

## **APPENDIX F**

### **SELECTED CRIMINAL CODE PROVISIONS**

#### **Chapter 20. THEFT AND RELATED OFFENSES**

##### **2C:20-11. Shoplifting.**

**a. Definitions.** The following definitions apply to this section:

(1) “Shopping cart” means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store;

(2) “Store or other retail mercantile establishment” means a place where merchandise is displayed, held, stored or sold or offered to the public for sale;

(3) “Merchandise” means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof;

(4) “Merchant” means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or proprietor;

(5) “Person” means any individual or individuals, including an agent, servant or employee of a merchant where the facts of the situation so require;

(6) “Conceal” means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation;

(7) “Full retail value” means the merchant’s stated or advertised price of the merchandise;

(8) “Premises of a store or retail mercantile establishment” means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment;

(9) “Under-ring” means to cause the cash register or other sale recording device to reflect less than the full retail value of the merchandise;

(10) “Antishoplifting or inventory control device countermeasure” means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device;

(11) “Organized retail theft enterprise” means any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

**b. Shoplifting.** Shoplifting shall consist of any one or more of the following acts:

(1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

(2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of

such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

(3) For any person purposely to alter, transfer or remove any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the value thereof.

(4) For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof.

(5) For any person purposely to under-ring with the intention of depriving the merchant of the full retail value thereof.

(6) For any person purposely to remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

**c. Gradation.** (1) Shoplifting constitutes a crime of the second degree under subsection b. of this section if the full retail value of the merchandise is \$75,000 or more, or the offense is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is \$1,000 or more.

(2) Shoplifting constitutes a crime of the third degree under subsection b. of this section if the full retail value of the merchandise exceeds \$500 but is less than \$75,000, or the offense is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is less than \$1,000.

(3) Shoplifting constitutes a crime of the fourth degree under subsection b. of this section if the full retail value of the merchandise is at least \$200.00 but does not exceed \$500.00.

(4) Shoplifting is a disorderly persons offense under subsection b. of this section if the full retail value of the merchandise is less than \$200.00.

The value of the merchandise involved in a violation of this section may be aggregated in determining the grade of the offense where the acts or conduct constituting a violation were committed pursuant to one scheme or course of conduct, whether from the same person or several persons, or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

Additionally, notwithstanding the term of imprisonment provided in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting offense shall be sentenced to perform community service as follows: for a first offense, at least ten days of community service; for a second offense, at least 15 days of community service; and for a third or subsequent offense, a maximum of 25 days of community service and any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of imprisonment of not less than 90 days.

**d. Presumptions.** Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention

of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof, and the finding of such merchandise concealed upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

e. A law enforcement officer, or a special officer, or a merchant, who has probable cause for believing that a person has willfully concealed unpurchased merchandise and that he can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section.

A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

f. Any person who possesses or uses any antishoplifting or inventory control device countermeasure within any store or other retail mercantile establishment is guilty of a disorderly persons offense.

**Source.** C. 2A:170-97 to 2A:170-99 (1962, c. 178, §§1-3). **Amended.** L. 1979, c. 178, §35B; L. 1997, c. 319, §1, effective January 8, 1998; L. 2000, c. 16, §1, effective April 28, 2000; L. 2006, c. 56, §1, effective August 2, 2006.

## **Chapter 33. RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES**

### *Section*

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### 2C:33-1. Riot; Failure to Disperse.

**a. Riot.** A person is guilty of riot if he participates with four or more others in a course of disorderly conduct as defined in section 2C:33-2a:

- (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.

Riot if committed under circumstances set forth in paragraph (3) is a crime of the third degree. Otherwise riot is a crime of the fourth degree.

**b. Failure of disorderly persons to disperse upon official order.** Where five or more persons are participating in a course of disorderly conduct as defined in section 2C:33-2a. likely to cause substantial harm, 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.** N.J.S. 2A:126-1 to 2A:126-5; 2A:126-7; Model Penal Code: 250.1. **Amended.** L. 1979, c. 178, §63; L. 1981, c. 290, §35.

### 2C:33-2. Disorderly Conduct.

**a. Improper behavior.** 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

- (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or
- (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

**b. Offensive language.** A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

“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.** N.J.S. 2A:170-26 to 2A:170-28; 2A:170-29 amended 1965, c. 172; 2A:170-30; Model Penal Code: 250.2.

**2C:33-2.1. Wandering, Remaining in or Prowling Public Places with Purpose of Obtaining or Selling Controlled Substances; Disorderly Persons Offense.** a. As used in this section:

“Public place” means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

b. A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if (1) he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and (2) engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog includes, but is not limited to, conduct such as the following:

- (1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;
- (2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place;
- (3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.

d. The element of the offense described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.

**Adopted.** L. 1991, c. 383, §1, effective March 16, 1992.

**2C:33-3. False Public Alarms.** a. (1) (a) Except as otherwise provided in this section, a person is guilty of a crime of the third degree if he initiates or circulates a report or warning of an impending fire, explosion, crime, catastrophe, emergency, or any other incident 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 inconvenience or alarm.

(b) A person is guilty of a crime of the second degree if the false alarm involves a report or warning of an impending bombing, hostage situation, person armed with a deadly weapon as defined by subsection c. of N.J.S.2C:11-1, or any other incident that elicits an immediate or heightened response by law enforcement or emergency services.

(c) A person is guilty of a crime of the second degree if the false alarm involves a report or warning about any critical infrastructure located in this State. For purposes of this subparagraph, “critical infrastructure” means any building, place of assembly, or facility that is indispensably necessary for national security, economic stability, or public safety.

(2) A person is guilty of a crime of the third degree if he knowingly causes the false alarm to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

b. A person is guilty of a crime of the second degree if in addition to the report or warning initiated, circulated or transmitted under subsection a. of this section, he places or causes to be placed any false or facsimile bomb in a building, place of assembly, or facility of public transport or in a place likely to cause public inconvenience or alarm. A violation of this subsection is a crime of the first degree if it occurs during a declared period of national, State or county emergency.

c. A person is guilty of a crime of the second degree if a violation of subsection a. of this section in fact results in serious bodily injury to another person or occurs during a declared period of national, State or county emergency. A person is guilty of a crime of the first degree if a violation of subsection a. of this section in fact results in death.

d. For the purposes of this section, “in fact” means that strict liability is imposed. It shall not be a defense that the death or serious bodily injury was not a foreseeable consequence of the person’s acts or that the death or serious bodily injury was caused by the actions of another person or by circumstances beyond the control of the actor. The actor shall be strictly liable upon proof that the crime occurred during a declared period of national, State or county emergency. It shall not be a defense that the actor did not know that there was a declared period of emergency at the time the crime occurred.

e. A person is guilty of a crime of the fourth degree if the person knowingly places a call to a 9-1-1 emergency telephone system without purpose of reporting the need for 9-1-1 service.

f. A person is guilty of a crime of the third degree if the person knowingly places a call to a 9-1-1 emergency telephone system with purpose to intimidate or harass an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

All local and county law enforcement authorities shall submit an annual report, on a form prescribed by the Attorney General, to the Uniform Crime Reporting Unit, within the Division of State Police in the Department of Law and Public Safety, or to another designated recipient determined by the Attorney General, containing the number and nature of offenses under this section committed within their respective jurisdictions and the disposition of these offenses. Every two years, the Uniform Crime Reporting Unit or other designated recipient of the annual reports shall forward a summary of all reports received during the

preceding two-year period, along with a summary of offenses investigated by the Division of State Police for the same period, to the State's Office of Emergency Management.

**Source.** C. 2A:122-11 (1960, c. 69); N.J.S. 2A:132-1; 2A:170-9 amended 1971, c. 87, §1; Model Penal Code: 241.4; 250.3. **Amended.** L. 1987, c. 6, §1; L. 1994, c. 115, §1, effective October 26, 1994; L. 1996, c. 63, §1, effective July 12, 1996; L. 1999, c. 195, §1, effective August 31, 1999; L. 2002, c. 26, §16, effective June 18, 2002; L. 2015, c. 156, §1, effective March 1, 2016; L. 2020, c. 73, §2, effective August 31, 2020.

### **2C:33-3.1. Repealed.**

**Adopted.** L. 1999, c. 195, §2, effective August 31, 1999. **Repealed.** L. 2019, c. 276, §20, effective January 1, 2021.

**2C:33-3.2. Fines for Violation of N.J.S. 2C:33-3.** a. Any person who violates the provisions of N.J.S.2C:33-3 shall be liable for a civil penalty of not less than \$2,000 or actual costs incurred by or resulting from the law enforcement and emergency services response to the false alarm, whichever is higher.

b. Any monies collected pursuant to this section shall be made payable to the municipality or other entity providing the law enforcement or emergency services response to the false alarm.

c. For the purposes of this section:

"Emergency services" includes, but is not limited to, paid or volunteer fire fighters, paramedics, members of an ambulance team, rescue squad or mobile intensive care unit.

"Person" excludes a juvenile as defined in section 3 of P.L.1982, c.77 (C.2A:4A-22).

**Adopted.** L. 1999, c. 195, §3, effective August 31, 1999. **Amended.** L. 2002, c. 26, §17, effective June 18, 2002; L. 2021 c. 342 §4, effective January 10, 2022.

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

a. Makes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

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

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

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

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

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States or he knowingly directs such action to a current or former judge that relates to the performance of the judge's public duties.

**Source.** N.J.S. 2A:170-26; N.J.S. 2A:170-29 amended 1965, c. 172; Model Penal Code: 250.4. **Amended.** L. 1983, c. 334, §1; L. 1990, c. 87, §2, effective August 9, 1990; L. 1995, c. 211, §2, effective August 14, 1995; L. 1998, c. 17, §4, effective May 6, 1998; L. 2001, c. 443, §3, effective January 11, 2002; L. 2021, c. 327, ~1, effective December 21, 2021.

**2C:33-4.1. Crime of Cyber-Harassment.** a. A person commits the crime of cyber-harassment if, while making one or more communications in an online

capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:

(1) threatens to inflict injury or physical harm to any person or the property of any person;

(2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or

(3) threatens to commit any crime against the person or the person's property.

b. Cyber-harassment is a crime of the fourth degree, unless the person is 21 years of age or older at the time of the offense and impersonates a minor for the purpose of cyber-harassing a minor, in which case it is a crime of the third degree.

c. If a minor under the age of 16 is adjudicated delinquent for cyber-harassment, the court may order as a condition of the sentence that the minor, accompanied by a parent or guardian, complete, in a satisfactory manner, one or both of the following:

(1) a class or training program intended to reduce the tendency toward cyber-harassment behavior; or

(2) a class or training program intended to bring awareness to the dangers associated with cyber-harassment.

d. A parent or guardian who fails to comply with a condition imposed by the court pursuant to subsection c. of this section is a disorderly person and shall be fined not more than \$100 for a first offense and not more than \$500 for each subsequent offense.

e. The trier of fact may infer that a person acted with a purpose to harass another if the person knows or should have known that any of the person's actions constituting an offense under this section are knowingly directed to or are about a judicial officer, and there is a nexus between the offense and relates to the performance of the judge's public duties. For the purposes of this subsection, "judicial officer" has the same meaning as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

f. In addition to any other disposition or condition imposed pursuant to this section, a parent or guardian having legal custody of a minor who demonstrates willful or wanton disregard in the exercise of the supervision and control of the conduct of a minor adjudicated delinquent of cyber-harassment pursuant to this section may be liable in a civil action pursuant to section 4 of P.L.2021, c.338 (C.2A:53A-17.1).

**Adopted.** L. 2013, c. 272, §1, effective January 17, 2014. **Amended.** L. 2021 c. 327 §2, effective December 21, 2021; L. 2021 c. 338 §1, effective January 10, 2022.

**2C:33-5 and 2C:33-6. Blank.**

**2C:33-7. 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.** Model Penal Code: 250.7.

**2C:33-8. 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.** N.J.S. 2A:170-28.

**2C:33-8.1. Definitions Relative to Disruption of Funerals, Violations, Disorderly Persons Offense.** a. As used in this act:

“funeral” means the ceremonies, processions and memorial services held in connection with the burial or cremation of the dead; and

“demonstration” includes the following:

- (1) any picketing or similar conduct,
- (2) any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral,
- (3) the display of any placard, banner, flag, or similar device, unless such a display is part of a funeral, or
- (4) the distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral.

b. A person is guilty of disrupting a funeral if, during the period beginning one hour prior to the scheduled commencement of a funeral, and until one hour following the actual completion of the funeral, with the purpose of causing inconvenience, annoyance or alarm to the funeral or its participants, or of recklessly creating the risk thereof, the person knowingly:

(1) obstructs, hinders, impedes or blocks another person’s entry to or exit from the funeral, the funeral procession, the funeral home, church, synagogue, temple or other place of public worship or other location at which a funeral takes place as part of demonstration activities, or

(2) engages in demonstration activities within 500 feet of the funeral, the funeral procession, the funeral home, church, synagogue, temple or other place of public worship or other location at which a funeral takes place and makes or assists in the making of noise, diversions, or threatening gestures, or engages in any other disruptive conduct, that disrupts or tends to disrupt the peace or good order of the funeral.

c. Disrupting a funeral is a disorderly persons offense.

