

REPORT AND RECOMMENDATIONS

RELATING TO COMPILATION OF THE

CRIMINAL LAW

NEW JERSEY LAW REVISION COMMISSION
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Introduction

Title 2C of the Code of Criminal Justice (hereafter the Criminal Code) codified criminal law and established a statutory framework to regulate crimes. However, the Legislature did not incorporate all penal provisions found in New Jersey Law when it enacted the Criminal Code. Some criminal law is found in Title 2A. Similarly, when the Comprehensive Drug Reform Act compiled drug offenses into the Criminal Code, a few crimes were left in Title 24. Although the Legislature had intended to move these non-Code criminal provisions into Title 2C, this codification was never completed.

The New Jersey Law Revision Commission examined the criminal provisions within Titles 2A and 24 with a view toward completing the task of codifying New Jersey criminal law. This report sets forth its findings and recommendations. The Commission recommends that the Legislature incorporate into the Criminal Code those Title 2A and Title 24 provisions with continuing validity. Provisions that are obsolete or superseded by other law are recommended for repeal. Provisions that are regulatory in nature are recommended for compilation in other titles of the statutes. The Commission revised the language for some provisions but mainly followed the substantive meaning of the existing statutes. The recommendations contained in this report, if adopted, would help to codify New Jersey criminal law. The Department of Law and Public Safety has reviewed the report and supports the recommendations of the Commission.

The format of this report is as follows. First, the existing statute is set forth; second, a comment and recommendation is made; and third, where appropriate, a proposed revised statute is recommended. The report sets forth the existing statutes in numerical order.

Funeral Payments 2A:102-13 to 17.

Current statutes

2A:102-13. Trust funds

Any and all moneys paid to a funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the personal property is not to be delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such property or services are to be furnished, shall be trust funds in the possession of such funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be deposited by him or it within 30 days after receipt thereof in a special account maintained exclusively for the deposit of such moneys in a federally insured State or federally chartered bank, savings bank or savings and loan association; or, if the person paying the moneys requests, in a pooled trust account established pursuant to P.L. 1985, c. 147 (C. 3B:11-16 et seq.) and chosen by the person paying the moneys, and shall be so held on deposit, together with any interest thereon, until said personal property has been delivered and said personal services have been rendered, unless sooner repaid, in whole or in part. No depository institution shall be liable for the misuse, misapplication or improper withdrawal by any such funeral director, undertaker, cemetery or other person, firm or corporation, of any moneys deposited in such depository institution pursuant to this act.

L. 1957, c. 182. Amended by L. 1985, c. 147.

2A:102-14. Repayment on demand

The amount of any and all moneys paid under or in connection with such an agreement, together with interest, if any, accrued thereon while on deposit as so required shall be repaid on demand at any time prior to the delivery of the personal property or the rendering of the personal services.

L.1957, c. 182.

2A:102-15. Invalid advance funeral payment agreements

Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of this act shall be void.

L.1957, c. 182.

2A:102-16. Violations

Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, shall fail to deposit or keep on deposit or to repay any and all such moneys as provided in this act, shall be guilty of a misdemeanor.

L.1957, c. 182.

2A:102-16.1. Irrevocable trusts, certain, conditions

Notwithstanding the provisions of P.L. 1957, c.182 (C.2A:102-13 et seq.) to the contrary, an agreement may provide that the trust shall be irrevocable during the lifetime of the beneficiary, if at the time of the signing of an agreement, the beneficiary or grantor of the trust is:

a. An aged, blind or disabled applicant for, or recipient of, benefits pursuant to the Supplemental Security Income Program under P.L.1973, c.256 (C.44:7-85 et seq.) or any Medicaid program under P.L.1968, c.413 (C.30:4D-1 et seq.) utilizing the eligibility criteria of the Supplemental Security Income Program in regard to burial spaces and funds set aside for burial expenses; or

b. An aged, blind or disabled person who reasonably anticipates applying for, or receiving, the benefits provided for in subsection a. of this section within six months.

An irrevocable trust established pursuant to this section shall not affect the selection of funeral goods or services or the selection of the funeral home. If the beneficiary or grantor of the trust enters into an agreement, reasonably anticipating that the beneficiary or grantor will become an applicant for, or recipient of, these programs within six months from the execution of the agreement, the agreement shall provide that, in the event the beneficiary or grantor of the trust does not become an applicant for, or recipient of, any of these programs within the six month period, the trust shall revert to a revocable trust.

As used in this section "agreement" means an agreement for the sale of personal property to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the personal property is not to be delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial the property or services are to be furnished.

L.1991, c.502.

2A:102-16.2. Crimes concerning funeral trusts

a. A person shall be guilty of a crime of the fourth degree if he knowingly or purposefully solicits or induces any person to execute an irrevocable trust pursuant to section 1 of P.L.1991, c.501 (C.2A:102-16.1) with an intent to collect or charge more than the fair market value for funeral goods or services.

b. A person shall be guilty of a crime of the fourth degree if the proceeds of the trust are expended on anything other than the fair market value of the funeral goods or services.

L.1991, c.502.

2A:102-17. Exceptions

This act shall not apply to the sale of lots or graves by a cemetery.

L.1957, c. 182.

Comment: These sections regulate payments made to funeral directors, undertakers and cemeteries in connection with services to be delivered upon the death of a person. These sections require the firm or corporation to deposit the funds in a trust account until the services have been delivered. Section 102-16 provides that a

violation of the substantive statutory sections constitutes a misdemeanor. Section 102-16.1 allows the payment to be made in the form of an irrevocable trust, and section 102-16.2 makes use of such a trust to overcharge or to pay for funeral expenses a crime of the fourth degree. Both offenses are applicable only to persons engaged in businesses associated with funerals and burials. Since the offenses contained in sections 102.16.1 and 102.16.2 do not apply to the general public, but to members of a specific profession, this provision is not appropriate for incorporation into the Criminal Code. The Criminal code contains laws of general application.

Recommendation: The Legislature should amend Section 102-16 by replacing the term "misdemeanor" with the phrase "crime of the fourth degree." This amendment reflects the classification of offenses under the Criminal Code. N.J.S. 2C:43-1(b). The legislature should also incorporate Sections 2A:102-13 to 17 into Title 45 where regulations covering the profession of mortuary science are found.

Persuading Another to Take Drugs 2A:108-9.

Current statutes

2A:108-9. Narcotic drugs; persuading others to use

Any person who induces or persuades any other person to use any narcotic drug unlawfully, or aids or contributes to such use of any narcotic drug by another person, or contributes to the addiction of any other person to the unlawful use of any narcotic drug, is guilty of a high misdemeanor.

L.1952, c. 95.

Comment: This statute criminalizes as a high misdemeanor the act of inducing or persuading any other person to use a narcotic drug unlawfully or aiding or contributing to such use, or contributing to the drug addiction of another person. The statute does not apply to persons authorized to administer drugs such as medical professionals.

Recommendation: The Legislature should repeal this provision. This provision is redundant with N.J.S. 2C:35-10b which makes illegal use of a controlled dangerous substance or analog a disorderly person offense and N.J.S. 2C:2-6c, which defines an accomplice as one who solicits, aids or agrees or attempts to aid another in committing an offense. Thus, this section should be repealed.

Illegal Voting 2A:149-1.

Current statutes

2A:149-1. Unauthorized use of voting machine or electrical voting system for recording votes

Any person who uses a voting machine or electrical voting system of any legislative or other public body of this state for the purpose of recording a vote or votes thereon or thereby upon any matter or question being considered or voted upon by the members of such legislative or public body, and who is not entitled to use the same for those purposes, is guilty of a misdemeanor.

Comment: This statute makes it a misdemeanor for a person to use a voting machine or electrical voting system of any legislative body or other public body of this State to record a vote on a matter being considered by the legislative or other public body when the person is not entitled to cast a vote. Title 19, Elections, does not contain a duplicate provision because it does not regulate voting within the Legislature itself. The more than forty sections defining voting crimes scattered throughout titles 18A and 19 also do not apply to this scenario.

Title 2C contains a section which bears upon the issue of illegal voting but does not obviate a separate voting statute. N.J.S. 2C: 29-1 makes it a crime for a person to purposely obstruct, impair or pervert "the administration of law or other governmental function" or to prevent or attempt to prevent "a public servant from lawfully performing an official function by means of intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act." The 1971 Commentary provides that "the purpose of this Section is to prohibit a broad range of behavior designed to impede or defeat the lawful operation of government." Final Report of the New Jersey Criminal Law Revision Commission, Volume II: Commentary at 280. A person who tampers with a legislative voting procedure would appear to obstruct the function of government in violation of 2C:29-1.

