third degree; under **【subsections b. (3) and**  
15 **b. (4)】** paragraphs (3) and (4) of subsection b. of this section is a  
16 crime of the fourth degree; and under **【subsection b. (5)】** paragraph  
17 (5) of subsection b. of this section is a crime of the third degree if  
18 the victim suffers bodily injury, otherwise it is a crime of the fourth  
19 degree. Aggravated assault under **【subsection b.(8)】** paragraph (8)  
20 of subsection b. of this section is a crime of the third degree if the  
21 victim suffers bodily injury; if the victim suffers significant bodily  
22 injury or serious bodily injury it is a crime of the second degree.  
23 Aggravated assault under **【subsection b. (11)】** paragraph (11) of  
24 subsection b. of this section is a crime of the third degree.  
25 Aggravated assault under paragraph (12) of subsection b. of this  
26 section is a crime of the third degree but the presumption of non-  
27 imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first  
28 offense of a crime of the third degree shall not apply.

29 c. (1) A person is guilty of assault by auto or vessel when the  
30 person drives a vehicle or vessel recklessly and causes either  
31 serious bodily injury or bodily injury to another. Assault by auto or  
32 vessel is a crime of the fourth degree if serious bodily injury results  
33 and is a disorderly persons offense if bodily injury results. Proof  
34 that the defendant was operating a hand-held wireless telephone  
35 while driving a motor vehicle in violation of section 1 of P.L.2003,  
36 c.310 (C.39:4-97.3) may give rise to an inference that the defendant  
37 was driving recklessly.

38 (2) Assault by auto or vessel is a crime of the third degree if the  
39 person drives the vehicle while in violation of R.S.39:4-50 or  
40 section 2 of P.L.1981, c.512 (C.39:4-50.4a) and serious bodily  
41 injury results and is a crime of the fourth degree if the person drives  
42 the vehicle while in violation of R.S.39:4-50 or section 2 of  
43 P.L.1981, c.512 (C.39:4-50.4a) and bodily injury results.

44 (3) Assault by auto or vessel is a crime of the second degree if  
45 serious bodily injury results from the defendant operating the auto  
46 or vessel while in violation of R.S.39:4-50 or section 2 of P.L.1981,  
47 c.512 (C.39:4-50.4a) while:

- 1 (a) on any school property used for school purposes which is  
2 owned by or leased to any elementary or secondary school or school  
3 board, or within 1,000 feet of such school property;
- 4 (b) driving through a school crossing as defined in R.S.39:1-1 if  
5 the municipality, by ordinance or resolution, has designated the  
6 school crossing as such; or
- 7 (c) driving through a school crossing as defined in R.S.39:1-1  
8 knowing that juveniles are present if the municipality has not  
9 designated the school crossing as such by ordinance or resolution.
- 10 Assault by auto or vessel is a crime of the third degree if bodily  
11 injury results from the defendant operating the auto or vessel in  
12 violation of this paragraph.
- 13 A map or true copy of a map depicting the location and  
14 boundaries of the area on or within 1,000 feet of any property used  
15 for school purposes which is owned by or leased to any elementary  
16 or secondary school or school board produced pursuant to section 1  
17 of P.L.1987, c.101 (C.2C:35-7) may be used in a prosecution under  
18 subparagraph (a) of paragraph (3) of this subsection.
- 19 It shall be no defense to a prosecution for a violation of  
20 subparagraph (a) or (b) of paragraph (3) of this subsection that the  
21 defendant was unaware that the prohibited conduct took place while  
22 on or within 1,000 feet of any school property or while driving  
23 through a school crossing. Nor shall it be a defense to a prosecution  
24 under subparagraph (a) or (b) of paragraph (3) of this subsection  
25 that no juveniles were present on the school property or crossing  
26 zone at the time of the offense or that the school was not in session.
- 27 (4) Assault by auto or vessel is a crime of the third degree if the  
28 person purposely drives a vehicle in an aggressive manner directed  
29 at another vehicle and serious bodily injury results and is a crime of  
30 the fourth degree if the person purposely drives a vehicle in an  
31 aggressive manner directed at another vehicle and bodily injury  
32 results. For purposes of this paragraph, "driving a vehicle in an  
33 aggressive manner" shall include, but is not limited to,  
34 unexpectedly altering the speed of the vehicle, making improper or  
35 erratic traffic lane changes, disregarding traffic control devices,  
36 failing to yield the right of way, or following another vehicle too  
37 closely.
- 38 As used in this **[section]** subsection, "vessel" means a means of  
39 conveyance for travel on water and propelled otherwise than by  
40 muscular power.
- 41 d. A person who is employed by a facility as defined in section  
42 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as  
43 defined in paragraph (1) or (2) of subsection a. of this section upon  
44 an institutionalized elderly person as defined in section 2 of  
45 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth  
46 degree.
- 47 e. (Deleted by amendment, P.L.2001, c.443).

1 f. A person who commits a simple assault as defined in  
2 paragraph (1), (2) or (3) of subsection a. of this section in the  
3 presence of a child under 16 years of age at a school or community  
4 sponsored youth sports event is guilty of a crime of the fourth  
5 degree. The defendant shall be strictly liable upon proof that the  
6 offense occurred, in fact, in the presence of a child under 16 years  
7 of age. It shall not be a defense that the defendant did not know  
8 that the child was present or reasonably believed that the child was  
9 16 years of age or older. The provisions of this subsection shall not  
10 be construed to create any liability on the part of a participant in a  
11 youth sports event or to abrogate any immunity or defense available  
12 to a participant in a youth sports event. As used in this act, "school  
13 or community sponsored youth sports event" means a competition,  
14 practice or instructional event involving one or more interscholastic  
15 sports teams or youth sports teams organized pursuant to a  
16 nonprofit or similar charter or which are member teams in a youth  
17 league organized by or affiliated with a county or municipal  
18 recreation department and shall not include collegiate, semi-  
19 professional or professional sporting events.  
20 (cf: P.L.2012, c.22, s.2)

21

22 2. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to  
23 read as follows:

24 3. As used in this act:

25 a. "Domestic violence" means the occurrence of one or more of  
26 the following acts inflicted upon a person protected under this act  
27 by an adult or an emancipated minor:

28 (1) Homicide N.J.S.2C:11-1 et seq.

