

THE EVOLUTION OF NEW JERSEY'S BIAS CRIME LAW

*Senator Joseph Vitale**

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I. INTRODUCTION

In the landmark case, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the United States Supreme Court ruled that New Jersey's bias crime law was unconstitutional.¹ As a result of *Apprendi*, the New Jersey Legislature undertook the process of revising the criminal code to incorporate a bias crime law that was within the strictures of the Constitution.² In the end, my bill (Senate Bill 1897), which allows for

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¹ *Apprendi v. New Jersey*, 530 U.S. 466, 523 (2000).

² SENATE JUDICIARY COMMITTEE STATEMENT TO SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL 1897, S-1897, 209th Sess. (Dec. 14, 2000). The committee statement recognized that S-1897 was in response to the United States Supreme Court ruling in *Apprendi*, which held that subsection e. of N.J. STAT. ANN. 2C:44-3 (West 2000) was unconstitutional. *Id.* The Court stated that any fact which increases the penalty of a crime

increased penalties for crimes that are determined to have a bias intent, was enacted into law on January 11, 2002.³

II. NEW JERSEY'S ORIGINAL HATE CRIMES LAW

In 1981, New Jersey became one of the first states to put a hate crimes law on the books.⁴ This law banned acts of intimidation motivated by bias such as the burning of crosses or the painting of swastikas. Additionally, the law permitted judges to increase the defendant's sentence if the crime was perpetrated with the "purpose to intimidate an individual . . . because of race, color, gender, handicap, religion, sexual orientation or ethnicity."⁵ The hate crimes law was expanded in 1990 to allow longer sentences when certain crimes were committed with the intent to intimidate because of race, sex or religion.⁶ Today, most states have some type of bias crime law. However, only New Jersey and North Carolina crafted their laws to permit judges rather than juries to find during the sentencing phase of trial that bias was a motivating factor in a crime by a "preponderance of evidence."⁷ The bias laws of other states generally require the jury to make a finding of bias "beyond a reasonable doubt."⁸

III. BACKGROUND OF APPRENDI V. NEW JERSEY

In 1994, Michael and Mattie Fowlkes designed a home and had it built for their family so they could move from the city to their new home surrounded by farmland.⁹ The family was the only African-American family in the sparsely populated neighborhood located on the

beyond the maximum time provided by statute, must be submitted to the jury and proved beyond a reasonable doubt. *Id.*

³ P.L. 2001, c. 443. S-1897 preserved the purpose of 2C:44-3, by establishing a separate crime of bias intimidation, which must be charged and proven as with any other charges. S-1897. Under S-1897, the bias intimidation sentence is not to be merged with the underlying offense. *Id.*

⁴ Robert Cohen, *Hate-Crime Law in Jersey Struck Down*, THE STAR-LEDGER (New Jersey), June 27, 2000, at ¶19, available at 2000 WL 23585454.

⁵ 2C:44-3(e).

⁶ A-2101, 205th Leg. Sess. (1990). Assembly Bill 2101 was introduced by Assemblyman Joseph Charles, Jr. (D-Hudson) and Assemblywoman Marlene Lynch Ford (D-Ocean). *Id.* On June 7, 1990, this legislation was combined with A-3022/2758/2759(ACS). A-3022, 205th Leg. Sess. (1990).

⁷ Cohen, *supra* note 4, at ¶ 16.

⁸ *Id.* at ¶ 17.

⁹ *Id.* at ¶ 34.

outskirts of Vineland.¹⁰ Once the Fowlkes moved into their new neighborhood, their home was attacked on three separate occasions.¹¹ On December 22, 1994, the Fowlkes home was attacked for a fourth time.¹² After several shots were fired at their home, Michael and Mattie ran outside and spotted Charles Apprendi Jr.'s Chevrolet truck leaving their driveway.¹³

After his arrest, Apprendi made a statement claiming that he fired several shots at the family's home "because they are black in color he does not want them in the neighborhood".¹⁴ He later retracted the statement.¹⁵ After a grand jury returned a 23-count indictment,¹⁶ Apprendi entered into a plea agreement with prosecutors for two counts (counts 3 and 18) of second degree possession of a firearm for unlawful purpose¹⁷ and one count (count 22) of third degree offense of an unlawful possession of an anti-personnel bomb.¹⁸ The other twenty

¹⁰ *Id.* at ¶ 4.

¹¹ *Id.* at ¶ 23.