However, while 2C: 29-1 might cover the subject matter of 2A:149-1, it is better to develop a comprehensive statute on crimes related to voting. This approach resolves the possible duplication between Title 2C and Title 2A with respect to illegal voting offenses and consolidates the voting statutes in Titles 18 and 19. The Commission has drafted a comprehensive statute governing illegal voting practices to replace these loosely related sections. 2C:31-7 of the draft statutes covers the conduct prohibited by 2A:149-1.

Recommendation: In a separate report and recommendations on voting offenses, the Commission proposes that the Legislature incorporate this statute into Title 2C as a new chapter 31 called Voting Offenses. That chapter would replace 2A:149-1 and other crimes related to voting now found in Titles 18 and 19. That report contains the full proposed chapter, commentary on it, and a table of dispositions of current voting offense statutes included in this section. Proposed 2C:31-7 from that report is reproduced below.

2C:31-7. Voting as member of public body

A person who knowingly votes as a member of a public body without lawful authority commits a crime of the fourth degree.

Wage Assignments 2A:150A-1 to 6.

Current statutes

2A:150A-1. Compensation for services of employee; unlawful purchase or assignment; unlawful withholding or payment to another

It shall be unlawful for any person to purchase or have assigned to him, other than by order of court, any salary, wages, commissions, pay or other compensation for services, or any part thereof, due or to become due to any employee and any such purchase or assignment, whenever executed, shall be void and unenforceable. It shall also be unlawful for any person to withhold or to pay to any other person on the basis of any assignment or purchase prohibited by this act any salary, wages, commissions, pay or other compensation due to any employee.

L.1971, c. 412. Amended by L.1973, c. 354.

2A:150A-2. Violations; penalty

Any person violating this act, or attempting to do so, shall be a disorderly person.

L.1971, c. 412. Amended by L.1973, c. 354.

2A:150A-3. Liability to employee for withholding, paying or receiving

Any person withholding, paying or receiving any salary, wages, commissions, or other compensation for services performed in violation of this act, shall be liable to the employee for the amount thereof.

L.1971, c. 412.

2A:150A-4. Person defined

The term "person" as used in this act shall include any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, or any agent, employee, salesman, partner, officer, director, member, stockholder, or associate acting on behalf thereof.

L.1971, c. 412.

2A:150A-5. Repeal of inconsistent acts

All acts or parts of acts inconsistent herewith are to the extent of such inconsistency repealed.

L.1971, c. 412.

2A:150A-6. Inapplicability of act to withholding or diversion of wages by employer in accordance with § 34:11-4.4

Nothing contained in this act or the act hereby amended and supplemented shall be construed to prevent or make unlawful the withholding or diverting of wages by any employer in accordance with section 4 of P.L.1965, c. 173 (C. 34:11-4.4).

L.1973, c. 354.

Comment: Section 150A-1 forbids a person to take by contract, assignment or purchase another person's wages, commissions, pay or other form of compensation. The statute also forbids a person to pay or assign another person's salary, wages or compensation to someone other than the employee or payee. A person convicted under this section commits a disorderly persons offense and is liable to the victim for the amount of wages unlawfully withheld, paid or received. 2A:150A-2; 2A:150A-3.

2A:150A-1 protects "the minimum living standards of the people" of the State of New Jersey and limits the freedom of parties to make contracts. The limitation of contract freedom is based on the policy ground that the purchase or assignment of wages may reflect overreaching by a party with greater bargaining power. Freedom Fin. Co. v. N.J.B.T. Co., et al., 123 N.J. Super. 255 (Cty. Ct. 1973); aff'd, 126 N.J. Super. 375 (App. Div. 1974). A person cannot contract away the right to receive

compensation to obtain a loan of money or some other benefit. Wage execution may result only from a court proceeding. N.J.S. 2A:17-50 et seq.; R. 4:59-1(d).

2A:150A-1, which does not permit wage assignment, supersedes 34:11-25, an earlier statute which permitted wage assignments under some circumstances. The latter statute, 34:11-25, should be explicitly repealed.

Recommendation: The Legislature should incorporate N.J.S. 2A:150A-1 through -6 in N.J.S. 34:11-4 which regulates the payment of wages.

The Legislature should repeal N.J.S. 34:11-25 and 26. This is permissible as the provisions of N.J.S. 2A:150A prohibit all wage assignments, of which those described in N.J.S. 34:11-25 (that impose usurious interest) are a sub-class. However, with this repeal a technical amendment is needed to N.J.S. 12A:10-104. The Legislature should delete the reference to assignment or purchase of wages law.

L.1991, c.205 (1991-A-3061) revised and strengthened various provisions of the labor laws. The penalty and enforcement provisions were continued as part of Title 34, even though certain violations were disorderly persons offenses. See, for example, N.J.S. 34:11-4.10.

Marihuana; Growing or Allowing to Grow on One's Land 2A:170-25.1.

Current statutes

2A:170-25.1. Marihuana; growing or allowing to grow on one's land

A person who, without being licensed so to do under the public health law, grows the narcotic plant known as marihuana or knowingly allows it to grow on his land without destroying the same, is a disorderly person.

L.1952, c. 106.

Comment: This statute makes it a disorderly persons offense for a person, without being licensed to do so under the public health law, to grow marihuana, or to knowingly allow it to be grown on his land without destroying it.

This conduct is covered under N.J.S. 2C:35-10 and 2C:35-5. A person who grows marihuana possesses it within the meaning of 2C:35-10. Additionally, the "Comprehensive Drug Reform Act of 1986," supersedes that part of 2A:170-25.1 making it a crime to grow marihuana. The Criminal Code makes it a crime to "manufacture, distribute or dispense" a controlled dangerous substance. N.J.S. 2C:35-5. The term "manufacture" includes the "production" of a controlled dangerous substance. The term "production" includes the "planting, cultivation, growing or harvesting" of a controlled dangerous substance. N.J.S. 2C: 35-2. Marihuana is a controlled dangerous substance listed under Schedule I of 24:21-7(e), and hence the provisions of the Criminal Code apply to the manufacture of marihuana. As a result, 2C:35-5 makes it a crime to grow marihuana.

The growing of marihuana under Title 2C is a crime graded on the amount grown under 2C:35-5. For example, a person who grows more than five pounds of marihuana commits a crime of the second degree. N.J.S. 2C: 35-5(b)(10). The

sentencing range for a crime of the second degree is between 5 and 10 years and carries a presumptive term of 7 years. By contrast, a violation of 2A:170.25.1 for growing marihuana is a disorderly persons offense. That offense carries a maximum custodial sentence of 6 months under the Criminal Code. Since subsequent legislation supersedes earlier inconsistent legislation, the Criminal Code superseded that part of 2A:170.25.1 forbidding the growing of marihuana.

However, 2C:35-5 does not explicitly make it a crime to "knowingly allow" marihuana to grow on land without destroying the marihuana. Whether the Code should recognize this offense is debatable. It may be unfair to punish landowners, especially those who own large tracts of undeveloped land, for failure to destroy marihuana plants on their land when the marihuana is growing on the land as a wild plant. The landowner may have difficulty in detecting and monitoring the growth of marihuana.

Moreover, other statutes empower the state to destroy marihuana growing on land. N.J.S. 26:2-81 and 26:2-82 authorize the prosecutor to destroy the marihuana plant growing on land in the prosecutor's county. The prosecutor is not liable for damages. Since the state has adequate authority to destroy marihuana growing on private property, it may be unnecessary to enact additional legislation to criminalize the failure to destroy marihuana growing on land.

Recommendation: The Legislature should repeal 2A:170-25.1.

Glue Sniffing Law 2A:170-25.9 to 25.13.

Current statutes

2A:170-25.9. Definitions

As used in this act the phrase "substance containing any chemical material having the property of releasing toxic vapors or fumes" shall mean and include but not be limited to any glue, cement, adhesive, paint remover or other chemical compounds containing one or more chemical compounds which release vapors or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system, including, but not limited to, the following chemical compounds; acetone, an acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluol, or toluene.

L.1965, c. 41. Amended L.1966, c. 295; L.1971, c. 260.

2A:170-25.10. Smelling or inhaling fumes from substance releasing toxic vapors; prohibition

No person shall, for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, intentionally smell or inhale the fumes from any substance containing any chemical material having the property of releasing toxic vapors or fumes; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes or the inhalation of the vapors or fumes of an alcoholic beverage, the sale and consumption of which is authorized by law.

