

# SENATE, No. 2431

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 8, 2007

**Sponsored by:**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**Senator PAUL A. SARLO**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Establishes as crime of the second degree knowingly carrying a prohibited firearm in a public place.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the unlawful carrying of certain firearms in  
2 public places and supplementing chapter 39 of Title 2C of the  
3 New Jersey Statutes.

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

7  
8 1. a. As used in this section:

9 “Prohibited firearm” means any handgun, sawed-off shotgun,  
10 assault firearm or machine gun.

11 “Public place” means any place to which the public has access,  
12 including but not limited to a public street, sidewalk, bridge, alley,  
13 plaza, park, boardwalk, driveway, parking lot or transportation  
14 facility, educational institution, public library, shopping center or  
15 mall or the doorways and entrance ways to any building which  
16 fronts on any of these places, or a motor vehicle in or on any such  
17 place.

18 b. Unless otherwise permitted by law, a person commits a crime  
19 of the second degree if, while in or on a public place, he knowingly  
20 carries a prohibited firearm on or about his person, or otherwise  
21 possesses the prohibited firearm within his immediate reach or in  
22 any portion of a motor vehicle in which he is traveling.

23 c. Except as provided in subsection d. of this section, a person  
24 convicted of violating subsection b. of this section shall be  
25 sentenced by the court to a term of imprisonment, which shall  
26 include the imposition of a minimum term during which the  
27 defendant shall be ineligible for parole. Except as provided in  
28 subsection d., the minimum term of parole ineligibility shall be  
29 fixed at, or between, one-third and one-half of the sentence imposed  
30 by the court or three years, whichever is greater, except that the  
31 minimum term of parole ineligibility shall be five years if the  
32 defendant is convicted of carrying or otherwise possessing an  
33 assault firearm or machine gun.

34 d. If the court at sentencing after considering all relevant  
35 circumstances is clearly convinced and finds on the record that the  
36 interests of justice would not be served by imposing the minimum  
37 term of parole ineligibility prescribed under subsection c. of this  
38 section, the court may waive or reduce the minimum term of parole  
39 ineligibility, or may, notwithstanding the provisions of subsection  
40 d. of N.J.S.2C:44-1, place the defendant on probation pursuant to  
41 paragraph (2) of subsection b. of N.J.S.2C:43-2, provided however,  
42 if the aggravating circumstance set forth in paragraph (5) of  
43 subsection a. of N.J.S.2C:44-1 applies, the court shall not waive or  
44 reduce the term of parole ineligibility and shall not place the  
45 defendant on probation unless the court further finds on the record,  
46 having regard to the character and condition of the defendant, the  
47 circumstances of the offense, and the impact of the crime on the  
48 community in which it occurred, that imposition of the minimum

1 term of imprisonment under subsection c. of this section would  
2 constitute a serious injustice which overrides the need to deter the  
3 defendant and others who may be involved in organized criminal  
4 activity from unlawfully carrying firearms while in or on a public  
5 place.

6 The sentencing court shall make a finding on the record whether  
7 the aggravating circumstance set forth in paragraph (5) of  
8 subsection a. of N.J.S.2C:44-1 applies, and the court shall presume  
9 that there is a substantial likelihood that the defendant is involved in  
10 organized criminal activity if there is a substantial likelihood that  
11 the defendant is a member of an organization or group that engages  
12 in criminal activity, including but not limited to a criminal street  
13 gang, crew, set, or posse; a motorcycle gang; a hate group; or a La  
14 Cosa Nostra or other organized crime family. The prosecution at  
15 the sentencing hearing shall have the initial burden of producing  
16 evidence or information concerning the defendant's membership in  
17 such an organization or group.

18 In making its findings, the sentencing court shall consider all  
19 relevant circumstances and shall take judicial notice of any  
20 evidence, testimony or information adduced at the trial, plea  
21 hearing, or other court proceedings and shall also consider the  
22 presentence report and any other relevant information. The court  
23 may rely upon expert opinion in the form of live testimony or by  
24 affidavit, or by such other means as the sentencing court deems  
25 appropriate. The prosecution may provide the court with statements  
26 by members of the affected community or other information  
27 concerning the nature and extent of gun-related violence and the  
28 impact of the crime on the community in which it occurred.

29 Nothing in this subsection shall be construed to establish a basis  
30 for not imposing a term of imprisonment or term of parole  
31 ineligibility authorized or required to be imposed upon conviction  
32 for a crime other than the offense set forth in subsection b. of this  
33 section.

34 e. If the court at sentencing elects not to impose a minimum  
35 term of imprisonment and parole ineligibility under subsection c. of  
36 this section, or the court imposes a term of parole ineligibility less  
37 than the minimum term prescribed in subsection c., the sentence  
38 shall not become final for ten days in order to permit the  
39 prosecution to appeal the court's findings and the sentence imposed.

40 f. When a person who is charged with an offense under this  
41 section is released from custody before trial on bail or personal  
42 recognizance, the court authorizing the release shall issue an order  
43 prohibiting the person from possessing any firearm pending final  
44 resolution of the charge unless the court is clearly convinced and  
45 finds on the record that no public safety interest would be served by  
46 issuing such an order. The court also may order the search for and  
47 seizure of any firearm that may be owned or possessed by the

1 person at any location where the judge has probable cause to  
2 believe that any such weapon is located.

3 When a person is convicted of or adjudicated delinquent for a  
4 violation of an offense under this section, the court at sentencing  
5 shall issue an order permanently prohibiting the person from  
6 possessing any firearm.