**Adopted.** L. 2006, c. 93, §2, effective August 21, 2006.

**2C:33-9. Desecration of Venerated Objects.** A person commits a disorderly persons offense if he purposely desecrates any public monument, insignia, symbol, or structure, or place of worship or burial. “Desecrate” means defacing, damaging or polluting.

**Source.** N.J.S. 2A:95-1; 2A:95-2 amended 1954, c. 219, §1; C. 2A:95-3 (1954, c. 219, §2 amended 1973, c. 219, §37); C. 2A:122-10 (1960, c. 5); C. 2A:122-12 (1967, c. 72); Model Penal Code: 250.9.

**2C:33-10. Placing Signs or Displays that Imply Threats of Violence.** A person is guilty of a crime of the third degree if he purposely, knowingly or recklessly puts or attempts to put another in fear of bodily violence by placing on private property of another a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence. A person shall not be guilty of an attempt unless his actions cause a serious and imminent likelihood of causing fear of unlawful bodily violence.

A person convicted of an offense under this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required either to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti or to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days nor less than the number of days necessary to remove the graffiti from the property.

**Adopted.** L. 1981, c. 282, §1. **Amended.** L. 1995, c. 211, §4, effective August 14, 1995; L. 1995, c. 251, §2, effective December 12, 1995.

**2C:33-11. Desecrating Religious or Sectarian Premises.** A person is guilty of a crime of the fourth degree if he purposely defaces or damages, without authorization of the owner or tenant, any private premises or property primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons for purpose of exercising any right guaranteed by law or by the Constitution of this State or of the United States by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence.

A person convicted of an offense under this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required either to pay to the owner of the damaged property monetary restitution in the amount of pecuniary damage caused by the act of graffiti or to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property.

**Adopted.** L. 1981, c. 282, §2. **Amended.** L. 1995, c. 211, §5, effective August 14, 1995; L. 1995, c. 251, §3, effective December 12, 1995.

**2C:33-11.1. Certain actions relevant to evictions, disorderly persons offense.** a. A person commits a disorderly persons offense if, after being warned by a law enforcement or other public official of the illegality of that action, the person (1) takes possession of residential real property or effectuates a forcible entry or detainer of residential real property without lawful execution of a warrant for possession in accordance with the provisions of section 2 of P.L.1974, c.47 (C.2A:42-10.16) or without the consent of the occupant solely in possession of the residential real property; or (2) refuses to restore immediately to exclusive possession and occupancy any such occupant so displaced. Legal occupants unlawfully displaced shall be entitled without delay to reenter and reoccupy the premises, and shall not be considered trespassers or chargeable with any offense, provided that a law enforcement officer is present at the time of reentry. It shall be the duty of such officer to prevent the landlord or any other persons from obstructing or hindering the reentry and reoccupancy of the dwelling by the displaced occupant.

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As used in this section, “forcible entry and detainer” means to enter upon or into any real property and detain and hold that property by:

(1) any kind of violence including threatening to kill or injure the party in possession;

(2) words, circumstances or actions which have a clear intention to incite fear or apprehension or danger in the party in possession;

(3) putting outside of the residential premises the personal effects or furniture of the party in possession;

(4) entering peaceably and then, by force or threats, turning the party out of possession;

(5) padlocking or otherwise changing locks to the property;

(6) shutting off, or causing to be shut off, vital services such as, but not limited to, heat, electricity or water, in an effort to regain possession; or by

(7) any means other than compliance with lawful eviction procedures pursuant to section 2 of P.L.1974, c.47 (C.2A:42-10.16), as established through possession of a lawfully prepared and valid “Execution of Warrant.”

b. A person who is convicted of an offense under this section more than once within a five-year period is guilty of a crime of the fourth degree.

**Adopted.** L. 2005, c. 319, §3, effective January 12, 2006.

**2C:33-12. Maintaining a Nuisance.** A person is guilty of maintaining a nuisance 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;

b. He knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct; or

c. He knowingly conducts or maintains any premises, place or resort as a house of prostitution or as a place where obscene material, as defined in N.J.S. 2C:34-2 and N.J.S. 2C:34-3, is sold, photographed, manufactured, exhibited or otherwise prepared or shown, in violation of N.J.S. 2C:34-2, N.J.S. 2C:34-3, and N.J.S. 2C:34-4.

A person is guilty of a disorderly persons offense if the person is convicted under subsection a. or b. of this section. A person is guilty of a crime of the fourth degree if the person is convicted under subsection c. of this section.

Upon conviction under this section, in addition to the sentence authorized by this code, the court may proceed as set forth in section 2C:33-12.1.

**Source.** N.J.S. 2A:130-3. **Amended.** L. 1979, c. 178, §64; L. 1982, c. 233, §1; L. 1983, c. 234, §1.

**2C:33-12.1. Abating Nuisance.** a. In addition to the penalty imposed in case of conviction under N.J.S.2C:33-12 or under section 2 of P.L.1995, c.167 (C.2C:33-12.2), 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, obscene material 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.

b. 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.

**Adopted.** L. 1979, c. 178, §66. **Amended.** L. 1982, c. 233, §2; L. 1983, c. 234, §2; L. 1995, c. 167, §1, effective September 3, 1995.

**2C:33-12.2. Sexually Oriented Business, Nuisance, Crime.** a. As used in this act:

(1) “Sexually oriented business” means:

(a) A commercial establishment which as one of its principal business purposes offers for sale, rental, or display any of the following:

Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a “specified sexual activity” or “specified anatomical area”; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any one time, and where the images so displayed are characterized by the depiction of a “specified sexual activity” or “specified anatomical area”; or instruments, devices, or paraphernalia which are designed for use in connection with a “specified sexual activity”; or

(b) A commercial establishment which regularly features live performances characterized by the exposure of a “specified anatomical area” or by a “specified sexual activity,” or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a “specified sexual activity” or “specified anatomical area”;

(2) “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(3) “Specified anatomical area” means:

(a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if covered.

(4) “Specified sexual activity” means:

(a) The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast; or

(b) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

b. In addition to any activities proscribed by the provisions of N.J.S.2C:33-12, a person is guilty of maintaining a nuisance when the person owns or operates a sexually oriented business which offers for public use booths, screens, enclosures or other devices which facilitate sexual activity by patrons.

c. Notwithstanding any other provision of law, a municipality shall have the power to determine restrictions, if any, on the hours of operation of sexually oriented businesses.

d. A person who violates this act is guilty of a crime of the fourth degree.

**Adopted.** L. 1995, c. 167, §2, effective September 3, 1995.

**2C:33-13. Smoking in Public.** a. Any person who smokes or carries lighted tobacco in or upon any bus or other public conveyance, except group charter buses, specially marked railroad smoking cars, limousines or livery services, and, when the driver is the only person in the vehicle, autocabs, is a petty disorderly person. For the purposes of this section, “bus” includes school buses and other vehicles owned or contracted for by the governing body, board or individual of a nonpublic school, a public or private college, university, or professional training

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school, or a board of education of a school district, that are used to transport students to and from school and school-related activities; and the prohibition on smoking or carrying lighted tobacco shall apply even if students are not present in the vehicle.

b. Any person who smokes or carries lighted tobacco in any public place, including, but not limited to, places of public accommodation, where such smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 and 40:48-2 or by the owner or person responsible for the operation of the public place, and when adequate notice of such prohibition has been conspicuously posted, is either: guilty of a petty disorderly persons offense under this section, or subject to a civil penalty under section 1 of P.L.2017, c.191 (C.26:3D-65) if such civil penalty is provided for as an alternative to the offense under this subsection. Notwithstanding the provisions of N.J.S.2C:43-3, the maximum fine which can be imposed for committing a petty disorderly persons offense under this section is \$200.

c. The provisions of this section shall supersede any other statute and any rule or regulation adopted pursuant to law, except as provided in section 1 of P.L.2017, c.191 (C.26:3D-65).

**Source.** N.J.S. 2A:170-65 amended 1972, c. 85. **Amended.** L. 1979, c. 178, §66A; L. 1985, c. 187, §1; L. 2003, c. 233, §1, effective January 9, 2004; L. 2017, c. 191, §2, effective August 8, 2017.

**2C:33-13.1. Providing certain items to a person under 21 years of age, petty disorderly persons offense.** a. A person who sells or gives to a person under 21 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, or any electronic smoking device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any cartridge or other component of the device or related product, or any cannabis item as defined in section 3 of P.L.2021, c.16 (C.24:6I-33), including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) or employee of a licensed cannabis establishment, cannabis distributor, or cannabis delivery service under P.L.2021, c.16 (C.24:6I-31 et al.), who actually sells or otherwise provides a tobacco product, electronic smoking device, or cannabis item to a person under 21 years of age, shall be punished by a fine as provided for a petty disorderly persons offense. A person who has been previously punished under this section and who commits another offense under it may be punishable by a fine of twice that provided for a petty disorderly persons offense.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser or recipient of the tobacco product, electronic smoking device, or cannabis item falsely represented, by producing a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, a photographic identification card issued by a county clerk, or other form of government-issued identification described in subparagraph (a) of paragraph (6) of subsection a. of section 18 of P.L.2021, c.16 (C.24:6I-35), that the purchaser or recipient was of legal age to purchase or receive the tobacco product, electronic smoking device, or cannabis item;

(2) that the appearance of the purchaser or recipient of the tobacco product, electronic smoking device, or cannabis item was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to purchase or receive the tobacco product, electronic smoking device, or cannabis item; and

(3) that the sale or distribution of the tobacco product, electronic smoking device, or cannabis item was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product, electronic smoking device, or cannabis item.

c. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 1 of P.L.2000, c.87 (C.2A:170-51.4) concerning tobacco products or electronic smoking devices, or section 64 of P.L.2021, c.16 (C.2C:35-10d) or section 6 of P.L.2021, c.25 (C.2A:170-51.13) concerning cannabis items.

**Source.** N.J.S. 2A:170-51. **Adopted.** L. 1999, c. 90, §3, effective May 3, 1999. **Amended.** L. 2000, c. 87, §4, effective August 14, 2000; L. 2005, c. 384, §5, effective April 15, 2006; except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act; L. 2009, c. 182, §4, effective March 12, 2010; L. 2017, c. 118, §3, effective November 1, 2017; L. 2021, c. 25, §10, effective February 22, 2021.

**2C:33-14. Interference with transportation.** a. A person is guilty of interference with transportation if the person purposely or knowingly:

(1) casts, shoots or throws anything at, against or into any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, railroad car, jitney, trolley car, subway car, ferry, airplane, or other facility of transportation; or

(2) casts, shoots, throws or otherwise places any stick, stone, object or other substance upon any street railway track, trolley track or railroad track; or

(3) endangers or obstructs the safe operation of motor vehicles by casting, shooting, throwing or otherwise placing any stick, stone, object or other substance upon any highway or roadway; or

(4) unlawfully climbs into or upon any light rail vehicle, railroad locomotive or railroad car, either in motion or standing on the track of any railroad company in this State; or

(5) unlawfully disrupts, delays or prevents the operation of any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, train, bus, jitney, trolley, subway, airplane or any other facility of transportation. The term “unlawfully disrupts, delays or prevents the operation of” does not include non-violent conduct growing out of a labor dispute as defined in N.J.S.2A:15-58; or

(6) endangers or obstructs the safe operation of motor vehicles by using a traffic control preemption device to interfere with or impair the operation of a traffic control signal as defined in R.S.39:1-1; or

(7) shines, points or focuses a laser lighting device beam, directly or indirectly, upon a person operating any vehicle, including, but not limited to, a bus, light rail vehicle, railroad locomotive, railroad car, jitney, trolley car, ferry, airplane, or other facility of transportation. As used in this paragraph, “laser lighting device” means a device which emits a laser beam that is designed to be used by the operator as a pointer or highlighter to indicate, mark or identify a specific position, place, item or object.

As used in this subsection, “traffic control preemption device” means an infrared transmitter or other device which transmits an infrared beam, radio wave or other signal designed to change, alter, or disrupt in any manner the normal operation of a traffic control signal.

b. Interference with transportation is a disorderly persons offense.

c. Interference with transportation is a crime of the fourth degree if the person purposely, knowingly or recklessly causes bodily injury to another person or causes pecuniary loss in excess of \$500 but less than \$2,000.

d. Interference with transportation is a crime of the third degree if the person purposely, knowingly or recklessly causes significant bodily injury to another person or causes pecuniary loss of \$2,000 or more, or if the person purposely or knowingly creates a risk of significant bodily injury to another person.

e. Interference with transportation is a crime of the second degree if the person purposely, knowingly or recklessly causes serious bodily injury to another person.