29 (2) Assault N.J.S.2C:12-1

30 (3) Terroristic threats N.J.S.2C:12-3

31 (4) Kidnapping N.J.S.2C:13-1

32 (5) Criminal restraint N.J.S.2C:13-2

33 (6) False imprisonment N.J.S.2C:13-3

34 (7) Sexual assault N.J.S.2C:14-2

35 (8) Criminal sexual contact N.J.S.2C:14-3

36 (9) Lewdness N.J.S.2C:14-4

37 (10) Criminal mischief N.J.S.2C:17-3

38 (11) Burglary N.J.S.2C:18-2

39 (12) Criminal trespass N.J.S.2C:18-3

40 (13) Harassment N.J.S.2C:33-4

41 (14) Stalking P.L.1992, c.209 (C.2C:12-10)

42 (15) Criminal coercion N.J.S.2C:13-5

43 (16) Robbery N.J.S.2C:15-1

44 (17) Contempt of a domestic violence order pursuant to  
45 subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly  
46 persons offense

1       (18) Any other crime involving risk of death or serious bodily  
2 injury to a person protected under the "Prevention of Domestic  
3 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.)

4       When one or more of these acts is inflicted by an unemancipated  
5 minor upon a person protected under this act, the occurrence shall  
6 not constitute "domestic violence," but may be the basis for the  
7 filing of a petition or complaint pursuant to the provisions of  
8 section 11 of P.L.1982, c.77 (C.2A:4A-30).

9       b. "Law enforcement agency" means a department, division,  
10 bureau, commission, board or other authority of the State or of any  
11 political subdivision thereof which employs law enforcement  
12 officers.

13       c. "Law enforcement officer" means a person whose public  
14 duties include the power to act as an officer for the detection,  
15 apprehension, arrest and conviction of offenders against the laws of  
16 this State.

17       d. "Victim of domestic violence" means a person protected  
18 under this act and shall include any person who is 18 years of age or  
19 older or who is an emancipated minor and who has been subjected  
20 to domestic violence by a spouse, former spouse, or any other  
21 person who is a present household member or **【former】** was at any  
22 time a household member. "Victim of domestic violence" also  
23 includes any person, regardless of age, who has been subjected to  
24 domestic violence by a person with whom the victim has a child in  
25 common, or with whom the victim anticipates having a child in  
26 common, if one of the parties is pregnant. "Victim of domestic  
27 violence" also includes any person who has been subjected to  
28 domestic violence by a person with whom the victim has had a  
29 dating relationship.

30       e. "Emancipated minor" means a person who is under 18 years  
31 of age but who has been married, has entered military service, has a  
32 child or is pregnant or has been previously declared by a court or an  
33 administrative agency to be emancipated.

34 (cf: P.L.1994, c.94, s.1)

35  
36       3. N.J.S.2C:13-5 is amended to read as follows:

37       2C:13-5. Criminal Coercion.

38       a. Offense defined. A person is guilty of criminal coercion if,  
39 with purpose unlawfully to restrict another's freedom of action to  
40 engage or refrain from engaging in conduct, he threatens to:

41       (1) Inflict bodily injury on anyone or commit any other offense,  
42 regardless of the immediacy of the threat;

43       (2) Accuse anyone of an offense;

44       (3) Expose any secret which would tend to subject any person to  
45 hatred, contempt or ridicule, or to impair his credit or business  
46 repute;

47       (4) Take or withhold action as an official, or cause an official to  
48 take or withhold action;

1 (5) Bring about or continue a strike, boycott or other collective  
2 action, except that such a threat shall not be deemed coercive when  
3 the restriction compelled is demanded in the course of negotiation  
4 for the benefit of the group in whose interest the actor acts;

5 (6) Testify or provide information or withhold testimony or  
6 information with respect to another's legal claim or defense; or

7 (7) Perform any other act which would not in itself substantially  
8 benefit the actor but which is calculated to substantially harm  
9 another person with respect to his health, safety, business, calling,  
10 career, financial condition, reputation or personal relationships.

11 It is an affirmative defense to prosecution based on paragraphs  
12 (2), (3), (4), (6) and (7) that the actor believed the accusation or  
13 secret to be true or the proposed official action justified and that  
14 his purpose was limited to compelling the other to behave in a way  
15 reasonably related to the circumstances which were the subject of  
16 the accusation, exposure or proposed official action, as by desisting  
17 from further misbehavior, making good a wrong done, or refraining  
18 from taking any action or responsibility for which the actor  
19 believes the other disqualified.

20 b. Grading. Criminal coercion is a crime of the fourth degree  
21 unless the threat is to commit a crime more serious than one of the  
22 fourth degree or the actor's purpose is criminal, in which cases the  
23 offense is a crime of the third degree.

24 (cf: P.L.1978, c.95, s.2C:13-5)

25

26 4. N.J.S.2C:43-12 is amended to read as follows:

27 2C:43-12. Supervisory Treatment--Pretrial Intervention.

