

P.L.2013, CHAPTER 113, *approved August 8, 2013*

Senate, No. 2804

1 AN ACT concerning unlawful possession of firearms and amending  
2 N.J.S.2C:39-5 and N.J.S.2C:43-6.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. N.J.S.2C:39-5 is amended to read as follows:

8 2C:39-5. Unlawful possession of weapons. a. Machine guns.  
9 Any person who knowingly has in his possession a machine gun or  
10 any instrument or device adaptable for use as a machine gun,  
11 without being licensed to do so as provided in N.J.S.2C:58-5, is  
12 guilty of a crime of the second degree.

13 b. Handguns. (1) Any person who knowingly has in his  
14 possession any handgun, including any antique handgun, without  
15 first having obtained a permit to carry the same as provided in  
16 N.J.S.2C:58-4, is guilty of a crime of the **third** second degree.  
17 **if** (2) If the handgun is in the nature of an air gun, spring gun or  
18 pistol or other weapon of a similar nature in which the propelling  
19 force is a spring, elastic band, carbon dioxide, compressed or other  
20 gas or vapor, air or compressed air, or is ignited by compressed air,  
21 and ejecting a bullet or missile smaller than three-eighths of an inch  
22 in diameter, with sufficient force to injure a person **Otherwise** it  
23 is a crime of the **second** third degree.

24 c. Rifles and shotguns. (1) Any person who knowingly has in  
25 his possession any rifle or shotgun without having first obtained a  
26 firearms purchaser identification card in accordance with the  
27 provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

28 (2) Unless otherwise permitted by law, any person who  
29 knowingly has in his possession any loaded rifle or shotgun is  
30 guilty of a crime of the third degree.

31 d. Other weapons. Any person who knowingly has in his  
32 possession any other weapon under circumstances not manifestly  
33 appropriate for such lawful uses as it may have is guilty of a crime  
34 of the fourth degree.

35 e. Firearms or other weapons in educational institutions.

36 (1) Any person who knowingly has in his possession any  
37 firearm in or upon any part of the buildings or grounds of any  
38 school, college, university or other educational institution, without  
39 the written authorization of the governing officer of the institution,  
40 is guilty of a crime of the third degree, irrespective of whether he  
41 possesses a valid permit to carry the firearm or a valid firearms  
42 purchaser identification card.

**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 (2) Any person who knowingly possesses any weapon  
2 enumerated in paragraphs (3) and (4) of subsection r. of  
3 N.J.S.2C:39-1 or any components which can readily be assembled  
4 into a firearm or other weapon enumerated in subsection r. of  
5 N.J.S.2C:39-1 or any other weapon under circumstances not  
6 manifestly appropriate for such lawful use as it may have, while in  
7 or upon any part of the buildings or grounds of any school, college,  
8 university or other educational institution without the written  
9 authorization of the governing officer of the institution is guilty of a  
10 crime of the fourth degree.

11 (3) Any person who knowingly has in his possession any  
12 imitation firearm in or upon any part of the buildings or grounds of  
13 any school, college, university or other educational institution,  
14 without the written authorization of the governing officer of the  
15 institution, or while on any school bus is a disorderly person,  
16 irrespective of whether he possesses a valid permit to carry a  
17 firearm or a valid firearms purchaser identification card.

18 f. Assault firearms. Any person who knowingly has in his  
19 possession an assault firearm is guilty of a crime of the second  
20 degree except if the assault firearm is licensed pursuant to  
21 N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32  
22 (C.2C:58-12); or rendered inoperable pursuant to section 12 of  
23 P.L.1990, c.32 (C.2C:58-13).

24 g. (1) The temporary possession of a handgun, rifle or shotgun  
25 by a person receiving, possessing, carrying or using the handgun,  
26 rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74  
27 (C.2C:58-3.1) shall not be considered unlawful possession under  
28 the provisions of subsection b. or c. of this section.

29 (2) The temporary possession of a firearm by a person receiving,  
30 possessing, carrying or using the firearm under the provisions of  
31 section 1 of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered  
32 unlawful possession under the provisions of this section.

33 h. A person who is convicted of a crime under subsection a., b.,  
34 **【or】** f. or j. of this section shall be ineligible for participation in any  
35 program of intensive supervision; provided, however, that this  
36 provision shall not apply to a crime under subsection b. involving  
37 only a handgun which is in the nature of an air gun, spring gun or  
38 pistol or other weapon of a similar nature in which the propelling  
39 force is a spring, elastic band, carbon dioxide, compressed or other  
40 gas or vapor, air or compressed air, or is ignited by compressed air,  
41 and ejecting a bullet or missile smaller than three-eighths of an inch  
42 in diameter, with sufficient force to injure a person.

