

ASSEMBLY, No. 1525

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman ANTHONY CHIAPPONE

District 31 (Hudson)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

SYNOPSIS

Establishes crime of using a defaced or stolen firearm to cause serious bodily or bodily injury to a law enforcement officer; enhances penalties concerning defaced firearms.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



A1525 CHIAPPONE, QUIGLEY

2

1 AN ACT concerning defaced and stolen firearms in certain cases, to
2 be known as “MarcAnthony’s Law,” supplementing chapter 12
3 of Title 2C of the New Jersey Statutes, and amending P.L.1997,
4 c.117, N.J.S.2C:39-3, and N.J.S.2C:39-9.

5

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

8

9 1. (New section) a. A person who uses a stolen or defaced
10 firearm to cause serious bodily injury to a law enforcement officer
11 is guilty of a crime of the first degree.

12 b. A person who uses a stolen or defaced firearm to cause
13 bodily injury to a law enforcement officer is guilty of a crime of the
14 second degree.

15 c. A person convicted of a violation of subsection a. or b. of
16 this section shall be subject to the sentencing provisions set forth in
17 section 2 of P.L.1997, c.117 (C.2C:43-7.2).

18 d. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
19 provisions of law, a conviction arising under this section shall not
20 merge with a conviction for any other offense that the defendant
21 intended to commit or facilitate when the defendant violated the
22 provisions of this section.

23

24 2. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
25 read as follows:

26 2. a. A court imposing a sentence of incarceration for a crime
27 of the first or second degree enumerated in subsection d. of this
28 section shall fix a minimum term of 85% of the sentence imposed,
29 during which the defendant shall not be eligible for parole.

30 b. The minimum term required by subsection a. of this section
31 shall be fixed as a part of every sentence of incarceration imposed
32 upon every conviction of a crime enumerated in subsection d. of
33 this section, whether the sentence of incarceration is determined
34 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
35 other provision of law, and shall be calculated based upon the
36 sentence of incarceration actually imposed. The provisions of
37 subsection a. of this section shall not be construed or applied to
38 reduce the time that must be served before eligibility for parole by
39 an inmate sentenced to a mandatory minimum period of
40 incarceration. Solely for the purpose of calculating the minimum
41 term of parole ineligibility pursuant to subsection a. of this section,
42 a sentence of life imprisonment shall be deemed to be 75 years.

43 c. Notwithstanding any other provision of law to the contrary
44 and in addition to any other sentence imposed, a court imposing a
45 minimum period of parole ineligibility of 85 percent of the sentence

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 pursuant to this section shall also impose a five-year term of parole
2 supervision if the defendant is being sentenced for a crime of the
3 first degree, or a three-year term of parole supervision if the
4 defendant is being sentenced for a crime of the second degree. The
5 term of parole supervision shall commence upon the completion of
6 the sentence of incarceration imposed by the court pursuant to
7 subsection a. of this section unless the defendant is serving a
8 sentence of incarceration for another crime at the time he completes
9 the sentence of incarceration imposed pursuant to subsection a., in
10 which case the term of parole supervision shall commence
11 immediately upon the defendant's release from incarceration.
12 During the term of parole supervision the defendant shall remain in
13 release status in the community in the legal custody of the
14 Commissioner of the Department of Corrections and shall be
15 supervised by the State Parole Board as if on parole and shall be
16 subject to the provisions and conditions of section 3 of P.L.1997,
17 c.117 (C.30:4-123.51b).

