

**NEW JERSEY LAW REVISION COMMISSION**

**Revised Draft Tentative Report**

**Regarding the Terms**

**“Public” and “Tumultuous” as used in the**

**New Jersey Code of Criminal Justice –**

**N.J.S. 2C:33-2 et seq.**

**May 06, 2018**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **July 08, 2019**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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“How all my brain was in tumult, and all my heart in insurrection!

Yet in what darkness, what dense ignorance, was the mental battle fought!”

― Charlotte Brontë, Jane Eyre

**Executive Summary**

In *State v. Finnemen*,[[1]](#footnote-1)the Appellate Division considered whether the defendant engaged in “tumultuous” behavior as required for a conviction under N.J.S. 2C:33-2(a)(1), as well as whether the definition of “public” as described in N.J.S. 2C:33-2(b) also applied to the word “public” as it appears in N.J.S. 2C:33-2(a).

In this unpublished opinion, the Appellate Division found the defendant’s behavior to be tumultuous.[[2]](#footnote-2) The court reasoned that the “defendant’s conduct caused public inconvenience, annoyance or alarm and constituted overwhelming turbulence or upheaval … and a violent agitation of mind and feelings.”[[3]](#footnote-3) The Court went on to find that “for the present purposes,” the word “public,” as defined in N.J.S. 2C:33-2(b), applied to subsection a. of N.J.S. 2C:33-2(a).[[4]](#footnote-4)

**Background**

In *State v. Finnemen*, the defendant created a disturbance inside a Walgreens, then continued to yell obscenities and make obscene hand gestures toward Walgreens employees even after being asked to leave the store.[[5]](#footnote-5) The responding police officers subsequently observed the defendant at a bus stop directly across the street from the store.[[6]](#footnote-6) These officers described the defendant’s affect as “irate” and noted that at the time, he was angrily gesturing with his hands.”[[7]](#footnote-7) After being asked to leave the area, the defendant proceeded in the direction of another bus stop.[[8]](#footnote-8) In a final confrontation with the responding officers the defendant “continued to yell and cause a scene” and entered a nail salon after being told by the officers not to so.[[9]](#footnote-9)

After being found guilty of both disorderly conduct[[10]](#footnote-10) and resisting arrest[[11]](#footnote-11) the defendant appealed his conviction to the Superior Court, Law Division.[[12]](#footnote-12) Following his conviction after a trial *de novo*, the defendant appealed to the Superior Court, Appellate Division. The defendant contested, among other issues, that his convictions should be reversed because his behavior did not rise to the level of “tumultuous” as set forth in N.J.S. 2C:33-2(a)(1).[[13]](#footnote-13)

**Analysis**

 In *State v. Finneman*, the defendant was charged with disorderly conduct under N.J.S. 2C:33-2(a)(1).[[14]](#footnote-14) The State, therefore, was required to prove that the defendant “acted with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof[,] … [e]ngaged in fighting or threatening, or in violent tumultuous behavior. The defendant argued that he had not engaged in tumultuous behavior within the meaning of the statute. After engaging an analysis of the statute, the defendant’s convictions were ultimately affirmed. Staff’s review and analysis of the terms “public” and “tumultuous” as they appear in the statute follows.

• *Public*

 The Appellate Division commenced its analysis with an examination of the “Disorderly Conduct” statute. In its current form, N.J.S. 2C:33-2 provides:

**a. Improper behavior.** A person is guilty of a petty disorderly persons offense, if with purpose to cause **public** inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or **tumultuous** behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

**b. Offensive language.** A person is guilty of a petty disorderly persons offense if, in a **public** place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.

(Emphasis added).

Conspicuously absent from subsection a. is a definition for either the word “public” or the word “tumultuous.” In attempting to ascertain a definition of the word “public” the court did not have to look further than just beneath section b., of the same statute.

 N.J.S. 2C:33-2(b) of the Disorderly Conduct statute is entitled “Offensive Language.” Directly beneath section b., in a separate un-lettered paragraph, is a definition of the word “public.” The term public as means: “… affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.” The location of this definition within the statute, however, gave the Appellate Court pause to consider whether it applied solely to subsection b. or whether it applied to subsection a. as well.

