The New Jersey Penal Code

Volume I:

Report and Penal Code

Final Report of the New Jersey Criminal Law Revision Commission

FOR COMMENTARY ON THE PENAL CODE'S PROVISIONS, CONSULT VOLUME II OF THE COMMISSION'S FINAL REPORT.

NEWARK, NEW JERSEY

OCTOBER, 1971

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State of New Jersey

CRIMINAL LAW REVISION COMMISSION

October, 1971

His Excellency, Governor William T. Cahill, and the Honorable Members of the Senate and the General Assembly:

Our Commission was organized in the Spring of 1969 "to study and review the New Jersey Statutory Law pertaining to crimes . . . and prepare a revision . . . thereof for enactment by the Legislature".

The Commission has previously reported on two occasions. An Interim Report, entitled "Toward a New Penal Code for New Jersey," was submitted in April, 1970. In May, 1971, The Commission submitted a study and report of Six-Member Juries.

After more than two years of work by the Commission and its Staff, our task has been completed. We now respectfully submit to the Governor, the Legislature and the Public this, our Final Report. Forming the basis for this Report is our draft of a Penal Code for the State of New Jersey.

Respectfully,

ROBERT E. KNOWLTON, *Chairman*
T. GIRARD WHARTON, *Vice-Chairman*
WILLIAM K. DICKEY
DOMINICK J. FERRELLI
EDWARD GAULKIN
ALVIN E. GRANITE
CHARLES J. IRWIN
RICHARD B. McGLYNN
RONALD OWENS

The New Jersey Criminal Law Revision Commission

Members of the Commission

Robert E. Knowlton, *Chairman.* Professor of Law, Rutgers Law School, Newark.

T. Girard Wharton, *Vice-Chairman.* Former President, New Jersey State Bar Association; Former County Prosecutor of Somerset County; Partner, Wharton, Stewart and Davis, Somerville.

William K. Dickey. Assemblyman, Camden County.

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Edward Gaulkin. Judge of the Superior Court, Appellate Division, Retired; Former County Prosecutor of Essex County.

Alvin E. Granite. Former County Prosecutor of Gloucester County; Partner, Granite and Granite, Woodbury.

Charles J. Irwin. Executive Director, Office of Consumer Protection, Department of Law & Public Safety; Former Assemblyman, Union County.

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Ronald Owens. Assemblyman, Essex County.

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William A. Wachenfeld, Former Justice of the Supreme Court of New Jersey, was a member of the Commission until his death in the spring of 1969.

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Statement by the Chairman

I wish to express my thanks to the other members of the Commission. Without minimizing the contribution of any member, particular appreciation is due to Mr. T. Girard Wharton, Vice Chairman of the Commission, Judge Edward Gaulkin and Prosecutor Dominick J. Ferrelli for their long hours of work and substantial contributions.

All members of the Commission join me, I am sure, in thanking the staff for a job well done. Most particularly, we are all indebted to Mr. John Graham, the Secretary, for his dedicated and brilliant job in drafting the proposals, and in writing the reports and commentaries. In addition, Mr. Graham handled the administrative details, recruited the staff and did all of those things which made this report possible. Special note should also be made of the contributions to the entire report by Mr. Daniel Coburn, Senior Consultant, and Mr. Barry Evenchick, Representative of the Office of the Attorney General.

Robert E. Knowlton
Chairman

A NEW PENAL CODE FOR NEW JERSEY

THE FINAL REPORT OF THE NEW JERSEY CRIMINAL LAW REVISION COMMISSION

The Need for Reform of the Criminal Law

In establishing this Commission, it is our view that the Legislature has clearly expressed its view that the criminal statutes of this State must be revised and modernized. The Statute setting forth our task did not direct us to determine *whether* the law needed revision; instead, we were to prepare the revision:

> "It shall be the duty of the commission to study and review the statutory law pertaining to crimes, disorderly persons, criminal procedure and related subject matter as contained in Title 2A of the New Jersey Statutes and other laws and prepare a revision or revisions thereof for enactment by the Legislature. It shall be the purpose of such revision or revisions to modernize the criminal law of this State so as to embody principles representing the best in modern statutory law, to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundent provisions and to revise and codify the law in a logical, clear and concise manner." L. 1968, c. 281, § 4, N.J.S. 1:19–4.

The Report of the Joint Legislative Committee which resulted in the legislation establishing our Commission recognized the need for a complete reexamination of our criminal law:

> ". . . it is clear that New Jersey's system for administering criminal justice would be strengthened, individual liberties and fair trials increased, and the cause of justice thereby advanced, if an independent commission were established to make a detailed analysis and redrafting of substantive criminal law. We must make sure the system is fair and rational, while we seek to make it effective." *Report, Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey 17-18 (1968)*

Thus, the need for revision has already been determined. In our work, however, we could not help but review this question. As we studied our present law and compared it with the work of others,

we could come to no conclusion other than that the statutes now found in Title 2A, defining crimes and disorderly persons offenses, are hopelessly antiquated. We believe the point made by the Joint Legislative Committee should, however be made even more strongly: *It is our opinion that the enactment of a modern, rational penal code in this State is essential to adequate law enforcement.* In reaching this conclusion, we draw heavily upon the same conclusion of the President's Commission on Law Enforcement and the Administration of Justice:

> "The substantive criminal law is of fundamental and pervasive importance to law enforcement and the administration of justice. In defining criminal conduct and authorizing punishment it constitutes the basic source of authority, directing and controlling the State's use of the criminal sanction. It has a profound effect upon the functioning of law enforcement.
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> "American criminal codes reflect a broad consensus on the appropriateness of employing the criminal law to protect against major injuries to persons, property, and institutions. But the absence of sustained legislative consideration of criminal codes has resulted in the perpetuation of anomalies and inadequacies which have complicated the duties of police, prosecutor, and court and have hindered the attainment of a rational and just penal system.
>
> "Some examples of these substantive inadequacies are the failure in most cases to treat as crimes highly dangerous conduct which does not produce injury, whether the conduct is undertaken negligently or recklessly; the unsatisfactory delineation of the line that separates innocent preparation from criminal attempt; the absence of laws that make criminal the solicitation to commit crimes; the amorphous doctrines of conspiracy that have grown unguided by considered legislative direction; the inconsistent and irrational doctrines of excuse and justification that govern the right to use force, including deadly force, self-defensively or in the prevention of crime, or in the apprehension of criminals; and the confusion that surrounds the definition of the intent or other culpable mental states required for particular crimes.
>
> "Legislative criteria for distinguishing greater and lesser degrees of criminality are in no less need of reex-

amination than legislative definitions of criminal conduct. For these criteria determine such matters as eligibility for capital punishment, applicability of mandatory minimum sentences, availability of probation, and length of authorized maximum terms of imprisonment—matters that may be even more significant issues in a particular case than whether the defendant is in fact guilty. Yet here too legislative inattention has been marked.

* * * *

"The whole problem of sentencing structure, the laws governing judicial sentencing alternatives, the range of authorized imprisonment for particular crimes, and the distribution of authority between courts and correctional agencies, is also in need of legislative consideration." *Task Force Report: The Courts, "Substantive Law Reform, ch. 8, pp. 97-98 (1967).*

Professor Herbert Wechsler, principal draftsman of the Model Penal Code, in *The Challenge of a Model Penal Code,* 65 *Harv. L. Rev.* 1097 (1956) has said:

"Whatever views one holds about the penal law, no one will question its importance in society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and insitutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. If penal law is weak or ineffective, basic human interests are in jeopardy. If it is harsh or arbitrary in its impact, it works a gross injustice on those caught within its toils. The law that carries such responsibilities should surely be as rational and just as law can be. Nowhere in the entire legal field is more at stake for the community or for the individual."

See also the remarks of Senator John McClellan in *The Challenge of a Modern Federal Criminal Code,* 117 *Congressional Record, No.* 33 (March 11, 1971).

The problem is particularly acute in New Jersey today. We are in an era of rising crime rates and we must be sure that we are using the law enforcement facilities available as effectively as possible. This includes both confining law to a proper sphere of activity and assuring ourselves that persons appropriately subject

to a criminal sanction will not escape because of a poorly defined crime. We are in the midst of a crisis with regard to respect for law. We must be sure our criminal statutes do not add to it, breeding contempt for law and disrespect for the enforcers of it, by being anachronistic or hypocritical. History has shown this to be the case:

> "When Sir Robert Peel first entered the British Cabinet as Home Secretary, two of his most urgent goals were police reform and law reform—in that order. His experience in office did not alter his estimate of the importance of these objectives, but it did cause him to reverse the order of their accomplishment; and his achievements in police reorganization and training came largely during his eventual Prime Ministership. It is said that he speedily learned that good police performance is highly dependent upon the existence of rationally conceived and clearly formulated criminal statutes." *Williams* v. *District of Columbia,* 419 F. 2d 638, 640 (D.C.Cir., 1969).

Another benefit of a modern, rationally graduated penal code is the encouragement it would give to a better system of plea negotiations and agreements. The availability of a series of more and less serious offenses for each category of wrongdoing facilitates matching society's interest to the wrongdoing which the defendant is willing to admit. In drafting this code, we have established for each category of wrongdoing a series of offenses, gradated by severity. This should substantially facilitate disposition by plea negotiations and agreements.

New Jersey has never had a comprehensive penal code. While most states have the problem of an outdated code, we must start virtually from scratch. Our statutes now only define the elements of the offenses. Even this is not done according to the harm done or threatened by the offenders. Title 2A knows no such logical ordering; it is alphabetical. This makes impossible any sort of consistent legislative policy. We have almost no statutes relating to the general part of the criminal law, i.e., those relating, for example, to principles of liability, responsibility, justification or excuse. Presently, this is found in our case law. Rationality demands that it be codified.

In submitting the Study Draft of the Federal Criminal Code, Governor Edmund G. Brown, the Chairman, made a statement about the state of the present federal criminal law. We adopt it as applicable to New Jersey:

"The time has come to create, for the first time in our history, a systematic, consistent, comprehensive federal criminal code to replace the hodge-podge that now exists. If criminal law is to be respected, it must be respectable. Important areas of federal criminal law have never been put in statutory form, *e.g.*, the law of self-defense, the law relating to the justified use of force to resist criminals or to arrest for crime, the law of entrapment, the law of conspiracy, the limits of permissible imprisonment upon conviction of multiple crimes (the problem of consecutive sentences). It seems clear that such matters should not be left entirely to shifting and contradictory disposition by judges. A comprehensive and comprehensible code is the appropriate vehicle for Congress to exercise its responsibility and express itself on these matters so central to its office."

Approching the Problem: Basic Decisions

Soon after its organization, the Commission arrived at three basic decisions as to the scope of its task:

First. The Commission would recommend codification of the general part of the criminal law. It is no longer sufficient for our statutes to simply define the elements of offenses. Modernization and rationalization compel enactment of statutory law on topics relating to culpability, excuse, justification, responsibility, etc. While our Supreme Court has done well to keep the common law alive and fluid in these areas, a more adequate job can be done by moving them into the area of legislative responsibility. The court itself has recognized that many changes must come from the Legislature.

Second: The Commission would submit an entirely new set of statutory provisions relating to the definitions of specific offenses. Patchwork revision is insufficient to meet the demands placed upon these all important provisions.

Third: The Commission would make only limited recommendations for revision in the fields of corrections and treatment. We intend to make such recommendations only to the extent necessary to implement a new penal code. We made this decision because of what we conceived to be the limit of our mandate and our field of expertise.

Approaching the Problem: The Work of Others

In approaching our task, we are fortunate to have had many walk the same road. First, there is the American Law Institute's Model Penal Code. It has been the principle basis of our study. The product of 10 years work, it is a thoughtful and comprehensive examination of the substantive criminal law. The main drafter of the Model Penal Code, Professor Herbert Wechsler, described its aims as follows:

> "We are attempting to think through the problems of the law that governs the determination of what conduct constitutes a crime—at least within the major areas of criminality—and also governs what is done or may be done with the offender. In thinking through these problems we are seeking all the help that we can get. We look for legal wisdom—a quality that we believe to be both real and relevant—for we are dealing after all with law. We also look, however, for the knowledge, insight and experience offered by the other disciplines and occupations concerned with crime and its prevention. Armed with collaboration of this order, we mean to act as if we were a legislative commission, charged with construction of an ideal penal code—properly regardful of realities but free, as legislative commissions rarely are, to take account of long range values as distinquished from immediate political demands." *Wechsler, A Thoughtful Code of Substantive Law, 45 J. Crim L.C. & P.S. 524, 525 (1955).*

We should say that all of us do not agree with or intend to recommend all that is in the Model Penal Code. But this does not make it any less useful. It was not intended to be a ready-made statute for adoption as is—rather, it is a "plan for criminal law revision, a source of research material, and a guide to the development of modernization of the law." *Task Force Report: The Courts, supra.*

> "It should be noted, however, that it was not the purpose of the Institute to achieve uniformity in penal law throughout the nation, since it was deemed inevitable that substantial differences of social situation or of point of view among the states should be reflected in substantial variation in their penal laws. The hope was rather that the model would stimulate and facilitate the systematic reexamination of the subject needed to assure that the prevailing law does truly represent the mature sentiment of our respective jurisdictions, sentiment formed after a fresh appraisal of the problems and their possible solutions. Of course, the Institute was not without ambition

that in such an enterprise the model might seem worthy of adoption or, at least, of adaptation. It coupled that ambition with the recognition that legislators working with the model might well find it unacceptable on given points and helpful upon others. It also recognized that much useful legislative work is addressed to particular problems of the penal law rather than to general revision, and wished the Code to be of aid, so far as possible, in undertakings of this kind." *Wechsler, Codification of the Criminal Law in the United States: The Model Penal Code, 68 Col. L. Rev. 1425, 1427 (1968).*

Additionally, many States and the Federal Government have either enacted new penal codes or have had legislative commissions make recommendations as to such laws. Chief among the States is the New York revision (N. Y. Rev. Pen. Law (McKinney 1967)) together with those of Illinois, Wisconsin, Michigan, California and Connecticut. We have drawn heavily upon the work of these States. The Study Draft of the Federal Criminal Code was published late in our work. To some extent, we have drawn upon this also.

Drafting and Deciding

The Penal Code has gone through three drafting states. First, we prepared A "Study Draft" which is about two thousand pages in length. This set forth the various areas to be covered by the Code and included, in each area, the Model Penal Code provisions and an explanation of it; a summary of existing New Jersey law, from cases or statutes; and a collection of important statutes from other States. This draft was reproduced and submitted to the Commission. The full Commission, or a subcommittee met and made tentative decisions upon the issues presented by the draft. From this, a "Tentative Draft" was written. This document, which is about one thousand pages long, contained a draft of the statutory language of the Code and a Drafter's Commentary upon each provision. At this point, the Commission met in weekly sessions for a period of some five months. From these meetings, relatively firm decisions as to the contents of the Code were made. Using this, the Commission's staff drafted this, our Final Report.

We believe that these drafting stages, meetings and discussions have produced a balanced, rational and fair Code. We recommend it to the Legislature, the Governor and to the people of this State for adoption.

The Code has been organized with the problems of existing law in mind. It presents a structured scheme, built upon the format of the Model Penal Code, through which the Legislature may express its will upon matters of vital importance. It is divided into four Subtitles.

Subtitle 1, consisting of five Chapters, is devoted to *General Provisions*. It sets forth matters common to many or all offenses. These are:

CHAPTER 1. PRELIMINARY

CHAPTER 2. GENERAL PRINCIPLES OF LIABILITY

CHAPTER 3. GENERAL PRINCIPLES OF JUSTIFICATION

CHAPTER 4. RESPONSIBILITY

CHAPTER 5. INCHOATE CRIMES.

In general, these matters have either not been treated in our statutes or are found in a limited, haphazard way.

Subtitle 2, *The Definition of Specific Offenses*, consists of 20 Chapters. They have been arranged according to the type of social danger indicated by the offender's behavior. Each offense is defined in terms of the specific conduct proscribed. In drafting these provisions, three overriding considerations prevailed in the minds of the Commissioners:

—There must be an attempt to match the degree of the defendant's offense with his actual culpability. Strict liability and "presumed intent" were, to the extent possible eliminated or limited in the Code.

—The criminal law should extend only to areas where the public has an actual, definable and workable interest in proscribing the conduct. A strong feeling exists in our minds that existing law has "over-criminalized" society. In particular, we believe the criminal law should be withdrawn substantially from the field of sexual behavior between consenting adults. This view has been very well expressed by the President's Commission on Law Enforcement and The Administration of Justice:

> "In many instances legislatures have responded to difficult problems of social control by making the undesired conduct criminal. And many people are prepared to argue that if the legislature has not included a criminal penalty as a means of enforcement, it is not really serious about the matter.

'If we are deeply disturbed by something which we know to be happening, and feel that we ought to be doing something to prevent it, this feeling can be partly relieved by prohibiting it on paper. Even if we merely succeed in persuading some organization to issue a statement deploring whatever it is, we have done something: but of course, the supreme form of prohibition on paper is the act of Parliament.'

"The criminal law is not the sole or even the primary method relied upon by society to motivate compliance with its rules. The community depends on a broad spectrum of sanctions to control conduct. Civil liability, administrative regulations, licensing, and noncriminal penalties carry the brunt of the regulatory job in many very important fields, with little additional force contributed by such infrequently used criminal provisions as may appear in the statute books. Internal moral compunctions and family, group, and community pressures are some of the obvious informal sanctions that often are more effective than the prohibitions of the criminal law. The overready assumption that the way to control behavior is by making it criminal may interfere with the operation of the criminal law and inhibit the development of solutions to underlying social problems. Too infrequently have the limits of the effectiveness of criminal law been critically examined and the costs that must be paid for its use appraised." *Task Force Report: The Courts, supra,* at 98.

See also *Allen, The Borderland and Criminal Justice,* pp. 3-4 (1964).

—There must be an attempt to define, for each area of wrongdoing, a range of crimes and offenses to permit an equating of the defendant's guilt with the offense. This allows the jury to arrive at a more rational result and facilitates bargaining.

Subtitle 3 is *Sentencing.* It consists of five Chapters and a series of amendments to our existing Parole Act:

CHAPTER 43. AUTHORIZED DISPOSITION OF OFFENDERS

CHAPTER 44. AUTHORITY OF COURT IN SENTENCING

CHAPTER 45. SUSPENSION OF SENTENCE; PROBATION

CHAPTER 46. FINES AND RESTITUTIONS

AMENDMENTS TO STATUTES RELATING TO PAROLE

CHAPTER 51. LOSS AND RESTORATION OF RIGHTS INCIDENT TO CONVICTION OF AN OFFENSE.

Sentencing is, of course, an integral part of a penal code. As we worked in this area, we found, as did the drafters of the Model Penal Code, that corrections is also. The line dividing the two is very fine. With revision in the corrections field, this area must also be reviewed. As to the last Chapter, we view the collateral consequences of a criminal conviction to be as much a part of, and as important to a penal code, as sentencing.

The present sentencing system, if it can be called a system, is defective in a number of respects. There is a senseless and indefensible variety of sentences prescribed for offenses. This leads to a total absence of sensible classification of the seriousness of different crimes. This is true both as to terms of imprisonment and fines. We reduce this chaos of sentencing categories to seven basic types: capital crimes, crimes of the first, second, third and fourth degree, disorderly persons offenses and petty disorderly persons offenses. A major reform of the proposed code is the institution of a consistent plan of grading individual offenses. Present penal law employs grading erratically. Some crude grading appears in the homicide and a few other provisions. The Code establishes a system of grading for virtually every offense. Legislative grading is important as a matter of fairness between offenders far apart in the spectrum of social danger and as a desirable legislative control of the discretion of sentencing judges. It can and does, under the proposed code, facilitate prosecutions by grading as disorderly persons offenses minor instances of what would otherwise be crimes. The former can be prosecuted by complaint rather than grand jury indictment, and tried before magistrates, thus helping to clear the dockets of the upper courts for more serious cases.

Subtitle 4 is entitled *Administrative Provisions.* Here, various regulatory provisions, now found in Title 2A, have been gathered. In this way, the definition of an offense in a particular field is clearly distinguished from licensing and other regulation in that field.

This systematizing of penal law is the core of the proposed reform. It is more important than any single one of the hundreds of proposed improvements in the substantive law. That is because this systematic code makes it possible, now and in the future, to look at any particular provision in terms of its consistency with the whole system.

The scope of our mandate imposed two important limitations upon our work. One of these has already been mentioned, the area of corrections. As noted earlier, we made only those limited recommendations in the area of corrections necessary to implement our recommendations in the code, particularly with regard to sentencing. The Legislature has already recognized the need for correctional reform by creating a Commission to study and make recommendations for reform in that field. We agree that change in that area is drastically needed. We do believe, however, the need for a new penal code to be so demanding that it should not await either the work or the funding necessary for correctional law reform.

When the Commission studying corrections reports and the Legislature considers its recommendations, consideration should be given to the changes made necessary in our Code in the areas of sentencing, probation and parole.

The second area which we considered as being beyond the scope of our mandate is capital punishment. Again, the Legislature has moved to create a separate Commission to study this problem. In order not to conflict with the work of that group, we have drafted the code on the assumption that the death penalty is to be retained. We have, however, made some changes in the scope of the death penalty and in the procedures surrounding the decision whether it should be imposed. The overall effect of these recommendations will, in our view, be to reduce the number of instances in which the death penalty will be imposed. These recommendations should not, however, be construed as a decision by the Commission in favor of capital punishment. We did not consider it appropriate for us to consider that issue. If, however, capital punishment is to be retained, we then consider our recommendations as appropriately establishing the procedures under which the decision is to be made.

In the event that the Legislature abolishes capital punishment, Chapters 4 and 11, defining responsibility and criminal homicide, should be reviewed and revised.

Our files and working papers have been deposited in the Law Library of Rutgers, The State University Law School—Newark. They are available there for use in tracing the history and development of the penal code. Copies of the Study Draft and the Tentative Draft are also available through the State Library and the libraries of the State's law schools.

Conclusion

It should be noted that this is a unanimous report and recommendation. Not unexpectedly, in our discussions, areas of disagreement arose. The issues being considered are so vital to the maintenance of an orderly society and the preservation of individual liberty that one could not expect otherwise. We have resolved these areas, however, and have created what we conceive to be an integrated, balanced document.

Eact of us, the Commissioners and the Staff, wish to express our gratitude for the opportunity to have served. We all said, on many occasions during our work, that this had been one of the most educational experiences in our professional lives.

In order to assist the Legislature in considering the Code, we ask that the life of the Commission be extended and that some funds be made available for us to continue employing some Staff assistance.

In conclusion, we would like to note that our Commission was appointed on a bipartisan basis: it operated, however, on a completely nonpartisan basis. The danger of mixing politics with the reform of the penal law has been noted by Senator McClellan. He views the subject as being too important to be the subject of narrow political advantage. We quote, and recommend to the Legislature, his views:

> "Mr. President, I know of no surer lesson of history than that politics should not be mixed in the process of codification, reform and revision, but that it inevitably will, in some measure, taint our work. Bacon's plan for reform aborted because of politics. Napoleon's Code became possible only through extraordinary legislative means. The work of Livingston and Field had to run the gauntlet of political criticism. If we are to develop a new Federal Code, codifying, reforming and revising our

laws, we ought, however, to put aside politics or at least minimize its impact on our work product to whatever degree possible. Crime and criminal justice are too important for our people to be made the subject of narrow political advantage. Too much is at stake and too great is the need for reform to run the risk of losing it all for the momentary gains of politics.

On the other hand, debate is not only to be expected, but to be welcomed, for it is only through the examination of diverse views stated by able advocates that we can reach sound decisions. No one has a monopoly on truth. Any one who has an open mind can learn from those who disagree with him. I would hope, however, that as we undertake this refrom that all could pledge themselves to the same goal: a comprehensive new Code. Differences should be confined to particular issues and not generalized to the Code itself. Otherwise, I fear our task will be in vain." *McClellan, supra.*

Respectfully Sumbitted,

ROBERT E. KNOWLTON, *Chairman*
T. GIRARD WHARTON, *Vice Chairman*
WILLIAM K. DICKEY
DOMINICK J. FERRELLI
EDWARD GAULKIN
ALVIN E. GRANITE
CHARLES J. IRWIN
RICHARD B. MCGLYNN
RONALD OWENS

JOHN G. GRAHAM, *Secretary*

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TITLE 2C
ADMINISTRATION OF CRIMINAL JUSTICE: PENAL CODE

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY

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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY

SECTION 2C:1-1. TITLE AND EFFECTIVE DATE.

a. This Act is called the New Jersey Penal Code. It shall become effective on .....(insert date).....

b. Except as provided in Subsections c and d of this Section, the Code does not apply to offenses committed prior to its effective date and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this Code were not in force. For the purposes of this Section, an offense was committed after the effective date of the Code if any of the elements of the offense occurred subsequent thereto.

c. In any case pending on or after the effective date of the Code, involving an offense committed prior to such date:

(1) procedural provisions of the Code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;

(2) provisions of the Code according a defense, mitigation, or a reduction in the severity of the offense shall apply with the consent of the defendant;

(3) the Court, with the consent of the defendant, may impose sentence under the provisions of the Code applicable to the offense and the offender.

d. Provisions of this Code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to the effective date of the Code, except that the minimum or maximum period of their detention or supervision shall in no case be increased.

SOURCE OR REFERENCE

N. J.: 1:1–15	Study Draft Page: IA-1
Model Penal Code: 1.01	Tentative Draft Page: 1
Other: None	Commentary Page: 1

SECTION 2C:1–2. PURPOSES; PRINCIPLES OF CONSTRUCTION.

a. The general purposes of the provisions governing the definition of offenses are:

(1) to forbid, prevent, and condemn conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) to insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection;

(3) to subject to public control persons whose conduct indicates that they are disposed to commit offenses;

(4) to give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(5) to differentiate on reasonable grounds between serious and minor offenses; and

(6) to define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault.

b. The general purposes of the provisions governing the sentencing of offenders are:

(1) to prevent and condemn the commission of offenses;

(2) to promote the correction and rehabilitation of offenders;

(3) to insure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protection;

(4) to safeguard offenders against excessive, disproportionate or arbitrary punishment;

(5) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;

(6) to differentiate among offenders with a view to a just individualization in their treatment; and

(7) to advance the use of generally accepted scientific methods and knowledge in sentencing offenders.

c. The provisions of the Code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers

conferred by the Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-4
Model Penal Code: 1.02	Tentative Draft Page: 5
Other: N. Y. 1.05; 5.00	Commentary Page: 2

SECTION 2C:1–3. TERRITORIAL APPLICABILITY.

a. Except as otherwise provided in this Section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(1) either the conduct which is an element of the offense or the result which is such an element occurs within this State;

(2) conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State;

(3) conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State;

(4) conduct occurring within the State establishes complicity in the commission of, or an attempt, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State;

(5) the offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(6) the offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

b. Subsection a(1) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

c. Subsection a(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.

d. When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of Subsection a(1) and if the body of a homicide victim is found within the State, it may be inferred that such result occurred within the State.

e. This State includes the land and water, including the waters set forth in N.J.S. 40:19–5, and the air space above such land and water with respect to which the State has legislative jurisdiction. It also includes any territory made subject to the criminal jurisdiction of this State by compacts between it and another State or between it and the Federal government.

f. Notwithstanding that territorial jurisdiction may be found under this Section, the Court may dismiss, hold in abeyance for up to six months, or, with the permission of the defendant, place on the inactive list a criminal prosecution under the law of this State where it appears that such action is in the interests of justice because the defendant is being or is likely to be prosecuted for an offense based on the same conduct in another jurisdiction and this State's interest will be adequately served by a prosecution in the other jurisdiction.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-11
Model Penal Code: 1.03	Tentative Draft Page: 10
Other: None	Commentary Page: 5

SECTION 2C:1–4. CLASSES OF OFFENSES.

a. An offense defined by this Code or by any other statute of this State, for which a sentence of death or of imprisonment in excess of six months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this Code as capital or as being of the first, second, third or fourth degree.

b. An offense is a disorderly persons offense if it is so designated in this Code or in a statute other than this Code or if it is defined by a statute other than this Code which now provides that persons convicted thereof may not be senteneed to imprisonment for a term of more than 6 months. An offense is a petty disorderly

persons offense if it is so designated in this Code or in a statute other than this Code. Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State. There shall be no right to indictment by a grand jury nor any right to trial by jury on such offenses. Conviction of such offenses shall not give rise to any disability or legal disadvantage based on conviction of a crime.

c. An offense defined by any statute of this State other than this Code shall be classified as provided in this Section or in Section 2C:43–1 and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code. The provisions of this Subsection shall not, however, apply to the offenses defined by the "New Jersey Controlled Dangerous Substances Act," N.J.S. 24:21–1 through 45, which shall be continued in effect.

SOURCE OR REFERENCE

N. J.: 2A:169–4	Study Draft Page: IA-22
Model Penal Code: 1.04	Tentative Draft Page: 20
Other: None	Commentary Page: 9

SECTION 2C:1–5. ABOLITION OF COMMON LAW CRIMES; ALL OFFENSES DEFINED BY STATUTE; APPLICATION OF GENERAL PROVISIONS OF THE CODE; LIMITATION OF LOCAL GOVERNMENT LAWS.

a. Common law crimes are abolished and no conduct constitutes an offense unless the offense is defined by this Code or another statute of this State.

b. The provisions of Subtitles 1 and 3 of the Code are applicable to offenses defined by other statutes, unless the Code otherwise provides.

c. This Section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

d. Notwithstanding any other provision of law, the local governmental units of this State may neither enact nor enforce any ordinance conflicting with any provision of this Code or with any policy of this State expressed by this Code, whether that policy be expressed by inclusion of a provision in the Code or by exclusion of that subject from the Code.

SOURCE OR REFERENCE

N. J.: 2A:85–1	Study Draft Page: IA-30
Model Penal Code: 1.05	Tentative Draft Page: 23
Other: None	Commentary Page: 11

SECTION 2C:1–6. TIME LIMITATIONS.

a. A prosecution for murder may be commenced at any time.

b. Except as otherwise provided in this Section, prosecutions for other offenses are subject to the following periods of limitations:

(1) a prosecution for a crime must be commenced within five years after it is committed;

(2) a prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed;

c. If the period prescribed in Subsection b has expired, a prosecution may nevertheless be commenced against a public officer or employee or any person acting in complicity with such public officer or employee for any offense based upon misconduct in office by such public officer or employee at any time when the defendant is in public office or employment or within two years thereafter.

d. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

e. A prosecution is commenced for a crime when an indictment is found and for a non-indictable offense, as defined in Section 2C:1–4b, when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

f. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.

SOURCE OR REFERENCE

N. J.: 2A:159–1 to 4; 2A:169–10
Model Penal Code: 1.06
Other: None

Study Draft Page: IA-35
Tentative Draft Page: 26
Commentary Page: 13

SECTION 2C:1–7. METHOD OF PROSECUTION WHEN CONDUCT CONSTITUTES MORE THAN ONE OFFENSE.

a. *Prosecution for Multiple Offenses; Limitation on Convictions.* When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other, as defined in Subsection d of this Section;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

b. *Limitation on Separate Trials for Multiple Offenses.* Except as provided in Subsection c of this Section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate law enforcement officials at the time of the commencement of the first trial and are within the jurisdiction and venue of a single court.

c. *Authority of Court to Order Separate Trials.* When a defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the Court may order any such charge to be tried separately in accordance with the Rules of Court.

d. *Conviction of Included Offense Permitted.* A defendant may be convicted of an offense included in an offense charged whether or not the included offense is an indictable offense. An offense is so included when:

(1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(3) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

e. *Submission of Included Offense to Jury.* The Court shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-46
Model Penal Code: 1.07	Tentative Draft Page: 35
Other: None	Commentary Page: 18

SECTION 2C:1–8. WHEN PROSECUTION BARRED BY FORMER PROSECUTION FOR THE SAME OFFENSE.

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

a. The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

b. The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

c. The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the Court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

d. The former prosecution was improperly terminated. Except as provided in this Subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first

witness was sworn but before findings were rendered by the trier of facts. Termination under any of the following circumstances is not improper:

(1) The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.

(2) The trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed.

(3) The trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-61
Model Penal Code: 1.08	Tentative Draft Page: 49
Other: None	Commentary Page: 26

SECTION 2C:1–9. WHEN PROSECUTION BARRED BY FORMER PROSECUTION FOR DIFFERENT OFFENSE.

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

a. The former prosecution resulted in an acquittal or in a conviction as defined in Section 2C:1–8 and the subsequent prosecution is for:

(1) any offense of which the defendant could have been convicted on the first prosecution; or

(2) any offense for which the defendant should have been tried on the first prosecution under Section 2C:1–7, unless the Court ordered a separate trial of the charge of such offense; or

(3) the same conduct, unless (a) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil, or (b) the second offense was not consummated when the former trial began.

b. The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside,

reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

c. The former prosecution was improperly terminated, as improper termination is defined in Section 2C:1–8, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-70
Model Penal Code: 1.09	Tentative Draft Page: 57
Other: None	Commentary Page: 30

SECTION 2C:1–10. FORMER PROSECUTION IN ANOTHER JURISDICTION: WHEN A BAR.

When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States or another State, a prosecution in a court of general jurisdiction in any such other jurisdiction is a bar to a subsequent prosecution in this State under the following circumstances:

a. The first prosecution resulted in an acquittal or in a conviction as defined in Section 2C:1–8 and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began; or

b. The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-74
Model Penal Code: 1.10	Tentative Draft Page: 61
Other: None	Commentary Page: 32

SECTION 2C:1–11. FORMER PROSECUTION BEFORE COURT LACKING JURISDICTION OR WHEN FRAUDULENTLY PROCURED BY THE DEFENDANT.

A prosecution is not a bar within the meaning of Sections 2C:1–8, 9 and 10 under any of the following circumstances:

a. The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

b. The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer; or

c. The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by Section 2C:1–8a shall apply.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IA-77
Model Penal Code: 1.11	Tentative Draft Page: 65
Other: None	Commentary Page: 33

SECTION 2C:1–12. PROOF BEYOND A REASONABLE DOUBT; AFFIRMATIVE DEFENSES; BURDEN OF PROVING FACT WHEN NOT AN ELEMENT OF AN OFFENSE.

a. No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.

b. Subsection a of this Section does not:

(1) require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or

(2) apply to any defense which the Code or another statute plainly requires the defendant to prove by a preponderance of evidence.

c. A defense is affirmative, within the meaning of Subsection b(1) of this Section, when:

(1) it arises under a section of the Code which so provides; or

(2) it relates to an offense defined by a statute other than the Code and such statute so provides; or

(3) it involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence.

d. When the application of the Code depends upon the finding of a fact which is not an element of an offense, unless the Code otherwise provides:

(1) the burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(2) the fact must be proved to the satisfaction of the Court or jury, as the case may be.

c. When the Code or other statute defining an offense establishes a presumption with respect to any fact which is an element of an offense, it has the meaning accorded it by the law of evidence.

SOURCE OR REFERENCE

N. J.: Evidence Rules 13 and 14	Study Draft Page: IA-81
Model Penal Code: 1.12	Tentative Draft Page: 68
Other: None	Commentary Page: 34

SECTION 2C:1–13. GENERAL DEFINITIONS.

In this Code, unless a different meaning plainly is required:

a. "statute" includes the Constitution and a local law or ordinance of a political subdivision of the State;

b. "act" or "action" means a bodily movement whether voluntary or involuntary;

c. "omission" means a failure to act;

d. "conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omission;

e. "actor" includes, where relevant, a person guilty of an omission;

f. "acted" includes, where relevant, "omitted to act";

g. "person," "he," and "actor" include any natural person and, where relevant, a corporation or an unincorporated association;

h. "element of an offense" means (1) such conduct or (2) such attendant circumstances or (3) such a result of conduct as

(a) is included in the description of the forbidden conduct in the definition of the offense;

(b) establishes the required kind of culpability;

(c) negatives an excuse or justification for such conduct;

(d) negatives a defense under the statute of limitations; or

(e) establishes jurisdiction or venue;

i. "material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (1) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (2) the existence of a justification or excuse for such conduct;

j. "reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or criminally negligent in holding.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 1.13
Other: None

Study Draft Page: IA-91
Tentative Draft Page: 74
Commentary Page: 37

CHAPTER 2. GENERAL PRINCIPLES OF LIABILITY

SECTION 2C:2–1. REQUIREMENT OF VOLUNTARY ACT; OMISSION AS BASIS OF LIABILITY; POSSESSION AS AN ACT.

a. A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable. A bodily movement that is not a product of the effort or determination of the actor, either conscious or habitual, is not a voluntary act within the meaning of this Section.

b. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(1) the omission is expressly made sufficient by the law defining the offense; or

(2) a duty to perform the omitted act is otherwise imposed by law.

c. Possession is an act, within the meaning of this Section, if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-1
Model Penal Code: 2.01	Tentative Draft Page: 77
Other: None	Commentary Page: 38

SECTION 2C:2–2. GENERAL REQUIREMENTS OF CULPABILITY.

a. *Minimum Requirements of Culpability.* Except as provided in Subsection c (3) of this Section, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

b. *Kinds of Culpability Defined.*

(1) *Purposely.* A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or

hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

(2) *Knowingly.* A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he is aware that it is practically certain that his conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

(3) *Recklessly.* A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Recklessness," "with recklessness" or equivalent terms have the same meaning.

(4) *Negligently.* A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. "Negligently" or "negligence" when used in this Code, shall refer to the standard set forth in this Section and not to the standard applied in civil cases.

c. *Construction of Statutes with Respect to Culpability Requirements.*

(1) *Prescribed Culpability Requirement Applies to All Material Elements.* When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.