18 d. The court shall impose sentence pursuant to subsection a. of
19 this section upon conviction of the following crimes or an attempt
20 or conspiracy to commit any of these crimes:

- 21 (1) N.J.S.2C:11-3, murder;
- 22 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 23 (3) N.J.S.2C:11-5, vehicular homicide;
- 24 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 25 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),
26 disarming a law enforcement officer;
- 27 (6) N.J.S.2C:13-1, kidnapping;
- 28 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 29 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
30 subsection c. of N.J.S.2C:14-2, sexual assault;
- 31 (9) N.J.S.2C:15-1, robbery;
- 32 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 33 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
34 arson;
- 35 (12) N.J.S.2C:18-2, burglary;
- 36 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 37 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
38 booby traps in manufacturing or distribution facilities;
- 39 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 40 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 41 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
42 possessing chemical weapons, biological agents or nuclear or
43 radiological devices; **[or]**
- 44 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
45 degree; or

1 (19) section 1 of P.L. _____, c. _____ (C. _____) (pending before the
2 Legislature as this bill), using a stolen or defaced firearm to cause
3 serious bodily injury or bodily injury to a law enforcement officer.

4 e. (Deleted by amendment, P.L.2001, c.129).
5 (cf: P.L.2007, c.341, s.6)

6
7 3. N.J.S.2C:39-3 is amended to read as follows:

8 2C:39-3. Prohibited Weapons and Devices.

9 a. Destructive devices. Any person who knowingly has in his
10 possession any destructive device is guilty of a crime of the third
11 degree.

12 b. Sawed-off shotguns. Any person who knowingly has in his
13 possession any sawed-off shotgun is guilty of a crime of the third
14 degree.

15 c. Silencers. Any person who knowingly has in his possession
16 any firearm silencer is guilty of a crime of the fourth degree.

17 d. Defaced firearms. Any person who knowingly has in his
18 possession any firearm which has been defaced, except an antique
19 firearm or an antique handgun, is guilty of a crime of the **[fourth]**
20 third degree.

21 e. Certain weapons. Any person who knowingly has in his
22 possession any gravity knife, switchblade knife, dagger, dirk,
23 stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus
24 or similar leather band studded with metal filings or razor blades
25 imbedded in wood, ballistic knife, without any explainable lawful
26 purpose, is guilty of a crime of the fourth degree.

27 f. Dum-dum or body armor penetrating bullets. (1) Any
28 person, other than a law enforcement officer or persons engaged in
29 activities pursuant to subsection f. of N.J.S.2C:39-6, who
30 knowingly has in his possession any hollow nose or dum-dum
31 bullet, or (2) any person, other than a collector of firearms or
32 ammunition as curios or relics as defined in Title 18, United States
33 Code, section 921 (a) (13) and has in his possession a valid
34 Collector of Curios and Relics License issued by the Bureau of
35 Alcohol, Tobacco and Firearms, who knowingly has in his
36 possession any body armor breaching or penetrating ammunition,
37 which means: (a) ammunition primarily designed for use in a
38 handgun, and (b) which is comprised of a bullet whose core or
39 jacket, if the jacket is thicker than .025 of an inch, is made of
40 tungsten carbide, or hard bronze, or other material which is harder
41 than a rating of 72 or greater on the Rockwell B. Hardness Scale,
42 and (c) is therefore capable of breaching or penetrating body armor,
43 is guilty of a crime of the fourth degree. For purposes of this
44 section, a collector may possess not more than three examples of
45 each distinctive variation of the ammunition described above. A
46 distinctive variation includes a different head stamp, composition,
47 design, or color.

1 g. Exceptions. (1) Nothing in subsection a., b., c., d., e., f., j.
2 or k. of this section shall apply to any member of the Armed Forces
3 of the United States or the National Guard, or except as otherwise
4 provided, to any law enforcement officer while actually on duty or
5 traveling to or from an authorized place of duty, provided that his
6 possession of the prohibited weapon or device has been duly
7 authorized under the applicable laws, regulations or military or law
8 enforcement orders. Nothing in subsection h. of this section shall
9 apply to any law enforcement officer who is exempted from the
10 provisions of that subsection by the Attorney General. Nothing in
11 this section shall apply to the possession of any weapon or device
12 by a law enforcement officer who has confiscated, seized or
13 otherwise taken possession of said weapon or device as evidence of
14 the commission of a crime or because he believed it to be possessed
15 illegally by the person from whom it was taken, provided that said
16 law enforcement officer promptly notifies his superiors of his
17 possession of such prohibited weapon or device.