 In conducting its analysis, the Court found that it was “…not clear whether the Legislature intended [subsection (b)] definition to apply to [the] use of the word ‘public’ in subsection [(a)]….”[[15]](#footnote-15) The Court went on to hold that the definition of public that immediately follows subsection b. also applies to subsection a. of the statute. The Court’s explanation for this finding was simply that “…for present purposes we assume a consistency of meaning.”[[16]](#footnote-16) The Court’s use of the “present purpose” shorthand, however, does not provide a definitive basis for this conclusion.

• *The Model Penal Code*

New Jersey’s Disorderly Conduct statute is based upon the language contained in the Model Penal Code. A comparison of New Jersey’s Disorderly Conduct Statute with the Model Penal Code (MPC) statute of the same name provides the basis for applying the definition of the term “public” to both subsections of the New Jersey statute. The New Jersey definition of “public” is identical to the definition of the same word set forth in the Model Penal Code.[[17]](#footnote-17) The only distinction between the two sections deals with placement, rather than substance.

In §250.2, of the MPC the disorderly conduct statute consists of two sections.[[18]](#footnote-18) Subsection 1. of the MPC is entitled “Offenses Defined” and the “grading” of the offense is set forth in subsection 2. The word “public” is defined in subsection 1. and directly follows the subsections (a) - (c) that enumerate the type of behavior that is considered disorderly conduct. It is clear that in the context of the MPC the term “public” is meant to apply to each of the enumerated behaviors.

By contrast, New Jersey’s disorderly conduct statute, which is based on MPC §250.2, was bifurcated into two subsections. The first subsection, a. Improper Behavior, incorporates MPC §250.2(1)(a) and (c). The second subsection, b. Offensive Language, is predicated upon 250.2(1)(a). The appearance of the definition of “public” immediately following subsection b. when viewed in connection with the original language of the MPC is indicia that the term applies to both provisions of the New Jersey statute.

 To the extent that the structure of New Jersey’s disorderly conduct statute forms the basis of any ambiguity, clarifying it could eliminate future confusion.[[19]](#footnote-19)

• *Tumultuous*

The second issue addressed by the Appellate Division in *State v. Finneman* concerned the meaning of the word “tumultuous.” The relevant portion of N.J.S. 2C:33-2(a) states the following:

A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or **tumultuous**[[20]](#footnote-20) behavior …

The term tumultuous is not frequently used in common parlance, nor is it defined in the New Jersey Code of Criminal Justice. The Court, therefore, chose to examine extrinsic sources to ascertain a definition of the term tumultuous.

As “tumultuous” is not defined in the statute, the *Finneman* Court examined the Webster’s New Collegiate Dictionary definition of this term as it appeared in 1978, the year N.J.S. 2C:33-2 was enacted.[[21]](#footnote-21) At the time, “tumultuous” was defined as “marked by tumult,” “tending or disposed or cause to excite a tumult,” and “marked by violent or overwhelming turbulence or upheaval.”[[22]](#footnote-22) The Court then turned its attention to the limited case law in this area to find a definition for the word “tumultuous.”

In the context of examining the municipal ordinances affecting the rental of summer properties, the Appellate Division in *United Property Owners Association of Belmar v. Borough of Belmar*[[23]](#footnote-23), had occasion to pass upon the term tumult. The Court determined that, “[a]lthough excessive noise does not qualify as disorderly conduct under N.J.S.A. 2C:33-2b, unless it consists of coarse or abusive language, it falls within the rubric of tumultuous.”[[24]](#footnote-24) The Court went on to define tumult as “…either “uproar” or “violent agitation of mind or feelings.”[[25]](#footnote-25) The court went on to find that “[e]xcessive noise could qualify as an uproar or a violent agitation to the victim.”[[26]](#footnote-26) As presently cast, N.J.S. 2C:33-2 does not include statutory language pertaining to excessive or unreasonable noises.

The Criminal Law Revision Commission included “unreasonable noise” in its definition of disorderly conduct.[[27]](#footnote-27) The term “unreasonable noise” was coupled with “offensively coarse utterance.” This term, however, was lost when the New Jersey Legislature redrafted the provision entitled “offensive language.”

