

**ASSEMBLY, No. 602**

---

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman JOHN DIMAIO**

**District 23 (Hunterdon, Somerset and Warren)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**SYNOPSIS**

Clarifies “knockout game” assault as third-degree aggravated assault; permits juvenile offender 14 years of age or older committing such assault to be tried as adult offender.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1   **AN ACT** concerning certain acts of aggravated assault, and  
2       amending various parts of the statutory law.

3

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

6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

14 (7) Attempts to cause significant bodily injury to another or  
15 causes significant bodily injury purposely or knowingly or, under  
16 circumstances manifesting extreme indifference to the value of  
17 human life recklessly causes such significant bodily injury. An  
18 aggravated assault described in this paragraph includes attempting  
19 to cause or causing another to lose consciousness by a single punch,  
20 kick, or other singular striking motion for the sole purpose of  
21 bringing about the loss of consciousness; or

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

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

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

47 (11) Uses or activates a laser sighting system or device, or a  
48 system or device which, in the manner used, would cause a

1 reasonable person to believe that it is a laser sighting system or  
2 device, against a law enforcement officer acting in the performance  
3 of his duties while in uniform or exhibiting evidence of his  
4 authority. As used in this paragraph, "laser sighting system or  
5 device" means any system or device that is integrated with or  
6 affixed to a firearm and emits a laser light beam that is used to  
7 assist in the sight alignment or aiming of the firearm.

8 Aggravated assault under **【subsections b. (1) and b. (6)】**  
9 paragraphs (1) and (6) of subsection b. of this section is a crime of  
10 the second degree; under **【subsections b. (2), b. (7), b. (9) and b.**  
11 **(10)】** paragraphs (2), (7), (9) and (10) of subsection b. of this  
12 section is a crime of the third degree; under **【subsections b. (3) and**  
13 **b. (4)】** paragraphs (3) and (4) of subsection b. of this section is a  
14 crime of the fourth degree; and under **【subsection b. (5)】** paragraph  
15 (5) of subsection b. of this section is a crime of the third degree if  
16 the victim suffers bodily injury, otherwise it is a crime of the fourth  
17 degree. Aggravated assault under **【subsection b.(8)】** paragraph (8)  
18 of subsection b. of this section is a crime of the third degree if the  
19 victim suffers bodily injury; if the victim suffers significant bodily  
20 injury or serious bodily injury it is a crime of the second degree.  
21 Aggravated assault under **【subsection b. (11)】** paragraph (11) of  
22 subsection b. of this section is a crime of the third degree.

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

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

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

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

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

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

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

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

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

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

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

35 d. A person who is employed by a facility as defined in section  
36 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as  
37 defined in paragraph (1) or (2) of subsection a. of this section upon  
38 an institutionalized elderly person as defined in section 2 of  
39 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth  
40 degree.

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

42 f. A person who commits a simple assault as defined in  
43 paragraph (1), (2) or (3) of subsection a. of this section in the  
44 presence of a child under 16 years of age at a school or community  
45 sponsored youth sports event is guilty of a crime of the fourth  
46 degree. The defendant shall be strictly liable upon proof that the  
47 offense occurred, in fact, in the presence of a child under 16 years  
48 of age. It shall not be a defense that the defendant did not know

1 that the child was present or reasonably believed that the child was  
2 16 years of age or older. The provisions of this subsection shall not  
3 be construed to create any liability on the part of a participant in a  
4 youth sports event or to abrogate any immunity or defense available  
5 to a participant in a youth sports event. As used in this act, "school  
6 or community sponsored youth sports event" means a competition,  
7 practice or instructional event involving one or more interscholastic  
8 sports teams or youth sports teams organized pursuant to a  
9 nonprofit or similar charter or which are member teams in a youth  
10 league organized by or affiliated with a county or municipal  
11 recreation department and shall not include collegiate, semi-  
12 professional or professional sporting events.  
13 (cf: P.L.2012, c.22, s.2)

14  
15 2. N.J.S.2C:44-1 is amended to read as follows:

16 2C:44-1. a. In determining the appropriate sentence to be  
17 imposed on a person who has been convicted of an offense, the  
18 court shall consider the following aggravating circumstances:

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

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

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

30 (4) A lesser sentence will depreciate the seriousness of the  
31 defendant's offense because it involved a breach of the public trust  
32 under chapters 27 and 30 of Title 2C of the New Jersey Statutes, or  
33 the defendant took advantage of a position of trust or confidence to  
34 commit the offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (2) When imposing a sentence of imprisonment the court shall  
7 consider the defendant's eligibility for release under the law  
8 governing parole, including time credits awarded pursuant to Title  
9 30 of the Revised Statutes, in determining the appropriate term of  
10 imprisonment.