**Source.** N.J.S. 2A:170-60 amended 1966, c. 231. **Amended.** L. 2001, c. 413, §2, effective January 8, 2002; L. 2005, c. 96, §1, effective September 1, 2005; L. 2007, c. 145, §1, effective August 1, 2007.

### **2C:33-14.1. Vandalizing Railroad Crossing Devices; Grading of Offenses.**

a. Any person who purposely, knowingly or recklessly defaces, damages, obstructs, removes or otherwise impairs the operation of any railroad crossing warning signal or protection device, including, but not limited to safety gates, electric bell, electric sign or any other alarm or protection system authorized by the Commissioner of Transportation, which is required under the provisions of R.S.48:12-54 or R.S.48:2-29, or any other railroad property or equipment, other than administrative buildings, offices or equipment, shall, for a first offense, be guilty of a crime of the fourth degree; however, if the defacement, damage, obstruction, removal or impediment of the crossing warning signal or protection device, property or equipment recklessly causes bodily injury or pecuniary loss of \$2000 or more, the actor is guilty of a crime of the third degree, or if it recklessly causes a death or serious bodily injury, the actor is guilty of a crime of the second degree.

b. A person convicted of a violation of this section that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property. As used in this section, “act of graffiti” means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

**Adopted.** L. 1991, c. 335, §1, effective January 6, 1992. **Amended.** L. 1998, c. 54, §2, effective July 10, 1998; L. 2001, c. 413, §3, effective January 8, 2002.

### **2C:33-15. Possession, consumption by persons under legal age; penalty. a.**

(1) Any person under the legal age to purchase alcoholic beverages, or under the legal age to purchase cannabis items, who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage, cannabis item, marijuana, or hashish in any school, public conveyance, public place, or place of public assembly, or motor vehicle shall be subject to the following consequences:

(a) for a first violation, a written warning issued by a law enforcement officer to the underage person. The written warning shall include the person’s name, address, and date of birth, and a copy of the warning containing this information,

plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a second or subsequent violation subject to the consequences set forth in subparagraph (b) or (c) of this paragraph. If the violation of this section is by a person under 18 years of age, a written notification concerning the violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a).

(b) for a second violation, a written warning issued by a law enforcement officer to the underage person indicating that a second violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall provide the person with informational materials about how to access community services provided by public or private agencies and organizations that shall assist the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. If the violation is by a person under 18 years of age, a written notification concerning the second violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a). The written notification shall include the same or similar informational materials about how to access community services provided by public or private agencies and organizations as those provided directly by a law enforcement officer to a person 18 years of age or older who commits a second violation of this paragraph. A copy of the second written warning to the underage person, and, if applicable, the written notification to the parent, guardian or other person having legal custody of the underage person concerning the second warning, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the second violation, shall be temporarily maintained in accordance with this section only for the purposes of determining a subsequent violation subject to the consequences set forth in subparagraph (c) of this paragraph.

(c) for a third or subsequent violation, a write-up issued by a law enforcement officer to the underage person indicating that a third or subsequent violation has occurred, which includes the person's name, address, and date of birth. If the violation is by a person 18 years of age or older, the officer shall include with the write-up a referral for accessing community services provided by a public or private agency or organization, and provide notice to that agency or organization of the referral which may also be used to initiate contact with the person, and the agency or organization shall offer assistance to the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. If the violation is by a person under 18 years of age, a written notification concerning the third or subsequent violation shall be provided to the parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a). The written notification shall include a referral for the person and the parent, guardian or other person having legal custody of the underage person for accessing community services provided by a public or private



agency or organization, and provide notice to that agency or organization of the referral which may also then be used to initiate contact with both persons, and the agency or organization shall offer assistance to both with opportunities to access further social services, including counseling, tutoring programs, mentoring services, and faith-based or other community initiatives. A copy of a write-up for a third or subsequent violation, the written notification to the parent, guardian or other person having legal custody of the underage person, if applicable, and accompanying referrals, plus a sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed the third or subsequent violation, shall be temporarily maintained in accordance with this section only to the extent necessary to track referrals to agencies and organizations, as well as for the purposes of determining a subsequent violation subject to the consequences set forth in this subparagraph.

The failure of a person under the legal age to purchase alcoholic beverages or cannabis items, or the failure of a parent, guardian or other person having legal custody of the underage person, to accept assistance from an agency or organization to which a law enforcement referral was made, or to access any community services provided by that agency or organization shall not result in any summons, initiation of a complaint, or other legal action to be adjudicated and enforced in any court.

(2) (a) A person under the legal age to purchase alcoholic beverages or cannabis items is not capable of giving lawful consent to a search to determine a violation of this section, and a law enforcement officer shall not request that a person consent to a search for that purpose.

(b) The odor of an alcoholic beverage, marijuana, hashish, cannabis, or cannabis item, or burnt marijuana, hashish, cannabis, or cannabis item, shall not constitute reasonable articulable suspicion to initiate an investigatory stop of a person, nor shall it constitute probable cause to initiate a search of a person or that person's personal property to determine a violation of paragraph (1) of this subsection. Additionally, the unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of paragraph (1) of this subsection, observed in plain sight by a law enforcement officer, shall not constitute probable cause to initiate a search of a person or that person's personal property to determine any further violation of that paragraph or any other violation of law.

(3) A person under the legal age to purchase alcoholic beverages or cannabis items who violates paragraph (1) of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item shall not be subject to arrest, shall not be transported to a police station, police headquarters, or other place of law enforcement operations, and shall not otherwise be subject to detention or be taken into custody by a law enforcement officer at or near the location where the violation occurred except to the extent that detention or custody at or near the location is required to issue a written warning or write-up, collect the information necessary to provide notice of a violation to a parent, guardian or other person having legal custody of the underage person in accordance with section 3 of P.L.1991, c.169 (C.33:1-81a), or make referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation, unless the person is being arrested, detained, or

otherwise taken into custody for also committing another violation of law for which that action is legally permitted or required.

(4) Consistent with the provisions of subsection c. of section 1 of P.L.2020, c.129 (C.40A:14-118.5), the video and audio recording functions of a law enforcement officer's body worn camera, as defined in that section, shall be activated whenever the law enforcement officer is responding to a call for service related to a violation or suspected violation of paragraph (1) of this subsection for possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that paragraph, and shall remain activated until the encounter has fully concluded and the officer leaves the scene of the encounter; provided, however, that the video and audio recording functions of a body worn camera shall not be deactivated pursuant to subparagraph (a) of paragraph (2) of subsection c. of P.L.2020, c.129 (C.40A:14-118.5), based on a request to deactivate the camera by a person who is the subject of a responsive call for service or law enforcement or investigative encounter related to a violation or suspected violation of paragraph (1) of this subsection.

(5) As part of the process for the issuance of a written warning or write-up to a person for a violation of paragraph (1) of this subsection, the law enforcement officer shall take possession of any alcoholic beverage, marijuana, hashish, or cannabis item from the person, and any drug or cannabis paraphernalia for use with any marijuana, hashish, or cannabis item. The existence and description of the alcoholic beverage, marijuana, hashish, or cannabis item, and any drug or cannabis paraphernalia shall be included in the sworn statement that includes a description of the relevant facts and circumstances that support the officer's determination that the person committed a violation, and which record is temporarily maintained in accordance with this section to determine subsequent possession or consumption violations, and track referrals for accessing community services provided by a public or private agency or organization due to a third or subsequent violation. Any alcoholic beverage, marijuana, hashish, cannabis item, or drug or cannabis paraphernalia obtained by the law enforcement officer shall either be destroyed or secured for use in law enforcement training or educational programs in accordance with applicable law and directives issued by the Attorney General.

(6) With respect to any violation of paragraph (1) of this subsection concerning the possession or consumption of an alcoholic beverage, marijuana, hashish, or any cannabis item:

(a) a person under the legal age to purchase alcoholic beverages or cannabis items shall not be photographed or fingerprinted, notwithstanding any provisions of section 2 of P.L.1982, c.79 (C.2A:4A-61) to the contrary;

(b) (i) any copy of any written warning or write-up issued to a person under the legal age to purchase alcoholic beverages or cannabis items, written notification provided to the person's parent, guardian or other person having legal custody in accordance with section 3 of P.L.1991, c.169 (C.33:1-81.1a), sworn statement describing the relevant facts and circumstances that support an officer's determination that a person committed a violation, or referrals for accessing community services provided by a public or private agency or organization pertaining to a third or subsequent violation shall be segregated and maintained in

a separate physical location or electronic repository or database from any other records maintained by a law enforcement agency, and reported to the Attorney General in a manner so that they are similarly segregated and maintained in a separate physical location or electronic repository or database from other law enforcement records accessible to the Attorney General and State and local law enforcement agencies, and shall not be transferred to or copied and placed in any other physical location or electronic repository or database containing any other law enforcement records. These records shall only be used to the extent necessary to determine a subsequent violation of paragraph (1) of this subsection or to track referrals to agencies and organizations, and shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

The Attorney General may use the records described herein to generate the number of occurrences and other statistics concerning first, second, third and subsequent violations of paragraph (1) of this subsection, the municipal, county or other geographic areas within which first, second, third and subsequent violations occur, and the law enforcement agencies involved in first, second, third and subsequent violations, which are to be compiled and made available by the Attorney General in accordance with section 4 of P.L.2021, c.25 (C.2C:33-15.1). The identity of any person named in a record shall not be revealed or included in the information to be compiled and made available in accordance with that section.

The records of violations shall only be maintained temporarily and shall be destroyed or permanently deleted as set forth in subparagraph (c) of this paragraph.

(ii) any records pertaining to a person's acceptance of assistance from an agency or organization to which a law enforcement referral was made shall not be revealed, reviewed, or considered in any manner with respect to any current or subsequent juvenile delinquency matter, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting the juvenile, or with respect to any current or subsequent prosecution for committing an offense or other violation of law, including but not limited to, a charge, filing, eligibility or decision for diversion or discharge, or sentencing, other disposition, or related decision affecting an adult under 21 years of age. Also, these records shall be deemed confidential and shall not be subject to public inspection or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), and their existence shall not be acknowledged based upon any inquiry in the same manner as if the records were expunged records pursuant to the provisions of subsection a. of N.J.S.2C:52-15.

(c) All of the records maintained by a law enforcement agency and reported to the Attorney General as described in subparagraph (i) of subparagraph (b) of this paragraph shall be destroyed or permanently deleted by the law enforcement agency and Attorney General on the second anniversary following the creation of the record concerning a violation, or not later than the last day of the month in which that second anniversary date falls, or alternatively not later than the 21st birthday of a person who is the subject of a record, or not later than the last day of the month in which that birthday falls, whichever date occurs sooner, except that a record shall be maintained upon request by the person named in the record or representative thereof, the law enforcement officer who made the record, or the law enforcement agency currently maintaining the record if it involves a lawsuit, disciplinary complaint, or criminal prosecution arising from the violation described in the record, based on an assertion that the record has evidentiary or exculpatory value. Upon final disposition of the matter for which the extended record retention was requested, the record shall be destroyed or permanently deleted.

(d) A law enforcement officer shall be guilty of the crime of official deprivation of civil rights as set forth in section 3 of P.L.2021, c.25 (C.2C:30-6.1) for violating the provisions of paragraph (1) of this subsection that address law enforcement actions involving persons who are under the legal age to purchase alcoholic beverages or cannabis items.

b. (Deleted by amendment, P.L.2021, c.25)

c. (Deleted by amendment, P.L.2021, c.25)

d. Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R.S.33:1-26, or while actively engaged in the preparation of food while enrolled in a culinary arts or hotel management program at a county vocational school or post-secondary educational institution; and nothing in this section shall apply to possession of cannabis items by any such person while actually engaged in the performance of employment by a cannabis establishment, distributor, or delivery service as permitted pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.).

e. Except as otherwise provided in this section, the provisions of section 3 of P.L.1991, c.169 (C.33:1-81.1a) shall apply to a parent, guardian or other person with legal custody of a person under 18 years of age who is found to be in violation of this section.

f. An underage person and one or two other persons shall be immune from prosecution under this section if:

(1) one of the underage persons called 9-1-1 and reported that another underage person was in need of medical assistance due to alcohol consumption, or the consumption of marijuana, hashish, or a cannabis item;

(2) the underage person who called 9-1-1 and, if applicable, one or two other persons acting in concert with the underage person who called 9-1-1 provided each of their names to the 9-1-1 first responder dispatcher;

(3) the underage person was the first person to make the 9-1-1 report; and

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(4) the underage person and, if applicable, one or two other persons acting in concert with the underage person who made the 9-1-1 call remained on the scene with the person under the legal age in need of medical assistance until assistance arrived and cooperated with medical assistance and law enforcement personnel on the scene.

