

SUBTITLE I. GENERAL PROVISIONS

CHAPTER I GENERAL PROVISIONS

FACT PATTERN (PERTAINING TO CHAPTERS I-7)

Over an 18-month period, 30 separate armed robberies involving a masked assailant occurred on the New Jersey state highways. Similarities in each case ended with the unifying factor of the perpetrator's mask—a white handkerchief. Race and ethnicity varied, ages were different, as well as hair color. Some perpetrators were men, others women. English language was used, as well as Spanish, Hebrew, Arabic and Italian. The weapon in each case was different; sometimes a gun was used, other times a knife or baseball bat. The robberies spanned the Garden State Parkway, New Jersey Turnpike and several of their intersecting state roadways. Getaway cars ranged from domestic models to Japanese and German imports. And the accompanying crimes in each case were distinct from one another, almost to the point of being bizarre.

Initially, law enforcement officials entertained a theory that a string of copycat masked robberies had occurred. However, that idea was quickly disbanded when five of the suspected felons were arrested—all of whom ultimately admitted under interrogation that they were part of a singular, intricate, organized crime outfit headed by one mastermind operative. Learning the identity of this criminal chieftain was the subject of a series of meetings convened by New Jersey State Police Colonel Frank Winters. Winters formed a council of several high-ranking law enforcement officers, hailing from municipalities from Cape May to Mahwah. Together, these men and women were determined to locate the group's leader and ascertain the purpose and goals of these criminal activities.

The first order of business was for each officer to recount the crimes that occurred in his or her jurisdiction. The Borough of Carlstadt was the site of the first robbery, a venture that netted masked gunman Michael Westmont almost \$100,000. Carlstadt Police Chief Andrew Beaumont explained the unusual circumstances as the other panel members listened intently.

On Route 17 North, less than one mile from the Meadowlands Sports Complex, two intoxicated football players argued furiously inside the Seventeen Diner. They knocked a plate of spaghetti and marinara sauce on the floor and tossed their respective drinks at each other. Their cursing was so loud that it could be heard outside the restaurant's entrance doors. In an effort to satisfy the diner's other customers and end the argument, management called the Carlstadt Police. Their arrival and presence, however, was not sufficient to quell the argument, as it actually swelled into a fistfight when one of the players slapped the other in the face. As the fight ensued, with the patrol officers attempting to break it up, the situation took a strange turn of events—a dark-haired Caucasian male,

Fact Pattern

draping a white handkerchief across his face, entered the establishment. He brandished a sawed-off shotgun and fired a few shots into the air. In English, the man ordered everyone to lay face down on the floor. Everyone complied, including the police officers, as they had no other recourse because their backs were to the gunman. The assailant then proceeded to the now-docile football players and reached into the front pocket of one of the men's leather jacket. He removed the man's car keys and exited the Seventeen Diner as quickly as he had entered. The assailant then sped off in the athlete's brand-new Mercedes. It was later learned that a suitcase containing \$95,000 in U.S. currency was hidden in the vehicle's trunk.

The two football players were arrested at the scene for violating state statutes related to their tumultuous behavior in the diner. The patrol officers, suspicious of the evening's events, probed the two men about the nature of their fight and the source of the large amount of cash in the one gentlemen's automobile. The quick arrival of the athletes' defense attorneys thwarted the police questioning, however, but not their follow-up investigation. Were either of the players involved in the robbery? If so, for what reason?

The Carlstadt Police Chief summed up what had happened. Rodney Crawson, the player whose car was stolen, had owed Bill McNichol, the other player, \$200,000 in gambling debts. Crawson had placed bets with McNichol and lost. McNichol was attempting to collect the funds the evening of the argument. Although he was aware that Crawson had a portion of the cash debt in his Mercedes, McNichol feared he would not turn the money over. This fear resulted in McNichol contacting an underworld friend, who arranged for the robbery of Crawson's car and cash. McNichol allowed the masked assailant to retain the proceeds related to the stolen automobile, but the cash was to be split between them.

To obtain a more lenient plea deal, McNichol cooperated with authorities and advised that Michael Westmont was the man wearing the white handkerchief. McNichol admitted, however, that Westmont was not the person responsible for planning the robbery. Westmont, of course, was still arrested. Both men refused to identify the name of the man who put them together.

Following standard protocol, the Carlstadt Police fingerprinted McNichol and Westmont and ran an NCIC report to ascertain their respective criminal histories. While the cumulative results of the NCIC searches resulted in no criminal convictions, Chief Beaumont reported that Michael Westmont's fingerprints matched those of an individual sought for a 35-year-old New Jersey murder of a nursing student.