43 i. A person convicted of violating subsection a., b. or f. of this  
44 section shall be sentenced by the court to a term of imprisonment,  
45 which shall include the imposition of a minimum term during which  
46 the defendant shall be ineligible for parole, if the court finds that  
47 the aggravating circumstance set forth in paragraph (5) of  
48 subsection a. of N.J.S.2C:44-1 applies. The minimum term of

1 parole ineligibility shall be fixed at five years. The sentencing  
2 court shall make a finding on the record as to whether the  
3 aggravating circumstance set forth in paragraph (5) of subsection a.  
4 of N.J.S.2C:44-1 applies, and the court shall presume that there is a  
5 substantial likelihood that the defendant is involved in organized  
6 criminal activity if there is a substantial likelihood that the  
7 defendant is a member of an organization or group that engages in  
8 criminal activity. The prosecution at the sentencing hearing shall  
9 have the initial burden of producing evidence or information  
10 concerning the defendant's membership in such an organization or  
11 group.

12 j. A violation of subsections a., b., c. or f. of this section by a  
13 person who has a prior conviction of any of the crimes enumerated  
14 in subsection d. of section 2 of of P.L.1997, c.117 (C.2C:43-7.2) is  
15 a first degree crime.

16 (c.f. P.L.2009, c.13, s.1)

17

18 2. N.J.S.2C:43-6 is amended to read as follows:

19 2C:43-6. a. Except as otherwise provided, a person who has been  
20 convicted of a crime may be sentenced to imprisonment, as follows:

21 (1) In the case of a crime of the first degree, for a specific term  
22 of years which shall be fixed by the court and shall be between 10  
23 years and 20 years;

24 (2) In the case of a crime of the second degree, for a specific  
25 term of years which shall be fixed by the court and shall be between  
26 five years and 10 years;

27 (3) In the case of a crime of the third degree, for a specific term  
28 of years which shall be fixed by the court and shall be between  
29 three years and five years;

30 (4) In the case of a crime of the fourth degree, for a specific  
31 term which shall be fixed by the court and shall not exceed 18  
32 months.

33 b. As part of a sentence for any crime, where the court is  
34 clearly convinced that the aggravating factors substantially  
35 outweigh the mitigating factors, as set forth in subsections a. and b.  
36 of 2C:44-1, or the court finds that the aggravating factor set forth in  
37 paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, the court  
38 may fix a minimum term not to exceed one-half of the term set  
39 pursuant to subsection a., or one-half of the term set pursuant to a  
40 maximum period of incarceration for a crime set forth in any statute  
41 other than this code, during which the defendant shall not be  
42 eligible for parole; provided that no defendant shall be eligible for  
43 parole at a date earlier than otherwise provided by the law  
44 governing parole.

45 c. A person who has been convicted under subsection b. or d.  
46 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of  
47 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., **[or]** c.,  
48 or f. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of

1 subsection b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or  
2 subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any  
3 of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,  
4 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the  
5 course of committing or attempting to commit the crime, including  
6 the immediate flight therefrom, used or was in possession of a  
7 firearm as defined in 2C:39-1f., shall be sentenced to a term of  
8 imprisonment by the court. The term of imprisonment shall include  
9 the imposition of a minimum term. The minimum term shall be  
10 fixed at **【**, or between, one-third and**】** one-half of the sentence  
11 imposed by the court or **【three years】** 42 months, whichever is  
12 greater, or 18 months in the case of a fourth degree crime, during  
13 which the defendant shall be ineligible for parole.

14 The minimum terms established by this section shall not prevent  
15 the court from imposing presumptive terms of imprisonment  
16 pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth  
17 degree.

18 A person who has been convicted of an offense enumerated by  
19 this subsection and who used or possessed a firearm during its  
20 commission, attempted commission or flight therefrom and who has  
21 been previously convicted of an offense involving the use or  
22 possession of a firearm as defined in 2C:44-3d., shall be sentenced  
23 by the court to an extended term as authorized by 2C:43-7c.,  
24 notwithstanding that extended terms are ordinarily discretionary  
25 with the court.

26 d. (1) The court shall not impose a mandatory sentence  
27 pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d.,  
28 unless the ground therefor has been established at a hearing. At the  
29 hearing, which may occur at the time of sentencing, the prosecutor  
30 shall establish by a preponderance of the evidence that the weapon  
31 used or possessed was a firearm. In making its finding, the court  
32 shall take judicial notice of any evidence, testimony or information  
33 adduced at the trial, plea hearing, or other court proceedings and  
34 shall also consider the presentence report and any other relevant  
35 information.

