

# TITLE 2C UPDATE

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On September 10, 2008, the Legislature, through *P.L. 2008, c.81*, amended the law regarding tampering with a witness or informant, upgraded the penalties for retaliating against a witness or informant, and added the specific crime of bribery of a witness or informant. The new legislation also upgraded the penalties for the offense of hindering apprehension or prosecution, *N.J.S. 2C:29-3*. Finally, the new legislation amended the contempt statute, *N.J.S. 2C:29-9*, to make specific reference to the protective orders set forth in *N.J.S. 2C:28-5.1*.

***In full, the new and amended provisions read as follows:***

## **2C:28-5. Tampering with witnesses and informants; retaliation against them.**

**a. *Tampering.*** A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly ~~attempts to induce or otherwise cause~~ engages in conduct which a reasonable person would believe would cause a witness or informant to:

- (1) Testify or inform falsely;
- (2) Withhold any testimony, information, document or thing;
- (3) Elude legal process summoning him to testify or supply evidence; ~~or~~
- (4) Absent himself from any proceeding or investigation to which he has been legally summoned; or
- (5) Otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

~~The offense~~ Witness tampering is a crime of the **first degree** if the conduct occurs in connection with an official proceeding or investigation involving any crime enumerated in subsection d. of section 2 of P.L. 1997, c.117 (C.2C:43-7.2) and the actor employs force or threat of force. Witness tampering is a crime of the **second degree** if the actor employs force or threat of force. Otherwise it is a crime of the **third degree**. Privileged communications may not be used as evidence in any prosecution for violations of paragraph (2), (3), (4) or (5).

**b. *Retaliation against witness or informant.*** A person commits ~~a crime of the fourth degree~~ an offense if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant. The offense is a crime of the **second degree** if the actor employs force or threat of force. Otherwise it is a crime of the **third degree**.

**c. *Witness or informant taking bribe.*** A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection a. (1) through (5) of this section.

**d. *Bribery of a witness or informant.*** A person commits a crime of the second degree if he directly or indirectly offers, confers or agrees to confer upon a witness or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of this section.

e. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5 or any other provision of law, a conviction arising under this section shall not merge with a conviction of an offense that was the subject of the official proceeding or investigation and the sentence imposed pursuant to this section shall be ordered to be served consecutively to that imposed for any such conviction.

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***N.J.S. 2C:29-3 has been amended to read as follows:***

**2C:29-3. Hindering Apprehension or Prosecution. a.** A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense or violation of Title 39 of the Revised Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

(1) Harbors or conceals the other;

(2) Provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape;

(3) Suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(4) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(6) Aids such person to protect or expeditiously profit from an advantage derived from such crime; or

(7) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by [17:33A-16].

An offense under paragraph (5) of subsection a. of this section is a crime of the **second degree**, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the **fourth degree**. Otherwise, the offense is a crime of the **third degree** if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child of the person aided, in which case the offense is a crime of the **fourth degree**. The offense is a crime of the **fourth degree** if such conduct would constitute a crime of the third degree. Otherwise it is a **disorderly persons offense**.

**b.** A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation

of Title 39 of the Revised Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

An offense under paragraph (3) of subsection b. of this section is a crime of the ***second degree***. Otherwise, the offense is a crime of the ***third degree*** if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the ***fourth degree*** if such conduct would constitute a crime of the third degree. Otherwise it is a ***disorderly persons offense***.

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***In pertinent part, N.J.S. 2C:29-9 has been amended to read as follows:***

**2C:29-9. Contempt. a.** A person is guilty of a crime of the ***fourth degree*** if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

**b.** Except as provided below, a person is guilty of a crime of the ***fourth degree*** if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," \* \* \* or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a ***disorderly persons offense*** if that person knowingly violates an order entered under the provisions of this act or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States. \* \* \*

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[NOTE: Underlined material is new. Deleted material is indicated by ~~strikeout~~.]

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