After probing further, Beaumont and his detectives learned that Westmont was a former medical doctor who was a fugitive from justice for allegedly performing first-trimester abortions in the 1960s—a time when the medical procedure was illegal in the state of New Jersey. He also found that the doctor had been convicted of sexual assault in 1959 under the alias "Roger Ponot." Westmont/Ponot had never registered as a sex offender in the municipality where he resided. Chief Beaumont advised that Westmont would be charged appropriately for these various crimes.

In the southwest part of the state, West Deptford police officers recently arrested Jacques Vandermeit, charging him with armed robbery, aggravated assault, and other related offenses. West Deptford's Chief of Police, M.P. Ironstone, explained the circumstances that led to Vandermeit's arrest—an arrest he personally performed.

While traveling to headquarters on an early Thursday morning, Ironstone bypassed his daily stop at his favorite highway coffee shop. His attention had been diverted by the strange appearances of two men in a jewelry store parking lot across the highway. One man was wearing a white handkerchief over his face and the other was shirtless and barefoot, only sporting blue jeans. Ironstone immediately notified his on-duty patrol officers and headed to the closest u-turn, which was about two miles south

of his current location. As he looked in his rearview mirror, Ironstone saw the men enter the jewelry establishment. Minutes later, he arrived alone at the store, witnessing a violent chain of events.

As he approached, Ironstone saw the masked man pull the jewelry clerk over a glass countertop and begin beating him on the upper body and face with a baseball bat. The half-naked man looked on, chanting and screaming for him to “knock the dude out.” He then stuffed a handful of diamonds into the masked man’s coat pocket. At this, Ironstone burst through the door, gun drawn, and ordered the assailants to hit the floor with arms and legs outstretched. The masked man seemingly complied with the chief’s directive, dropping the baseball bat and falling to the ground. As he did so, however, his shirtless companion tripped over him and fell directly into Ironstone. The felon and police officer simultaneously crashed to the ground, allowing the face-covered man to escape through a back exit. Ironstone immediately ascertained that the jewelry clerk, although apparently injured, was not in a life-threatening condition. He handcuffed the one robbery suspect and then chased after the other.

A 20-minute foot pursuit followed where Ironstone tracked the assailant across the highway, through wooded areas, into residential backyards, and finally into a supermarket. Once inside the grocery store, Ironstone tackled the fleeing felon before any more danger could occur. Backup officers arrived moments later, and the suspect, who was later identified as Jacques Vandermeit, was transported to the West Deptford police headquarters. There, \$500,000 in diamonds, rubies and emeralds were confiscated from his person.

Vandermeit’s accomplice, however, never made it to the police station. Ironstone advised that the jewelry clerk had shot and killed the man before police made it to the gem store. Apparently, although the shirtless man was handcuffed, he was able to reach into his pants where he was attempting to remove a solid black instrument. The clerk, frightened and believing it was a gun, grabbed a pistol he kept stashed behind the counter. The gun accidentally went off as the clerk pointed it at the handcuffed man in an attempt to prevent his reaching. The solid black instrument turned out to be a hairbrush. The dead man’s family subsequently argued that the clerk should be charged with manslaughter. The West Deptford Police Department and the Gloucester County Prosecutor’s Office denied their request. Ironstone also noted that an autopsy of the shirtless man showed that he had high levels of both PCP and alcohol in his bloodstream.

In Jersey City, Hudson County Prosecutor Francine Colongero had recently successfully indicted Jillian Peterson for armed robbery and attempted murder. She described to her group of colleagues the circumstances that led to this indictment.

The Jersey City Police received a late afternoon report that a red Camaro was traveling in excess of 100 miles per hour on Route 1&9, a busy commuter highway. Several independent witnesses verified that the vehicle’s lone occupant was a woman whose face was masked with a white handkerchief. Two patrol cars were dispatched to the stretch of roadway where the vehicle was traveling. One of the units located the Camaro but did not find it violating any motor vehicle statutes. To the contrary, the vehicle was parked at a local car dealership. The suspect driver was not visible from the patrol officer’s highway purview.