L.1965, c. 41. Amended by L.1971, c. 260.

2A:170-25.11. Use or possession of substance releasing toxic vapors; prohibition

No person shall, for the purpose of violating section 2, use, or possess for the purpose of so using, any substance containing any chemical material having the property of releasing toxic vapors or fumes.

L.1965, c. 41. Amended by L.1971, c. 260.

2A:170-25.12. Sale of chemical releasing toxic vapors or fumes; prohibition

No person shall sell, or offer to sell, to any other person any container of any substance containing any chemical material having the property of releasing toxic vapors or fumes, (a) if he has reasonable cause to suspect that the product sold, or offered for sale, will be used for the purpose set forth in section 2 of this act; or (b) which does not include an additive approved or designated by the Commissioner of the State Department of Health; and the term "additive" shall mean any element or compound approved or designated by the Commissioner of the State Department of Health for use as a safe and effective ingredient of substances containing any chemical material having the property of releasing toxic vapors or fumes for the purpose of discouraging the intentional smelling or inhaling the fumes of such substances. This act shall not apply to adhesives manufactured only for industrial consumption.

L.1965, c. 41. Amended by L.1971, c. 260; L.1971, c. 364.

2A:170-25.13. Violators of act as disorderly persons

Any person who violates any provision of this act is a disorderly person.

L.1965, c. 41, § 5.

Comment: These sections constitute an Act making it a crime to inhale chemical vapors for the purpose of becoming intoxicated. Section 170-25.9 defines the phrase "substance containing any chemical material having the property of releasing toxic vapors or fumes." The definition is awkward; a revision is recommended below. Section 170-25.10 makes it a crime to smell or inhale toxic vapors from any substance for the purpose of becoming intoxicated. Anesthesia and alcoholic beverages are excepted. Section 170-25.11 makes it a crime to use or possess a forbidden substance for the purpose of becoming intoxicated.

Section 170-25.12 makes it a disorderly persons offense to sell or offer to sell a substance covered under the Act if the seller has reasonable cause to suspect that the buyer will use the substance for the purpose of becoming intoxicated. The "reasonable belief" standard, which does not accord with Code terminology, appears to define a state of mind somewhere between "knowing" and "reckless." This section also makes it a disorderly persons offense to sell a substance which does not include an additive approved by the Department of Health to reduce the intoxicating effect of chemical substances. The Act does not apply to adhesives manufactured for industrial consumption.

Recommendation: The Legislature should incorporate the proposed revision of 2A:170-25.9 through 25.13 into Chapter 35 of Title 2C. The proposed revision collapses the individual sections of the original act into one statute and conforms the Act to the vocabulary and concepts found in Title 2C.

2C:35-10.2. Inhaling vapors of toxic chemicals

a. As used in this section the term "toxic chemical" means any chemical having the property of releasing toxic fumes and includes the following chemicals: acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene, or toluene.

b. A person commits a disorderly persons offense if the person:

(1) inhales the fumes of any toxic chemical for the purpose of causing a condition of intoxication; or

(2) possesses any toxic chemical for the purpose of causing a condition of intoxication.

c. A person commits a fourth degree offense if the person sells, or offers to sell, any substance containing a toxic chemical knowing that the intended use of the product is to cause a condition of intoxication, or knowing that the product does not include an additive required by the Commissioner of the State Department of Health to discourage the inhalation of vapors of toxic chemicals for the purpose of causing a condition of intoxication. This subsection does not apply to adhesives manufactured only for industrial application.

Hypodermic Needles or Syringes 2A:170-25.17.

Current statutes

2A:170-25.17. Destruction of hypodermic needles, syringes

No person shall discard or abandon in any public or private place accessible to any other person, whether or not the other person may be a trespasser, any disposable or reusable hypodermic needle or syringe, without first destroying the needle or syringe; nor shall any owner, lessee or other person in control of premises accessible to any other person, whether or not the other person may be a trespasser, knowingly permit discarded or abandoned hypodermic needles or syringes to remain on said premises in an intact condition.

For purposes of this act, a hypodermic needle or syringe shall be deemed destroyed only if: a. the needle is broken from the hub or mangled, in the case of a needle, and the nipple of the barrel is broken from the barrel or the plunger and barrel are melted, in the case of a syringe; or b. it is discarded as a single unit, without recapping, into a rigid container and the container is destroyed by grinding or crushing in a compacter, or by burning in an incinerator approved by the Department of Environmental Protection, or by any other method approved by the Department of Health.

Any person who violates the provisions of this act is a disorderly person and shall be punished by a fine not exceeding \$500.00 or by imprisonment for not more than five days, or both.

L. 1972, c. 143. Amended by L. 1973, c. 113; L. 1985, c. 96.

Comment: This section prohibits the disposal of a hypodermic needle or syringe contrary to the procedure for disposal specified in the statute. A violation of this section is a disorderly persons offense and carries a maximum fine of \$500 and prison sentence of not more than five days.

Recommendation: The Legislature should repeal 2A:170-25.17 and incorporate the proposed statute in Chapter 35 on Controlled Dangerous Substances.

2C:35-6.1. Discarding hypodermic needle or syringe

a. A person commits a petty disorderly offense if:

(1) the person discards, in a place accessible to other persons, a hypodermic needle or syringe without destroying the hypodermic needle or syringe; or

(2) he is the owner, lessee or person in control of real property and, knowing that needles and syringes in an intact condition have been discarded or abandoned on his real property, allows them to remain.

b. A hypodermic needle is destroyed if the needle is broken from the hub or mangled. A syringe is destroyed if the nipple of the barrel is broken from the barrel, or the plunger and barrel are melted. Alternatively, a hypodermic needle

or syringe is destroyed if it is discarded as a single unit, without recapping, into a rigid container and the container is destroyed by grinding or crushing in a compacter, or by burning in an incinerator approved by the Department of Environmental Protection, or by any other method approved by the Department of Health.

Brown Bag Law 2A:170-25.21 to 2A:170-25.23.

Current statutes

2A:170-25.21. Consumption of wine or malt alcoholic beverage on premises of unlicensed restaurant or public place

No person owning or operating any restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public, and for which premises a license or permit authorizing the sale of alcoholic beverages for on-premises consumption has not been issued:

- a. Shall permit or allow the consumption of alcoholic beverages, other than wine or a malt alcoholic beverage, in a portion of the premises which is open to the public; or
- b. Shall charge any admission fee or cover, corkage or service charge or advertise inside or outside of such premises that patrons may bring and consume their own wine or malt alcoholic beverages in a portion of the premises which is open to the public.
- c. Shall permit or allow the consumption of wine or malt alcoholic beverages at times or by persons to whom the service or consumption of alcoholic beverages on licensed premises is prohibited by State or municipal law or regulation.

L.1977, c. 244.

2A:170-25.22. Right of municipality or owner or operator of public place to prohibit consumption of alcoholic beverages on premises

Nothing in this act shall restrict the right of a municipality or an owner or operator of a restaurant, dining room or other public place where food or liquid refreshments are sold or served to the general public from prohibiting the consumption of alcoholic beverages on such premises referred to herein.

L.1977, c. 244.

2A:170-25.23. Violations; disorderly person; denial of right to allow consumption of wine or malt alcoholic beverages on premises of public place

Any person violating any provision of this act is a disorderly person, and the court, in addition to such sentence as may be imposed for the disorderly person violation, may by its judgment bar any owner or operator violating this act from permitting or allowing consumption of wine or malt alcoholic beverages in his premises as authorized by this act.

L.1977, c. 244.

Comment: These sections constitute New Jersey's "brown bag law." Section 170-25.21 makes it an offense for the owner or operator of a restaurant without a liquor license to allow customers to consume alcoholic beverages except beer and wine on the premises. The restaurant owner or operator also may not: (1) advertise that customers may bring wine and beer to the restaurant; (2) charge an admission fee or corkage or service charge, or (3) allow the consumption of beer and wine at times or by persons when it is against the law to do so.

Section 170-25.22 gives the municipality, owner or operator of a restaurant the discretion to prohibit any drinking of alcohol on the premises. Section 170:25.23 provides that a violation of this law is a disorderly persons offense and, in addition to any lawful punishment, the court can prohibit the owner or operator from permitting the consumption of wine or beer on premises.

Recommendation: The Legislature should repeal 2A:170-25.21 through 2A:170-25.23 and incorporate the provisions of "Brown Bag Law" into Title 2C.