¹² *Id.*

¹³ Cohen, *supra* note 4, at ¶ 23.

¹⁴ *Apprendi*, 530 U.S. at 469.

¹⁵ *Id.*

¹⁶ *Id.* The grand jury returned the 23-count indictment which included: four first-degree, eight second-degree, six third-degree, and five fourth-degree offenses. The charges alleged shootings on four different dates as well as the unlawful possession of various weapons. None of the counts referred to the hate crime statute, and none alleged that Apprendi acted with a racially biased purpose.

Id.

¹⁷ *Id.* Possession of weapons for unlawful purpose:

- a. Firearms. Any person who has in his possession any firearm with a purpose to use it unlawfully against the person or property is guilty of a crime of the second degree.
- b. Explosives. Any person who has in his possession or carries any explosive substance with a purpose to use it unlawfully against the person or property is guilty of a crime of the second degree.
- c. Destructive devices. Any person who has in his possession any destructive device with a purpose to use it unlawfully against the person or property is guilty of a crime of the second degree.
- d. Other weapons. Any person who has in his possession any weapon, except a firearm, with a purpose to use it unlawfully against the person or property is guilty of a crime of the third degree.
- e. Imitation firearms. Any person who has in his possession an imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose is guilty of a crime of the fourth degree.

N.J. STAT. ANN. 2C:39-4 (West 2000).

¹⁸ *Apprendi*, 530 U.S. at 470. Prohibited weapons and devices:

counts were dismissed.¹⁹

The penalty for a second-degree crime is between five and ten years²⁰ and for a third degree offense is between three and five years.²¹ However, as part of the plea agreement, the State reserved the right to ask the court to impose a greater sentence under New Jersey's hate crimes statute.²² They reasoned that Apprendi shot at the home of the

a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime in the third degree.

b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.

c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.

d. Defaced firearms. Any person in his possession any firearm which has been defaced, except an antique firearm or antique handgun, is guilty of a crime in fourth degree.

N.J. STAT. ANN. 39-3 (West 2000).

¹⁹ *Apprendi*, 530 U.S. at 470.

²⁰ N.J. STAT. ANN. 2C:43-6(a)(West 2000). Sentence imprisonment for crime; ordinary terms; mandatory terms:

a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

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

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

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

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

Id.

²¹ *Id.*

²² *Apprendi*, 530 U.S. at 470. Criteria for sentence of extended term of imprisonment:

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime in the first, second or third degree to an extended term of imprisonment if it finds one or more grounds specified in subsection a,b,c, or f. of this action. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime, other than a violation of N.J.S. 2C:12-1a., N.J.S. 2C:33-4, or a violation of N.J.S. 2C:14-2 or 2C:14-3 if the grounds for the application is purpose to intimate because of gender, to an extended term if it finds, by a preponderance of the evidence, the grounds in subsection e. . . .

e. The defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity.

2C:44-3(e).

Fowlkes family because they were African-American and therefore the crime was done with the purpose and intent to intimidate on the basis of the family's race.²³ The trial judge accepted the plea agreement and the prosecutor filed a motion for an extended sentence.²⁴

During the sentencing phase, the trial judge found by a "preponderance of the evidence"²⁵ that the crime was "motivated by racial bias" with the intent to intimidate the African-American family,²⁶ ergo, the hate crime enhancement applied.²⁷ The trial court sentenced Apprendi to twelve years imprisonment for the crime of shooting into the African-American home and shorter consecutive sentences for the other two counts.²⁸

After he was sentenced under the New Jersey Hate Crimes Act, Apprendi appealed his additional jail time, arguing that his Due Process rights were violated because the finding of bias was not made by a jury beyond a reasonable doubt.²⁹ Instead, the finding was made by a judge under the less burdensome preponderance of evidence standard.³⁰ During the long and tenuous journey through the Appellate Division of the Superior Court of New Jersey and the New Jersey Supreme Court, the courts consistently found New Jersey's application of the hate crimes statute to be constitutional.³¹ Apprendi then appealed to the

²³ *Apprendi*, 530 U.S. at 470.

²⁴ *Id.*

²⁵ *Id.* at 471.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* The plea agreement provided that the sentences of all three counts would be served concurrently. *Id.* at 470. If the judge found that there was no bias element to the crime then the maximum consecutive sentence would amount to 20 years. *Id.* If, however, the trial judge found the bias element then the imprisoned time for count 18 (the shooting of shots into the African-American home) alone would be 20 years. *Id.* The maximum sentence would be 30 years in aggregate for all counts, without the chance for parole for 15 years. *Id.*

²⁹ *Apprendi*, 530 U.S. at 471.