28 a. Public policy. The purpose of N.J.S.2C:43-12 through  
29 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial  
30 Intervention. It is the policy of the State of New Jersey that  
31 supervisory treatment should ordinarily be limited to persons who  
32 have not previously been convicted of any criminal offense under  
33 the laws of New Jersey, or under any criminal law of the United  
34 States, or any other state when supervisory treatment would:

35 (1) Provide applicants, on an equal basis, with opportunities to  
36 avoid ordinary prosecution by receiving early rehabilitative services  
37 or supervision, when such services or supervision can reasonably be  
38 expected to deter future criminal behavior by an applicant, and  
39 when there is apparent causal connection between the offense  
40 charged and the rehabilitative or supervisory need, without which  
41 cause both the alleged offense and the need to prosecute might not  
42 have occurred; or

43 (2) Provide an alternative to prosecution for applicants who  
44 might be harmed by the imposition of criminal sanctions as  
45 presently administered, when such an alternative can be expected to  
46 serve as sufficient sanction to deter criminal conduct; or

47 (3) Provide a mechanism for permitting the least burdensome  
48 form of prosecution possible for defendants charged with

1 "victimless" offenses, other than defendants who were public  
2 officers or employees charged with offenses that involved or  
3 touched their office or employment; or

4 (4) Provide assistance to criminal calendars in order to focus  
5 expenditure of criminal justice resources on matters involving  
6 serious criminality and severe correctional problems; or

7 (5) Provide deterrence of future criminal or disorderly behavior  
8 by an applicant in a program of supervisory treatment.

9 b. Admission of an applicant into a program of supervisory  
10 treatment shall be measured according to the applicant's amenability  
11 to correction, responsiveness to rehabilitation and the nature of the  
12 offense. There shall be a presumption against admission into a  
13 program of supervisory treatment for a defendant who was a public  
14 officer or employee whose offense involved or touched upon his  
15 public office or employment.

16 c. The decision and reasons therefor made by the designated  
17 judges (or assignment judges), prosecutors and program directors in  
18 granting or denying applications for supervisory treatment, in  
19 recommending and ordering termination from the program or  
20 dismissal of charges, in all cases shall be reduced to writing and  
21 disclosed to the applicant.

22 d. If an applicant desires to challenge the decision of the  
23 prosecutor or program director not to recommend enrollment in a  
24 program of supervisory treatment the proceedings prescribed under  
25 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be  
26 followed.

27 e. Referral. At any time prior to trial but after the filing of a  
28 criminal complaint, or the filing of an accusation or the return of an  
29 indictment, with the consent of the prosecutor and upon written  
30 recommendation of the program director, the assignment judge or a  
31 judge designated by him may postpone all further proceedings  
32 against an applicant and refer said applicant to a program of  
33 supervisory treatment approved by the Supreme Court. Prosecutors  
34 and program directors shall consider in formulating their  
35 recommendation of an applicant's participation in a supervisory  
36 treatment program, among others, the following criteria:

37 (1) The nature of the offense;

38 (2) The facts of the case;

39 (3) The motivation and age of the defendant;

40 (4) The desire of the complainant or victim to forego  
41 prosecution;

42 (5) The existence of personal problems and character traits  
43 which may be related to the applicant's crime and for which services  
44 are unavailable within the criminal justice system, or which may be  
45 provided more effectively through supervisory treatment and the  
46 probability that the causes of criminal behavior can be controlled by  
47 proper treatment;



- 1 (6) The likelihood that the applicant's crime is related to a  
2 condition or situation that would be conducive to change through  
3 his participation in supervisory treatment;
- 4 (7) The needs and interests of the victim and society;
- 5 (8) The extent to which the applicant's crime constitutes part of  
6 a continuing pattern of anti-social behavior;
- 7 (9) The applicant's record of criminal and penal violations and  
8 the extent to which he may present a substantial danger to others;
- 9 (10) Whether or not the crime is of an assaultive or violent  
10 nature, whether in the criminal act itself or in the possible injurious  
11 consequences of such behavior;
- 12 (11) Consideration of whether or not prosecution would  
13 exacerbate the social problem that led to the applicant's criminal  
14 act;
- 15 (12) The history of the use of physical violence toward others;
- 16 (13) Any involvement of the applicant with organized crime;
- 17 (14) Whether or not the crime is of such a nature that the value  
18 of supervisory treatment would be outweighed by the public need  
19 for prosecution;
- 20 (15) Whether or not the applicant's involvement with other  
21 people in the crime charged or in other crime is such that the  
22 interest of the State would be best served by processing his case  
23 through traditional criminal justice system procedures;
- 24 (16) Whether or not the applicant's participation in pretrial  
25 intervention will adversely affect the prosecution of codefendants;  
26 and
- 27 (17) Whether or not the harm done to society by abandoning  
28 criminal prosecution would outweigh the benefits to society from  
29 channeling an offender into a supervisory treatment program.
- 30 The prosecutor and the court, in formulating their  
31 recommendations or decisions regarding an applicant's participation  
32 in a supervisory treatment program, shall give added weight to the  
33 victim's position on whether the defendant should be admitted.
- 34 f. Review of Supervisory Treatment Applications; Procedure  
35 Upon Denial. Each applicant for supervisory treatment shall be  
36 entitled to full and fair consideration of his application. If an  
37 application is denied, the program director or the prosecutor shall  
38 precisely state his findings and conclusion which shall include the  
39 facts upon which the application is based and the reasons offered  
40 for the denial. If the applicant desires to challenge the decision of a  
41 program director not to recommend, or of a prosecutor not to  
42 consent to, enrollment into a supervisory treatment program, a  
43 motion shall be filed before the designated judge (or assignment  
44 judge) authorized pursuant to the rules of court to enter orders.
- 45 g. Limitations. (1) Supervisory treatment may occur only once  
46 with respect to any defendant and any person who has previously  
47 received supervisory treatment under section 27 of P.L.1970,  
48 c.226 (C.24:21-27), a conditional discharge pursuant to

1 N.J.S.2C:36A-1, or a conditional dismissal pursuant to P.L.2013,  
2 c.158 (C.2C:43-13.1 et al.) shall not be eligible for supervisory  
3 treatment under this section.