Inherently, the category of offense defined by this statute raises some problems. While it is appropriate to forbid breaches of the peace that affect the rights of others, if drawn too broadly the statute may be used to forbid conduct that should otherwise be tolerated. These problems will likely be exacerbated by the inclusion of a noise provision. The use of the word “annoyance” in the phrase, “pubic inconvenience, annoyance or alarm” may have the unintended consequence of criminalizing a wide range of legitimate behavior. Arguably, the word does not add anything to “public inconvenience or alarm.”

The word “inconvenience” is also susceptible to overly broad interpretation. To limit the meaning of the term some jurisdictions have added the word “physical” before the word “inconvenience.”[[28]](#footnote-28) While the word “alarm” alone may be too narrow, the inclusion of the phrase “physical inconvenience” provides sufficient statutory protection without the subjectivity of “annoyance” or the vagueness of “inconvenience” when used alone.

To the extent that this omission of the term “unreasonable noise” from New Jersey’s body of statutes was inadvertent, rather than intentional, the disorderly conduct statute could be amended to have the term “unreasonable noise” replace the term “tumultuous” to eliminate any future confusion concerning the term tumultuous.[[29]](#footnote-29)

• *50 State Survey of “Tumultuous”*[[30]](#footnote-30)

New Jersey is not the only state in the country to use the term “tumultuous” in its criminal statutes; rather, it is one of 24 states that use the term tumultuous in its body of law.[[31]](#footnote-31) The majority of states, however, do not use the term “tumultuous” in their disorderly conduct statutes.[[32]](#footnote-32) After a review of each state’s disorderly conduct statute, three solutions present themselves for consideration in clarifying New Jersey’s statute on this subject.

**Fig. 1.**



 The first solution involves eliminating the term from the statute.[[33]](#footnote-33) The second, option provides for the elimination of the word “tumultuous” and substitution of the phrase “creates excessive or unreasonable noise.”[[34]](#footnote-34) The final modification would be to define the term “tumultuous.”[[35]](#footnote-35)

Presently, Indiana is the only state in the country that supplies a statutory definition for the term tumultuous.[[36]](#footnote-36) Indiana’s criminal law and procedure are found in Title 35 of the Indiana Code (“IC” or the “Code”). The Code prohibits tumultuous conduct pursuant to IC 35-45-1-3 *et seq.* A person who recklessly, knowingly, or intentionally engages in fighting or in tumultuous conduct commits disorderly conduct.[[37]](#footnote-37) Tumultuous conduct is defined in the Code in IC 35-45-1-1. Tumultuous conduct, as used in this chapter, “…means conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.”[[38]](#footnote-38) The addition of a modified definition, such as this one, to New Jersey’s disorderly conduct statute would eliminate any confusion regarding the meaning of the term tumultuous.[[39]](#footnote-39)

• *Offensive Language*[[40]](#footnote-40)

Enacted in 1978, subsection b. of New Jersey’s disorderly conduct statute prohibits the public use of coarse or abusive language that is uttered with the purpose of offending the sensibilities of a hearer, or in reckless disregard of the probability of so doing.[[41]](#footnote-41) The current incarnation of New Jersey’s disorderly conduct statute was enacted after the decisions of both the United States and the New Jersey Supreme Court invalidated convictions for the use of public and offensive language.[[42]](#footnote-42) The constitutionality of the current statute, however, would remain unquestioned for almost a decade.

In 1985, a juvenile was adjudicated delinquent for conduct which would cause him to be classified as a disorderly person under N.J.S. 2C:33-2(b).[[43]](#footnote-43) The punishable conduct, according to the trial court judge, was the juvenile’s use of “…profane language, the purpose of which was to offend the officer, in effect, to exact verbal vengeance for his arrest.”[[44]](#footnote-44) An appeal from this adjudication was perfected by the juvenile.[[45]](#footnote-45)

The appellate panel reviewed the language of the statute in the context of the constitutional parameters set forth by the decisions of the United States Supreme Court and the New Jersey Supreme Court.[[46]](#footnote-46) In addition, the court juxtaposed N.J.S. 170-29(1) and N.J.S. 2C:33-2(b) and found that the defect fatal to the validity of the former inheres to the latter.[[47]](#footnote-47) In reversing H.D.’s adjudication of delinquency the Court held that, “…there is no valid statutory authority for prosecutions based upon the public use of coarse or abusive language which [do] not go beyond offending the sensibilities of the listener.”[[48]](#footnote-48)

The elimination of subsection b. would be consistent with jurisprudence from both the United States Supreme Court and the New Jersey Supreme Court.