18 (2) a. Nothing in subsection f. (1) shall be construed to prevent
19 a person from keeping such ammunition at his dwelling, premises
20 or other land owned or possessed by him, or from carrying such
21 ammunition from the place of purchase to said dwelling or land, nor
22 shall subsection f. (1) be construed to prevent any licensed retail or
23 wholesale firearms dealer from possessing such ammunition at its
24 licensed premises, provided that the seller of any such ammunition
25 shall maintain a record of the name, age and place of residence of
26 any purchaser who is not a licensed dealer, together with the date of
27 sale and quantity of ammunition sold.

28 b. Nothing in subsection f. (1) shall be construed to prevent a
29 designated employee or designated licensed agent for a nuclear
30 power plant under the license of the Nuclear Regulatory
31 Commission from possessing hollow nose ammunition while in the
32 actual performance of his official duties, if the federal licensee
33 certifies that the designated employee or designated licensed agent
34 is assigned to perform site protection, guard, armed response or
35 armed escort duties and is appropriately trained and qualified, as
36 prescribed by federal regulation, to perform those duties.

37 (3) Nothing in paragraph (2) of subsection f. or in subsection j.
38 shall be construed to prevent any licensed retail or wholesale
39 firearms dealer from possessing that ammunition or large capacity
40 ammunition magazine at its licensed premises for sale or disposition
41 to another licensed dealer, the Armed Forces of the United States or
42 the National Guard, or to a law enforcement agency, provided that
43 the seller maintains a record of any sale or disposition to a law
44 enforcement agency. The record shall include the name of the
45 purchasing agency, together with written authorization of the chief
46 of police or highest ranking official of the agency, the name and
47 rank of the purchasing law enforcement officer, if applicable, and

1 the date, time and amount of ammunition sold or otherwise
2 disposed. A copy of this record shall be forwarded by the seller to
3 the Superintendent of the Division of State Police within 48 hours
4 of the sale or disposition.

5 (4) Nothing in subsection a. of this section shall be construed to
6 apply to antique cannons as exempted in subsection d. of
7 N.J.S.2C:39-6.

8 (5) Nothing in subsection c. of this section shall be construed to
9 apply to any person who is specifically identified in a special deer
10 management permit issued by the Division of Fish and Wildlife to
11 utilize a firearm silencer as part of an alternative deer control
12 method implemented in accordance with a special deer management
13 permit issued pursuant to section 4 of P.L.2000, c.46 (C.23:4-42.6),
14 while the person is in the actual performance of the permitted
15 alternative deer control method and while going to and from the
16 place where the permitted alternative deer control method is being
17 utilized. This exception shall not, however, otherwise apply to any
18 person to authorize the purchase or possession of a firearm silencer.

19 h. Stun guns. Any person who knowingly has in his possession
20 any stun gun is guilty of a crime of the fourth degree.

21 i. Nothing in subsection e. of this section shall be construed to
22 prevent any guard in the employ of a private security company, who
23 is licensed to carry a firearm, from the possession of a nightstick
24 when in the actual performance of his official duties, provided that
25 he has satisfactorily completed a training course approved by the
26 Police Training Commission in the use of a nightstick.

27 j. Any person who knowingly has in his possession a large
28 capacity ammunition magazine is guilty of a crime of the fourth
29 degree unless the person has registered an assault firearm pursuant
30 to section 11 of P.L.1990, c.32 (C.2C:58-12) and the magazine is
31 maintained and used in connection with participation in competitive
32 shooting matches sanctioned by the Director of Civilian
33 Marksmanship of the United States Department of the Army.