(2) *Substitutes for Kinds of Culpability.* When the law provides that a particular kind of culpability suffices to establish an element of an offense such element is also established if a person acts with higher kind of culpability.

(3) *Construction of Statutes Not Stating Culpability Requirement.* Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime with mental culpability. This provision applies to offenses defined both within and outside of this Code.

d. *Culpability as to Illegality of Conduct.* Neither knowledge nor recklessness nor negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense or the Code so provides.

e. *Culpability as Determinant of Grade of Offense.* When the grade or degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly or criminally negligently, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-8
Model Penal Code: 2:02	Tentative Draft Page: 80
Other: N. Y. §15.15(2)	Commentary Page: 40

SECTION 2C:2–3. CAUSAL RELATIONSHIP BETWEEN CONDUCT AND RESULT; DIVERGENCE BETWEEN RESULT DESIGNED, CONTEMPLATED OR RISKED AND ACTUAL RESULT.

a. Conduct is the cause of a result when:

(1) it is an antecedent but for which the result in question would not have occurred; and

(2) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

b. When the offense requires that the defendant purposely or knowingly cause a particular result, the actual result must be within the design or contemplation, as the case may be, of the actor, or, if not, the actual result must involve the same kind of injury or harm as that designed or contemplated and not be too remote, accidental in its occurrence, or dependent on another's volitional

act to have a just bearing on the actor's liability or on the gravity of his offense.

c. When the offense requires that the defendant recklessly or criminally negligently cause a particular result, the actual result must be within the risk of which the actor is aware or, in the case of criminal negligence, of which he should be aware, or, if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

d. A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that a less serious or less extensive injury or harm occurred.

e. When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-26
Model Penal Code: 2.03	Tentative Draft Page: 95
Other: None	Commentary Page: 49

SECTION 2C:2–4. IGNORANCE OR MISTAKE.

a. Ignorance or mistake as to a matter of fact or law is a defense if:

(1) it negatives the culpable mental state required to establish the offense; or

(2) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.

b. Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

c. A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(1) the statute or other enactment defining the offense is not known to the actor and has not been published or otherwise reasonably made available prior to the conduct alleged; or

(2) he acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (a) a statute or other enactment, (b) a judicial decision, opinion or judgment, (c) an administrative order or grant of permission, or (d) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense; or

(3) he otherwise diligently pursues all means available to ascertain the meaning and application of the offense to his conduct and honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude.

The defendant must prove a defense arising under Subsection c of this Section by a preponderance of evidence.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-22
Model Penal Code: 2.04	Tentative Draft Page: 101
Other: None	Commentary Page: 52

SECTION 2C:2-5. DEFENSES GENERALLY.

Conduct which would otherwise be an offense is excused or alleviated by reason of any defense now provided by law for which neither the Code nor other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the defense claimed does not otherwise plainly appear.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 107
Other: None	Commentary Page: 55

SECTION 2C:2-6. LIABILITY FOR CONDUCT OF ANOTHER; COMPLICITY.

a. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

b. A person is legally accountable for the conduct of another person when:

(1) acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct;

(2) he is made accountable for the conduct of such other person by the Code or by the law defining the offense; or

(3) he is an accomplice of such other person in the commission of an offense.

c. A person is an accomplice of another person in the commission of an offense if:

(1) with the purpose of promoting or facilitating the commission of the offense, he

(a) solicits such other person to commit it;

(b) aids or agrees or attempts to aid such other person in planning or committing it; or

(c) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; or

(2) his conduct is expressly declared by law to establish his complicity.

d. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by another person for whose conduct he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

e. Unless otherwise provided by the Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) he is a victim of that offense;

(2) the offense is so defined that his conduct is inevitably incident to its commission; or

(3) he terminates his complicity under circumstances manifesting a complete and voluntary renunciation as defined in Section 2C:5–1d prior to the commission of the offense. Termination by renunciation is an affirmative defense which the defendant must prove by a preponderance of evidence.

f. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

SOURCE OR REFERENCE

N. J.: 2A:85–2; 2A:85–14
Model Penal Code: 206
Other: None

Study Draft Page: IB-46
Tentative Draft Page: 108
Commentary Page: 55

SECTION 2C:2–7. LIABILITY OF CORPORATIONS AND PERSONS ACTING, OR UNDER A DUTY TO ACT, IN THEIR BEHALF.

a. A corporation may be convicted of the commission of an offense if:

(1) the conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation unless the offense is one defined by a statute which indicates a legislative purpose not to impose criminal liability on corporations. If the law governing the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply.

(2) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law, or

(3) the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation.

b. As used in this Section:

(1) "corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program,

(2) "agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation;

(3) "high managerial agent" means an officer of a corporation or any other agent of a corporation having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation.

c. In any prosecution of a corporation for the commission of an offense included within the terms of Subsection a (1) of this Section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.

d. Nothing in this Section imposing liability upon a corporation shall be construed as limiting the liability for an offense of an individual by reason of his being an agent of the corporation.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 2.07
Other: None

Study Draft Page: IB-69
Tentative Draft Page: 124
Commentary Page: 64

SECTION 2C:2–8. INTOXICATION.

a. Except as provided in Subsection d of this Section, intoxication of the actor is not a defense unless it negatives an element of the offense.

b. When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

c. Intoxication does not, in itself, constitute mental disease within the meaning of Section 2C:4–1.

d. Intoxication which (1) is not self-induced or (2) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial and adequate capacity either to appreciate its wrongfulness or to conform his conduct to the requirement of law.

e. *Definitions.* In this Section unless a different meaning plainly is required:

(1) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body,

(2) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;

(3) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 2.08
Other: None

Study Draft Page: IB-81
Tentative Draft Page: 131
Commentary Page: 67

SECTION 2C:2–9. DURESS.

a. Subject to Subsection b of this Section, it is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

b. The defense provided by this Section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was criminally negligent in placing himself in such a situation, whenever criminal negligence suffices to establish culpability for the offense charged. In a prosecution for murder, the defense is only available to reduce the degree of the crime to manslaughter.

c. It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this Section. The presumption that a woman, acting in the presence of her husband, is coerced is abolished.

SOURCE OR REFERENCE

N. J.: 2A:85–3	Study Draft Page: IB-86
Model Penal Code: 2.09	Tentative Draft Page: 136
Other: Wisconsin §939.46	Commentary Page: 70

SECTION 2C:2–10. CONSENT.

a. *In General.* The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

b. *Consent to Bodily Harm.* When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

(1) the bodily harm consented to or threatened by the conduct consented to is not serious; or

(2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or

(3) the consent establishes a justification for the conduct under Chapter 3 of the Code.

c. *Ineffective Consent.* Unless otherwise provided by the Code or by the law defining the offense, assent does not constitute consent if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or

(3) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-94
Model Penal Code: 2.11	Tentative Draft Page: 141
Other: None	Commentary Page: 73

SECTION 2C:2–11. DE MINIMIS INFRACTIONS.

The Court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

a. was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

b. did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

c. presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

The Court shall not dismiss a prosecution under Subsection c of this Section without filing a written statement of its reasons.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IB-98
Model Penal Code: 2.12	Tentative Draft Page: 145
Other: None	Commentary Page: 74

SECTION 2C:2–12. ENTRAPMENT.

a. A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for

the purpose of obtaining evidence of the commission of an offense, he induces or encourages and, as a direct result, causes another person to engage in conduct constituting such offense by either:

(1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

b. Except as provided in Subsection c of this Section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried by the Court in the absence of the jury.

c. The defense afforded by this Section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 2.13
Other: None

Study Draft Page: IB-101
Tentative Draft Page: 148
Commentary Page: 75

CHAPTER 3. GENERAL PRINCIPLES OF JUSTIFICATION

SECTION 2C:3–1. JUSTIFICATION AN AFFIRMATIVE DEFENSE; CIVIL REMEDIES UNAFFECTED.

a. In any prosecution based on conduct which is justifiable under this Chapter, justification is an affirmative defense.

b. The fact that conduct is justifiable under this Chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IC-7
Model Penal Code: 3.01	Tentative Draft Page: 156
Other: None	Commentary Page: 79

SECTION 2C:3–2. NECESSITY AND OTHER JUSTIFICATIONS IN GENERAL.

a. *Necessity.* Conduct which would otherwise be an offense is justifiable by reason of necessity to the extent permitted by law and as to which neither the Code nor other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

b. *Other Justifications in General.* Conduct which would otherwise be an offense is justifiable by reason of any defense of justification provided by law for which neither the Code nor other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

SOURCE OR REFERENCE

N. J.: 2A:113–6	Study Draft Page: IC-9
Model Penal Code: 3.02	Tentative Draft Page: 157
Other: N. Y. §35.05	Commentary Page: 80

SECTION 2C:3–3. EXECUTION OF PUBLIC DUTY.

a. Except as provided in Subsection b of this Section, conduct is justifiable when it is required or authorized by:

(1) the law defining the duties or functions of a public officer or the assistance to be rendered to such officer in the performance of his duties;

(2) the law governing the execution of legal process;

(3) the judgment or order of a competent court or tribunal;

(4) the law governing the armed services or the lawful conduct of war; or

(5) any other provision of law imposing a public duty.

b. The other Sections of this Chapter apply to:

(1) the use of force upon or toward the person of another for any of the purposes dealt with in such Sections; and

(2) the use of deadly force for any purpose, unless the use of such force is otherwise expressly authorized by law.

c. The justification afforded by Subsection a of this Section applies:

(1) when the actor believes his conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(2) when the actor believes his conduct to be required or authorized to asist a public officer in the performance of his duties, notwithstanding that the officer exceeded his legal authority.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IC-14
Model Penal Code: 3.03	Tentative Draft Page: 159
Other: None	Commentary Page: 80

SECTION 2C:3–4. USE OF FORCE IN SELF-PROTECTION.

a. *Use of Force Justifiable for Protection of the Person.* Subject to the provisions of this Section and of Section 2C:3–9, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

b. *Limitations on Justifying Necessity for Use of Force.*

(1) The use of force is not justifiable under this Section:

(a) to resist an arrest which the actor knows is being made by a peace officer in the performance of his duties, although the arrest is unlawful; or

(b) to resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that

the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if:

(i) the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest;

(ii) the actor has been unlawfully dispossessed of the property and is making a re-entry or recaption justified by Section 2C:3–6; or

(iii) the actor reasonably believes that such force is necessary to protect himself against death or serious bodily harm.

(2) The use of deadly force is not justifiable under this Section unless the actor believes that such force is necessary to protect himself against death or serious bodily harm; nor is it justifiable if:

(a) the actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or

(b) the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(i) the actor is not obliged to retreat from his dwelling, unless he was the initial agressor or is assailed in his dwelling by another person whose dwelling the actor knows it to be; and

(ii) a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape is not obliged to desist from efforts to perform such duty, effect such arrest or prevent such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed.

(3) Except as required by paragraphs (1) and (2) of this Subsection, a person employing protective force may estimate the necessity of using force when the force is used, without retreating, surrendering possession, doing any other act which he has no legal duty to do or abstaining from any lawful action.

SOURCE OR REFERENCE

N. J.: 2A:113–6
Model Penal Code: 3.04
Other: None

Study Draft Page: IC-18
Tentative Draft Page: 162
Commentary Page: 82

SECTION 2C:3–5. USE OF FORCE FOR THE PROTECTION OF OTHER PERSONS.

a. Subject to the provisions of this Section and of Section 2C:3–9, the use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the actor would be justified under Section 2C:3–4 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; and

(2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the actor believes that his intervention is necessary for the protection of such other person.

b. Notwithstanding Subsection a of this Section:

(1) when the actor would be obliged under Section 2C:3–4b(2)(b) to retreat or take other action he is not obliged to do so before using force for the protection of another person, unless he knows that he can thereby secure the complete safety of such other person, and

(2) when the person whom the actor seeks to protect would be obliged under Section 2C:3–4b(2)(b) to retreat or take similar action if he knew that he could obtain complete safety by so doing, the actor is obliged to try to cause him to do so before using force in his protection if the actor knows that he can obtain complete safety in that way; and

(3) neither the actor nor the person whom he seeks to protect is obliged to retreat when in the other's dwelling to any greater extent than in his own.

SOURCE OR REFERENCE

N. J.: 2A:113–6	Study Draft Page: IC-32
Model Penal Code: 3.05	Tentative Draft Page: 173
Other: None	Commentary Page: 87

SECTION 2C:3–6. USE OF FORCE IN DEFENSE OF PREMISES OR PERSONAL PROPERTY.

a. *Use of Force in Defense of Premises.* Subject to the provisions of this Section and of Section 2C:3–9, the use of force upon or toward the person of another is justifiable when the actor is in possession or control of premises or is licensed or privileged to be thereon and he believes such force necessary to prevent or terminate what he believes to be commission or attempted commission

of a criminal trespass by such other person in or upon such premises.

b. *Limitations on Justifiable Use of Force in Defense of Premises.*

(1) *Request to Desist.* The use of force is justifiable under this Section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that:

(a) such request would be useless;

(b) it would be dangerous to himself or another person to make the request; or

(c) substantial harm will be done to the physical condition of the property which is sought to be protected before the request can effectively be made.

(2) *Exclusion of Trespasser.* The use of force is not justifiable under this Section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.

(3) *Use of Deadly Force.* The use of deadly force is not justifiable under Subscetion a of this Section unless the actor believes that:

(a) the person against whom the force is used is attempting to dispossess him of his dwelling otherwise than under a claim of right to its possession; or

(b) the person against whom the force is used is attempting to commit or consummate arson, burglary, robbery or other criminal theft or property destruction and either:

(i) has employed or threatened deadly force against or in the presence of the actor; or

(ii) the use of force other than deadly force to prevent the commission or the consummation of the crime would expose the actor or another in his presence to substantial danger of serious bodily harm.

c. *Use of Force in Defense of Personal Property.* Subject to the provisions of Subsection d of this Section and of Section 2C:3-9, the use of force upon or toward the person of another is justifiable when the actor believes it necessary to prevent what he believes to be an attempt by such other person to commit theft, criminal mischief or other criminal interference with personal property in his possession or in the possession of another for whose protection he acts.

d. *Limitations on Justifiable Use of Force in Defense of Personal Property.*

(1) *Request to Desist and Exclusion of Trespasser.* The limitations of Subsection b(1) and (2) of this Section apply to Subsection c of this Section.

(2) *Use of Deadly Force.* The use of deadly force in defense of personal property is not justified unless justified under another provision of this Chapter.

SOURCE OR REFERENCE

N. J.: 2A:113–6	Study Draft Page: IC-35
Model Penal Code: 3.06	Tentative Draft Page: 176
Other: N. Y. §§35.20 and 35.25	Commentary Page: 88

SECTION 2C:3–7. USE OF FORCE IN LAW ENFORCEMENT.

a. *Use of Force Justifiable to Effect an Arrest.* Subject to the provisions of this Section and of Section 2C:3–9, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

b. *Limitations on the Use of Force.*

(1) The use of force is not justifiable under this Section unless:

(a) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) when the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(2) The use of deadly force is not justifiable under this Section unless:

(a) the person effecting the arrest is authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer; and

(b) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(c) the actor believes that the crime for which the arrest is made was homicide, kidnapping, rape, sodomy, arson, burglary, robbery or an attempt to commit one of these crimes.

c. *Use of Force to Prevent Escape from Custody.* The use of force to prevent the escape of an arrested person from custody is justifiable when the force could, under Subsections a and b of

this Section, have been employed to effect the arrest under which the person is in custody. A guard or other person authorized to act as a peace officer is, however, justified in using any force including deadly force, which he reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.

d. *Use of Force by Private Person Assisting an Unlawful Arrest.*

(1) A private person who is summoned by a peace officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful.

(2) A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a peace officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that (i) he believes the arrest is lawful, and (ii) the arrest would be lawful if the facts were as he believes them to be.

e. *Use of Force to Prevent Suicide or the Commission of a Crime.* The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious bodily harm upon himself, committing or consummating the commission of a crime involving or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

(1) any limitations imposed by the other provisions of this Chapter on the justifiable use of force in self protection, for the protection of others, the protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(2) the use of deadly force is not in any event justifiable under this Subsection unless:

(a) the actor believes that it is likely that the person whom he seeks to prevent from committing a crime will endanger human life or inflict serious physical injury upon another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or

(b) the actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

SOURCE OR REFERENCE

N. J.: 2A:113–6	Study Draft Page: IC-43
Model Penal Code: 3.07	Tentative Draft Page: 180
Other: N. Y. §35.30	Commentary Page: 90

SECTION 2C:3–8. USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY FOR CARE, DISCIPLINE OR SAFETY OF OTHERS.

The use of force upon or toward the person of another is justifiable as permitted by law or as would be a defense in a civil action based thereon where the actor has been vested or entrusted with special responsibility for the care, supervision, discipline or safety of another or of others and the force is used for the purpose of and, subject to Section 2C:3–9(b), to the extent necessary to further that responsibility, unless:

a. the Code or the law defining the offense deals with the specific situation involved; or

b. a legislative purpose to exclude the justification claimed otherwise plainly appears; or

c. deadly force is used, in which case such force must be otherwise justifiable under the provisions of this Chapter.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IC-57
Model Penal Code: 3.08	Tentative Draft Page: 190
Other: None	Commentary Page: 94

SECTION 2C:3–9. MISTAKE OF LAW AS TO UNLAWFULNESS OF FORCE OR LEGALITY OF ARREST; RECKLESS OR NEGLIGENT USE OF EXCESSIVE BUT OTHERWISE JUSTIFIABLE FORCE; RECKLESS OR NEGLIGENT INJURY OR RISK OF INJURY TO INNOCENT PERSONS.

a. The justification afforded by Sections 2C:3–4 to 2C:3–7, inclusive, is unavailable when:

(1) the actor's belief in the unlawfulness of the force or conduct against which he employs protective force or his belief in the lawfulness of an arrest which he endeavors to effect by force is erroneous; and

(2) his error is due to ignorance or mistake as to the provisions of the Code, any other provisions of the criminal law or the law governing the legality of an arrest or search.

b. When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Sections 2C:3–3 to 3–8 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those Sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

c. When the actor is justified under Sections 2C:3–3 to 3–8 in using force upon or toward the person of another but he recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those Sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 3.09
Other: None

Study Draft Page: IC-62
Tentative Draft Page: 192
Commentary Page: 94

SECTION 2C:3–10. JUSTIFICATION IN PROPERTY CRIMES.

Conduct involving the appropriation, seizure or destruction of, damage to, intrusion on, or interference with, property is justifiable under circumstances which would establish a defense of privilege in a civil action based thereon, unless:

a. the Code or the law defining the offense deals with the specific situation involved; or

b. a legislative purpose to exclude the justification claimed otherwise plainly appears.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 3.10
Other: None

Study Draft Page: IC-64
Tentative Draft Page: 194
Commentary Page: 95

SECTION 2C:3–11. DEFINITIONS.

In this Chapter, unless a different meaning plainly is required:

a. "unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is

directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress, youth, or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this Section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

b. "deadly force" means force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force;

c. "dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IC-65
Model Penal Code: 3.11	Tentative Draft Page: 195
Other: None	Commentary Page: 95

CHAPTER 4. RESPONSIBILITY

SECTION 2C:4–1. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

a. A person is not criminally responsible for conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial and adequate capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

b. As used in this Chapter, the terms "mental disease or defect" do not include abnormality manifested only by repeated criminal or other repeated, wrongful conduct.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 4.01
Other: Vermont T.13, §4801; N. Y. §11.20

Study Draft Page: ID-1
Tentative Draft Page: 196
Commentary Page: 95

SECTION 2C:4–2. EVIDENCE OF MENTAL DISEASE OR DEFECT ADMISSIBLE WHEN RELEVENT TO ELEMENT OF THE OFFENSE; MENTAL DISEASE OR DEFECT IMPAIRING CAPACITY AS GROUND FOR MITIGATION OF PUNISHMENT IN CAPITAL CASES.

a. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did not have a purpose which is an element of the offense. When relevant to other states of mind, such evidence may be admitted by the Court.

b. Whenever the jury or the Court is authorized to determine or to recommend whether or not the defendant shall be sentenced to death or imprisonment upon conviction, evidence that the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect is admissible in favor of sentence of imprisonment.

c. Whenever evidence is admitted under Subsections a or b of this Section, the prosecution may thereafter offer evidence in rebuttal.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 4.02
Other: None

Study Draft Page: ID-9
Tentative Draft Page: 202
Commentary Page: 99

SECTION 2C:4–3. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY IS AFFIRMATIVE DEFENSE; REQUIREMENT OF NOTICE; FORM OF VERDICT AND JUDGMENT WHEN FINDING OF IRRESPONSIBILITY IS MADE.

a. Mental disease or defect excluding responsibility is an affirmative defense.

b. If the defendant intends to claim insanity or mental infirmity either as a defense, as affecting the degree of the crime charged, or as a matter which should be considered at trial in determining the penalty, he shall serve notice of such intention upon the prosecuting attorney in accordance with the Rules of Court.

c. When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and judgment shall so state.

SOURCE OR REFERENCE

N. J.: 2A:163–3; R.3:12; R.3:19–2
Model Penal Code: 4.03
Other: None

Study Draft Page: ID-13
Tentative Draft Page: 206
Commentary Page: 101

SECTION 2C:4–4. MENTAL DISEASE OR DEFECT EXCLUDING FITNESS TO PROCEED.

No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.

SOURCE OR REFERENCE

N. J.: 2A:163–2
Model Penal Code: 4.04
Other: None

Study Draft Page: ID-16
Tentative Draft Page: 208
Commentary Page: 101

SECTION 2C:4–5. PSYCHIATRIC EXAMINATION OF DEFENDANT WITH RESPECT TO MENTAL DISEASE OR DEFECT.

a. Whenever the defendant has served notice pursuant to Section 2C:4–3b, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the Court shall on motion by the prosecutor, the defendant or on its own motion appoint at least one qualified psychiatrist to examine and report upon the mental condition of the defendant. The Court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified

psychiatrist retained by the defendant or by the prosecution be permitted to witness and participate in the examination.

b. In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

c. The report of the examination shall include at least the following: (1) a description of the nature of the examination; (2) a diagnosis of the mental condition of the defendant; (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; (4) when a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and (5) when directed by the Court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged. The examining psychiatrist or psychiatrists may ask questions respecting the crime charged when such questions are necessary to enable formation of an opinion as to a relevant issue.

d. If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect. Upon the filing of such a report, the Court may order measures necessary to induce cooperation or to permit examination without cooperation. Such measures may include appointment of a different psychiatrist, commitment for observation, exclusion or limitation of testimony by the defense psychiatrist, permitting comment by the appointed psychiatrist upon the defendant's unwillingness to cooperate or the like. The Court shall not order exclusion or limitation of testimony by the defense psychiatrist nor permit comment by the Court-appointed psychiatrist upon the defendant's unwillingness to cooperate if it finds, after a hearing, that the unwillingness was the result of mental disease or defect.

e. The report of the examination shall be sent by the psychiatrist to the Court, the county prosecutor and counsel for the defendant.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 4.05
Other: None

Study Draft Page: ID-18
Tentative Draft Page: 210
Commentary Page: 102

SECTION 2C:4–6. DETERMINATION OF FITNESS TO PROCEED; EFFECT OF FINDING OF UNFITNESS; PROCEEDINGS IF FITNESS IS REGAINED; POST-COMMITMENT HEARING.

a. When the defendant's fitness to proceed is drawn into question, the issue shall be determined by the Court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to Section 2C:4–5, the Court may make the determination on the basis of such report. If the finding is contested, the Court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and examine the psychiatrists who joined in the report and to offer evidence upon the issue.

b. If the Court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in Subsection d of this Section, and the Court shall commit him to the custody of the Commissioner of Institutions and Agencies to be placed in an appropriate institution for so long as such unfitness shall endure. When the Court, on its own motion or upon application of the Commissioner, his designee, or either party, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceedings shall, subject to Subsection c, be resumed. When the Court, on its own motion or upon application of the Commissioner, his designee, or either party, determines after a hearing, if a hearing is requested, that the defendant has not regained fitness to proceed, the Court may order the institution of civil commitment proceedings or, if it is found that the defendant may be paroled or released on condition without danger to himself or to others, the Court may proceed as in Section 2C:4–8 b through e.

c. If after the defendant was committed because he lacked fitness to proceed and the Court is of the view that so much time has elapsed since the commitment that it would be unjust to resume the criminal proceedings, the Court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution.

d. The fact that the defendant is unfit to proceed does not preclude determination of (1) any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant or (2) the issue of

whether the defendant was responsible under Section 2C:4–1. The determination of responsibility may be made by the Court or by a jury.

SOURCE OR REFERENCE

N. J.: 2A:163–2; 30:4–82
Model Penal Code: 4.06
Other: None

Study Draft Page: ID-23
Tentative Draft Page: 215
Commentary Page: 104

SECTION 2C:4–7. DETERMINATION OF IRRESPONSIBILITY ON BASIS OR REPORT; ACCESS TO DEFENDANT BY PSYCHIATRISTS; EXPERT TESTIMONY WHEN ISSUE OF RESPONSIBILITY IS TRIED.

a. If the report filed pursuant to Section 2C:4–5 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which substantially impaired his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law, and the Court after a hearing, if a hearing is requested, is satisfied that such impairment was sufficient under Section 2C:4–1 to exclude responsibility, the Court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility. The Court may empanel a jury to hear this issue.

b. When, notwithstanding the report filed pursuant to Section 2C:4–5, the defendant wishes to be examined by a qualified psychiatrist or other expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purposes of such examination.

c. When notwithstanding the report filed pursuant to Section 2C:4–5, the prosecutor wishes to have the defendant examined by a qualified psychiatrist or other expert of his own choice, the Court may order that such examination take place subject to appropriate safeguards, including the right of the defendant to have a psychiatrist or other expert present during the examination. If the examination cannot take place because of the unwillingness of the defendant to participate, the Court shall proceed as in Section 2C:4–5d. Reports of psychiatrists or other experts under this Subsection shall be subject to discovery.

d. Upon the trial, the psychiatrists who reported pursuant to Section 2C:4–5 may be called as witnesses by the prosecution, the defendant or the Court. If the issue is being tried before a jury, the jury may be informed that the psychiatrist or psychiatrists were designated by the Court. If called by the Court, the witness shall be subject to examination by the prosecution and by the

defendant. Both the prosecution and the defendant may summon any other qualified psychiatrist or other expert to testify.

e. When a psychiatrist or other expert testifies concerning the defendant's mental condition, he shall be permitted to make a statement as to the nature of any examination of the defendant, any diagnosis of the mental condition of the defendant at the time of the commission of the offense charged and his opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law or, as permitted by Section 2C:4–2, to have a particular state of mind which is an element of the offense charged was impaired as a result of mental disease or defect at that time. He shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

SOURCE OR REFERENCE

N. J.: 2A:163–2; 30:4–82	Study Draft Page: ID-31
Model Penal Code: 4.07	Tentative Draft Page: 220
Other: None	Commentary Page: 106

SECTION 2C:4–8. EFFECT OF ACQUITTAL ON THE GROUND OF MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY; COMMITMENT; RELEASE OR DISCHARGE.

a. When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the Court shall order him to be committed to the custody of the Commissioner of Institutions and Agencies for custody, cure and treatment.

b. If the Commissioner, or his designee, is of the view that a person committed to his custody, pursuant to Subsection a of this Section, may be discharged or released on condition without danger to himself or to others, or that he is more appropriately committed pursuant to civil commitment, the Commissioner shall make application for the discharge or release of such person in a report to the Court by which such person was committed and shall transmit a copy of such application and report to the County Prosecutor of the county from which the defendant was committed. The Court shall thereupon appoint at least two qualified psychiatrists to examine such person and to report within sixty days, or such longer period as the Court determines to be necessary for the purpose, their opinion as to his mental condition.

c. If the Court is satisfied by the report filed pursuant to Subsection b of this Section and such testimony of the reporting

psychiatrists as the Court deems necessary that the committed person may be discharged, released on condition without danger to himself or others, or treated as in civil commitment the Court shall order his discharge, his release on such conditions as the Court determines to be necessary or his transfer. If the Court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged, released or transferred. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the Court upon the hearing, the committed person shall thereupon be discharged, paroled or released on such conditions as the Court determines to be necessary, or shall be recommitted subject to discharge, parole or release only in accordance with the procedure prescribed above for a first hearing.

d. If within five years after the parole or conditional release of a committed person, the Court shall determine, after a hearing, that the conditions of parole or release have not been fulfilled and that for the safety of such person or for the safety of others, his parole or conditional release should be revoked, the Court shall forthwith order him to be recommitted, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

e. A committed person may make application for his discharge or release to the Court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the Commissioner. However, no such application need be considered until he has been confined for a period of not less than six months from the date of the order of commitment, and if the determination of the Court be adverse to the application, such person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for his release or discharge.

f. At the expiration of a ten-year period following commitment pursuant to Subsection a of this Section, unless previously discharged, the defendant shall be discharged unless the Court, subject to the law governing the civil commitment of persons suffering from mental disease or defect, orders the defendant to be committed to an appropriate institution.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 4:08
Other: None

Study Draft Page: ID-35
Tentative Draft Page: 224
Commentary Page: 107

SECTION 2C:4–9. STATEMENTS FOR PURPOSES OF EXAMINATION OR TREATMENT INADMISSIBLE EXCEPT ON ISSUE OF MENTAL CONDITION; SEPARATE TRIAL ON ISSUE OF RESPONSIBILITY FOR PREJUDICE.

a. A statement made by a person subjected to psychiatric examination or treatment pursuant to Sections 2C:4–5,–6 or–8 for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication. When such a statement constitutes an admission of guilt of the crime charged or of an element thereof, it shall only be admissible where it appears at trial that conversations with the examining psychiatrist were necessary to enable him to form an opinion as to a matter in issue.

b. Where it appears to the Court that serious prejudice may result from the admission of evidence pursuant to Subsection a of this Section, constituting an admission by the defendant, the Court shall order that the issues of guilt and responsibility be tried separately and, if necessary, before separate juries.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: ID-41
Model Penal Code: 4.09	Tentative Draft Page: 229
Other: None	Commentary Page: 109

SECTION 2C:4–10. IMMATURITY EXCLUDING CRIMINAL CONVICTION; TRANSFER OF PROCEEDINGS TO JUVENILE COURT.

a. A person shall not be tried for or convicted of an offense if:

(1) at the time of the conduct charged to constitute the offense he was less than sixteen years of age, in which case the Juvenile and Domestic Relations Court shall have exclusive jurisdiction; or

(2) at the time of the conduct charged to constitute the offense he was sixteen or seventeen years of age, unless:

(a) the Juvenile and Domestic Relations Court has no jurisdiction over him;

(b) the Juvenile and Domestic Relations Court has, pursuant to N.J.S. 2A:4–15, entered an order waiving jurisdiction and referring the case to the county prosecutor for the institution of criminal proceedings against him;

(c) the juvenile has, pursuant to N.J.S. 2A:4–15, demanded indictment and trial by jury.

b. No Court shall have jurisdiction to try and convict a person of an offense if criminal proceedings against him are barred by Subsection a of this Section. When it appears that a person charged with the commission of an offense may be of such an age that proceedings may be barred under subsection a of this Section, the Court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the Court that the proceeding is not barred upon such grounds. If the Court determines that the proceeding is barred, custody of the person charged shall be surrendered to the Juvenile and Domestic Relations Court, and the case, including all papers and processes relating thereto shall be transferred.

SOURCE OR REFERENCE

N. J.: 2A:4–14, 15; 2A:85–4
Model Penal Code: 4.10
Other: None

Study Draft Page: ID-43
Tentative Draft Page: 231
Commentary Page: 110

CHAPTER 5. INCHOATE CRIMES

SECTION 2C:5–1. CRIMINAL ATTEMPT.

a. *Definition of Attempt.* A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he:

(1) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be;

(2) when causing a particular result is an element of the crime, does or omits to do anything with the purpose of causing such result without further conduct on his part; or

(3) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

b. *Conduct Which May Be Held Substantial Step Under Subsection a(3).* Conduct shall not be held to constitute a substantial step under Subsection a(3) of this Section unless it is strongly corroborative of the actor's criminal purpose. Without negativing the sufficiency of other conduct, the following, if strongly corroborative of the actor's criminal purpose, shall not be held insufficient as a matter of law:

(1) lying in wait, searching for or following the contemplated victim of the crime;

(2) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(3) reconnoitering the place contemplated for the commission of the crime;

(4) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(5) possession of materials to be employed in the commission of the crime, which are specially designed for such unlawful use or which can serve no lawful purpose of the actor under the circumstances;

(6) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place con-

templated for its commission, where such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(7) soliciting an agent, whether or not innocent, to engage in specific conduct which would constitute an element of the crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

c. *Conduct Designed to Aid Another in Commission of a Crime.* A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under Section 2C:2–6 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

d. *Renunciation of Criminal Purpose.* When the actor's conduct would otherwise constitute an attempt under Subsection a(2) or (3) of this Section, it is an affirmative defense which he must prove by a preponderance of the evidence that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Chapter, renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim. Renunciation is also not complete if mere abandonment is insufficient to accomplish avoidance of the offense in which case the defendant must have taken further and affirmative steps that prevented the commission thereof.

SOURCE OR REFERENCE

N. J.: 2A:85–1 and 5
Model Penal Code: 5.01
Other: N. Y.

Study Draft Page: IE-4
Tentative Draft Page: 238
Commentary Page: 113

SECTION 2C:5–2. CONSPIRACY,

a. *Definition of Conspiracy.* A person is guilty of conspiracy with another person or persons to commit an offense if with the purpose of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such offense or an attempt or solicitation to commit such offense; or

(2) agrees to aid such other person or persons in the planning or commission of such offense or of an attempt or solicitation to commit such offense.

b. *Scope of Conspiratorial Relationship.* If a person guilty of conspiracy, as defined by Subsection a of this Section, knows that a person with whom he conspires to commit an offense has conspired with another person or persons to commit the same offense, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such offense.

c. *Conspiracy with Multiple Objectives.* If a person conspires to commit a number of offenses, he is guilty of only one conspiracy so long as such multiple offenses are the object of the same agreement or continuous conspiratorial relationship.

d. *Overt Act.* No person may be convicted of conspiracy to commit an offense, other than a crime of the first or second degree, unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired.

e. *Renunciation of Purpose.* It is an affirmative defense which the actor must prove by a preponderance of the evidence that he, after conspiring to commit an offense, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose as defined in Section 2C:5–1d.

f. *Duration of Conspiracy.* For the purpose of Section 2C:1–6d:

(1) conspiracy is a continuing course of conduct which terminates when the offense or offenses which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired; and

(2) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and

(3) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom

he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

SOURCE OR REFERENCE

N. J.: 2A:98–1 through 4; 2A: 85–1	Study Draft Page: IE-31
Model Penal Code: 5.03	Tentative Draft Page: 757
Other: None	Commentary Page: 126

SECTION 2C:5–3. INCAPACITY, IRRESPONSIBILITY OR IMMUNITY OF PARTY TO CONSPIRACY.

a. *In General.* Except as provided in Subsection b of this Section, it is immaterial to the liability of a person who conspires with another to commit an offense that:

(1) he or the person with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such offense, if he believes that one of them does; or

(2) the person with whom he conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the offense.

b. *Exceptions to Subsection a: Victims, Behavior Inevitably Incident to the Commission of the Offense.* It is a defense to a charge of conspiracy to commit an offense that if the object of the conspiracy were achieved, the person charged would not be guilty of an offense under the law defining the offense or as an accomplice under Section 2C:2–6e or 2C:6f(1) or (2).

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IE-62
Model Penal Code: 5.04	Tentative Draft Page: 284
Other: None	Commentary Page: 145

SECTION 2C:5–4. GRADING OF CRIMINAL ATTEMPT AND CONSPIRACY; MITIGATION IN CASES OF LESSER DANGER; MULTIPLE CONVICTIONS BARRED.

a. *Grading.* Except as otherwise provided in this Section,

(1) attempt is a crime of the same grade and degree as the most serious crime which is attempted; and

(2) conspiracy is a crime or offense of the same grade and degree as the most serious crime or offense which is an object of the conspiracy.

An attempt or conspiracy to commit a capital crime or a crime of the first degree is a crime of the second degree.

b. *Mitigation.* If the particular conduct charged to constitute

(1) criminal attempt or conspiracy is so inherently unlikely to result or culminate in the commission of a crime or offense; or

(2) a conspiracy, as to a particular defendant, is so peripherally related to the main unlawful enterprise that neither such conduct nor the defendant presents a public danger warranting the grading of such offense under this Section, the Court shall exercise its power under Section 2C:43–11 to enter judgment and impose sentence for a crime or offense of lower grade or degree or, in extreme cases, may dismiss the prosecution.

c. *Multiple Convictions.* A person may not be convicted of more than one offense defined by this Chapter for conduct designed to commit or to culminate in the commission of the same offense.

SOURCE OR REFERENCE

N. J.: 2A:85–5, 2A:93–1 to 4
Model Penal Code: 5.05
Other: None

Study Draft Page: IE-67
Tentative Draft Page: 288
Commentary Page: 147

SECTION 2C:5–5. BURGLAR'S TOOLS.

Any person who manufactures or possesses any engine, machine, tool or implement adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises, larceny by a physical taking, or theft of services

a. knowing the same to be so adapted or designed; and

b. with either a purpose to so use or employ it, or with knowledge that some person has such a purpose is guilty of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:94–3; 2A:170–3
Model Penal Code: None
Other: N. Y. §140.35

Study Draft Page: None
Tentative Draft Page: 703
Commentary Page: 149

CHAPTER 6. [RESERVED]

CHAPTER 7. [RESERVED]

CHAPTER 8. [RESERVED]

CHAPTER 9. [RESERVED]

CHAPTER 10. [RESERVED]

SUBTITLE 2. DEFINITION OF SPECIFIC OFFENSES

PART 1. OFFENSES INVOLVING DANGER TO THE PERSON

CHAPTER 11. CRIMINAL HOMICIDE

SECTION 2C:11–1. DEFINITIONS.