Cigarettes 2A:170-51.

Current statutes

2A:170-51. Ban on tobacco sales to minors

Any person who directly or indirectly, acting as agent or otherwise, sells, gives or furnishes to a minor under the age of 18 years, any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, shall be punished by a fine of \$250.00.

Comment: This section makes it punishable by a fine of \$250 to sell, give or furnish cigarettes, cigarette paper, or tobacco in any form, including smokeless tobacco, to a person under the age of 18.

The reform of these provisions is currently advancing in the Legislature as Senate Bill 279. The Department of Law and Public Safety is working with the sponsors of S-279 to resolve technical issues.

Recommendation: The Legislature should repeal 2A:170-51 and incorporate it into Title 2C.

Circulars 2A:170-77 to 77.2.

Current statutes

2A:170-77. Unauthorized placing of circulars or advertisements in newspapers or periodicals

Any person who places upon, affixes to or places in, or causes to be placed upon, affixed to or placed in a newspaper, magazine, periodical or book, any notice, circular, pamphlet, card, handbill, printed book or notice of any kind without the consent of the owner or publisher of such newspaper, magazine, periodical or book, is a disorderly person.

Comment: This section provides that anyone who, without the consent of the publisher, places in a newspaper, magazine, periodical or book, any notice, pamphlet or circular commits a crime. The placement of a notice, or circular advertisement in a newspaper, etc., without consent of the publisher is a form of theft of services covered under N.J.S. 2C:20-8a.

Recommendation: The Legislature should repeal 2A:170-77.

Unlawful Distribution Practices 2A:170-77.2 to 77.2b.

Current statutes

2A:170-77.2. Distribution of newspapers, magazines and other publications

Any person, firm or corporation, or any agent, officer or employee thereof engaged in the business of distribution of newspapers, magazines or publications of any kind whatsoever to retail dealers, who shall refuse to furnish to any retail dealer such quantity of newspapers, magazines or other publications sought to be purchased by said retail dealer, because said retail dealer refuses to purchase or accept delivery of other magazines or publications other than newspapers is a disorderly person.

L.1955, c. 48.

2A:170-77.2a. Distribution of books, magazines and other publications; notice by retailer to distributor not to send or deliver

No person, firm or corporation engaged in the business of distribution of books, magazines or publications of any kind to retail dealers, after notification in writing by a retail dealer not to send or deliver to such dealer any book, magazine or other publication, shall send or deliver to such dealer such book, magazine or other publication.

L.1962, c. 174.

2A:170-77.2b. Distribution of books, magazines and other publications; removal of publication by distributor after improper delivery

Any person, firm or corporation which fails to comply with the provisions of section 1 of this act, after oral or written notification of such failure to comply by a retail dealer, shall forthwith remove from the possession of such dealer the book, magazine or other publication which was improperly delivered without cost or charge to the dealer. Any person, firm or corporation failing or refusing to remove such publications by the end of the second business day following notification of improper delivery shall be a disorderly person and shall be subject to a fine of not less than \$500.00 or imprisonment for 30 days or both.

L.1962, c. 174.

Comment: 2A:170-77.2 makes it an offense for a wholesaler of newspapers or magazines to condition the sale of certain quantities of newspapers or magazines on the purchase of other (non-newspaper) publications. Section 77.2a makes it an offense for a distributor of books, magazines and other publications to deliver a particular publication to a retailer if the retailer has canceled the publication. Section 77.2b requires a distributor to remove without charge any publication delivered to the retailer if the retailer has requested the distributor not to deliver the publication. If the distributor does not remove the publication by the end of the second business day, following notification of improper delivery, then the distributor commits a disorderly persons offense and is fined at least \$500 or imprisoned for 30 days or both.

Recommendation: The Legislature should repeal 2A:170-77.2 through 2A:170-77.2b. The Legislature should consider decriminalization of these provisions which are regulatory in nature and can be adequately addresses through civil remedies. Public concern over obscenity, which motivated enactment of this law in 1962, have subsequently and specifically been addressed under N.J.S. 2C:34-3 through 34-3.2, to the extent permissible under the First Amendment.

Prescription Legend Drugs 2A:170-77.8 to 77.11.

Current statutes

2A:170-77.8. Unlawful use, possession or control, or under influence of prescription legend drug of stramonium preparation

Except as hereinafter provided, any person who uses or is under the influence of, or who possesses or has under his control, in any form, any prescription legend drug which is not a narcotic, depressant or stimulant drug, anabolic steroid as defined in section 1 of P.L.1989, c.335 (C.2C:35-2.1), or controlled dangerous substance as defined in N.J.S.2C:35-2 or section 2 of P.L.1970, c.226 (C.24:21-2) or any stramonium preparation, unless obtained from, or on a valid prescription of, a duly licensed physician, veterinarian or dentist, is a disorderly person.

In a prosecution under this act, it shall not be necessary for the State to prove that the accused did use or was under the influence of any specific drug or drugs except for stramonium preparations, but it shall be sufficient for a conviction under this act for the State to prove that the accused did use or was under the influence of some drug or drugs as aforesaid by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any such drug.

As used in this act, "stramonium preparation" means a preparation prepared from the leaves, seeds, or any other part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form, with or without admixture of other ingredients. "Stramonium plant" means the plant *Datura Stramonium* Linne, including *Datura Tatula* Linne.

L.1989, c.335, s.6.

2A:170-77.9. Unlawful sale of prescription legend drug or stramonium preparation

Except as hereinafter provided, any person who sells, dispenses or gives away, in any form, any prescription legend drug which is not a narcotic, depressant or stimulant drug, not an anabolic steroid as defined in section 1 of P.L.1989, c.335 (C.2C:35-2.1), or controlled dangerous substance as defined in N.J.S.2C:35-2 or section 2 of P.L.1970, c.226 (C.24:21-2), or any stramonium preparation, is a disorderly person.

L.1962, c.113; amended L.1966, c.314; L.1970, c.226; L.1981, c.441; L.1989, c.335.

2A:170-77.10. Exceptions to 2A:170-77.8, 2A:170-77.9

The provisions of sections 1 and 2 of this act, except so far as such provisions relate to any person who uses or is under the influence of the drugs or stramonium preparations described in the sections, shall not apply to a duly licensed physician, dentist, registered pharmacist, veterinarian, nurse, podiatrist, intern or resident physician of a hospital, sanitarium or other medical institution when acting in the regular course of his respective business or profession; or to a hospital, sanitarium, clinical laboratory or any other medical institution; or a state or governmental agency; or to any manufacturer, wholesaler, retailer or regular dealer in drugs or stramonium preparations when acting in the regular course of his respective business.

L.1962, c. 113. Amended by L.1964, c. 225; L.1971, c. 38; L.1981, c. 441.

2A:170-77.11. Exceptions to 2A:170-77.8

The provisions of section 1 of this act, except so far as such provisions relate to any person who uses or is under the influence of the drugs or stramonium preparations described in section 1, shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs or stramonium preparations or to any employee of the same acting within the scope of his employment; or to public officers or employees in the performance of their official duties requiring possession or control of these drugs or stramonium preparations; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession; or to persons whose possession is for the purpose of aiding public officers in performing their official duties.

L.1962, c. 113. Amended by L.1964, c. 225; L.1981, c. 441.

Comment: 2A:170-77.8 makes it a disorderly persons offense to use, possess, control or be under the influence of any prescription legend drug or stramonium preparation without a valid prescription. Controlled dangerous substances, narcotics and other specified drugs are exempted. The section also identifies the prosecution's burden of proof in cases not involving a stramonium preparation. 2A:170-77.9 criminalizes administration of prescription legend drugs or stramonium preparation.

The remaining sections contain exemptions for doctors, nurses and other medical personnel.

Recommendation: The Legislature should repeal 2A:170-77.8 through 2A:170-77.11, and adopt the proposed revised statute. The Legislature should incorporate the revised statute into Chapter 35, following 2C:35-10. The revised statute amends 2C:35-2 to include the definitions of "prescription legend drug" and "stramonium preparation."

2C:35-2. Definitions

* * *

"Prescription legend drug" means any drug which under Federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian or dentist and is required to bear the statement "Caution: Federal law prohibits dispensing without a prescription" and is not a controlled dangerous substance or a stramonium preparation.

"Stramonium preparation" means a substance prepared from any part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form, with or without other ingredients. "Stramonium plant" means the plant Datura Stramonium Linne, including Datura Tatula Linne.