4 **【However,】** (2) Except as otherwise provided in paragraph (3)  
5 of this subsection, supervisory treatment, as provided herein, shall  
6 be available to a defendant irrespective of whether the defendant  
7 contests his guilt of the charge or charges against him.

8 (3) Admission into supervisory treatment shall be available to  
9 the following defendants only upon entering a plea of guilty: (a) a  
10 defendant charged with a first or second degree crime; (b) a  
11 defendant charged with any crime if the defendant had previously  
12 been convicted of a first or second degree crime; (c) a defendant  
13 charged with a third or fourth degree crime involving domestic  
14 violence, as defined in subsection a. of section 3 of P.L.1991,  
15 c.261 (C.2C:25-19); (d) a defendant charged with any crime or  
16 offense involving domestic violence, as defined in subsection a. of  
17 section 3 of P.L.1991, c.261 (C.2C:25-19) if the defendant  
18 committed the crime or offense while subject to a temporary or  
19 permanent restraining order issued pursuant to the provisions of the  
20 “Prevention of Domestic Violence Act of 1991,” P.L.1991,  
21 c.261 (C.2C:25-17 et al); or (e) a defendant charged with a fourth  
22 degree crime of contempt pursuant to subsection b. of N.J.S.2C:29-  
23 9. For any such defendant, following the plea of guilty the plea  
24 shall be held in an inactive status pending termination of  
25 supervisory treatment pursuant to subsection d. or e. of  
26 N.J.S.2C:43-13. Upon successful completion of the program of  
27 supervisory treatment the charges shall be dismissed.

28 h. Termination. Termination of supervisory treatment under  
29 this section shall be immediately reported to the assignment judge  
30 of the county who shall forward such information to the  
31 Administrative Director of the Courts.

32 i. Appointment of Program Directors; Authorized Referrals.  
33 Programs of supervisory treatment and appointment of the program  
34 directors require approval by the Supreme Court with the consent of  
35 the assignment judge and prosecutor. Referrals of participants from  
36 supervisory treatment programs may be to any public or private  
37 office or agency, including but not limited to, programs within the  
38 probation service of the court, offering counseling or any other  
39 social service likely to aid in the rehabilitation of the participant  
40 and to deter the commission of other offenses.

41 j. Health Care Professional Licensing Board Notification. The  
42 program director shall promptly notify the State Board of Medical  
43 Examiners when a State licensed physician or podiatrist has been  
44 enrolled in a supervisory treatment program after he has been  
45 charged with an offense involving drugs or alcohol.

46 (cf: P.L.2013, c.158, s.11)

47

48 5. N.J.S.2C:44-1 is amended to read as follows:

1       2C:44-1. a. In determining the appropriate sentence to be  
2 imposed on a person who has been convicted of an offense, the  
3 court shall consider the following aggravating circumstances:

4       (1) The nature and circumstances of the offense, and the role of  
5 the actor therein, including whether or not it was committed in an  
6 especially heinous, cruel, or depraved manner;

7       (2) The gravity and seriousness of harm inflicted on the victim,  
8 including whether or not the defendant knew or reasonably should  
9 have known that the victim of the offense was particularly  
10 vulnerable or incapable of resistance due to advanced age, ill-  
11 health, or extreme youth, or was for any other reason substantially  
12 incapable of exercising normal physical or mental power of  
13 resistance;

14       (3) The risk that the defendant will commit another offense;

15       (4) A lesser sentence will depreciate the seriousness of the  
16 defendant's offense because it involved a breach of the public trust  
17 under chapters 27 and 30, or the defendant took advantage of a  
18 position of trust or confidence to commit the offense;

19       (5) There is a substantial likelihood that the defendant is  
20 involved in organized criminal activity;

21       (6) The extent of the defendant's prior criminal record and the  
22 seriousness of the offenses of which he has been convicted;

23       (7) The defendant committed the offense pursuant to an  
24 agreement that he either pay or be paid for the commission of the  
25 offense and the pecuniary incentive was beyond that inherent in the  
26 offense itself;

27       (8) The defendant committed the offense against a police or  
28 other law enforcement officer, correctional employee or fireman,  
29 acting in the performance of his duties while in uniform or  
30 exhibiting evidence of his authority; the defendant committed the  
31 offense because of the status of the victim as a public servant; or the  
32 defendant committed the offense against a sports official, athletic  
33 coach or manager, acting in or immediately following the  
34 performance of his duties or because of the person's status as a  
35 sports official, coach or manager;

36       (9) The need for deterring the defendant and others from  
37 violating the law;

38       (10) The offense involved fraudulent or deceptive practices  
39 committed against any department or division of State government;

40       (11) The imposition of a fine, penalty or order of restitution  
41 without also imposing a term of imprisonment would be perceived  
42 by the defendant or others merely as part of the cost of doing  
43 business, or as an acceptable contingent business or operating  
44 expense associated with the initial decision to resort to unlawful  
45 practices;

46       (12) The defendant committed the offense against a person who  
47 he knew or should have known was 60 years of age or older, or  
48 disabled; **[and]**