Aware of the reports that the Camaro driver was masked, the officer was naturally cautious and drove past the dealership and parked in the lot of an adjoining business. Moments later, he heard screaming and two loud thuds. Following the sounds of this violent eruption, the officer raced to the dealership’s showroom. There, he found the masked woman alone. Two machetes were lodged in a wall leading down a staircase; the woman stood motionless, holding a black leather suitcase. The officer ordered her to freeze, pointing his pistol at her. She responded by saying, “Queen Elizabeth told me to steal this cash. I am flying to the moon with her tomorrow to start a cheese factory.” Upon the completion of her statements, she reached inside her overcoat and produced a hand grenade. As

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she was about to pull the explosive device's pin, the police officer lunged at her, knocking the grenade from her hand and allowing it to fall harmlessly to the floor. The woman, who was later identified as Jillian Peterson, was arrested on the spot.

A subsequent investigation revealed that Peterson was a martial arts enthusiast, whose particular expertise was sword and knife fighting, skills she employed in her failed robbery attempt of the car dealership. Wielding two machetes, she ordered the business's general manager to turn over the company's \$500,000 cash reserve, which she advised she knew was hidden in a safe in the back office. The manager complied and immediately led her to the money. When they returned to the showroom, Peterson waved the machetes and told the manager, "Thanks for the cash. I'm going to kill you with these machetes anyway." The manager, who was so close to Peterson that the knives could touch him, quickly dropped to the floor, rolling through an open doorway and down a staircase. As he was doing this, Peterson whipped the knives at him, narrowly missing the man's head. Though the man fled, she stayed in place, staring at the knives stuck in the wall. She later told the police that she was so distraught having missed the general manager that she was initially unable to move. Peterson provided no further statements and the Hudson County Prosecutor's Office prepared to succeed in their various felony charges against her.

2C:1-1. Short title; rules of construction

- a. This Title shall be known and may be cited as the "New Jersey Code of Criminal Justice."
- b. Except as provided in subsections c. and d. of this section, the code does not apply to offenses committed prior to its effective date and prosecutions and dispositions for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purposes of this section, an offense was committed after the effective date of the code if any of the elements of the offenses occurred subsequent thereto.
- c. In any case pending on or initiated after the effective date of the code involving an offense committed prior to such date:
 - (1) The procedural provisions of the code shall govern, insofar as they are justly applicable and their application does not introduce confusion or delay;
 - (2) The court, with the consent of the defendant, may impose sentence under the provisions of the code applicable to the offense and the offender.
 - (3) The court shall, if the offense committed is no longer an offense under the provisions of the code, dismiss such prosecution.
- d.
 - (1) The provisions of the code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to the effective date of the code, except that the minimum or maximum period of their detention or supervision shall in no case be increased.
 - (2) Any person who is under sentence of imprisonment on the effective date of the code for an offense committed prior to the effective date which has been eliminated by the code or who has been sentenced to a maximum term of imprisonment for an offense committed prior to the effective date which exceeds the maximum established by the code for such an offense and who, on said effective date, is under sentence of imprisonment shall continue to be imprisoned for the term of the sentence imposed by the code for such an offense and who, on said effective date, is under sentence of imprisonment shall continue to be imprisoned for the term of the sentence imposed by the code for such an offense and who, on said effective date, is under sentence of imprisonment shall continue to be imprisoned for the term of the sentence imposed by the code for such an offense.

tive date, has not had his sentence suspended or been paroled or discharged, may move to have his sentence reviewed by the sentencing court and the court may impose a new sentence, for good cause shown as though the person had been convicted under the code, except that no period of detention or supervision shall be increased as a result of such resentencing.

- e. The provisions of the code not inconsistent with those of prior laws shall be construed as a continuation of such laws.
- f. The classification and arrangement of the several sections of the code have been made for the purpose of convenience, reference and orderly arrangement and, therefore, no implication or presumption of a legislative construction is to be drawn therefrom.
- g. In the construction of the code, or any part thereof, no outline or analysis of the contents of said title or of any subtitle, chapter, article or section, no cross-reference or cross-reference note and no headnote or source note to any section shall be deemed to be a part of the code.
- h. If said title or any subtitle, chapter, article or section of the code, or any provision thereof, shall be declared to be unconstitutional, invalid or inoperative in whole or in part, by a court of competent jurisdiction, such title, subtitle, chapter, article, section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the title, or of any subtitle, chapter, article or section of the code.

PRACTICAL APPLICATION OF STATUTE

The Carlstadt Police Department would be in error if they charged Michael Westmont for performing first-trimester abortions in the 1960s even though he violated the law at that time. Given that this code of criminal justice became generally effective in 1979 and that there is no provision currently outlawing first-trimester abortions in the code, nor any continued law prohibiting said abortions that existed prior to the enactment of the code, under 2C:1-1 Westmont cannot be prosecuted in New Jersey for his 1960s abortions.