2C:35-10.3. Prescription legend drugs

a. Except as authorized by 24:21-9 through 24:21-15, a person who knowingly distributes a prescription legend drug or stramonium preparation unless lawfully prescribed or administered by a licensed physician, veterinarian or dentist is a disorderly person.

b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician is a disorderly person.

c. A defendant may be convicted for a violation of subsection (b) if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is a disorderly person. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of this title.

Flagship Statute 2A:170-77.12 to 77.14.

Current statutes

2A:170-77.12. Issuance or sale of ticket for passage aboard vessel not having country of registry imprinted thereon

No person shall issue, sell, or offer for sale in this State in the regular course of business any ticket for passage aboard any vessel required by law to be registered in this country

or in any other country which does not have clearly imprinted thereon the country of registry of such vessel.

L.1964, c. 230.

2A:170-77.13. Unlawfully advertising passage upon vessel

No person issuing, selling or offering to sell any ticket for passage aboard any such vessel shall directly or indirectly cause to be placed before the public in this State any advertising matter or information pertaining to passage or the availability of passage upon any such vessel, unless such advertising matter or information clearly indicates the country of registry of such vessel.

L.1964, c. 230.

2A:170-77.14. Penalty

Any person who willfully violates any provision of this act is a disorderly person.

L.1964, c. 230.

Comment: These sections comprise the New Jersey flagship statute which prohibits the sale of tickets for passage aboard any vessel, or the advertisement of any such tickets, unless the ticket or advertisement indicates the country in which the vessel is registered. The Appellate Division found these statutes to be an unconstitutional infringement of the commerce clause power vested in Congress. Cunard S.S. Co. v. Lucci, 94 N.J. Super. 440 (App. Div. 1967).

Recommendation: The Legislature should repeal 2A:170-77.12 to 2A:170-77.14.

Obtaining Drugs by Fraud 2A:170-77.15.

Current statutes

2A:170-77.15. Obtaining prescription legend drugs or stramonium preparation; disorderly person

Any person, who shall obtain, or attempt to obtain, possession of, or procure, or attempt to procure, the administration of, in any form, any depressant or stimulant drug, as defined pursuant to law, or any other prescription legend drug, which is not a narcotic drug within the meaning of chapter 18 of Title 24 of the Revised Statutes or any stramonium preparation, as defined in section 1 of P.L.1962, c. 113 (C. 2A:170-77.8) as amended by section 1 of this act, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address, is a disorderly person.

L.1966, c. 314. Amended by L.1981, c. 441.

Comment: This section makes it a crime to possess or procure the administration of any depressant, stimulant or prescription drug by (1) fraud, deceit, misrepresentation or subterfuge, (2) the forgery or alteration of a prescription, (3) the concealment of a material fact or (4) the use of a false name. This section also prohibits any attempt to do the foregoing. The statute does not apply to narcotics or to any stramonium preparation.

2C:35-13, which makes it unlawful to obtain by fraud a controlled dangerous substance, supersedes most of 2A:170-77.15. The term "controlled dangerous substances" is broadly defined to include any substance found in Schedules I through V of Title 24. Despite this overlap, 2A:170-77.15 may retain some function in forbidding a person from obtaining by fraud non-scheduled prescription drugs. However, that type

of offense is prohibited by the proposed addition to Chapter 35 of Title 2C on prescription legend drugs replacing 2A:170-8 to 170-11. See proposed 2C:35-10.3.

Recommendation: The Legislature should repeal 2A:170-77.15.

Term Papers 2A:170-77.16 to 77.18.

Current statutes

2A:170-77.16. Preparation, sale or distribution for sale of written or other assignment for submission under purchaser's own name in fulfillment of course or degree requirements

No person shall, for any fee, or other remuneration, prepare, offer to prepare, cause to be prepared, sell or offer for sale any term paper, thesis, dissertation, essay, report or other written, recorded, pictorial, artistic or other assignment knowing, or under the circumstances having reason to know, that said assignment is intended for submission either in whole or substantial part under a student's name in fulfillment of the requirements for a degree, diploma, certificate, course or courses of study at any university, college, academy, school or other educational institution.

L.1977, c. 215.

2A:170-77.17. Inapplicability of act to tutorial assistance, research materials or assistance not intended for submission under student's name, or to services for fee not prepared at request of or on behalf of purchaser

Nothing contained in this act shall prevent any person from providing tutorial assistance, research material, information or other assistance to persons enrolled in a university, college, academy, school or other educational institution, which is not intended for submission directly or in substantial part as an assignment under the student's name to such educational institution in fulfillment of the requirements for a degree, diploma, certificate or course of study. Nor shall any person be prevented by this act from rendering services for a fee which include the typing, research, assembling, transcription, reproduction or editing of a manuscript or other assignment which he has not prepared at the request of or on behalf of the purchaser.

L.1977, c. 215.

2A:170-77.18. Violations; penalty; enforcement; other relief; injunctions

Anyone convicted of violating any provision of this act shall be guilty of a civil offense which shall be enforced by summons and complaint as if it were a disorderly persons action and which shall be subject to a fine of up to \$1,000.00, which fine shall be collectible by any municipal court or any other court of competent jurisdiction. Any court of competent jurisdiction is hereby authorized to grant such further relief as is necessary to enforce the provisions of this act, including the issuance of an injunction.

Actions for injunction under the provisions of this act may be brought in the name of the people of this State upon their own complaint or upon the complaint of any person, or any public or private college, university, academy, school or other educational institution which is chartered, incorporated, licensed, registered or supervised by this State, acting for the interest of itself, its students, or the general public.

L.1977, c. 215.

Comment: These sections comprise an Act making it a civil offense to sell a term paper, thesis, dissertation and other like material to a student for submission under the student's name in fulfillment of requirements for a degree, certificate or diploma. The statute does not penalize the purchase of the term paper, thesis or dissertation. The statute does not apply to various research and tutorial services that assist the student but do not sell products that are submitted directly under the student's name to the school.

Section 170-77.18 provides that a violation of the Act is a civil offense "treated like a disorderly persons offense" punishable by a fine up to \$1000. It also provides for

injunctive relief on application by the state, or any person acting in the interest of the general public.

Recommendation: The Legislature should recompile 2A:170-77.16 through 2A:170-77.18 and incorporate them into Title 18A, Education, since they establish a civil, not criminal, offense.

Failure to Pay Wages 2A:170-90.2.

Current statutes

2A:170-90.2. Failure of employer to pay wages or benefits within time specified; penalty for violation

In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement made with a collective bargaining agent or with an individual employee which requires the payment of (a) wages or of benefits, or (b) contributions for the support of a fund out of which benefits may be paid, including, without limitation upon the generality of the foregoing, any pension fund, welfare fund or any fund for the support of any program or programs of educational or vacation benefits for the employees covered by such agreement, or any fund for the support of any apprenticeship program or programs in any trade, profession or occupation concerned in such agreement, or (c) other payments in connection with the employment of any employee or employees and who knowingly and willfully fails or refuses to make such payments within 30 days after such payments are required by said agreement to be made, or, in the case of wages, if the agreement fails to specify the time of payment, then within the time specified for the payment of wages by section 2, P.L.1965, c. 173 (C. 34:11-4.2) is a disorderly person. If such employer is a corporation, the officer or employee responsible for such willful failure or refusal is a disorderly person.

L.1966, c. 121. Amended by L.1973, c. 331.

Comment: This statute makes it a disorderly persons offense for an employer to violate the terms of an agreement with an employee or a collective bargaining agreement requiring the payment of wages or other compensation. If a corporation violates the statute, the officer or employee of the corporation responsible for the failure or refusal to comply with the terms of the agreement commits a disorderly persons offense.

When the employer is required to make a payment to a pension fund, the Federal Employee Retirement Security Act (ERISA) preempts the statute. State v. Burten, 219 N.J. Super. 339 (Law Div. 1986), aff'd, 219 N.J. Super 156 (App. Div. 1987). However, the statute continues to have effect in regard to the payment of wages and other benefits.

Recommendation: The Legislature should repeal 2A:170-90.2 and adopt the proposed revised statute for incorporation in Title 2C.

2C:40A-3. Violation of contract of pay employees

a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense, if the employer:

(1) fails to pay wages when due; or

(2) fails to pay compensation or benefits within 30 days after due.

b. If a corporate employer violates subsection (a), any officer or employee of the corporation who is responsible for the violation commits a a disorderly persons offense.

Discharge of Employee for Garnishment 2A:170-90.3 to 2A:170-90.5.