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

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

1 P.L.1997, c.111 (C.2C:12-1.1); **【or】** if the person is convicted of a  
2 crime of the third or fourth degree under the provisions of section 1  
3 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30); or if the  
4 person is convicted of a crime of the third degree constituting an  
5 aggravated assault for attempting to cause or causing significant  
6 bodily injury to another by a single punch, kick, or other singular  
7 striking motion for the sole purpose of bringing about the loss of  
8 consciousness of that other person in violation of paragraph (7) of  
9 subsection b. of N.J.S.2C:12-1.

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

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

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

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

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

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

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

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

45 In imposing a minimum term pursuant to **【2C:43-7b.】** subsection  
46 b. of N.J.S.2C:43-7, the sentencing court shall specifically place on

1 the record the aggravating factors set forth in this section which  
2 justify the imposition of a minimum term.

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

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

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

28  
29 3. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to  
30 read as follows:

31 7. a. On motion of the prosecutor, the court shall, without the  
32 consent of the juvenile, waive jurisdiction over a case and refer that  
33 case from the Superior Court, Chancery Division, Family Part to the  
34 appropriate court and prosecuting authority having jurisdiction if it  
35 finds, after hearing, that:

36 (1) The juvenile was 14 years of age or older at the time of the  
37 charged delinquent act; and

38 (2) There is probable cause to believe that the juvenile  
39 committed a delinquent act or acts which if committed by an adult  
40 would constitute:

41 (a) Criminal homicide other than death by auto, strict liability  
42 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which  
43 would constitute a crime of the first degree, carjacking, aggravated  
44 sexual assault, sexual assault, aggravated assault which would  
45 constitute a crime of the second degree, aggravated assault which  
46 would constitute a crime of the third degree for attempting to cause  
47 or causing significant bodily injury to another by a single punch,  
48 kick, or other singular striking motion for the sole purpose of

- 1 bringing about the loss of consciousness of that other person in  
2 violation of paragraph (7) of subsection b. of N.J.S.2C:12-1,  
3 kidnapping, aggravated arson, or gang criminality pursuant to  
4 section 1 of P.L.2007, c.341 (C.2C:33-29) where the underlying  
5 crime is enumerated in this subparagraph or promotion of organized  
6 street crime pursuant to section 2 of P.L.2007, c.341 (C.2C:33-30)  
7 which would constitute a crime of the first or second degree which  
8 is enumerated in this subparagraph; or
- 9 (b) A crime committed at a time when the juvenile had  
10 previously been adjudicated delinquent, or convicted, on the basis  
11 of any of the offenses enumerated in **【subsection a.(2)(a)】**  
12 subparagraph (a) of paragraph (2) of this subsection; or
- 13 (c) A crime committed at a time when the juvenile had  
14 previously been sentenced and confined in an adult penal  
15 institution; or
- 16 (d) An offense against a person committed in an aggressive,  
17 violent and willful manner, other than an offense enumerated in  
18 **【subsection a.(2)(a)】** subparagraph (a) of paragraph (2) of this  
19 **【section】 subsection**, or the unlawful possession of a firearm,  
20 destructive device or other prohibited weapon, arson or death by  
21 auto if the juvenile was operating the vehicle under the influence of  
22 an intoxicating liquor, narcotic, hallucinogenic or habit producing  
23 drug; or
- 24 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or  
25 N.J.S.2C:35-5; or
- 26 (f) Crimes which are a part of a continuing criminal activity in  
27 concert with two or more persons and the circumstances of the  
28 crimes show the juvenile has knowingly devoted himself to criminal  
29 activity as a source of livelihood; or
- 30 (g) An attempt or conspiracy to commit any of the acts  
31 enumerated in **【paragraph】** subparagraph (a), (d) or (e) of paragraph  
32 (2) of this subsection; or
- 33 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of  
34 the New Jersey Statutes; or
- 35 (i) Possession of a firearm with a purpose to use it unlawfully  
36 against the person of another under subsection a. of N.J.S.2C:39-4,  
37 or the crime of aggravated assault, aggravated criminal sexual  
38 contact, burglary or escape if, while in the course of committing or  
39 attempting to commit the crime including the immediate flight  
40 therefrom, the juvenile possessed a firearm; or
- 41 (j) Computer criminal activity which would be a crime of the  
42 first or second degree pursuant to section 4 or section 10 of  
43 P.L.1984 **【.】**, c.184 (C.2C:20-25 or C.2C:20-31); and
- 44 (3) Except with respect to any of the acts enumerated in  
45 subparagraph (a), (i) or (j) of paragraph (2) of **【subsection a. of】**  
46 this **【section】 subsection**, or with respect to any acts enumerated in  
47 subparagraph (e) of paragraph (2) of **【subsection a. of】** this