2C:1-1c.(3) specifically addresses the above issue. With regard to any case pending after the effective date of the code that involves “an offense committed prior to such date . . . the court shall, if the offense committed is no longer an offense under the provisions of the code, dismiss such prosecution.”

2C:1-2.

Purposes; principles of construction

- a. The general purposes of the provisions governing the definition of offenses are:
 - (1) To forbid, prevent and condemn conduct that unjustifiably and inexcusably inflicts or threatens serious harm to individual or public interests;
 - (2) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted and their confinement when required in the interests of public protection;

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- (3) To subject to public control persons whose conduct indicates that they are disposed to commit offenses;
 - (4) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
 - (5) To differentiate on reasonable grounds between serious and minor offenses; and
 - (6) To define adequately the act and mental state which constitute each offense and limit the condemnation of conduct as criminal when it is without fault.
- b. The general purposes of the provisions governing the sentencing of offenders are:
- (1) To prevent and condemn the commission of offenses;
 - (2) To promote the correction and rehabilitation of offenders;
 - (3) To insure the public safety by preventing the commission of offenses through the deterrent influence of sentences imposed and the confinement of offenders when required in the interest of public protection;
 - (4) To safeguard offenders against excessive, disproportionate or arbitrary punishment;
 - (5) To give fair warning of the nature of the sentences that may be imposed on conviction of an offense;
 - (6) To differentiate among offenders with a view to a just individualization in their treatment;
 - (7) To advance the use of generally accepted scientific methods and knowledge in sentencing offenders; and
 - (8) To promote restitution to victims.
- c. The provisions of the code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved. The discretionary powers conferred by the code shall be exercised in accordance with the criteria stated in the code and, insofar as such criteria are not decisive, to further the general purposes stated in this section.
- d. Nothing contained in this code shall limit the right of a defendant and, subject only to the Federal and State constitutions, the right of the State to appeal or seek leave to appeal pursuant to law and Rules of Court.

2C:1-3.

Territorial applicability

- a. Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:
- (1) Either the conduct which is an element of the offense or the result which is such an element occurs within this State;
 - (2) Conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit a crime within the State;
 - (3) Conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State;

- (4) Conduct occurring within the State establishes complicity in the commission of, or an attempt, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State;
 - (5) The offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or
 - (6) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.
- b. Subsection a.(1) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.
 - c. Except as provided in subsection g., subsection a.(1) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.
 - d. When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a “result,” within the meaning of subsection a.(1) and if the body of a homicide victim is found within the State, it may be inferred that such result occurred within the State.
 - e. This State includes the land and water, including the waters set forth in N.J.S. 40A:13-2 and the air space above such land and water with respect to which the State has legislative jurisdiction. It also includes any territory made subject to the criminal jurisdiction of this State by compacts between it and another state or between it and the Federal Government.
 - f. Notwithstanding that territorial jurisdiction may be found under this section, the court may dismiss, hold in abeyance for up to 6 months, or, with the permission of the defendant, place on the inactive list a criminal prosecution under the law of this State where it appears that such action is in the interests of justice because the defendant is being prosecuted for an offense based on the same conduct in another jurisdiction and this State’s interest will be adequately served by a prosecution in the other jurisdiction.
 - g. When the result which is an element of an offense consists of inflicting a harm upon a resident of this State or depriving a resident of this State of a benefit, the result occurs within this State, even if the conduct occurs wholly outside this State and any property that was affected by the offense was located outside this State.

PRACTICAL APPLICATION OF STATUTE

The Carlstadt Police Department obviously has jurisdiction to charge Bill McNichol and Michael Westmont with armed robbery for their combined efforts in illegally heisting \$100,000 in cash from Crawson. Since the actual robbery took place in New Jersey, these defendants would appropriately be

2C:1-4.

charged for this offense in the Garden State. What if, however, the actual robbery did not occur within the territorial boundaries of New Jersey? Could McNichol and Westmont have been charged for robbery under that scenario? The answer may be yes, due to the planning involved in their illegal undertakings.

The crime of conspiracy is key to determining whether the defendants could be prosecuted in New Jersey even if the actual offense did not occur in this state. For instance, if the facts were modified to the extent that the diner and parking lot where the armed robbery occurred were in Connecticut or New York, but the defendants had conspired (planned) to commit the crime in New Jersey, then New Jersey could be the jurisdiction where charges could be levied—but only if an overt act in furtherance of the conspiracy to commit robbery also occurred in New Jersey. A sufficient overt act in this case could be McNichol paying off Westmont in New Jersey or Westmont purchasing the robbery gun within the confines of this state. In sum, McNichol and Westmont could be charged with the armed robbery in New Jersey where they conspired and planned the crime in the state and furthered the conspiracy by payment or another overt act in the Garden State—even if the actual offense had actually been carried out in a different state.