Current statutes

2A:170-90.3. Definitions

As used in this act:

a. The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, income from trust funds, profits, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

b. The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt, and specifically includes any order of the Superior Court directing that an execution issue against earnings as herein defined.

L.1975,c.182; amended L.1991, c.91.

2A:170-90.4. Discharge or discipline of employee due to garnishment of earnings; prohibition

No employer may discharge any employee or take any other disciplinary action affecting the terms, conditions, or rights of employment of any employee, by reason of the fact that his earnings have been subjected to garnishment for one, or more than one indebtedness.

L.1975, c. 182.

2A:170-90.5. Violators; disorderly persons

Whoever willfully violates this act shall be a disorderly person.

L.1975, c. 182.

Comment: These statutes provide that an employer who discharges an employee because the employee's wage is garnished commits a disorderly persons offense.

Recommendation: The Legislature should repeal 2A:170-90.3 to 2A:170-90.5 and adopt the proposed revised statute for incorporation into Chapter 40A of Title 2C.

2C:40A-4. Wrongful discharge of employee

a. An employer who discharges an employee or takes any other disciplinary action against the employee because the employee's earnings have been subjected to garnishment commits a disorderly persons offense.

b. An employer who discharges an employee or takes any other disciplinary action in violation of this section shall re-employ any employee discharged, and shall compensate any employee for any damages resulting from the discharge or disciplinary action.

c. The term "earnings" means any form of compensation payable for personal services, regardless of whether the payment is denominated wages,

salary, commission, bonus, income from trust funds, profits, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

Bonus for Rental of Rent Control Property 2A:170-91.

Current statutes

2A:170-91. Bonus in connection with rental of property under rent control

Any person who, directly or indirectly, receives, collects or accepts from another any donation, gratuity, bonus or gift, in addition to lawful charges, upon the representation, understanding or statement that compliance with such request or demand will facilitate, influence or procure an advantage over others in entering into an agreement, either oral or written, for the lease or rental of real property which is subject to rent control by any federal or state agency, for any term or for the use or occupation thereof, or any person who refuses to enter into such agreement unless he receives, directly or indirectly, any such donation, gratuity, bonus or gift, or any person who, directly or indirectly, aids, abets, requests or authorizes any other person to violate any of the provisions of this section, is a disorderly person.

This section shall cease to be effective upon the termination of the regulation and control of rents and rental agreements under state and federal law.

Comment: This statute makes it a crime for a person to receive a form of payment additional to lawful charges in order to help someone rent property subject to state or federal rent control. 2C:21-10, which prohibits commercial bribery, supersedes this statute.

Recommendation: The Legislature should repeal 2A:170-91 because the conduct it proscribes is covered by 2C:21-10.

Sunday Closing Laws 2A:171-1.1 to 5.28.

Current statutes

2A:171-1.1. Buying, selling and trading motor vehicles on Sunday

Any person who shall carry on or engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles; or who shall open any place of business or lot wherein he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles; or who does buy, sell, exchange, deal or trade in new or used motor vehicles as a business on the first day of the week, commonly known and designated as Sunday is a disorderly person. Such a disorderly person upon conviction for the first offense shall pay a fine not to exceed \$100.00 or be imprisoned for a period of not more than 10 days or both; and for the second offense shall pay a fine not to exceed \$500.00 or be imprisoned for a period not more than 30 days or both; and for the third or each subsequent offense shall pay a fine of \$750.00 or be imprisoned for a period of 6 months or both.

If the person is a licensed dealer in new or used motor vehicles in this State, under the provisions of chapter 10, Title 39 of the Revised Statutes, such person shall also be subject to suspension or revocation of his dealer's license to engage in the business of buying, selling or dealing in motor vehicles in this State as provided in Title 39, chapter 10, section 20, for violation of this statute.

L.1955, c. 254.

2A:171-1.2. Definitions

The following definitions shall apply for the words or terms used in this act unless other meaning is clearly apparent from the language or context:

"Motor vehicle" means and includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks.

"New motor vehicle" means only newly manufactured motor vehicles and includes but is not limited to motorcycles, trailers, trucks, passenger cars and tractors.

"Used motor vehicle" means every motor vehicle, title to, or possession of, which has been transferred from the person who first acquired it from the manufacturer or dealer and has been so used as to become or is commonly known as secondhand within the ordinary meaning thereof, and includes every motor vehicle other than a new motor vehicle, including but not limited to motorcycles, trailers, tractors, trucks and passenger cars.

"Person" includes natural persons, firms, partnerships, corporations, associations or other artificial bodies, trustees, receiver and officers, employees, agents, and others acting for or on behalf of any person.

L.1955, c. 254.

2A:171-5.8. Retail, wholesale or auction sale of certain articles on Sunday prohibited; violators as disorderly persons; penalties

On the first day of the week, commonly known and designated as Sunday, it shall be unlawful for any person whether it be at retail, wholesale or by auction, to sell, attempt to sell or offer to sell or to engage in the business of selling, as hereinafter defined, clothing or wearing apparel, building and lumber supply materials, furniture, home or business or office furnishings, household, business or office appliances, except as works of necessity and charity or as isolated transactions not in the usual course of the business of the participants.

Any person who violates any provision of this act is a disorderly person and upon conviction for the first offense, shall pay a fine of \$250.00; and for the second offense, shall pay a fine of not less than \$250.00 or more than \$1,000.00 to be fixed by the court; and for the third offense, shall pay a fine of not less than \$1,000.00 or more than \$2,000.00 to be fixed by the court or, in the discretion of the court, may be imprisoned for a period of not more than 30 days, or both; and for the fourth or each subsequent offense, shall pay a fine of not less than \$2,000.00 or more than \$5,000.00 to be fixed by the court, or, in the discretion of the court, may be imprisoned for a period of not less than 30 days or more than six months, or both. A single sale of an article or articles of merchandise of the character hereinabove set forth to any one customer, or a single offer to sell an article or articles of such merchandise to any one prospective customer, shall be deemed to be and constitute a separate and distinct violation of this act.

L.1959, c. 119. Amended by L.1983, c. 540.

2A:171-5.9. Additional penalties; nuisance

In addition to the penalties hereinabove provided in case of conviction under section 1 of this act, upon any 4 convictions for violations of this act, the premises in or upon which the violation occurred shall be deemed a nuisance.

L.1959, c. 119.

2A:171-5.10. Definitions

The following definitions are not to be deemed as all-inclusive and shall apply for the words or terms used in this act unless other meaning is clearly apparent from the language or context:

"Person" includes natural persons, firms, partnerships, corporations, associations or other artificial bodies, forms of business designated or known as cooperatives, trustees, receivers and officers, employees, agents, and others acting for or on behalf of any person.

"Clothing and wearing apparel" includes any article or articles to be worn on the person by man, woman, or child as bodily covering or protection, including garments of all types, headwear and footwear.

"Furniture" includes all articles of furniture used inside or outside a house or office, including chairs, tables, beds, desks, wardrobes, dressers, bureaus, cupboards, cabinets, bookcases, sofas, couches, and related items; and materials especially designed and prepared for assembly into furniture; and all such furniture, whether finished or unfinished, painted or unpainted.

"Home furnishings" includes items of equipment and furnishings used in a home or office, such as floor coverings, lamps and lighting fixtures, household linens, drapes, blinds, curtains, mattresses, bed coverings, mirrors, china, kitchenware and kitchen utensils, silverware, cutlery.

"Household appliances" includes stoves, heating devices, cooking equipment, refrigerators, air conditioning equipment, electric fans, clocks, radios, toasters, television sets, washing machines, dryers, and all such electrical and gas appliances used in the home.

"Building and lumber supply materials" includes all items used in the construction of buildings, whether residential or industrial, and, particularly, but not limited to lumber, cement, building blocks, sashes, frames, windows, doors and related items.

"Sell" means to enter into an agreement whereby the seller transfers ownership of property in the goods or an interest in the goods to the purchaser for a consideration, whether or not the transfer is for immediate or future delivery, and whether or not the transaction is regarded as absolute, conditional or secured, and whether or not immediate consideration is paid therefor. The acceptance of a deposit for future delivery of any such merchandise, or an agreement for future delivery of any such merchandise, whether or not immediate consideration is paid therefor, shall also be deemed a sale for purposes of this act.

"Offer to sell" means the acceptance of bids or proposals for the purchase of goods at a future date or the attempt to induce a sale as hereinabove defined, or the attempt to induce an immediate transfer of any such merchandise, but not to include advertising or display of any such merchandise, which merchandise is not available for purchase on Sunday.