In Chapters 11 through 14, unless a different meaning plainly is required:

a. "human being" means a person who has been born and is alive;

b. "bodily injury" means physical pain, illness or any impairment of physical condition;

c. "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

d. "deadly weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 210.0
Other: None

Study Draft Page: IIB-1
Tentative Draft Page: 296
Commentary Page: 150

SECTION 2C:11–2. CRIMINAL HOMICIDE.

a. A person is guilty of criminal homicide if he purposely, knowingly, recklessly or, under the circumstances set forth in Section 2C:11–5, negligently causes the death of another human being.

b. Criminal homicide is murder, manslaughter or negligent homicide.

SOURCE OR REFERENCE

N. J.: 2A:113–1 to 9
Model Penal Code: 210.1
Other: None

Study Draft Page: IIB-4
Tentative Draft Page: 299
Commentary Page: 150

SECTION 2C:11–3. MURDER.

a. Except as provided in Section 2C:11–4a(1), criminal homicide constitutes murder when:

(1) it is committed purposely; or

(2) it is committed knowingly; or

(3) it is committed recklessly under circumstances manifesting extreme indifference to the value of human life.

(4) it is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, aggravated rape, aggravated sodomy, aggravated arson, burglary, kidnapping or criminal escape, and in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this Subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. Murder is a crime of the first degree but a person convicted of murder may be sentenced to death, to life imprisonment or as in a crime of the first degree, as provided in Section 2C:11–7, if the conviction is under Subsection a(1) or (4) of this Section. If the conviction is under any other provision of Subsection a of this Section, the defendant shall be sentenced by the Court to life imprisonment or as in a crime of the first degree.

SOURCE OR REFERENCE

N. J.: 2A:113–1 and 2
Model Penal Code: 210.2
Other: N. Y. §125.25

Study Draft Page: IIB-15
Tentative Draft Page: 308
Commentary Page: 155

SECTION 2C:11–4. MANSLAUGHTER.

a. Criminal homicide constitutes manslaughter when:

(1) it is committed recklessly; or

(2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be.

b. Manslaughter is a crime of the second degree.

SOURCE OR REFERENCE

N. J.: 2A:113–5
Model Penal Code: 210.3
Other: None

Study Draft Page: IIB-28
Tentative Draft Page: 315
Commentary Page: 158

SECTION 2C:11–5. NEGLIGENT HOMICIDE.

a. Criminal homicide constitutes negligent homicide when it is committed negligently under circumstances manifesting extreme indifference to the value of human life.

b. Negligent homicide is a crime of the third degree.

SOURCE OR REFERENCE

N. J.: 2A:113–9
Model Penal Code: 210.4
Other: None

Study Draft Page: IIB-43
Tentative Draft Page: 326
Commentary Page: 165

SECTION 2C:11–6. CAUSING OR AIDING SUICIDE.

a. *Causing Suicide as Criminal Homicide.* A person may be convicted of criminal homicide for causing another to commit suicide only if he purposely causes such suicide by force, duress or deception.

b. *Aiding Suicide as an Independent Offense.* A person who purposely aids another to commit suicide is guilty of a crime of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 210.5
Other: None

Study Draft Page: IIB-48
Tentative Draft Page: 329
Commentary Page: 167

SECTION 2C:11–7. SENTENCE OF DEATH FOR MURDER; FURTHER PROCEEDINGS TO DETERMINE SENTENCE.

a. *Death Sentence Excluded.* When a defendant is found guilty of those forms of murder which under Section 2C:11–3b subject him to a sentence of death, the Court shall impose a sentence of life imprisonment or sentence for a crime of the first degree if it is satisfied that:

(1) none of the aggravating circumstances enumerated in Subsection c of this Section was established by the evidence at the trial or will be established if further proceedings are initiated under Subsection b of this Section; or

(2) substantial mitigating circumstances call for leniency; or

(3) the defendant, with the approval of the Court, pleaded guilty to murder as a noncapital crime or as a crime of the first degree; or

(4) the defendant was under 18 years of age at the time of the commission of the crime.

b. *Determination by Court or by Court and Jury.* Unless the Court imposes sentence under Subsection a of this Section, it shall conduct a separate proceeding to determine whether the defendant should be sentenced for a crime of the first degree, to life imprisonment, or to death. The proceeding shall be conducted before the Court sitting with the jury which determined the defendant's guilt unless the Court has discharged that jury in which case a new jury shall be empanelled for that purpose. Even though the defendant may have entered a plea of guilty or may have waived trial by jury with respect to guilt, the separate proceeding to determine sentence shall be before a jury. In the proceeding, evidence may be presented as to any matter that the Court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition and any of the aggravating or mitigating circumstances enumerated in Subsections c and d of this Section. Any such evidence, not legally privileged, which the Court deems to have probative force may be received, regardless of its admissibility under the exclusionary rules of evidence, provided that counsel be accorded a fair opportunity to rebut such evidence. The prosecuting attorney and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

The determination whether sentence of death shall be imposed shall be in the discretion of the jury and the Court shall not im-

pose sentence of death unless it submits to the jury the issue whether the defendant should be sentenced to death or to imprisonment and the jury returns a verdict that the sentence should be death. If the jury recommends against the sentence of death or if the jury is unable to reach a unanimous verdict, the Court shall dismiss the jury and impose a sentence of life imprisonment or sentence for a crime of the first degree.

The jury, in determining upon its verdict, shall take into account the aggravating and mitigating circumstances enumerated in Subsections c and d and any other relevant facts but it shall not recommend sentence of death unless it finds, beyond a reasonable doubt, one of the aggravating circumstances enumerated in Subsection c and further finds that there are no mitigating circumstances sufficiently substantial to call for leniency. When the issue is submitted to the jury, the Court shall so instruct and also may inform the jury of the nature of the sentence of imprisonment that may be imposed, including its implication with respect to possible release upon parole, if the jury verdict is against sentence of death.

c. *Aggravating Circumstances.*

(1) The murder was committed by a convict under sentence of imprisonment.

(2) The defendant was previously convicted of murder, manslaughter, robbery, aggravated rape, aggravated sodomy, kidnapping or other crime involving the use of violence to the person.

(3) At the time the murder was committed the defendant also committed another murder.

(4) The defendant knowingly created a great risk of death to many persons.

(5) The murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, aggravated rape, aggravated sodomy, aggravated arson, burglary or kidnapping.

(6) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody.

(7) The murder was committed for pecuniary gain.

(8) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

d. *Mitigating Circumstances.* Mitigating circumstances include, but are not limited to:

(1) The defendant has no significant history of prior criminal activity.

(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(4) The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct.

(5) The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor.

(6) The defendant acted under duress or under the domination of another person.

(7) At the time of the murder, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication.

(8) The youth of the defendant at the time of the crime.

SOURCE OR REFERENCE

N. J.: N.J.S. 2A:113–2, 4	Study Draft Page: IIB-51
Model Penal Code: 210.6	Tentative Draft Page: 331
Other: None	Commentary Page: 168

CHAPTER 12. ASSAULT; RECKLESS ENDANGERING; THREATS

SECTION 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, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; 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) commits a simple assault as defined in Subsections a(1) and (2) 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

(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.

Aggravated assault under Subsection b(1) is a crime of the second degree; aggravated assault under Subsections b(2) and (4) is a crime of the third degree; aggravated assault under Subsection b(3) is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:90–1, 2, 3 and 4	Study Draft Page: IIC-2
Model Penal Code: 211.1	Tentative Draft Page: 345
Other: None	Commentary Page: 173

SECTION 2C:12–2. RECKLESSLY ENDANGERING ANOTHER PERSON.

A person commits an offense if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. The offense is a crime of the fourth degree if the act is done under circumstances manifesting extreme indifference to the value of human life. Otherwise, it is a disorderly persons offense. Recklessness and danger shall be presumed where a person knowingly points a firearm, as defined in Section 2C:39–1e, at or in the direction of another, whether or not the actor believed the firearm to be loaded.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIC-18
Model Penal Code: 211.2	Tentative Draft Page: 353
Other: N. Y. §§120.20 and 120.25	Commentary Page: 178

SECTION 2C:12–3. TERRORISTIC THREATS.

A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIC-23
Model Penal Code: 211.3	Tentative Draft Page: 355
Other: None	Commentary Page: 180

CHAPTER 13. KIDNAPPING AND RELATED OFFENSES; COERCION

SECTION 2C:13–1. KIDNAPPING.

a. *Holding for Ransom, Reward or as a Hostage.* A person is guilty of kidnapping if he unlawfully removes another from the place where he is found or if he unlawfully confines another with the purpose of holding that person for ransom or reward or as a hostage.

b. *Holding for Other Purposes.* A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes:

(1) to facilitate commission of any crime or flight thereafter;

(2) to inflict bodily injury on or to terrorize the victim or another; or

(3) to interfere with the performance of any governmental or political function.

c. *Gradation of Kidnapping.* Kidnapping is a crime of the first degree unless the actor voluntarily releases the victim unharmed and in a safe place prior to apprehension, in which case it is a crime of the second degree.

d. *"Unlawful" Removal or Confinement.* A removal or confinement is unlawful within the meaning of this Section and of Sections 2C:13–2 and 3 if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or is incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

SOURCE OR REFERENCE

N. J.: 2A:118–1	Study Draft Page: IID-2
Model Penal Code: 212.1	Tentative Draft Page: 358
Other: N. Y. §135.25	Commentary Page: 181

SECTION 2C:13–2. FELONIOUS RESTRAINT.

A person commits a crime of the third degree if he knowingly:

a. restrains another unlawfully in circumstances exposing the other to risk of serious bodily injury; or

b. holds another in a condition of involuntary servitude.

SOURCE OR REFERENCE

N. J.: 2A:131–3 to 12	Study Draft Page: IID-17
Model Penal Code: 212.2	Tentative Draft Page: 367
Other: None	Commentary Page: 187

SECTION 2C:13–3. FALSE IMPRISONMENT.

A person commits a disorderly persons offense if he knowingly restrains another unlawfully so as to interfere substantially with his liberty. In any prosecution under this Section, it is an affirmative defense that the person restrained was a child less than eighteen years old and that the actor was a relative of such child and that his sole purpose was to assume control of such child.

SOURCE OR REFERENCE

N. J.: 2A:85–1	Study Draft Page: IID-18
Model Penal Code: 212:3	Tentative Draft Page: 368
Other: None	Commentary Page: 187

SECTION 2C:13–4. INTERFERENCE WITH CUSTODY.

a. *Custody of Children.* A person commits an offense if he knowingly takes or entices any child under the age of 18 from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so. It is an affirmative defense that:

(1) the actor believed that his action was necessary to preserve the child from danger to its welfare; or

(2) the child, being at the time not less than 14 years old, was taken away at its own volition and without purpose to commit a criminal offense with or against the child.

Proof that the child was below the critical age gives rise to a presumption that the actor knew the child's age.

The offense is a crime of the fourth degree if the actor is neither a parent of or person in equivalent relation to the child and if he acted with knowledge that his conduct would cause serious alarm for the child's safety or in reckless disregard of a likelihood of causing such alarm. It all other cases it is a disorderly persons offense.

b. *Custody of Committed Persons.* A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or in-

competent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IID-20
Model Penal Code: 212.4	Tentative Draft Page: 369
Other: None	Commentary Page: 188

SECTION 2C:13–5. CRIMINAL COERCION.

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

(1) inflict bodily injury on anyone or commit any other offense;

(2) accuse anyone of an offense;

(3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

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

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

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

(7) inflict any other harm which would not benefit the actor.

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

b. *Grading.* Criminal coercion is a crime of the fourth degree unless the threat is to commit a crime of the third degree or greater or the actor's purpose is criminal, in which cases the offense is a crime of the third degree.

SOURCE OR REFERENCE

N. J.: 2A:105–3, 105–5	Study Draft Page: IID-25
Model Penal Code: 212.5	Tentative Draft Page: 371
Other: None	Commentary Page: 189

CHAPTER 14. SEXUAL OFFENSES

SECTION 2C:14–1. RAPE.

a. *Aggravated Rape.* A male who has sexual intercourse with a female not his wife is guilty of aggravated rape if:

(1) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on her or on any other person;

(2) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(3) the female is unconscious; or

(4) the female is less than 12 years old.

Aggravated rape is a crime of the first degree if (a) in the course thereof the actor inflicts serious bodily injury upon anyone, or (b) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties. Otherwise the offense is a crime of the second degree. Sexual intercourse includes intercourse per os or per anum with some penetration, however slight; emission is not required.

b. *Rape.* A male who has sexual intercourse with a female not his wife commits a crime of the third degree if:

(1) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or

(2) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or

(3) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she mistakenly supposes that he is her husband.

SOURCE OR REFERENCE

N. J.: 2A:138–1 and 2
Model Penal Code: 213.1
Other: None

Study Draft Page: IIE-16
Tentative Draft Page: 375
Commentary Page: 190

SECTION 2C:14–2. SODOMY AND RELATED OFFENSES

a. *Aggravated Sodomy.* A person who engages in deviate sexual intercourse or who causes another to engage in deviate sexual intercourse, is guilty of aggravated sodomy if:

(1) he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(2) he has substantially impaired the other person's power to appraise or control his conduct, by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or

(3) the other person is less than 12 years old.

Aggravated sodomy is a crime of the first degree if (i) in the course thereof the actor inflicts serious bodily injury upon anyone, or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted the actor sexual liberties. Otherwise it is a crime of the second degree.

Deviate sexual intercourse means sexual intercourse per os or per anum between human beings who are not husband and wife.

b. *Sodomy.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a crime of the third degree if:

(1) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(2) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or

(3) he knows that the other person submits because he is unaware that a sexual act is being committed upon him.

c. *Sexual Contact with a Human Dead Body.* A person who knowingly engages in sexual contact with a human dead body is a disorderly person. "Sexual Contact" means any touching of the sexual or other intimate parts of a person or animal for the purpose of gratifying sexual desire.

SOURCE OR REFERENCE

N. J.: 2A:143–1
Model Penal Code: 213.2
Other: N. Y. §§130.00(2) and 130.20

Study Draft Page: IIE-32
Tentative Draft Page: 385
Commentary Page: 196

SECTION 2C:14–3. CORRUPTION OF MINORS AND SEDUCTION.

a. *Offense Defined.* A male who has sexual intercourse with a female not his wife, or any person who engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse, is guilty of an offense if:

(1) the other person is less than 16 years old and the actor is at least 4 years older than the other person; or

(2) the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or

(3) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

b. *Grading.* An offense under Subsection a(1) is a crime of the third degree. Otherwise an offense under this section is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:138–1 and 2
Model Penal Code: 213.3
Other: None

Study Draft Page: IIE-41
Tentative Draft Page: 389
Commentary Page: 197

SECTION 2C:14–4. SEXUAL ASSAULT.

A person who has sexual contact with another not his spouse, or causes such other to have sexual contact is guilty of sexual assault if:

a. he knows that the contact is offensive to the other person; or

b. he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct; or

c. he knows that the other person is unaware that a sexual act is being committed; or

d. the other person is less than 12 years old; or

e. he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

f. the other person is less than 16 years old and the actor is at least four years older than the other person; or

g. the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or

h. the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Sexual assault under Subsection d is a crime of the third degree. Sexual assault under Subsections e and f is a crime of the fourth degree. Otherwise, it is a disorderly persons offense.

Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 213.4
Other: None

Study Draft Page: IIE-52
Tentative Draft Page: 397
Commentary Page: 200

SECTION 2C:14–5. INDECENT EXPOSURE.

A person is a disorderly person if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.

SOURCE OR REFERENCE

N. J.: 2A:115–1
Model Penal Code: 213.5
Other: None

Study Draft Page: IIE-56
Tentative Draft Page: 399
Commentary Page: 200

SECTION 2C:14–6. PROVISIONS GENERALLY APPLICABLE TO CHAPTER 14.

a. *Mistake as to Age.* Whenever in this Chapter the criminality of conduct depends on a child's being below the age of 12, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than 12. When criminality depends on the child's being below a critical age other than 12, it is a defense for the actor to prove by a preponderance of evidence that he reasonably believed the child to be above the critical age.

b. *Spouse Relationships.* Whenever in this Chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart in a state of

separation. Where the definition of an offense excludes conduct with a spouse or conduct by a woman, this shall not preclude conviction of a spouse or woman as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.

c. *Prompt Complaint.* No prosecution may be instituted or maintained under this Chapter unless the alleged offense was brought to the notice of public authority within 3 months of its occurrence or, where the alleged victim was less than 16 years old or incompetent to make complaint, within 3 months after a parent, guardian or other competent person specially interested in the victim, other than the alleged offender, learns of the offense but in no case more than one year after the alleged offense.

d. *Testimony of Complainants.* No person shall be convicted of any crime under this Chapter upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 213.6
Other: Conn. §68(b)

Study Draft Page: IIE-58
Tentative Draft Page: 401
Commentary Page: 201

SECTION 2C:14–7. DISEASED PERSON HAVING SEXUAL INTERCOURSE.

Any person who, knowing that he or she is infected with a venereal disease such as chancroid, gonorrhoea, syphilis or any of the varieties or stages of such diseases, has sexual intercourse or deviate sexual intercourse, is a petty disorderly person.

SOURCE OR REFERENCE

N. J.: 2A:170–6
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 407
Commentary Page: 204

CHAPTER 15. [RESERVED]

CHAPTER 16. [RESERVED]

PART 2. OFFENSES AGAINST PROPERTY

CHAPTER 17. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DESTRUCTION

SECTION 2C:17–1. ARSON AND RELATED OFFENSES.

a. *Aggravated Arson.* A person is guilty of aggravated arson, a crime of the second degree, if he starts a fire or causes an explosion with the purpose of:

(1) destroying a building or occupied structure of another; or

(2) destroying or damaging any property, whether his own or that of another, to collect insurance for such loss under circumstances which recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.

b. *Arson.* A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's, and thereby purposely, knowingly, or recklessly places:

(1) another person in danger of death or bodily injury; or

(2) a building or occupied structure of another in danger of damage or destruction.

c. *Failure to Control or Report Dangerous Fire.* A person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measure to put out or control the fire, when he can do so without substantial risk to himself, or to give prompt fire alarm, commits a crime of the fourth degree if:

(1) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control.

d. *Definitions.* "Occupied structure" is defined in Section 2C:18–1. Property is that of another, for the purpose of this Section, if anyone other than the actor has a possessory or proprietory interest therein. If a building or structure is divided into

separately occupied units, any unit not occupied by the actor is an occupied structure of another.

SOURCE OR REFERENCE

N. J.: 2A:89–1 to 6
Model Penal Code: 220.1
Other: None

Study Draft Page: IIF-1
Tentative Draft Page: 408
Commentary Page: 204

SECTION 2C:17–2. CAUSING OR RISKING CATASTROPHE.

a. *Causing Catastrophe.* A person who causes a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, commits a crime of the second degree if he does so purposely or knowingly, or a crime of the third degree if he does so recklessly.

b. *Risking Catastrophe.* A person is guilty of a crime of the fourth degree if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in Subsection a, even though no fire, explosion or other catastrophe occurs.

c. *Failure to Prevent Catastrophe.* A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits a crime of the fourth degree if:

(1) he knows that he is under an official, contractual or other legal duty to take such measures; or

(2) he did or assented to the act causing or threatening the catastrophe.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 220.2
Other: None

Study Draft Page: IIF-14
Tentative Draft Page: 415
Commentary Page: 207

SECTION 2C:17–3. CRIMINAL MISCHIEF.

a. *Offense Defined.* A person is guilty of criminal mischief if he:

(1) damages tangible property of another purposely, recklessly, or negligently in the employment of fire, explosives, or other dangerous means listed in Section 2C:17–2a; or

(2) purposely or recklesly tampers with tangible property of another so as to endanger person or property.

b. *Grading.* Criminal mischief is a crime of the third degree if the actor purposely causes pecuniary loss in excess of $2,000, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a crime of the fourth degree if the actor causes pecuniary loss in excess of $500, or a disorderly persons offense if he causes pecuniary loss of less than $500.

SOURCE OR REFERENCE

N. J.: 2A:122–1 to 10, 12;
2A:170–32 to 39, 93
Model Penal Code: 220.3
Other: None

Study Draft Page: IIF-16
Tentative Draft Page: 417
Commentary Page: 207

CHAPTER 18. BURGLARY AND OTHER CRIMINAL INTRUSION

SECTION 2C:18–1. DEFINITION.

In this Chapter, unless a different meaning plainly is required, "occupied structure" means any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 221.0
Other: None

Study Draft Page: IIG-1
Tentative Draft Page: 420
Commentary Page: 208

SECTION 2C:18–2. BURGLARY.

a. *Burglary Defined.* A person is guilty of burglary if he enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

b. *Grading.* Burglary is a crime of the second degree if it is perpetrated in an occupied structure of another, or if, in the course of committing the offense, the actor:

(1) purposely, knowingly or recklessly inflicts, attempts to inflict or threatens to inflict bodily injury on anyone; or

(2) is armed with or displays what appears to be explosives or a deadly weapon.

Otherwise burglary is a crime of the third degree. An act shall be deemed "in the course of committing" an offense if it occurs in an attempt to commit the offense or in immediate flight after the attempt or commission.

c. *Multiple Convictions.* A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense.

SOURCE OR REFERENCE

N. J.: 2A:94–1, 2; 2A:170–3
Model Penal Code: 221.1
Other: None

Study Draft Page: IIG-4
Tentative Draft Page: 422
Commentary Page: 209

SECTION 2C:18-3. CRIMINAL TRESPASS.

a. *Buildings and Occupied Structures.* A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any building or occupied structure, or separately secured or occupied portion thereof. An offense under this Subsection is a crime of the fourth degree if it is committed in a dwelling. Otherwise it is a disorderly persons offense.

b. *Defiant Trespasser.* A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(1) actual communication to the actor; or

(2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) fencing or other enclosure manifestly designed to exclude intruders.

c. *Defenses.* It is an affirmative defense to prosecution under this Section that:

(1) a building or occupied structure involved in an offense under Subsection a was abandoned;

(2) the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 221.2
Other: None

Study Draft Page: IIG-14
Tentative Draft Page: 427
Commentary Page: 211

CHAPTER 19. ROBBERY

SECTION 2C:19–1. ROBBERY.

a. *Robbery Defined.* A person is guilty of robbery if, in the course of committing a theft, he:

(1) inflicts serious bodily injury upon another;

(2) threatens another with or purposely puts him in fear of immediate serious bodily injury; or

(3) commits or threatens immediately to commit any crime of the first or second degree.

An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

b. *Grading.* Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with a deadly weapon, or uses or threatens the immediate use of a dangerous instrument.

SOURCE OR REFERENCE

N. J.: 2A:141–1
Model Penal Code: 222.1
Other: N. Y. §160.15

Study Draft Page: IIH-1
Tentative Draft Page: 430
Commentary Page: 213

CHAPTER 20. THEFT AND RELATED OFFENSES

SECTION 2C:20–1. DEFINITIONS

In Chapters 20 and 21 unless a different meaning plainly is required:

a. "deprive" means: (1) to withhold or cause to be withheld property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with purpose to restore only upon payment of reward or other compensation; or (2) to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it.

b. "financial institution" means a bank, insurance company, credit union, building and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

c. "government" means the United States, any State, county, municipality, or other political unit, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government.

d. "movable property" means property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property.

e. "obtain" means: (1) in relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or (2) in relation to labor or service, to secure performance thereof.

f. "property" means anything of value, including real estate, tangible and intangible personal property, trade secrets, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric, gas, steam or other power.

g. "property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was

used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

h. "trade secret" means the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

SOURCE OR REFERENCE

N. J.: 2A:119–5.2(c)
Model Penal Code: 223.0
Other: None

Study Draft Page: III-1
Tentative Draft Page: 434
Commentary Page: 215

SECTION 2C:20–2. CONSOLIDATION OF THEFT OFFENSES; GRADING; PROVISIONS APPLICABLE TO THEFT GENERALLY.

a. *Consolidation of Theft Offenses.* Conduct denominated theft in this Chapter constitutes a single offense. A charge of theft may be supported by evidence that it was committed in any manner that would be theft under this Chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the Court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. *Grading of Theft Offenses.*

(1) Theft constitutes a crime of the second degree if the property is taken by extortion.

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

(a) the amount involved exceeds $500.00;

(b) the property stolen is a firearm, automobile or airplane;

(c) it is a controlled dangerous substance as defined in Chapter 21 of Title 24 of the New Jersey Statutes;

(d) it is by receiving stolen property by a person in the business of buying or selling stolen property;

(e) it is from the person of the victim;

(f) it is in breach of a fiduciary obligation;

(g) it is by threat not amounting to extortion; or,

(h) it is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant.

(3) Theft not within the preceding paragraphs constitutes a crime of the fourth degree. If, however, the actor proves by a preponderance of the evidence that the amount involved was less than $50, the offense constitutes a disorderly persons offense.

(4) The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which the actor stole or attempted to steal. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

c. *Claim of Right.* It is an affirmative defense to prosecution for theft that the actor:

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

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

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

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

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: III-14
Model Penal Code: 223.1	Tentative Draft Page: 439
Other: N. Y.	Commentary Page: 216

SECTION 2C:20–3. THEFT BY UNLAWFUL TAKING OR DISPOSITION.

a. *Movable Property.* A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

b. *Immovable Property.* A person is guilty of theft if he unlawfully transfers immovable property of another or any interest

therein with purpose to benefit himself or another not entitled thereto.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: III-61
Model Penal Code: 223.2	Tentative Draft Page: 449
Other: None	Commentary Page: 222

SECTION 2C:20–4. THEFT BY DECEPTION.

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b. prevents another from acquiring information which would affect his judgment of a transaction;

c. fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

d. fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

SOURCE OR REFERENCE

N. J.: 2A:111–1 et seq.	Study Draft Page: III-64
Model Penal Code: 223.3	Tentative Draft Page: 452
Other: None	Commentary Page: 223

SECTION 2C:20–5. THEFT BY EXTORTION.

A person is guilty of theft if he purposely obtains property of another by threatening to:

a. inflict bodily injury on or physically confine or restrain anyone or commit any other criminal offense;

b. accuse anyone of an offense or cause charges of an offense to be instituted against any person;

c. expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;

d. take or withhold action as an official, or cause an official to take or withhold action;

e. bring about or continue a strike, boycott or other collective action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

f. testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

g. inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

It is an affirmative defense to prosecution based on paragraphs b, c, d or f that the property obtained was honestly claimed as restitution or indemnification for harm done in the circumstances or as lawful compensation for property or services.

SOURCE OR REFERENCE

N. J.: 2A:105–1 to 5;
2A:119A–1 to 4
Model Penal Code: 223.4
Other: New York; Michigan; California.

Study Draft Page: III-71
Tentative Draft Page: 459
Commentary Page: 227

SECTION 2C:20–6. THEFT OF PROPERTY LOST, MISLAID, OR DELIVERED BY MISTAKE.

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft if, with purpose to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 223.5
Other: None

Study Draft Page: III-78
Tentative Draft Page: 465
Commentary Page: 230

SECTION 2C:20–7. RECEIVING STOLEN PROPERTY.

a. *Receiving.* A person is guilty of theft if he purposely receives movable property of another knowing that it has been stolen, or believing that it has probably been stolen. It is an affirmative defense that the property was received with purpose to restore

it to the owner. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

b. *Presumption of Knowledge.* The requisite knowledge or belief is presumed in the case of a person who:

(1) is found in possession or control of property stolen from two or more persons on separate occasions;

(2) has received stolen property in another transaction within the year preceding the transaction charged;

(3) acquires the property for a consideration which he knows is far below its reasonable value; or

(4) being a person in the business of buying or selling property of the sort received, acquires the property without having ascertained by reasonable inquiry that the person from whom he obtained it had a legal right to possess and dispose of it.

SOURCE OR REFERENCE

N. J.: 2A:139–1 to 4
Model Penal Code: 223.6
Other: N. Y.; Proposed Michigan Code

Study Draft Page: III-82
Tentative Draft Page: 468
Commentary Page: 232

SECTION 2C:20–8. THEFT OF SERVICES.

a. A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. "Services" include labor, professional service, transportation, telephone, or other public service, accommodation in hotels, restaurants or elsewhere, entertainment, admission to exhibitions, use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

b. A person commits theft if, having control over the disposition of services of another, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 223.7
Other: None

Study Draft Page: III-98
Tentative Draft Page: 474
Commentary Page: 235

SECTION 2C:20–9. THEFT BY FAILURE TO MAKE REQUIRED DISPOSITION OF PROPERTY RECEIVED.

A person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition. An officer or employee of the government or of a financial institution is presumed: (i) to know any legal obligation relevant to his criminal liability under this Section, and (ii) to have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 223.8
Other: None

Study Draft Page: III-103
Tentative Draft Page: 476
Commentary Page: 236

SECTION 2C:20–10. UNAUTHORIZED USE OR OCCUPANCY OF AUTOMOBILES AND OTHER VEHICLES.

a. A person commits a disorderly persons offense if he takes, operates, or exercises control over another's automobile, aircraft, motorcycle, motorboat, or other motor-propelled vehicle, or any sailboat, without consent of the owner or other person authorized to give consent. It is an affirmative defense to prosecution under this Section that the actor reasonably believed that the owner or any other person authorized to give consent would have consented to the operation had he known of it.

b. A person commits a petty disorderly persons offense if he knowingly rides in a vehicle described in Subsection a which at the time he entered he knew or had been informed that it had been taken, or was being operated or controlled in violation of Subsection a.

SOURCE OR REFERENCE

N. J.: 2A:170–38
Model Penal Code: 223.9
Other: Proposed Michigan Code

Study Draft Page: III-107
Tentative Draft Page: 478
Commentary Page: 237

CHAPTER 21. FORGERY AND FRADULENT PRACTICES

SECTION 2C:21-1. FORGERY AND RELATED OFFENSES.

a. *Forgery.* A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(1) alters or changes any writing of another without his authority;

(2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or

(3) utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2).

"Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trade-marks, and other symbols of value, right, privilege, or identification.

b. *Grading of Forgery.*

(1) Forgery is a crime of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments, certificates or licenses issued by the government, or part of an issue of stock, bonds or other instruments representing interests in or claims against any property or enterprise.

(2) Forgery is a crime of the third degree if the writing is or purports to be

(a) a will, deed, contract, release, commercial instrument, or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations; or

(b) a prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

Otherwise forgery is a crime of the fourth degree.

c. *Possession of Forgery Devices.* A person is guilty of possession of forgery devices, a crime of the third degree, when with purpose to use, or to aid or permit another to use the same for purposes of forging written instruments, he makes or possesses any device, apparatus, equipment or article capable or adaptable to such use.

SOURCE OR REFERENCE

N. J.: 2A:109–1 to 12, 2A:111–25 to 27; 2A:147–1
Model Penal Code: 224.1
Other: N. Y.

Study Draft Page: IIJ-2
Tentative Draft Page: 480
Commentary Page: 237

SECTION 2C:21–2. CRIMINAL SIMULATION.

A person commits a crime of the fourth degree if, with purpose to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

SOURCE OR REFERENCE

N. J.: 2A:111–23 and 24
Model Penal Code: 224.2
Other: None

Study Draft Page: IIJ-9
Tentative Draft Page: 486
Commentary Page: 239

SECTION 2C:21–3. FRAUDS RELATING TO PUBLIC RECORDS AND RECORDABLE INSTRUMENTS.

a. *Fraudulent Destruction, Removal or Concealment of Recordable Instruments.* A person commits a crime of the third degree if, with purpose to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording.

b. *Offering a False Instrument for Filing.* A person is guilty of a disorderly persons offense when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

SOURCE OR REFERENCE

N. J.: 2A:119–4
Model Penal Code: 224.3
Other: N. Y. §§175.30 and 175.35

Study Draft Page: IIJ-20
Tentative Draft Page: 487
Commentary Page: 240

SECTION 2C:21–4. FALSIFYING OR TAMPERING WITH RECORDS.

a. Except as provided in Subsection b of this Section, a person commits a crime of the fourth degree if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

b. *Issuing a False Financial Statement.* A person is guilty of issuing a false financial statement, a crime of the third degree, when, with purpose to deceive or injure anyone or to conceal any wrongdoing, he

(1) knowingly makes or utters a written instrument which purports to describe the financial condition or ability to pay of some person and which is inaccurate in some material respect; or

(2) represents in writing that a written instrument purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to such person's current financial condition or ability to pay, whereas, he knows it is materially inaccurate in that respect.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 224.4
Other: N. Y.

Study Draft Page: IIJ-22
Tentative Draft Page: 488
Commentary Page: 240

SECTION 2C:21–5. BAD CHECKS.

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a disorderly persons offense. For the purposes of this Section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or money order (other than a post-dated check or order) would not be paid, if:

a. the issuer had no account with the drawee at the time the check or order was issued; or

b. payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

SOURCE OR REFERENCE

N. J.: 2A:111–15 to 17;
2A:170–50.4 to 50.6
Model Penal Code: 224.5
Other: None

Study Draft Page: IIJ-28
Tentative Draft Page: 491
Commentary Page: 241

SECTION 2C:21–6. CREDIT CARDS.

A person commits an offense if he uses a credit card for the purpose of obtaining property or services with knowledge that:

a. the card is stolen or forged;

b. the card has been revoked or cancelled; or

c. for any other reason his use of the card is unauthorized by the issuer.

"Credit card" means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer. An offense under this Section is a crime of the third degree if the value of the property or services secured or sought to be secured by means of the credit card exceeds $500; otherwise it is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:111–40 through 51	Study Draft Page: IIJ-34
Model Penal Code: 224.6	Tentative Draft Page: 494
Other: None	Commentary Page: 242

SECTION 2C:21–7. DECEPTIVE BUSINESS PRACTICES.

A person commits an offense if in the course of business he:

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

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

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

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

e. makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services or publishes any advertisement in violation of Chapter three of the Act of Congress entitled "Truth in Lending" and the regulations thereunder as such act and regulations may from time to time be amended;

f. makes a false or misleading written statement for the purpose of obtaining property or credit; or

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

The offense is a crime of the fourth degree if Subsection f or g is violated. Otherwise it is a disorderly persons offense.

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

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

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 224.7
Other: None

Study Draft Page: IIJ-41
Tentative Draft Page: 496
Commentary Page: 243

SECTION 2C:21–8. MISREPRESENTATION OF MILEAGE OF MOTOR VEHICLE.

A person who shall misrepresent the mileage of a used motor vehicle which he is offering for sale or exchange by changing the mileage registering instrument on it so as to show a lesser mileage reading than that recorded by the instrument is a disorderly person. This provision shall not prevent the servicing, repair or replacement of a mileage registering instrument which by reason of normal wear or through damage requires service, repair or replacement if the instrument is then set at zero or at the actual previously recorded mileage.

In addition to the penalty authorized for violation of this Section, the Director of the Division of Motor Vehicles may, after notice and hearing, revoke the license of any motor vehicle dealer as defined in N.J.S. 39:1–1 so convicted.

SOURCE OR REFERENCE

N. J.: 2A:170–50.1 through 50.3
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 499
Commentary Page: 244

SECTION 2C:21–9. MISCONDUCT BY CORPORATE OFFICIAL.

A person is guilty of a crime of the fourth degree when:

a. being a director of a stock corporation, he knowingly concurs in any vote or act of the directors of such corporation, or any of them, which has the purpose of:

(1) making a dividend except in the manner provided by law;

(2) dividing, withdrawing or in any manner paying to any stockholder any part of the capital stock of the corporation except in the manner provided by law;

(3) discounting or receiving any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with purpose of providing the means of making such payment;

(4) receiving or discounting any note or other evidence of debt with purpose of enabling any stockholder to withdraw any part of the money paid in by him on his stock; or

(5) applying any portion of the funds of such corporation, directly or indirectly, to the purchase of shares of its own stock, except in the manner provided by law; or

b. being a director or officer of a stock corporation:

(1) he issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or

(2) he sells, or agrees to sell, or is directly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share, provided that the foregoing shall not apply to a sale by or on behalf of an underwriter or dealer in connection with a bona fide public offering of shares of stock of such corporation.

SOURCE OR REFERENCE

N. J.: 2A:111–12 and 13
Model Penal Code: None
Other: N. Y. §190.35

Study Draft Page: None
Tentative Draft Page: 500
Commentary Page: 245

SECTION 2C:21–10. COMMERCIAL BRIBERY AND BREACH OF DUTY TO ACT DISINTERESTEDLY.

a. A person commits a crime of the fourth degree if he solicits, accepts or agrees to accept any benefit as consideration for know-

ingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(1) an agent, partner or employee of another;

(2) a trustee, guardian, or other fiduciary;

(3) a lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(4) an officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association;

(5) a labor official, including any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund; or

(6) an arbitrator or other purportedly disinterested adjudicator or referee.

b. A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, real properties or services commits a crime of the fourth degree if he solicits, accepts or agrees to accept any benefit to influence his selection, appraisal or criticism.

c. A person commits a crime of the fourth degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this Section.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIJ-49
Model Penal Code: 224.8	Tentative Draft Page: 501
Other: None	Commentary Page: 245

SECTION 2C:21–11. RIGGING PUBLICLY EXHIBITED CONTEST.

a. A person commits a crime of the fourth degree if, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(1) confers or offers or agrees to confer any benefit upon, or threatens any injury to a participant, official or other person associated with the contest or exhibition; or

(2) tampers with any person, animal or thing.

b. *Soliciting or Accepting Benefit for Rigging.* A person commits a crime of the fourth degree if he knowingly solicits, accepts or agrees to accept any benefit the giving of which would be criminal under Subsection a.

c. *Failure to Report Solicitation for Rigging.* A person commits a disorderly persons offense if he fails to report, with reasonable promptness, a solicitation to accept any benefit or to do any tampering, the giving or doing of which would be criminal under Subsection a.

d. *Participation in Rigged Contest.* A person commits a crime of the fourth degree if he knowingly engages in, sponsors, produces, judges, or otherwise participates in a publicly exhibited contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct which would be criminal under this Section.