2C:1-4.

Classes of offenses

- a.
 - (1) An offense defined by this code or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this code as being of the first, second, third or fourth degree.
 - (2) An offense defined by the laws of any other jurisdiction, for which a sentence of imprisonment in excess of one year is authorized, shall be considered in this State to be a crime when a reference is made by this code, or by any other statute of this State, to such offense.
- b.
 - (1) An offense is a disorderly persons offense if it is so designated in this code or in a statute other than this code. An offense is a petty disorderly persons offense if it is so designated in this code or in a statute other than this code. Disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State. There shall be no right to indictment by a grand jury nor any right to trial by jury on such offenses. Conviction of such offenses shall not give rise to any disability or legal disadvantage based on conviction of a crime.
 - (2)
 - (a) An offense defined by the laws of any other jurisdiction, for which a sentence of imprisonment of one year or less, but more than 30 days, is authorized, shall be considered in this State to be a disorderly persons offense when a reference is made by this code, or by any other statute of this State, to such offense.

- (b) An offense defined by the laws of any other jurisdiction, for which a sentence of imprisonment of 30 days or less is authorized, shall be considered in this State to be a petty disorderly persons offense when a reference is made by this code, or by any other statute of this State, to such offense.
- c. An offense defined by any statute of this State other than this code shall be classified as provided in this section or in section 2C:43-1 and, except as provided in subsection b. of 2C:1-5 and chapter 43, the sentence that may be imposed upon conviction thereof shall hereafter be governed by this code. Insofar as any provision of this State outside the code declares an offense to be a misdemeanor when such offense specifically provides a maximum penalty of 6 months' imprisonment or less, whether or not in combination with a fine, such provision shall constitute a disorderly persons offense.
- d. Subject to the provisions of section 2C:43-1, reference in any statute, rule, or regulation of this State outside the code to the term "high misdemeanor" shall mean crimes of the first, second, or third degree and reference to the term "misdemeanor" shall mean all crimes.

PRACTICAL APPLICATION OF STATUTE

Throughout the codebook, offenses are classified as either crimes, disorderly persons offenses or petty disorderly persons offenses. The primary differentiating factor among these classifications is the penalty that each category can yield along with the different rights attached to the same.

For example, an individual charged with a crime, such as murder, armed robbery or theft, is entitled to an indictment by a grand jury and a jury trial. A person charged with simple assault, a disorderly persons offense, however, has no such rights. This defendant will simply be served with a complaint and then face a singular judge as his trier of fact.

The penalty for a disorderly persons offense cannot exceed six months of imprisonment; 30 days is the maximum prison term for a conviction of a petty disorderly persons offense. The rationale behind this light sentencing structure is simple: the offenses are considered less serious in nature. Examples of disorderly persons offenses and petty disorderly persons offenses are harassment, shoplifting, disorderly conduct and simple assault. The football players' various antics in the diner would be disorderly persons offenses, while the subsequent armed robbery would be a crime.

Offenses become crimes when the potential prison sentence attached to the offense exceeds six months; sentences for the most serious crimes in New Jersey may reach 25 years in prison, life in prison or even the death penalty (see 2C:43-6 for sentences of imprisonment for crimes). Crimes are gradated according to their degree. First degree crimes, such as murder, kidnapping and aggravated sexual assault, are the most serious offenses and carry the greatest possible prison terms. Fourth degree crimes (e.g., reckless endangerment, certain theft offenses, certain forgery offenses) are the least serious and although a prison term up to 18 months may be imposed, individuals convicted of these offenses often will escape prison sentences.

2C:1-4.1.

It is interesting to note that, per a 2022 revision to 2C:1-4, an offense from another jurisdiction (i.e., another state) that authorizes “a sentence of imprisonment in excess of one year” shall be considered to be a crime in New Jersey; this is found in a new subsection to the statute, 2C:1-4a.(2). In similar fashion, new subsections 2C:1-4b.(2)(a) and 2C:1-4b.(2)(b) were added in 2022. The former provides that an offense from another jurisdiction that authorizes “a sentence of imprisonment of one year or less, but more than 30 days” shall be considered to be a disorderly persons offense in New Jersey. The latter provides that an offense from another jurisdiction that authorizes “a sentence of imprisonment of 30 days or less” shall be considered to be a petty disorderly persons offense in New Jersey.

