

ASSEMBLY, No. 1235

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Co-Sponsored by:

Assemblyman Calabrese, Assemblywomen Vainieri Huttie and Chaparro

SYNOPSIS

Upgrades certain penalties for criminal street gang recruitment and criminality; imposes mandatory minimum sentence for certain offenses; establishes accomplice liability and imposes restrictions for certain recruiters.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning criminal street gangs, amending various parts
2 of the statutory law, and supplementing Title 2C of the New
3 Jersey Statutes.

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

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

9 2C:2-6. a. A **【person】** defendant is guilty of an offense if it is
10 committed by his own conduct or by the conduct of another person
11 for which he is legally accountable, or both.

12 b. A **【person】** defendant is legally accountable for the conduct
13 of another person when:

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

17 (2) **【He】** he is made accountable for the conduct of such other
18 person by the code or by the law defining the offense;

19 (3) **【He】** he is an accomplice of such other person in the
20 commission of an offense; or

21 (4) **【He】** he is engaged in a conspiracy with such other person.

22 c. A **【person】** defendant is an accomplice of another person in
23 the commission of an offense if:

24 (1) **【With】** with the purpose of promoting or facilitating the
25 commission of the offense; he

26 (a) **【Solicits】** solicits such other person to commit it;

27 (b) **【Aids】** aids or agrees or attempts to aid such other person in
28 planning or committing it; **【or】**

29 (c) **【Having】** having a legal duty to prevent the commission of
30 the offense, fails to make proper effort so to do; or

31 (d) the act is committed by a person that the defendant has
32 caused, encouraged, intimidated, coerced, or solicited to commit
33 while soliciting or recruiting the person to join or actively
34 participate in a criminal street gang in violation of section 1 of
35 P.L.1999, c.160 (C.2C:33-28); or

36 (2) **【His】** his conduct is expressly declared by law to establish
37 his complicity.

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

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 e. Unless otherwise provided by the code or by the law
2 defining the offense, a **【person】** defendant is not an accomplice in
3 an offense committed by another person if:

4 (1) **【He】** he is a victim of that offense;

5 (2) **【The】** the offense is so defined that his conduct is inevitably
6 incident to its commission; or

7 (3) **【He】** he terminates his complicity under circumstances
8 manifesting a complete and voluntary renunciation as defined in
9 **【section 2C:5-1 d.】** subsection d. of N.J.S.2C:5-1 prior to the
10 commission of the offense. Termination by renunciation is an
11 affirmative defense which the defendant must prove by a
12 preponderance of evidence.

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

19 (cf: N.J.S.2C:2-6)

20
21 2. Section 1 of P.L.1999, c.160 (C.2C:33-28) is amended to
22 read as follows:

23 1. a. An actor who causes, encourages, intimidates, coerces,
24 solicits, or recruits another to join or actively participate in a
25 criminal street gang with the knowledge or purpose that the person
26 who is solicited or recruited will promote, further, assist, plan, aid,
27 agree, or attempt to aid in the commission of criminal conduct by a
28 member of a criminal street gang commits a crime of the fourth
29 degree and shall be liable as an accomplice under subsection c. of
30 N.J.S.2C:2-6 for any criminal offense committed by the person as a
31 result of the defendant causing, encouraging, intimidating, coercing,
32 soliciting, or recruiting the person to join or actively participate in a
33 criminal street gang. For purposes of this section, the actor shall
34 have the requisite knowledge or purpose if he knows that the person
35 who is solicited or recruited will engage in some form, though not
36 necessarily which form, of criminal activity. "Criminal street gang"
37 shall have the meaning set forth in section 1 of P.L.2007, c.341
38 (C.2C:33-29).

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

43 c. An actor who, in the course of violating subsection a. of this
44 section, inflicts significant bodily injury upon another commits a
45 crime of the second degree. Notwithstanding the provisions of
46 subsection a. of N.J.S.2C:43-6, a defendant who violates the
47 provisions of this subsection shall be sentenced to a mandatory

1 minimum term of imprisonment of five years during which time the
2 defendant shall not be eligible for parole. The court shall not
3 suspend the sentence or make any other non-custodial disposition of
4 any defendant sentenced pursuant to this subsection.

5 d. Any defendant convicted of causing, encouraging,
6 intimidating, soliciting, recruiting, coercing, or threatening a person
7 under 18 years of age in violation of subsection a., b., c., or g. of
8 this section shall be guilty of a crime of the second degree.
9 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a
10 defendant who violates the provisions of this subsection shall be
11 sentenced to a mandatory minimum term of imprisonment of seven
12 years during which time the defendant shall not be eligible for
13 parole. The court shall not suspend the sentence or make any other
14 non-custodial disposition of any defendant sentenced pursuant to
15 this subsection.

