

ASSEMBLY, No. 3608

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 11, 2014

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Assemblyman CARMELO G. GARCIA

District 33 (Hudson)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Assemblyman Peterson, Assemblywoman Gove, Assemblymen Rumpf, Wilson, Assemblywoman Schepisi, Assemblyman Fiocchi, Assemblywomen Simon, Angelini, Assemblymen Rible, Singleton, Assemblywoman Casagrande, Assemblymen Ciattarelli, Johnson, DiMaio, Assemblywoman N.Munoz, Assemblymen Rumana, DeAngelo, Clifton and Webber

SYNOPSIS

Provides courts with sentencing discretion for certain convictions concerning possession of a firearm.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 10/24/2014)

1 AN ACT concerning possession of firearms and amending
2 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:43-6 is amended to read as follows:

8 2C:43-6. a. Except as otherwise provided, a person who has
9 been convicted of a crime may be sentenced to imprisonment, as
10 follows:

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

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

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

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

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

35 c. A person who has been convicted under subsection b. or d.
36 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
37 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.
38 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection
39 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,
40 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following
41 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-
42 3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of
43 committing or attempting to commit the crime, including the
44 immediate flight therefrom, used or was in possession of a firearm
45 as defined in 2C:39-1f., shall be sentenced to a term of

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 imprisonment by the court, except as provided by subsection d. of
2 this section. The term of imprisonment shall include the imposition
3 of a minimum term. The minimum term shall be fixed at one-half
4 of the sentence imposed by the court or 42 months, whichever is
5 greater, or 18 months in the case of a fourth degree crime, during
6 which the defendant shall be ineligible for parole.

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

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

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

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

40 (3) Notwithstanding the provisions of subsection c. of this
41 section to the contrary, the court shall have discretion to impose the
42 mandatory sentence, or pretrial intervention or supervisory
43 treatment pursuant to N.J.S.2C:43-12 et seq., for a violation of
44 subsections b. or c. of N.J.S.2C:39-5 if the court makes a finding on
45 the record that the convicted person:

46 (a) is an out-of-State resident;

1 **(b) is otherwise permitted by the state in which he is a resident**
2 **to possess the firearm in the manner under which the conviction**
3 **arose in this State;**

4 **(c) has no known association with a criminal street gang, as**
5 **defined in section 1 of P.L.2007, c.341 (C.2C:33-29); and**

6 **(d) has never been convicted of a crime in this State or any other**
7 **state, territory or other jurisdiction of the United States.**

8 e. A person convicted of a third or subsequent offense
9 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any
10 other provision of this code, or under any of the provisions of Title
11 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,
12 as amended and supplemented, shall be sentenced to a term of
13 imprisonment by the court. This shall not preclude an application
14 for and imposition of an extended term of imprisonment under
15 N.J.S.2C:44-3 if the provisions of that section are applicable to the
16 offender.

17 f. A person convicted of manufacturing, distributing,
18 dispensing or possessing with intent to distribute any dangerous
19 substance or controlled substance analog under N.J.S.2C:35-5, of
20 maintaining or operating a controlled dangerous substance
21 production facility under N.J.S.2C:35-4, of employing a juvenile in
22 a drug distribution scheme under N.J.S.2C:35-6, leader of a
23 narcotics trafficking network under N.J.S.2C:35-3, or of
24 distributing, dispensing or possessing with intent to distribute on or
25 near school property or buses under section 1 of P.L.1987, c.101
26 (C.2C:35-7), who has been previously convicted of manufacturing,
27 distributing, dispensing or possessing with intent to distribute a
28 controlled dangerous substance or controlled substance analog,
29 shall upon application of the prosecuting attorney be sentenced by
30 the court to an extended term as authorized by subsection c. of
31 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
32 discretionary with the court. The term of imprisonment shall,
33 except as may be provided in N.J.S.2C:35-12, include the
34 imposition of a minimum term. The minimum term shall be fixed
35 at, or between, one-third and one-half of the sentence imposed by
36 the court or three years, whichever is greater, not less than seven
37 years if the person is convicted of a violation of N.J.S.2C:35-6, or
38 18 months in the case of a fourth degree crime, during which the
39 defendant shall be ineligible for parole.