SOURCE OR REFERENCE

N. J.: 2A:93–10 to 14
Model Penal Code: 224.9
Other: None

Study Draft Page: IIJ-58
Tentative Draft Page: 504
Commentary Page: 246

SECTION 2C:21–12. DEFRAUDING SECURED CREDITORS.

A person commits a crime of the fourth degree if he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder enforcement of that interest.

SOURCE OR REFERENCE

N. J.: 2A:111–20 and 21.1; 2A:122.2
Model Penal Code: 224.10
Other: None

Study Draft Page: IIJ-64
Tentative Draft Page: 506
Commentary Page: 247

SECTION 2C:21–13. FRAUD IN INSOLVENCY.

A person commits a crime of the fourth degree if, knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, he:

a. destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property or obtains any substantial part of or interest in the debtor's estate with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

b. knowingly falsifies any writing or record relating to the property; or

c. knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

SOURCE OR REFERENCE

N. J.: 2A:111–8
Model Penal Code: 224.11
Other: None

Study Draft Page: IIJ-70
Tentative Draft Page: 508
Commentary Page: 248

SECTION 2C:21–14. RECEIVING DEPOSITS IN A FAILING FINANCIAL INSTITUTION.

An officer, manager or other person directing or participating in the direction of a financial institution commits a crime of the fourth degree if he receives or permits the receipt of a deposit, premium payment or other investment in the institution knowing that:

a. due to financial difficulties the institution is about to suspend operations or go into receivership or reorganization, and

b. the person making the deposit or other payment is unaware of the precarious situation of the institution.

SOURCE OR REFERENCE

N. J.: 2A:91–8
Model Penal Code: 224.12
Other: None

Study Draft Page: IIJ-74
Tentative Draft Page: 509
Commentary Page: 248

SECTION 2C:21–15. MISAPPLICATION OF ENTRUSTED PROPERTY AND PROPERTY OF GOVERNMENT OR FINANCIAL INSTITUTION.

A person commits a crime of the fourth degree if he applies or disposes of property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted. "Fiduciary" includes trustee, guardian, executor, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

SOURCE OR REFERENCE

N. J.: 2A:135–3, 4 and 5
Model Penal Code: 224.13
Other: None

Study Draft Page: IIJ-76
Tentative Draft Page: 510
Commentary Page: 248

SECTION 2C:21–16. SECURING EXECUTION OF DOCUMENTS BY DECEPTION.

A person commits a crime of the fourth degree if by deception he causes or induces another to execute any instrument affecting, purporting to affect, or likely to affect the pecuniary interest of any person.

SOURCE OR REFERENCE

N. J.: 2A:111–5
Model Penal Code: 224.16
Other: None

Study Draft Page: IIJ-80
Tentative Draft Page: 512
Commentary Page: 249

SECTION 2C:21–17. WRONGFUL IMPERSONATING.

A person is guilty of a disorderly persons offense when he:

(1) impersonates another or assumes a false identity and does an act in such assumed character or false identity for purpose of obtaining a pecuniary benefit for himself or another or to injure or defraud another; or

(2) pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another.

SOURCE OR REFERENCE

N. J.: 2A:111–18, 2A:170–19
Model Penal Code: None
Other: Conn.; Proposed Michigan Code

Study Draft Page: None
Tentative Draft Page: 513
Commentary Page: 249

SECTION 2C:21–18. SLUGS.

A person is guilty of a petty disorderly persons offense when

(1) he inserts or deposits a slug in a coin machine with purpose to defraud; or

(2) he makes, possesses or disposes of a slug with purpose to enable a person to insert or deposit it in a coin machine.

"Slug" means an object or article which, by virtue of its size, shape or any other quality is capable of being inserted or deposited in a coin machine as an improper substitute for money.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: None
Other N. Y. §§175.50 and 175.55

Study Draft Page: None
Tentative Draft Page: 514
Commentary Page: 250

SECTION 2C:21–19. WRONGFUL CREDIT PRACTICES AND RELATED OFFENSES.

a. *Criminal Usury.* A person is guilty of criminal usury when not being authorized or permitted by law to do so, he knowingly

(1) loans or agrees to loan, directly or indirectly, to any person any money or other property at a rate exceeding the maximum rate permitted by law; or

(2) takes, agrees to take, or receives any money or other property as interest on the loan or on the forbearance of any money or other interest in excess of the maximum rate permitted by law.

Criminal usury is a crime of the second degree if the rate of interest exceeds fifty percentum per annum or the equivalent rate for a longer or shorter period. It is a crime of the third degree if the interest rate does not exceed fifty percentum per annum but the amount of the loan or forbearance exceeds $1,000.00. Otherwise, it is a disorderly persons offense.

b. *Business of Criminal Usury.* Any person who knowingly engages in the business of making loans or forbearances in violation of Subsection a is guilty of a crime of the second degree.

c. *Possession of Usurious Loan Records.* A person is guilty of a crime of the second degree when, with knowledge of the nature thereof, he possesses any writing, paper instrument or article used to record criminally usurious transactions prohibited by Subsection a.

d. *Unlawful Collection Practices.* A person is guilty of a disorderly persons offense when, with purpose to enforce a claim or judgment for money or property, he knowingly sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance simulates a summons, complaint, court order or process or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

e. *Making a False Statement of Credit Terms.* A person is guilty of a disorderly persons offense when he knowingly violates the provisions of Chapter Two of the Act of Congress entitled "Truth in Lending Act" and the regulations thereunder, as such Act and regulations may from time to time be amended, by understating or failing to state the interest rate required to be disclosed, or by

failing to make or by making a false or inaccurate or incomplete statement of other credit terms in violation of such Act.

f. *Debt Adjusters.* Any person who shall act or offer to act as a debt adjuster shall be guilty of a crime of the fourth degree. "Debt adjuster" means a person who acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor and, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor. "Debtor" means an individual or 2 or more individuals who are jointly and severally, or jointly or severally indebted.

The following persons shall not be deemed debt adjusters for the purposes of this Section: an attorney-at-law of this State; a person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts; a person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this State or of the United States; a person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; or a person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such debts.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: None
Other: N. Y. §190.40, 190.45, 190.50, 190.55

Study Draft Page: None
Tentative Draft Page: 515
Commentary Page: 250

CHAPTER 22. [RESERVED]

CHAPTER 23. [RESERVED]

PART 3. OFFENSES AGAINST THE FAMILY, CHILDREN AND INCOMPETENTS

CHAPTER 24. OFFENSES AGAINST THE FAMILY, CHILDREN AND INCOMPETENTS

SECTION 2C:24–1. BIGAMY.

a. *Bigamy.* A married person is guilty of bigamy, a crime of the fourth degree, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(1) the actor believes that the prior spouse is dead;

(2) the actor and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the actor to be alive;

(3) a Court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or

(4) the actor reasonably believes that he is legally eligible to remarry.

b. *Other Party to Bigamous Marriage.* A person is guilty of bigamy if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy.

SOURCE OR REFERENCE

N. J.: 2A:92–1, 2 and 3
Model Penal Code: 230.1
Other: None

Study Draft Page: IIK-1
Tentative Draft Page: 518
Commentary Page: 250

SECTION 2C:24–2. INCEST.

A person is guilty of incest, a crime of the third degree, if he knowingly marries or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

SOURCE OR REFERENCE

N. J.: 2A:114–1 and 2
Model Penal Code: 230.2
Other: N. Y.

Study Draft Page: IIK-21
Tentative Draft Page: 527
Commentary Page: 256

SECTION 2C:24–3. ABORTION.

[No Recommendation]

SOURCE OR REFERENCE

N. J.: 2A:87–1 and 2; 2A:170–76
Model Penal Code: 230.3
Other: None

Study Draft Page: IIK-31
Tentative Draft Page: 532
Commentary Page: 259

SECTION 2C:24–4. ENDANGERING WELFARE OF CHILDREN.

a. *Endangering the Welfare of a Child.* Any person who shall abuse, be cruel to or neglectful of any child shall be guilty of a crime of the fourth degree. Any parent, guardian or person having the care, custody or control of any child, who shall abandon such child shall be guilty of a crime of the fourth degree.

"Parent" and "person having the care, custody and control of any child" shall have the meaning set forth in N.J.S. 9:6–2. "Abuse," "abandonment," "cruelty," and "neglect" shall have the meaning set forth in N.J.S. 9:6–1 and –1.1.

b. *Proceedings Upon Conviction.* Upon conviction under this Section, in addition to the sentence authorized by this Code, the Court may proceed as set forth in N.J.S. 9:6–3.

SOURCE OR REFERENCE

N. J.: 2A:96–1 to 4; 9:6–1 to 3
Model Penal Code: 230A
Other: None

Study Draft Page: IIK-34
Tentative Draft Page: 534
Commentary Page: 259

SECTION 2C:24–5. PERSISTENT NON-SUPPORT.

A person commits a crime of the fourth degree if he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent. In addition to the sentence authorized by the Code, the Court may proceed under Section 2C:62–1.

SOURCE OR REFERENCE

N. J.: 2A:100–1 and 2
Model Penal Code: 230.5
Other: None

Study Draft Page: IIK-43
Tentative Draft Page: 536
Commentary Page: 260

SECTION 2C:24–6. UNLAWFUL ADOPTIONS.

a. *Placing Child for Adoption Without Legal Authority.* Any person who shall place, offer to place, or assist in the placement

of a child with any other person for the purpose of adoption is guilty of a crime of the fourth degree. This Section shall not apply to the placement of a child with a brother, sister, aunt, uncle, grandparent or step-parent of such child, nor shall it apply if such person shall be the natural or adopting parent of the child or shall have been approved for such purpose as provided by law.

b. *Placing Child For Adoption For Consideration.* Any person, including a natural parent or parent by adoption, other than an agency approved to place children for adoption as provided by law, who shall place, offer to place, or assist in the placement of a child in the home of any other person for the purpose of adoption and, in so doing, take, receive or pay any pecuniary benefit or obligation, except expenses in connection with the birth and any illness of the child, is guilty of a crime of the third degree.

SOURCE OR REFERENCE

N. J.: 2A:96-6 and 7
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 540
Commentary Page: 261

SECTION 2C:24-7. ENDANGERING THE WELFARE OF AN INCOMPETENT PERSON.

A person is guilty of a disorderly persons offense when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself because of mental disease or defect.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: None
Other: N. Y. §260.25

Study Draft Page: None
Tentative Draft Page: 543
Commentary Page: 262

CHAPTER 25. [RESERVED]

CHAPTER 26. [RESERVED]

PART 4. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 27. BRIBERY AND CORRUPT INFLUENCE

SECTION 2C:27–1. DEFINITIONS.

In Chapters 27-30, unless a different meaning plainly is required:

a. "benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested;

b. "government" includes any branch, subdivision or agency of the government of the State or any locality within it;

c. "harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

d. "official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency, arbitration proceeding, or official authorized to take evidence under oath, including any arbitrator, referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding;

e. "party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

f. "pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain;

g. "public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses;

h. "administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

j. "statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the

representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 240.0; 241.0 and 242.0
Other: None

Study Draft Page: IIL-1; IIM-1; IIN-1
Tentative Draft Page: 544
Commentary Page: 262

SECTION 2C:27–2. BRIBERY IN OFFICIAL AND POLITICAL MATTERS.

A person is guilty of bribery, a crime of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

a. any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

b. any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a juricial or administrative proceeding; or

c. any benefit as consideration for a violation of a known legal duty as public servant or party official.

It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

In any prosecution under this section, it is no defense that the actor solicited, accepted or agreed to accept the benefit involved as a result of conduct constituting theft by extortion, or an attempt to commit same, or coercion, or an attempt to commit coercion.

SOURCE OR REFERENCE

N. J.: 2A:93–1 to 6; 2A:103–1 and 2; 2A:105–1 and 2
Model Penal Code: 240.1
Other N. Y. §§200.05; 200.15

Study Draft Page: IIL-6
Tentative Draft Page: 546
Commentary Page: 262

SECTION 2C:27–3. THREATS AND OTHER IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS.

a. *Offenses Defined.* A person commits an offense if he:

(1) threatens unlawful harm to any person with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;

(2) threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;

(3) threatens harm to any public servant or party official with purpose to influence him to violate his known legal duty; or

(4) privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction, or for any other reason.

b. *Grading.* An offense under this Section is a crime of the fourth degree unless the actor threatened to commit a crime or made a threat with purpose to influence a judicial or administrative proceeding, in which cases the offense is a crime of the third degree.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIL-23
Model Penal Code: 240.2	Tentative Draft Page: 552
Other: None	Commentary Page: 266

SECTION 2C:27–4. COMPENSATION FOR PAST OFFICIAL BEHAVIOR.

A person commits a crime of the fourth degree if he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a crime of the fourth degree if he offers, confers or agrees to confer compensation acceptance of which is prohibited by this Section.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIL-28
Model Penal Code: 240.3	Tentative Draft Page: 555
Other: None	Commentary Page: 267

SECTION 23:27–5. RETALIATION FOR PAST OFFICIAL ACTION.

A person commits a crime of the fourth degree if he harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIL-31
Model Penal Code: 240.4	Tentative Draft Page: 557
Other: None	Commentary Page: 268

SECTION 2C:27-6. GIFTS TO PUBLIC SERVANTS BY PERSONS SUBJECT TO THEIR JURISDICTION.

a. *Regulatory and Law Enforcement Officials.* No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated or from an agent or representative of such a person.

b. *Officials Concerned with Government Contracts and Pecuniary Transactions.* No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

c. *Judicial and Administrative Officials.* No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, or accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

d. *Legislative Officials.* No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in a bill, transaction or proceeding, pending or contemplated, before the legislature or any committee or agency thereof.

e. *Exceptions.* This Section shall not apply to:

(1) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled, or

(2) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(3) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

f. *Offering Benefits Prohibited.* No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing Subsections.

g. *Grade of Offense.* An offense under this Section is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIL-32
Model Penal Code: 240.5	Tentative Draft Page: 558
Other: None	Commentary Page: 268

SECTION 2C:27–7. COMPENSATING PUBLIC SERVANT FOR ASSISTING PRIVATE INTERESTS IN RELATION TO MATTERS BEFORE HIM.

a. *Receiving Compensation.* A public servant commits a crime of the fourth degree if he solicits, accepts or agrees to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise.

b. *Paying Compensation.* A person commits a crime of the fourth degree if he pays or offers or agrees to pay compensation to a public servant with knowledge that acceptance by the public servant is unlawful.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIL-36
Model Penal Code: 240.7	Tentative Draft Page: 560
Other: None	Commentary Page: 268

SECTION 2C:27–8. SELLING POLITICAL ENDORSEMENT; SPECIAL INFLUENCE.

a. *Selling Political Endorsement.* A person commits a crime of the fourth degree if he solicits, receives, agrees to receive, or agrees that any political party or other person shall receive, any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service, or for approval or disapproval of any person or transaction for any benefit conferred by an official or agency of government. "Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence. "Disapproval" includes failure to approve, or any other manifestation of disfavor or nonacquiescence.

6. *Other Trading in Special Influence.* A person commits a crime of the fourth degree if he solicits, receives, or agrees to receive any pecuniary benefit as consideration for exerting special influence upon a public servant or procuring another to do so. "Special influence" means power to influence through kinship, friendship or other relationship, apart from the merits of the transaction.

c. *Paying for Endorsement or Special Influence.* A person commits a crime of the fourth degree if he offers, confers or agrees to confer any pecuniary benefit, receipt of which is prohibited by this Section.

SOURCE OR REFERENCE

N. J.: 2A:93–6
Model Penal Code: 240.7
Other: None

Study Draft Page: IIL-40
Tentative Draft Page: 562
Commentary Page: 269

SECTION 2C:27–9. FAILURE TO REPORT A BRIBE ATTEMPT OR OFFER.

Any public servant who fails to report an offer or attempt to offer any benefit unlawful under this Chapter within a reasonable time to the Attorney General, the County Prosecutor, the police or his superior, or other appropriate official, is guilty of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: None
Other: Illinois §33–2

Study Draft Page: IIL-43
Tentative Draft Page: 564
Commentary Page: 269

CHAPTER 28. PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS

SECTION 2C:28–1. PERJURY.

a. *Offense Defined.* A person is guilty of perjury, a crime of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

b. *Materiality.* Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material is a question of law.

c. *Irregularities No Defense.* It is not a defense to prosecution under this Section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

d. *Retraction.* No person shall be guilty of an offense under this Section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

e. *Inconsistent Statements.* Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

f. *Corroboration.* No person shall be convicted of an offense under this Section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

SOURCE OR REFERENCE

N. J.: 2A:131–1 to 7
Model Penal Code: 241.1
Other: None

Study Draft Page: IIM-6
Tentative Draft Page: 565
Commentary Page: 270

SECTION 2C:28–2. FALSE SWEARING.

a. *False Swearing in Official Matters.* A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a crime of the fourth degree if the falsification is made with the purpose of misleading a public servant in performing his official function.

b. *Other False Swearing.* A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a disorderly persons offense.

c. *Perjury Provisions Applicable.* Subsections c through f of Section 2C:28–1 apply to the present Section.

SOURCE OR REFERENCE

N. J.: 2A:134–1 to 7
Model Penal Code: 241:2
Other: None

Study Draft Page: IIM-33
Tentative Draft Page: 580
Commentary Page: 277

SECTION 2C:28–3. UNSWORN FALSIFICATION TO AUTHORITIES.

a. *In General.* A person commits a crime of the fourth degree if, with purpose to mislead a public servant in performing his function, he:

(1) makes any written false statement which he does not believe to be true;

(2) purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading;

(3) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(4) submits or invites reliance on any sample, specimen, map, boundary-mark, or other object which he knows to be false.

b. *Statements "Under Penalty."* A person commits a petty disorderly persons offense if he makes a written false statement

which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

c. *Perjury Provisions Applicable.* Subsections c through f of Section 2C:28–1 apply to the present Section.

SOURCE OR REFERENCE

N. J.: 2A:131–6	Study Draft Page: IIM-35
Model Penal Code: 241.3	Tentative Draft Page: 582
Other: None	Commentary Page: 278

SECTION 2C:28–4. FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES.

a. *Falsely Incriminating Another.* A person who knowingly gives or causes to be given false information to any law enforcement officer with purpose to implicate another commits a crime of the fourth degree.

b. *Fictitious Reports.* A person commits a disorderly persons offense if he:

(1) reports or causes to be reported to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) pretends to furnish or causes to be furnished such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

SOURCE OR REFERENCE

N. J.: 2A:148–22.1; 2A:170–9	Study Draft Page: IIM-39
Model Penal Code: 241.5	Tentative Draft Page: 585
Other: None	Commentary Page: 279

SECTION 2C:28–5. TAMPERING WITH WITNESSES AND INFORMANTS; RETALIATION AGAINST THEM.

a. *Tampering.* A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a witness or informant to:

(1) testify or inform falsely;

(2) withhold any testimony, information, document or thing;

(3) elude legal process summoning him to testify or supply evidence; or

(4) absent himself from any proceeding or investigation to which he has been legally summoned.

The offense is a crime of the third degree if the actor employs force, deception, threat or offer of pecuniary benefit. Otherwise it is a crime of the fourth degree.

b. *Retaliation Against Witness or Informant.* A person commits a crime of the fourth degree if he harms another by any wrongful act in retaliation for anything lawfully done in the capacity of witness or informant.

c. *Witness or Informant Taking Bribe.* A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in Subsections a(1) through (4) of this Section.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: IIM-41
Model Penal Code: 241.6	Tentative Draft Page: 586
Other: None	Commentary Page: 279

SECTION 2C:28–6. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.

A person commits a crime of the fourth degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any article, object, record, document or other thing of physical substance with purpose to impair its verity or availability in such proceeding or investigation; or

(2) makes, devises, prepares, presents, offers or uses any article, object, record, document or other thing of physical substance knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIM-47
Model Penal Code: 241.7	Tentative Draft Page: 588
Other: None	Commentary Page: 279

SECTION 2C:28–7. TAMPERING WITH PUBLIC RECORDS OR INFORMATION.

a. *Offense Defined.* A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(3) purposely and unlawfully destroys, conceals, removes, mutilates, or otherwise impairs the verity or availability of any such record, document or thing.

b. *Grading.* An offense under this Section is a crime of the fourth degree unless the actor's purpose is to defraud or injure anyone, in which case the offense is a crime of the third degree.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 241.8
Other: None

Study Draft Page: IIM-50
Tentative Draft Page: 589
Commentary Page: 280

SECTION 2C:28–8. IMPERSONATING A PUBLIC SERVANT.

A person commits a crime of the fourth degree if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense.

SOURCE OR REFERENCE

N. J.: 2A:135–10 and 11;
2A:170–20.5
Model Penal Code: 241.9
Other: None

Study Draft Page: IIM-54
Tentative Draft Page: 590
Commentary Page: 280

CHAPTER 29. OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES

SECTION 2C:29–1. OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION.

A person commits a disorderly persons offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. This Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 242.1, 242.9
Other: None

Study Draft Page: IIN-3
Tentative Draft Page: 591, 611
Commentary Page: 280

SECTION 2C:29–2. RESISTING ARREST.

A person is guilty of an offense if he purposely prevents a public servant from effecting a lawful arrest. The offense is a crime of the fourth degree if he:

a. uses or threatens to use physical force or violence against the public servant or another; or

b. uses any other means to create a substantial risk of causing physical injury to the public servant or another. Otherwise it is a disorderly persons offense.

It is not a defense to a prosecution under this Section that the public servant was acting unlawfully in making the arrest, provided he was acting under color of his official authority.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 242.2
Other: Michigan Proposed Code §4625

Study Draft Page: IIN-13
Tentative Draft Page: 595
Commentary Page: 282

SECTION 2C:29–3. HINDERING APPREHENSION OR PROSECUTION.

A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for an offense he:

a. harbors or conceals the other;

b. provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or affecting escape;

c. suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

d. warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

e. prevents or obstructs, by means of force, intimidation or deception, any one from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

f. aids such person to protect or expeditiously profit from an advantage derived from such crime; or

g. volunteers false information to a law enforcement officer.

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:85–2
Model Penal Code: 242.3, 242.4
Other: N. Y. §205.50

Study Draft Page: IIN-16, 24
Tentative Draft Page: 596, 601
Commentary Page: 283

SECTION 2C:29–4. COMPOUNDING.

A person commits a crime of the fourth degree if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense or from seeking prosecution of an offense.

A person commits a crime of the fourth degree if he confers or agrees to confer any pecuniary benefit in consideration of the other person agreeing to refrain from any such reporting or seeking prosecution. It is an affirmative defense to prosecution under this Section that the pecuniary benefit did not exceed an amount which the actor reasonably believed to be due as restitution or indemnification for harm caused by the offense.

SOURCE OR REFERENCE

N. J.: 2A:97–1	Study Draft Page: IIN-26
Model Penal Code: 242.5	Tentative Draft Page: 602
Other: None	Commentary Page: 286

SECTION 2C:29–5. ESCAPE.

a. *Escape.* A person commits an offense if he without lawful authority removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but "official detention" does not include supervision of probation or parole, or constraint incidental to release on bail.

b. *Permitting or Facilitating Escape.* A public servant concerned in detention commits an offense if he knowingly or recklessly permits an escape. Any person who knowingly causes or facilitates an escape commits an offense.

c. *Effect of Legal Irregularity in Detention.* Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to prosecution under this Section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

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

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

d. *Grading of Offenses.* An offense under this Section is a crime of the third degree where:

(1) the actor was under arrest for or detained on a charge of crime or following conviction of an offense; or

(2) the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape; or

(3) a public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility.

Otherwise it is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:104–1 to 10	Study Draft Page: IIN-33
Model Penal Code: 242.6	Tentative Draft Page: 604
Other: None	Commentary Page: 287

SECTION 2C:29–6. IMPLEMENTS FOR ESCAPE; OTHER CONTRABAND.

a. *Escape Implements.* A person commits an offense if he unlawfully introduces within a detention facility, or unlawfully provides an inmate with, any weapon, tool or other thing which may be useful for escape. An inmate commits an offense if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape. "Unlawfully" means surreptitiously or contrary to law, regulation or order of the detaining authority. The offense is a crime of the third degree if the item is a weapon. Otherwise it is a crime of the fourth degree.

b. *Other Contraband.* A person commits a petty disorderly persons offense if he provides an inmate with any other thing which the actor knows or should know it is unlawful for the inmate to possess.

SOURCE OR REFERENCE

N. J.: 2A:104–8, 11 and 12	Study Draft Page: IIN-49
Model Penal Code: 242.7	Tentative Draft Page: 609
Other: None	Commentary Page: 289

SECTION 2C:29–7. BAIL JUMPING; DEFAULT IN REQUIRED APPEARANCE.

A person set at liberty by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place in connection with any offense, commits an offense if, without lawful excuse, he fails to appear at that time and place. It is an affirmative defense for the defendant to prove, by a preponderance of evidence, that he did not knowingly fail to appear. The offense constitutes a crime of the third degree where the required appearance was to answer to a charge of a crime of the third degree or

greater, or for disposition of any such charge and the actor took flight or went into hiding to avoid apprehension, trial or punishment. The offense constitutes a crime of the fourth degree where the required appearance was otherwise to answer to a charge of crime or for disposition of such charge. The offense constitutes a disorderly persons offense or a petty disorderly persons offense, respectively, when the required appearance was to answer a charge of such an offense or for disposition of any such charge.

This Section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole. Nothing herein shall interfere with or prevent the exercise by any court of this State of its power to punish for contempt.

SOURCE OR REFERENCE

N. J.: 2A:104–13 and 14
Model Penal Code: 242.8
Other: None

Study Draft Page: IIN-53
Tentative Draft Page: 610
Commentary Page: 289

SECTION 2C:29–8. GOVERNMENT COMMUNICATION DEVICES IN PRIVATE VEHICLES.

A person who, without a valid permit to do so, knowingly installs or maintains in any vehicle a short-waive radio receiver operative on frequencies assigned by the Federal Communications Commission for fire, police, municipal or other governmental uses is guilty of a disorderly persons offense. This Section shall not apply to any governmental official authorized to possess such a device.

SOURCE OR REFERENCE

N. J.: 2A:127–4
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 613
Commentary Page: 289

CHAPTER 30. MISCONDUCT IN OFFICE; ABUSE OF OFFICE

SECTION 2C:30–1. OFFICIAL OPPRESSION.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a crime of the fourth degree if, knowing that his conduct is illegal, he:

a. subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

b. denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

SOURCE OR REFERENCE

N. J.: Various	Study Draft Page: II0-1
Model Penal Code: 243.1	Tentative Draft Page: 614
Other: None	Commentary Page: 289

SECTION 2C:30–2. OFFICIAL MISCONDUCT.

A public servant is guilty of official misconduct when, with purpose to act unlawfully:

a. he commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

b. he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: II0-1
Model Penal Code: None	Tentative Draft Page: 617
Other: N. Y. §195.00	Commentary Page: 291

SECTION 2C:30–3. SPECULATING OR WAGERING ON OFFICIAL ACTION OR INFORMATION.

A public servant commits a crime of the fourth degree if, in contemplation of official action by himself or by a governmental unit with which he is or has been associated, or in reliance on in-

formation to which he has or has had access in an official capacity and which has not been made public, he:

a. acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official; or

b. speculates or wagers on the basis of such information or official action; or

c. aids another to do any of the foregoing, while in office or after leaving office with a purpose of using such information.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 243.2
Other: None

Study Draft Page: IIO-8
Tentative Draft Page: 620
Commentary Page: 292

CHAPTER 31. [RESERVED]

CHAPTER 32. [RESERVED]

PART 5. OFFENSES AGAINST PUBLIC ORDER, HEALTH AND DECENCY

CHAPTER 33. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES

SECTION 2C:33–1. RIOT; FAILURE TO DISPERSE.

a. *Riot.* A person is guilty of riot, a crime of the fourth degree, if he participates with four or more others in a course of disorderly conduct as defined in Section 2C:33–2

(1) with purpose to commit or facilitate the commission of a crime;

(2) with purpose to prevent or coerce official action; or

(3) when he or any other participant, known to him, uses or plans to use a firearm or other deadly weapon.

b. *Failure of Disorderly Persons to Disperse Upon Official Order.* Where four or more persons are participating in a course of disorderly conduct as defined in Section 2C:33–2 likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:126–1 to 7
Model Penal Code: 250.1
Other: None

Study Draft Page: IIP-1
Tentative Draft Page: 622
Commentary Page: 293

SECTION 2C:33–2. DISORDERLY CONDUCT.

A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he:

a. engages in fighting or threatening, or in violent or tumultuous behavior;

b. makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

c. creates a hazardous or physically offensive condition by any act which serves no legitimate purposes of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

SOURCE OR REFERENCE

N. J.: 2A:170–26 to 30
Model Penal Code: 250.2
Other: None

Study Draft Page: IIP-13
Tentative Draft Page: 625
Commentary Page: 294

SECTION 2C:33–3. FALSE PUBLIC ALARMS.

A person is guilty of a crime of the fourth degree if he initiates or circulates a report or warning of an impending fire, explosion, bombing, crime, catastrophe or emergency knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconveniences or alarm. A person is guilty of a crime of the fourth degree if he knowingly causes such false alarm to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

SOURCE OR REFERENCE

N. J.: 2A:122–11, 2A:132–1, 2A:170–9
Model Penal Code: §241.4, 250.3
Other: None

Study Draft Page: IIM-38; IIP-26
Tentative Draft Page: 584, 629
Commentary Page: 296

SECTION 2C:33–4. HARASSMENT.

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 which alarm or seriously annoy such other person serving no legitimate purpose of the actor.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: 250.4
Other: None

Study Draft Page: IIP-29
Tentative Draft Page: 630
Commentary Page: 296

SECTION 2C:33-5. PUBLIC DRUNKENNESS.

A person is guilty of a petty disorderly persons offense if he appears in any public place manifestly under the influence of alcohol, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

SOURCE OR REFERENCE

N. J.: 2A:170-30, 2A:170-25.3
Model Penal Code: 250.5
Other: None

Study Draft Page: IIP-33
Tentative Draft Page: 631
Commentary Page: 296

SECTION 2C:33-6. JOSTLING.

A person is guilty of a petty disorderly persons offense when, in a public place, he purposely and unnecessarily:

a. places his hand in the proximity of a person's pocket or handbag; or

b. jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: None
Other: N. Y. §165.25

Study Draft Page: None
Tentative Draft Page: 632
Commentary Page: 297

SECTION 2C:33-7. LOITERING OR PROWLING.

A person commits a petty disorderly persons offense if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be

convicted of an offense under this Section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

SOURCE OR REFERENCE

N. J.: 2A:170–1, 2, 3 and 4	Study Draft Page: IIP-37
Model Penal Code: 250.6	Tentative Draft Page: 633
Other: None	Commentary Page: 297

SECTION 2C:33–8. OBSTRUCTING HIGHWAYS AND OTHER PUBLIC PASSAGES.

a. A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage whether alone or with others, commits a petty disorderly persons offense. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this Subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

b. A person in a gathering commits a petty disorderly persons offense if he refuses to obey a reasonable official request or order to move:

(1) to prevent obstruction of a highway or other public passage; or

(2) to maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIP-44
Model Penal Code: 250.7	Tentative Draft Page: 635
Other: None	Commentary Page: 298

SECTION 2C:33–9. DISRUPTING MEETINGS AND PROCESSIONS.

A person commits a disorderly persons offense if, with purpose to prevent or disrupt a lawful meeting, procession or gathering, he does an act tending to obstruct or interfere with it physically.

SOURCE OR REFERENCE

N. J.: 2A:170–20	Study Draft Page: IIP-46
Model Penal Code: 250.8	Tentative Draft Page: 637
Other: None	Commentary Page: 298

SECTION 2C:33–10. DESECRATION OF VENERATED OBJECTS.

A person commits a disorderly persons offense if he purposely desecrates any public monument or structure, or place of worship or burial. "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.

SOURCE OR REFERENCE

N. J.: 2A:107–1 through 5; 2A:91–1, 2 and 3; 2A:122–10 and 12
Model Penal Code: §250.9
Other: None

Study Draft Page: IIP-48
Tentative Draft Page: 639
Commentary Page: 299

SECTION 2C:33–11. CRUELTY TO ANIMALS.

a. Except as provided in Subsection b of this Section a person commits a disorderly persons offense if he purposely, knowingly or recklessly:

(1) subjects any animal to cruel mistreatment; or

(2) subjects any animal in his custody to cruel neglect.

b. The provisions of Subsection a shall not apply to:

(1) properly conducted scientific experiments performed under the authority of the State Department of Health. That Department may authorize the conduct of such experiments or investigations by agricultural stations and schools maintained by the state or federal government, or by medical societies, universities, colleges and philanthropic institutions incorporated or authorized to do business in this state and having among their corporate purposes investigation into the causes, nature, prevention and cure of diseases in men and animals; and may for cause revoke such authority;

(2) the killing or disposing of an animal or creature by virtue of the order of a constituted authority of the state; or

(3) the shooting or taking of game or game fish in such manner and at such times as is allowed or provided by the laws of this State.

SOURCE OR REFERENCE

N. J.: 4:22–15 to 26; 2A:170–14, 37 and 39
Model Penal Code: 250.11
Other: None

Study Draft Page: IIP-54
Tentative Draft Page: 641
Commentary Page: 299

SECTION 2C:33-12. VIOLATION OF PRIVACY.

a. *Interception, Disclosure or Use of Wire or Oral Communications.* Except as provided in Subsection b of this Section, any person who:

(1) knowingly intercepts, attempts to intercept, or procures any other person to intercept any wire or oral communication;

(2) knowingly discloses or attempts to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) knowingly uses or attempts to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication;

shall be guilty of a crime of the third degree.

b. *Exceptions to Subsection a.*

(1) Subsections (2) and (3) of Subsection a shall not apply to the contents of any wire or oral communication or evidence derived therefrom, that has become common knowledge or public information.

(2) Subsection a shall not apply to

(a) an operator of a switchboard, or an officer, agent or employee of a communication common carrier, whose facilities are used in the transmission of wire communications who intercepts, discloses or uses that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication and which is for no purpose other than service observation or random monitoring for mechanical or service quality control checks;

(b) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception;

(c) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception unless such communication is inter-

cepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act; or

(d) a person acting pursuant to an order issued under and authorized by Section 2C:54–3.

c. *Possession, Sale, Distribution, Manufacture, or Advertisement of Intercepting Devices.* Except as provided in Subsection d of this Section, any person who:

(1) knowingly possesses an intercepting device, the design of which renders it primarily useful for the purpose of surreptitious interception of a wire or oral communication;

(2) knowingly sells an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication;

(3) knowingly distributes an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication;

(4) knowingly manufactures or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(5) knowingly places in any newspaper, magazine, handbill, or other publication any advertisement of any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication or of any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication

shall be guilty of crime of the third degree.

d. *Exceptions to Subsection c.* It shall not be unlawful under Subsection c for:

(1) a communication common carrier or an officer, agent or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

(2) a person under contract with the United States, a state or a political subdivision thereof, or an officer, agent, or employee of a state or a political subdivision thereof;

to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a state or a political subdivision thereof or a communication common carrier.

e. *Unlawful Use or Disclosure of Existence of Order or Information Concerning Intercepted Communication or Derivative Evidence.* Except as authorized pursuant to Chapter 54, any person who uses or discloses the existence of an order authorizing interception of a wire or oral communication or the contents of, or information concerning an intercepted wire or oral communication or evidence derived therefrom, is guilty of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:156A-3, 4, 5, 6 and 19
Model Penal Code: 250.12
Other: None

Study Draft Page: IIP-57
Tentative Draft Page: 643
Commentary Page: 300

SECTION 2C:33-13. MAINTAINING A NUISANCE.

A person is guilty of a disorderly persons offense when:

a. by conduct either unlawful in itself or unreasonable under all the circumstances, he knowingly or recklessly creates or maintains a condition which endangers the safety or health of a considerable number of persons; or

b. he knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Upon conviction under Subsection b of this Section, in addition to the sentence authorized by this code, the Court may proceed as set forth in Section 2C:56-1.

SOURCE OR REFERENCE

N. J.: 2A:130-3
Model Penal Code: None
Other: N. Y. §240.45

Study Draft Page: IIP-63
Tentative Draft Page: 646
Commentary Page: 300

SECTION 2C:33-14. INTERFERENCE WITH EDUCATION.

a. *Entry of Educational Facilities to Commit a Crime.* Any person who enters any building, structure or place used for any educational purpose with the purpose of committing therein any crime shall be guilty of a crime of the third degree.

b. *Disruption of Classes or Interfering with Peace.* Any person who enters any building, structure or place used for any educa-

tional purpose with the purpose of disrupting classes or of otherwise interfering with the peace and good order of the place shall be guilty of a crime of the fourth degree.

c. *Obstruction or Interference with Person Lawfully Seeking to Enter Educational Facility.* Any person who obstructs, interferes with, assaults, or threatens bodily harm to any student, teacher, administrator, school employee, or parent, or legal guardian, of any student, or any other person lawfully seeking to enter a school building or any other building, structure or place used for any educational purpose shall be guilty of a crime of the third degree.