2C:1-4.1. **Crime, disorderly persons offense, petty disorderly persons offense, construing out-of-State conviction**

When a provision in Title 2C of the New Jersey Statutes, any other statute, rule, regulation, or ordinance of this State, or any certification or application form promulgated thereunder, refers to a conviction of “a similar crime in another state,” a conviction under the laws of “any other state or the United States,” a conviction under the laws of “any other jurisdiction,” or contains similar phrasing referring to a conviction of a criminal offense outside this State, the conviction shall be construed in this State as a crime, disorderly persons offense, or petty disorderly persons offense, as set forth in paragraph (2) of subsection a. of N.J.S.2C:1-4, paragraph (2) of subsection b. of N.J.S.2C:1-4, and subsection c. of N.J.S.2C:44-4.

2C:1-5. **Abolition of common law crimes; all offenses defined by statute; application of general provisions of the code; limitation of local government laws**

- a. Common law crimes are abolished and no conduct constitutes an offense unless the offense is defined by this code or another statute of this State.
- b. The provisions of subtitle 1 of the code are applicable to offenses defined by other statutes. The provisions of subtitle 3 are applicable to offenses defined by other statutes but the maximum penalties applicable to such offenses, if specifically provided in the statute defining such offenses, shall be as provided therein, rather than as provided in this code, except that if the non-code offense is a misdemeanor with a maximum penalty of more than 18 months imprisonment, the provisions of section 2C:43-1b shall apply.
- c. This section does not affect the power to punish for contempt, either summarily or after indictment, or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.
- d. Notwithstanding any other provision of law, the local governmental units of this State may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this code or with any policy of this State expressed by this code, whether that policy be expressed by inclusion of a provision in the code or by exclusion of that subject from the code.

2C:1-6.

Time limitations

- a.
- (1) A prosecution for any offense set forth in N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:14-2 or sections 1 through 5 of P.L.2002, c.26 (C.2C:38-1 through C.2C:38-5) may be commenced at any time.
 - (2) A prosecution for any offense set forth in N.J.S.2C:17-2, section 9 of P.L.1970, c.39 (C.13:1E-9), section 20 of P.L.1989, c.34 (C.13:1E.48.20), section 19 of P.L.1954, c.212 (C.26:2C-19) section 10 of P.L.1984, c.173 (C.34:5A-41), or section 10 of P.L.1977, c.74 (C.58:10A-10) may be commenced at any time.
- b. Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitations:
- (1) A prosecution for a crime must be commenced within five years after it is committed;
 - (2) A prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed;
 - (3) A prosecution for any offense set forth in N.J.S.2C:27-2, N.J.S.2C:27-4, N.J.S.2C:27-6, N.J.S.2C:27-7, N.J.S.2C:29-4, N.J.S.2C:30-2, N.J.S.2C:30-3, or any attempt or conspiracy to commit such an offense, must be commenced within seven years after the commission of the offense;
 - (4) A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later;
 - (5) (Deleted by amendment, P.L.2007, c.131).
- c. An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed, except that when the prosecution is supported by physical evidence that identifies the actor by means of DNA testing or fingerprint analysis, time does not start to run until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence.
- d. A prosecution is commenced for a crime when an indictment is found and for a nonindictable offense when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. Nothing contained in this section, however, shall be deemed to prohibit the downgrading of an offense at any time if the prosecution of the greater offense was commenced within the statute of limitations applicable to the greater offense.
- e. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.
- f. The limitations in this section shall not apply to any person fleeing from justice.
- g. Except as otherwise provided in this code, no civil action shall be brought pursuant to this code more than five years after such action accrues.

2C:1-7.

PRACTICAL APPLICATION OF STATUTE

2C:1-6a. provides that there is no time limitation to prosecute individuals who have committed murder (2C:11-3), aggravated manslaughter or manslaughter (2C:11-4) or sexual assault (2C:14-2). In other words, a person can be charged with murder, manslaughter or sexual assault even if the criminal offense occurred 10 years ago, 25 years ago or 100 years ago. Accordingly, with receipt of Michael Westmont’s matching fingerprints, law enforcement authorities may appropriately charge him with the nursing student murder that was 35 years old. They are not barred by any statute of limitations provision.