³⁰ *Id.*

³¹ *Id.* at 471-473. In upholding the statute, the New Jersey appellate court stated, "legislature decided to make the hate crime enhancement a "sentencing factor" rather than an element of the underlying offense—and that decision was within the State's established power to define the elements of the crime." *Id.* The New Jersey Supreme Court, in a divided opinion, explained that the Due Process Clause requires that the State only prove the elements of the crime beyond a reasonable doubt. *Id.* The New Jersey Supreme Court said, "the mere fact that a state legislature has placed a criminal component 'within the sentencing provisions' of the criminal code 'does not mean that the finding of a biased purpose to intimidate is not an essential element of the offense.'" *Id.*

United States Supreme Court.³²

IV. *APPRENDI V. NEW JERSEY*

The United States Supreme Court was charged with determining the narrow question of “whether the [twelve] year sentence imposed on count 18 was permissible, given that it was above the [ten] year maximum for the offense charged.”³³ In a 5-4 decision, the Supreme Court ruled that New Jersey’s procedure was inadequate.³⁴ In a majority opinion written by Justice Stevens, the Court stated that the Constitutional protections of the Fourteenth Amendment³⁵ are of surpassing importance and no one should be deprived of their liberty without proper due process.³⁶ Furthermore, the Court held that the Sixth Amendment³⁷, juxtaposed with the Fourteenth Amendment, entitled a defendant to a jury determination of every element of a crime of which he is charged beyond a reasonable doubt.³⁸ Since the charge of bias motivation was not heard by the jury, Apprendi’s twelve-year prison sentence was overturned by the Court as a violation of his Constitutional rights.³⁹

³² *Id.* at 474.

³³ *Id.*

³⁴ *Id.* at 474-76.

³⁵ U.S. CONST. amend. XIV, §1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws.

Id.

³⁶ *Apprendi*, 530 U.S. at 484.

³⁷ U.S. CONST. amend. VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have a compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Id.

³⁸ *Apprendi*, 530 U.S. at 477.

³⁹ *Id.* at 497.

V. FIXING NEW JERSEY'S BIAS CRIME LAW: ENACTING SENATE BILL 1897

As a result of the Supreme Court's decision, New Jersey was left without a bias crime law to protect its citizens against crimes such as the one perpetrated by Apprendi. On November 13, 2000, I introduced a bill, that would later be enacted into law, that established a separate crime of bias intimidation and repealed New Jersey's then-existing bias crime statute that was found unconstitutional.⁴⁰ As a separate offense, a charge of bias intimidation is now treated as any other crime and the defendant is afforded all of the protections of the Sixth and Fourteenth Amendments, including the right to be tried by a jury on that specific crime and a right to a finding of guilt "beyond a reasonable doubt."

Under my new law, a person could be found guilty of bias intimidation if he commits a crime with the purpose of intimidating a victim because of their race, color, religion, gender, handicap, sexual orientation or ethnicity.⁴¹ The bill as originally drafted would have permitted prosecutors to charge a bias motive in the indictment and the purpose to intimidate would be treated as an element of the crime to be submitted to the jury and proven beyond a reasonable doubt.⁴² At the recommendation of the Attorney General's office, the bill was changed in committee to simply establish the crime of bias intimidation that could be separately charged and prosecuted.⁴³ The bill also permitted an

⁴⁰ S-1897. The General Assembly counterpart was introduced on July 13, 2000 by Assemblyman Neil Cohen (D-Union) and Assemblyman David Russo (R-Bergen) and referred to the Assembly Judiciary Committee. A-2702, 209th Leg. Sess. (2000).

⁴¹ P.L. 2001, c. 443. Under this law, a person is guilty of the crime of bias intimidation if he commits one of the specified underlying crimes:

- i) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
- ii) knowing that the conduct would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation or ethnicity; or
- iii) under circumstances that cause any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation or ethnicity.

Id.

⁴² S-1897.