SOURCE OR REFERENCE

N. J.: 2A:149A–1, 2 and 3
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 647
Commentary Page: 300

SECTION 2C:33–15. POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS.

a. Any person under the age of 21 years who shall knowingly possess without legal authority or who shall knowingly consume any alcoholic beverage in any public place or in any motor vehicle is guilty of a petty disorderly persons offense.

b. Whenever this offense shall be committed in a motor vehicle, the Court may, in addition to the sentence authorized by this Code, suspend or revoke the driving privilege of the defendant.

SOURCE OR REFERENCE

N. J.: 2A:170–54.1
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 648
Commentary Page: 301

SECTION 2C:33–16. SMOKING IN PUBLIC CONVEYANCES.

Any person who smokes or carries lighted tobacco in or upon any bus or other public conveyance, other than in the places provided, is a petty disorderly person.

SOURCE OR REFERENCE

N. J.: 2A:170–65
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 649
Commentary Page: 301

CHAPTER 34. PUBLIC INDECENCY

SECTION 2C:34–1. OPEN LEWDNESS.

A person commits a disorderly persons offense if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

SOURCE OR REFERENCE

N. J.: 2A:115–1	Study Daft Page IIQ-1
Model Penal Code: 251.1	Tentative Draft Page: 650
Other: None	Commentary Page: 301

SECTION 2C:34–2. PROSTITUTION AND RELATED OFFENSES.

a. *Prostitution.* A person is guilty of prostitution, a disorderly persons offense, if he or she:

(1) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or

(2) solicits another person in or within view of any public place for the purpose of being hired to engage in sexual activity. "Sexual activity" includes homosexual and other deviate sexual relations. A "house of prostitution" is any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another. An "inmate" is a person who engages in prostitution in or through the agency of a house of prostitution. "Public place" means any place to which the public or any substantial group thereof has access.

b. *Promoting Prostitution.* A person who knowingly promotes prostitution of another commits an offense. The following acts shall, without limitation of the foregoing, constitute promoting prostitution:

(1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business;

(2) procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(3) encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;

(4) soliciting a person to patronize a prostitute;

(5) procuring a prostitute for a patron;

(6) transporting a person into or within this state with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose;

(7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or

(8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this Subsection.

c. *Grading of Offenses Under Subsection b.* An offense under Subsection b constitutes a crime of the third degree if:

(1) the offense falls within paragraph (1), (2) or (3) of that Subsection;

(2) the actor compels another to engage in or promote prostitution;

(3) the actor promotes prostitution of a child under 16, whether or not he is aware of the child's age; or

(4) the actor promotes prostitution of his wife, child, ward or any person for whose care he is responsible.

d. *Presumption from Living off Prostitutes.* A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is supported in whole or substantial part by the proceeds of prostitution is presumed to be knowingly promoting prostitution in violation of Subsection b.

e. *Patronizing Prostitutes.* A person commits a petty disorderly persons offense if he hires a prostitute to engage in sexual activity with him, or if he enters or remains in a house of prostitution for the purpose of engaging in sexual activity or if he solicits or requests another person to engage in sexual activity with him for hire.

SOURCE OR REFERENCE

N. J.: 2A:133–1 to 12;
2A:170–5
Model Penal Code: 251.2
Other: Proposed Federal Code §1843

Study Draft Page: IIQ-5
Tentative Draft Page: 653
Commentary Page: 301

SECTION 2C:34–3. LOITERING TO SOLICIT SEXUAL ACTIVITY.

A person is guilty of a petty disorderly persons offense if, under circumstances in which his conduct causes offense or alarm to others, he loiters in any public place with purpose of soliciting another or offering himself for the purpose of engaging in sexual activity.

SOURCE OR REFERENCE

N. J.: 2A:133–2; 2A:170.5
Model Penal Code: 251.3
Other: Proposed Federal Code §1853

Study Draft Page: IIQ-27
Tentative Draft Page: 661
Commentary Page: 306

SECTION 2C:34–4. OBSCENITY.

[No recommendation.]

SOURCE OR REFERENCE

N. J.: NJS2A:115–1.1 through 3.2
Model Penal Code: 251.4
Other: None

Study Draft Page: IIQ-29
Tentative Draft Page: 662
Commentary Page: 306

CHAPTER 35. DANGEROUS DRUG OFFENSES

SECTION 2C:35–1. HIRING, EMPLOYING OR USING CHILD UNDER 18 IN CONNECTION WITH DRUGS FOR UNLAWFUL PURPOSE.

A person who hires, employs or uses any child under the age of 18 years to transport, carry, sell, prepare for sale or offer for sale any narcotic, depressant or stimulant drug or controlled dangerous substance within the meaning of existing law for any unlawful purpose, is guilty of an offense. The offense is a crime of the second degree unless the person is addicted to the use of morphine, cocaine, heroin, opium or any derivative thereof, or marihuana in which case the offense is a crime of the third degree. A presumption of imprisonment shall apply upon a conviction for this offense.

SOURCE OR REFERENCE

N. J.: 2A:96–5 and 5.1	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 669
Other: None	Commentary Page: 307

SECTION 2C:35–2. GROWING OR ALLOWING MARIHUANA TO GROW ON ONE'S LAND.

A person who, without being licensed so to do under the public health law, knowingly grows the plant known as marihuana or knowingly allows it to grow on his land without destroying the same is a disorderly person.

SOURCE OR REFERENCE

N. J.: 2A:170–25.1	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 671
Other: None	Commentary Page: 307

SECTION 2C:35–3. PERSUADING OTHERS TO USE DRUGS.

Any person who induces or persuades any other person to use any narcotic, depressant or stimulant drugs or controlled dangerous substance within the meaning of existing law unlawfully, or who aids or contributes to such use of any such drug or substance by another person, or who contributes to the addiction of any other person to the unlawful use of any such drug, is guilty of a crime of the third degree.

SOURCE OR REFERENCE

N. J.: 2A:108–9	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 672
Other: None	Commentary Page: 307

SECTION 2C:35–4. INSTRUMENTS FOR SUBCUTANEOUS INJECTIONS.

a. *Sale or Distribution of Hypodermic Syringe or Needle.* Any person who shall sell, furnish, or give to any person other than a licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, registered pharmacist, or a hospital, sanitarium, clinical laboratory or any other medical institution or a state or governmental agency, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution, an instrument commonly known as a hypodermic syringe, hypodermic needle or any instrument adapted for the use by subcutaneous injection of narcotic, depressant or stimulant drugs or controlled dangerous substances within the meaning of existing law without a written prescription of a duly licensed physician, dentist or veterinarian is guilty of a disorderly persons offense. Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed.

b. *Recording, Filing and Renewal of Prescriptions.* Every person who disposes of, or sells, or furnishes, or gives away a syringe, needle or instrument as described in Subsection a of this Section upon the written prescription of a duly licensed physician, dentist, or veterinarian, shall record upon the face of the prescription over his signature, the date of the sale or furnishing of the instrument. This prescription shall be retained on file for a period of two years and shall be open to inspection by any public officer or employee engaged in the enforcement of this Section. A prescription filed in accordance with this Section shall be sufficient authority, without the necessity of a renewal or reissuance, to permit subsequent sales or the furnishing of such syringes, needles or instruments to the person to whom the prescription was issued, for a period of 6 months from the date of its original issuance. Violation of the provisions of this Subsection is a disorderly persons offense.

c. *Control or Possession of Needles Without Prescription.* It shall be unlawful for any person, except a duly licensed person, to have under his control or possess a syringe, needle or instrument as described in Subsection a of this Section with the purpose of using it for such purpose, unless such possession be obtained upon a valid written prescription form, and such use be authorized or directed by, a duly licensed physician, dentist or veterinarian. For the purposes of this subdivision no such prescription shall be valid which has been outstanding for

more than 6 months. Violation of the provisions of this Subsection is a disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:170–77.3 to 77.5
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 673
Commentary Page: 307

SECTION 2C:35–5. SNIFFING TOXIC VAPORS OR FUMES.

a. *Definition.* "Compound having the property of releasing toxic vapors or fumes" shall mean and include any compound which releases vapors or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system, including, but not limited to, the following chemical compounds: acetone, any acetate, benzine, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluol, toluene.

b. *Smelling or Inhaling Fumes from Certain Compounds.* Any person who shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, smell or inhale the fumes from any compound having the property of releasing toxic vapors or fumes is guilty of a disorderly persons offense. Nothing in this Subsection shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

c. *Possession of Certain Compounds.* Any person who shall possess any compound having the property of releasing vapors or fumes for the purpose of using it in violation of Subsection b of this Section is a disorderly person.

d. *Sale of Certain Compounds.* Any person who shall sell or offer to sell to another person any compound having the property of releasing vapors or fumes when the actor has reasonable cause to believe the other person will use the compound in violation of Subsection b of this Section is guilty of a disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:170–25.9 to 25.13
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 675
Commentary Page: 307

SECTION 2C:35-6. PRESCRIPTION LEGEND DRUGS.

a. *Unlawful Possession of Prescription Legend Drugs.* Except as provided in Subsections c and d of this Section, any person who uses or is under the influence of, or who possesses or has under his control, in any form, any prescription legend drug which is not a narcotic, depressant or stimulant drug or controlled dangerous substance within the meaning of existing law, unless obtained from or on a valid prescription of a duly licensed physician, veterinarian or dentist, is a disorderly person.

In a prosecution under this Section, it shall not be necessary for the State to prove that the accused did use or was under the influence of any specific drug or drugs, but it shall be sufficient for the State to prove that the accused did use or was under the influence of some such drug by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any such drug.

b. *Unlawful Sale of Prescription Legend Drugs.* Except as provided in Subsection c of this Section any person who sells, dispenses or gives away, in any form, any prescription legend drug which is not a narcotic, depressant or stimulant drug or controlled dangerous substance within the meaning of existing law, is a disorderly person.

c. *Exceptions to Subsections a and b.* The provisions of Subsections a and b of this Section, except so far as such provisions relate to any person who uses or is under the influence of the drugs described in said Subsections, shall not apply to a duly licensed physician, dentist, registered pharmacist, veterinarian, nurse, podiatrist, intern or resident physician of a hospital, sanitarium, clinical laboratory or any other medical institution; or to a hospital, sanitarium, clinical laboratory or any other medical institution; or to a State or governmental agency; or to any manufacturer, wholesaler, retailer or regular dealer in drugs.

d. *Exceptions to Subsection a.* The provisions of Subsection a of this Section, except so far as such provisions relate to any person who uses or is under the influence of the drugs described in said sections, shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs or to any employee of the same acting within the scope of his employment; to public officers or employees in the performance of their official duties requiring possession or control of these drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession; or to persons whose pos-

session is for the purpose of aiding public officers in performing their official duties.

e. *Obtaining Prescription Legend Drugs Unlawfully.* Any person, who shall obtain, or attempt to obtain, possession of, or procure, or attempt to procure, the administration of, in any form, any prescription legend drug which is not a narcotic, depressant or stimulant, drug or controlled dangerous substance within the meaning of existing law by:

(1) deception which would satisfy the requirements of Section 2C:20–4;

(2) the concealment of a material fact; or

(3) the use of a false name or the giving of a false address

is a disorderly person.

SOURCE OR REFERENCE

N. J.: 2A:170–77.8 to .11 and .15
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 677
Commentary Page: 307

CHAPTER 36. [RESERVED]

CHAPTER 37. GAMBLING OFFENSES

SECTION 2C:37-1. GAMING.

a. *Gaming.* Any person playing for money or other valuable thing at cards, dice or other game, with one or more dice, or with any other instrument, engine or device in the nature of dice, having one or more figures or numbers, or at billiards, pool, tennis, bowls or shuffleboard, or A.B.C. or E.O. table, or other tables, or at faro bank, or other bank of a like nature by whatever name known, or with any slot machine or device in the nature of a slot machine, or with any other instrument, engine, apparatus or device having one or more figures or numbers thereon, is guilty of a crime of the fourth degree.

b. *Keeping Slot Machine for Gaming.* Any person who has or keeps any slot machine or device in the nature of a slot machine which may be used for the playing of money or other valuable thing, is guilty of a crime of the third degree.

c. *Bookmaking and Pool Selling; Keeping Gambling Resort.* Any person who, habitually or otherwise, buys or sells what is commonly known as a pool, or any interest or share therein, or makes or takes what is commonly known as a book, upon the running, pacing or trotting, either within or without this state, of any horse, mare or gelding, or conducts the practices commonly known as bookmaking or pool selling, or keeps a place to which persons may resort for engaging in any such practices, or for betting upon the event of any horse race or other race or contest, either within or without this state, or for gambling in any form, is guilty of a crime of the third degree.

d. *Horse Racing for Money.* All racing for money or other valuable thing, by running, pacing or trotting of horses, mares or geldings, is an offense and the authors, parties, contrivers and abettors thereof, and every other person concerned therein, either directly or indirectly, or present thereat, is guilty of a disorderly persons offense.

e. *Making up Purses for Horse Races.* Any person who makes up any purse, plate or other thing, or contributes or collects, or

asks any other person to contribute or collect, any money, goods or chattels to make up any purse, plate or other thing, to be run, paced or trotted for by any horse, mare or gelding at any place in this state, is guilty of a disorderly persons offense.

f. *Holding Stakes on Horse Races; Advertising Races; Riders and Drivers.* Any person who is a stakeholder of any sum of money or other thing which is bet, staked or wagered upon any running, pacing or trotting race of horses, mares or geldings, or who becomes the custodian or depository in any manner, of any pool or pools, money, property or other thing of value staked or bet upon such result, or causes to be printed or sets up any paper or other thing giving notice of or advertising any such race, or is a rider or driver of any horse, mare or gelding in any such race, is guilty of a disorderly persons offense.

g. *Permitting Land to be Used for Race Course.* Any person who lets or rents his land for the purpose of a race course for the running, pacing or trotting of horses, mares or geldings, or knowingly suffers any such running, pacing or trotting upon lands belonging to him, or of which he may be in possession, is guilty of a crime of the fourth degree.

h. *Exception to Subsections c through g.* Subsections c through g of this Section shall not apply to pari-mutuel betting at race meetings as authorized by the Constitution of this State or any statute passed in pursuance thereof.

SOURCE OR REFERENCE

N. J.: 2A:112–1 to 3 and 5 to 8
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 680
Commentary Page: 308

SECTION 2C:37–2. LOTTERIES.

a. *Lottery Tickets.* Any person who:

(1) gives, barters, sells or otherwise disposes of, or offers to give, barter, sell or otherwise dispose of, a ticket or any share or interest in a ticket in a lottery, whether erected, set up, opened or made in this state or elsewhere, or the chance of any such ticket;

(2) issues a policy of insurance, or insures or receives any consideration for insuring for or against the drawing of any ticket or number, or any share or interest in a ticket, in a lottery;

(3) Receives money or any thing of value in consideration of an agreement to repay a sum of money, or to deliver any goods or thing in action if a ticket or any share of a ticket in a lottery proves fortunate or unfortunate, or is drawn or not drawn on a particular day or in a particular order; or

(4) Promises or agrees to pay a sum of money or to deliver any goods or thing in action, or to do or forbear to do anything for the benefit of another person, upon an event or contingency dependent on the drawing of a ticket or number, or any share of a ticket, in a lottery

is guilty of a crime of the third degree.

b. *Advertising Lotteries.* Any person who advertises, either directly or by indirect, covert or suggestive language, a lottery company, or the place and manner at or in which tickets, slips or advertisements of a lottery company may be procured, or brings into this state or prints or distributes herein any such advertisement, is guilty of a crime of the third degree.

c. *Lottery Business.* Any person who:

(1) knowingly engages as a messenger, clerk or copyist, or in any other capacity in or about an office or room in any building or place where lottery slips or copies of numbers or lists of drawings of a lottery, drawn or to be drawn anywhere within or without this state, are printed, kept or used in connection with the business of lottery or lottery policy, so-called;

(2) knowingly possesses any paper, document, slip or memorandum that pertains in any way to the business of lottery or lottery policy, so-called, whether the drawing has taken place or not; or

(3) being the owner of a building or place where any business of lottery or lottery policy, so-called, is carried on knowingly, by himself or his agent, permits such premises to be so used is guilty of a crime of the third degree.

Paragraph (3) of this Subsection shall not apply to any person who has in his possession or custody any paper, document, slip or memorandum of a lottery which is authorized, sponsored and operated by any State of the United States, provided that the paper, document, slip or memorandum was purchased by the holder thereof in the State wherein such lottery was authorized, sponsored and operated.

d. *Transmitting Messages or Packages Relating to Lotteries.* Any person who knowingly:

(1) transmits or carries to any place within this state, by letter, telephone, telegraph, express or any other means of communication, whether written or expressed by letters, numbers, characters or ciphers, the drawing or list of numbers drawn, or purporting to be drawn, of a lottery; or

(2) receives from any person by letter, telephone, telegraph or any other means of communication, a list of numbers or drawing of any such lottery is guilty of a crime of the third degree.

e. *Possession of Lottery or Numbers Slips.* Any person who has in his possession or custody any lottery slips, books or records pertaining to a lottery, or any person who has in his possession or has in an automobile in his custody any ticket or tickets, slip or slips, paper, document or memoranda in any way pertaining to the business of a number game, is a disorderly person. "Number game" as used in this Section means any betting on any number or numbers, or sets or arrangement of numbers, on or according to any plan or method whatsoever.

This Subsection shall not apply to any person who has in his possession or custody any ticket, slip, paper, document or memorandum of a lottery which is authorized, sponsored and operated by any State of the United States, provided that the ticket, slip, paper, document or memorandum was purchased by the holder thereof in the State wherein such lottery was authorized, sponsored and operated.

f. *Proof on Trial of Lottery.* It shall not be necessary, upon the trial of an indictment or accusation for violation of any of the provisions of this Section to prove (1) the existence of a lottery in which any ticket, share or part of a ticket is purported to have been issued; or (2) the actual signing of such ticket or share or part; or (3) that any ticket, share or interest was signed or issued by authority of any manager or person assuming to have authority as manager; or (4) the existence of a lottery in which any number or numbers may be charged to have been issued. Proof of the sale, furnishing, bartering or procuring of a ticket, share or interest therein, or of an instrument purporting to be a ticket, or

part or share therein, shall be conclusive evidence that such ticket, share or interest was signed and issued according to the purport thereof.

g. *Lottery Defined.* As used in this Section, the term "lottery" shall mean a distribution of prizes by chance in return for a consideration in the form of money or other valuable thing. Consideration shall not be deemed to exist with respect to a distribution of prizes by chance in a contest where admission to the class of distributees is based upon the submission of a box top, package, label, coupon or other similar article connected with merchandise produced or sold by the sponsor of the contest in the regular course of business, provided that the sales price of said merchandise does not include any direct or indirect charge to the purchaser for the right to participate in such contest.

SOURCE OR REFERENCE

N. J.: 2A:121–1 to 6;
2A:170–18
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 682
Commentary Page: 308

SECTION 2C:37–3. SENDING MESSAGES OR CARRYING PACKAGES IN AID OF ILLEGAL BUSINESS.

Any person who knowingly carries any message of a kind which will further or promote the interest of any unlawful pursuit, or enable a person to carry on any unlawful business or practice is guilty of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:146–3
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 685
Commentary Page: 308

CHAPTER 38. [RESERVED]

CHAPTER 39. FIREARMS, OTHER DANGEROUS WEAPONS, AND INSTRUMENTS OF CRIME

SECTION 2C:39–1. DEFINITIONS.

The following definitions apply to this Chapter and to Chapter 58:

a. "Dealer" means any person, except a wholesale dealer, who engages in the business of purchasing or in any manner disposing of any firearm.

b. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark on any firearm.

c. "Dispose of" means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

d. "Explosive" includes any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generalization of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

e. "Firearm" includes any pistol, revolver, rifle, shotgun, machine gun, automatic and semi-automatic rifle, or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectile ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of any air gun, spring gun or pistol, carbon dioxide or compressed air gun or pistol, or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas, or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than 3/8 of an inch in diameter, with sufficient force to injure the person.

f. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm.

g. "Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device.

h. "Machine gun" means any weapon, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the weapon, mechanism or instrument and fired therefrom, and includes automatic rifles and semi-automatic rifles.

i. "Manufacturer" includes all persons who receive or obtain raw materials or parts and process them into firearms or finished parts of firearms, except those persons who exclusively process grips, stocks and other nonmetal parts of firearms. The term does not include those persons who repair existing firearms or who receive and use raw materials or parts solely for the repair of existing firearms.

j. "Molotov cocktail" means a breakable container containing flammable liquid and having a wick or similar device capable of being ignited, but does not mean a device manufactured for the purpose of illumination or other such uses.

k. "Pistol" or "revolver" includes any firearm as defined in Subsection e of this Section with an overall length less than 26 inches, or a shotgun having a barrel or barrels of a length less than 18 inches, or a rifle having a barrel length less than 16 inches.

l. "Retail dealer" includes all persons except the manufacturer and wholesale dealer who sell, transfer or assign for a fee or profit any firearm or parts of firearms which they have purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumer and includes any person who sells any firearm to satisfy a debt secured by the pledge of a firearm.

m. "Rifle" and "shotgun" includes all firearms other than pistols or revolvers with overall length of 26 inches or greater, provided the length of the barrel or barrels, if a shotgun, is 18 or more inches, and if a rifle is 16 or more inches but does not include machine guns.

n. "Switchblade knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

o. "Superintendent" means the Superintendent of State Police.

p. "Weapon" means anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes (1) firearms even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can readily be assembled into a weapon; and (3) gravity knives, switchblade knives, billies, blackjacks, bludgeons, metal knuckles, sandbags, sandclubs, slungshots, cestus or similar leather bands studded with metal filings or razor blades imbedded in wood slivers.

q. "Wholesale dealer" includes all persons, except manufacturers, who sell, transfer or assign firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumer, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

SOURCE OR REFERENCE

N. J.: 2A:151–1 and 49	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 686
Other: N. Y. §265.00	Commentary Page: 308

Section 2C:39–2. Violation of Regulatory Provisions Relating to Firearms; False Representations in Applications.

a. *Violation of Regulatory Provisions Relating to Firearms.*

(1) Any person who knowingly violates the regulatory provisions relating to manufacturing or wholesaling of firearms (Section 2C:58–1), retailing of firearms (Section 2C:58–2), permits to purchase certain firearms (Section 2C:58–3), permits to carry certain firearms (Section 2C:58–4); licenses to procure machine guns (Section 2C:58–5); or incendiary or tracer ammunition (Section 2C:58–10) is guilty of a crime of the fourth degree.

(2) Any person who knowingly violates the regulatory provisions relating to notifying the authorities of possessing certain items of explosives (Section 2C:58–7) and of certain wounds (Section 2C:58–8) is a disorderly person.

b. *False Representations in Identification Card or Permit Applications or in Purchases.* Any person who gives or causes to be given any false information, or signs a fictitious name or address, in applying for a firearms purchaser identification card or a permit to purchase or a permit to carry a pistol, revolver or other firearm, or a permit to possess a machine gun or in completing the certificate or any other instrument required by law in purchasing or otherwise acquiring delivery of any rifle, shotgun, pistol, revolver, machine gun, or other firearm, is guilty of a crime of the third degree.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 689
Commentary Page: 308

SECTION 2C:39–3. POSSESSION OF WEAPONS AND DANGEROUS INSTRUMENTS AND APPLIANCES.

a. *Machine Guns.* Any person who knowingly has in his possession a machine gun or any other firearm or weapon simulating a machine gun and which is adaptable for such use, without a license to do so as provided in Section 2C:58–5, is guilty of a crime of the third degree.

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

c. *Bombs and the Like.* Any person who has in his possession:

(1) any shell, bomb or similar device charged or filled with one or more explosives; or

(2) any bomb, fire bomb, molotov cocktail or any container charged or filled with an explosive, combustible or incendiary substance is guilty of an offense.

The offense is a crime of the second degree if it is possessed with a purpose to use it or to cause it to be used unlawfully. Otherwise it is a crime of the third degree.

d. *Explosives.* Any person who, with purpose to use the same unlawfully against the person or property of another, possesses or carries any explosive substance, or any explosive liquid, gas or like substance, is guilty of a crime of the third degree.

e. *Loaded Firearms.* Any person who knowingly has in his possession any firearm which is loaded with ammunition, or who has in his possession any firearm and, at the same time has in his possession a quantity of ammunition which may be used to

discharge such firearm, without first having obtained a permit to purchase or carry same pursuant to Section 2C:58–4 or 5 is guilty of a crime of the third degree.

f. *Firearms With Purpose to Use.* Any person who has in his possession any firearm with a purpose to use it unlawfully against the person or property of another is guilty of a crime of the third degree.

g. *Possession of Weapons in General.* Any person who, unless licensed to do so under Section 2C:58–4 or 5, knowingly has in his possession any firearm or weapon is guilty of a crime of the fourth degree.

h. *Defaced Firearms.* Any person who knowingly has in his possession a machine gun or firearm which has been defaced for the purpose of either concealment or prevention of the detection of a crime, or misrepresentation of the identity of such machine gun or firearm is guilty of a crime of the fourth degree.

i. *Knives With Purpose To Use.* Any person who has in his possession any dagger, dangerous knife, dirk, razor, stilletto or any weapon with a purpose to use the same unlawfully against another is guilty of a crime of the fourth degree.

j. *Firearms In Educational Institutions.* Any person who knowingly has in his possession a firearm in or upon a building or the grounds, used for educational purposes, of any school, college or university without the written authorization of such educational institution is guilty of a crime of the third degree. It shall not be a defense to a violation of this Section that the defendant possessed a valid permit to carry a firearm or a valid firearms purchaser identification card, unless the holder of such permit or card has acquired the written consent from governing officer of such institution.

k. *Certain Persons Not To Have Weapons.* Any person (1) having been convicted in this state or elsewhere of the crime of assault, robbery, theft, burglary, rape, murder, kidnapping, or sodomy whether or not armed with or having in his possession any firearms or weapons; or (2) 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 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 (3) who has been convicted for the unlawful use, possession or sale of a drug or

controlled dangerous substance; or (4) who is registered as a narcotic drug offender, who purchases, owns, possesses or controls any firearms or any weapons is guilty of a crime of the third degree.

l. *Acquisition of Weapons or Explosives by Minors.* Any person under the age of 18 years who purchases, barters, borrows, acquires or exchanges any firearm, grenade, bomb or other explosive or any chemical compounds or ingredients for explosives or instruction for the use of such chemical compounds or ingredients as explosive, is guilty of a crime of the fourth degree or an act of juvenile delinquency. Any such person may, however, carry, fire or use any firearm (1) in the actual presence or under the direct supervision of his father, mother, guardian or some other person who is himself a holder of a permit to carry a pistol or revolver or a firearms purchaser identification card; or (2) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision; or (3) for the purpose of competition or target practice in and upon a firing range approved by the governing body or the chief of police of the municipality in which such range is located or the National Rifle Association and which is under competent supervision at the time of such competition or target practice. A minor under the age of 18 years who has successfully completed a hunter's safety course taught by a qualified instructor or conservation officer and carries in his possession a certificate indicating the successful completion of such a course and has a valid hunting license in his own name may also, however, carry and use a rifle or shotgun as otherwise provided in this chapter, for the purpose of hunting during the regularly designated hunting season.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: None
Other: N. Y. §265.05

Study Draft Page: None
Tentative Draft Page: 690
Commentary Page: 309

Section 2C:39–4. Manufacture, Transport, Disposition and Defacement of Weapons, and Dangerous Instruments and Appliances.

a. *Machine Guns.* Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine gun unless licensed to do so is guilty of a crime of the third degree.

b. *Weapons.* Any person who manufactures, causes to be manufactured, transports, ships, disposes of any weapon is guilty of a crime of the fourth degree.

c. *Silencers.* Any person who manufactures, causes to be manufactured, transports, ships, sells, or disposes of any firearm silencer is guilty of a crime of the fourth degree.

d. *Defaced Firearms.* Any person who (1) knowingly buys, receives, disposes of, or conceals a defaced firearm for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine gun or firearm; or (2) knowingly defaces a firearm is guilty of a crime of the third degree.

e. *Right to Refuse to Sell Weapons; Sales to Persons Without Permit or to Persons of Unsound Mind or With Physical Defects.* Any person shall have the right to refuse to sell any firearm or dangerous instrument to any other person. Any person who knowingly sells any firearm to a person who does not possess and exhibit to the seller a permit to purchase, in the case of a pistol or revolver, or a firearms purchaser identification card, in the case of a rifle or shotgun, shall be guilty of a crime of the fourth degree. Any person who knowingly sells any firearm to a person who the seller has reason to believe is of unsound mind or suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, is guilty of a crime of the fourth degree. The presentation of a permit for the purchase of a pistol or revolver, or the signing of a certificate and presentation of a firearms purchaser identification card for the purchase of a rifle or shotgun as set forth in Chapter 58 shall be prima facie evidence of compliance with the requirements of this Chapter.

f. *Sale of Weapons or Loaded or Blank Cartridges to Minors.* Any person who knowingly offers, sells, lends, leases or gives to any person under the age of 18 years, any firearm, grenade, bomb or other explosive or any chemical compounds or ingredients for explosives or instructions for the use of such chemical compounds or ingredients as explosives, or a toy pistol or other instrument from which a loaded or blank cartridge may be fired, or any loaded or blank cartridge therefor, is guilty of a crime of the fourth degree. A person may lend a firearm to a minor who may borrow same for the purpose of carrying, firing or using said firearm as provided in Section 2C:39-3l if said minor furnishes the owner with written consent to his use thereof by his parent or legal guardian.

SOURCE OR REFERENCE

N. J.: Various
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 694
Commentary Page: 309

SECTION 2C:39–5. PRESUMPTIONS OF POSSESSION, CRIMINAL PURPOSE AND DEFACEMENT.

a. *Presumption as to Possession of Weapons and Criminal Instruments In Automobiles.* Where a weapon, instrument, appliance or substance specified in Section 2C:39–3 is found in an automobile, it is presumed to be in the possession of the occupant if there is but one. If there is more than one occupant, it shall be presumed to be in the possession of all, except under the following circumstances:

(1) where it is found upon the person of one of the occupants;

(2) where the automobile is not a stolen one and the weapon or instrument is found out of view in a glove compartment, car trunk, or other enclosed customary depository, in which case it shall be presumed to be in the possession of the occupant or occupants who own or have authority to operate the automobile; or

(3) in the case of a taxicab, a weapon or instrument found in the passengers' portion of the vehicle shall be presumed to be in the possession of all the passengers, if there are any, and if not, in the possession of the driver.

b. *Presumption of Criminal Purpose from Possession of Weapon.* If a person possesses a firearm or a weapon on or about his person, in a vehicle occupied by him, or otherwise readily available for use, it shall be presumed that he had the purpose to employ it criminally, unless:

(1) the weapon is possessed in the actor's home or place of business; or

(2) the actor is licensed or otherwise authorized by law to possess such weapon.

c. *Possession of Defaced Firearm.* When a person possesses a defaced firearm, it shall be presumed that he defaced it.

SOURCE OR REFERENCE

N. J.: 2A:151–6 and 7	Study Draft Page: None
Model Penal Code: 5.06	Tentative Draft Page: 696
Other: N. Y. §265.15	Commentary Page: 310

SECTION 2C:39–6. EXEMPTIONS.

a. Section 2C:39–3 does not apply to:

(1) the United States Marshal or his deputies;

(2) members of the Armed Forces of the United States or of the National Guard when on duty;

(3) a sheriff, undersheriff, county prosecutor, assistant prosecutor, prosecutor's detective or investigator;

(4) a regularly employed member, including a detective, of the police department of any county or municipality or of any State, interstate, municipal or county park or boulevard police force, at all times while within the State of New Jersey, or a special policeman appointed by the governing body of any county or municipality or by the commission or other board or body having control of a county park or boulevard police force while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry firearms;

(5) a member of the State Police, or any motor vehicle inspector;

(6) a jailer, constable, railway policeman, or any other peace officer, when in discharge of his duties;

(7) a member of the Fish and Game Council, a conservation officer and a full-time employee of the Division of Shell Fisheries having the power of arrest and authorized to carry weapons;

(8) a prison or jail warden or their deputies, a guard or keeper of any penal institution in this State, while engaged in the actual performance of his duties of and when so required by their superior officers;

(9) a court attendant serving as such under appointment by the sheriff of the county or by the judge of or magistrate of any court of this State while in the performance of his duties;

(10) a guard in the employ of any railway express company, banking or building and loan or savings and loan institution of this State while in the performance of his duties;

(11) an officer of the society for the prevention of cruelty to animals while in the performance of his duties;

(12) a legally recognized military organization when under orders, or a member thereof when going to or from the place of meeting of the organization, carrying the weapons prescribed for drill, exercise or parade;

(13) a member of a government or civilian rifle or pistol club duly organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from his several places of target practice and carrying weapons necessary for such practice if a copy of the charter has been filed with the Superintendent and a list of the members of the club is submitted annually to the superintendent;

(14) the director, deputy directors, inspectors and investigators of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety;

(15) an employee of a public utility corporation actually engaged in the transportation of explosives;

(16) a civil employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located within this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while engaged in the actual performance of his official duties;

(17) a law enforcement officer employed by governmental agencies outside of the State of New Jersey engaged in his official duties if he has first notified the Superintendent or the chief law enforcement officer of the municipality or the county prosecutor of the county in which he is engaged;

(18) a full-time member of the marine patrol force of the Bureau of Navigation in the Department of Conservation and Economic Development while in the performance of their duties; or

(19) a licensed retail dealer in firearms and his registered employees during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale; provided any such weapon so carried shall be unloaded and wrapped in a case, box or other container.

b. Nothing in Section 2C:39–3 shall be construed to prevent:

(1) a person keeping or carrying about his place of business, dwelling house, premises, or on land possessed by him, any firearm or from carrying the same from any place of purchase to his dwelling house or place of business or from his dwelling house or place of business to or from any place where repairing is done, to have the same repaired;

(2) a person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice, or fishing;

(3) a person transporting any firearm while traveling directly to or from any place for the purpose of hunting provided such person has in his possession a valid hunting license or while traveling directly to or from any target range or other authorized

place for the purpose of practice, match, target, trap or skeet shooting or shooting exhibitions, provided in all cases that during the course of traveling for the purposes set forth in this section, the firearm is unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which the person is transporting the firearm, and provided further that the course of travel to or from said areas may include such deviations as may be reasonable or necessary under the circumstances; and provided further that nothing contained in this chapter shall be considered as an exemption or exception from the requirements or provisions of Title 23 of the Revised Statutes and amendments thereto or any rules and regulations promulgated thereunder;

c. This Chapter and Chapter 58 do not apply to antique firearms which are incapable of being fired or discharged or which do not fire fixed ammunition, or those manufactured before 1898 for which cartridge ammunition is not commercially available, and are possessed as curiosities or ornaments or for their historical significance or value.

SOURCE OR REFERENCE

N. J.: 2A:151–18, 42 and 43
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 698
Commentary Page: 310

SECTION 2C:39–7. PAWNBROKERS NOT TO DEAL IN WEAPONS.

Any pawnbroker who sells, offers to sell or to lend or give away any firearm, weapon or explosive is guilty of a crime of the fourth degree.

SOURCE OR REFERENCE

N. J.: 2A:151–2
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 704
Commentary Page: 310

SECTION 2C:39–8. LOANING ON FIREARMS.

Any person who loans money secured by mortgage, deposit or pledge of a pistol or revolver is guilty of a disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:151–3
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 705
Commentary Page: 310

CHAPTER 40. OTHER OFFENSES RELATING TO PUBLIC SAFETY

SECTION 2C:40–1. CREATING A HAZARD.

A person is guilty of a disorderly persons offense when:

a. having discarded in any place where it might attract children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot easily be opened from the inside, he fails to remove the door, lid, locking or fastening device; or

b. being the owner or otherwise having possession of property upon which an abandoned well or cesspool is located, he fails to cover the same with suitable protective construction.

SOURCE OR REFERENCE

N. J.: 2A:170–25.2
Model Penal Code: None
Other: N. Y. §270.15

Study Draft Page: None
Tentative Draft Page: 709
Commentary Page: 310

SECTION 2C:40–2. REFUSING TO YIELD A PARTY LINE.

A person is guilty of a disorderly persons offense when, being informed that a party line is needed for an emergency call, he refuses immediately to relinquish such line.

"Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency call" means a telephone call to a police or fire department or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.

SOURCE OR REFERENCE

N. J.: 2A:170–25.5
Model Penal Code: None
Other: N. Y. §270.15

Study Draft Page: None
Tentative Draft Page: 710
Commentary Page: 310

CHAPTER 41. [RESERVED]

CHAPTER 42. [RESERVED]

SUBTITLE 3. SENTENCING

CHAPTER 43. AUTHORIZED DISPOSITION OF OFFENDERS

SECTION 2C:43–1. DEGREES OF CRIMES.

a. Crimes defined by this Code are classified, for the purpose of sentence, into five degrees, as follows:

(1) capital crimes;
(2) crimes of the first degree;
(3) crimes of the second degree;
(4) crimes of the third degree; and
(5) crimes of the fourth degree.

A crime is capital or of the first, second, third or fourth degree when it is so designated by the Code. An offense, declared to be a crime, without specification of degree, is of the fourth degree.

b. Notwithstanding any other provision of law, a crime defined by any statute of this State other than this Code and designated as a high misdemeanor shall constitute for the purpose of sentence a crime of the third degree. Notwithstanding any other provision of law, a crime defined by any statute of this State other than this Code and designated as a misdemeanor shall constitute for the purpose of sentence a crime of the fourth degree. The provisions of this Subsection shall not, however, apply to the sentences authorized by the "New Jersey Controlled Dangerous Substances Act," N.J.S. 24:21–1 through 45, which shall be continued in effect.