"Engage in selling" means the attempt to sell or to induce an immediate or future transfer of any such merchandise by describing, explaining, extolling or identifying any such merchandise while the seller is in personal contact with the potential purchaser.

"Sunday sales" means selling, attempting to sell, offering to sell or engaging in selling the goods enumerated in section 1 of P.L. 1959, c. 119 (C. 2A:171-5.8) on Sunday.

L. 1959, c. 119. Amended by L.1985, c. 271.

2A:171-5.11. Additional remedy; liability of corporate officers and employees

This act shall be construed as an additional remedy to secure proper Sunday observance and the directors, officers, managers, agents or employees of corporations shall be personally liable for the penalties hereinabove provided.

L.1959, c. 119.

2A:171-5.12. Referendum

This act shall not become operative in any county unless and until the voters of the county shall determine by referendum held pursuant to this act that Sunday sales shall not be permitted in the county.

L. 1959, c. 119. Amended by L.1985, c. 271.

2A:171-5.13. Petition for public question

In any county in which there shall be filed with the county clerk prior to the forty-fifth day preceding a general election, a petition signed by not less than 2,500 registered voters of the county requesting that there shall be submitted to the voters of the county a public question as to whether Sunday sales shall be permitted in said county, said question shall be submitted to the voters of said county at such election.

L. 1959, c. 119. Amended by L.1985, c.271.

2A:171-5.14. Ballots

There shall be printed on each official ballot to be used at such election, the following:

If you favor the proposition printed below make a cross (X), plus (+) or check (/) in the square opposite the word "Yes." If you are opposed thereto make a cross (X), plus (+) or check (/) in the square opposite the word "No."

_____ YES. Shall Sunday sales be permitted in this county?

_____ NO.

In any municipality in which voting machines are used, the question shall be placed upon the official ballots to be used upon the voting machines without the foregoing instructions to the voters and shall be voted upon by the use of such machines without marking as aforesaid.

L. 1959, c. 119. Amended by L. 1985, c. 271.

2A:171-5.15. Results of election

If at the election at which such question is submitted as provided in this act the majority of all the votes cast, both for and against such question, in said county, shall be cast against the question, the provisions of this act shall be operative in such county upon the first Sunday following the date of the holding of said election, but if a majority of all such votes shall be cast in favor of the question, the provisions of this act shall remain inoperative in such county.

L. 1959, c. 119. Amended by L. 1985, c. 271.

2A:171-5.16. Resubmission of question after approval

If in any county in which, by referendum of the voters therein, the provisions of this act shall apply, there shall be filed with the clerk of the county a petition signed by at least 10% of the registered voters of the county, requesting that there shall be again submitted to the voters of the county the question of whether the provisions of this act shall apply within the county, said question shall be submitted to the legal voters of the county at the next general election succeeding the forty-fifth day following the date of the filing of said petition in the same manner and form as provided in section 7 of this act.

L.1959, c. 119.

2A:171-5.17. Resubmission of question after defeat of proposal

If, in any county in which by referendum of the voters therein the provisions of this act do not apply, there shall be filed with the clerk of the county a petition signed by at least 10% of the registered voters of the county requesting that there shall again be submitted to the voters of the county, the question of whether the provisions of this act shall apply within the county, said question shall be submitted to the legal voters of the county at the next general election succeeding the forty-fifth day following the date of the filing of said petition in the same manner and form as provided in section 7.

L.1959, c. 119.

2A:171-5.18. Time for resubmission

No petition for the holding of a referendum under this act shall be received, and no question shall be submitted pursuant to this act, within 3 years of the date of any election at which a question was submitted to the voters of the county pursuant to this act.

L.1959, c. 171.

2A:171-5.19. First class city within county where Sunday liquor sales prohibited by referendum; referendum to allow sale; election

If in any city of the first class located within any county in which, by referendum of the voters therein, the provisions of P.L.1959, c. 119 (C. 2A:171-5.8 et seq.) prohibiting Sunday sales apply, there shall be filed with the city clerk a petition signed by not less than 2,500 registered voters of the city requesting that there shall be submitted to the voters of the city the question of whether the provisions of P.L.1959, c. 119 shall apply within the city, the question shall be submitted to the legal voters of the city at the next general election succeeding the thirtieth day following the date of the filing of the petition in the manner and form as provided in section 2 of this act.

L.1984, c. 160.

2A:171-5.20. Ballot question

There shall be printed on each official ballot to be used at the election authorized by section 1 of this act, the following:

If you favor the provision printed below, make a cross (X), plus (+) or check (/) in the square opposite the word "Yes." If you are opposed thereto, make a cross (X), plus (+) or check (/) in the square opposite the word "No."

_____ Yes. Shall Sunday sales be permitted in this city?

_____ No.

In any city in which voting machines are used, the question shall be placed upon the official ballots to be used upon the voting machines without the foregoing instructions to the voters and shall be voted upon by the use of such machines without marking as aforesaid.

L.1984, c. 160.

2A:171-5.21. Effect of vote

If at the election at which the question set forth in section 2 of this act is submitted, the majority of all votes cast, both for and against the question, in the city, shall be cast in favor of the question, the provisions of P.L.1959, c. 119 (C. 2A:171-5.8 et seq.) shall be inoperative in that city, but if a majority of such votes shall be cast against the question, the provisions of P.L.1959, c. 119 shall remain operative.

L.1984, c. 160.

2A:171-5.22. Resubmission

In any county of the first class having a population of less than 600,000, according to the most recent federal decennial census, in which a question pursuant to section 7 of P.L. 1959, c. 119 (C. 2A:171-5.14) has at any time been submitted to the voters and in which there shall be filed with the county clerk prior to the forty-fifth day preceding a general election a petition signed by not less than 2,500 registered voters of the county requesting that a question be resubmitted to the voters of the county, a question may be resubmitted to those voters not sooner than on the second consecutive general election following the original submission of the question in the manner and form as provided in section 7 of P.L. 1959, c. 119 (C. 2A:171-5.14), as revised by this amendatory and supplementary act. The results of any such resubmission shall take effect on the first Sunday following the election at which the question is resubmitted.

L. 1985, c. 271.

2A:171-5.23. Prior referenda

The provisions of this amendatory and supplementary act shall not invalidate any referendum held pursuant to the provisions of P.L. 1959, c. 119 (C. 2A:171-5.8 et seq.) prior to the effective date of this amendatory and supplementary act.

L. 1985, c. 271.

2A:171-5.24. Municipal Sunday sales referendum

In a county approving Sunday sales by referendum held pursuant to P.L. 1959, c. 119 (C. 2A:171-5.8 et seq.), any municipality in that county which voted to prohibit Sunday sales at that referendum may by municipal referendum and pursuant to R.S. 40:45-3 submit to the legal voters of the municipality for their approval the question of whether Sunday sales shall be permitted in that municipality.

L. 1985, c. 417.

2A:171-5.25. Prior referenda valid

The provisions of this act shall not invalidate any referendum held pursuant to the provisions of P.L. 1959, c. 119 (C. 2A:171-5.8 et seq.) prior to the effective date of this act.

L. 1985, c. 417.

2A:171-5.26. Definitions

As used in this act:

a. "Fundraising event" means a planned, scheduled activity which has as its main purpose the generating of moneys to be used for any educational purposes benefiting students including, but not limited to, use for scholarships or educational or athletic equipment. The moneys generated as a result of the sponsorship of a fundraising event, the leasing of space to vendors, and any actual sales by the educational organization itself must be used in their entirety for educational purposes. These events shall be conducted on the premises of the school with which the educational organization is affiliated and may include, but are not limited to, flea markets, auctions, and bazaars.

b. "Educational organizations" means associations of parents of public or private, nonprofit school students and faculty members of the public or private, nonprofit school where those students are enrolled, including teachers and administrators, or student groups consisting of present or former enrollees of the school or organizations consisting of some members of both these associations or groups who have joined together to conduct activities relating to the improvement of the quality of education. These activities may include, but are not limited to, meetings devoted to issues concerning administration or curriculum matters or volunteer efforts concerning any extracurricular activities or athletic events.

