

ASSEMBLY, No. 2911

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Assemblyman KEVIN J. ROONEY

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblywoman Dunn

SYNOPSIS

Upgrades penalties for certain crimes committed during a state of emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/1/2020)

1 AN ACT concerning penalties for certain crimes committed during a
2 state of emergency and amending various sections of statutory
3 law.

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:15-1 is amended to read as follows:

9 2C:15-1. a. Robbery defined. A person is guilty of robbery if,
10 in the course of committing a theft, he:

11 (1) Inflicts bodily injury or uses force upon another; or

12 (2) Threatens another with or purposely puts him in fear of
13 immediate bodily injury; or

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

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

19 b. Grading. Robbery is a crime of the second degree, except
20 that it is a crime of the first degree if in the course of committing
21 the theft the actor attempts to kill anyone, or purposely inflicts or
22 attempts to inflict serious bodily injury, or is armed with, or uses or
23 threatens the immediate use of a deadly weapon. Robbery is also a
24 crime of the first degree when committed in a jurisdiction where a
25 state of emergency is in force.

26 (cf: P.L.1981, c.22, s.1)

27
28 2. N.J.S.2C:18-2 is amended to read as follows:

29 2C:18-2. Burglary. a. Burglary defined. A person is guilty of
30 burglary if, with purpose to commit an offense therein or thereon
31 he:

32 (1) Enters a research facility, structure, or a separately secured
33 or occupied portion thereof unless the structure was at the time
34 open to the public or the actor is licensed or privileged to enter;

35 (2) Surreptitiously remains in a research facility, structure, or a
36 separately secured or occupied portion thereof knowing that he is
37 not licensed or privileged to do so; or

38 (3) Trespasses in or upon utility company property where public
39 notice prohibiting trespass is given by conspicuous posting, or
40 fencing or other enclosure manifestly designed to exclude intruders.

41 b. Grading. Burglary is a crime of the second degree if in the
42 course of committing the offense, the actor:

43 (1) Purposely, knowingly or recklessly inflicts, attempts to
44 inflict or threatens to inflict bodily injury on anyone; **[or]**

45 (2) Is armed with or displays what appear to be explosives or a
46 deadly weapon; 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 (3) Is in a jurisdiction wherein a state of emergency is in force.

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

6 (cf: P.L.2009, c.283, s.2)

7

8 3. N.J.S.2C:18-3 is amended to read as follows:

9 2C:18-3. a. Unlicensed entry of structures. A person commits
10 an offense if, knowing that he is not licensed or privileged to do so,
11 he enters or surreptitiously remains in any research facility,
12 structure, or separately secured or occupied portion thereof, or in or
13 upon utility company property, or in the sterile area or operational
14 area of an airport. An offense under this subsection is a crime of
15 the third degree when committed in a jurisdiction where a state of
16 emergency is in force. An offense under this subsection is a crime
17 of the fourth degree if it is committed in a school or on school
18 property. The offense is a crime of the fourth degree if it is
19 committed in a dwelling. An offense under this section is a crime
20 of the fourth degree if it is committed in a research facility, power
21 generation facility, waste treatment facility, public sewage facility,
22 water treatment facility, public water facility, nuclear electric
23 generating plant or any facility which stores, generates or handles
24 any hazardous chemical or chemical compounds. An offense under
25 this subsection is a crime of the fourth degree if it is committed in
26 or upon utility company property. An offense under this subsection
27 is a crime of the fourth degree if it is committed in the sterile area
28 or operational area of an airport. Otherwise it is a disorderly
29 persons offense.

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

34 (1) Actual communication to the actor; or

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

37 (3) Fencing or other enclosure manifestly designed to exclude
38 intruders.

39 An offense under this subsection is a disorderly persons offense
40 when committed in a jurisdiction in which a state of emergency is
41 in force.

42 c. Peering into windows or other openings of dwelling places.
43 A person commits a crime of the fourth degree if, knowing that he
44 is not licensed or privileged to do so, he peers into a window or
45 other opening of a dwelling or other structure adapted for overnight
46 accommodation for the purpose of invading the privacy of another
47 person and under circumstances in which a reasonable person in the
48 dwelling or other structure would not expect to be observed.