- 1 (13) The defendant, while in the course of committing or  
2 attempting to commit the crime, including the immediate flight  
3 therefrom, used or was in possession of a stolen motor vehicle;
- 4 (14) The offense involved an act of domestic violence, as that  
5 term is defined in subsection a. of section 3 of P.L.1991,  
6 c. 261 (C.2C:25-19), committed in the presence of a child under 16  
7 years of age; and
- 8 (15) The offense involved an act of domestic violence, as that  
9 term is defined in subsection a. of section 3 of P.L.1991,  
10 c. 261 (C.2C:25-19) and the defendant committed at least one act of  
11 domestic violence on more than one occasion.
- 12 b. In determining the appropriate sentence to be imposed on a  
13 person who has been convicted of an offense, the court may  
14 properly consider the following mitigating circumstances:
- 15 (1) The defendant's conduct neither caused nor threatened  
16 serious harm;
- 17 (2) The defendant did not contemplate that his conduct would  
18 cause or threaten serious harm;
- 19 (3) The defendant acted under a strong provocation;
- 20 (4) There were substantial grounds tending to excuse or justify  
21 the defendant's conduct, though failing to establish a defense;
- 22 (5) The victim of the defendant's conduct induced or facilitated  
23 its commission;
- 24 (6) The defendant has compensated or will compensate the  
25 victim of his conduct for the damage or injury that he sustained, or  
26 will participate in a program of community service;
- 27 (7) The defendant has no history of prior delinquency or  
28 criminal activity or has led a law-abiding life for a substantial  
29 period of time before the commission of the present offense;
- 30 (8) The defendant's conduct was the result of circumstances  
31 unlikely to recur;
- 32 (9) The character and attitude of the defendant indicate that he is  
33 unlikely to commit another offense;
- 34 (10) The defendant is particularly likely to respond affirmatively  
35 to probationary treatment;
- 36 (11) The imprisonment of the defendant would entail excessive  
37 hardship to himself or his dependents;
- 38 (12) The willingness of the defendant to cooperate with law  
39 enforcement authorities;
- 40 (13) The conduct of a youthful defendant was substantially  
41 influenced by another person more mature than the defendant.
- 42 c. (1) A plea of guilty by a defendant or failure to so plead shall  
43 not be considered in withholding or imposing a sentence of  
44 imprisonment.
- 45 (2) When imposing a sentence of imprisonment the court shall  
46 consider the defendant's eligibility for release under the law  
47 governing parole, including time credits awarded pursuant to Title

1 30 of the Revised Statutes, in determining the appropriate term of  
2 imprisonment.

3 d. Presumption of imprisonment. The court shall deal with a  
4 person who has been convicted of a crime of the first or second  
5 degree, or a crime of the third degree where the court finds that the  
6 aggravating factor in paragraph (5), (14) or (15) of subsection a.  
7 applies, by imposing a sentence of imprisonment unless, having  
8 regard to the character and condition of the defendant, it is of the  
9 opinion that his imprisonment would be a serious injustice which  
10 overrides the need to deter such conduct by others.  
11 Notwithstanding the provisions of subsection e. of this section, the  
12 court shall deal with a person who has been convicted of theft of a  
13 motor vehicle or of the unlawful taking of a motor vehicle and who  
14 has previously been convicted of either offense by imposing a  
15 sentence of imprisonment unless, having regard to the character and  
16 condition of the defendant, it is of the opinion that his imprisonment  
17 would be a serious injustice which overrides the need to deter such  
18 conduct by others.

19 e. The court shall deal with a person convicted of an offense  
20 other than a crime of the first or second degree, who has not  
21 previously been convicted of an offense, without imposing a  
22 sentence of imprisonment unless, having regard to the nature and  
23 circumstances of the offense and the history, character and  
24 condition of the defendant, it is of the opinion that his imprisonment  
25 is necessary for the protection of the public under the criteria set  
26 forth in subsection a., except that this subsection shall not apply if  
27 the court finds that the aggravating factor in paragraph (5), (14) or  
28 (15) of subsection a. applies or if the person is convicted of any of  
29 the following crimes of the third degree: theft of a motor vehicle;  
30 unlawful taking of a motor vehicle; eluding; if the person is  
31 convicted of a crime of the third degree constituting use of a false  
32 government document in violation of subsection c. of section 1 of  
33 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime  
34 of the third degree constituting distribution, manufacture or  
35 possession of an item containing personal identifying information in  
36 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-  
37 17.3); if the person is convicted of a crime of the third or fourth  
38 degree constituting bias intimidation in violation of N.J.S.2C:16-1;  
39 if the person is convicted of a crime of the third degree under  
40 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of  
41 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a  
42 crime of the third or fourth degree under the provisions of section 1  
43 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

44 f. Presumptive Sentences. (1) Except for the crime of murder,  
45 unless the preponderance of aggravating or mitigating factors, as set  
46 forth in subsections a. and b., weighs in favor of a higher or lower  
47 term within the limits provided in N.J.S.2C:43-6, when a court

1 determines that a sentence of imprisonment is warranted, it shall  
2 impose sentence as follows:

3 (a) To a term of 20 years for aggravated manslaughter or  
4 kidnapping pursuant to paragraph (1) of subsection c. of  
5 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
6 degree;

7 (b) Except as provided in **[paragraph]** subparagraph (a) of this  
8 **[subsection]** paragraph to a term of 15 years for a crime of the first  
9 degree;

10 (c) To a term of seven years for a crime of the second degree;

11 (d) To a term of four years for a crime of the third degree; and

12 (e) To a term of nine months for a crime of the fourth degree.

13 In imposing a minimum term pursuant to **[2C:43-6b.]** subsection  
14 b. of N.J.S.2C:43-6, the sentencing court shall specifically place on  
15 the record the aggravating factors set forth in this section which  
16 justify the imposition of a minimum term.