40 The court shall not impose an extended term pursuant to this
41 subsection unless the ground therefor has been established at a
42 hearing. At the hearing, which may occur at the time of sentencing,
43 the prosecutor shall establish the ground therefor by a
44 preponderance of the evidence. In making its finding, the court shall
45 take judicial notice of any evidence, testimony or information
46 adduced at the trial, plea hearing, or other court proceedings and
47 shall also consider the presentence report and any other relevant
48 information.

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

8 g. Any person who has been convicted under subsection a. of
9 N.J.S.2C:39-4 or of a crime under any of the following sections:
10 N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
11 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
12 N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of
13 committing or attempting to commit the crime, including the
14 immediate flight therefrom, used or was in possession of a machine
15 gun or assault firearm shall be sentenced to a term of imprisonment
16 by the court. The term of imprisonment shall include the
17 imposition of a minimum term. The minimum term shall be fixed at
18 10 years for a crime of the first or second degree, five years for a
19 crime of the third degree, or 18 months in the case of a fourth
20 degree crime, during which the defendant shall be ineligible for
21 parole.

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

26 A person who has been convicted of an offense enumerated in
27 this subsection and who used or possessed a machine gun or assault
28 firearm during its commission, attempted commission or flight
29 therefrom and who has been previously convicted of an offense
30 involving the use or possession of any firearm as defined in
31 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
32 extended term as authorized by subsection d. of N.J.S.2C:43-7,
33 notwithstanding that extended terms are ordinarily discretionary
34 with the court.

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

45 i. A person who has been convicted under paragraph (6) of
46 subsection b. of 2C:12-1 of causing bodily injury while eluding
47 shall be sentenced to a term of imprisonment by the court. The
48 term of imprisonment shall include the imposition of a minimum

1 term. The minimum term shall be fixed at, or between one-third
2 and one-half of the sentence imposed by the court. The minimum
3 term established by this subsection shall not prevent the court from
4 imposing a presumptive term of imprisonment pursuant to
5 paragraph (1) of subsection f. of 2C:44-1.

6 (cf: P.L.2013, 113, s.2)

7
8 2. This act shall take effect immediately.

9
10
11 STATEMENT

12
13 This bill revises the Graves Act to grant the court discretion
14 when imposing the mandatory minimum term of imprisonment, or
15 to permit admittance to pretrial intervention or supervisory
16 treatment, on an out-of-State resident convicted in New Jersey of
17 unlawful possession of a firearm.

18 Under the provisions of the Graves Act, courts are required to
19 impose mandatory minimum terms of imprisonment on defendants
20 convicted of certain firearms crimes. These crimes include:

- 21 • possession of a sawed-off shotgun;
22 • possession of a defaced firearm;
23 • possession of a firearm for an unlawful purpose;
24 • possession of a firearm while committing certain crimes;
25 • unlawful possession of a machine gun, handgun, long gun or
26 assault firearm;
27 • possession of a firearm by certain persons not to possess
28 firearms; and
29 • certain crimes related to the manufacture, transport,
30 disposition, and defacement of machine guns, sawed off
31 shotguns, defaced firearms, and assault firearms.

32 The minimum terms are be fixed at one-half of the sentence
33 imposed by the court or 42 months, whichever is greater, or 18
34 months in the case of a fourth degree crime. The Graves Act does
35 not provide courts with any discretion concerning the imposition of
36 minimum terms.

37 This bill provides courts with discretion in cases where the court
38 makes a finding on the record that the convicted person: (1) is an
39 out-of-State resident; (2) is otherwise permitted by the state in
40 which the person is a resident to possess the firearm in the manner
41 under which the conviction arose in this State; (3) has no known
42 association with a criminal street gang; and (4) has never been
43 convicted of a crime in this State or any other state.

44 It is the sponsor's intent to provide courts with discretion
45 concerning whether to impose a 42-month minimum term in cases
46 where the convicted person is an out-of-State resident who legally
47 possesses a firearm in his or her home state and who is an otherwise
48 law abiding citizen with no criminal record or gang affiliations.

A3608 DANCER, ANDRZEJCZAK

7

1 This bill is meant to address situations where an out-of-State
2 resident, unaware of the difference among various state firearms
3 laws, simply makes an unwitting mistake without any criminal
4 intent to violate the laws in New Jersey, as has been publicized and
5 well-documented by the national news media.