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

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

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

40 h. A defendant convicted of causing, encouraging,
41 intimidating, soliciting, recruiting, coercing, or threatening a person
42 under 14 years of age in violation of subsection a., b., c., or g. of
43 this section shall be guilty of a crime of the second degree.
44 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, a
45 defendant who violates the provisions of this subsection shall be
46 sentenced to a mandatory minimum term of imprisonment of 10
47 years during which time the defendant shall not be eligible for
48 parole. The court shall not suspend the sentence or make any other

1 non-custodial disposition of any defendant sentenced pursuant to
2 this subsection.

3 Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5
4 or any other provision of law, a conviction arising under this section
5 shall not merge with a conviction for any criminal offense that the
6 actor committed, whether committed by the actor's own conduct or
7 by the conduct of another person for which the actor is legally
8 responsible pursuant to N.J.S.2C:2-6, while involved in criminal
9 street gang related activity, as defined in subsection [h.] a. of
10 **[N.J.S.2C:44-3]** section 2 of P.L.2007, c.341 (C.2C:33-29), nor
11 shall the conviction for any such offense merge with a conviction
12 pursuant to this section and the sentence imposed upon a violation
13 of this section shall be ordered to be served consecutively to that
14 imposed upon any other such conviction.
15 (cf: P.L.2013, c.202, s.1)

16
17 3. Section 2 of P.L.2007, c.341 (C.2C:33-29) is amended to
18 read as follows:

19 2. a. A person is guilty of the crime of gang criminality if,
20 while knowingly involved in criminal street gang activity, he
21 commits, attempts to commit, or conspires to commit, whether as a
22 principal or an accomplice, any crime specified in chapters 11
23 through 18, 20, 33, 35 or 37 of Title 2C of the New Jersey Statutes;
24 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; section 1 of
25 P.L.1998, c.26 (C.2C:39-4.1); N.J.S.2C:39-5; or N.J.S.2C:39-9. A
26 crime is committed while involved in a criminal street gang related
27 activity if the crime was committed: (1) for the benefit of, at the
28 direction of, or in association with a criminal street gang; or (2)
29 while causing, encouraging, intimidating, coercing, soliciting, or
30 recruiting another to join or actively participate in a criminal street
31 gang in violation of section 1 of P.L.1999, c.160 (C.2C:33-28).

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

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

12 c. A defendant convicted as an accomplice pursuant to
13 N.J.S.2C:2-6 for a crime committed by a person under 18 years of
14 age who was solicited by the defendant to commit the crime while
15 violating the provisions of section 1 of P.L.1999, c.160 (C.2C:33-
16 28) commits a crime of the first degree and, upon conviction and
17 notwithstanding the provisions of paragraph (1) of subsection a. of
18 N.J.S.2C:43-6, shall be sentenced to a mandatory minimum term of
19 imprisonment of 15 years during which time the defendant shall be
20 ineligible for parole. The court shall not suspend the sentence or
21 make any other non-custodial disposition of any defendant
22 sentenced pursuant to this subsection.
23 (cf: P.L.2007, c.341, s.1)

24
25 4. (New section) It shall be a crime of the fourth degree for a
26 person convicted of soliciting or recruiting a person under 18 years
27 of age to join or actively participate in a criminal street gang or who
28 is convicted of doing so on school property in violation of
29 subsection d., f., g., or h. of section 1 of P.L.1999, c.160 (C.2C:33-
30 28) to reside within 500 feet of the real property comprising an
31 elementary or secondary school or playground as defined in section
32 1 of P.L.1999, c.50 (C.52:27D-123.9) unless:

33 a. the person is required to serve a sentence at a jail, prison,
34 juvenile facility, or other correctional institution or facility which is
35 located within 500 feet of the real property comprising an
36 elementary or secondary school, child care center, or playground;

37 b. the person is receiving treatment at a mental health facility
38 located within 500 feet of the real property comprising an
39 elementary or secondary school, child care center, or playground;

40 c. the person established the residence prior to the effective
41 date of P.L. , c. (C.) (pending before the Legislature as this
42 bill);

43 d. an elementary or secondary school, child care center, or
44 playground is built or established within 500 feet of the person's
45 existing residence; or

46 e. the parole board, after considering an individual's housing
47 options, determines that a needs-based exception is required.

1 5. (New section) a. As used in this section, “primarily consists
2 of contact with children” means 80 percent or more of the actual or
3 official duties or responsibilities include contact with a child.

4 b. It shall be a crime of the fourth degree for a person
5 convicted of soliciting or recruiting a person under 18 years of age
6 to join or actively participate in a criminal street gang or who is
7 convicted of doing so on school property in violation of subsection
8 d., f., g., or h. of section 1 of P.L.1999, c.160 (C.2C:33-28) to
9 volunteer or be employed at a job which primarily consists of
10 contact with children.