17 Unless the preponderance of mitigating factors set forth in  
18 subsection b. weighs in favor of a lower term within the limits  
19 authorized, sentences imposed pursuant to **[2C:43-7a.(1)]**  
20 paragraph (1) of subsection a. of N.J.S.2C:43-7 shall have a  
21 presumptive term of life imprisonment. Unless the preponderance  
22 of aggravating and mitigating factors set forth in subsections a. and  
23 b. weighs in favor of a higher or lower term within the limits  
24 authorized, sentences imposed pursuant to **[2C:43-7a.(2)]**  
25 paragraph (2) of subsection a. of N.J.S.2C:43-7 shall have a  
26 presumptive term of 50 years' imprisonment; sentences imposed  
27 pursuant to **[2C:43-7a.(3)]** paragraph (3) of subsection a. of  
28 N.J.S.2C:43-7 shall have a presumptive term of 15 years'  
29 imprisonment; and sentences imposed pursuant to **[2C:43-7a.(4)]**  
30 paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a  
31 presumptive term of seven years' imprisonment.

32 In imposing a minimum term pursuant to **[2C:43-7b.]** subsection  
33 b. of N.J.S.2C43-7, the sentencing court shall specifically place on  
34 the record the aggravating factors set forth in this section which  
35 justify the imposition of a minimum term.

36 (2) In cases of convictions for crimes of the first or second  
37 degree where the court is clearly convinced that the mitigating  
38 factors substantially outweigh the aggravating factors and where the  
39 interest of justice demands, the court may sentence the defendant to  
40 a term appropriate to a crime of one degree lower than that of the  
41 crime for which he was convicted. If the court does impose  
42 sentence pursuant to this paragraph, or if the court imposes a  
43 noncustodial or probationary sentence upon conviction for a crime  
44 of the first or second degree, such sentence shall not become final  
45 for 10 days in order to permit the appeal of such sentence by the  
46 prosecution.

1 g. Imposition of Noncustodial Sentences in Certain Cases. If  
2 the court, in considering the aggravating factors set forth in  
3 subsection a., finds the aggravating factor in **【**paragraph a.(2), a.(5),  
4 a.(10), or a.(12)**】** paragraph (2), (5), (10), or (12) of subsection a.  
5 and does not impose a custodial sentence, the court shall  
6 specifically place on the record the mitigating factors which justify  
7 the imposition of a noncustodial sentence.

8 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-  
9 11), the presumption of imprisonment as provided in subsection d.  
10 of this section shall not preclude the admission of a person to the  
11 Intensive Supervision Program, established pursuant to the Rules  
12 Governing the Courts of the State of New Jersey.  
13 (cf: P.L.2010, c.30, s.1)

14  
15 6. This act shall take effect immediately.

16  
17  
18 STATEMENT

19  
20 This bill would upgrade assault against a victim of domestic  
21 violence under certain circumstances. Under current law, it is a  
22 crime of the third degree to attempt to cause significant bodily  
23 injury to another; to cause significant bodily injury purposely or  
24 knowingly; or, under circumstances manifesting extreme  
25 indifference to the value of human life, to recklessly cause such  
26 significant bodily injury. A crime of the third degree is ordinarily  
27 punishable by a term of imprisonment of three to five years, a fine  
28 of up to \$15,000, or both. Under N.J.S.2C:44-1 there is a  
29 presumption of non-imprisonment for a first offense of a crime of  
30 the third degree. Under the bill, if the victim, with respect to the  
31 actor, meets the definition of a victim of domestic violence, as  
32 defined in subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-  
33 19), there would be no presumption of non-imprisonment.

34 In addition, this bill would add the following offenses to the list  
35 of predicate offenses enumerated in the "Prevention of Domestic  
36 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.):  
37 criminal coercion (N.J.S.2C:13-5); robbery (N.J.S.2C:15-1);  
38 contempt of a domestic violence order (subsection b. of  
39 N.J.S.2C:29-9) where the contempt would constitute a crime or  
40 disorderly persons offense; and any other crime involving a risk of  
41 death or serious bodily injury to a domestic violence victim.

42 The bill would also expand the offense of criminal coercion,  
43 pursuant to N.J.S.2C:13-5, to include threatening to inflict bodily  
44 injury on anyone or commit any other offense regardless of the  
45 immediacy of the threat.

46 In addition, the bill provides that additional weight should be  
47 given by the prosecutor and the court to a domestic violence  
48 victim's position on the proposed admission of a defendant for

1 participation in Pretrial Intervention (PTI), also known as  
2 supervisory treatment.

3 The bill also provides that admission into supervisory treatment  
4 would be made available to the following defendants only upon  
5 entering a plea of guilty:

6 (a) a defendant charged with a first or second crime;

7 (b) a defendant charged with any crime if the defendant had  
8 previously been convicted of a first or second degree crime;

9 (c) a defendant charged with a third or fourth degree crime  
10 involving domestic violence;

11 (d) a defendant charged with any crime or offense involving  
12 domestic violence, if the defendant committed the crime or offense  
13 while subject to a domestic violence temporary or permanent  
14 restraining order; or

15 (e) a defendant charged with a fourth degree crime of contempt  
16 of a domestic violence order.

17 For any such defendant, following the plea of guilty the plea  
18 would be held in an inactive status pending termination of  
19 supervisory treatment pursuant to subsection d. or e. of  
20 N.J.S.2C:43-13. Upon successful completion of the program of  
21 supervisory treatment the charges would be dismissed.

22 The bill would also amend N.J.S.2C:44-1 to add two new  
23 aggravating factors for the court to consider in imposing a sentence:

24 (a) the offense involved an act of domestic violence committed in  
25 the presence of a child under 16 years of age; and (b) the offense  
26 involved an act of domestic violence and the defendant committed  
27 at least one act of domestic violence on more than one occasion.



# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4016

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 4, 2015

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4016.