7 g. A person who knowingly possesses a firearm in violation of  
8 an order issued pursuant to subsection f. of this section is guilty of a  
9 crime of the second degree. Notwithstanding the provisions of  
10 N.J.S.2C:44-5 or any other provision of law, the sentence imposed  
11 upon conviction for a violation of the offense set forth in this  
12 subsection shall be ordered to be served consecutively to the  
13 sentence imposed upon a conviction for violation of the offense set  
14 forth in subsection b. of this section. Nothing herein shall be  
15 construed to preclude a prosecution or conviction for contempt in  
16 violation of N.J.S.2C:29-9, or any other law.

17

18 2. This act shall take effect immediately.

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#### STATEMENT

22

23 This bill is intended to address the growing problem of gang-  
24 related gun violence by establishing the second degree crime of  
25 knowingly carrying a prohibited firearm in a public place.  
26 Specifically, it would be a crime under the bill for a person who is  
27 in or on a public place to knowingly carry a prohibited firearm on  
28 or about his person or to otherwise possess the prohibited firearm  
29 within his immediate reach or anywhere within a motor vehicle.

30 Current law generally does not distinguish between the  
31 constructive possession of a firearm and the immediate personal  
32 possession of a firearm, where the weapon is essentially being  
33 carried on or about the person, possibly concealed in the person's  
34 clothing or in a handbag or similar container, or is otherwise  
35 accessible to the person at a moment's notice to commit a crime on  
36 a public street or place. This bill supplements current gun laws by  
37 creating this new second-degree crime of carrying a prohibited  
38 firearm in a public place.

39 The bill defines a prohibited firearm as a handgun, sawed-off  
40 shotgun, assault firearm or machine gun. These are often gang  
41 members' weapons of choice as they are either high-powered or  
42 easily concealed. A public place is defined in the bill as any place  
43 to which the public has access, such as public streets, sidewalks,  
44 bridges, alleys, plazas, parks, boardwalks, driveways, parking lots,  
45 transportation facilities, schools, libraries, shopping centers or  
46 malls, doorways and entranceways to these places, and motor  
47 vehicles.

1 Second degree crimes are generally punishable by imprisonment  
2 of between five and 10 years, a fine of up to \$150,000, or both.  
3 Under the bill, a person convicted of knowingly carrying a  
4 prohibited handgun or sawed-off shotgun in a public place would  
5 have to serve a mandatory minimum of one-third to one-half of the  
6 sentence imposed, or three years, whichever is greater. If the  
7 prohibited weapon is an assault firearm or machine gun, the person  
8 must serve a mandatory minimum of five years. But the bill grants  
9 the court discretion to waive or reduce the mandatory minimum or  
10 place the defendant on probation if it is clearly convinced and finds  
11 on the record that the interests of justice would not be served by  
12 imposing the mandatory term. Such waiver or reduction would not  
13 be available to defendants who are involved in organized criminal  
14 activity, unless the court finds imposing the mandatory minimum  
15 would constitute a serious injustice which overrides the need to  
16 deter the defendant and others involved in this activity.

17 The bill directs the sentencing court to presume that there is a  
18 substantial likelihood that a defendant is involved in organized  
19 criminal activity if there is a substantial likelihood that the  
20 defendant is a member of an organization or group that engages in  
21 criminal activity, such as a criminal street gang, crew, set or posse;  
22 a motorcycle gang; a hate group; or a La Cosa Nostra or other  
23 organized crime family. The prosecution has the initial burden to  
24 produce evidence of such membership. The prosecution is allotted  
25 10 days to appeal a court's decision not to impose a mandatory  
26 minimum for illegally carrying a prohibited firearm in a public  
27 place.

28 Under the bill, a person convicted of carrying a prohibited  
29 weapon in a public place would be permanently prohibited from  
30 possessing a firearm. The bill also prohibits defendants charged  
31 with the offense from possessing a firearm during the period after  
32 they are released from custody, but before trial. The court also may  
33 order a search for and seizure of a firearm in a particular place if  
34 there is probable cause to believe a firearm owned or possessed is  
35 located there. A violation of these provisions constitutes a crime of  
36 the second degree and any term of imprisonment imposed must be  
37 served consecutively to a term of imprisonment imposed for  
38 carrying a prohibited weapon in a public place.

39 According to the sponsor, this bill supplements existing law to  
40 advance the goal of general deterrence by enhancing the likelihood  
41 of a successful prosecution, considering that gang members today  
42 believe that they can avoid conviction by intimidating witnesses.  
43 Because this new offense is a simple possession crime, the  
44 prosecution would not need to rely on the cooperation of a civilian  
45 witness who might be reticent to testify against a gang member for  
46 fear of violent reprisal. Rather, the State's proofs in a prosecution  
47 for a violation of this new crime could be based on the testimony of  
48 a law enforcement officer who found and seized the firearm.

**S2431 GIRGENTI, SARLO**

1 Accordingly, persons who choose to carry weapons would know  
2 that they would now face a greater likelihood of conviction upon  
3 their apprehension by police. The sponsor also notes that the bill  
4 restores judicial sentencing discretion by authorizing the court to  
5 waive or reduce the prescribed term of parole ineligibility, or even  
6 to place the defendant on probation notwithstanding the  
7 presumption of imprisonment that ordinarily applies to second-  
8 degree crimes. Rather than unduly restricting the exercise of  
9 judicial discretion by imposing inflexible mandates, the bill would  
10 instead channel sentencing discretion by requiring the court to state  
11 on the record its reasons for not imposing the minimum term, and  
12 by affording the prosecution the right to appeal the sentencing  
13 court's findings.