If Westmont, however, had merely punched the nursing student in the face, thereby committing a simple assault, or stabbed the nursing student in the arm, committing an aggravated assault, authorities would be barred from prosecuting him at this time. Under 2C:1-6b.(1), prosecutions for crimes must be commenced within five years of their commission. Since aggravated assault is defined as a crime under the code, authorities would not be able to charge Westmont for an aggravated assault that is 35 years old.

Similarly, Westmont could not be charged currently for a 35-year-old simple assault. The time limitation to commence prosecution of simple assault, a disorderly persons offense, is even shorter than for a crime. 2C:1-6b.(2) provides that a prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed. While Westmont cannot get away with murder, he could certainly get away with committing other violent crimes, such as aggravated assault and simple assault, if enough time passes.

Please note that there are a few crimes where the statute of limitations is extended to seven years (see subsection b.(3)). Also, per subsection b.(4), there are a few crimes where prosecution “must be commenced within five years of the victim’s attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later.

It is also important to note that the statutory limitations on prosecutions as stated in 2C:1-6 only act as bars to the *initiation* or *commencement* of prosecutions. In other words, if, in 1975 an indictment had been handed down against Michael Westmont for an aggravated assault or a warrant had been issued charging him with simple assault, Westmont would not be able to escape facing either of these charges if he had fled and become a fugitive of justice. Currently, the state would still be able to prosecute him for those already-charged offenses.

2C:1-7. [Blank]

2C:1-8. **Method of prosecution when conduct constitutes more than one offense**

a. Prosecution for multiple offenses; limitation on convictions. When the same conduct of a defendant may establish the commission of more than one offense, the defendant

may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

- (1) One offense is included in the other, as defined in subsection d. of this section;
- (2) One offense consists only of a conspiracy or other form of preparation to commit the other;
- (3) Inconsistent findings of fact are required to establish the commission of the offenses; or
- (4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct. The provisions of this paragraph (4) of subsection a. of this section or any other provision of law notwithstanding, no State tax offense defined in Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, as amended and supplemented, shall be construed to preclude a prosecution for any offense defined in this code.

A determination barring multiple convictions shall be made by the court after verdict or finding of guilt.

- b. Limitation on separate trials for multiple offenses.** Except as provided in subsection c. of this section, a defendant shall not be subject to separate trials for multiple criminal offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction and venue of a single court.
- c. Authority of court to order separate trials.** When a defendant is charged with two or more criminal offenses based on the same conduct or arising from the same episode, the court may order any such charges to be tried separately in accordance with the Rules of Court.
- d. Conviction of included offense permitted.** A defendant may be convicted of an offense included in an offense charged whether or not the included offense is an indictable offense. An offense is so included when:
 - (1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or
 - (2) It consists of an attempt or conspiracy to commit the offense charged or to commit an offense otherwise included therein; or
 - (3) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.
- e. Submission of included offense to jury.** The court shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense.

2C:1-9.

When prosecution barred by former prosecution for the same offense

A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

2C:1-10.

- a. The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.
- b. The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense. This subsection shall not apply to an order or judgment quashing an indictment prior to trial.
- c. The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.
- d. The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury, after the first witness was sworn but before findings were rendered by the trier of facts. Termination under any of the following circumstances is not improper:
 - (1) The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.
 - (2) The trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed.
 - (3) The trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity.

2C:1-10.

When prosecution barred by former prosecution for different offense

A prosecution of a defendant for a violation of a different provision of the statutes or based on different facts than a former prosecution is barred by such former prosecution under the following circumstances:

- a. The former prosecution resulted in an acquittal or in a conviction as defined in section 2C:1-9 and the subsequent prosecution is for:
 - (1) Any offense of which the defendant could have been convicted on the first prosecution; or
 - (2) Any offense for which the defendant should have been tried on the first prosecution under section 2C:1-8 unless the court ordered a separate trial of the charge of such offense; or
 - (3) The same conduct, unless (a) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each

- of such offenses is intended to prevent a substantially different harm or evil, or
 (b) the second offense was not consummated when the former trial began.
- b. The former prosecution was terminated, after the complaint was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.
 - c. The former prosecution was improperly terminated, as improper termination is defined in section 2C:1-9, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.
 - d. Nothing in this section shall bar the disposition of a nonindictable complaint after disposition of an indictable offense except as required by the Federal and State constitutions.

