

SENATE, No. 626

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 36 (Bergen and Passaic)

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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.

43 e. Unless otherwise provided by the code or by the law
 44 defining the offense, a **person** defendant is not an accomplice in
 45 an offense committed by another person if:

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

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

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

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

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

17

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

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

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

40 c. An actor who, in the course of violating subsection a. of this
41 section, inflicts significant bodily injury upon another commits a
42 crime of the second degree. Notwithstanding the provisions of
43 subsection a. of N.J.S.2C:43-6, a defendant who violates the
44 provisions of this subsection shall be sentenced to a mandatory
45 minimum term of imprisonment of five years during which time the
46 defendant shall not be eligible for parole. The court shall not
47 suspend the sentence or make any other non-custodial disposition of
48 any defendant sentenced pursuant to this subsection.

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

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

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

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

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

47 Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5
48 or any other provision of law, a conviction arising under this section

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

11 (cf: P.L.2013, c.202, s.1)

12

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

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

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

44 b. Grading. Gang criminality is a crime of one degree higher
45 than the most serious underlying crime referred to in subsection a.
46 of this section, except that where the underlying crime is a crime of
47 the first degree, gang criminality is a first degree crime and the
48 defendant, upon conviction, and notwithstanding the provisions of

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

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

18 (cf: P.L.2007, c.341, s.1)

19
20 4. (New section) It shall be a crime of the fourth degree for a
21 person convicted of soliciting or recruiting a person under 18 years
22 of age to join or actively participate in a criminal street gang or who
23 is convicted of doing so on school property in violation of
24 subsection d., f., g., or h. of section 1 of P.L.1999, c.160 (C.2C:33-
25 28) to reside within 500 feet of the real property comprising an
26 elementary or secondary school or playground as defined in section
27 1 of P.L.1999, c.50 (C.52:27D-123.9) unless:

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

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

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

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

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

43
44 5. (New section) a. As used in this section, "primarily consists
45 of contact with children" means 80 percent or more of the actual or
46 official duties or responsibilities include contact with a child.

47 b. It shall be a crime of the fourth degree for a person
48 convicted of soliciting or recruiting a person under 18 years of age

1 to join or actively participate in a criminal street gang or who is
2 convicted of doing so on school property in violation of subsection
3 d., f., g., or h. of section 1 of P.L.1999, c.160 (C.2C:33-28) to
4 volunteer or be employed at a job which primarily consists of
5 contact with children.

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

12
13 6. This act shall take effect immediately.
14
15

16 STATEMENT

17

18 This bill upgrades certain penalties for criminal street gang
19 recruitment and criminality, requires a court to impose a mandatory
20 minimum sentence for certain offenses of criminal street gang
21 recruitment of minors, establishes accomplice liability and imposes
22 residency, employment, and hiring restrictions for certain recruiters.

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

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

40 The bill requires a person who is convicted of soliciting or
41 recruiting a minor to be sentenced to a mandatory minimum term of
42 imprisonment of seven years during which time the defendant will
43 be ineligible for parole. A person who is convicted of soliciting or
44 recruiting a minor under 14 years of age will be sentenced to a
45 mandatory minimum term of imprisonment of 10 years during
46 which time the defendant will be ineligible for parole. The court is
47 not permitted to suspend the sentence or make any other non-

1 custodial disposition of a defendant sentenced pursuant to these
2 provisions.

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

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

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

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

42 The provisions of the bill also provide that a person convicted of
43 soliciting or recruiting a minor, or convicted of doing so on school
44 property, who volunteers or is employed at a job which primarily
45 consists of contact with children commits a crime of the fourth
46 degree. "Primarily consists of contact with children" is defined
47 under the bill to mean that 80 percent or more of the actual or
48 official duties or responsibilities include contact with a child. It

1 also is a crime of the fourth degree under the bill for a person to
2 knowingly hire or provide a volunteer position which primarily
3 consists of contact with children to a person convicted of soliciting
4 or recruiting a minor on school property.

5 A crime of the fourth degree is punishable by a term of
6 imprisonment of up to 18 months, a fine of up to \$10,000, or both.