The underage person who received medical assistance also shall be immune from prosecution under this section.

g. For purposes of this section, an alcoholic beverage includes powdered alcohol as defined by R.S.33:1-1, a cannabis item includes any item available for lawful consumption pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.), and the terms “marijuana” and “hashish” have the same meaning as set forth in N.J.S.2C:35-2, and the terms “drug paraphernalia” and “cannabis paraphernalia” have the same meaning as set forth in N.J.S.2C:36-1 and section 3 of P.L.2021, c.16 (C.24:6I-33), respectively.

**Adopted.** L. 1979, c. 264, §1. **Amended.** L. 1991, c. 169, §2, effective June 19, 1991; L. 1997, c. 161, §1, effective July 10, 1997; L. 2009, c. 133, §1, effective October 1, 2009; L. 2015, c. 137, §3, effective November 9, 2015; L. 2021, c. 16, §73, effective February 22, 2021, but shall only become operative upon adoption of the commission’s initial rules and regulations pursuant to subparagraph (a) of paragraph (1) of subsection d. of section 6 of P.L. 2021, c.16 (C.24:6I-34); L. 2021, c. 25, §2, effective February 22, 2021; L. 2021, c. 38, §1, effective March 26, 2021; L. 2021, c 447, ~4, effective January 18, 2022; L. 2023, c. 335, ~1, effective immediately.

**2C:33-15.1. Report by Attorney General; Taskforce.** a. (1) The Attorney General shall biannually issue a comprehensive report detailing the number of occurrences and other statistics, without revealing or including any personal identifying information, concerning first, second, third and subsequent violations of paragraph (1) of subsection a. of section 1 of P.L.1979, c.264 (C.2C:33-15) involving the possession or consumption of any alcoholic beverage, marijuana, hashish, or cannabis items by persons under the legal age to purchase alcoholic beverages or cannabis items, the municipal, county or other geographic areas within which the violations occur, and the law enforcement agencies involved in the violations, covering the previous six-month period. The initial report shall be issued by June 30, 2021, the second report shall be issued by January 30, 2022, and then the next report issued every six months thereafter. Each report shall also be submitted to the Governor and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

(2) The Attorney General shall also make reports available to the task force established pursuant to subsection b. of this section based on the Attorney General’s periodic review of body worn camera recordings of law enforcement officers responding to a call for service related to a violation or suspected violation of paragraph (1) of subsection a. of section 1 of P.L.1979, c.264 (C.2C:33-15), or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that paragraph, which recordings are required to be made in accordance with paragraph (4) of subsection a. of section 1 of P.L.1979, c.264 (C.2C:33-15). The periodic review shall be conducted using body worn camera recordings both selected by the Attorney General and randomly determined, and the task force may request an Attorney General review a particular municipality, region, or time period. The identity of any person included in a recording reviewed by the Attorney General shall be kept confidential and shall not be revealed to the

members of the task force or any staff provided to the task force by the Department of Law and Public Safety pursuant to paragraph (6) of subsection b. of this section to support its work.

b. (1) A taskforce shall be established in the Department of Law and Public Safety, comprised of 26 members to review each Attorney General report described in subsection a. of this section, and make recommendations thereon to the Governor and Legislature related to law enforcement activities to address the enforcement of underage possession or consumption of alcoholic beverages, marijuana, hashish, or cannabis items in violation of section 1 of P.L.1979, c.264 (C.2C:33-15), as well as the broader issue of underage possession or consumption of these substances.

(2) The membership of the taskforce shall include the following individuals:

(a) the Attorney General, or a designee;

(b) the Public Defender, or a designee;

(c) the Commissioner of the Department of Children and Families, or a designee;

(d) the Commissioner of Education, or a designee;

(e) a representative from the Juvenile Justice Commission, appointed by the Governor;

(f) a representative from the Division of Criminal Justice in the Department of Law and Public Safety, appointed by the Governor;

(g) the Chair of the Governor's Juvenile Justice Delinquency and Prevention Committee;

(h) two members appointed by the Governor upon the recommendation of the President of the Senate, at least one of whom shall be a member of the Legislative Black Caucus or Legislative Latino Caucus, determined in coordination with the members recommended by the Speaker of the General Assembly pursuant to subparagraph (i) of this paragraph, so that there is at least one member of each caucus serving as a member of the task force;

(i) two members appointed by the Governor upon the recommendation of the Speaker of the General Assembly, at least one of whom shall be a member of the Legislative Black Caucus or Legislative Latino Caucus, determined in coordination with the members recommended by the Senate President pursuant to subparagraph (h) of this paragraph, so that there is at least one member of each caucus serving as a member of the task force;

(j) the Administrative Director of the Courts, or a designee;

(k) a representative from the New Jersey Institute for Social Justice, appointed by the Governor;

(l) a representative from the American Civil Liberties Union of New Jersey, appointed by the Governor;

(m) a representative from the County Prosecutors Association of New Jersey who is actively and presently involved in juvenile matters, appointed by the Governor;

(n) a representative from the New Jersey Juvenile Officers Association, appointed by the Governor;

(o) one representative each from the Annie E. Casey Foundation and Vera Institute of Justice, both appointed by the Governor;

(p) a representative of the NAACP New Jersey State Conference, appointed by the Governor;

(q) a representative of Salvation and Social Justice, appointed by the Governor;  
(r) a representative from the County Youth Services Commission Administrators, appointed by the Governor;

(s) a representative from the faith-based ethical community in New Jersey, appointed by the Governor;

(t) a representative of an employee organization representing employees who work at juvenile justice facilities, appointed by the Governor; and

(u) three representatives who have been involved with the New Jersey juvenile justice system, appointed by the Governor, including at least one representative of a non-profit organization that deals with juvenile justice issues and at least one individual who has been subject to the custody of the juvenile justice system.

(3) All members appointed by the Governor, other than the members of the Legislature recommended for appointment, shall serve at the pleasure of the Governor. The members of the Legislature shall serve on the task force during their elective term of office. Any vacancies in the membership of the task force shall be filled in the same manner as the original appointments were made.

(4) Members of the task force shall serve without compensation, but shall be reimbursed for necessary expenditures incurred in the performance of their duties as members of the task force within the limits of funds appropriated or otherwise made available to the task force for its purposes.

(5) The task force shall organize as soon as practicable following the appointment of its members. The task force shall choose a chairperson from among its members and shall appoint a secretary who need not be a member of the task force.

(6) The Department of Law and Public Safety shall provide such stenographic, clerical, and other administrative assistants, and such professional staff as the task force requires to carry out its work.

**Adopted.** L. 2021, c. 25, §4, effective February 22, 2021; **Amended.** L. 2023, c. 335, §1, effective immediately.

**2C:33-16. Bringing Alcoholic Beverages, Cannabis Items Onto School Property; Disorderly Person.** Any person of legal age to purchase alcoholic beverages or cannabis items, who, in the case of alcoholic beverages, knowingly and without the express written permission of the school board, its delegated authority, or any school principal, brings or possesses any alcoholic beverages, or in the case of cannabis items, brings, possesses, or consumes, including by smoking, vaping, or aerosolizing, any cannabis items, on any property used for school purposes which is owned by any school or school board, is guilty of a disorderly persons offense. For purposes of this section, an alcoholic beverage includes powdered alcohol as defined by R.S.33:1-1, and a cannabis item includes any item available for lawful consumption pursuant to the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.).

**Adopted.** L. 1981, c. 197, §1. **Amended.** L. 2021, c. 16, §75, effective February 22, 2021, but shall only become operative upon adoption of the commission’s initial rules and regulations pursuant to subparagraph (a) of paragraph (1) of subsection d. of section 6 of P.L. 2021, c.16 (C.24:6I-34).

**2C:33-17. Availability of Alcoholic Beverage to Underaged, Offenses.** a. Anyone who purposely or knowingly offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic

beverages or entices or encourages that person to drink an alcoholic beverage is a disorderly person.

This subsection shall not apply to a parent or guardian of the person under legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages or to a religious observance, ceremony or rite. This subsection shall also not apply to any person in his home who is of the legal age to consume alcoholic beverages who offers or serves or makes available an alcoholic beverage to a person under the legal age for consuming alcoholic beverages or entices that person to drink an alcoholic beverage in the presence of and with the permission of the parent or guardian of the person under the legal age for consuming alcoholic beverages if the parent or guardian is of the legal age to consume alcoholic beverages.

b. A person who makes real property owned, leased or managed by him available to, or leaves that property in the care of, another person with the purpose that alcoholic beverages will be made available for consumption by, or will be consumed by, persons who are under the legal age for consuming alcoholic beverages is guilty of a disorderly persons offense.

This subsection shall not apply if:

(1) the real property is licensed or required to be licensed by the Division of Alcoholic Beverage Control in accordance with the provisions of R.S.33:1-1 et seq;

(2) the person making the property available, or leaving it in the care of another person, is of the legal age to consume alcoholic beverages and is the parent or guardian of the person who consumes alcoholic beverages while under the legal age for consuming alcoholic beverages; or

(3) the alcoholic beverages are consumed by a person under the legal age for consuming alcoholic beverages during a religious observance, ceremony or rite.

c. For purposes of this section, an alcoholic beverage includes powdered alcohol as defined by R.S.33:1-1.

**Adopted.** L. 1985, c. 311, §1. **Amended.** L. 1995, c. 31, §1, effective February 23, 1995; L. 2015, c. 137, §4, effective November 9, 2015.

### **2C:33-18. Repealed.**

**Repealed.** L. 1996, c. 94, §2, effective July 26, 1996.

**2C:33-19. Student Possession of Paging Device on School Property Without Permission.** No person enrolled as a student of an elementary or secondary school, knowingly and without the express written permission of the school board, its delegated authority, or any school principal, shall bring or possess any remotely activated paging device on any property used for school purposes, at any time and regardless of whether school is in session or other persons are present. A violation of this section shall be a disorderly persons offense. No permission to bring or possess any remotely activated paging device on school property shall be granted unless and until a student shall have established to the satisfaction of the school authorities a reasonable basis for the possession of the device on school property.

This section shall not apply to any student who is an active member in good standing of a volunteer fire company or first aid, ambulance or rescue squad provided that (1) the student is required to respond to an emergency and (2) a copy of the statement by the chief executive officer of the volunteer fire company or first aid, ambulance or rescue squad authorizing the possession of the paging



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device is in the possession of the student at all times while that student is in possession of the remotely activated paging device.

**Adopted.** L. 1989, c. 232, §2, effective December 29, 1989. **Amended.** L. 1996, c. 94, §1, effective July 26, 1996.

**2C:33-20. Use of Paging Device While Engaged in Commission of Certain Crimes.** A person is guilty of a crime of the fourth degree if he uses a remotely activated paging device while engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit any crime or offense enumerated in chapter 35 or 36 of Title 2C of the New Jersey Statutes.

**Adopted.** L. 1989, c. 232, §3, effective December 29, 1989.

**2C:33-21. Interception of Emergency Communications for Unlawful Purposes.** Any person who intercepts any message or transmission made on or over any police, fire or emergency medical communications system, or any person who is the recipient of information so intercepted, and who uses the information obtained thereby to facilitate the commission of or the attempt to commit a crime or a violation of any law of this State, or uses the same in a manner which interferes with the discharge of police or firefighting operations or provision of medical services by first aid, rescue or ambulance squad personnel, shall be guilty of a crime of the fourth degree.

**Adopted.** L. 1991, c. 432, §1, effective January 18, 1992. **Amended.** L. 1999, c. 317, §1, effective January 6, 2000.

**2C:33-22. Possession of Radio to Intercept Emergency Communications while Committing or Attempting to Commit a Crime.** Any person who, while in the course of committing or attempting to commit a crime, including the immediate flight therefrom, possesses or controls a radio capable of receiving any message or transmission made on or over any police, fire or emergency medical communications system, shall be guilty of a crime of the fourth degree.

**Adopted.** L. 1991, c. 432, §2, effective January 18, 1992.

**2C:33-23. Exception; Radar Devices Not Included.** For purposes of P.L. 1991, c.432 (C.2C:33-21 et seq.), the term “police, fire or emergency medical communications system” shall not include radar devices used to monitor vehicular speed.

**Adopted.** L. 1991, c. 432, §3, effective January 18, 1992.

**2C:33-23.1. License Required for Certain Radio Transmissions.** A person shall not:

a. Make, or cause to be made, a radio transmission of energy in this State unless the person obtains a license, or an exemption from licensure, from the Federal Communications Commission pursuant to 47 U.S.C. s.301, or other applicable federal law or regulation; or

b. Do any act to cause an unlicensed radio transmission of energy or interference with a public or commercial radio station licensed by the Federal Communications Commission or to enable the radio transmission of energy or interference to occur.

c. As used in this section, “radio transmission of energy” has the same meaning given that term under 47 U.S.C. s.153.