1 d. Defenses. It is an affirmative defense to prosecution under
2 this section that:

3 (1) A structure involved in an offense under subsection a. was
4 abandoned;

5 (2) The structure was at the time open to members of the public
6 and the actor complied with all lawful conditions imposed on access
7 to or remaining in the structure; or

8 (3) The actor reasonably believed that the owner of the
9 structure, or other person empowered to license access thereto,
10 would have licensed him to enter or remain, or, in the case of
11 subsection c. of this section, to peer.

12 (cf: P.L.2013, c.138, s.2)

13

14 4. N.J.S.2C:20-2 is amended to read as follows:

15 2C:20-2. a. Consolidation of Theft and Computer Criminal
16 Activity Offenses. Conduct denominated theft or computer
17 criminal activity in this chapter constitutes a single offense, but
18 each episode or transaction may be the subject of a separate
19 prosecution and conviction. A charge of theft or computer criminal
20 activity may be supported by evidence that it was committed in any
21 manner that would be theft or computer criminal activity under this
22 chapter, notwithstanding the specification of a different manner in
23 the indictment or accusation, subject only to the power of the court
24 to ensure fair trial by granting a bill of particulars, discovery, a
25 continuance, or other appropriate relief where the conduct of the
26 defense would be prejudiced by lack of fair notice or by surprise.

27 b. Grading of theft offenses.

28 (1) Theft constitutes a crime of the second degree if:

29 (a) The amount involved is \$75,000.00 or more;

30 (b) The property is taken by extortion;

31 (c) The property stolen is a controlled dangerous substance or
32 controlled substance analog as defined in N.J.S.2C:35-2 and the
33 quantity is in excess of one kilogram;

34 (d) The property stolen is a person's benefits under federal or
35 State law, or from any other source, which the Department of
36 Human Services or an agency acting on its behalf has budgeted for
37 the person's health care and the amount involved is \$75,000.00 or
38 more;

39 (e) The property stolen is human remains or any part thereof;
40 except that, if the human remains are stolen by deception or
41 falsification of a document by which a gift of all or part of a human
42 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the
43 theft constitutes a crime of the first degree; or

44 (f) It is in breach of an obligation by a person in his capacity as
45 a fiduciary and the amount involved is \$50,000.00 or more.

46 (g) Except as otherwise provided in subparagraph (e) of this
47 paragraph, the theft was committed in a jurisdiction wherein a state
48 of emergency is in force.

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

2 (a) The amount involved exceeds \$500.00 but is less than
3 \$75,000.00;

4 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
5 horse, domestic companion animal or airplane;

6 (c) The property stolen is a controlled dangerous substance or
7 controlled substance analog as defined in N.J.S.2C:35-2 and the
8 amount involved is less than \$75,000.00 or is undetermined and the
9 quantity is one kilogram or less;

10 (d) It is from the person of the victim;

11 (e) It is in breach of an obligation by a person in his capacity as
12 a fiduciary and the amount involved is less than \$50,000.00;

13 (f) It is by threat not amounting to extortion;

14 (g) It is of a public record, writing or instrument kept, filed or
15 deposited according to law with or in the keeping of any public
16 office or public servant;

17 (h) The property stolen is a person's benefits under federal or
18 State law, or from any other source, which the Department of
19 Human Services or an agency acting on its behalf has budgeted for
20 the person's health care and the amount involved is less than
21 \$75,000.00;

22 (i) The property stolen is any real or personal property related
23 to, necessary for, or derived from research, regardless of value,
24 including, but not limited to, any sample, specimens and
25 components thereof, research subject, including any warm-blooded
26 or cold-blooded animals being used for research or intended for use
27 in research, supplies, records, data or test results, prototypes or
28 equipment, as well as any proprietary information or other type of
29 information related to research;

30 (j) The property stolen is a New Jersey Prescription Blank as
31 referred to in R.S.45:14-14;

32 (k) The property stolen consists of an access device or a defaced
33 access device; or

34 (l) The property stolen consists of anhydrous ammonia and the
35 actor intends it to be used to manufacture methamphetamine.

36 (3) Theft constitutes a crime of the fourth degree if the amount
37 involved is at least \$200.00 but does not exceed \$500.00.