34 k. Handcuffs. Any person who knowingly has in his
35 possession handcuffs as defined in P.L.1991, c.437 (C.2C:39-9.2),
36 under circumstances not manifestly appropriate for such lawful uses
37 as handcuffs may have, is guilty of a disorderly persons offense. A
38 law enforcement officer shall confiscate handcuffs possessed in
39 violation of the law.

40 (cf: P.L.2003, c.168, s.1)

41

42 4. N.J.S.2C:39-9 is amended to read as follows:

43 2C:39-9. Manufacture, Transport, Disposition and Defacement
44 of Weapons and Dangerous Instruments and Appliances.

45 a. Machine guns. Any person who manufactures, causes to be
46 manufactured, transports, ships, sells or disposes of any machine

1 gun without being registered or licensed to do so as provided in
2 chapter 58 is guilty of a crime of the third degree.

3 b. Sawed-off shotguns. Any person who manufactures, causes
4 to be manufactured, transports, ships, sells or disposes of any
5 sawed-off shotgun is guilty of a crime of the third degree.

6 c. Firearm silencers. Any person who manufactures, causes to
7 be manufactured, transports, ships, sells or disposes of any firearm
8 silencer is guilty of a crime of the fourth degree.

9 d. Weapons. Any person who manufactures, causes to be
10 manufactured, transports, ships, sells or disposes of any weapon,
11 including gravity knives, switchblade knives, ballistic knives,
12 daggers, dirks, stilettos, billies, blackjacks, metal knuckles,
13 sandclubs, slingshots, cesti or similar leather bands studded with
14 metal filings, or, except as otherwise provided in subsection i. of
15 this section, in the case of firearms if he is not licensed or registered
16 to do so as provided in chapter 58, is guilty of a crime of the fourth
17 degree. Any person who manufactures, causes to be manufactured,
18 transports, ships, sells or disposes of any weapon or other device
19 which projects, releases or emits tear gas or other substances
20 intended to produce temporary physical discomfort or permanent
21 injury through being vaporized or otherwise dispensed in the air,
22 which is intended to be used for any purpose other than for
23 authorized military or law enforcement purposes by duly authorized
24 military or law enforcement personnel or the device is for the
25 purpose of personal self-defense, is pocket-sized and contains not
26 more than three-quarters of an ounce of chemical substance not
27 ordinarily capable of lethal use or of inflicting serious bodily injury,
28 or other than to be used by any person permitted to possess such
29 weapon or device under the provisions of subsection d. of
30 N.J.S.2C:39-5, which is intended for use by financial and other
31 business institutions as part of an integrated security system, placed
32 at fixed locations, for the protection of money and property, by the
33 duly authorized personnel of those institutions, is guilty of a crime
34 of the fourth degree.

35 e. Defaced firearms. Any person who defaces any firearm is
36 guilty of a crime of the ~~third~~ second degree. Any person who
37 knowingly buys, receives, disposes of or conceals a defaced
38 firearm, except an antique firearm or an antique handgun, is guilty
39 of a crime of the ~~fourth~~ third degree.

40 f. (1) Any person who manufactures, causes to be
41 manufactured, transports, ships, sells, or disposes of any bullet,
42 which is primarily designed for use in a handgun, and which is
43 comprised of a bullet whose core or jacket, if the jacket is thicker
44 than .025 of an inch, is made of tungsten carbide, or hard bronze, or
45 other material which is harder than a rating of 72 or greater on the
46 Rockwell B. Hardness Scale, and is therefore capable of breaching
47 or penetrating body armor and which is intended to be used for any

1 purpose other than for authorized military or law enforcement
2 purposes by duly authorized military or law enforcement personnel,
3 is guilty of a crime of the fourth degree.