This bill would upgrade assault against a victim of domestic violence under certain circumstances. Under current law, it is a crime of the third degree to attempt to cause significant bodily injury to another; to cause significant bodily injury purposely or knowingly; or, under circumstances manifesting extreme indifference to the value of human life, to recklessly cause such significant bodily injury. A crime of the third degree is ordinarily punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. Under N.J.S.2C:44-1 there is a presumption of non-imprisonment for a first offense of a crime of the third degree. Under the bill, if a person commits this crime against a victim who, with respect to the actor, meets the definition of a victim of domestic violence, as defined in subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-19), there would be no presumption of non-imprisonment.

In addition, this bill would add the following offenses to the list of predicate offenses enumerated in the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.): criminal coercion (N.J.S.2C:13-5); robbery (N.J.S.2C:15-1); contempt of a domestic violence order (subsection b. of N.J.S.2C:29-9) where the contempt would constitute a crime or disorderly persons offense; and any other crime involving a risk of death or serious bodily injury to a domestic violence victim.

The bill would also expand the offense of criminal coercion pursuant to N.J.S.2C:13-5. Currently, a person who, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, threatens to inflict bodily injury on anyone or commit any other offense, is guilty of criminal coercion. This bill provides that these actions would constitute criminal coercion if the person threatens to inflict bodily injury on anyone or commit any other offense *regardless of the immediacy of the threat*.

As introduced, the bill had provided that additional weight should be given by the prosecutor and the court to a domestic violence victim's position on the proposed admission of a defendant for

participation in Pretrial Intervention (PTI), also known as supervisory treatment. This provision was amended by the committee to provide that *due consideration* to the victim's position should be given by the prosecutor and the court.

The bill also provides that admission into supervisory treatment would be made available to the following defendants only upon entering a plea of guilty:

- (a) a defendant charged with a first or second crime;
- (b) a defendant charged with any crime if the defendant had previously been convicted of a first or second degree crime;
- (c) a defendant charged with a third or fourth degree crime involving domestic violence;
- (d) a defendant charged with any crime or offense involving domestic violence, if the defendant committed the crime or offense while subject to a domestic violence temporary or permanent restraining order; or
- (e) a defendant charged with a fourth degree crime of contempt of a domestic violence order.

For any such defendant, following the plea of guilty the plea would be held in an inactive status pending termination of supervisory treatment pursuant to subsection d. or e. of N.J.S.2C:43-13. Upon successful completion of the program of supervisory treatment the charges would be dismissed.

The bill would also amend N.J.S.2C:44-1 to add two new aggravating factors for the court to consider in imposing a sentence: (a) the offense involved an act of domestic violence committed in the presence of a child under 16 years of age; and (b) the offense involved an act of domestic violence and the defendant committed at least one act of domestic violence on more than one occasion.

#### COMMITTEE AMENDMENTS:

Amend section 4 of the bill to provide that due consideration should be given by the prosecutor and the court to a domestic violence victim's position on the proposed admission of a defendant for participation in Pretrial Intervention.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 4016**

with Assembly Floor Amendments  
(Proposed by Assemblyman LAGANA)

ADOPTED: JUNE 11, 2015

These floor amendments provide for a presumption against admission into a program of supervisory treatment (PTI) for a defendant charged with any crime or offense involving domestic violence, if the defendant committed the crime or offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.) or if the crime or offense charged involved violence or the threat of violence. The amendments specify that, for purposes of the bill, a crime or offense involves violence or the threat of violence if the victim sustains serious or significant bodily injury as defined in subsection b. or d. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict serious or significant bodily injury.

The amendments also require the Attorney General to develop guidelines to ensure the uniform exercise of discretion by prosecutors in formulating their recommendations on participation in a supervisory treatment program by an applicant charged with a crime or offense involving domestic violence.

In addition, the amendments remove redundant language within the amendments to subsection g. of N.J.S.2C:43-12, set out in section 4 of the bill. These amendments to section 4 do not change the substance of the bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

## ASSEMBLY, No. 4016

### STATE OF NEW JERSEY 216th LEGISLATURE

DATED: JUNE 26, 2015

#### SUMMARY

- Synopsis:** Removes presumption of nonimprisonment in certain assault cases involving domestic violence victims; expands criminal coercion statute; revises Pretrial Intervention procedures in certain criminal cases.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Department of Correction, County Prosecutors, Judiciary

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate – See comments below		
<b>Local Cost</b>	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) notes that while the cost to the Department of Corrections (DOC) would be indeterminate, for every offender who is incarcerated under the bill, the DOC would incur additional expenses for housing that individual. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility totals \$45,000. However, due to fixed costs, the cost may not necessarily total this amount. The OLS notes that the marginal cost of providing food, wages and clothing for each inmate would total \$7.15 per day, or \$2,609.75 annually.
- The bill concerns the State’s prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill’s provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the “Prevention of Domestic Violence Act of 1991,” (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State’s Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

- Information obtained informally from the Department of Corrections (DOC) indicates that there is no available information that would provide supporting statistics to determine the number of individuals that would be convicted of these offenses. As a result, the DOC is unable to calculate the fiscal impact resulting from the enactment of this legislation.

## **BILL DESCRIPTION**

Assembly Bill No. 4016 (2R) of 2014 concerns the State's prosecution of various crimes, particularly with respect to crimes associated with domestic violence. Among the bill's provisions are those which: (1) expand the list of criminal offenses that constitute domestic violence as defined in the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al.; (2) increase the likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury and other crimes or offenses committed against domestic violence victims; and (3) alter the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program, including a requirement that such offenders plead guilty to the charged crime, which guilty plea is then held in an inactive status pending the outcome of supervisory treatment under the program.