**Adopted.** L. 2005, c. 293, §1, effective April 9, 2006.

**2C:33-23.2. Violations, Fourth Degree Crime.** A person who violates the provisions of this act is guilty of a crime of the fourth degree.

**Adopted.** L. 2005, c. 293, §2, effective April 9, 2006.

**2C:33-23.3. Offense Relative to Access of Information Indicating the Location of Law Enforcement Vehicles.** a. (1) A person commits a disorderly persons offense if, without license or privilege to do so, he knowingly intercepts a signal transmitted by an automatic vehicle location system which identifies the current location of a law enforcement vehicle.

(2) A person commits a disorderly persons offense if, without license or privilege to do so, he knowingly discloses information provided by a signal transmitted by an automatic vehicle location system which identifies the current or prior location of a law enforcement vehicle to a person who is not authorized to receive or access such information.

(3) A person commits a crime of the fourth degree if he uses information provided by a signal transmitted by an automatic vehicle location system which identifies the current or prior location of a law enforcement vehicle for an unlawful purpose.

b. (1) This section shall not in any way limit the authority of any law enforcement officer acting within the scope of his official duties.

(2) It shall not be deemed an unlawful purpose for any person to use information provided by a signal transmitted by an automatic vehicle location system which identifies the prior location of a law enforcement vehicle to evaluate or examine the operations of a law enforcement agency; provided, however, that nothing in this act shall be deemed to authorize any person to receive or access information provided by a signal transmitted by an automatic vehicle location system which identifies the location of a law enforcement vehicle if such receipt or access could reasonably jeopardize the safety of a law enforcement officer or the public, or compromise the integrity of any ongoing investigation.

c. Nothing in this act shall preclude an indictment and conviction for any other offense defined by the laws of this State.

d. For purposes of this section:

“Automatic vehicle location system” means an automated system, such as a global positioning system, for tracking the geographic location of a motor vehicle and transmitting that location information to an authorized receiving entity; and

“Global positioning system” means a reporting technology that is monitored by a network of electronic navigation components in which a vehicle may be identified and tracked via satellite.

**Adopted.** L. 2013, c. 127, §1, effective August 9, 2013.

**2C:33-24. “Act of graffiti.”** As used in this chapter, “act of graffiti” means the drawing, painting or making any mark or inscription on public or private real or personal property without the permission of the owner.

**Adopted.** L. 1995, c. 251, §7, effective December 12, 1995. **Amended.** L. 2014, c. 69, §3, effective November 28, 2014.

### **2C:33-25. Repealed.**

**Repealed.** L. 2014, c. 69, §1, effective November 28, 2014.

**2C:33-26. Sale of Motor Vehicles on Sunday; Exemption.** Except as provided in section 1 of P.L.2011, c.28 (C.39:10-38), a person who engages in the business of buying, selling, or exchanging motor vehicles or who opens a place of business and attempts to engage in such conduct on a Sunday commits a disorderly persons offense. The first offense is punishable by a fine not to exceed \$100 or imprisonment for a period of not more than 10 days or both; the second offense is punishable by a fine not to exceed \$500 or imprisonment for a period of

not more than 30 days or both; the third or each subsequent offense is punishable by a fine of \$750 or imprisonment for a period of six months or both. If the person is a licensed dealer in new or used motor vehicles in this State, under the provisions of chapter 10, Title 39 of the Revised Statutes, the person shall also be subject to suspension or revocation of his dealer's license to engage in the business of buying, selling, or exchanging motor vehicles in this State as provided in Title 39, chapter 10, section 20, for violation of this statute. Nothing contained in this section shall be construed to prohibit a person from accepting a deposit to secure the sale of a recreational vehicle, as defined in section 1 of P.L.1999, c.284 (C.54:4-1.18), at an off-site sale authorized pursuant to section 2 of P.L.2005, c.351 (C.39:10-19.2), on a Sunday. Nothing contained in this section shall be construed to prohibit a dealer, engaged in the business of selling motorcycles and licensed pursuant to R.S.39:10-19, and who holds a franchise from a manufacturer of new motorcycles from engaging in the business of buying, selling, or exchanging motorcycles on a Sunday, except that such a dealer shall be prohibited from engaging in the business of buying, selling, or exchanging motorcycles on a Sunday in a county where Sunday sales are prohibited pursuant to sections 14 through 18 of P.L.1999, c.90 (C.40A:64-1 et seq.) and for a violation of this prohibition shall be subject to the penalties provided in this section for the buying, selling, or exchanging motor vehicles on a Sunday. As used in this section, the terms "dealer," "motor vehicle," and "motorcycle" shall have the meaning set forth in R.S.39:1-1.

**Source.** N.J.S. 2A:171-1.1. **Adopted.** L. 1999, c. 90, §4, effective May 3, 1999. **Amended.** L. 2005, c. 351, §5, effective August 1, 2006, but the Chief Administrator of the Motor Vehicle Commission may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of this act; L. 2011, c. 29, §2, effective March 1, 2011.

**2C:33-27. Consumption of Alcohol in Restaurants.** a. No person who owns or operates a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public, and for which premises a license or permit authorizing the sale of alcoholic beverages for on-premises consumption has not been issued:

(1) Shall allow the consumption of alcoholic beverages, other than wine or a malt alcoholic beverage, in a portion of the premises which is open to the public; or

(2) Shall charge any admission fee or cover, corkage or service charge or advertise inside or outside of such premises that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public.

(3) Shall allow the consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal law or regulation.

b. Nothing in this act shall restrict the right of a municipality or an owner or operator of a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public from prohibiting the consumption of alcoholic beverages on those premises.

c. A person who violates any provision of this act is a disorderly person, and the court, in addition to the sentence imposed for the disorderly person violation, may by its judgment bar the owner or operator from allowing

consumption of wine or malt alcoholic beverages in his premises as authorized by this act.

**Source.** N.J.S. 2A:170-25.21; 2A:170-25.22; 2A:170-25.23. **Adopted.** L. 1999, c. 90, §5, effective May 3, 1999.

**2C:33-28. Solicitation, Recruitment to Join Criminal Street Gang; Crime, Degrees; Sentencing.** a. An actor who solicits or recruits another to join or actively participate in a criminal street gang with the knowledge or purpose that the person who is solicited or recruited will promote, further, assist, plan, aid, agree, or attempt to aid in the commission of criminal conduct by a member of a criminal street gang commits a crime of the fourth degree. For purposes of this section, the actor shall have the requisite knowledge or purpose if he knows that the person who is solicited or recruited will engage in some form, though not necessarily which form, of criminal activity. “Criminal street gang” shall have the meaning set forth in section 1 of P.L.2007, c.341 (C.2C:33-29).

b. An actor who, in the course of violating subsection a. of this section, threatens another with bodily injury on two or more separate occasions within a 30-day period commits a crime of the third degree.

c. An actor who, in the course of violating subsection a. of this section, inflicts significant bodily injury upon another commits a crime of the second degree.

d. Any defendant convicted of soliciting, recruiting, coercing or threatening a person under 18 years of age in violation of subsection a., b. or g. of this section shall be guilty of a crime of the second degree.

e. An actor who violates subsection a. of this section while under official detention commits a crime of the second degree. As used in this subsection, “official detention” means detention in any facility for custody of persons under charge or conviction of a crime or offense, or committed pursuant to chapter 4 of this Title, or alleged or found to be delinquent; detention for extradition or deportation; mandatory commitment to a residential treatment facility imposed as a condition of special probation pursuant to subsection d. of N.J.S.2C:35-14; or any other detention for law enforcement purposes. “Official detention” also includes supervision of probation or parole, or constraint incidental to release on bail. Notwithstanding the provisions of N.J.S.2C:44-5 or any other provision of law, the court shall order that the sentence imposed upon a violation of this section be served consecutively to the period or periods of detention the actor was serving at the time of the violation.

f. Any defendant convicted of soliciting, recruiting, coercing or threatening a person under 18 years of age in violation of subsection c. or e. of this section shall be sentenced by the court to an extended term of imprisonment as set forth in subsection a. of N.J.S.2C:43-7.

g. An actor who in the course of violating subsection a. of this section, does so on school property commits a crime of the third degree.

Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5 or any other provision of law, a conviction arising under this section shall not merge with a conviction for any criminal offense that the actor committed while involved in criminal street gang related activity, as defined in subsection h. of N.J.S.2C:44-3, nor shall the conviction for any such offense merge with a conviction pursuant to this section and the sentence imposed upon a violation of this section shall be ordered to be served consecutively to that imposed upon any other such conviction.

**Adopted.** L. 1999, c. 160, §1, effective July 8, 1999. **Amended.** L. 2007, c. 234, §1, effective January 3, 2008; L. 2013, c. 202, §1, effective January 17, 2014.

**2C:33-29. Gang Criminality.** a. A person is guilty of the crime of gang criminality if, while knowingly involved in criminal street gang activity, he commits, attempts to commit, or conspires to commit, whether as a principal or an accomplice, any crime specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. A crime is committed while involved in a criminal street gang related activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang.

“Criminal street gang” means three or more persons associated in fact. Individuals are associated in fact if: (1) two of the following seven criteria that indicate criminal street gang membership apply: (a) self-proclamation; (b) witness testimony or official statement; (c) written or electronic correspondence; (d) paraphernalia or photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia of street gang activity; and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed or conspired or attempted to commit, within the preceding five years from the date of present offense, excluding any period of imprisonment, one or more offenses on separate occasions of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, tampering with witnesses and informants or a violation of chapter 11, sections 3, 4, 5, 6, or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes.

b. Grading. Gang criminality is a crime of one degree higher than the most serious underlying crime referred to in subsection a. of this section, except that where the underlying crime is a crime of the first degree, gang criminality is a first degree crime and the defendant, upon conviction, and notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced to an ordinary term of imprisonment between 15 and 30 years. A sentence imposed upon conviction of the crime of gang criminality shall be ordered to be served consecutively to the sentence imposed upon conviction of any underlying offense referred to in subsection a. of this section.

**Adopted.** L. 2007, c. 341, §1, effective January 13, 2008.

**2C:33-30. Promoting Organized Street Crime.** a. A person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any crime specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9.

b. Grading. Promotion of organized street crime is a crime of one degree higher than the most serious underlying crime referred to in subsection a. of this section, except that where the underlying offense is a crime of the first degree, promotion of organized street crime is a first degree crime and the defendant, upon conviction, and notwithstanding the provisions of

paragraph (1) of subsection a of N.J.S.2C:43-6, shall be sentenced to an ordinary term of imprisonment between 15 and 30 years. A sentence imposed upon conviction of the crime of promotion of organized street crime shall be ordered to be served consecutively to the sentence imposed upon conviction of any underlying offense referred to in subsection a. of this section.

**Adopted.** L. 2007, c. 341, §2, effective January 13, 2008.

**2C:33-31. Crime of Dog Fighting, Penalties; Definitions.** a. A person is guilty of dog fighting if that person knowingly:

(1) keeps, uses, is connected with or interested in the management of, or receives money for the admission of a person to, a place kept or used for the purpose of fighting or baiting a dog;

(2) owns, possesses, keeps, trains, promotes, purchases, breeds or sells a dog for the purpose of fighting or baiting that dog;

(3) for amusement or gain, causes, allows, or permits the fighting or baiting of a dog;

(4) permits or suffers a place owned or controlled by that person to be used for the purpose of fighting or baiting a dog;

(5) is present and witnesses, pays admission to, encourages or assists in the fighting or baiting of a dog;

(6) gambles on the outcome of a fight involving a dog; or

(7) owns, possesses, buys, sells, transfers, or manufactures dog fighting paraphernalia for the purpose of engaging in or otherwise promoting or facilitating the fighting or baiting of a dog.

Dog fighting is a crime of the third degree.

b. (1) In addition to any other penalty imposed, the court shall order:

(a) the seizure and forfeiture of any dogs or other animals used for fighting or baiting, and may upon request of the prosecutor or on its own motion, order any person convicted of a violation under this section to forfeit possession of: (i) any other dogs or other animals in the person's custody or possession; and (ii) any other property involved in or related to a violation of this section; and

(b) restitution, concerning the dogs or other animals seized and forfeited pursuant to subparagraph (a) of this paragraph, in the form of reimbursing any costs for all the animals' food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any person, agency, entity, or organization, including but not limited to a county society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, a State or local governmental entity, or a kennel, shelter, pound, or other facility.