SOURCE OR REFERENCE

N. J.: 2A:85–1, 6 and 7
Model Penal Code: 6.01
Other: None

Study Draft Page: IF-1
Tentative Draft Page: 713
Commentary Page: 311

SECTION 2C:43–2. SENTENCE IN ACCORDANCE WITH CODE; AUTHORIZED DISPOSITIONS.

a. Except as provided in Section 2C:43–1b, as to persons convicted of offenses under the New Jersey Dangerous Controlled Substances Act, all persons convicted of an offense or offenses shall be sentenced in accordance with this Chapter.

b. The Court shall sentence a person who has been convicted of a capital crime to death or imprisonment, in accordance with Section 2C:11–7.

c. Except as provided in Subsections a and b of this Section and subject to the applicable provisions of the Code, the Court may suspend the imposition of sentence on a person who has been convicted of an offense or may sentence him as follows:

(1) to pay a fine or make restitution authorized by Section 2C:43–3;

(2) to be placed on probation and, in the case of a person convicted of an offense, other than a petty disorderly persons offense, to imprisonment for a term fixed by the Court not exceeding ninety days to be served as a condition of probation;

(3) to imprisonment for a term authorized by Sections 2C:43–5, 6, 7, and 8 or 2C:44–6; or

(4) to fine, restitution and probation, or fine, restitution and imprisonment.

d. This Chapter does not deprive the Court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IIF-4
Model Penal Code: 6.02	Tentative Draft Page: 716
Other: None	Commentary Page: 312

SECTION 2C:43–3. FINES AND RESTITUTIONS.

A person who has been convicted of an offense may be sentenced to pay a fine or to make restitution not exceeding:

a. $10,000, when the conviction is of a crime of the first or second degree;

b. $5,000, when the conviction is of a crime of the third or fourth degree;

c. $1,000, when the conviction is of a disorderly persons offense;

d. $500, when the conviction is of a petty disorderly persons offense,

e. any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this Sec-

tion the terms "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount or value separated from the victim.

f. any higher amount specifically authorized by statute.

The restitution ordered paid to the victim shall not exceed his loss.

SOURCE OR REFERENCE

N. J.: 2A:85–6 and 7	Study Draft Page: IF-10
Model Penal Code: 6.03	Tentative Draft Page: 720
Other: None	Commentary Page: 314

SECTION 2C:43–4. PENALTIES AGAINST CORPORATIONS; FORFEITURE OF CORPORATE CHARTER OR REVOCATION OF CERTIFICATE AUTHORIZING FOREIGN CORPORATION TO DO BUSINESS IN THE STATE.

a. The Court may suspend the imposition of sentence of a corporation which has been convicted of an offense or may sentence it to pay a fine or make restitution authorized by Section 2C:43–3.

b. When a corporation is convicted of an offense or a high managerial agent of a corporation, as defined in Section 2C:43–7, is convicted of an offense committed in conducting the affairs of the corporation, the Court may request the Attorney General to institute appropriate proceedings to dissolve the corporation, forfeit its charter, revoke any franchises held by it, or to revoke the certificate authorizing the corporation to conduct business in this State.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IF-14
Model Penal Code: 6.04	Tentative Draft Page: 722
Other: None	Commentary Page: 315

SECTION 2C:43–5. YOUNG ADULT OFFENDERS.

a. *Sentences To Reformatories.* Any person who, at the time of sentencing, is less than 26 years of age and who has been convicted of a crime of the second, third, or fourth degree may be sentenced to the Reformatory as defined in N.J.S. 30:4–146, in the case of men, and N.J.S. 30:4–153, in the case of women, instead of the sentences otherwise authorized by the Code.

b. *Length of Sentences to Reformatory.* The period of commitment shall be a term of five years or the maximum term provided by law for the crime, whichever is less. The Court, may, however, impose a sentence greater than five years, but in no case greater than the maximum provided by law for the offense, in which case the Court shall specify the term of the sentence so imposed.

SOURCE OR REFERENCE

N. J.: 2A:164–17 and 19	Study Draft Page: IF-18
Model Penal Code: 6.05	Tentative Draft Page: 724
Other: None	Commentary Page: 316

SECTION 2C:43–6. SENTENCE OF IMPRISONMENT FOR CRIME; ORDINARY TERMS.

a. 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 term which shall be fixed by the Court between ten years and twenty years;

(2) in the case of a crime of the second degree, for a term which shall be fixed by the Court between five years and ten years;

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

(4) in the case of a crime of the fourth degree, for a definite term not to exceed eighteen months.

b. By operation of law, there shall be added to the terms described in Subsection a the separate parole term described in Section 2C:43–9.

SOURCE OR REFERENCE

N. J.: 2A:85–6 and 7	Study Draft Page: IF-29
Model Penal Code: 6.06	Tentative Draft Page: 726
Other: None	Commentary Page: 316

SECTION 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 to an extended term of imprisonment, as follows:

(1) in the case of a crime of the first degree, for a term which shall be fixed by the Court between twenty years and life imprisonment;

(2) in the case of a crime of the second degree, for a term which shall be fixed by the Court between ten and twenty years;

(3) in the case of a crime of the third degree, for a term which shall be fixed by the Court between five and ten years.

b. By operation of law, there shall be added to the terms described in Subsection a the separate parole term described in Section 2C:43–9.

SOURCE OR REFERENCE

N. J.: 2A:85–8 to 13	Study Draft Page: IF-29
Model Penal Code: 6.07	Tentative Draft Page: 733
Other: None	Commentary Page: 318

SECTION 2C:43–8. SENTENCE OF IMPRISONMENT FOR DISORDERLY PERSONS OFFENSES AND PETTY DISORDERLY PERSONS OFFENSES.

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the Court and shall not exceed six months in the case of a disorderly persons offense or thirty days in the case of a petty disorderly persons offense.

SOURCE OR REFERENCE

N. J.: 2A:169–4	Study Draft Page: IF-40
Model Penal Code: 6.08	Tentative Draft Page: 735
Other: None	Commentary Page: 319

SECTION 2C:43–9. FIRST RELEASE OF ALL OFFENDERS ON PAROLE; SENTENCE OF IMPRISONMENT INCLUDES SEPARATE PAROLE TERM; LENGTH OF RECOMMITMENT AND REPAROLE AFTER REVOCATION OF PAROLE; FINAL UNCONDITIONAL RELEASE.

a. *First Release of All Offenders On Parole.* An offender sentenced to a term of imprisonment under Section 2C:43–5, 2C:43–6, 2C:43–7, or 2C:44–5 shall be released conditionally on parole at or before the expiration of such term, in accordance with the law governing parole.

b. *Sentence Of Imprisonment Includes Separate Parole Term; Length Of Parole Term.* A sentence to a term of imprisonment under Section 2C:43–5, 2C:43–6, 2C:43–7 or 2C:44–5 includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole which governs the duration of parole or recommitment after the offenders' first conditional release on parole. The term is five years, unless the sentence was imposed under Section 2C:43–5, in which case it is two years or unless the conviction was for a crime of the fourth degree in which case it is one year.

c. *Length Of Recommitment And Reparole After Revocation Of Parole.* If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the Parole Board but shall not exceed in aggregate length the longer of the unserved balance of the parole term provided by Subsection b of this Section or of the original sentence determined from the date of conviction.

d. *Final Unconditional Release.* When the parole term has expired or he has been sooner discharged from parole, an offender

shall be deemed to have served his sentence and shall be released unconditionally.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IF-43
Model Penal Code: 6.10	Tentative Draft Page: 736
Other: None	Commentary Page: 319

SECTION 2C:43–10. PLACE OF IMPRISONMENT; BEGINNING SENTENCES; TRANSFERS.

a. *Sentences for Terms of One Year or Longer.* Except as provided in Section 2C:43–5 and in Subsection b of this Section, when a person is sentenced to imprisonment for any term of one year or greater, the Court shall commit him to the State Prison in the case of men and to the women's reformatory in the case of women for the term of his sentence and until released in accordance with law.

b. *County Institution.* In any county in which a county penitentiary or a county workhouse is located, a person sentenced to imprisonment for a term not exceeding eighteen months may be committed to the penitentiary or workhouse of such county instead of the State Prison.

c. *Sentences for Terms of Less Than One Year.* When a person is sentenced to imprisonment for a term of less than one year, the Court shall commit him either to the common jail of the county, the county workhouse or the county penitentiary for the term of his sentence and until released in accordance with law. In counties of the first class, however, no sentence exceeding six months shall be to the common jail of the county.

d. *Duties of Sheriff and Keeper on Sentence to State Prison.* In all cases where the defendant, upon conviction, is sentenced by the court to imprisonment for a term in the State Prison, the sheriff of the county or his lawful deputy shall, within 15 days transport to the State Prison and there deliver him into the custody of the keeper of the prison together with a copy of the sentence of the court ordering such imprisonment certified by the clerk of the court where the conviction was had.

In every case at least 48 hours, exclusive of Sundays and legal holidays, shall elapse between the time of sentence and removal to the State Prison.

e. *Beginning Sentences in County Institutions.* Every person sentenced to the county workhouse or penitentiary shall be transferred to and confined therein within ten days after the sentence.

f. *Transfer of Persons Sentenced to County Jail, Penitentiary or Workhouse from One to Another Thereof.* Every person sentenced to imprisonment in a county jail, penitentiary or workhouse may upon the application of the board of chosen freeholders of such county and by order of the County Court, be transferred from any one of such county penal institutions to any other thereof. No such transfer or retransfer shall in any way affect the term of the original sentence of the person so transferred or retransferred.

SOURCE OR REFERENCE

N. J.: 2A:164–15, 18 and 23
Model Penal Code: 6.11
Other: None

Study Draft Page: IF-49
Tentative Draft Page: 742
Commentary Page: 323

SECTION 2C:43–11. REDUCTION OF CONVICTION BY COURT TO LESSER DEGREE OF OFFENSE.

If, when a person has been convicted of an offense, the Court, having regard to the nature and circumstances of the offense and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with the Code, the Court may enter judgment for a lesser included offense and impose sentence accordingly.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 6.12
Other: None

Study Draft Page: IF-51
Tentative Draft Page: 744
Commentary Page: 323

CHAPTER 44. AUTHORITY OF COURT IN SENTENCING

SECTION 2C:44–1. CRITERIA FOR WITHHOLDING OR IMPOSING SENTENCE OF IMPRISONMENT.

a. Except as provided in subsection d of this Section, the Court shall deal with a person who has 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 protection of the public because:

(1) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime;

(2) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution;

(3) a lesser sentence will depreciate the seriousness of the defendant's crime in appraising its impact upon the general community whose standards and values have been violated; or

(4) the offense is characteristic of organized criminal activity.

b. The following grounds, while not controlling the discretion of the Court, shall be accorded weight in favor of withholding sentence of imprisonment:

(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;

(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 attitudes 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.

c. When a person who has been convicted of a crime is not sentenced to imprisonment, the Court shall place him on probation if he is in need of the supervision, guidance, assistance or direction that the probation service can provide.

d. *Presumption Of Imprisonment.* Where a statute defining an offense provides that a presumption of imprisonment shall be applied upon conviction or where a statute outside the Code defining an offense provides for a mandatory sentence, the presumption of sentencing without imprisonment under Subsection a shall not apply and a presumption of imprisonment shall apply. The Court shall deal with a person who has been convicted of such a crime 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.

SOURCE OR REFERENCE

N. J.: 2A:168–1 *et seq.*	Study Draft Page: IG-1
Model Penal Code: 7.01	Tentative Draft Page: 746
Other: None	Commentary Page: 324

SECTION 2C:44–2. CRITERIA FOR IMPOSING FINES AND RESTITUTIONS.

a. The Court shall not sentence a defendant only to pay a fine or to make restitution, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is of the opinion that the fine or restitution alone is appropriate and suffices for the protection of the public.

b. The Court shall not sentence a defendant to pay a fine or make restitution in addition to a sentence of imprisonment or probation unless:

(1) the defendant has derived a pecuniary gain from the offense, or

(2) the Court is of opinion that a fine or restitution is specially adapted to deterrence of the type of offense involved or to the correction of the offender.

c. The Court shall not sentence a defendant to pay a fine or make restitution unless the defendant is or, given a fair opportunity to do so, will be able to pay the fine or restitution. The Court shall not sentence a defendant to pay a fine unless the fine will not prevent the defendant from making restitution to the victim of the offense.

d. In determining the amount and method of payment of a fine or restitution, the Court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

e. *Nonpayment.* When a defendant is sentenced to pay a fine or to make restitution, the Court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid. The response of the court to nonpayment shall be determined only after the fine has not been paid, as provided in Section 2C:46–2.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 7.02
Other: Proposed Federal Code §3302

Study Draft Page: IG-7
Tentative Draft Page: 752
Commentary Page: 327

SECTION 2C:44–3. CRITERIA FOR SENTENCE OF EXTENDED TERM OF IMPRISONMENT.

The Court may 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 this Section. The finding of the Court shall be incorporated in the record.

a. The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant is over twenty-one years of age and has previously been convicted on at least two separate occasions of two crimes committed at different times when he was at least eighteen years of age.

b. The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant is over twenty-one years of age and:

(1) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood, or

(2) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

c. The defendant is a dangerous, mentally abnormal person whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant has been subjected to a psychiatric examination resulting in the conclusion that his mental condition is gravely abnormal; that his criminal conduct has been characterized by a pattern of repetitive or compulsive behavior or by persistent aggressive behavior with heedless indifference to consequences; and that such condition makes him a serious danger to others.

d. The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The Court shall not make such a finding unless:

(1) the defendant is being sentenced for two or more crimes or is already under sentence of imprisonment for crime, and the sentences of imprisonment involved will run concurrently under Section 2C:44–5; or

(2) the defendant admits in open court the commission of one or more other crimes and asks that they be taken into account when he is sentenced; and

(3) the longest sentences of imprisonment authorized for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively would exceed in length the maximum of the extended term imposed.

e. The defendant is a dangerous armed criminal because in committing the crime of which he was convicted he employed a firearm, as defined in Section 2C:39–1e, or other dangerous instrumentality of any kind in committing the crime.

SOURCE OR REFERENCE

N. J.: 2A: 85–8 to 13; 2A:164–3 *et seq.*; 2A:151–5
Model Penal Code: 7.03
Other: None

Study Draft Page: IG-11
Tentative Draft Page: 756
Commentary Page: 329

SECTION 2C:44–4. FORMER CONVICTION IN ANOTHER JURISDICTION; DEFINITION AND PROOF OF CONVICTION; SENTENCE TAKING INTO ACCOUNT ADMITTED CRIMES BARS SUBSEQUENT CONVICTION FOR SUCH CRIMES.

a. For purposes of Section 2C:44–3a, a conviction of the commission of an offense in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a crime if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction.

b. An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of Section 2C:44–3 and of this Section, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

c. Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction or imprisonment, that reasonably satisfies the Court that the defendant was convicted.

d. When the defendant has asked, pursuant to Section 2C:44–3d(2), that other offenses admitted in open court be taken into account when he is sentenced and the Court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in this State for any such admitted offense.

SOURCE OR REFERENCE

N. J.: 2A:85–8
Model Penal Code: 7.05
Other: None

Study Draft Page: IG-25
Tentative Draft Page: 764
Commentary Page: 332

SECTION 2C:44–5. MULTIPLE SENTENCES; CONCURRENT AND CONSECUTIVE TERMS.

a. *Sentences of Imprisonment for More Than One Offense.* When multiple sentences of imprisonment are imposed on a defendant for more than one offense, including an offense for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the Court determines at the time of sentence, except that:

(1) a term to a State penal or correctional institution and a definite term to a county institution shall run concurrently and both sentences shall be satisfied by service of the State term; and

(2) the aggregate of consecutive terms to a county institution shall not exceed eighteen months; and

(3) the aggregate of consecutive terms shall not exceed the longest extended term authorized for the highest grade and degree of crime for which any of the sentences was imposed; and

(4) not more than one sentence for an extended term shall be imposed.

b. *Sentences of Imprisonment Imposed at Different Times.* When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody;

(1) the multiple sentences imposed shall so far as possible conform to Subsection a of this Section; and

(2) whether the Court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term or terms remaining to be served; and

(3) when a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall be deemed to run during the period of the new imprisonment.

c. *Sentence of Imprisonment for Offense Committed While On Parole.* When a defendant is sentenced to imprisonment for an offense committed while on parole in this State, such term of imprisonment and any period of reimprisonment that the Parole Board may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the Court orders them to run consecutively.

d. *Multiple Sentences of Imprisonment in Other Cases.* Except as otherwise provided in this Section, multiple terms of imprisonment shall run concurrently or consecutively as the Court determines when the second or subsequent sentence is imposed.

e. *Calculation of Concurrent and Consecutive Terms of Imprisonment.*

(1) When terms of imprisonment run concurrently, the shorter terms merge in and are satisfied by discharge of the longest term.

(2) When terms of imprisonment run consecutively, the terms are added to arrive at an aggregate term to be served equal to the sum of all terms.

f. *Suspension of Sentence or Probation and Imprisonment; Multiple Terms of Suspension and Probation.* When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense committed prior to the former sentence:

(1) the Court shall not sentence to probation a defendant who is under sentence of imprisonment, except as authorized by Section 2C:43-2c(2);

(2) multiple periods of suspension or probation shall run concurrently from the date of the first such disposition;

(3) when a sentence of imprisonment in excess of one year is imposed, the service of such sentence shall satisfy a suspended sentence on another count or prior suspended sentence or sentence to probation; and

(4) when a sentence of imprisonment of one year or less is imposed, the period of a suspended sentence on another count or a prior suspended sentence or sentence to probation shall run during the period of such imprisonment.

g. *Offense Committed While Under Suspension of Sentence or Probation.* When a defendant is convicted of an offense committed while under suspension of sentence or on probation and such suspension or probation is not revoked:

(1) if the defendant is sentenced to imprisonment in excess of one year, the service of such sentence shall satisfy the prior suspended sentence or sentence to probation;

(2) if the defendant is sentenced to imprisonment of one year or less, the period of the suspension or probation shall not run during the period of such imprisonment; and

(3) if sentence is suspended or the defendant is sentenced to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the Court determines at the time of sentence.

SOURCE OR REFERENCE

N. J.: None	Study Draft Page: IG-30
Model Penal Code: 7.06	Tentative Draft Page: 768
Other: None	Commentary Page: 335

SECTION 2C:44-6. PROCEDURE ON SENTENCE; PRE-SENTENCE INVESTIGATION AND REPORT; REMAND FOR PSYCHIATRIC EXAMINATION.

a. The Court shall not impose sentence without first ordering a pre-sentence investigation of the defendant and according due

consideration to a written report of such investigation when required by Rules of Court. The Court may order a pre-sentence investigation in any other case.

b. The pre-sentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation and personal habits and may include a report on his physical and mental condition and any other matters that the probation officer deems relevant or the Court directs to be included.

c. Before imposing sentence, the Court may order the defendant to submit to a psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the Court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or mental hospital or the Court or the Probation Department may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the Court and the Probation Department.

d. Disclosure of any pre-sentence investigation report or psychiatric examination report shall be in accordance with law and the Rules of Court.

e. The Court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. The defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 7.07
Other: None

Study Draft Page: IG-38
Tentative Draft Page: 775
Commentary Page: 338

SECTION 2C:44–7. APPELLATE REVIEW OF ACTIONS OF SENTENCING COURT.

Any action taken by the Court in imposing sentence shall be subject to review by an Appellate Court in accordance with law and with the Rules of Court.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 779
Commentary Page: 339

SECTION 2C:44–8. COMMITMENT TO CORRECTIONAL INSTITUTION FOR OBSERVATION.

If, after pre-sentence investigation, the Court desires additional information concerning an offender convicted of an offense before imposing sentence, it may order that he be committed, for a period not exceeding ninety days for observation and study at an appropriate correctional institution. That institution shall advise the Court of its findings and recommendations on or before the expiration of such ninety-day period. If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the term of such sentencing.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 7.08
Other: None

Study Draft Page: IG-43
Tentative Draft Page: 780
Commentary Page: 339

CHAPTER 45. SUSPENSION OF SENTENCE: PROBATION

SECTION 2C:45-1. CONDITIONS OF SUSPENSION OR PROBATION.

a. When the Court suspends the imposition of sentence on a person who has been convicted of an offense or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this Section, as it deems necessary to insure that he will lead a law-abiding life or is likely to assist him to do so. These conditions may be set forth in a set of standardized conditions promulgated by the County Probation Department and approved by the Court.

b. The Court, as a condition of its order, may require the defendant:

(1) to support his dependents and meet his family responsibilities;

(2) to find and continue in gainful employment;

(3) to undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;

(4) to pursue a prescribed secular course of study or vocational training;

(5) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(6) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(7) not to have in his possession any firearm or other dangerous weapon unless granted written permission;

(8) to make restitution of the fruits of his offense, in an amount he can afford to pay, for the loss or damage caused thereby;

(9) to remain within the jurisdiction of the Court and to notify the Court or the probation officer of any change in his address or his employment;

(10) to report as directed to the Court or the probation officer, to permit the officer to visit his home, and to answer all reasonable inquiries by the probation officer;

(11) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

c. When the Court sentences a person who has been convicted of an offense, other than a petty disorderly persons offense, to be placed on probation, it may require him to serve a term of imprisonment not exceeding ninety days as an additional condition of its order. The term of imprisonment imposed hereunder shall be treated as part of the sentence, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent sentence.

d. The defendant shall be given a copy of this Chapter and written notice of any requirements imposed pursuant to this Section, stated with sufficient specificity to enable him to guide himself accordingly. The defendant shall acknowledge, in writing, his receipt of these documents and his consent to their terms.

SOURCE OR REFERENCE

N. J.: 2A:168–1, 2	Study Draft Page: None
Model Penal Code: 301.1	Tentative Draft Page: 782
Other: N. Y. §65.10(2)(d)	Commentary Page: 340

SECTION 2C:45–2. PERIOD OF SUSPENSION OR PROBATION; MODIFICATION OF CONDITIONS; DISCHARGE OF DEFENDANT.

a. When the Court has suspended sentence or has sentenced a defendant to be placed on probation, the period of the suspension or probation shall be fixed by the Court at not less than one year nor more than five years except in the case of disorderly persons offenses and petty disorderly persons offenses where the maximum period shall not exceed three years. The Court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time.

b. During the period of the suspension or probation, the Court, on application of a probation officer or of the defendant, or on its own motion, may (1) extend the period of probation within the limits imposed by Subsection a; (2) modify the requirements imposed on the defendant; or (3) add further requirements authorized by Section 2C:45–1. The Court shall eliminate any requirement that imposes an unreasonable burden on the defendant.

c. Upon the termination of the period of suspension or probation or the earlier discharge of the defendant, the defendant shall be

relieved of any obligations imposed by the order of the Court and shall have satisfied his sentence for the offense.

SOURCE OR REFERENCE

N. J.: 2A:168–1
Model Penal Code: 301.2
Other: None

Study Draft Page: None
Tentative Draft Page: 792
Commentary Page: 345

SECTION 2C:45–3. SUMMONS OR ARREST OF DEFENDANT UNDER SUSPENDED SENTENCE OR ON PROBATION; COMMITMENT WITHOUT BAIL; REVOCATION AND RE-SENTENCE.

a. At any time before the discharge of the defendant or the termination of the period of suspension or probation:

(1) the Court may summon the defendant to appear before it or may issue a warrant for his arrest;

(2) a probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order or that he has committed another offense, may arrest him without a warrant;

(3) the Court, if there is probable cause to believe that the defendant has committed another offense or if he has been held to answer therefor, may commit him without bail, pending a determination of the charge by the Court having jurisdiction thereof;

(4) the Court, if satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or if he has been convicted of another offense, may revoke the suspension or probation and sentence or resentence the defendant, as provided in this Section.

b. When the Court revokes a suspension or probation, it may impose on the defendant any sentence that might have been imposed originally for the offense of which he was convicted, except that the defendant shall not be sentenced to imprisonment unless:

(1) he has been convicted of another offense;

(2) the facts supporting the revocation indicate that his continued liberty involves excessive risk that he will commit another offense; or

(3) such disposition is essential to vindicate the authority of the Court.

SOURCE OR REFERENCE

N. J.: 2A:168–4
Model Penal Code: 301.3
Other: None

Study Draft Page: None
Tentative Draft Page: 794
Commentary Page: 346

SECTION 2C:45–4. NOTICE AND HEARING ON REVOCATION OF CONDITIONS OF SUSPENSION OR PROBATION.

The Court shall not revoke a suspension of sentence or probation except after a hearing upon written notice to the defendant of the grounds on which such action is proposed. The defendant shall have the right to hear and controvert the evidence against him, to offer evidence in his defense, and to be represented by counsel.

SOURCE OR REFERENCE

N. J.: 2A:168–4
Model Penal Code: 301.4
Other: None

Study Draft Page: None
Tentative Draft Page: 797
Commentary Page: 348

CHAPTER 46. FINES AND RESTITUTIONS

SECTION 2C:46–1. TIME AND METHOD OF PAYMENT; DISPOSITION OF FUNDS.

a. When a defendant is sentenced to pay a fine or to make restitution, the Court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine or restitution shall be payable forthwith.

b. When a defendant sentenced to pay a fine or to make restitution is also sentenced to probation, the Court may make the payment a condition of probation.

c. The defendant shall pay a fine or any installment thereof to the officer entitled by law to collect the fine. In the event of default in payment, such agency shall take appropriate action for its collection.

SOURCE OR REFERENCE

N. J.: 2A:168–2	Study Draft Page: None
Model Penal Code: 302.1	Tentative Draft Page: 798
Other: None	Commentary Page: 348

SECTION 2C:46–2. CONSEQUENCES OF NON-PAYMENT; SUMMARY COLLECTION.

a. When a defendant sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the Court, upon the motion of the person authorized by law to collect the fine or restitution, the prosecuting attorney or upon its own motion, may recall him, or issue a summons or a warrant of arrest for his appearance. After a hearing, the Court may reduce the fine or restitution, suspend it, or modify the payment or installment plan, or, if none of these alternatives is warranted, may impose a term of imprisonment to achieve the objective of the sentence. The term of imprisonment in such case shall be specified in the order of commitment. It need not be equated with any particular dollar amount but it shall not exceed one day for each five dollars of the fine nor sixty days if the fine was imposed upon conviction of a disorderly persons offense nor thirty days for a petty disorderly persons offense nor one year in any other case, whichever is the shorter period. In no case shall the total period of imprisonment in the case of a disorderly persons offense for both the sentence

of imprisonment and for failure to pay a fine exceed six months. When a fine is imposed on a corporation, it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held to be contumacious.

b. Upon any default in the payment of a fine, a restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.

SOURCE OR REFERENCE

N. J.: 2A:166–11, 2A:166–14
Model Penal Code: 302.2
Other: None

Study Draft Page: None
Tentative Draft Page: 799
Commentary Page: 348

SECTION 2C:46–3. REVOCATION OF FINE.

A defendant who has been sentenced to pay a fine may at any time petition the Court which sentenced him for a revocation of the fine or of any unpaid portion thereof. If it appears to the satisfaction of the Court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the Court may revoke the fine or the unpaid portion thereof in whole or in part.

SOURCE OR REFERENCE

N. J.: 2A:164–25
Model Penal Code: 302.3
Other: None

Study Draft Page: None
Tentative Draft Page: 802
Commentary Page: 351

CHAPTER 47. [RESERVED]

CHAPTER 48. [RESERVED]

CHAPTER 49. [RESERVED]

CHAPTER 50. [RESERVED]

AMENDMENTS TO STATUTES RELATING TO PAROLE

N.J.S. 30:4–106. Parole from State Penal and Correctional Institutions.

The State Parole Board shall have power to release upon parole, subject to the provisions of law, such inmates of state penal and correctional institutions as they may determine to be eligible therefor.

SOURCE OR REFERENCE

N. J.: 30:4–106	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 804
Other: None	Commentary Page: 352

N.J.S. 30:4–123.2. Chairman's Duties; Salary; Compensation of Associate Members.

The chairman and the associate members of the board shall devote their entire time to the performance of their duties and they shall receive such annual salaries as shall be fixed by the Governor, subject to appropriations to be made by law.

SOURCE OR REFERENCE

N. J.: 30:4–123.2	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 805
Other: None	Commentary Page: 352

N.J.S. 30:4–123.5. Powers and Duties of Board.

It shall be the duty of the board to determine when and under what conditions, subject to the provisions of this act, persons now or hereafter serving sentences in the several penal and correctional institutions of this State may be released upon parole.

In addition thereto, the board shall have full and complete jurisdiction over all persons sentenced to any penal or correctional institution of this State who have been paroled by the board of managers of such institutions under powers previously exercised by said board of managers.

The board shall have such other powers and jurisdictions as are provided in this act.

SOURCE OR REFERENCE

N. J.: 30:4–123.5	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 806
Other: None	Commentary Page: 352

N.J.S. 30:4–123.10. PAROLE ELIGIBILITY; CONSIDERATIONS.

a. Every person confined in a state penal or correctional institution shall be eligible for release on parole immediately upon confinement, except a person sentenced to life imprisonment who shall be so eligible after having been confined for fifteen years.

b. The board shall consider the desirability of parole of each inmate as soon as practicable after his confinement in a state institution, but in no case later than six months after his confinement, except in the case of a sentence of life imprisonment in which case he shall be considered at least sixty days prior to his first eligibility. Following such consideration, the board shall issue a formal order granting or denying parole. If parole is denied, the board shall state in its order the reasons therefor and the approximate date of next consideration. The board need not state any reasons for denial if to do so would impair a course of rehabilitative treatment of the inmate. The board shall reconsider its decision at least once every year thereafter until parole is granted.

c. This Section shall apply to all persons now incarcerated in state penal and correctional institutions. The Board may, however, delay for a reasonable time consideration required by Subsection b of present inmates whose eligibility has been accelerated by subsection a. The Board shall promulgate procedures to implement this Subsection and shall notify affected inmates of their new parole consideration hearing dates.

SOURCE OR REFERENCE

N. J.: 30:4–123.10, .11, .12	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 807
Other: None	Commentary Page: 352

N.J.S. 30:4–123.11. ELIGIBILITY FOR RELEASE OF PRISONERS SENTENCED FOR LIFE.

[To Be Repealed.]

SOURCE OR REFERENCE

N. J.: 30:4–123.10, .11, .12	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 811
Other: None	Commentary Page: 355

N.J.S. 30:4–123.12 LIMITATIONS ON GRANTING PAROLE.

[To Be Repealed.]

SOURCE OR REFERENCE

N. J.: 30:4–123.10, .11, .12	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 811
Other: None	Commentary Page: 355

N.J.S. 30:4–123.15. TERMS AND CONDITIONS OF PAROLE; LEGAL CUSTODY.

If the board shall determine that a prisoner is eligible for parole he may be released upon such terms and conditions as the Board shall prescribe, but while on parole he shall at all times remain in the legal custody of the warden, keeper or chief executive officer of the institution from which he is paroled, and under immediate supervision of the Division of Parole of the Department of Institutions and Agencies in accordance with the rules of the board until the expiration of his maximum parole term, less reductions for good behavior on parole, or until his earlier discharge from parole supervision.

SOURCE OR REFERENCE

N. J.: 30:4–123.15	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 816
Other: None	Commentary Page: 355

N.J.S. 30:4–123.16 RULES AND REGULATIONS FOR EARNING COMMUTATION TIME.

The Board shall establish rules and regulations whereby prisoners on parole shall earn commutation time in reduction of their parole term for good behavior on parole.

SOURCE OR REFERENCE

N. J.: 30:4–123.16	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 818
Other: None	Commentary Page: 355

N.J.S. 30:4–123.23. VIOLATION OF TERMS AND CONDITIONS OF PAROLE; REVOCATION OF PAROLE.

a. Whenever it shall appear to the satisfaction of the board that a paroled prisoner has violated the terms, conditions and limitations annexed to his parole and has given evidence by his conduct that he is unfit to be further at liberty, or if he shall be convicted of crime in this or any other State committed after the date of his parole, then the board shall have power to declare him delinquent and to revoke his parole by majority vote of the members of the board, by an order in writing signed by the chairman, upon forms and in manner to be prescribed by the rules of the board.

b. Prior to revoking the parole of any prisoner, the board may declare him to be delinquent on parole and shall notify him of this fact and of the reasons for the proposed revocation, and may, in

accordance with its rules, permit him an opportunity to appear before the board and show cause why his parole should not be revoked.

c. Except for the commission of a crime while on parole, it shall be the policy of the board to employ sanctions short of revocation for violations of parole. After consideration of the particular violation, the board may instead of revoking parole order that

(1) the parolee receive a reprimand and warning from the Board;

(2) parole supervision and reporting be intensified;

(3) reductions for good behavior be forfeited or withheld;

(4) the parolee be required to conform to one or more additional conditions of parole; or

(5) the parolee be arrested and returned to prison, there to await a hearing to determine whether his parole should be revoked.

SOURCE OR REFERENCE

N. J.: 30:4–123.23	Study Draft Page: None
Model Penal Code: 305.16	Tentative Draft Page: 819
Other: None	Commentary Page: 356

N.J.S. 30:4–123.24. Duration of Re-Imprisonment and Re-Parole After Revocation.

a. A parolee whose parole is revoked for violation of the conditions of parole shall be recommitted for the term provided by N. J. S. 2C:43–9c, after credit thereon for the period served on parole prior to the violation and for reductions for good behavior earned while on parole.

b. A parolee whose parole has been revoked may be considered by the Board for re-parole at any time. He shall be considered for re-parole not more than six months after reconfinement.

c. Persons recommitted for violation of parole prior to the effective date of this Section shall, with their consent, have their maximum term of imprisonment recomputed in accordance with Subsection a, or set at six months following the effective date of this section, whichever period shall be longer. All such persons shall be considered by the board for re-parole in accordance with Subsection b. The remaining period of incarceration eliminated from the person's sentence shall constitute a term of parole.

SOURCE OR REFERENCE

N. J.: 30:4–123.24	Study Draft Page: None
Model Penal Code: 305.17	Tentative Draft Page: 822
Other: None	Commentary Page: 356

N.J.S. 30:4–123.26. COPY OF REVOCATION.

If the prisoner at the time of revocation of parole is in custody in the same institution from which he was paroled but serving a sentence for an offense other than that for which he was paroled, a copy of the revocation shall be sent to the warden, keeper or chief executive officer of such institution, which shall be sufficient warrant and authority for the detention of the prisoner in accordance with the period of incarceration set out in the order of revocation.

SOURCE OR REFERENCE

N. J.: 30:4–123.26
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 825
Commentary Page: 358

N.J.S. 30:4–123.27. PERSONS SERVING SENTENCE OR AWAITING TRIAL FOR OFFENSE COMMITTED AFTER PAROLE.

If the prisoner is confined in an institution other than that from which originally paroled, and is serving a sentence or awaiting trial or indictment for an offense committed after his parole, then the board shall cause a warrant to issue and to be sent to the warden, keeper or chief executive officer of such institution wherein the prisoner is confined. Such warrant shall be sufficient authority to detain the prisoner therein and to cause his retaking to and reimprisonment in the institution from which he was originally paroled for the period of incarceration set out in the order of revocation.

SOURCE OR REFERENCE

N. J.: 30:4–123.27
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 826
Commentary Page: 358

N.J.S. 30:4–123.30. DISCHARGE FROM PAROLE; RELIEF FROM MAKING REPORTS; LEAVING STATE.

(1) The board may by written order relieve a prisoner on parole from making further reports to his parole officer, and may in writing permit such prisoner to leave the State and reside elsewhere if satisfied that such change of residence is for the best interest of society and the welfare of the prisoner. Any such permission may be revoked by the board in its discretion.

(2) Any person serving a parole term may, in the discretion of the board, be given a complete discharge from the parole prior to the expiration of his maximum parole term, provided that he

has completed at least two years of satisfactory adjustment while on parole.

(3) A parolee's discharge from parole or from recommitment for violation of parole becomes mandatory upon completion of the maximum parole term less reductions for good behavior.

SOURCE OR REFERENCE

N. J.: 30:4–123.30
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 827
Commentary Page: 358

CHAPTER 51. LOSS AND RESTORATION OF RIGHTS INCIDENT TO CONVICTION OF AN OFFENSE

SECTION 2C:51-1. BASIS OF DISQUALIFICATION OR DISABILITY.

a. No person shall suffer any legal disqualification or disability because of his conviction of an offense or his sentence on such conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is:

(1) necessarily incident to execution of the sentence of the Court;

(2) provided by the Constitution or the Code;

(3) provided by a statute other than the Code, when the conviction is of an offense defined by such statute; or

(4) provided by the judgment, order or regulation of a court, agency or official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the offense or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

b. Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness is not a disqualification or disability within the meaning of this Chapter.

SOURCE OR REFERENCE

N. J.: None
Model Penal Code: 306.1
Other: None

Study Draft Page: None
Tentative Draft Page: 830
Commentary Page: 359

SECTION 2C:51-2. FORFEITURE OF PUBLIC OFFICE.

a. A person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:

(1) he is convicted under the laws of this State of an offense involving dishonesty or of a crime involving moral turpitude or under the laws of another State or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;

(2) he is convicted of an offense involving or touching such office, position or employment; or

(3) the Constitution or a statute other than the Code so provides.

b. The forfeiture set forth in Subsection a shall take effect upon sentencing unless the sentencing court or an appellate court, for good cause shown, orders a stay of such forfeiture. If the conviction be reversed, he shall be restored to his office, position or employment with all the rights, emoluments and salary thereof from the date of forfeiture.