• *Pending Legislation – A1324*

Assembly Bill 1324 was introduced on January 9, 2018, and referred to the Assembly Law and Public Safety Committee. This legislation seeks to “enhance[] the penalties for engaging in the petty disorderly person’s offense of improper behavior while in a place of public accommodation.”[[49]](#footnote-49) This legislation, however, does not address the ambiguity raised in *Finneman* regarding the term tumultuous. Rather, this bill leaves the current language of the statute unchanged, and adds a new subsection wherein a person engaging in the behavior described in subsection a. of the current statute, which includes “tumultuous” behavior, in a place of public accommodation “shall be sentenced to a term of imprisonment of not less than one day or more than 30 days; shall be ordered to perform 50 hours of community service; shall be ordered to pay a fine of $500 in addition to any restitution ordered; and shall be banned by judicial order from frequenting the place of public accommodation for not less than one year or more than two years.”[[50]](#footnote-50)

If this proposed legislation is enacted, the penalties for “tumultuous” behavior in a “public” place would include imprisonment, as well as fines. Given the possibility of incarceration for those found guilty of disorderly conduct, it may be beneficial to define or eliminate the word “tumultuous” and clarify whether the definition of “public” applies to both subsections a. and b. of N.J.S. 2C:33-2.

**Conclusion**

A review of New Jersey’s disorderly conduct statute, and similar statutes throughout the United States, suggests that N.J.S. 2C:33-2 may benefit from revision to provide for: gender neutral language; the modification or elimination of the term tumultuous; the elimination of the subsection criminalizing offensive language; and, clarification that the term “public” applies to the entire statute rather than to only one subsection.

The Appendix on the following pages proposes modifications to the New Jersey statute that which seeks to discourage individuals from acting in a disorderly manner in public. The proposed modifications are derived from the language and principles contained in similar statutes and the case law.

**Appendix**

**Proposed Changes to 2C:33-2 – Three Options**

The proposed modifications (shown with *italics* underlining and ~~strikethrough~~ [optional language choices shown in [brackets]), are as follows:

*Option #1:*

**2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting or threatening, or in violent ~~or tumultuous~~ behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

~~b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.~~

b. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Comment

Language has been added to section a. to render the statute gender neutral. The term tumultuous has been stricken from subsection (a)(1).

To ensure that the statute is consistent with the holding in *State in the Interest of H.D.* 206 N.J. Super. 58 (App. Div. 1985), subsection b. has been eliminated from the statute. *See* discussion of offensive language *supra* at 8. *See also State v. Skott*, 2014 WL 6634684 f.2 (Nov. 25, 2014)(Prosecutor in the Law Division dismissed the disorderly conduct charge against the defendant *citing State in the interest of H.D.*, 206 N.J. Super. 58, 61 (App. Div. 1985)). *See also* Cannel, Criminal Code Annotated, Comment 3 to N.J.S. 2C:33-2(b), (*Gann),* for a thoughtful discussion on the issue of the unconstitutionality of this portion of the statute.

The previously undesignated paragraph that appeared immediately below the now stricken section b. has been designated as subsection b. In addition, language has been added to this paragraph to clarify the definition of the word “public” as used in this statute.

*Option #2:*

**2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public physical inconvenience~~, annoyance~~ or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting or threatening, or in violent ~~or tumultuous~~ behavior; or

(2) Creates excessive and unreasonable noise; or

~~(2)~~ (3) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

~~b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.~~

b. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

Comment

The word “physical” has been added to clarify the type of inconvenience necessary to constitute improper behavior under section a. The term “annoyance” has been struck from this statute because of the ambiguity surrounding the definition of this subjective term. Language has been added to section a. to render the statute gender neutral. The term tumultuous has been stricken from (a)(1) and language concerning excessive noise has been added to the statute as (a)(2). The previously designated section (a)(2) has been renumbered (a)(3).