36 (2) The court shall not impose a mandatory sentence pursuant to  
37 subsection c. of this section for a violation of paragraph (2) of  
38 subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of  
39 subsection c. of N.J.S.2C:39-5, if that rifle or shotgun is in the  
40 nature of an air gun, spring gun or pistol or other weapon of a  
41 similar nature in which the propelling force is a spring, elastic band,  
42 carbon dioxide, compressed or other gas or vapor, air or compressed  
43 air, or is ignited by compressed air, and electing a bullet or missile  
44 smaller than three-eighths of an inch in diameter, with sufficient  
45 force to injure a person; or a violation of paragraph (1) of  
46 subsection c. of N.J.S.2C:39-5.

47 e. A person convicted of a third or subsequent offense  
48 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any

1 other provision of this code, or under any of the provisions of Title  
2 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,  
3 as amended and supplemented, shall be sentenced to a term of  
4 imprisonment by the court. This shall not preclude an application  
5 for and imposition of an extended term of imprisonment under  
6 N.J.S.2C:44-3 if the provisions of that section are applicable to the  
7 offender.

8 f. A person convicted of manufacturing, distributing,  
9 dispensing or possessing with intent to distribute any dangerous  
10 substance or controlled substance analog under N.J.S.2C:35-5, of  
11 maintaining or operating a controlled dangerous substance  
12 production facility under N.J.S.2C:35-4, of employing a juvenile in  
13 a drug distribution scheme under N.J.S.2C:35-6, leader of a  
14 narcotics trafficking network under N.J.S.2C:35-3, or of  
15 distributing, dispensing or possessing with intent to distribute on or  
16 near school property or buses under section 1 of P.L.1987, c.101  
17 (C.2C:35-7), who has been previously convicted of manufacturing,  
18 distributing, dispensing or possessing with intent to distribute a  
19 controlled dangerous substance or controlled substance analog,  
20 shall upon application of the prosecuting attorney be sentenced by  
21 the court to an extended term as authorized by subsection c. of  
22 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily  
23 discretionary with the court. The term of imprisonment shall,  
24 except as may be provided in N.J.S.2C:35-12, include the  
25 imposition of a minimum term. The minimum term shall be fixed  
26 at, or between, one-third and one-half of the sentence imposed by  
27 the court or three years, whichever is greater, not less than seven  
28 years if the person is convicted of a violation of N.J.S.2C:35-6, or  
29 18 months in the case of a fourth degree crime, during which the  
30 defendant shall be ineligible for parole.

31 The court shall not impose an extended term pursuant to this  
32 subsection unless the ground therefor has been established at a  
33 hearing. At the hearing, which may occur at the time of sentencing,  
34 the prosecutor shall establish the ground therefor by a  
35 preponderance of the evidence. In making its finding, the court shall  
36 take judicial notice of any evidence, testimony or information  
37 adduced at the trial, plea hearing, or other court proceedings and  
38 shall also consider the presentence report and any other relevant  
39 information.

40 For the purpose of this subsection, a previous conviction exists  
41 where the actor has at any time been convicted under chapter 35 of  
42 this title or Title 24 of the Revised Statutes or under any similar  
43 statute of the United States, this State, or any other state for an  
44 offense that is substantially equivalent to N.J.S.2C:35-3,  
45 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of  
46 P.L.1987, c.101 (C.2C:35-7).

47 g. Any person who has been convicted under subsection a. of  
48 N.J.S.2C:39-4 or of a crime under any of the following sections:

1 N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,  
2 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,  
3 N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of  
4 committing or attempting to commit the crime, including the  
5 immediate flight therefrom, used or was in possession of a machine  
6 gun or assault firearm shall be sentenced to a term of imprisonment  
7 by the court. The term of imprisonment shall include the  
8 imposition of a minimum term. The minimum term shall be fixed at  
9 10 years for a crime of the first or second degree, five years for a  
10 crime of the third degree, or 18 months in the case of a fourth  
11 degree crime, during which the defendant shall be ineligible for  
12 parole.

13 The minimum terms established by this section shall not prevent  
14 the court from imposing presumptive terms of imprisonment  
15 pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for  
16 crimes of the first degree.