SOURCE OR REFERENCE

N. J.: 2A:93–5; 2A:135–9; Various Provisions in Title 40
Model Penal Code: 306.2
Other: None

Study Draft Page: None
Tentative Draft Page: 834
Commentary Page: 360

SECTION 2C:51–3. VOTING AND JURY SERVICE.

Except as otherwise specifically provided by law, a person who is convicted of an offense shall be disqualified

a. from voting in a primary or general election if and only so long as he is committed under a sentence of imprisonment; and

b. from serving as a juror until he has satisfied his sentence and, in the case of a conviction of a crime, for a period of five years thereafter.

SOURCE OR REFERENCE

N. J.: 19:4–1; 2A:69–1
Model Penal Code: 306.3
Other: None

Study Draft Page: None
Tentative Draft Page: 837
Commentary Page: 362

SECTION 2C:51–4. ORDER REMOVING DISQUALIFICATIONS OR DISABILITIES; VACATION OF CONVICTION; EFFECT OF ORDER OF REMOVAL OR VACATION.

a. In the cases specified in this Subsection, the Court may order that so long as the defendant is not convicted of another offense, the judgment shall not thereafter constitute a conviction for the purpose of any disqualification or disability imposed by law because of the conviction of an offense:

(1) in sentencing a young adult offender as provided by Section 2C:43–5 or to any sentence other than one of imprisonment;

(2) when the Court has theretofore suspended sentence or has sentenced the defendant to be placed on probation and the defendant has fully complied with the requirements imposed as a condition of such order and has satisfied the sentence;

(3) when the Court has theretofore sentenced the defendant to imprisonment and the defendant has been released on parole, has fully complied with the conditions of parole and has been discharged; or

(4) when the Court has theretofore sentenced the defendant, the defendant has fully satisfied the sentence and has since led a law-abiding life for at least two years.

b. In the cases specified in this Subsection, the Court which sentenced a defendant may enter an order vacating the judgment of conviction:

(1) when an offender has been discharged from probation or parole before the expiration of the maximum term thereof; or

(2) when a defendant has fully satisfied the sentence and has since led a law-abiding life for at least five years.

c. An order entered under Subsection a or b of this Section:

(1) has only prospective operation and does not require the restoration of the defendant to any office, employment or position forfeited or lost in accordance with this Chapter;

(2) does not preclude proof of the conviction as evidence of the commission of the crime, whenever the fact of its commission is relevant to the determination of an issue involving the rights or liabilities of someone other than the defendant;

(3) does not preclude consideration of the conviction for purposes of sentence if the defendant subsequently is convicted of another offense;

(4) does not preclude proof of the conviction as evidence of the commission of the offense, whenever the fact of its commission is relevant to the exercise of the discretion of a court, agency or official authorized to pass upon the competency of the defendant to perform a function or to exercise a right or privilege which such court, agency or official is empowered to deny, except that in such case the court, agency or official shall also give due weight to the issuance of the order;

(5) does not preclude proof of the conviction as evidence of the commission of the offense, whenever the fact of its commission is relevant for the purpose of impeaching the defendant as a wit-

ness, except that the issuance of the order may be adduced for the purpose of his rehabilitation; and

(6) does not justify a defendant in stating that he has not been convicted of an offense, unless he also calls attention to the order.

SOURCE OR REFERENCE

N. J.: 2A:164–28; 2A:169–11	Study Draft Page: None
Model Penal Code: 306.6	Tentative Draft Page: 844
Other: None	Commentary Page: 366

CHAPTER 52. [RESERVED]

SUBTITLE 4

ADMINISTRATIVE PROVISIONS

CHAPTER 53. SEIZURE OF OBSCENE MATERIALS

SECTION 2C:53–1. SEIZURE OF OBSCENE MATERIALS.

[No Recommendation]

SOURCE OR REFERENCE

N. J.: 2A:115–3.3 Through 3.10
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 851
Commentary Page: 368

CHAPTER 54. WIRETAPPING AND ELECTRONIC SURVEILLANCE CONTROL

SECTION 2C:54–1. GENERAL PROVISIONS.

a. This Chapter, together with Section 2C:33–12, shall be known and may be cited as the "New Jersey Wiretapping and Electronic Surveillance Control Act."

b. *Definitions.* As used in this Chapter and in Section 2C:33–12,

(1) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by wire, cable or other like connection between the point of origin and the point of reception furnished or operated by a telephone, telegraph or radio company for hire as a communication common carrier.

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

(3) "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device.

(4) "Intercepting device" means any device or apparatus that can be used to intercept a wire or oral communication other than

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, furnished to the subscriber or user by a communication common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or being used by a communication common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Person" means that term as defined in R.S. 1:1–2 and includes any officer or employee of the State or of a political subdivision thereof.

(6) "Investigative or law enforcement officer" means any officer of the State of New Jersey or of a political subdivision thereof who

is empowered by law to conduct investigations of, or to make arrests for, any offense enumerated in Section 2C:54–3a and any attorney authorized by law to prosecute or participate in the prosecution of any such offense.

(7) "Contents", when used with respect to any wire or oral communication includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(8) "Court of competent jurisdiction" means the Superior Court.

(9) "Judge", when referring to a judge authorized to receive applications for, and to enter orders authorizing interceptions of wire or oral communications, means one of the several judges of the Superior Court to be designated from time to time by the Chief Justice of the Supreme Court to receive applications for, and to enter, orders authorizing interceptions of wire or oral communications pursuant to this Chapter.

(10) "Communication common carrier" means any person engaged as a common carrier for hire, in intrastate, interstate or foreign communication by wire or radio or in intrastate, interstate or foreign radio transmission of energy; but a person engaged in radio broadcasting shall not, while so engaged, be deemed a common carrier.

(11) "Aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed.

SOURCE OR REFERENCE

N. J.: 2A:156A–1 and 2
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 853
Commentary Page: 368

SECTION 2C:54–2. NUISANCE; SEIZURE AND FORFEITURE OF INTERCEPTING DEVICES.

Any intercepting device possessed, used, sent, distributed, manufactured, or assembled in violation of Section 2C:33–12c is hereby declared to be a nuisance and may be seized and forfeited to the State.

SOURCE OR REFERENCE

N. J.: 2A:158A–7
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 855
Commentary Page: 368

SECTION 2C:54-3. AUTHORIZED INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

a. *Order Authorizing Interception of Wire or Oral Communications.* The Attorney General, a county prosecutor, or the chairman of the State Commission of Investigation when authorized by a majority of the members of that commission or a person designated to act for such an official and to perform his duties in and during his actual absence or disability may authorize, in writing, an ex parte application to a judge designated to receive the same for an order authorizing the interception of a wire or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, theft by extortion, loan sharking, dealing in narcotic drugs, marijuana or other dangerous drugs, arson, burglary, theft by embezzlement, forgery, theft by receiving stolen property, escape, alteration of motor vehicle identification numbers or theft punishable by imprisonment for more than one year, or any conspiracy to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

b. *Application for Order; Contents.* Each application for an order of authorization to intercept a wire or oral communication shall be made in writing upon oath or affirmation and shall state:

(1) the authority of the applicant to make such application;

(2) the identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire or oral communication is sought and the identity of whoever authorized the application;

(3) a particular statement of the facts relied upon by the applicant, including:

(a) the identity of the particular person, if known, committing the offense and whose communications are to be intercepted;

(b) the details as to the particular offense that has been, is being, or is about to be committed;

(c) the particular type of communication to be intercepted;

(d) the character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be intercepted;

(e) a statement of the period of time for which the interception is required to be maintained or, if the character of the investigation is such that the authorization for interception should not auto-

matically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(f) a particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such result;

(5) a complete statement of the facts concerning all previous applications known to the individual authorizing and to the individual making the application, made to any court for authorization to intercept a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each such application; and

(6) such additional testimony or documentary evidence in support of the application as the judge may require.

c. *Grounds for Entry of Order.* Upon consideration of an application, the judge may enter an ex parte order, as requested or as modified, authorizing the interception of a wire or oral communication, if the Court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:

(1) the person whose communication is to be intercepted is engaging or was engaged over a period of time as a part of a continuing criminal activity or is committing, has or had committed or is about to commit an offense as provided in Subsection a of this Section;

(2) particular communications concerning such offense may be obtained through such interception;

(3) normal investigative procedures with respect to such offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) the facilities from which, or the place where, the wire or oral communications are to be intercepted, are or have been used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, such individual; and

(5) the investigative or law enforcement officers or agency to be authorized to intercept the wire or oral communication are qualified by training and experience to execute the interception sought.

d. *Public Facilities; Additional Grounds for Issuance of Order.* If the facilities from which a wire communication is to be intercepted are public, no order shall be issued unless the court, in addition to the matters provided in Subsection c of this Section determines that there is a special need to intercept wire communications over such facilities.

If the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, or are leased to, listed in the name of, or commonly used by, a licensed physician, an attorney-at-law, or practicing clergyman, or is a place used primarily for habitation by a husband and wife, no order shall be issued unless the court, in addition to the matters provided in Subsection c of this Section determines that there is a special need to intercept wire or oral communications over such facilities or in such places. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this act, shall lose its privileged character.

e. *Required Statements in Order; Scope of Order; Extensions and Renewals, Progress Reports.* Each order authorizing the interception of any wire or oral communication shall state:

(1) the judge is authorized to issue the order;

(2) the identity of, or a particular description of, the person, if known, whose communications are to be intercepted;

(3) the character and location of the particular communication facilities as to which, or the particular place of the communication as to which, authority to intercept is granted;

(4) a particular description of the type of the communication to be intercepted and a statement of the particular offense to which it relates;

(5) the identity of the investigative or law enforcement officers or agency to whom the authority to intercept a wire or oral communication is given and the identity of whoever authorized the application; and

(6) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

No order entered under this section shall authorize the interception of any wire or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this act. In no case shall an order entered under this section authorize the interception of wire or oral communications for any period exceeding 30 days. Extensions or renewals of such an order may be granted for periods of not more than 30 days. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the court makes the findings required by Subsections c and d of this Section and this subsection.

Whenever an order authorizing an interception is entered, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court may require.

f. *Emergency Situations; Authority to Grant Verbal Approval for Interception without Order.* Whenever, upon informal application by an authorized applicant, a judge determines there are grounds upon which an order could be issued pursuant to this act, and that an emergency situation exists with respect to the investigation of conspiratorial activities of organized crime, related to an offense designated in Subsection a of this Section dictating authorization for immediate interception of wire or oral communication before an application for an order could with due diligence be submitted to him and acted upon, the judge may grant verbal approval for such interception without an order, conditioned upon the filing with him, within 48 hours thereafter, of an application for an order which, if granted, shall recite the verbal approval and be retroactive to the time of such verbal approval. Such interception shall immediately terminate when the communication sought is obtained or when the application for an order is denied. In the event no application for an order is made, the content of any wire or oral communication intercepted shall be treated as having been obtained in violation of this act.

In the event no application is made or any application made pursuant to this section is denied, the court shall require the wire, tape or other recording of the intercepted communication to be delivered to, and sealed by, the court and such evidence shall be

retained by the court in accordance with Subsection g of this Section and the same shall not be used or disclosed in any legal proceeding except in a civil action brought by an aggrieved person pursuant to Section 2C:54–6 or as otherwise authorized by court order. Failure to effect delivery of any such wire, tape or other recording shall be punishable as contempt by the court directing such delivery. Evidence of verbal authorization to intercept an oral or wire communication shall be a defense to any charge against the investigating or law enforcement officer for engaging in unlawful interception.

g. *Recording of Intercepted Communications, Custody; Destruction; Duplicate Tapes or Wires.* Any wire or oral communication intercepted in accordance with this act shall, if practicable, be recorded by tape, wire or other comparable method. The recording shall be done in such a way as will protect it from editing or other alteration. Immediately upon the expiration of the order or extensions or renewals thereof, the tapes, wires or other recordings shall be transferred to the judge issuing the order and sealed under his direction. Custody of the tapes, wires or other recordings shall be maintained wherever the court directs. They shall not be destroyed except upon an order of such court and in any event shall be kept for 10 years. Duplicate tapes, wires or other recordings may be made for disclosure or use pursuant to Subsection j(1) of this Section. The presence of the seal provided by this section, or a satisfactory explanation for its absence, shall be a prerequisite for the disclosure of the contents of any wire or oral communication, or evidence derived therefrom, under Subsection j(1) of this Section.

h. *Sealing of Applications, Orders and Supporting Papers; Destruction; Disclosure of Contents, Violations.* Applications made and orders granted pursuant to this act and supporting papers shall be sealed by the court and shall be held in custody as the court shall direct and shall not be destroyed except on order of the court and in any event shall be kept for 10 years. They may be disclosed only upon a showing of good cause before a court of competent jurisdiction.

Any violation of the provisions of this Section may be punished as contempt of the issuing or denying court.

i. *Service of Inventory by Judge; Contents; Inspection of Intercepted Communications, Applications and Orders.* Within a reasonable time but not later than 90 days after the termination of the period of the order or of extensions or renewals thereof, or the date

of the denial of an order applied for under Subsection f of this Section the issuing or denying judge shall cause to be served on the person named in the order or application, and such other parties to the intercepted communications as the judge may in his discretion determine to be in the interest of justice, an inventory which shall include:

(1) notice of the entry of the order or the application for an order denied under Subsection f of this Section;

(2) the date of the entry of the order or the denial of an order applied for under Subsection f of this Section;

(3) the period of authorized or disapproved interception; and

(4) the fact that during the period wire or oral communications were or were not intercepted.

The Court, upon the filing of a motion, may in its discretion make available to such person or his attorney for inspection such portions of the intercepted communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this Section may be postponed.

j. *Disclosure or Use of Contents of Wire or Oral Communication or Derivative Evidence.*

(1) Any investigative or law enforcement officer, who by any means authorized by this act, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to another investigative or law enforcement officer to the extent that such disclosure or use is appropriate to the proper performance of his official duties.

(2) Any person who, by any means authorized by this act, has obtained any information concerning any wire or oral communication or evidence derived therefrom intercepted in accordance with the provisions of this act, may disclose the contents of such communication or derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this or another State or of the United States or before any Federal or State grand jury.

(3) The contents of any intercepted wire or oral communication, or evidence derived therefrom, may otherwise be disclosed or used only upon a showing of good cause before a court of competent jurisdiction.

k. *Interception of Communications Relating to Other Offenses; Disclosure or Use; Application.* When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Subsection j(1) of this Section. Such contents and any evidence derived therefrom may be used under Subsection j(1) of this Section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this act. Such application shall be made as soon as practicable.

l. *Service of Copy of Order and Application Before Disclosure of Intercepted Communication in Trial, Hearing or Proceeding.* The contents of any wire or oral communication intercepted in accordance with the provisions of this act, or evidence derived therefrom, shall not be disclosed in any trial, hearing, or proceeding before any court of this State unless not less than 10 days before the trial, hearing or proceeding the parties to the action have been served with a copy of the order and accompanying application under which the interception was authorized.

The service of inventory, order, and application required by this section may be waived by the court where it finds that the service is not practicable and that the parties will not be prejudiced by the failure to make the service.

SOURCE OR REFERENCE

N. J.: 2A:156A–8 through 18 and 20
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 856
Commentary Page: 368

SECTION 2C:54–4. SUPPRESSION OF CONTENTS OF INTERCEPTED COMMUNICATION AND OF DERIVATIVE EVIDENCE.

a. *Motion to Suppress; Grounds.* Any aggrieved person in any trial, hearing, or proceeding in or before any court or other authority of this State may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that:

(1) the communication was unlawfully intercepted;

(2) the order of authorization is insufficient on its face; or

(3) The interception was not made in conformity with the order of authorization.

The motion shall be made at least 10 days before the trial, hearing, or proceeding unless there was no opportunity to make the motion or the moving party was not aware of the grounds for the motion. The court, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as is determined to be in the interests of justice. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall not be received in evidence in the trial, hearing or proceeding.

b. *Appeals.* In addition to any other right to appeal, the State shall have the right to appeal from an order granting a motion to suppress if the official to whom the order authorizing the intercept was granted shall certify to the court that the appeal is not taken for purposes of delay. The appeal shall be taken within the time specified by the Rules of Court and shall be diligently prosecuted.

SOURCE OR REFERENCE

N. J.: 2A:156A–21	Study Draft Page: None
Model Penal Code: None	Tentative Draft Page: 862
Other: None	Commentary Page: 368

SECTION 2C:54–5. REPORTS CONCERNING AUTHORIZED INTERCEPTIONS.

a. *Report by Issuing or Denying Judge to Administrative Director of Courts; Contents.* Within 30 days after the expiration of an order or an extension or renewal thereof entered under this act or the denial of an order confirming verbal approval of interception, the issuing or denying judge shall make a report to the Administrative Director of the Courts stating that:

(1) an order, extension or renewal was applied for;

(2) the kind of order applied for;

(3) the order was granted as applied for, was modified, or was denied;

(4) the period of the interceptions authorized by the order, and the number and duration of any extensions or renewals of the order;

(5) the offense specified in the order, or extension or renewal of an order;

(6) the identity of the person authorizing the application and of the investigative or law enforcement officer and agency for whom it was made; and

(7) the character of the facilities from which or the place where the communications were to be intercepted.

b. *Annual Reports by Superior Court Judges and Chief Justice of Supreme Court.* In addition to reports required to be made by applicants pursuant to Federal law, all judges of the Superior Court authorized to issue orders pursuant to this act shall make annual reports on the operation of this act to the Administrative Director of the Courts. The reports by the judges shall contain (1) the number of applications made; (2) the number of orders issued; (3) the effective periods of such orders; (4) the number and duration of any renewals thereof; (5) the crimes in connection with which the conversations were sought; (6) the names of the applicants; and (7) such other and further particulars as the Administrative Director of the Courts may require.

The Chief Justice of the Supreme Court shall annually report to the Governor and the Legislature on such aspects of the operation of this Chapter as he deems appropriate including any recommendations he may care to make as to legislative changes or improvements to effectuate the purposes of this Chapter and to assure and protect individual rights.

SOURCE OR REFERENCE

N. J.: 2A:156A–22 and 23
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 863
Commentary Page: 369

SECTION 2C:54–6. CIVIL ACTION FOR UNLAWFUL INTERCEPTION, DISCLOSURE OR USE OF WIRE OR ORAL COMMUNICATION.

Any person whose wire or oral communication is intercepted, disclosed or used in violation of this Chapter or Section 2C:33–11 shall have a civil cause of action against any person who intercepts, discloses or uses or procures any other person to intercept, disclose or use such communication, and shall be entitled to recover from any such person:

a. actual damages, but not less than liquidated damages computed at the rate of $100.00 a day for each day of violation, or $1,000.00, whichever is higher;

b. punitive damages; and

c. a reasonable attorney's fee and other litigation costs reasonably incurred.

SOURCE OR REFERENCE

N. J.: 2A:156A–24
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 864
Commentary Page: 369

SECTION 2C:54–7. GOOD FAITH RELIANCE ON COURT ORDER AS DEFENSE.

A good faith reliance on a court order authorizing the interception shall constitute a complete defense to a civil or criminal action brought under this Chapter or Section 2C:33–12 or to administrative proceedings brought against a law enforcement officer.

SOURCE OR REFERENCE

N. J.: 2A:156A–25
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 865
Commentary Page: 369

SECTION 2C:54–8. PARTIAL INVALIDITY.

If any Section, Subsection or portion or provision of any Section or Subsections of this Chapter or of Section 2C:33–11 or the application thereof by or to any person or circumstances is declared invalid, the remainder of such Section or Sections or Subsection and the application thereof by or to other persons or circumstances shall not be affected thereby.

SOURCE OR REFERENCE

N. J.: 2A:156A–26
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 866
Commentary Page: 369

CHAPTER 55. [RESERVED]

CHAPTER 56. NUISANCE

SECTION 2C:56–1. NUISANCES AND THEIR ABATEMENT

a. *Places Constituting Nuisance.* Every premises, place or resort where persons gather for purposes of engaging in unlawful conduct is a nuisance.

b. *Abating Nuisance; Seizure and Forfeiture of Chattels Involved.* In addition to the penalty imposed in case of conviction under Section 2C:33–12b, the Court may order the immediate abatement of the nuisance, and for that purpose may order the seizure and forfeiture or destruction of any chattels, liquors or other personal property which may be found in such building or place, and which the Court is satisfied from the evidence were possessed or used with a purpose of maintaining the nuisance. Any such forfeiture shall be in the name and to the use of the State of New Jersey, and the Court shall direct the forfeited property to be sold at public sale, the proceeds to be paid to the treasurer of the county wherein conviction was had.

c. *Additional Penalty.* If the owner of any building or place is found guilty of maintaining a nuisance, the Court may order that the building or place where the nuisance was maintained be closed and not used for a period not exceeding one year from the date of the conviction.

SOURCE OR REFERENCE

N. J.: 2A:130–2, 4 and 5
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 867
Commentary Page: 369

CHAPTER 57. [RESERVED]

CHAPTER 58. LICENSING AND OTHER PROVISIONS RELATING TO FIREARMS

SECTION 2C:58–1. REGISTRATION OF MANUFACTURERS AND WHOLESALERS OF FIREARMS.

a. *In General.* No person shall manufacture or sell at wholesale any firearm until he has registered with the Superintendent and shall furnish him with such particulars as may be prescribed by law and by rules and regulations promulgated by the Superintendent for registration. The application for registration shall be accompanied by a fee of $50.00 and may be renewed annually upon payment of a fee of $25.00.

The Superintendent shall prescribe standards and qualifications for registration of manufacturers and wholesalers of firearms, for the protection of the public safety, health and welfare. If the Superintendent is satisfied that an applicant for registration cannot be permitted to carry on business as a manufacturer or wholesale dealer in firearms without danger to the public health, safety or welfare, he may refuse to register the applicant.

The Superintendent shall furnish a certificate of registration to every person registered under this Section.

b. *Removal of Name from Register.* If a person desires to have his name removed from registration, or if the Superintendent is satisfied that a registered person is no longer carrying on the business for which he was registered, or has ceased to have a place of business within the State, or cannot longer be permitted to carry on his business without danger to the public safety, the said Superintendent shall, after reasonable notice to the registered person and hearing thereon, cause his name to be removed from registration.

c. *Appeals.* Any person aggrieved by the refusal of the Superintendent to register him as such manufacturer or wholesale dealer, or by removal of his name from registration, may appeal to the Appellate Division of the Superior Court.

d. *Manufacturer and Wholesale Dealer to Keep Record of Sales.* Every manufacturer and wholesale dealer shall keep a detailed record of each firearm enumerated in Subsection a of this Section sold by him. The record shall include the date of sale, the name and

address of the purchaser, a description of each firearm and the serial number thereof. The information contained in the record shall be available at all reasonable hours for inspection by any law enforcement officer.

SOURCE OR REFERENCE

N. J.: 2A:151–19 to 22
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 868
Commentary Page: 369

SECTION 2C:58–2. RETAILING OF FIREARMS.

a. *Licenses for Retail Dealers; By Whom Granted; Conditions Upon Which Licenses Granted.* No retail dealer shall sell or expose for sale, or possess with the purpose of selling, any firearm unless licensed to do so as hereinafter provided.

The Superintendent shall prescribe standards and qualifications for retail dealers of firearms for the protection of the public safety, health and welfare.

A Judge of the County Court wherein the retail dealer has his place of business shall grant licenses in form prescribed by the Superintendent to applicants who meet such standards and qualifications, effective for not more than 1 year from the date of issue, permitting the licensee to sell firearms at retail within a specified municipality. The application shall be accompanied by a fee of $10.00 payable to the Superintendent and may be renewed annually upon payment of a fee of $5.00.

No license shall be granted to any person under the age of 21 years or to any person who could not qualify to obtain a permit to purchase a pistol or revolver or firearms purchaser identification card under Subsection b of this Section or to any corporation, partnership or other business organization in which a controlling or dominating interest is held or possessed by such a person or persons.

Licenses shall be granted subject to the following conditions, for breach of any of which the license shall be subject to revocation on application of any law enforcement officer and after hearing by the issuing court:

(1) the business shall be carried on only in the building or buildings designated in the license, provided that repairs may be made by the dealer or his employees outside of such premises;

(2) the license or a copy certified by the issuing authority shall be displayed in a conspicuous place on the premises in which the business is conducted where it can be easily read;

(3) no firearm or imitation thereof shall be placed in any window or in any part of the premises where it can readily be seen from the outside;

(4) no pistol or revolver shall be delivered to any person:

(a) unless the person has obtained a permit to purchase under the provisions of Section 2C:58–3;

(b) until 7 days have elapsed after the date of the application for the permit;

(c) unless the person either is personally known to the seller or presents evidence of his identity; and

(d) unless the pistol or revolver is unloaded and securely wrapped;

(5) a true record of every pistol or revolver sold, given or otherwise delivered or disposed of shall be kept by the retail dealer in accordance with the provisions of Subsection b through f of this Section; and

(6) no rifle or shotgun shall be delivered to any person:

(a) unless the person has obtained a firearms purchaser identification card under the provisions of this Chapter; and

(b) unless the person has exhibited his firearms purchaser identification card and furnished the seller, on a form prescribed by the superintendent, a certification signed by him which shall contain among other things the name, permanent home address and firearms purchaser identification card number of said person. The certification shall be retained by the dealer and shall for law enforcement purposes be made available for inspection by any law enforcement officer.

b. *Record of Sales to Be Kept; Inspection of Register.* Every person engaged in the retail business of selling, leasing or otherwise transferring a pistol, or revolver, whether such seller, lessor or transferor is a retail dealer or otherwise, shall keep a register in which shall be entered the time of the sale, lease or other transfer, the date thereof, the name, age, date of birth, complexion, occupation, residence and a physical description including distinguishing physical characteristics, if any, of the purchaser, lessee or trans-

feree, the name and permanent home address of the person making the sale, lease or transfer, the place of the transaction, and the make, model, manufacturer's number, caliber or other marks of identification on such pistol or revolver and such other information as the Superintendent shall deem necessary for the proper enforcement of this Chapter. The register shall be retained by the dealer and shall be made available at all reasonable hours for the inspection of any law enforcement officer.

c. *Preparation and Furnishing.* The Superintendent shall prepare the form of the register as described in Subsection b of this Section and furnish the same in triplicate to each person licensed to be engaged in the business of selling, leasing, or otherwise transferring firearms.

d. *Signatures on Register.* The purchaser, lessee or transferee of any pistol or revolver shall sign, and the dealer shall require him to sign his name to the register, in triplicate, and the person making the sale, lease or transfer shall affix his name, in triplicate, as a witness to the signature. The signatures shall constitute a representation of the accuracy of the information contained in the register.

e. *Copies of Register Entries; Delivery to Chief of Police or County Clerk.* Within 5 days of the date of the sale, assignment or transfer, the dealer shall deliver or mail by certified mail, return receipt requested, to the office of the chief of police of the municipality in which the purchaser resides, or to the office of the captain of the precinct of the municipality in which the purchaser resides, and to the Superintendent, legible copies of the entries in the register on the duplicate copies of the register forms. If hand delivered a receipt shall be given to the dealer therefor.

Where a sale, assignment or transfer is made to a purchaser who resides in a municipality having no chief of police, the dealer shall, within 5 days of the transaction, mail a duplicate copy of the register sheet to the clerk of the county within which the purchaser resides.

SOURCE OR REFERENCE

N. J.: 2A:151–24 to 28
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 869
Commentary Page: 369

SECTION 2C:58–3. PERMITS TO PURCHASE FIREARMS.

a. *Purchaser Must Have Permit; Firearms Purchaser Identification Card.*

(1) No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a pistol or revolver unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this Chapter or has first secured a permit to purchase a pistol or revolver as provided by this Section.

(2) No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire a rifle or shotgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the Superintendent, which shall indicate that he presently complies with the requirements of Subsection c of this Section and shall contain his name, address and firearms purchaser identification card number or dealer's registration number. The said certification shall be retained by the seller, as provided in Section 2C:58–2a, or, in the case of a person who is not a dealer, it may be filed with the chief of police of the municipality in which he resides or with the Superintendent.

(3) Notwithstanding any other provision of this Section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to his heir or legatee whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive or acquire said firearm shall, however, be subject to all other provisions of this Chapter and if the heir or legatee of such firearm does not qualify to possess or carry it, the firearm may be possessed by him for the purpose of sale for a period not exceeding 180 days, or for such further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the Superintendent.

b. *Permit to Purchase; Who May Obtain.* No person of good character and who is of good repute in the community in which he lives, and who is not subject to any of the disabilities set forth in this Section or other Sections of this Chapter, shall be denied a permit to purchase a pistol or revolver or a firearms purchaser identification card, except as hereinafter set forth:

(1) no pistol or revolver purchase permit or firearms purchaser identification card shall be issued to any person who has ever been convicted of any crime, to any person addicted to narcotics or who is a habitual user of controlled dangerous substances, to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently a habitual drunkard;

(2) to any person who suffers from a physical defect or sickness which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic, unless any of the foregoing persons produce a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms;

(3) to any person under the age of 18 years; or

(4) to any person where the issuance would not be in the interest of the public health, safety or welfare.

c. *Issuance of Permit or Purchaser Identification Card by Chief of Police; Hearing upon Denial.* The chief of police of an organized full-time police department of the municipality where the applicant resides or the Superintendent, in all other cases, shall upon application, issue to any person qualified under the provisions of Subsection b of this Section a permit to purchase a pistol or revolver or a firearms purchaser identification card.

Any person aggrieved by the denial of a permit or identification card may request a hearing in the County Court of the county in which he resides if he is a resident of New Jersey or in the County Court of the county in which his application was filed if he is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit or identification card. The applicant shall serve a copy of his request for a hearing upon the chief of police of the municipality in which he resides, if he is a resident of New Jersey, and upon the Superintendent in all cases. The hearing shall be held and a record made thereof within 30 days of the receipt of the application for such hearing by the judge of the County Court. No formal pleading and no filing fee shall be required as a preliminary to such hearing. Appeals from the results of such hearing shall be in accordance with law.

d. *Applications for Permits and Identification Cards; Contents; Blanks; Fingerprints.* Applications for permits to purchase a pistol or revolver and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description including, distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, addicted to narcotic drugs or is a habitual user of goofballs or pep pills, whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey, whether he has ever been convicted of a crime or disorderly persons offense, and such other information as the Superintendent shall deem necessary for the proper enforcement of this chapter. The application shall be signed by the applicant and shall contain as reference the names and addresses of 2 reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the Superintendent and from any other officer authorized to grant such permit or identification card, and may be obtained from licensed retail dealers.

The chief police officer or the Superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a pistol or revolver purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a pistol or revolver purchase permit from the same licensing authority for which he was previously

fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the Superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this Chapter.

e. *Granting of Permit or Identification Card; Fee; Term; Renewal; Revocation.* The application for the permit to purchase a pistol or revolver, or the firearms purchase identification card, together with a fee of $2.00 shall be delivered or forwarded to the licensing authority who shall investigate the same and, unless good cause for the denial thereof appears, shall grant the permit or the identification card, or both, if application has been made therefor, within 10 days from the date of receipt of the application for residents of this State and within 15 days for nonresident applicants. A permit to purchase a pistol or revolver shall be valid for a period of 90 days from the date of issuance and may be renewed by the issuing authority for good cause for an additional 90 days. A firearms purchaser identification card shall be valid permanently or until such time as the holder becomes subject to any of the disabilities set forth in Subsection b of this Section whereupon the card shall be void and shall be returned within 5 days by the holder to the Superintendent, who shall then advise the licensing authority. Failure of the holder to return the firearms purchaser identification card to the Superintendent within the said 5 days shall be an offense under Section 2C:39–2. Any firearms purchaser identification card may be revoked by the County Court of the county wherein the card was issued, after hearing upon notice, and upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such Court at any time for the revocation of such card.

There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this Chapter.

f. *Disposition of Fees.* All fees for permits shall be paid to the state treasury if the permit is issued by the Superintendent; to the municipality if issued by the chief of police, and to the County Treasurer if issued by the Judge of the County Court.

g. *Form of Permit; Quadruplicate; Disposition of Copies.* The permit shall be in the form prescribed by the Superintendent and shall be issued to the applicant in quadruplicate. Prior to the time

he receives the pistol or revolver from the seller, the applicant shall deliver to the seller the permit in quadruplicate and the seller shall complete all of the information required on the form. Within 5 days of the date of the sale, the seller shall forward the original copy to the superintendent and the second copy to the chief of police of the municipality in which the purchaser resides, except that in a municipality having no chief of police, such copy shall be forwarded to the clerk of the county wherein the municipality is located. The third copy shall then be returned to the purchaser with the pistol or revolver and the fourth copy shall be kept by the seller as a permanent record.

h. *Restriction on Number of Firearms Person May Purchase.* A person shall not be restricted as to the number of pistols or revolvers he may purchase, if he applies for and obtains permits to purchase the same, but only one pistol or revolver shall be purchased or delivered on each permit, except that a person shall not be restricted as to the number of rifles or shotguns he may purchase provided he possesses a valid firearms purchaser identification card and provided further that he signs the certification required in Subsection a(2) of this Section for each transaction.

SOURCE OR REFERENCE

N. J.: 2A:151–32 to 39
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 872
Commentary Page: 369

SECTION 2C:58–4. PERMITS TO CARRY FIREARMS.

a. *Permit to Carry Firearms; Application; Investigation of Fingerprints; Fee.* Any person desiring to obtain a permit to carry a pistol or revolver shall in the first instance make application therefor either to the chief police officer of the municipality in which the applicant resides or to the Superintendent, if there is no chief police officer in the municipality where the applicant resides. No permit shall be issued to any person who suffers from any disability which would preclude his obtaining a permit to purchase a pistol or revolver as provided in Section 2C:58–3b and who does not produce proof of his familiarity with the handling and use of firearms and of the need therefor.

On all such applications the chief police officer or the Superintendent, as the case may be, shall have the fingerprints of the applicant taken and compared with any and all records of fingerprints in the municipality and county in which the applicant is a resident and also the records of the State Bureau of Identification

and the Federal Bureau of Investigation. He may also require reasonable proof that the applicant is of sufficient maturity and possesses sufficient skill and knowledge in the handling of firearms. On applications for a permit to carry a pistol or revolver he shall also inquire into and determine the name and address of the manufacturer of the weapon, any and all manufacturer's identification numbers, letters and marks, and a complete description of the kind and type of revolver or pistol which the applicant intends to carry.

If such application is approved by the chief police officer or by the Superintendent, as the case may be, the applicant shall then present the same to the County Court of the county in which the applicant resides. Upon being satisfied of the sufficiency of the application and that the applicant has never been convicted of a crime, is a person of good character, and is not subject to any of the disabilities set forth in Section 2C:58–3b, and the need of the applicant to carry a pistol or revolver, the Court shall issue a permit therefor.

Each applicant for a permit shall at the time of granting the same pay to the clerk of the county in which he resides and in which the application is made, a license fee of $3.00.

One permit shall be sufficient for such revolvers, pistols or other firearms as the applicant may possess.

Failure of the issuing authority to deny the application or issue a permit within 60 days shall be deemed to be approval thereof, unless the applicant waives the time period herein provided or agrees to an extension thereof in writing.

b. *Denial of Application; Hearing; Appeals.* Any person aggrieved by the denial by the chief of police or the Superintendent of approval for a permit to carry may request a hearing in the County Court of the county in which he resides, if he is a resident of New Jersey, or in the County Court of the county in which the application is made, if he is a nonresident. The request for a hearing shall be made in writing within 30 days of the denial of the application for a permit. The applicant shall serve a copy of his request for a hearing upon the chief of police of the municipality in which he resides, if he is a resident of New Jersey, and upon the Superintendent. The hearing shall be held and a record made thereof within 30 days of the receipt of the application for such hearing by the County Court. No formal pleading and no filing fee shall be required as a preliminary to such hearing. Appeals from the results of such hearing shall be in accordance with law. If the Superintendent or police chief approves the ap-

plication and the County Court denies the application, then the appeal from the denial of such application by the County Court shall be in accordance with law.

c. *Application and Renewal Forms; Contents.* Applications for permits to carry a pistol or revolver and for any renewals thereof shall be on forms prescribed by the Superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description including distinguishing physical characteristics, if any, of the applicant; and shall state whether the applicant is a citizen; whether he is an alcoholic or addicted to drugs or is an habitual user of controlled dangerous substances; whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, pyschiatrist, hospital or institution and the dates of such occurrence; whether he presently is or ever has been a member of any organization which advocates or approves the commission of acts of force and violence to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey; and whether he has ever been convicted of a crime or disorderly persons offense; and such other information as the Superintendent may prescribe for the proper enforcement of this Chapter. The application shall be signed by the applicant under oath and shall contain the names, addresses and indorsement of the applicant, as a person of good moral character and behavior, by 3 reputable persons who have been personally acquainted with the applicant for a period of at least 3 years next preceding the date of the application and who shall sign their indorsement on the application. There shall be no further conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit than those set forth by the Superintendent and those that are specifically set forth in this Chapter.

d. *Permit to Carry Firearms, Authority; Expiration and Renewal; Revocation.* A permit issued under Subsection a of this Section shall be sufficient authority for the holder thereof to carry a re-

volver or pistol in all parts of the State. Except as herein otherwise provided, all permits to carry a pistol or revolver issued pursuant to this Section shall expire on December 31 subsequent to the date of issue, and may thereafter be renewed annually in the same manner and subject to the same provisions by which the original permit was obtained, provided that the permit shall be void at such time as the holder thereof becomes subject to any of the disabilities set forth in Subsection a of this Section in which event the holder thereof shall return the permit to the Superintendent who shall then advise the licensing authority. Failure of the holder to return the permit to the Superintendent within the said 5 days shall be an offense under Section 2C:39–2. All permits so issued to an employee of an armored car company rendering armored car service shall continue to be in full force and effect so long as the said employee continues in his employment with the armored car company and renewal of the permit shall not be required, but if the said employee ceases to be in such employment he shall surrender the permit to the authority which issued it.