2C:1-11. Former prosecution in another jurisdiction: when a bar

When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States, a prosecution in the District Court of the United States is a bar to a subsequent prosecution in this State under the following circumstances:

- a. The first prosecution resulted in an acquittal or in a conviction, or in an improper termination as defined in section 2C:1-9 and the subsequent prosecution is based on the same conduct, unless (1) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil or (2) the offense for which the defendant is subsequently prosecuted is intended to prevent a substantially more serious harm or evil than the offense of which he was formerly convicted or acquitted or (3) the second offense was not consummated when the former trial began; or
- b. The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

2C:1-12. Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant

A prosecution is not a bar within the meaning of sections 2C:1-9, 10 and 11 under any of the following circumstances:

- a. The former prosecution was before a court which lacked jurisdiction over the defendant or the offense tried in that court; or

2C:1-13.

- b. The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer; or
- c. The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a petition for post-conviction relief or similar process, except that any bar as to reprosecution for a greater inclusive offense created by section 2C:1-9a. shall apply.

2C:1-13. Proof beyond a reasonable doubt; affirmative defenses; burden of proving fact when not an element of an offense

- a. No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed.
- b. Subsection a. of this section does not:
 - (1) Require the disproof of an affirmative defense unless and until there is evidence supporting such defense; or
 - (2) Apply to any defense which the code or another statute requires the defendant to prove by a preponderance of evidence or such other standard as specified in this code.
- c. A defense is affirmative, within the meaning of subsection b.(1) of this section, when:
 - (1) It arises under a section of the code which so provides; or
 - (2) It relates to an offense defined by a statute other than the code and such statute so provides; or
- d. When the application of the code depends upon the finding of a fact which is not an element of an offense, unless the code otherwise provides:
 - (1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and
 - (2) The fact must be proved to the satisfaction of the court or jury, as the case may be.
- e. When the code or other statute defining an offense establishes a presumption with respect to any fact which is an element of an offense, it has the meaning accorded it by the law of evidence.
- f. In any civil action commenced pursuant to any provision of this code the burden of proof shall be by a preponderance of the evidence.

2C:1-14. General definitions

In this code, unless a different meaning plainly is required:

- a. “Statute” includes the Constitution and a local law or ordinance of a political subdivision of the State;
- b. “Act” or “action” means a bodily movement whether voluntary or involuntary;
- c. “Omission” means a failure to act;
- d. “Conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

- e. “Actor” includes, where relevant, a person guilty of an omission;
- f. “Acted” includes, where relevant, “omitted to act”;
- g. “Person,” “he,” and “actor” include any natural person and, where relevant, a corporation or an unincorporated association;
- h. “Element of an offense” means (1) such conduct or (2) such attendant circumstances or (3) such a result of conduct as
 - (a) Is included in the description of the forbidden conduct in the definition of the offense;
 - (b) Establishes the required kind of culpability;
 - (c) Negatives an excuse or justification for such conduct;
 - (d) Negatives a defense under the statute of limitations; or
 - (e) Establishes jurisdiction or venue;
- i. “Material element of an offense” means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (1) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (2) the existence of a justification or excuse for such conduct;
- j. “Reasonably believes” or “reasonable belief” designates a belief the holding of which does not make the actor reckless or criminally negligent;
- k. “Offense” means a crime, a disorderly persons offense or a petty disorderly persons offense unless a particular section in this code is intended to apply to less than all three;
- l. (Deleted by amendment, P.L.1991, c.91).
- m. “Amount involved,” “benefit,” and other terms of value. Where it is necessary in this act to determine value, for purposes of fixing the degree of an offense, that value shall be the fair market value at the time and place of the operative act.
- n. “Motor vehicle” shall have the meaning provided in R.S.39:1-1.
- o. “Unlawful taking of a motor vehicle” means conduct prohibited under N.J.S.2C:20-10 when the means of conveyance taken, operated or controlled is a motor vehicle.
- p. “Research facility” means any building, laboratory, institution, organization, school, or person engaged in research, testing, educational or experimental activities, or any commercial or academic enterprise that uses warm-blooded or cold-blooded animals for food or fiber production, agriculture, research, testing, experimentation or education. A research facility includes, but is not limited to, any enclosure, separately secured yard, pad, pond, vehicle, building structure or premises or separately secured portion thereof.
- q. “Communication” means any form of communication made by any means, including, but not limited to, any verbal or written communication, communications conveyed by any electronic communication device, which includes but is not limited to, a wire, radio, electromagnetic, photoelectric or photo-optical system, telephone, including a cordless, cellular or digital telephone, computer, video recorder, fax machine, pager, or any other means of transmitting voice or data and communications made by sign or gesture.
- r. “School” means a public or nonpublic elementary or secondary school within this State offering education in grades K through 12, or any combination thereof, at which a child may legally fulfill compulsory school attendance requirements.