⁴³ Bills 2000-01, New Jersey State Legislature Home Page (last visited April 22, 2002) available at <http://www.njleg.state/nj/us/bills/BillView.asp>. A committee substitute for S-

inference that the crime was motivated by bias if proof is presented showing that the defendant selected the victim or property because of race, color, religion, gender, handicap, sexual orientation or ethnicity.⁴⁴ The bill also created an exception for certain sexual offenses if the bias intimidation is based solely on the victim's gender.⁴⁵

The bill that originally passed the Senate included sentencing guidelines that mirrored the New Jersey's original bias crime statute. The grading of the crime of bias intimidation would be determined by the grading of the underlying crime.⁴⁶ Generally, bias intimidation would be a crime one degree higher than the most serious underlying charge.⁴⁷ If the underlying crime was a disorderly persons offense or a petty disorderly persons offense, the bias intimidation would be a crime of the fourth degree. If the most serious underlying offense was an offense in the first degree, then the bias intimidation would also be a crime of the first degree. The sentence for bias intimidation could not be merged with any underlying offense and consecutive sentences must be imposed.⁴⁸

When the bill was presented to the Assembly floor for a vote, the Assembly bill sponsor, Assemblyman Neil Cohen (D-Union), introduced an amendment to limit the sentence in cases where the underlying offense is a first degree crime.⁴⁹ The amendments provided that the sentence in these cases would be an ordinary term of imprisonment between fifteen years and thirty years with a presumptive term of twenty years, rather than imprisonment between twenty years and life imprisonment with a presumptive term of fifty years.⁵⁰ These amendments were offered to make the sentencing provisions consistent

1897, S-1897scs, was passed by the Senate Judiciary Committee on December 14, 2000. *Id.* It passed the Senate by a unanimous vote on February 15, 2001. *Id.* On May 7, 2001, the Assembly version passed the Assembly Judiciary Committee and passed the Assembly, with floor amendments, on December 17, 2001 by a vote of 74-1-2. *Id.* The Assembly amendments were concurred by the Senate on January 7, 2002. *Id.*

⁴⁴ S-1897.

⁴⁵ *Id.* For example, to find a defendant guilty of bias intimidation in a sexual assault case, the bias must be based on the victim's race, color, religion, handicap, sexual orientation or handicap.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Bills 2000-01, New Jersey State Legislature Home Page (last visited April 22, 2002) available at <http://www.njleg.state/nj/us/bills/BillView.asp>.

⁵⁰ *Id.*

with existing sentencing provisions outlined in New Jersey statutes.⁵¹

VI. CONCLUSION

Senate Bill 1897 and its Assembly companion received overwhelming support from members in both houses of the Legislature, the Anti-Defamation League, the New Jersey Bar Association, County of Middlesex Prosecutor's Office and the Governor's Administration.⁵² Only token opposition was heard.⁵³ After passing both houses, Acting Governor John O. Bennett signed my bill into law on January 11, 2002.⁵⁴

⁵¹ N.J. STAT. ANN. 2C:44-1 (West 2000).

⁵² Vote tally from Senate and Assembly; Action Alert on Anti-Defamation League Website, available at www.adl.org; Letter from Middlesex County Prosecutor Glenn Berman dated May 1, 2001; Letter from New Jersey Bar Association dated May 5, 2001 (documents on reserve with author).

⁵³ *Id.* Assemblyman E. Scott Garrett (R-Bergen) voted nay and Assemblywoman Connie Myers (R-Hunterdon) and Assemblyman Joel Weingartner (R-Essex) abstained from voting. *Id.*

⁵⁴ Bruno Tedeschi, *\$15M Provided for Open Space Over Objections*, THE RECORD (New Jersey), Jan. 12, 2002, at A-3.

APPENDIX A

CHAPTER 443

AN ACT concerning bias crimes, amending P.L.1998, c.26, P.L.1979, c.179, N.J.S.2C:12-1, N.J.S.2C:33-4, N.J.S.2C:43-7, N.J.S.2C:44-1 and N.J.S.2C:44-3 and adding a new chapter 16 to the New Jersey Statutes.

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

1. An additional chapter 16, Bias Crimes, is added to Title 2C of the New Jersey Statutes as follows:

Bias intimidation.

2C:16-1. Bias Intimidation.

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4 or N.J.S.2C:39-5,

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, handicap, sexual orientation, or ethnicity; or

(3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, handicap, sexual orientation, or ethnicity, or (b) the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, handicap, sexual orientation, or ethnicity.