Any permit may be revoked by the County Court of the county wherein the permit was issued, after hearing upon notice, and upon a finding that the holder thereof no longer qualifies for the issuance of such permit. The county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such Court at any time for the revocation of any such permit.

e. *Permits in Blank for Banking Institutions.* The president of of any national bank, building and loan association, savings and loan association, trust company or other banking institution located in any municipality of this state may make application to the chief police officer of the municipality for permits, in blank, to be used by the messengers, clerks or other employees or agents of such institution while engaged in the performance of their respective duties. Upon the issuance of such permits, the president shall transmit to the chief police officer from whom the permits were obtained, a record of the persons to whom they were issued. Permits issued in blank in accordance with this section shall not exceed 20 in number to any one banking institution.

SOURCE OR REFERENCE

N. J.: 2A:151–44, 44.1, 44.2, 45 and 47.
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 876
Commentary Page: 370

SECTION 2C:58–5. LICENSES TO POSSESS MACHINE GUNS.

a. *License to Procure Machine Gun; Application; Reference and Approval; Issue of License.* Any person who desires to purchase, have and possess a machine gun may apply to the County Court of the county in which the applicant resides for a license to do so. The application shall be in writing and shall state in detail the reasons why the applicant desires a license. Upon the application being presented to the Judge, he shall refer it to the Sheriff of the county or to the chief police officer of the municipality in which the applicant resides, for his investigation and approval. If the application is approved by the Sheriff or chief police officer, the Court may issue a license to the applicant to purchase, have and possess a machine gun for his own protection and for the protection of his servants and employees.

b. *Record and Delivery of License.* Upon the issuance of the license, the judge shall send or deliver it to the Superintendent who shall enter a record of the license and forward the license to the local police chief of the municipality where the licensee resides. The chief shall, in a book provided for that purpose, enter a record of the license, stating the date of its issuance, and the name and address of the person to whom it was issued. After making such record the chief of police shall deliver the license to such person.

c. *Banking Institutions and Public Utilities Licensed.* Upon the application of any bank or banking institution, trust company, building and loan association or savings and loan association within the state, the County Court of the county within which the applicant is located, shall issue to the applicant a license to purchase and possess 1 or more machine guns for its own use and protection, and for the use and protection of its officers, servants and employees, which license shall be recorded by the County Clerk as provided in Subsection b of this Section.

Upon the application of any common carrier within this State, the County Court of any county within which the applicant operates, shall issue to the applicant a license to purchase and possess 1 or more machine guns for its own use and protection, and for the use and protection of its officers, servants and employees, which license shall be recorded by the County Clerk as provided in Subsection b of this Section.

SOURCE OR REFERENCE

N. J.: 2A:151–52 to 54
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 879
Commentary Page: 370

SECTION 2C:58–6. PROPERTY RIGHTS IN FIREARMS; FORFEITURE.

No property right exists in firearms unlawfully possessed, carried, acquired or used, and all such firearms are declared to be nuisances and forfeited to the State. When such forfeited firearms are taken from any person, they shall be surrendered to the Sheriff of the county in which taken, or to the head of the police department in municipalities, or to the office of the county prosecutor and may be disposed of when they are no longer needed for evidential purposes and after they have been inventoried and their disposition witnessed and recorded by the head of the agency having possession or his representative designated for this purpose. If any such firearms are found to be the property of an innocent owner prior to their disposition, they shall be returned to him if and when no longer needed for evidential purposes.

SOURCE OR REFERENCE

N. J.: 2A:151–16
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 880
Commentary Page: 370

SECTION 2C:58–7. PERSONS POSSESSING EXPLOSIVES TO NOTIFY POLICE.

a. Any person who has or becomes the possessor of any ammunition, explosive missile, shell, projectile, fuse designed for use with any weapon, or other explosive weapon, which is loaded or as to which it cannot be determined by casual inspection whether or not it is loaded, except such as is possessed for any lawful commercial or other purpose in connection with which the use of explosives is authorized, or is suitable for use in a firearm or weapon, shall within 15 days notify the police authorities of the municipality in which he resides or the State Police that the same is in his possession and shall present the same to them for inspection.

b. When any such ammunition, explosive missile, shell, projectile, fuse or other explosive weapon is presented for inspection, it shall be inspected to ascertain whether or not it is located or is of a dangerous character, and if it is found to be loaded or of a dangerous character, it shall be unloaded or be so processed as to remove its dangerous character before being returned to the possessor, and if it is not possible to unload or remove the dangerous character of the same, it shall be destroyed.

c. Any police officer knowing or having reasonable cause to believe that any person is possessed of any such ammunition, ex-

plosive missile, shell, projectile, fuse or other explosive weapon, shall investigate, under a proper search warrant when necessary and which it shall be his further duty to apply for, and shall seize the same for the purpose of inspection, unloading, processing or destruction, as provided in this Section, and the same shall not be returned to the possessor thereof until it has been unloaded or so processed.

SOURCE OR REFERENCE

N. J.: 2A:170–17
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 881
Commentary Page: 370

SECTION 2C:58–8. CERTAIN WOUNDS TO BE REPORTED.

Every case of a bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun or firearm, and every case of a wound which is likely to or may result in death and is actually or apparently inflicted by a knife, icepick or other sharp or pointed instrument, shall be reported at once to the police authorities of the municipality where the person reporting is located or to the State Police by: (a) the physician consulted, attending or treating the case; or (b) the manager, superintendent or other person in charge, whenever such case is presented for treatment or treated in a hospital, sanitarium or other institution. This Section shall not apply to such wounds, burns or injuries received by a member of the armed forces of the United States or the State of New Jersey while engaged in the actual performance of duty.

SOURCE OR REFERENCE

N. J.: 2A:170–25.7
Model Penal Code: None
Other: N. Y. §265.25

Study Draft Page: None
Tentative Draft Page: 882
Commentary Page: 370

SECTION 2C:58–9. CERTAIN CONVICTIONS TO BE REPORTED.

Every conviction under any provision of Chapter 39 of this Code of a person who is not a citizen of the United States, shall be certified to the proper officer of the United States government by the county prosecutor of the county in which such conviction was had or by the Attorney General or his representative.

SOURCE OR REFERENCE

N. J.: 2A:151–17
Model Penal Code: None
Other: N. Y. §265.30

Study Draft Page: None
Tentative Draft Page: 883
Commentary Page: 370

SECTION 2C:58–10. INCENDIARY OR TRACER AMMUNITION.

No incendiary or tracer type ammunition shall be discharged anywhere in this State except for law enforcement purposes by law enforcement officers in the course of their official duties or by members of legally recognized military organizations during the actual course of their official duties in or upon military establishments or ranges constructed or maintained for such purposes. Nonincendiary shotgun tracer ammunition may be used on a trap or skeet field for target purposes. Nothing in this Section shall prohibit the carrying or possession for distress signal purposes of flare type guns aboard boats, or ships in open tidewater or upon aircraft.

SOURCE OR REFERENCE

N. J.: 2A:151–57.1
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 701
Commentary Page: 370

CHAPTER 59. [RESERVED]

CHAPTER 60. DEBT ADJUSTERS

SECTION 2C:60–1. DEBT ADJUSTERS; INJUNCTION; APPOINTMENT OF RECEIVER.

The Superior Court shall have power, in an action brought in the name of the State by the Attorney General, to enjoin any person from acting or offering to act as a debt adjuster. In such action, the Court may appoint a receiver for the property and money employed in the transaction of business by such person as a debt adjuster, to insure the return to debtors of so much of their money and property as has been received by the debt adjuster and has been paid to the creditors of the debtors.

SOURCE OR REFERENCE

N. J.: 2A:99A–3
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 884
Commentary Page: 370

CHAPTER 61. [RESERVED]

CHAPTER 62. PERSISTENT NON-SUPPORT

SECTION 2C:62–1. SUPPORT ORDERS FOR PERSISTENT NON-SUPPORT.

a. *Order for Support Pendente Lite.* At any time after a sworn complaint is made charging an offense under Section 2C:24–5 and before trial, the Court may enter such temporary order as may seem just, providing for the support of the wife or children, or both, pendente lite, and may punish a violation of such order as for contempt.

b. *Order for Future Support; Release on Recognizance Conditioned on Obeying Order; Periodic Service of Sentence.* Before trial, with the consent of the defendant, or after conviction, instead of imposing the penalty provided for violation of Section 2C:24–5, or in addition thereto, the Court, having regard to the circumstances and the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by the Court from time to time as circumstances may require, directing the defendant to pay a sum certain periodically to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court as trustee. The Court may release the defendant from custody on probation, upon his or her entering into a recognizance, with or without surety, in such sum as the court may order and approve. The condition of the recognizance shall be such that if the defendant shall personally appear in court whenever ordered to do so, and shall comply with the terms of the order, or of any modification thereof, the recognizance shall be void, otherwise it will remain in full force and effect. The Court may, in addition to or in place of any order under this Section, order and direct that any sentence of imprisonment be served periodically, instead of consecutively, during periods of time between Friday at 6 P.M. and Monday at 8 A.M. or at other times or on other days, whenever the court determines the existence of proper circumstances and that the ends of justice will be served thereby. Any person so imprisoned shall be given credit for each day or fraction of a day to the nearest hour actually served.

c. *Violation of Order.* If the Court be satisfied by information and due proof under oath that the defendant has violated the terms of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence the defendant under the original conviction or plea of guilty, or enforce the suspended

sentence or punish for contempt, as the case may be. In case of forfeiture of a recognizance, and the enforcement thereof by execution, the sum recovered may, in the discretion of the Court, be paid in whole or part to the wife, or to the guardian, custodian or trustee of such minor child or children.

d. *Proof of Marriage; Husband and Wife as Witness.* No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is required in a civil action. In no prosecution under this Chapter shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other as to any and all relevant matters, including the fact of the marriage and the parentage of the child or children.

e. *Proof of Desertion.* Proof of desertion of the wife, child or children in destitute or necessitous circumstances, or of neglect or refusal to provide for the support and maintenance of such wife, child or children in destitute, necessitous circumstances, shall be prima facie evidence that the desertion, neglect or refusal was willful.

f. *Place of Residence Confers Jurisdiction of Offense.* The place of residence at the time of the desertion of the wife, child or children, under the provisions of this Chapter, shall confer jurisdiction of the offense set forth therein, upon the County, County District, Criminal Judicial District or Juvenile and Domestic Relations Court having territorial jurisdiction of the place of such residence, until the deserted party shall establish a legal residence in some other county or state.

SOURCE OR REFERENCE

N. J.: 2A:100–3 to 8
Model Penal Code: None
Other: Uniform Desertion and Nonsupport Act §§3 to 6

Study Draft Page: IIK-43
Tentative Draft Page: 88
Commentary Page: 370

CHAPTER 63. [RESERVED]

CHAPTER 64. GAMING APPARATUS AND PROCEEDS

SECTION 2C:64–1. DESTRUCTION OF GAMING APPARATUS.

Whenever any furniture, implement, device or machine, made or used for the purpose of gambling or for the playing of any game wherein money or other thing of value is wagered or gambled, shall be seized or captured by the police, constabulary or other officer, the prosecutor of the county where such seizure is made shall have the same destroyed or rendered useless for the uses and purposes aforesaid. It shall be unlawful to return them to the person or persons owning the same, or to any other person. The prosecutor, in his discretion and subject to rules and regulations which may be promulgated by the attorney general may, however, donate and deliver such of them as may be used for lawful purposes to any institution located within the county where such seizure is made and which is under the control and operation of the Federal government, of the State of New Jersey, any political subdivision thereof, or any institution under the control and operation of any public, semipublic, or private, charitable, religious or philanthropic institution or organization.

The Attorney General shall have authority to make, amend and repeal, from time to time, such rules and regulations as he may, in the public interest, deem necessary, to assure an orderly procedure and reasonable uniformity in the disposition of such property, in accordance with the provisions hereof, in the several counties.

SOURCE OR REFERENCE

N. J.: 2A:152–6
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 887
Commentary Page: 371

SECTION 2C:64–2. MONEY SEIZED ON ARREST FOR PLAYING UNLAWFUL GAMES, RETURN PROHIBITED; EXCEPTIONS.

Whenever any money, currency or cash shall be seized or captured by the police, constabulary or other officer in connection with any arrest for violation of or conspiracy to violate any gambling law of this state, the said money, currency or cash shall be presumed to be contraband of law as a gambling device, or as part of a gambling operation, and it shall be unlawful to return

the said money, currency or cash to the person or persons claiming to own the same, or to any other person, except in the circumstances and manner provided in Section 2C:64–3.

SOURCE OR REFERENCE

N. J.: 2A:152–7
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 889
Commentary Page: 371

SECTION 2C:64–3. DISPOSITION PENDING TRIAL OF MONEYS SEIZED.

Pending trial or ultimate disposition of the charge or charges, indictment or indictments, growing out of any arrest in connection with which any such money, currency or cash was seized or captured, the same shall be accounted for and deposited with the county treasurer of the county in which said arrest occurred, by and under the supervision of the prosecutor of the county.

SOURCE OR REFERENCE

N. J.: 2A:152–8
Model Penal Code: None
Other: None

Study Draft Page: None
Tentative Draft Page: 889
Commentary Page: 371

CHAPTERS 65 TO 70. [RESERVED]

APPENDIX A

DISPOSITION OF TITLE 2A PROVISIONS

Explanatory Note

The first column below lists sections of existing Title 2A, all of which will be replaced by the enactment of the Penal Code. The second column indicates the disposition of those sections either by the Code or by relocation in another Title of the New Jersey Statutes.

The difference between existing Title 2A and our proposals in the approach to the criminal law make the disposition somewhat complex in some cases. The existing statutes are not a code but are merely a collection of years of legislative enactments. Thus, in such cases, this Appendix provides only a guide to disposition. For a full explanation, one must look to the Code and its Commentary.

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Chapter 85. General Provisions	
85—1	1–5
2	29–4
3	2–6 and 9
4	4–10
5	5–1 and 4
6	43–6
7	43–6
8	43–7; 44–3
9	43–7; 44–3
10	.....
11	.....
12	43–7; 44–3
13	44–3, 4 and 6
14	2–6
Chapter 86. Abduction	
86—1	Chapter 13
2	Chapter 13
3	Chapter 13

Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 87. Abortion	
87—1	24–3
2	24–3
Chapter 88. Adultery	
88—1	Chapter 14
Chapter 88A. Aircraft	
88A—1	12–2; 17–2
Chapter 89. Arson & Other Burnings	
89—1	Chapter 17
2	Chapter 17
3	Chapter 17
4	Chapter 17
5	Chapter 17
6	Chapter 17
Chapter 90. Assault & Battery	
90—1	12–1
2	5–1; 12–1
3	5–1; 12–1
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Chapter 91. Banks & Financial Corporations	
91—1	Chapters 20 and 21
2	Chapters 20 and 21
3	21–1 and 4
4	Chapters 20 and 21
5	Chapter 21
6	Chapter 21
7	Chapter 21
8	Chapter 21
Chapter 92. Bigamy	
92—1	24–1
2	24–1
Chapter 93. Bribery & Corruption	
93—1	Chapter 27
2	Chapter 27
3	.....
4	Chapter 27

Section of Title 2A:	*Section of Penal Code (Title 2C):*
5	51–1 and 2
6	Chapter 27
7	21–10
8	21–10
9	.....
10	21–11
11	21–11
12	21–11
13	21–11
14	21–11

Chapter 94. Burglary & Like Crimes

94—1	Chapter 18
2	Chapter 18
3	5–5

Chapter 95. Cemeteries

95—1	17–3; 33–10
2	17–3
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Chapter 96. Children

96—1	24–4
2	24–4
3	24–4
4	24–4
5	35–1
5.1	35–1
6	24–6
7	24–6
8	24–6

Chapter 97. Compounding & Concealing Crimes

97—1	29–4
2	Chapter 29

Chapter 98. Conspiracy

98—1	5–2
2	5–2
3	5–2; Chapter 30
4	5–2

Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 99. Courts & Court Process	
99—1	Chapters 12 and 29
2	. . . . .
Chapter 99A. Debt Adjusters	
99A—1	21–19
2	21–19
3	Chapter 60
4	21–19
Chapter 99B. Dead Bodies	
99B—1	. . . . .
Chapter 100. Desertion	
100—1	24–5
2	24–5
3	Chapter 62
4	Chapter 62
5	Chapter 62
6	Chapter 62
7	Chapter 62
8	Chapter 62
Chapter 101. Dueling	
101—1	Chapter 12
Chapter 102. Embezzlement, Conversion & Misappropriation	
102—1	Chapters 20, 21 and 27
2	Chapters 20 and 21
3	Chapters 20 and 21
4	Chapters 20 and 21
5	Chapter 20
6	Chapter 20
7	Chapter 20
8	Chapter 20
9	Chapter 20
10	Chapter 20
11	Chapter 20
12	Chapter 20
12.1	Chapter 20

Section of Title 2A:	*Section of Penal Code (Title 2C):*
13	Renumber to Title 45, Chapter 7
14	
15	
16	
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Chapter 103. Embracery

103—1	Chapter 27

Chapter 104. Escapes & Rescues

104—1	Chapter 29
2	Chapter 29
3	Chapter 29
4	Chapter 29
5	Chapter 29
6	Chapter 29
7	Chapter 29
8	Chapter 29
9	Chapter 29
10	Chapter 29
11	Chapter 29
12	Chapter 29
13	Chapter 29
14	Chapter 29

Chapter 105. Extortion, Threats & Unlawful Takings

105—1	Chapters 27 and 29
2	Chapters 27 and 29
3	Chapters 12 and 13
4	Chapters 12, 13 and 20
5	Chapters 12, 13 and 21

Chapter 106. Extradition

106—1	Chapter 30

Chapter 107. Flag—Offenses Against

107—1	33–10
2	33–10
3	33–10
4	33–10
5	.....

Section of Title 2A:	*Section of Penal Code (Title 2C):*
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108—1	21–7
2	21–7
3	21–7
4	21–7
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5	Chapters 20 and 21–1
6	21–1
7	21–1
8	Chapters 20 and 21–1
9	21–1
10	21–1
11	21–1
Chapter 110. Fornication	
110—1	Chapter 14
Chapter 111. Frauds & Cheats	
111—1	Chapter 20
2	Chapter 20
3	Chapter 20
4	Chapters 20 and 29
5	Chapter 21
6	Chapter 20
7	Chapter 20
8	Chapter 21
9	Chapter 21
10	Chapter 21
11	Chapter 21
12	Chapter 21
13	Chapter 21

Section of Title 2A:	*Section of Penal Code (Title 2C):*
14	Chapter 21
15	Chapter 21
16	Chapter 21
17	Chapter 21
18	Chapter 21
19	Chapter 21
20	Chapter 20
21	Chapters 20 and 21
21.1	Chapter 20
22	Chapter 21
23	Chapter 21
24	Chapter 21
25	Chapters 20 and 21
26	Chapters 20 and 21
27	Chapters 20 and 21
28	Chapters 20 and 21
29	Chapter 21
30	Chapter 20
31	Chapter 20
32	Chapter 21
33	Chapter 21
34	Chapter 20
35	Chapter 20
36	.....
37	Chapter 20
38	Chapter 20
39	Chapter 21
40	Chapter 21
41	Chapter 21
42	Chapter 21
43	Chapter 21
44	Chapter 21
45	Chapter 21
46	Chapter 21
47	Chapter 21
48	Chapter 21
49	Chapter 21
50	Chapter 21
51	Chapter 21

Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 112. Gaming	
112—1	Chapter 37
2	Chapter 37
3	Chapter 37
4	Chapter 37
5	Chapter 37
6	Chapter 37
7	Chapter 37
8	Chapter 37
Chapter 113. Homicide	
113—1	Chapter 11
2	Chapter 11
3	Chapter 11
4	Chapter 11
5	Chapter 11
6	Subtitle 1
7	5–1
8	Chapter 12
9	Chapter 11
Chapter 114. Incest	
114—1	24–2
2	14–4; 24–2 and 4
Chapter 115. Indecency & Obscenity	
115—1	14–5; 34–1
1.1	34–1
1.2	34–1
1.3	34–1
1.4	34–1
1.5	34–1
2	34–1
3	34–1
3.1	34–1
3.2	34–1
3.3	53–1
3.4	53–1
3.5	53–1
3.6	53–1
3.7	53–1

Section of Title 2A:	*Section of Penal Code (Title 2C):*
3.8	53–1
3.9	53–1
3.10	53–1
4	33–4; 34–1
5	.....
Chapter 116. Insignia—Fraternal & Military	
116—1	21–17
2	21–17
3	21–17
Chapter 117. Insurance	
117—1	Chapter 21
2	Chapters 20 and 21
3	To be Renumbered in Title 17, Chapter 33
4	
Chapter 118. Kidnaping	
118—1	Chapter 13
2	Chapters 12 and 13
Chapter 119. Larceny & other Stealings	
119—1	Chapter 20
2	Chapter 20
3	Chapter 20
4	Chapter 20
5	Chapters 20 and 21
5.1	Chapter 20
5.2	Chapter 20
5.3	Chapter 20
5.4	Chapter 20
5.5	Chapter 20
6	Chapter 20
7	Chapter 20
8	Chapter 20
8.1	.....
9	Chapter 20
Chapter 119A. Loansharking	
119A—1	21–19
2	12–1; 20–2; 21–19
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Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 120. Libel	
120—1	.....
Chapter 121. Lotteries	
121—1	37–2
2	37–2
3	37–2
4	37–2
5	37–2
6	37–2
Chapter 122. Malicious Mischief	
122—1	17–3
2	17–3; 21–12
3	21–3
4	17–3
5	17–3
6	17–3
7	17–3
8	33–3
9	17–3; 29–1; 33–3
10	17–3; 33–10
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Chapter 123. Manufacture, Sale, Etc., of Certain Articles	
123—1	12–2
2	12–2
3	Renumber to Title 21
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Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 124. Marriage	
124—1	24–7
2	24–7
Chapter 125. Mayhem	
125—1	12–1
Chapter 126. Mobs, Riots & Unlawful Assemblies	
126—1	Chapter 33
2	Chapter 33
3	Chapter 33
4	Chapter 33
5	Chapter 33
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Chapter 127. Motor Vehicles	
127—1	.....
2	21–1 and 4
3	20–7
4	29–8
5	12–1; 17–3
Chapter 128. Navigation	
128—1	12–2
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3	12–2
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Chapter 129. News Photographers & Reporters	
129—1	12–1
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130—1	.....
2	56–1
3	33–13
4	56–1
5	56–1

Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 131. Perjury & False Swearing	
131—1	Chapter 28
2	Chapter 28
3	Chapter 28
4	Chapter 28
5	Chapter 28
6	Chapter 28
7	Chapter 28
Chapter 132. Police Radio Alarms	
132—1	28–4; 33–4
Chapter 133. Prostitution	
133—1	34–2
2	34–2
3	34–2
4	34–2
5	34–2
6	34–2
7	34–2
8	34–2
9	24–4; 34–2
10	13–3; 14–3; 34–2
11	13–3; 34–2
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Chapter 134. Public Health	
134—1	12–2
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Chapter 135. Public Officers & Offices	
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3	20–2; 30–2
4	20–9; 30–2
5	20–9; 30–2
6	20–9; 30–2
7	30–2
8	30–2
9	51–2

Section of Title 2A:	*Section of Penal Code (Title 2C):*
10	21–15
11	21–1; 24–14
12	30–1
13	30–1
Chapter 136. Public Records & Documents	
136—1	21–3
Chapter 137. Railroads and Railways	
137—1	17–3
2	17–3; 33–2 and 3
3	33–2 and 3
Chapter 138. Rape & Carnal Abuse	
138—1	Chapter 14
2	Chapter 14
Chapter 139. Receiving Stolen Property	
139—1	20–7
2	20–7
3	20–7
4	20–7
Chapter 140. Religion	
140—1	.....
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Chapter 141. Robbery	
141—1	19–1
Chapter 142. Seduction	
141—1	14–3
2	14–3
3	14–6
Chapter 143. Sodomy	
143—1	14–2
2	14–2 and 3
Chapter 144. Stink Bombs	
144—1	12–1; 17–3
2	12–1; 17–3

Section of Title 2A:	*Section of Penal Code (Title 2C):*
Chapter 145. Taxes	
145—1	29–1
Chapter 146. Telegraph, Telephone, Express, Etc.	
146—1	.....
2	17–3
3	37–3
Chapter 147. Trademarks	
147—1	Chapter 21
2	Chapter 21
3	Chapter 21
4	Chapter 21
Chapter 148. Treason and Offenses Against the Government	
148—1	.....
2	29–4
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4	.....
5	.....
6	12–1
7	.....
8	.....
9	.....
10	33–1
11	33–1
12	33–1
13	.....
14	.....
15	.....
16	.....
17	.....
18	.....
19	.....
20	.....
21	.....
22	.....
22.1	28–4
Chapter 149. Unauthorized use of Voting Machines	
149—1	29–1

Section of Title 2A:	*Section of Penal Code (Title 2C):*
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149A—1	33–14
2	33–14
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Chapter 150. Warehouse Receipts	
150—1	Chapter 21
Chapter 151. Weapons and Explosives	
151—1	39–1
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4	39–2
5	43–7; 44–3
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7	39–5
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9	39–4
10	39–4
10.1	Renumber Outside of Title 2C
11	39–3
12	39–3; 39–4
14	39–3; 39–4
15	39–4
16	58–6
17	58–9
18	39–6
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22	58–1
23	39–2
24	58–2
25	58–2
26	58–2
27	58–2
28	58–2
31	39–2
32	58–3
33	58–3
34	58–3

Section of Title 2A:	*Section of Penal Code (Title 2C):*
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37	58–3
38	58–3
39	58–3
40	39–2
41	39–2
41.1	39–3
41.2	39–3
42	39–6
43	39–6
44	58–4
44.1	58–4
44.2	58–4
45	58–4
46	39–2
47	58–4
48	39–2
49	39–1
50	39–3
51	39–5
52	58–5
53	58–5
54	58–5
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56	39–3
57	39–5
57.1	58–10
57.2	.....
57.3	39–2
58	39–3
59	39–3
60	39–3
61	39–3
62	39–3; 39–4
63	.....

Subtitle II. Criminal Procedure

Chapter 152. Definitions, Construction and General Provision

[No Change]

Section of Title 2A:	*Section of Penal Code (Title 2C):*

Chapter 153. Rewards for Apprehension of Persons Accused of Crime

[No Change]

Chapter 154. Peace Officers

[No Change]

Chapter 155. Uniform Fresh Pursuit Law

[No Change]

Chapter 156. Uniform Action on Intrastate Fresh Pursuit

[No Change]

Chapter 156A. Wiretapping

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3	33–12
4	33–12
5	33–12
6	33–12
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9	54–3
10	54–3
11	54–3
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14	54–3
15	54–3
16	54–3
17	54–3
18	54–3
19	33–12
20	54–3
21	54–4
22	54–5
23	54–5
24	54–6
25	54–7
26	54–8

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Chapter 157. County Detectives & Investigators	
	[No Change]
Chapter 158. County Prosecutors	
	[No Change]
Chapter 158A. Public Defender	
	[No Change]
Chapter 159. Limitation of Criminal Prosecutions	
159—1	1–6
2	1–6
3	1–6
4	1–6
Chapter 159A. Interstate Agreement on Detainers	
	[No Change]
Chapter 160. Extradition	
	[No Change]
Chapter 161. Preliminary Proceedings in General	
	[No Change]
Chapter 162. Bail & Recognizances	
	[No Change]
Chapter 163. Trial	
161—1	No Change
2	Chapter 4
3	Chapter 4
Chapter 164. Sentence and imprisonment.	
161—1	No Change
2	~~44–6~~
3	43–7; ~~44–3~~
4	43–7; ~~44–3~~
5	43–7; ~~44–3~~
6	43–7; ~~44–3~~
7	43–7; ~~44–3~~
8	43–7; ~~44–3~~
9	43–7; ~~44–3~~
10	43–7; ~~44–3~~

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11	43–7; 44–3
12	43–7; 44–3
13	No Change
14	. . . . .
15	43–10
16	Chapter 43
17	Chapters 43 and 44
18	43–10
19	Chapters 43 and 44
20	43–10
21	No Change
22	43–10
23	43–10
24	. . . . .
25	. . . . .
26	. . . . .
27	. . . . .
28	Chapter 51

Chapter 165. Death Sentence

[No Change. See Introductory Note to Chapter 11.]

Chapter 166. Costs and Fines

166—1	Chapters 43, 44 and 46
2	Chapters 43, 44 and 46
3	Chapters 43, 44 and 46
4	Chapters 43, 44 and 46
5	Chapters 43, 44 and 46
6	Chapters 43, 44 and 46
7	Chapters 43, 44 and 46
8	Chapters 43, 44 and 46
9	Chapters 43, 44 and 46
10	Chapters 43, 44 and 46
11	Chapters 43, 44 and 46
12	Chapters 43, 44 and 46
13	Chapters 43, 44 and 46
14	Chapters 43, 44 and 46
15	Chapters 43, 44 and 46
16	Chapters 43, 44 and 46
17	Chapters 43, 44 and 46
18	Chapters 43, 44 and 46
19	Chapters 43, 44 and 46

Section of Title 2A:	*Section of Penal Code (Title 2C):*

Chapter 166A. Reimbursement to Counties for Criminal Prosecution Expenses

[No Change]

Chapter 167. Executive Clemency

[No Change]

Chapter 168. Probation & Parole

168—1	Chapters 43, 44 and 45
2	Chapters 43, 44 and 45
3	Chapters 43, 44 and 45
4	Chapters 43, 44 and 45
5	No Change
6	No Change
7	No Change
8	No Change
9	No Change
10	No Change
11	No Change
12	No Change
13	No Change
14	No Change
15	No Change
16	No Change
17	No Change
18	No Change
19	No Change
20	No Change
21	No Change
22	No Change
23	No Change
24	No Change
25	No Change

Chapter 168A. Rehabilitated Criminal Offenders

[No Change]

Section of Title 2A:	*Section of Penal Code (Title 2C):*

Subtitle 12. Disorderly Persons

Chapter 169. General Provisions

169—1	.....
2	.....
3	.....
4	43–8
5	Chapter 46
6	Chapters 43, 44 and 45
7	.....
8	.....
9	Move to Title 40
10	1–6
11	Chapter 51

Chapter 169A. Registration of Persons Convicted of Certain Offenses

[No Change]

Chapter 170. Disorderly Persons Generally

170—1	33–2 and 7
2	33–2 and 7
3	33–2 and 7
4	33–2 and 7
5	34–2
6	14–7
7	.....
9	28–4; 33–3
10	.....
11	.....
12	.....
13	.....
14	33–11
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16	.....
17	58–7
18	37–2
19	21–17

Section of Title 2A:	*Section of Penal Code (Title 2C):*
20	To be Renumbered in Another Title
20.1	
20.2	
20.3	
20.4	
20.5	21–17
20.6	5–2
20.7	2–6
20.8	Chapters 20 and 21
20.9	To be Renumbered in Another Title
20.10	
21	17–3
22	17–3
23	To be Renumbered in Title 4, Chapter 5
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25	12–2
25.1	35–2
25.2	40–1
25.3	33–15
25.4	Chapter 21
25.5	40–2
25.6	.....
25.7	58–8
25.8	Chapter 29
25.9	35–5
25.10	35–5
25.11	35–5
25.12	35–5
25.13	35–5
25.14	33–1 and 2
25.15	33–1 and 2
26	12–1
27	12–1
28	33–1, 2 and 9
29	33–1, 2, 4 and 9
30	33–5
31	18–3
31.1	18–3; 33–7
32	17–3
33	17–3
34	17–3; 18–3

Section of Title 2A:	*Section of Penal Code (Title 2C):*
35	12–2; 17–3
36	17–3
37	17–3
38	20–10
39	17–3
40	Chapter 20
41	Chapter 20
42	Chapters 20 and 21
43	Chapters 20 and 21
44	Chapters 20 and 21
45	Chapters 20 and 21
46	Chapters 20 and 21
47	Chapters 20 and 21
48	Chapters 20 and 21
49	Chapters 20 and 21
50	Chapters 20 and 21
50.1	21–8
50.2	21–8
50.3	21–8
50.4	Chapters 20 and 21
50.5	Chapters 20 and 21
50.6	Chapters 20 and 21
51	.....
52	.....
53	.....
54	24–4
54.1	33–15
54.2	12–2; 24–4; 33–2
55	Chapters 20 and 21
56	.....
57	.....
58	18–3
59	18–3
60	12–2 and 3; 17–3 and Chapter 33
61	17–3; and Chapter 33
62	12–2; 17–3; and Chapter 33
63	Chapters 20 and 21
64	Chapters 20 and 21
64.1	Chapters 20 and 21
64.2	Chapters 20 and 21

Section of Title 2A:	*Section of Penal Code (Title 2C):*
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66	17–3; 18–3
67	18–3
67.1	17–3
68	17–3
69	17–3
69.1 69.1a 69.1b	To be Renumbered in Title 12
69.2	.....
69.3	.....
69.4	12–2; 17–2 and 3
69.5	12–2; 17–2 and 3
69.6	12–2; 17–2 and 3
69.7	.....
69.8	56–1
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71	21–7
72	21–7
73	21–7
74	40–1
75	.....
76	.....
77	.....
77.2	.....
77.2a	.....
77.2b	.....
77.3	35–4
77.4	35–6
77.5	35–4
77.6	35–4 and 6
77.8	34–6
77.9	34–6
77.10	34–4 and 6
77.11	34–4 and 6
77.12	.....
77.13	.....
77.14	.....
77.15	34–6

Section of Title 2A:	*Section of Penal Code (Title 2C):*
78	To be Renumbered in Title 45
79	
80	
81	
82	
83	
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85	
86	Chapter 21
87	Chapter 21
88	Chapter 21
89	. . . . .
90	Chapter 20
90.1	To be Renumbered in Title 34
90.2	
91	. . . . .
92	. . . . .
93	17–3
94	. . . . .
95	. . . . .
96	. . . . .
97	Chapter 20
98	Chapter 20
99	Chapter 20
100	Chapter 20
101	Chapter 20
102	21–19
103	21–19

Chapter 171. Observance of Sabbath Days

[No Change]

APPENDIX B

Provisions Outside Title 2A Affected by Penal Code

The following statutes should be amended or repealed, as noted, to mesh with the provisions of the Penal Code. These are in addition to the amendments recommended to the Parole Act as set forth in Subtitle 3 of the Code.

Statute N.J.S.	*Action*	*Code Provision*
2A:69–1	Repeal	2C:51–3
4:22–15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33	Repeal	2C:33–11
9:6–3	Amend to read as follows:	2C:24–4

"Conviction under N.J.S. 2C:24–4 of Abuse, Abandonment, Cruelty or Neglect of Child."

"When any person is convicted under N.J.S. 2C:24–4a or b, the Court may sentence as provided for that crime or . . . [no further change].

19:4–1	Repeal	2C:51–3
30:4–82	Repeal	2C: 4–6 and 7
41:3–1	Repeal	2C:28–2

APPENDIX C

ACT ESTABLISHING THE COMMISSION

An Act creating a commission to revise the statutory law pertaining to crimes, disorderly persons, criminal procedure and related statutory law, prescribing its powers and duties and making an appropriation. L. 1968, c. 281.

(N.J.S. 1:19–1 *Et Seq.*)

§ 1. A Criminal Law Revision Commission is hereby created which shall consist of 9 members, 3 to be appointed by the President of the Senate, 3 to be appointed by the Speaker of the General Assembly and 3 to be appointed from the citizenry of the State at large by the Governor. No more than 2 of each group of 3 shall be of the same political party. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

§ 2. All of the members of the commission shall serve without compensation but they shall be entitled to be reimbursed for all necessary expenses incurred in the performance of their duties.

§ 3. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman and vice-chairman from among its members and a secretary who need not be a member of the commission.

§ 4. It shall be the duty of the commission to study and review the statutory law pertaining to crimes, disorderly persons, criminal procedure and related subject matter as contained in Title 2A of the New Jersey Statutes and other laws and prepare a revision or revisions thereof for enactment by the Legislature. It shall be the purpose of such revision or revisions to modernize the criminal law of this State so as to embody principles representing the best in modern statutory law, to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundent provisions and to revise and codify the law in a logical, clear and concise manner.

§ 5. In the performance of its work, the commission shall establish a working staff and may contract with attorneys and consult-

ants for specific portions of its work. The commission shall collaborate with the members and staff of the Law Revision and Legislative Services Commission as to style and arrangement of its proposals and shall be entitled to accept the assistance and services of such employees of any department of the State Government, board, bureau, commission or agency as may be made available to it, and to employ such legal, stenographic, technical and clerical assistance, and incur such traveling, printing and other miscellaneous expenses as it may deem necessary in order to perform its duties and to disseminate its report or reports and proposals among those interested in the State, provided that the aggregate of all expenditures for such purpose shall be within the limits of the funds appropriated or otherwise made available to it therefor.

§ 6. The commission shall prepare and submit to the Governor and the Legislature, such interim reports from time to time as it shall determine and on or before April 1, 1971, a final report containing its basic policy determinations and the principal proposals for substantive change in the law, together with the text of its proposed revision. (Amended L. 1970, c. 68, § 1, eff. May 20, 1970.)

§ 7. There is hereby appropriated to the commission the sum of $50,000.00 to carry out the purposes of this act.

§ 8. This Act shall take effect immediately.