4 (2) Nothing in this subsection shall be construed to prevent a
5 licensed collector of ammunition as defined in paragraph (2) of
6 subsection f. of N.J.S.2C:39-3 from transporting the bullets defined
7 in paragraph (1) of this subsection from (a) any licensed retail or
8 wholesale firearms dealer's place of business to the collector's
9 dwelling, premises, or other land owned or possessed by him, or (b)
10 to or from the collector's dwelling, premises or other land owned or
11 possessed by him to any gun show for the purposes of display, sale,
12 trade, or transfer between collectors, or (c) to or from the collector's
13 dwelling, premises or other land owned or possessed by him to any
14 rifle or pistol club organized in accordance with the rules prescribed
15 by the National Board for the Promotion of Rifle Practice; provided
16 that the club has filed a copy of its charter with the superintendent
17 of the State Police and annually submits a list of its members to the
18 superintendent, and provided further that the ammunition being
19 transported shall be carried not loaded in any firearm and contained
20 in a closed and fastened case, gun box, or locked in the trunk of the
21 automobile in which it is being transported, and the course of travel
22 shall include only such deviations as are reasonably necessary under
23 the circumstances.

24 g. Assault firearms. Any person who manufactures, causes to
25 be manufactured, transports, ships, sells or disposes of an assault
26 firearm without being registered or licensed to do so pursuant to
27 N.J.S.2C:58-1 et seq. is guilty of a crime of the third degree.

28 h. Large capacity ammunition magazines. Any person who
29 manufactures, causes to be manufactured, transports, ships, sells or
30 disposes of a large capacity ammunition magazine which is
31 intended to be used for any purpose other than for authorized
32 military or law enforcement purposes by duly authorized military or
33 law enforcement personnel is guilty of a crime of the fourth degree.

34 i. Transporting firearms into this State for an unlawful sale or
35 transfer. Any person who knowingly transports, ships or otherwise
36 brings into this State any firearm for the purpose of unlawfully
37 selling, transferring, giving, assigning or otherwise disposing of that
38 firearm to another individual is guilty of a crime of the second
39 degree. The temporary transfer of a firearm while hunting or target
40 shooting, the transfer of any firearm that uses air or carbon dioxide
41 to expel a projectile, or the transfer of an antique firearm shall not
42 constitute a violation of this subsection.

43 (cf: P.L. 2007, c.298, s 1)

44

45 5. This act shall take effect on the first day of the second month
46 following enactment.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

This bill establishes the new crime of using a defaced or stolen firearm to cause serious bodily injury or bodily injury to a law enforcement officer.

This new statute, to be known as “MarcAnthony’s Law,” in honor of slain Jersey City Detective MarcAnthony DiNardo, would make it a crime of the first degree to use a defaced or stolen firearm to cause serious bodily injury to a law enforcement officer and a crime of the second degree to use a defaced or stolen firearm to cause bodily injury to a law enforcement officer. The bill further provides that anyone convicted of this crime would be subject to the provisions of the “No Early Release Act” (P.L.1997, c.117; C.2C:43-7.1 et seq.) which requires that a violator must serve at least 85% of the sentence imposed by the court before being eligible for parole. Since a crime of the first degree is punishable by a term of imprisonment between 10 and 20 years, this provision means that a person convicted of this crime would serve a mandatory minimum sentence of between eight and one-half and 16 years before being eligible for parole. A person convicted of using a defaced or stolen firearm to cause bodily injury to a law enforcement officer would serve a mandatory minimum sentence of between four and one-quarter and eight and one-half years before being eligible for parole, since a crime of the second degree is punishable by a term of imprisonment between five and 10 years.

The bill also increases the penalties for defacing a firearm and for acquiring or possessing a defaced firearm. The penalty for defacing a firearm is upgraded from a crime of the third degree to a crime of the second degree, which is punishable for a term of imprisonment between five and 10 years; a fine of not more than \$150,000; or both. The penalty for acquiring or possessing a defaced firearm is upgraded from a crime of the fourth degree to a crime of the third degree, which is punishable for a term of imprisonment between three and five years; a fine of not more than \$15,000; or both.