(2) The court may prohibit any convicted person from having future possession or custody of any animal for any period of time the court deems reasonable, including a permanent prohibition.

c. For the purposes of this section:

"Dog fighting paraphernalia" means equipment, products, implements, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, or conditioning of a dog for fighting, or in furtherance of dog fighting. "Bait" means to attack with violence, to provoke, or to harass a dog with

one or more animals for the purpose of training the dog for, or to cause a dog to engage in, a fight with or among other dogs.

d. In determining whether an object is dog fighting paraphernalia, a trier of fact may consider:

- (1) the proximity of the object in time and space to any violation of this section;
- (2) direct or circumstantial evidence of the intent of the person to deliver the object to any person whom the person in possession of the object knows, or should reasonably know, intends to use the object to violate this section;
- (3) oral or written instructions concerning its use provided with, or found in the vicinity of, the object;
- (4) descriptive materials accompanying the object which explain or depict its use; and
- (5) any other relevant factors.

**Adopted.** L. 2015, c. 85, §1, effective August 10, 2015. **Amended.** L. 2018, c. 331, §2, effective August 1, 2018; L. 2019, c. 223, §2, effective August 9, 2019.

**2C:33-32. Leader, Financier of Dog Fighting Network; Penalties.** a. A person is a leader of a dog fighting network if he conspires with others in a scheme or course of conduct to unlawfully engage in dog fighting, as defined in section 1 of P.L.2015, c.85 (C.2C:33-31), as an organizer, supervisor, financier or manager of at least one other person. Leader of a dog fighting network is a crime of the second degree.

“Financier” means a person who, with the intent to derive a profit, provides money or credit or other thing of value in order to finance the operations of dog fighting.

b. (1) In addition to any other penalty imposed, the court shall order:

(a) the seizure and forfeiture of any dogs or other animals used for fighting or baiting, and may upon request of the prosecutor or on its own motion, order any person convicted of a violation under this section to forfeit possession of: (i) any other dogs or other animals in the person’s custody or possession; and (ii) any other property involved in or related to a violation of this; and

(b) restitution, concerning the dogs or other animals seized and forfeited pursuant to subparagraph (a) of this paragraph, in the form of reimbursing any costs for all the animals’ food, drink, shelter, or veterinary care or treatment, or other costs, incurred by any person, agency, entity, or organization, including but not limited to a county society for the prevention of cruelty to animals, any other recognized organization concerned with the prevention of cruelty to animals or the humane treatment and care of animals, a State or local governmental entity, or a kennel, shelter, pound, or other facility.

(2) The court may prohibit any convicted person from having future possession or custody of any animal for any period of time the court deems reasonable, including a permanent prohibition.

c. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of a dog fighting network shall not merge with the conviction for any offense, nor shall such other conviction merge with a conviction under this section, which is the object of the conspiracy. Nothing contained in this section shall prohibit the court from imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this section be construed in any way to preclude or limit the prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2, or any prosecution or conviction under N.J.S.2C:41-1 et seq. (racketeering activities) or subsection g. of N.J.S.2C:5-2 (leader of organized crime) or any prosecution or conviction for any such offense.

d. It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attendant circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, or the amount of cash or currency involved.

e. It shall not be a defense to a prosecution under this section that the dog intended to be used for fighting was brought into or transported in this State solely for ultimate distribution or sale in another jurisdiction.

f. It shall not be a defense that the defendant was subject to the supervision or management of another, nor that another person or persons were also leaders of a dog fighting network.

**Adopted.** L. 2015, c. 85, §2, effective August 10, 2015. **Amended.** L. 2018, c. 331, §2, effective August 1, 2018.

## Chapter 34. PUBLIC INDECENCY

### *Section*

- 2C:34-1 Prostitution and Related Offenses.
- 2C:34-1.1 Loitering for the Purpose of Engaging in Prostitution.
- 2C:34-1.2 Additional Penalties for Engaging in Prostitution as a Patron.
- 2C:34-2 Obscenity for Persons 18 Years of Age or Older.
- 2C:34-3 Obscenity For Persons Under 18.
- 2C:34-3.1 Retailer Defined.
- 2C:34-3.2 Display of Obscene Material, Ordinance to Establish Petty Disorderly Offense.
- 2C:34-4 Public Communication of Obscenity.
- 2C:34-5 Repealed.
- 2C:34-6 Definitions.
- 2C:34-7 Sexually Oriented Business; Location, Building Requirements; Penalty.

### **2C:34-1. Prostitution and Related Offenses.** a. As used in this section:

(1) "Prostitution" is sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.

(2) "Sexual activity" includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.

(3) "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.

(4) "Promoting prostitution" is:

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

(b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;

(d) Soliciting a person to patronize a prostitute;

(e) Procuring a prostitute for a patron;



(f) 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; or

(g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

b. A person commits an offense if:

(1) The actor engages in prostitution as a patron;

(2) The actor promotes prostitution;

(3) The actor knowingly promotes prostitution of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;

(5) The actor compels another to engage in or promote prostitution;

(6) The actor promotes prostitution of the actor's spouse;

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable; or

(8) The actor engages in prostitution by personally offering sexual activity in exchange for something of economic value.

**c. Grading of offenses under subsection b.**

(1) An offense under subsection b. constitutes a crime of the first degree if the offense falls within paragraph (3) or (4) of that subsection.

(2) An offense under subsection b. constitutes a crime of the second degree if the offense falls within paragraph (7) of that subsection.

(3) An offense under subsection b. constitutes a crime of the third degree if the offense falls within paragraph (5) or (6) of that subsection.

(4) An offense under paragraph (2) of subsection b. constitutes a crime of the third degree if the conduct falls within subparagraph (a), (b), (c), (f), or (g) of paragraph (4) of subsection a. Otherwise the offense is a crime of the fourth degree.

(5) An offense under subsection b. constitutes a disorderly persons offense if the offense falls within paragraph (1) of that subsection except that a second or third conviction for such an offense constitutes a crime of the fourth degree, and a fourth or subsequent conviction for such an offense constitutes a crime of the third degree. In addition, where a motor vehicle was used in the commission of any offense under paragraph (1) of subsection b. the court shall suspend for six months the driving privilege of any such offender who has a valid driver's license issued by this State. Upon conviction, the court shall immediately collect the offender's driver's license and shall forward it, along with a report stating the first and last day of the suspension imposed pursuant to this paragraph, to the New Jersey Motor Vehicle Commission.

(6) An offense under subsection b. constitutes a disorderly persons offense if the offense falls within paragraph (8) of that subsection, except that a second or subsequent conviction for such an offense constitutes a crime of the fourth degree.

**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.

e. It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or compelled by another to engage in sexual activity, regardless of the defendant's age.

f. (1) Any fine set forth in N.J.S.2C:43-3 that is imposed upon a person by a municipal court for a conviction of a disorderly persons offense under this section shall be collected, notwithstanding the procedures for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), by the municipal court administrator and paid into the municipal treasury of the municipality in which the offense was committed.

(2) In addition to any fine, fee, assessment, or penalty authorized under the provisions of Title 2C of the New Jersey Statutes, a person convicted of an offense of prostitution or related offense under paragraph (2), (3), (4), (5), (6), or (7) of subsection b. shall be assessed a penalty of at least \$10,000 but not more than \$50,000, except if the offense involved promotion of the prostitution of a child under the age of 18, the penalty shall be at least \$25,000. All penalties provided for in this subsection, collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), shall be forwarded to the Department of the Treasury to be deposited in the "Human Trafficking Survivor's Assistance Fund" established by section 2 of P.L.2013, c.51 (C.52:17B-238).

**Source.** N.J.S. 2A:133-1 to 2A:133-12; 2A:170-5; Model Penal Code: 251.2. **Amended.** L. 1991, c. 211, §1, effective September 21, 1991; L. 1997, c. 93, §1, effective May 8, 1997; L. 1999, c. 9, §1, effective January 25, 1999; L. 2005, c. 77, §2, effective April 26, 2005; L. 2011, c. 195, §6, effective January 17, 2012, and shall be applicable to all offenses committed on or after the effective date; L. 2013, c. 51, §9, effective July 1, 2013.

**2C:34-1.1. Loitering for the Purpose of Engaging in Prostitution.** a. As used in this section, "public place" means any place to which the public has access, including but not limited to any public street, sidewalk, bridge, alley, plaza, park, boardwalk, driveway, parking lot or transportation facility, public library or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.

b. A person commits a disorderly persons offense if he:

(1) wanders, remains or prowls in a public place with the purpose of engaging in prostitution or promoting prostitution as defined in N.J.S.2C:34-1; and

(2) engages in conduct that, under the circumstances, manifests a purpose to engage in prostitution or promoting prostitution as defined in N.J.S.2C:34-1.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to engage in prostitution or promoting prostitution includes, but is not limited to, conduct such as the following:

(1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;

(2) Repeatedly attempting to stop, or repeatedly attempting to engage passers-by in conversation;

(3) Repeatedly stopping or attempting to stop motor vehicles.

d. The element described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.

**Adopted.** L. 1997, c. 93, §3, effective May 8, 1997.

**2C:34-1.2. Additional Penalties for Engaging in Prostitution as a Patron.**

a. In addition to any other disposition authorized by law, the court shall order any person convicted of a disorderly persons offense for engaging in prostitution as a patron pursuant to paragraph (1) of subsection b. of N.J.S.2C:34-1 to participate in the “Prostitution Offender Program” established pursuant to subsection d. of this section, unless the prosecutor, by motion, requests that the mandatory participation be waived, in which case the court may waive the program participation required by this section.

b. In addition to any fine, fee, assessment, or penalty authorized under the provisions of Title 2C of the New Jersey Statutes, a person convicted of an offense of engaging in prostitution as a patron pursuant to paragraph (1) of subsection b. of N.J.S.2C:34-1 shall be assessed, if ordered to participate in the “Prostitution Offender Program,” a fee of \$500.

c. Each \$500 fee assessed as required by this section shall be collected by the court, and forwarded to the Department of the Treasury to be deposited in the “Human Trafficking Survivor’s Assistance Fund” established by section 2 of P.L.2013, c.51 (C.52:17B-238). From this fee, \$200 shall be retained in the fund, and the remaining \$300 shall be distributed as follows: \$200 to the approved provider of the “Prostitution Offender Program,” as established under subsection d. of this section, attended by the person; and \$100 to the law enforcement agency that arrested the person resulting in that person’s conviction.

d. (1) There is hereby established an education program to be known as the “Prostitution Offender Program,” which shall consist of an instructional program on prostitution and human trafficking schemes offered in one or more locations throughout the State as follows:

(a) by a county or local governmental entity, if that county or local governmental entity demonstrates an interest in establishing a program, submits information pertaining to the proposed operation of an instructional program by the county or local governmental entity, or alternatively, by a nonprofit or other private provider on behalf of the county or local governmental entity, and the Attorney General, in consultation with the Commission on Human Trafficking created by section 1 of P.L.2013, c.51 (C.52:17B-237), approves the program and the provider thereof, if the proposed provider is a nonprofit or other private entity. If a county or local governmental entity establishes and operates an instructional program, then all courts operating within the jurisdiction of that county or local governmental entity shall order a person convicted of an eligible offense under subsection a. of this section to attend that county or local governmental entity’s program; provided, a court shall not be required to order a person to attend that program until the first day of the month next following the date on which the Attorney General notifies the Administrative Office of the Courts that the program has been established and approved by the Attorney General; and

(b) by the State, to be established within six months of the effective date of this section, based upon the Attorney General, in consultation with the Commission on Human Trafficking created by section 1 of P.L.2013, c.51 (C.52:17B-237),

approving an instructional program to be provided by one or more approved nonprofit or other private providers in multiple locations throughout the State. Any court in a jurisdiction that does not have an approved county or local governmental entity instructional program as established under subparagraph (a) of this paragraph shall order a person convicted of an eligible offense under subsection a. of this section to attend the approved State program established under this subparagraph, unless there is an extra-jurisdictional county or local governmental entity instructional program within 25 miles of the court, and the court has been notified in accordance with this subparagraph, or subparagraph (a) of this paragraph, of the availability of that program to accept participants from the court, in which case the court may instead order a person to attend the county or local governmental entity's instructional program; regarding any program notice under this subparagraph, a court shall not be required to order a person to attend a program until the first day of the month next following the date on which the Attorney General notifies the Administrative Office of the Courts that the program has been established and approved by the Attorney General.

(2) The program shall include information intended to increase the person's awareness of:

- (a) the causes of prostitution and its relationship to human trafficking;
- (b) the health risks connected with prostitution, including the risk of transmittable diseases;
- (c) the consequences of convictions for prostitution or human trafficking, including penalties for subsequent convictions; and
- (d) the pervasiveness of human trafficking and the effects of human trafficking on its victims.

(3) Pursuant to section 2 of P.L.2013, c.51 (C.52:17B-238), the Attorney General, in consultation with the Commission on Human Trafficking, may provide for the expenditures of monies from the "Human Trafficking Survivor's Assistance Fund" to assist with the development, maintenance, revision, and distribution of instructional program materials for the "Prostitution Offender Program," and the operation of this instructional program.