To ensure that the statute is consistent with the holding in *State in the Interest of H.D.* 206 N.J. Super. 58 (App. Div. 1985), subsection b. has been eliminated from the statute. *See* discussion of offensive language *supra* at 8. *See also State v. Skott*, 2014 WL 6634684 f.2 (Nov. 25, 2014)(Prosecutor in the Law Division dismissed the disorderly conduct charge against the defendant *citing State in the interest of H.D.*, 206 N.J. Super. 58, 61 (App. Div. 1985)). *See also* Cannel, Criminal Code Annotated, Comment 3 to N.J.S. 2C:33-2(b), (*Gann),* for a thoughtful discussion on the issue of the unconstitutionality of this portion of the statute.

The previously undesignated paragraph that appeared immediately below the now stricken section b. has been designated as subsection b. In addition, language has been added to this paragraph to clarify the definition of the word “public” as used in this statute.

*Option #3: (Inclusion of Definition Section)*

**2C:33-2. Disorderly conduct**

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public physical inconvenience~~, annoyance~~ or alarm, or recklessly creating a risk thereof he or she

(1) Engages in fighting, ~~or~~ threatening, ~~or in~~ violent [or tumultuous] behavior; or

(2) Creates excessive and unreasonable noise; or

(3) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

~~b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given the circumstances of the person present and the setting of the utterance, to any person present.~~

b. “Public,” as used in this section, means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

c. “Tumultuous behavior,” as used in this section, means conduct that results in, or is likely to result in:

(1) bodily injury to a person; or,

(2) substantial damage to property.

Comment

The word “physical” has been added to clarify the type of inconvenience necessary to constitute improper behavior under section a. The term “annoyance” has been struck from this statute because of the ambiguity surrounding the definition of this subjective term. Language has been added to section a. to render the statute gender neutral. The language concerning excessive noise has been added to the statute as (a)(2). The previously designated section (a)(2) has been renumbered (a)(3).

To ensure that the statute is consistent with the holding in *State in the Interest of H.D.* 206 N.J. Super. 58 (App. Div. 1985), subsection b. has been eliminated from the statute. *See* discussion of offensive language *supra* at 8. *See also State v. Skott*, 2014 WL 6634684 f.2 (Nov. 25, 2014) (Prosecutor in the Law Division dismissed the disorderly conduct charge against the defendant *citing State in the interest of H.D.*, 206 N.J. Super. 58, 61 (App. Div. 1985)). *See also* Cannel, Criminal Code Annotated, Comment 3 to N.J.S. 2C:33-2(b), (*Gann),* for a thoughtful discussion on the issue of the unconstitutionality of this portion of the statute. Section b. now clarifies the meaning of the word public as used in this statute.

The previously undesignated paragraph that appeared immediately below the now stricken section b. has been designated as subsection b. In addition, language has been added to this paragraph to clarify the definition of the word “public” as used in this statute.

The term “tumultuous behavior” is defined in a newly created section c. The definition derived from the Indiana Code, IC 35-45-1-1 Sec. 1, has been modified herein to remove the term “serious” from the bodily injury reference because the term “serious bodily injury” is a defined in N.J.S. 2C:1-11(b) and its use would be inappropriate in this statute. *See* n. 39, *supra.*