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, handicap, sexual orientation, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation, or ethnicity.

c. Grading. Bias intimidation is a crime of the fourth degree if the underlying offense referred to in subsection a. is a disorderly persons offense or petty disorderly persons offense. Otherwise, bias intimidation is a crime one degree higher than the most serious underlying crime referred to in subsection a., except that where the underlying crime is a crime of the first degree, bias intimidation is a first-degree crime and the defendant upon conviction thereof may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 15 years and 30 years, with a presumptive term of 20 years

d. Gender exemption in sexual offense prosecutions. It shall not be a violation of subsection a. if the underlying criminal offense is a violation of chapter 14 of Title 2C of the New Jersey Statutes and the circumstance specified in paragraph (1), (2) or (3) of subsection a. of this section is based solely upon the gender of the victim.

e. Merger. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction for bias intimidation shall not merge with a conviction of any of the underlying offenses referred to in subsection a. of this section, nor shall any conviction for such underlying offense merge with a conviction for bias intimidation. The court shall impose separate sentences upon a conviction for bias intimidation and a conviction of any underlying offense.

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

Assault.

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

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

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

(3) Attempts by physical menace to put another in fear of

imminent serious bodily injury.

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

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

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

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

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

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

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

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

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

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

(d) Any school board member, school administrator, teacher, school bus driver or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board or any school bus driver employed by an operator under contract to a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a school bus driver; or

(e) Any employee of the Division of Youth and Family Services while clearly identifiable as being engaged in the performance of his

duties or because of his status as an employee of the division; or

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

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

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

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

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

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

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

(11) Uses or activates a laser sighting system or device, or a system or device which, in the manner used, would cause a reasonable person to believe that it is a laser sighting system or device, against a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. As used in this paragraph, "laser sighting system or device" means any system or device that is integrated with or affixed to a firearm and emits a laser light beam that is used to assist in the sight alignment or aiming of the firearm.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsections b. (2), b. (7), b. (9) and b. (10) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree. Aggravated assault under subsection b.(8) is a crime of the third degree if the victim suffers bodily injury; if the victim suffers significant bodily injury or serious bodily injury it is a crime of the second degree. Aggravated assault under subsection b.(11) is a crime of the third degree.

c. (1) A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

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

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

(a) on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school

board, or within 1,000 feet of such school property;

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

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

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

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

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

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

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

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

3.N.J.S.2C:33-4 is amended to read as follows:

Harassment.

2C:33-4. Harassment. Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

a.Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in

offensively coarse language, or any other manner likely to cause annoyance or alarm;

b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

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

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

4. Section 1 of P.L.1998, c.26 (C.2C:39-4.1) is amended to read as follows:

C.2C:39-4.1 Weapons; controlled dangerous substances and other offenses, penalties.

2C:39-4.1. Weapons; controlled dangerous substances and other offenses, penalties.

1. a. Any person who has in his possession any firearm while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S. 2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

b. Any person who has in his possession any weapon, except a firearm, with a purpose to use such weapon unlawfully against the person or property of another, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997, c.327 (C.2C:35-

7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

c. Any person who has in his possession any weapon, except a firearm, under circumstances not manifestly appropriate for such lawful uses as the weapon may have, while in the course of committing, attempting to commit, or conspiring to commit a violation of N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, section 3 or section 5 of P.L. 1997, c.194 (C.2C:35-5.2 or 2C:35-5.3), N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), section 1 of P.L.1997,c.327(C.2C:35-7.1), N.J.S.2C:35-11 or N.J.S.2C:16-1 is guilty of a crime of the second degree.

d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provision of law, a conviction arising under this section shall not merge with a conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section nor shall any conviction under those sections merge with a conviction under this section. Notwithstanding the provisions of N.J.S.2C:44-5 or any other provision of law, the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed for any conviction for a violation of any of the sections of chapter 35 or chapter 16 referred to in this section or a conviction for conspiracy or attempt to violate any of those sections.

e. Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for a violation of N.J.S.2C:39-4 or N.J.S.2C:39-5 or any other provision of law.

f. Nothing herein shall prevent the court from also imposing enhanced punishments, pursuant to N.J.S.2C:35-8, section 2 of P.L.1997, c.117 (C.2C:43-7.2), or any other provision of law, or an extended term.

5. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person,

having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b.A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation in violation of N.J.S.2C:16-1 or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term, which shall be fixed at five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of imprisonment pursuant to N.J.S. 2C:43-7, the extended term of imprisonment shall include the imposition of a minimum term, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

c.Whenever any person shall have been convicted in another

state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

6.N.J.S.2C:43-7 is amended to read as follows:

Sentence of imprisonment for crime; extended terms.