**Adopted.** L. 2013, c. 51, §11, effective July 1, 2013.

**2C:34-2. Obscenity for Persons 18 Years of Age or Older.** a. Definitions for purpose of this section:

(1) "Obscene material" means any description, narrative account, display, or depiction of sexual activity or anatomical area contained in, or consisting of, a picture or other representation, publication, sound recording, live performance, or film, which by means of posing, composition, format or animated sensual details:

(a) Depicts or describes in a patently offensive way, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, or lewd exhibition of the genitals,

(b) Lacks serious literary, artistic, political, or scientific value, when taken as a whole, and

(c) Is a part of a work, which to the average person applying contemporary community standards, has a dominant theme taken as a whole, which appeals to the prurient interest.

(2) "Exhibit" means the sale of admission to view obscene material.

b. A person who sells, distributes, rents or exhibits obscene material to a person 18 years of age or older commits a crime of the fourth degree. Sale of obscene material shall be deemed to include any form of transaction which results in the admission to a display or depiction of obscene material or temporary or permanent access to any obscene material.

Nothing contained herein or in section 3 of P.L.1995, c.230 (C.2C:34-7) shall be construed to prohibit a municipality from adopting as a part of its zoning ordinances an ordinance permitting the sale, distribution, rental or exhibition of obscene material in which event such sale, distribution, rental or exhibition shall be deemed legal.

**Source.** N.J.S. 2A:115-2 amended 1957, c. 175; 1959, c. 97; C. 2A:115-1.7 (1971, c. 446, §2); C. 2A:115-2.2 (1971, c. 447, §2); C. 2A:115-2.5 (1971, c. 448, §1). **Amended.** L. 1982, c. 211, §1; L. 1989, c. 54, §1, effective April 14, 1989; L. 1995, c. 230, §1, effective September 15, 1995.

**2C:34-3. Obscenity For Persons Under 18.** a. Definitions for purposes of this section:

(1) "Obscene material" means any description, narrative account, display, depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording, live performance or film, which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.

(2) "Obscene film" means any motion picture film or preview or trailer to a film, not including newsreels portraying actual current events or pictorial news of the day, in which a scene, taken by itself:

(a) Depicts a specified anatomical area or specified sexual activity, or the simulation of a specified sexual activity, or verbalization concerning a specified sexual activity; and

(b) Emits sensuality sufficient, in terms of the duration and impact of the depiction, to appeal to prurient interest.

(3) "Specified anatomical area" means:

(a) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if covered.

(4) "Specified sexual activity" means:

(a) Human genitals in a state of sexual stimulation or arousal; or

(b) Any act of human masturbation, sexual intercourse or deviate sexual intercourse; or

(c) Fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

(5) "Knowingly" means:

(a) Having knowledge of the character and content of the material or film described herein; or

(b) Having failed to exercise reasonable inspection which would disclose its character and content.

(6) "Exhibit" means the sale or admission to view obscene material.

(7) "Show" means cause or allow to be seen.

**b. Promoting obscene material.**

(1) A person who knowingly sells, distributes, rents or exhibits to a person under 18 years of age obscene material is guilty of a crime of the third degree.

(2) A person who knowingly shows obscene material to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene material is at least four years older than the person under 18 years of age viewing the material.

**c. Admitting to exhibition of obscene film.**

(1) Any person who knowingly admits a person under 18 years of age to a theatre then exhibiting an obscene film is guilty of a crime of the third degree.

(2) A person who knowingly shows an obscene film to a person under 18 years of age with the knowledge or purpose to arouse, gratify or stimulate himself or another is guilty of a crime of the third degree if the person showing the obscene film is at least four years older than the person under 18 years of age viewing the film.

**d. Presumption of knowledge and age.**

The requisite knowledge with regard to the character and content of the film or material and of the age of the person is presumed in the case of an actor who sells, distributes, rents, exhibits or shows obscene material to a person under 18 years of age or admits to a film obscene for a person under 18 years of age a person who is under 18 years of age.

**e. Defenses.**

(1) It is an affirmative defense to a prosecution under subsections b. and c. which the defendant must prove by a preponderance of evidence that:

(a) The person under age 18 falsely represented in or by writing that he was age 18 or over;

(b) The person's appearance was such that an individual of ordinary prudence would believe him to be age 18 or over; and

(c) The sale, distribution, rental, showing or exhibition to or admission of the person was made in good faith relying upon such written representation and appearance and in the reasonable belief that he was actually age 18 or over.

(2) It is an affirmative defense to a prosecution under subsection c. that the defendant is an employee in a motion picture theatre who has no financial interest in that motion picture theatre other than his wages and has no decision-making authority or responsibility with respect to the selection of the motion picture show which is exhibited.

**Amended.** L. 1989, c. 54, §2, effective April 14, 1989; L. 1999, c. 227, §1, effective November 1, 1999.

**2C:34-3.1. Retailer Defined.** "Retailer," as used in this act, means any person who operates a store, newsstand, booth, concession or similar business with unimpeded access for persons under 18 years old, who is in the business of making sales of periodicals or other publications at retail containing pictures, drawings or photographs.

**Adopted.** L. 1988, c. 17, §1.

**2C:34-3.2. Display of Obscene Material, Ordinance to Establish Petty Disorderly Offense.** A municipality may enact an ordinance making it a petty disorderly persons offense for a retailer to display or permit to be displayed at his business premises any obscene material as defined in N.J.S. 2C:34-3, at a height of less than 5 feet or without a blinder or other covering placed or printed on the

front of the material displayed. Any such ordinance shall contain a provision stating that public display of the obscene material shall constitute presumptive evidence that the retailer knowingly made or permitted the display.

**Adopted.** L. 1988, c. 17, §2.

**2C:34-4. Public Communication of Obscenity.** a. “Publicly communicate” means to display, post, exhibit, give away or vocalize material in such a way that its character and content may be readily and distinctly perceived by the public by normal unaided vision or hearing when viewing or hearing it in, on or from a public street, road, thoroughfare, recreation or shopping center or area, public transportation facility or vehicle used for public transportation.

b. A person who knowingly publicly communicates obscene material, as defined in section 2C:34-3 or causes or permits it to be publicly communicated on property he owns or leases or operates is guilty of a crime of the fourth degree.

c. Public communication of obscene material shall constitute presumptive evidence that the defendant made the communication or caused or permitted it to be made knowingly.

**Source.** C. 2A:115-2.1 to 2A:115-2.4 (1971, c. 447, §§1-4).

### **2C:34-5. Repealed.**

**Repealed.** L. 2021 c. 409 §2, effective March 19, 2022.

**2C:34-6. Definitions.** As used in sections 2 and 3 of this act:

a. “Sexually oriented business” means:

(1) A commercial establishment which as one of its principal business purposes offers for sale, rental, or display any of the following:

Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a “specified sexual activity” or “specified anatomical area”; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any one time, and where the images so displayed are characterized by the depiction of a “specified sexual activity” or “specified anatomical area”; or instruments, devices, or paraphernalia which are designed for use in connection with a “specified sexual activity”; or

(2) A commercial establishment which regularly features live performances characterized by the exposure of a “specified anatomical area” or by a “specified sexual activity,” or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a “specified sexual activity” or “specified anatomical area”.

b. “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

c. “Specified anatomical area” means:

(1) Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if covered.

d. “Specified sexual activity” means:

(1) The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast; or

(2) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

**Adopted.** L. 1995, c. 230, §2, effective September 15, 1995.

**2C:34-7. Sexually Oriented Business; Location, Building Requirements;**

**Penalty.** a. Except as provided in a municipal zoning ordinance adopted pursuant to N.J.S.2C:34-2, no person shall operate a sexually oriented business within 1,000 feet of any existing sexually oriented business, or any church, synagogue, temple or other place of public worship, or any elementary or secondary school or any school bus stop, or any municipal or county playground or place of public resort and recreation, or any hospital or any child care center, or within 1,000 feet of any area zoned for residential use. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act where another sexually oriented business, an elementary or secondary school or school bus stop, or any municipal or county playground or place of public resort and recreation, or any hospital or any child care center, is subsequently established within 1,000 feet, or a residential district or residential lot is subsequently established within 1,000 feet.

b. Every sexually oriented business shall be surrounded by a perimeter buffer of at least 50 feet in width with plantings, fence, or other physical divider along the outside of the perimeter sufficient to impede the view of the interior of the premises in which the business is located. The municipality may, by ordinance, require the perimeter buffer to meet additional requirements or standards. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this act.

c. No sexually oriented business shall display more than two exterior signs, consisting of one identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than 40 square feet in size.

d. A person who violates this section is guilty of a crime of the fourth degree.

**Adopted.** L. 1995, c. 230, §3, effective September 15, 1995. **Amended.** L. 1999, c. 41, §1, effective March 12, 1999.

**Chapter 36. DRUG PARAPHERNALIA***Section*

- 2C:36-1 Drug Paraphernalia, Defined; Determination.
- 2C:36-2 Use or Possession with Intent to Use, Disorderly Persons Offense.
- 2C:36-3 Distribute, Dispense or Possess with Intent to Distribute or Manufacture, Crime of Fourth Degree.
- 2C:36-4 Advertising to Promote Sale, Crime of Fourth Degree.
- 2C:36-5 Delivering Drug Paraphernalia to Person Under 18 Years of Age, Crime of Third Degree.
- 2C:36-6 Possession or Distribution of Hypodermic Syringe or Needle.
- 2C:36-6a Possession of Hypodermic Syringe, Needle Under Certain Circumstances Not an Offense.
- 2C:36-6.1 Discarding Hypodermic Needle or Syringe.
- 2C:36-6.2 Sale by Licensed Pharmacy of Hypodermic Syringe or Needle Under Certain Circumstances.
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**2C:36-1. Drug Paraphernalia, Defined; Determination.** a. As used in this act:



“Drug paraphernalia” means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance, controlled substance analog or toxic chemical, other than marijuana, hashish, or harm reduction supplies, in violation of the provisions of chapter 35 of this title. In no case shall “drug paraphernalia” include “harm reduction supplies” as defined in this subsection. “Drug paraphernalia” shall include, but not be limited to:

(1) kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant, other than the plant *Cannabis sativa* L., which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances or controlled substance analogs;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant, other than the plant *Cannabis sativa* L., which is a controlled dangerous substance;

(4) (deleted by amendment P.L. 2023, c. 224)

(5) scales and balances used or intended for use in weighing or measuring controlled dangerous substances or controlled substance analogs;

(6) dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances or controlled substance analogs, unless provided by an entity authorized to provide harm reduction services in accordance with the provisions of P.L. 2006, c. 99 (C. 26:5C-25 et al.);

(7) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances or controlled substance analogs, unless provided by an entity authorized to provide harm reduction services in accordance with the provisions of P.L. 2006, c. 99 (C. 26:5C-25 et al.);

(8) capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances or controlled substance analogs;

(9) containers and other objects used or intended for use in storing or concealing controlled dangerous substances, controlled substance analogs or toxic chemicals; and

(10) objects used or intended for use in ingesting, inhaling, or otherwise introducing cocaine, nitrous oxide or the fumes of a toxic chemical into the human body, unless provided by an entity authorized to provide harm reduction services in accordance with the provisions of P.L. 2006, c. 99 (C. 26:5C-25 et al.), such as (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls; (b) water pipes; (c) carburetion tubes and devices; (d) smoking and carburetion masks; (e) roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand; (f) miniature cocaine spoons, and cocaine vials; (g) chamber pipes; (h) carburetor pipes; (i) electric pipes; (j) air-driven pipes; (k) chillums; (l) bongs; (m) ice pipes or chillers; (n) compressed gas containers, such

as tanks, cartridges or canisters, that contain food grade or pharmaceutical grade nitrous oxide as a principal ingredient; (o) chargers or charging bottles, meaning metal, ceramic or plastic devices that contain an interior pin that may be used to expel compressed gas from a cartridge or canister; and (p) tubes, balloons, bags, fabrics, bottles or other containers used to concentrate or hold in suspension a toxic chemical or the fumes of a toxic chemical.