First, the statutory definition of "domestic violence" under the "Prevention of Domestic Violence Act of 1991," N.J.S.2C:25-17 et al. would be expanded to include: robbery (N.J.S.2C:15-1); criminal coercion (N.J.S.2C:13-5); contempt of a court order entered under the act (N.J.S.2C:29-9, subsection b.), when the contempt violation itself constitutes the commission of a crime or disorderly persons offense; and any other crime involving risk of death or serious bodily injury to a domestic violence victim. These crimes would be added to the existing crimes or offenses, such as assault, terroristic threat, false imprisonment, and criminal trespass, which collectively constitute acts of domestic violence for which a victim may seek additional protections and relief from an abuser under the law.

Criminal coercion, referenced above, would also be clarified to provide domestic violence victims and other victims better protections from such acts. Specifically, the bill would indicate that there was no immediacy of harm requirement necessary in order to prosecute a person who threatened to inflict bodily injury on anyone or commit any other offense with the purpose of unlawfully restricting another's freedom of action, recognizing that such threats of coercion may not always involve an immediacy of harm.

As to the increased likelihood of prison time for domestic violence-related aggravated assaults involving actual or attempted significant bodily injury, the bill would take this crime, graded as a crime of the third degree, and remove the statutory presumption of non-imprisonment, set forth in subsection e. of N.J.S.2C:44-1, ordinarily associated with sentencing for this and other third degree crimes. Thus, absent the presumption, the court would engage in the weighing of the aggravating and mitigating sentencing factors set forth in subsections a. and b. of N.J.S.2C:44-1 in order to determine the appropriateness for a prison sentence and, if imposed, the length of such sentence, which would ordinarily be between three to five years. A third-degree aggravated assault is also punishable by a fine of up to \$15,000.

As to the increased likelihood of prison time for other crimes or offenses committed against domestic violence victims, the bill would establish a presumption of imprisonment for the following:

- any act of domestic violence committed in the presence of a child under 16 years of age;
- and

- any act of domestic violence, when the abuser committed at least one act of domestic violence on more than one occasion.

Both categories would also be established as aggravating factors for the court to consider when determining the possible length of the prison sentence imposed.

Finally, the bill presents several alterations to the admissions procedures for domestic violence offenders and other criminal offenders seeking admission into the State's Pretrial Intervention Program (PTI) for supervisory treatment.

Specific to domestic violence offenders, the bill would establish a presumption against admission into the program, if the crime or offense:

- was committed while subject to a domestic violence temporary or permanent restraining order; or

- involved violence or the threat of violence against the victim – meaning the victim sustained serious or significant bodily injury, or the offender is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon, or threatens to inflict serious or significant bodily injury.

Also, the Attorney General would be responsible for developing guidelines to ensure the uniform exercise of discretion by prosecutors in formulating recommendations on participation in PTI for domestic violence offenders.

For all criminal offenders, even those domestic violence offenders presumed to not be admitted to the program, the bill provides that when a prosecutor and court consider an application for admission, both would “give due consideration to the victim's position” on whether the defendant should be admitted. The bill also provides that PTI admission would require entry of a plea of guilty for any person charged with:

- a first or second degree crime;
- any crime, if the person was previously convicted of a first or second degree crime;
- a third or fourth degree crime involving domestic violence; or
- any disorderly or petty disorderly persons offense involving domestic violence, if the defendant committed the offense while subject to a domestic violence temporary or permanent restraining order.

For any such person, the guilty plea would be held in an inactive status pending the outcome of supervisory treatment under the program. If the person successfully completed the program, the person's charges would be dismissed. If the person was discharged without successfully completing the program, the person's charges could be reactivated and criminal proceedings continued as through no supervisory treatment had been commenced.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

Information obtained informally from the DOC indicates that under the law, there is a presumption of non-imprisonment for a first time offense of a crime of the third degree. The bill provides that if a victim of an offense meets the definition of a victim of domestic violence, there would be no presumption of non-incarceration for first time offenders. The offender would still be sentenced to a third degree crime punishable by a term of imprisonment between three to five years, and most likely be required to serve their time at the DOC. Based on these provisions, there is no statistical data to calculate the number of first time offender cases that would meet the criteria.

The DOC has also indicated that the bill provides that admission into supervisory treatment would be made available to certain defendants only upon entering a plea of guilty. The plea agreement would be held in an inactive status pending termination of supervisory treatment. Upon successful completion of the supervisory treatment, the charges would be dismissed. This provision would potentially reduce the inmate population, however, there are no statistics to calculate the number of cases that would meet the criteria.

The bill adds criminal coercion, robbery, contempt of a domestic violence order pursuant to subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly persons offense, and any other crime involving risk of death or serious bodily injury to a person protected under the “Prevention of Domestic Violence Act of 1991.” The Act allows the victim to request a restraining order and/or file a criminal complaint arising from the same incident. The DOC is unable to determine the number of cases that would receive an additional sentence based on these provisions.

The DOC further noted that the bill expands the offense of criminal coercion to include threatening to inflict bodily injury on anyone or commit any other offense regardless of the immediacy of the threat. There is no supporting statistics to determine the number of additional convictions based on these provisions of the proposed legislation.

In summary, according to information obtained from the DOC, there is no available information that would provide supporting statistics to determine the number of individuals that would be convicted of these offenses and the resulting fiscal impact is indeterminate.

#### **Administrative Office of the Courts**

None received.

#### **County Prosecutors**

None received.

#### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that while the cost to the Department of Corrections (DOC) would be indeterminate, for every offender who is incarcerated under the bill, the DOC would incur additional expenses for housing that individual. According to information obtained from the DOC, the average annual per capita cost to house an inmate in a State prison facility totals \$45,000. However, due to fixed costs, the cost may not necessarily total this amount. The OLS notes that the marginal cost of providing food, wages and clothing for each inmate would total \$7.15 per day, or \$2,609.75 annually.

The OLS adds that the Judiciary and county prosecutors would incur an undetermined cost to implement the amended procedures for individuals seeking admission into the State’s Pretrial Intervention Program.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).