17 A person who has been convicted of an offense enumerated in  
18 this subsection and who used or possessed a machine gun or assault  
19 firearm during its commission, attempted commission or flight  
20 therefrom and who has been previously convicted of an offense  
21 involving the use or possession of any firearm as defined in  
22 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an  
23 extended term as authorized by subsection d. of N.J.S.2C:43-7,  
24 notwithstanding that extended terms are ordinarily discretionary  
25 with the court.

26 h. The court shall not impose a mandatory sentence pursuant to  
27 subsection g. of this section, subsection d. of N.J.S.2C:43-7 or  
28 N.J.S.2C:44-3, unless the ground therefor has been established at a  
29 hearing. At the hearing, which may occur at the time of sentencing,  
30 the prosecutor shall establish by a preponderance of the evidence  
31 that the weapon used or possessed was a machine gun or assault  
32 firearm. In making its finding, the court shall take judicial notice of  
33 any evidence, testimony or information adduced at the trial, plea  
34 hearing, or other court proceedings and shall also consider the  
35 presentence report and any other relevant information.

36 i. A person who has been convicted under paragraph (6) of  
37 subsection b. of 2C:12-1 of causing bodily injury while eluding  
38 shall be sentenced to a term of imprisonment by the court. The  
39 term of imprisonment shall include the imposition of a minimum  
40 term. The minimum term shall be fixed at, or between one-third  
41 and one-half of the sentence imposed by the court. The minimum  
42 term established by this subsection shall not prevent the court from  
43 imposing a presumptive term of imprisonment pursuant to  
44 paragraph (1) of subsection f. of 2C:44-1.

45 (cf: P.L.2007, c.341, s.5)

46

47 3. This act shall take effect immediately.

## STATEMENT

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2  
3 This bill upgrades the crime of unlawful possession of a firearm  
4 to a first degree crime in certain circumstances and amends various  
5 penalty provisions under the Graves Act.

6 The provisions of the bill make it crime of the first degree for a  
7 person to unlawfully possess a machine gun, handgun, rifle or  
8 shotgun, or an assault firearm following a conviction for a crime  
9 enumerated in subsection d. of section 2 of of P.L.1997, c. 117  
10 (C.2C:43-7.1) (the No Early Release Act.) Under current law  
11 violations of these provisions are either a second degree offense, in  
12 the case of machine guns, handguns and assault firearms, or a third  
13 degree offense, in the case of rifles and shotguns.

14 The bill also amends sentencing under the Graves Act, P.L.1981,  
15 c.31 (C.2C:43-6), which sets forth mandatory minimum terms of  
16 imprisonment for persons convicted of certain firearms related  
17 offenses or offenses where a person possessed or used a firearm  
18 during the commission of a crime.

19 The Graves Act provides that a person convicted of unlawful  
20 possession of a machine gun, handgun, rifle or shotgun, in violation  
21 of subsections a., b. and c., respectively, of N.J.S.2C:39-5 is subject  
22 to a mandatory minimum period of parole ineligibility. Under  
23 current law the minimum term of imprisonment is three years.

24 In addition, the bill adds the unlawful possession of an assault  
25 firearm to the list of crimes that are subject to Graves Act  
26 sentencing.

27 The bill also increases the mandatory minimum period of parole  
28 ineligibility under the Graves Act from three years to 42 months.

29 Finally, the bill clarifies that individuals convicted of the  
30 unlawful possession of a BB gun, air gun or spring gun, be it a  
31 handgun, rifle, shotgun, are not subject to the mandatory sentences  
32 imposed under the Graves Act. Similarly, individuals convicted of  
33 the unlawful possession of an unloaded rifle or shotgun are also  
34 exempt from the mandatory sentences imposed under the Graves  
35 Act.

36 The bill adds unlawful possession of an assault firearm to the list  
37 of crimes for which Graves Act sentencing applies. Further, the  
38 provisions of the bill increase the mandatory minimum period of  
39 parole eligibility from three years to 42 months. The bill also  
40 provides that the mandatory minimum term will not apply to  
41 unlawful possession of a handgun, rifle or shotgun if the firearms  
42 are in the nature of an air gun, spring gun or pistol or other weapon  
43 of a similar nature, or to the unlawful possession of an unloaded  
44 rifle or shotgun.

45 It is the understanding of the sponsor that the bill would not  
46 preclude a defendant convicted of unlawful possession of an  
47 unloaded rifle or shotgun or a BB gun, air gun, or spring gun, from  
48 being eligible for participation in a pretrial intervention program.

**S2804**

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Upgrades certain unlawful possession of firearms to first degree  
crime; revises certain penalties under the "Graves Act."