“Harm reduction supplies” means any materials or equipment used or intended for use in preventing, reducing, or mitigating the adverse effects associated with the personal use of controlled dangerous substances, controlled substance analogs, or toxic chemicals, which adverse effects may include, but are not limited to, disease transmission and overdose. “Harm reduction supplies” include, but shall not be limited to: naloxone hydrochloride and other opioid antidotes; test strips and other supplies or equipment designed to identify or analyze the presence, strength, effectiveness, or purity of controlled dangerous substances, controlled substance analogs, toxic chemicals, or other substances used to potentiate or enhance the effects of controlled dangerous substances, controlled substance analogs, or toxic chemicals; and supplies or equipment provided by an entity authorized to provide harm reduction services in accordance with the provisions of P.L. 2006, c. 99 (C. 26:5C-25 et al.).

b. In determining whether or not an object is drug paraphernalia, the trier of fact, in addition to or as part of the proofs, may consider the following factors:

(1) (a) statements by an owner or by anyone in control of the object concerning its use;

(b) the proximity of the object to illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals;

(c) the existence of any residue of illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals on the object;

(d) direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use as drug paraphernalia;

(e) instructions, oral or written, provided with the object concerning its use;

(f) descriptive materials accompanying the object which explain or depict its use;

(g) national or local advertising whose purpose the person knows or should know is to promote the sale of objects intended for use as drug paraphernalia;

(h) the manner in which the object is displayed for sale;

(i) the existence and scope of legitimate uses for the object in the community; and

(j) expert testimony concerning its use; and

(k) any indicia demonstrating that an object falls within the definition of “harm reduction supplies” as set forth in subsection a. of this section or was obtained from or provided by an authorized harm reduction services program in accordance with the provisions of P.L. 2006, c. 99 (C. 26:5C-25 et al.).

(2) If an object appears to be for use, intended for use, or designed for use with cannabis or cannabis items in accordance with the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act,” P.L.2021, c.16 (C.24:6I-31 et al.), the object is presumed to be a lawful cannabis

paraphernalia as defined in section 3 of that act (C.24:6I-33), and does not alone constitute reasonable articulable suspicion that the object is a drug paraphernalia, notwithstanding that the object could also be used with an illegal controlled substance or controlled substance analog, unless the owner or any other person in proximity to or in control of the object was in possession of an illegal controlled dangerous substance or controlled substance analog, or the object was in proximity of an illegally possessed controlled dangerous substance or controlled substance analog to indicate its use, intended use, or design for use with that controlled dangerous substance or controlled substance analog.

c. Notwithstanding subsection a. of this section, it shall not be unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance. This provision shall extend to a hypodermic syringe or needle that contains a residual amount of a controlled dangerous substance or controlled substance analog.

**Adopted.** L. 1987, c. 106, §2. **Amended.** L. 2007, c. 31, §2, effective January 29, 2007; L. 2021, c. 16, §57, effective February 22, 2021; L. 2021 c. 403 §3, effective January 18, 2022; L. 2023, c. 224, §1, effective January 8, 2024.

### **2C:36-2. Use or Possession with Intent to Use, Disorderly Persons Offense.**

a. Use or possession with intent to use. It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title, other than when used, or possessed with intent to use, for ingesting, inhaling, or otherwise introducing marijuana or hashish into the human body. Any person who violates this section is guilty of a disorderly persons offense.

b. Notwithstanding that using or possessing with intent to use drug paraphernalia to ingest, inhale, or otherwise introduce marijuana or hashish into the human body is not a punishable crime, offense, act of delinquency, or civil violation pursuant to this section, the use of drug paraphernalia for that purpose may be prohibited or otherwise regulated on or in any property by the person or entity that owns or controls that property, including multifamily housing that is a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3), the structure or specific units of the structure of a cooperative as defined in section 3 of P.L.1987, c.381 (C.46:8D-3), the units of a condominium, as those terms are defined by section 3 of P.L.1969, c.257 (C.46:8B-3), or a site in a mobile home park as defined in section 3 of P.L.1983, c.386 (C.40:55D-102), which site is leased to the owner of a manufactured home, as defined in that section, that is installed thereon.

**Adopted.** L. 1987, c. 106, §2. **Amended.** L. 2007, c. 31, §3, effective January 29, 2007; L. 2021, c. 16, §58, effective February 22, 2021; L. 2021, c. 19, §3, effective February 22, 2021.

**2C:36-3. Distribute, Dispense or Possess with Intent to Distribute or Manufacture, Crime of Fourth Degree.** It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale or otherwise introduce into the human body a

controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title. Any person who violates this section commits a crime of the fourth degree.

**Adopted.** L. 1987, c. 106, §2. **Amended.** L. 2007, c. 31, §4, effective January 29, 2007.

**2C:36-4. Advertising to Promote Sale, Crime of Fourth Degree.** It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Any person who violates this section commits a crime of the fourth degree.

**Adopted.** L. 1987, c. 106, §2.

**2C:36-5. Delivering Drug Paraphernalia to Person Under 18 Years of Age, Crime of Third Degree.** Any person 18 years of age or over who violates N.J.S. 2C:36-3 by delivering drug paraphernalia to a person under 18 years of age commits a crime of the third degree.

**Adopted.** L. 1987, c. 106, §2.

**2C:36-6. Repealed.**

**Repealed.** L. 2021, c. 403, §4, effective January 18, 2022.

**2C:36-6a. Possession of Hypodermic Syringe, Needle Under Certain Circumstances Not an Offense.** The possession of a hypodermic syringe or needle by a consumer who participates in, or an employee or volunteer of, a sterile syringe access program established pursuant to sections 3 and 4 of P.L.2006, c.99 (C.26:5C-27 and C.26:5C-28), as amended by P.L.2016, c.36, shall not constitute an offense pursuant to N.J.S.2C:36-1 et seq. This provision shall extend to a hypodermic syringe or needle that contains a residual amount of a controlled dangerous substance or controlled substance analog.

**Adopted.** L. 2006, c. 99, §8, effective December 19, 2006. **Amended.** L. 2016, c. 36, §4, effective August 31, 2016.

**2C:36-6.1. Discarding Hypodermic Needle or Syringe.** a. A person commits a petty disorderly persons offense if:

(1) the person discards, in a place accessible to other persons, a hypodermic needle or syringe without destroying the hypodermic needle or syringe; or

(2) he is the owner, lessee, or person in control of real property and, knowing that needles and syringes in an intact condition have been discarded or abandoned on his real property, allows them to remain.

b. A hypodermic needle is destroyed if the needle is broken from the hub or mangled. A syringe is destroyed if the nipple of the barrel is broken from the barrel, or the plunger and barrel are melted. Alternatively, a hypodermic needle or syringe is destroyed if it is discarded as a single unit, without recapping, into a rigid container and the container is destroyed by grinding or crushing in a compactor, or by burning in an incinerator approved by the Department of Environmental Protection, or by another method approved by the Department of Health.

**Source.** N.J.S. 2A:170-25.17. **Adopted.** L. 1999, c. 90, §6, effective May 3, 1999. **Amended.** L. 2012, c. 17, §3, effective June 29, 2012.

**2C:36-6.2. Sale by Licensed Pharmacy of Hypodermic Syringe or Needle Under Certain Circumstances.** a. Notwithstanding any State law, rule, or regulation to the contrary, a licensed pharmacy may sell a hypodermic syringe or

needle, or any other instrument adapted for the administration of drugs by injection, to a person over 18 years of age who presents valid photo identification to demonstrate proof of age or who otherwise satisfies the seller that he is over 18 years of age, as follows:

(1) without a prescription if sold in quantities of 10 or fewer; and

(2) pursuant to a prescription issued by a person authorized to prescribe under State law if sold in quantities of more than 10.

b. A licensed pharmacy that provides hypodermic syringes or needles for sale shall also be required to:

(1) maintain its supply of such instruments under or behind the pharmacy sales counter such that they are accessible only to a person standing behind a pharmacy sales counter; and

(2) make available to each person who purchases any such instrument, at the time of purchase, information to be developed by the Department of Health to the purchaser, about:

(a) the safe disposal of the instrument, including local disposal locations or a telephone number to call for that information; and

(b) substance use disorder treatment, including a telephone number to call for assistance in obtaining treatment.

c. In addition to any other provision of law that may apply, a person who purchases a hypodermic syringe or needle pursuant to subsection a. of this section and sells that needle or syringe to another person is guilty of a disorderly persons offense.

d. The Department of Health, in consultation with the Department of Human Services and the New Jersey State Board of Pharmacy, may, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations to effectuate the purposes of subsection b. of this section. The Department of Health shall make the information that is to be developed pursuant to subsection b. of this section available to pharmacies and purchasers of hypodermic syringes or needles through its Internet website.

**Adopted.** L. 2011, c. 183, §1, effective July 15, 2012. **Amended.** L. 2012, c. 17, §4, effective June 29, 2012; L. 2023, c. 177, §9, effective November 20, 2023.

### **2C:36-6.3. Affirmative Defense to Criminal Action, Construction of Act.**

It is an affirmative defense to any criminal action arising under chapter 36 of Title 2C of the New Jersey Statutes for possession of a hypodermic syringe or needle that the item was obtained pursuant to the authority of section 1 of P.L.2011, c.183 (C.2C:36-6.2). The affirmative defense established herein shall be proved by the defendant by a preponderance of the evidence. It shall not be necessary for the State to negate any such fact in any criminal complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding. Nothing in this act shall be construed to limit or constrain in any way a prosecution for the possession, manufacture, or distribution of a controlled dangerous substance or for any other conduct proscribed by chapter 35 or chapter 36 of Title 2C of the New Jersey Statutes.

**Adopted.** L. 2011, c. 183, §2, effective July 15, 2012.

**2C:36-7. Seizure in Violation of Chapter.** Any drug paraphernalia, hypodermic syringe or needle seized in violation of this chapter shall be subject to the forfeiture provisions of Chapter 64 of this title.

**Adopted.** L. 1987, c. 106, §2.

**2C:36-8. Severability.** If any provision of this chapter or the application thereof to any person or circumstance are held invalid, the invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**Adopted.** L. 1987, c. 106, §2.

**2C:36-9. Pending Cases.** Notwithstanding any other provision of this act, the provisions of P.L. 1970, c. 226 (C. 24:21-1 et seq.) shall remain in full force and effect as to any offense committed prior to the effective date of this act.

**Adopted.** L. 1987, c. 106, §2.

**2C:36-10. Definition of “defraud the administration of a drug test;” Crime, Grading.** a. As used in this act, “defraud the administration of a drug test” means to submit a substance that purports to be from a person other than its actual source, or purports to have been excreted or collected at a time other than when it was actually excreted or collected, or to otherwise engage in conduct intended to produce a false or misleading outcome of a test for the presence of a chemical, drug or controlled dangerous substance, or a metabolite of a drug or controlled dangerous substance, in the human body. It shall specifically include, but shall not be limited to, the furnishing of urine with the purpose that the urine be submitted for urinalysis as a true specimen of a person.

b. Any person who offers for sale or rental, or who manufactures, sells, transfers, or gives to any person, any instrument, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test, is guilty of a crime of the third degree.

c. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of employment or continued employment as a law enforcement officer, corrections officer, school bus driver, operator of a motorbus, employee of a rail passenger service, firefighter, provider of emergency first-aid or medical services, or any other occupation that requires the administration of a drug test as a condition of employment or continued employment by law, rule or regulation of the State or a local agency, public authority, or the federal government, is guilty of a crime of the third degree.

d. Any person who knowingly defrauds the administration of a drug test that is administered as a condition of monitoring a person on bail, in custody or on parole, probation or pretrial intervention, or any other form of supervision administered in connection with a criminal offense or juvenile delinquency matter, is guilty of a crime of the third degree.

e. Any person who knowingly possesses any instrument, product, tool, device or substance adapted, designed or commonly used to defraud the administration of a drug test is guilty of a crime of the fourth degree.

f. Any person who knowingly defrauds the administration of a drug test which is administered as a condition of any employment or continued employment not specified in subsection c. of this section is guilty of a crime of the fourth degree.

**Adopted.** L. 2002, c. 60, §1, effective August 3, 2002.

## **Chapter 36A. CONDITIONAL DISCHARGE FOR CERTAIN FIRST OFFENDERS**

**2C:36A-1. Conditional Discharge for Certain First Offenses.** a. Whenever any person who has not previously been convicted of any offense under section 20

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of P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty disorderly persons offense defined in chapter 35 or 36 of this title or, subsequent to the effective date of this title, under any law of the United States, this State or any other state relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, and who has not previously participated in a program of supervisory treatment pursuant to N.J.S.2C:43-12 or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), or a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), or a Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.) is charged with or convicted of any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of this title, the court upon notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of the person after reference to the State Bureau of Identification criminal history record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of the person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of three years.

Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest; and

(3) The person has not previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or the provisions of this chapter.

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75 which shall be paid to the Treasurer of the State of New Jersey for deposit in the General Fund. The defendant shall also be required to pay restitution, costs and other assessments as provided by law. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey, or the court may permit the defendant to pay the conditional discharge fee and other assessments in installments or may order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

**Adopted.** L. 1987, c. 106, §3. **Amended.** L. 1988, c. 44, §12; L. 1993, c. 275, §14, effective January 5, 1994; L. 2008, c. 84, §1, effective September 10, 2008; L. 2013, c. 158, §10, effective January 4, 2014, and shall be applicable to any person who commits a disorderly persons or petty disorderly persons offense on or after the effective date; L. 2017, c. 42, §9, effective December 1, 2017; L. 2019, c. 276, §5, effective January 1, 2021; L. 2023, c. 188, §11, effective July 1, 2024.