1. *State v. Finnemen*, 2017 WL 4448541 (App. Div. Oct. 6, 2017). [↑](#footnote-ref-1)
2. *Id.* at \*5. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *Id.* at \*4-5. [↑](#footnote-ref-4)
5. *Id.* at \*1. [↑](#footnote-ref-5)
6. *Id.*  [↑](#footnote-ref-6)
7. *Id.* at \*2. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* at \*1-2. [↑](#footnote-ref-9)
10. N.J.S. 2C:33-2. [↑](#footnote-ref-10)
11. N.J.S. 2C:29-2(a). [↑](#footnote-ref-11)
12. *State v. Finnemen*, 2017 WL 4448541 at \*1. [↑](#footnote-ref-12)
13. *Id.* at \*1-2, \*4. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* (quoting *State v. Stampone*, 341 N.J. Super. 247, 254 (App. Div. 2001)). [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. Model Penal Code §250.2 Disorderly Conduct (Proposed Official Draft 1962). [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *See* proposed language set forth in the Appendix. [↑](#footnote-ref-19)
20. Emphasis added. [↑](#footnote-ref-20)
21. *Id.* at \*5. [↑](#footnote-ref-21)
22. *State v. Finnemen*, 2017 WL 4448541 at \*5 *citing* Webster’s New Collegiate Dictionary 1258 (1977). *See Tumultuous,* Random House Webster’s Unabridged Dictionary (2d. ed. 2001) (“highly agitated, as the mind or emotions”); *Tumultuous*, The American Heritage Dictionary of the English Language, https://ahdictionary.com/word/search. html?q=tumultuous (last visited Nov. 15, 2017) (“[c]haracterized by mental or emotional agitation”); *Tumultuous*, The American Heritage Dictionary (Second College Ed. 1982) (“[c]onfusedly or violently agitated”); *see also* *Hunter v. Allen*, 422 F.2d 1158, 1164 n.14A (5th Cir. 1970) (Godbold, J., dissenting) (*citing* The Random House Dictionary of the English Language (1966) to define “tumult” as “[h]ighly distressing agitation of mind or feeling; turbulent mental or emotional disturbance”), *rev’d on other grounds*, *Embry v. Allen*, 401 U.S. 989, 91 S.Ct. 1237, 28 L.Ed.2d 528 (1971); *State v. Lund*, 144 Vt. 171, 475 A.2d 1055, 1060 (1984) (*citing* Webster’s New International Dictionary (1961) to define “tumult” as a “violent outburst”). [↑](#footnote-ref-22)
23. *United Prop. Owners Ass’n of Belmar v. Borough of Belmar*, 343 N.J. Super. 1, 67 (App. Div. 2001). [↑](#footnote-ref-23)
24. *Id.*  [↑](#footnote-ref-24)
25. *Id. quoting* Webster’s New American Dictionary 555 (Smithmark 1995). [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. Final Report of the Criminal Law Revision Commission, Volume I \*111 (1971). [↑](#footnote-ref-27)
28. *State v. Teale,* 139 Hawai’i 351 (S.Ct. Feb. 2017). [↑](#footnote-ref-28)
29. *See* proposed language set forth in the Appendix. [↑](#footnote-ref-29)
30. Staff conducted a fifty-state survey in Westlaw using the term “tumult!” In addition, each state was searched for the terms “disorderly conduct.” [↑](#footnote-ref-30)
31. Ala. (§ 13A-11-7. Dis. con.); Ark. (§ 5-71-207. Dis. con.); Conn. (§ 53a-182. Dis. con.); Del. (§ 1301. Dis. con.; unclassified misd.); Ga. (§ 16-11-39. Dis. con.); Haw. (§ 711-1101. Dis. con.); Idaho (§ 18-6409. Dist. the peace); Ind. (35-31.5-2-338 Tumultuous cond.); Ky. (525.055 Dis. con. in the first degree); La. (§ 103. Disturbing the peace); Mass. (§8. Destr. of or damage to prop. by persons riotously assembled; liability of town); Miss. (§ 97-35-9. Disturb. by tumultuous or offensive cond.); Nev. (203.010. Breach of peace); N.H. (644:2 Dis. con.); N.J. (2C:33-2. Dis. con.); N.Y. (§ 240.20 Dis. con.); N.D. (§ 12.1-31-01. Dis. con.); Or. (166.025. Dis. con. in the second degree); Pa. (§ 5503. Dis. con.); R.I. (§ 11-45-1. Dis. con.); Tex. (§ 38.13. Hindering Proc. by Dis. con.); Utah (§ 76-9-102. Dis. con.); Vt. (§ 1026. Dis. con.); Wash. (9A.84.030. Dis. con.). *See* Fig. 1. [↑](#footnote-ref-31)