L. 1988, c. 162.

2A:171-5.27. Sunday fundraising events

Notwithstanding any other provisions of law to the contrary, in any county in which the provisions of P.L. 1959, c. 119 (C. 2A:171-5.8 et seq.) prohibiting Sunday sales apply, an educational organization may be authorized by the appropriate school board of a public school or the appropriate chief administrative officer of a private, nonprofit school, as the case may be, in that county to conduct, on the appropriate school premises, no more than 10 fundraising events on any 10 Sundays in a calendar year. Each such event shall be subject to separate approval by the board or chief administrative officer, as the case may be. The 10-day limitation provided for herein shall apply to all educational organizations for which a fundraising event would be subject to the approval of a single school district or chief administrative officer, as the case may be.

L. 1988, c. 162.

2A:171-5.28. Municipal option

The governing body of a municipality in any county referred to in section 2 of this act may, by ordinance or resolution, provide that the provisions of this act will not be applicable in that municipality or may regulate or otherwise limit the fundraising events permitted by this act.

Comment: The above statutes comprise New Jersey's Sunday closing laws. Section 171-5.8 prohibits the selling of clothing, building and lumber supply materials, furniture, and appliances on Sundays, but permits works of charity and necessity. Section 171-5.11 imposes personal liability upon officers and managers of corporations violating the act. Section 171-5.12 provides that the Sunday closing laws are effective only if the voters of each county adopt the law by referendum. In that case, the Sunday closing law is effective within that county. If the county does not adopt the Sunday closing law, then sales are permitted within that county. Section 2A:171-5.13 sets forth the procedure to get the referendum on the ballot. Section 2A:171-5.14 sets forth the form in which the ballot is submitted to the voters. Section 2A:171-5.19 states that majority vote controls the issue. The referendum may be resubmitted to the voters of each county after a three year period has elapsed. N.J.S. 2A:171-5.16; 2A:171-5.17; N.J.S. 2A:171-5.18.

Section 2A:171-5.19 allows first class cities within counties that have voted to adopt the Sunday closing laws to hold a vote to opt out of the county ban on Sunday sales. Conversely, 2A:171-5.24 allows a municipality located in a county which voted not to adopt the Sunday closing laws to hold a referendum to adopt the Sunday closing laws. Section 2A:171-25 provides that the Act shall not invalidate any referendum held pursuant to 2A:171-5.8. Sections 2A:171-5.26, 5.27 and 5.28 allows schools to hold ten fund raising activities per year on Sunday.

Section 2A:171-1.1 makes it a crime to engage in the business of selling, exchanging, dealing or trading in new or used motor vehicles on Sunday. This section is applicable throughout the state. 2A:171-1.1 is clearly distinct from the other Sunday closing law statutes since 2A:171-1.1 provides a state-wide criminal law . The other statutes authorize certain counties and municipalities to approve Sunday closing restrictions but are not state-wide. The Legislature should recompile 2A:171-1.1 in the Criminal Code.

Recommendation: The Legislature should repeal 2A:171-1.1 and recompile the proposed revised statute in the Criminal Code. The Legislature should repeal 2A:171-1.2 through 2A:171-5.28 and recompile them in Title 40A Municipalities and Counties.

2C:33-21. Sale of motor vehicles on Sunday

A person who engages in the business of buying, selling, or exchanging motor vehicles or who opens a place of business and attempts to engage in such conduct on a Sunday commits a disorderly persons offense. The first offense is punishable by a fine not to exceed \$100 or imprisonment for a period of not more than 10 days or both; the second offense is punishable by a fine not to exceed \$500 or imprisonment for a period of not more than 30 days or both; the third or each subsequent offense is punishable by a fine of \$750 or imprisonment for a period of 6 months or both. If the person is a licensed dealer in new or used motor vehicles in this State, under the provisions of chapter 10, Title 39 of the Revised Statutes, the person shall also be subject to suspension or revocation of his dealer's license

to engage in the business of buying, selling or exchanging in motor vehicles in this State as provided in Title 39, chapter 10, section 20, for violation of this statute.

Drugs to be Kept in Original Container 24:21-18.

Current statutes

24:21-18. Drug to be kept in original container

An individual to whom or for whose use any controlled dangerous substance has been prescribed, sold or dispensed, by a practitioner and the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same; provided, however, that an individual may possess not more than a 10-day supply of a controlled dangerous substance in other than the original container and if he does so, upon the request of a law enforcement officer, he shall produce the name and address of the practitioner who prescribed, sold or dispensed the substance or the name and address of the pharmacist who sold or dispensed the substance. Any individual who possesses no more than 10-day supply of a controlled dangerous substance in other than the original container without providing the required information upon the request of a law enforcement officer is a disorderly person.

L.1970, c. 226. Amended by L.1977, c. 428; L.1981, c. 316.

Comment: This statute requires that a person who possesses a drug pursuant to a valid prescription must keep the drug in its original container or give the name and address of the practitioner who prescribed it and the pharmacist who dispensed it to any law enforcement officer on demand.

Recommendation: The Legislature should repeal 24:21-18 and recompile the proposed revised statute in the Criminal Code.

2C:35-24. Possession of prescription drugs

A person who possesses a controlled dangerous substance pursuant to a valid prescription may possess it only in the container in which it was dispensed; except that the person may possess no more than a 10-day supply out of that container if the person produces, upon the request of a law enforcement officer, the name and address of the practitioner who prescribed the substance or the pharmacist who dispensed it. A person who violates this section is a disorderly person.

Distribution of Hypodermic Syringe or Needle Without Prescription 24:21-51.

Current statutes

24:21-51. Prescription for hypodermic syringe

a. No person shall sell, furnish, or give to any person or persons other than a duly licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, registered pharmacist, or a hospital, sanitarium, clinical laboratory or any other medical institution, or a State or governmental agency, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution, an instrument commonly known as a hypodermic syringe, hypodermic needle or any instrument adapted for the use of controlled dangerous substances as defined in P.L. 1970, c. 226 (C. 24:21-1 et seq.) by subcutaneous injections without a prescription of a duly licensed physician, dentist or veterinarian. Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed.

b. Every person who disposes of, or sells, or furnishes, or gives away a hypodermic syringe or a hypodermic needle or an instrument adapted for the use of controlled dangerous substances by subcutaneous injections, upon the prescription of a duly licensed physician,

dentist, or veterinarian, shall record the date of the sale or furnishing of the instrument. This prescription shall be retained on file for a period of two years and shall be open to inspection by any public officer or employee engaged in the enforcement of this section. A prescription filed in accordance with this section shall be sufficient authority, without the necessity of a renewal or reissuance, to permit subsequent sales or the furnishing of hypodermic syringes or hypodermic needles or instruments adapted for the use of controlled dangerous substances by subcutaneous injections to the person to whom the prescription was issued, for a period of six months from the date of its original issuance.

c. It shall be unlawful for any person or persons, except a duly licensed physician, dentist, veterinarian, nurse, podiatrist, hospital, sanitarium or other medical institution, or a resident physician or intern of a hospital, sanitarium or other medical institution, to have under control or possess a hypodermic syringe, hypodermic needle or any other instrument adapted for the use of controlled dangerous substances by subcutaneous injections with intent to use such syringe, needle or instrument for such purpose, unless such possession be obtained upon a valid prescription form, and such use be authorized or directed by a duly licensed physician or veterinarian. For the purposes of this subsection, no such prescription shall be valid which has been outstanding for more than six months.

d. Any person who violates this section is guilty of a disorderly persons offense.
L. 1980, c. 133. Amended by L. 1986, c. 75.

Comment: This statute forbids the distribution of hypodermic syringes or needles without prescription. 2C:36-6 deals with this subject and partially supersedes 24:21-51.

Recommendation: The Legislature should repeal 24:21-51 and amend 2C:36-6 to make exemptions for medical personnel.

(a). Except as [otherwise] authorized by subsections (b), (c) or other law, it shall be unlawful for a person to have under his control or possess with intent to use a hypodermic syringe, hypodermic needle or any other instrument adapted for the use of a controlled substance analog as defined in chapter 35 of this Title or to sell, furnish or give to any person such syringe, needle or instrument. Any person who violates this section is guilty of a disorderly persons offense.

(b). A person is authorized to possess and use a hypodermic needle or hypodermic syringe if the person obtains the hypodermic syringe or hypodermic needle by a valid prescription issued by a licensed physician, dentist or veterinarian and uses it for its authorized purpose.

(c). Subsection (a) does not apply to a duly licensed physician, dentist, veterinarian, undertaker, nurse, podiatrist, registered pharmacist, or a hospital, sanitarium, clinical laboratory or any other medical institution, or a state or a governmental agency, or a regular dealer in medical, dental or surgical supplies, or a resident physician or intern of a hospital, sanitarium or other medical institution.