38 (4) Theft constitutes a disorderly persons offense if:

39 (a) The amount involved was less than \$200.00; or

40 (b) The property stolen is an electronic vehicle identification
41 system transponder.

42 The amount involved in a theft or computer criminal activity
43 shall be determined by the trier of fact. The amount shall include,
44 but shall not be limited to, the amount of any State tax avoided,
45 evaded or otherwise unpaid, improperly retained or disposed of.
46 Amounts involved in thefts or computer criminal activities
47 committed pursuant to one scheme or course of conduct, whether

1 from the same person or several persons, may be aggregated in
2 determining the grade of the offense.

3 c. Claim of right. It is an affirmative defense to prosecution
4 for theft that the actor:

5 (1) Was unaware that the property or service was that of
6 another;

7 (2) Acted under an honest claim of right to the property or
8 service involved or that he had a right to acquire or dispose of it as
9 he did; or

10 (3) Took property exposed for sale, intending to purchase and
11 pay for it promptly, or reasonably believing that the owner, if
12 present, would have consented.

13 d. Theft from spouse. It is no defense that theft or computer
14 criminal activity was from or committed against the actor's spouse,
15 except that misappropriation of household and personal effects, or
16 other property normally accessible to both spouses, is theft or
17 computer criminal activity only if it occurs after the parties have
18 ceased living together.

19 (cf: P.L.2013, c.58, s.2)

20

21 5. N.J.S.2C:20-11 is amended to read as follows:

22 2C:20-11. a. Definitions. The following definitions apply to
23 this section:

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

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

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

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

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

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

44 (7) "Full retail value" means the merchant's stated or advertised
45 price of the merchandise;

46 (8) "Premises of a store or retail mercantile establishment"
47 means and includes but is not limited to, the retail mercantile
48 establishment; any common use areas in shopping centers and all

1 parking areas set aside by a merchant or on behalf of a merchant for
2 the parking of vehicles for the convenience of the patrons of such
3 retail mercantile establishment;

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

7 (10) "Antishoplifting or inventory control device
8 countermeasure" means any item or device which is designed,
9 manufactured, modified, or altered to defeat any antishoplifting or
10 inventory control device;

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

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

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

24 (2) For any person purposely to conceal upon his person or
25 otherwise any merchandise offered for sale by any store or other
26 retail mercantile establishment with the intention of depriving the
27 merchant of the processes, use or benefit of such merchandise or
28 converting the same to the use of such person without paying to the
29 merchant the value thereof.

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

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

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

45 (6) For any person purposely to remove a shopping cart from the
46 premises of a store or other retail mercantile establishment without
47 the consent of the merchant given at the time of such removal with

1 the intention of permanently depriving the merchant of the
2 possession, use or benefit of such cart.

3 c. Gradation. (1) Shoplifting constitutes a crime of the second
4 degree under subsection b. of this section if the full retail value of
5 the merchandise is \$75,000 or more, or the offense is committed in
6 furtherance of or in conjunction with an organized retail theft
7 enterprise and the full retail value of the merchandise is \$1,000 or
8 more, or the offense is committed in a jurisdiction wherein a state
9 of emergency is in force.

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

16 (3) Shoplifting constitutes a crime of the fourth degree under
17 subsection b. of this section if the full retail value of the
18 merchandise is at least \$200 but does not exceed \$500.

19 (4) Shoplifting is a disorderly persons offense under subsection
20 b. of this section if the full retail value of the merchandise is less
21 than \$200.

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

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

37 d. Presumptions. Any person purposely concealing
38 unpurchased merchandise of any store or other retail mercantile
39 establishment, either on the premises or outside the premises of
40 such store or other retail mercantile establishment, shall be prima
41 facie presumed to have so concealed such merchandise with the
42 intention of depriving the merchant of the possession, use or benefit
43 of such merchandise without paying the full retail value thereof,
44 and the finding of such merchandise concealed upon the person or
45 among the belongings of such person shall be prima facie evidence
46 of purposeful concealment; and if such person conceals, or causes
47 to be concealed, such merchandise upon the person or among the
48 belongings of another, the finding of the same shall also be prima

1 facie evidence of willful concealment on the part of the person so
2 concealing such merchandise.