1 **【section】** subsection which involve the distribution for pecuniary  
2 gain of any controlled dangerous substance or controlled substance  
3 analog while on any property used for school purposes which is  
4 owned by or leased to any school or school board, or within 1,000  
5 feet of such school property or while on any school bus, or any  
6 attempt or conspiracy to commit any of those acts, the State has  
7 shown that the nature and circumstances of the charge or the prior  
8 record of the juvenile are sufficiently serious that the interests of  
9 the public require waiver.

10 b. (Deleted by amendment, P.L.1999, c.373).

11 c. An order referring a case shall incorporate therein not only  
12 the alleged act or acts upon which the referral is premised, but also  
13 all other delinquent acts arising out of or related to the same  
14 transaction.

15 d. A motion seeking waiver shall be filed by the prosecutor  
16 within 30 days of receipt of the complaint. This time limit shall not,  
17 except for good cause shown, be extended.

18 e. If the juvenile can show that the probability of his  
19 rehabilitation by the use of the procedures, services and facilities  
20 available to the court prior to the juvenile reaching the age of 19  
21 substantially outweighs the reasons for waiver, waiver shall not be  
22 granted. This subsection shall not apply with respect to a juvenile  
23 16 years of age or older who is charged with committing any of the  
24 acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of  
25 subsection a. of this section or with respect to a violation of  
26 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26  
27 (C.2C:39-4.1).

28 f. The Attorney General shall develop for dissemination to the  
29 county prosecutors those guidelines or directives deemed necessary  
30 or appropriate to ensure the uniform application of this section  
31 throughout the State.

32 (cf: P.L.2007, c.341, s.3)

33  
34 4. This act shall take effect immediately and apply to any  
35 criminal offense occurring on or after the effective date.  
36  
37

#### 38 STATEMENT

39  
40 This bill clarifies that a “knockout game” assault, which is an  
41 assault by a person attempting to cause or causing another to lose  
42 consciousness by a single punch, kick, or other singular striking  
43 motion for the sole purpose of bringing about the loss of  
44 consciousness, would be graded as a third-degree aggravated  
45 assault. Third-degree aggravated assault is normally punishable by  
46 a term of imprisonment of three to five years, a fine of up to  
47 \$15,000, or both.

1       Causing a person to lose consciousness represents a “significant  
2       bodily injury” to that person, see N.J.S.2C:11-1, and attempting or  
3       causing such injury is already subject to prosecution as a third-  
4       degree aggravated assault. However, by separately defining a  
5       “knockout game” assault within the broader third-degree aggravated  
6       assault provisions, the bill is then able to establish separate, more  
7       significant potential penalties for such an act. In accordance with  
8       the bill, the presumption of nonimprisonment generally afforded to  
9       a first-time offender committing a third-degree aggravated assault  
10      would not apply to a “knockout game” assault. Additionally, a  
11      juvenile who is 14 years of age or older at the time of committing a  
12      “knockout game” assault could, upon motion by a prosecutor and  
13      ruling by a court, be tried in criminal court and subject to the same  
14      penalties as an adult offender.

15      It should also be noted that by including a “knockout game”  
16      assault within the broader third-degree aggravated assault  
17      provisions, it would make a person who committed such an assault  
18      while knowingly involved in criminal street gang activity guilty of  
19      second-degree gang criminality (by upping the underlying offense,  
20      the aggravated assault, by one degree). See P.L.2007, c.341, s.1  
21      (C.2C:33-29). A crime of the second degree is normally punishable  
22      by a term of imprisonment of five to 10 years, and fine of up to  
23      \$150,000, or both.

24      Media reports list several states in which incidents of “knockout  
25      game” assaults have recently occurred, including California,  
26      Illinois, Massachusetts, Missouri, New York, and Pennsylvania. In  
27      October 2013, a 26-year-old former U.S. Marine Sergeant, running  
28      across America to raise money and awareness for veterans, suffered  
29      a concussion from a “knockout game” assault in Wilmington,  
30      Delaware; and in Hoboken, New Jersey, a homeless man died as a  
31      result of injuries sustained from a September 2013 “knockout  
32      game” assault involving three teenage boys. The bill’s focus on  
33      these “knockout game” assaults, particularly the increased penalties  
34      that would be available against both adult and juvenile offenders, is  
35      intended to address the heinous nature of such assaults and more  
36      strongly deter would-be offenders.