11 c. It shall be a crime of the fourth degree to knowingly hire or
12 provide a volunteer position to a person convicted of soliciting or
13 recruiting a person under 18 years of age to join or actively
14 participate in a criminal street gang in violation of subsection g. of
15 section 1 of P.L.1999, c.160 (C.2C:33-28) for a job or volunteer
16 position which primarily consists of contact with children.

17

18 6. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill upgrades certain penalties for criminal street gang
24 recruitment and criminality, requires a court to impose a mandatory
25 minimum sentence for certain offenses of criminal street gang
26 recruitment of minors, establishes accomplice liability and imposes
27 residency, employment, and hiring restrictions for certain recruiters.

28 Current law provides that a defendant is guilty of an offense if it
29 is committed by the defendant’s own conduct, or by the conduct of
30 another person for which the defendant is legally accountable. This
31 bill provides that a defendant will be held accountable for the
32 conduct of another person for a criminal act as an accomplice if the
33 act is committed by a person that the defendant has caused,
34 encouraged, intimidated, coerced, or solicited to commit the act
35 while soliciting or recruiting the person to join or actively
36 participate in a criminal street gang.

37 Currently, it is a crime of the second degree to solicit, recruit,
38 coerce, or threaten a minor to join or actively participate in a
39 criminal street gang. A person who commits this crime on school
40 property commits a crime of the third degree. A crime of the
41 second degree is punishable by a term of imprisonment of five to 10
42 years, a fine of up to \$150,000, or both. A crime of the third degree
43 is punishable by a term of imprisonment of three to five years, a
44 fine of up to \$15,000, or both.

45 The bill requires a person who is convicted of soliciting or
46 recruiting a minor to be sentenced to a mandatory minimum term of
47 imprisonment of seven years during which time the defendant will
48 be ineligible for parole. A person who is convicted of soliciting or

1 recruiting a minor under 14 years of age will be sentenced to a
2 mandatory minimum term of imprisonment of 10 years during
3 which time the defendant will be ineligible for parole. The court is
4 not permitted to suspend the sentence or make any other non-
5 custodial disposition of a defendant sentenced pursuant to these
6 provisions.

7 The bill's provisions also require a defendant who inflicts
8 significant bodily injury upon another while soliciting or recruiting
9 a person to join or actively participate in a criminal street gang to be
10 sentenced to a mandatory minimum term of imprisonment of five
11 years during which time the defendant will be ineligible for parole.

12 The bill also amends the law related to gang criminality. Under
13 current law, a defendant is guilty of the crime of gang criminality if
14 the defendant, whether as a principal or an accomplice, commits
15 certain specified crimes if the crime was committed for the benefit
16 of, at the direction of, or in association with a criminal street gang.
17 The bill provides that a defendant will also be guilty of the crime of
18 gang criminality if the crime was committed while causing,
19 encouraging, intimidating, coercing, soliciting, or recruiting another
20 to join or actively participate in a criminal street gang.

21 The bill further provides that a defendant convicted as an
22 accomplice for a crime committed by a person under 18 years of
23 age who was solicited by the defendant to join a criminal street
24 gang, commits a crime of the first degree and will be sentenced to a
25 mandatory minimum term of imprisonment of 15 years during
26 which time the defendant shall be ineligible for parole. A crime of
27 the first degree is punishable by a term of imprisonment of 10 to 20
28 years, a fine of up to \$200,000, or both.

29 The bill also provides that a person convicted of soliciting or
30 recruiting a minor to join a criminal street gang, or who is convicted
31 of the offense while on school property, commits a crime of the
32 fourth degree if the person resides within 500 feet of an elementary
33 or secondary school or playground. A person is not subject to these
34 residency restrictions if: the person is required to serve a sentence at
35 a jail, prison, juvenile facility, or other correctional institution or
36 facility which is located within 500 feet of an elementary or
37 secondary school or playground; the person is receiving treatment at
38 a mental health facility located within 500 feet of an elementary or
39 secondary school, child care center, or playground; the person
40 established the residence prior to the effective date of the bill; an
41 elementary or secondary school, child care center, or playground is
42 built or established within 500 feet of the person's existing
43 residence; or the parole board, after considering an individual's
44 housing options, determines that a needs-based exception is
45 required.

46 The provisions of the bill also provide that a person convicted of
47 soliciting or recruiting a minor, or convicted of doing so on school
48 property, who volunteers or is employed at a job which primarily

1 consists of contact with children commits a crime of the fourth
2 degree. “Primarily consists of contact with children” is defined
3 under the bill to mean that 80 percent or more of the actual or
4 official duties or responsibilities include contact with a child. It
5 also is a crime of the fourth degree under the bill for a person to
6 knowingly hire or provide a volunteer position which primarily
7 consists of contact with children to a person convicted of soliciting
8 or recruiting a minor on school property.
9 A crime of the fourth degree is punishable by a term of
10 imprisonment of up to 18 months, a fine of up to \$10,000, or both.