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

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

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

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

25 (cf: P.L.2006, c.56, s.1)

26

27 6. N.J.S.2C:33-1 is amended to read as follows:

28 2C:33-1. a. Riot. A person is guilty of riot if he participates
29 with four or more others in a course of disorderly conduct as
30 defined in section 2C:33-2a:

31 (1) With purpose to commit or facilitate the commission of a
32 crime;

33 (2) With purpose to prevent or coerce official action; or

34 (3) When he or any other participant, known to him, uses or
35 plans to use a firearm or other deadly weapon.

36 Riot if committed under circumstances set forth in paragraph (3)
37 or in a jurisdiction wherein a state of emergency is in force is a
38 crime of the third degree. Otherwise riot is a crime of the fourth
39 degree.

40 b. Failure of disorderly persons to disperse upon official order.
41 Where five or more persons are participating in a course of
42 disorderly conduct as defined in section 2C:33-2 a. likely to cause
43 substantial harm, a peace officer or other public servant engaged in
44 executing or enforcing the law may order the participants and others
45 in the immediate vicinity to disperse. A person who refuses or
46 knowingly fails to obey such an order commits a disorderly persons
47 offense; provided, however, if the offense is committed in a

1 jurisdiction wherein a state of emergency is in force, the person
2 failing to disperse commits a crime of the fourth degree.

3 (cf: P.L.1981, c.290, s. 5)

4

5 7. N.J.S.2C:33-14 is amended to read as follows:

6 2C:33-14. a. Interference with Transportation. A person is
7 guilty of interference with transportation if the person purposely or
8 knowingly:

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

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

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

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

22 (5) unlawfully disrupts, delays or prevents the operation of any
23 vehicle, including, but not limited to, a bus, light rail vehicle,
24 railroad locomotive, train, bus, jitney, trolley, subway, airplane or
25 any other facility of transportation. The term "unlawfully disrupts,
26 delays or prevents the operation of" does not include non-violent
27 conduct growing out of a labor dispute as defined in N.J.S.2A:15-
28 58; or

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

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

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

47 b. Interference with transportation is a disorderly persons
48 offense.

1 c. Interference with transportation is a crime of the fourth
2 degree if the person purposely, knowingly or recklessly causes
3 bodily injury to another person or causes pecuniary loss in excess of
4 \$500 but less than \$2,000.

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

10 e. Interference with transportation is a crime of the second
11 degree if the person purposely, knowingly or recklessly causes
12 serious bodily injury to another person, or if the crime is committed
13 in a jurisdiction wherein a state of emergency is in force
14 (cf: P.L.2007, c.145, s.1)

15
16 8. Section 1 of P.L.1991, c. 432 (C.2C:33-21) is amended to
17 read as follows:

18 1. Any person who intercepts any message or transmission
19 made on or over any police, fire or emergency medical
20 communications system, or any person who is the recipient of
21 information so intercepted, and who uses the information obtained
22 thereby to facilitate the commission of or the attempt to commit a
23 crime or a violation of any law of this State, or uses the same in a
24 manner which interferes with the discharge of police or firefighting
25 operations or provision of medical services by first aid, rescue or
26 ambulance squad personnel, shall be guilty of a crime of the fourth
27 degree.

28 A person who commits a violation of this section in a jurisdiction
29 wherein a state of emergency is in force is guilty of a crime of the
30 third degree.
31 (cf: P.L.1999, c.317, s.1)

32
33 9. This act shall take effect immediately.

34
35 STATEMENT

36
37 This bill would upgrade the penalties for certain crimes when
38 they are committed in a jurisdiction where a state of emergency is
39 in force.

40 Under the provisions of the bill, robbery committed in a
41 jurisdiction where a state of emergency is in force would be a crime
42 of the first degree; burglary, theft, shoplifting, and interference with
43 transportation would be upgraded to crimes of the second degree;
44 trespassing, riot, and the unlawful interception emergency
45 communications would be ungraded to crimes of the third degree;
46 the crime of failing to disperse would be upgraded a to a crime of
47 the fourth degree; and defiant trespass would be upgraded to a
48 disorderly persons offense.