32. Alaska (§ 11.61.110. Dis. con.); Ariz. (§ 13-2904. Dis. con.; classification); Cal. (§ 415. Fighting; noise; offensive words); Colo. (§ 18-9-106. Dis. con.); D.C. (§ 22-1322. Rioting or inciting to riot.); Fla. (877.03. Breach of the peace; Dis. con.); Ill. (5/11-5-3. Intox.; fighting; Dis. con.); Iowa (723.4. Dis. con.); Kan. (21-6203. Dis. con.); Me. (§ 501-A. Dis. con.); Md. (§ 10-201. Dist. the public peace and Dis. con.); Mich. (750.167. “Disorderly person” defined.); Minn. (609.72. Dis. con.); Mo. (574.010. Peace disturbance--penalty); Mont. (45-8-101. Dis. con.); Neb. (17-129. Dis. con.; power to prevent); N.M. (§ 30-20-1. Dis. con.); N.C. (§ 14-288.4. Dis. con.); Ohio (2917.11 Dis. con.); Okla. (725:30-4-17. Dis. con.); S.C. (§ 16-17-530. Public Dis. con.); S.D. (22-18-35. Dis. con. - Misdemeanor); Tenn. (§ 39-17-305. Dis. con.); Va. (§ 18.2-415. Dis. con. in public places); W.Va. (§ 61-6 1b. Dis. con.; penalty); Wis. (947.01. Dis. con.); Wyo. (§ 6-6-102. Breach of the peace; penalties). *See* Fig. 1. [↑](#footnote-ref-32)
33. *See* Appendix, Option #2. This solution may be employed, with or without the inclusion of subsection (a)(2) as discussed *supra.* [↑](#footnote-ref-33)
34. *See* Appendix, Option #2. This solution provides for the inclusion of subsection (a)(2) as discussed *supra.* [↑](#footnote-ref-34)
35. *See* Appendix, Option #3. [↑](#footnote-ref-35)
36. IC 35-45-1 defines “Tumultuous Conduct.” [↑](#footnote-ref-36)
37. IC 35-45-1-3(a)(1). [↑](#footnote-ref-37)
38. IC 35-45-1-1 Sec. 1. [↑](#footnote-ref-38)
39. *See* Appendix, Option #3. “Serious bodily injury” is a term defined in N.J.S. 2C:11-1(b) as “bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” [↑](#footnote-ref-39)
40. During the December 20, 2018, the Commission discussed the constitutionality of N.J.S. 2C:33-2(b). In an effort to answer questions raised by the Commission at this meeting Staff conducted an examination of this portion of the statute. [↑](#footnote-ref-40)
41. N.J.S. 2C:33-2(b). [↑](#footnote-ref-41)
42. *In the Interest of H.D.,* 206 N.J. Super. 58 (App. Div. 1985), *citing Gooding v. Wilson*, 405 U.S. 518 (1972); *Cohen v. California*, 403 U.S. 15 (1971); and, *State v. Rosenfeld*, 62 N.J. 594 (1973) (recognizing that the disorderly conduct statute, N.J.S. 2A:170-29(1) may not be utilized to punish speech which is offensive to the sensibilities of the hearer). [↑](#footnote-ref-42)
43. *State in the Interest of H.D.,* 206 N.J. Super. at 59. [↑](#footnote-ref-43)
44. *Id. citing State in the Interest of H.D.,* 184 N.J. Super. 299 (J&D.R.Ct. 1982). [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *See* n.41 *supra.* [↑](#footnote-ref-46)
47. *State in the Interest of H.D.,* 206 N.J. Super. at 61. [↑](#footnote-ref-47)
48. *Id. See also State v. Skott*, 2014 WL 6634684 f.2 (Nov. 25, 2014) (Prosecutor in the Law Division dismissed the disorderly conduct charge against the defendant *citing State in the interest of H.D.*, 206 N.J. Super. 58, 61 (App. Div. 1985)). [↑](#footnote-ref-48)
49. A1324, 2018 Leg., 218th Leg., 1st Sess. (N.J. 2018). [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)