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced, and in the cases designated in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997, c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall be sentenced, to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c. and 2C:44-3d. for a term of five years, and in the case of a crime of the fourth degree pursuant to 2C:43-6f. and 2C:43-6g. for a term which shall be fixed by the court between three and five years;

(6) In the case of the crime of murder, for a specific term of years which shall be fixed by the court between 35 years and life imprisonment, of which the defendant shall serve 35 years before being eligible for parole;

(7) In the case of kidnapping under paragraph (2) of subsection c.

of 2C:13-1, for a specific term of years which shall be fixed by the court between 30 years and life imprisonment, of which the defendant shall serve 30 years before being eligible for parole.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

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

Criteria for withholding or imposing sentence of imprisonment.

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

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

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

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

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

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

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

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

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

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

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

(11) The imposition of a fine, penalty or order of restitution

without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled;

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle. b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

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

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

(3) The defendant acted under a strong provocation;

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

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

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

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

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

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

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

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

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

(13) The conduct of a youthful defendant was substantially

influenced by another person more mature than the defendant.

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

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; or eluding; or if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1.

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

(a) To a term of 20 years for aggravated manslaughter or

kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in paragraph (a) of this subsection to a term of 15 years for a crime of the first degree;

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

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

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

In imposing a minimum term pursuant to 2C:43-6b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to 2C:43-7a.(4) shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to 2C:43-7b., the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

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

g.Imposition of Noncustodial Sentences in Certain Cases. If the

court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph a.(2) or a.(12) and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

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

8.N.J.S.2C:44-3 is amended to read as follows:

Criteria for sentence of extended term of imprisonment.

2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime of the first, second or third degree to an extended term of imprisonment if it finds one or more of the grounds specified in subsection a., b., c., or f. of this section. If the grounds specified in subsection d. are found, and the person is being sentenced for commission of any of the offenses enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the defendant to an extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the prosecutor shall not be required. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment if the grounds specified in subsection g. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime to an extended term of imprisonment if the grounds specified in subsection h. of this section are found. The court shall, upon application of the prosecuting attorney, sentence a person to an extended term if the imposition of such term is required pursuant to the provisions of section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the court shall be incorporated in the record.

a.The defendant has been convicted of a crime of the first, second or third degree and is a persistent offender. A persistent offender is a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at

least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.

b. The defendant has been convicted of a crime of the first, second or third degree and is a professional criminal. A professional criminal is a person who committed a crime as part of a continuing criminal activity in concert with two or more persons, and the circumstances of the crime show he has knowingly devoted himself to criminal activity as a major source of livelihood.

c. The defendant has been convicted of a crime of the first, second or third degree and committed the crime as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value the amount of which was unrelated to the proceeds of the crime or he procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

d. Second offender with a firearm. The defendant is at least 18 years of age and has been previously convicted of any of the following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously convicted of an offense under Title 2A of the New Jersey Statutes or under any statute of the United States or any other state which is substantially equivalent to the offenses enumerated in this subsection and he used or possessed a firearm, as defined in 2C:39-1f., in the course of committing or attempting to commit any of these crimes, including the immediate flight therefrom.

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

f. The defendant has been convicted of a crime under any of the following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of committing or attempting to commit the crime, including the immediate flight therefrom, the defendant used or was in possession of a stolen motor vehicle.

g. The defendant has been convicted of a crime under N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of violence and the victim of the crime was 16 years of age or less.

For purposes of this subsection, a crime involves violence or the threat of violence if the victim sustains serious bodily injury as defined

in subsection b. 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 bodily injury.

h. The crime was committed while the defendant was knowingly involved in criminal street gang related activity. A crime is committed while the defendant was involved in criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang. "Criminal street gang" means three or more persons associated in fact. Individuals are associated in fact if (1) they have in common a group name or identifying sign, symbol, tattoo or other physical marking, style of dress or use of hand signs or other indicia of association or common leadership, and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed, conspired or attempted to commit, within the preceding three years, two or more offenses of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, or a violation of chapter 11, section 3, 4, 5, 6 or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes regardless of whether the prior offenses have resulted in convictions.

The court shall not impose a sentence pursuant to this subsection unless the ground therefore has been established by a preponderance of the evidence established at a hearing, which may occur at the time of sentencing. In making its finding, the court shall take judicial notice of any testimony or information adduced at the trial, plea hearing or other court proceedings and also shall consider the presentence report and any other relevant information.

9. This act shall take effect immediately.

Approved January 11, 2002.