

ASSEMBLY, No. 5641

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Assemblywomen Reynolds-Jackson, Jimenez, Jasey and Assemblyman Mejjia

SYNOPSIS

Eliminates mandatory minimum terms of imprisonment determined by Legislature to be of non-violent nature.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning the elimination of mandatory minimum terms
2 of imprisonment for crimes determined to be of a non-violent
3 nature, supplementing chapter 1 of Title 2C of the New Jersey
4 Statutes, and amending various parts of the statutory law.

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

8
9 1. (New section) The Legislature finds and declares:

10 a. New Jersey's criminal justice system will benefit from
11 sentencing reforms aimed at reviewing and eliminating mandatory
12 minimum sentences for crimes of a non-violent nature as
13 determined by the Legislature.

14 b. The Legislature has an excellent blueprint in the first report
15 of the New Jersey Criminal Sentencing and Disposition
16 Commission which was passed unanimously by its members in
17 November 2019.

18 c. That Commission had the benefit of a broad membership
19 that included judges, defense attorneys, prosecutors, law
20 enforcement, corrections officials and victim advocates, among
21 others, which encouraged a view of the State's criminal justice
22 system from varied vantage points.

23 d. The Commission's report included recommendations for
24 eliminating mandatory minimum terms of imprisonment for non-
25 violent drug and property crimes, as these types of sentences, noted
26 in the introduction to the report, contributed to "exponentially"
27 increasing the State's prison population and "substantially curtailed
28 judicial discretion" in the issue of determining the appropriate level
29 of punishment to match offender accountability.

30 e. This act, applying the same reasoning of the Commission,
31 broadly addresses a bigger array of non-violent criminal activity to
32 return decision making to the courts for matching an individual's
33 punishment to account for the nature and circumstances of the crime
34 committed, and to strive for reductions in the State's prison
35 population of non-violent offenders who do not pose a danger to
36 their surrounding communities on the basis of the crimes they
37 committed.

38 f. The Legislature understands that eliminating certain
39 mandatory minimum terms of imprisonment does not mean
40 eliminating imprisonment as a punishment in all those cases but
41 does mean eliminating rigid terms of parole ineligibility for a crime
42 considered to be non-violent, for which the ordinary sentencing
43 options appear sufficient when coupled with judicial discretion.

44 g. The Legislature values the recommendations of the
45 Commission on eliminating mandatory minimum terms 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, which are incorporated in this act, and seeks to
2 expand upon that foundation to help realize that justice for non-
3 violent crimes is better served when an individual's punishment is
4 tailored to the specific circumstances of the crime committed, as
5 determined by the sentencing court, which will also foster broader
6 public confidence in the criminal justice system for not being overly
7 punitive in its treatment of non-violent criminal offenders.

8
9 2. Section 4 of P.L.2013, c.53 (C.2C:20-2.4) is amended to
10 read as follows:

11 4. a. A person is a leader of a cargo theft network if he
12 conspires with others as an organizer, supervisor, financier or
13 manager to engage for profit in a scheme or course of conduct to
14 unlawfully take, dispose of, distribute, bring into, transport, or store
15 in this State property stolen from a cargo carrier, where the amount
16 is at least \$5,000.

17 (1) Except as provided in paragraph (2) of this subsection,
18 leader of a cargo theft network is a crime of the second degree.
19 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
20 the court may impose a fine not to exceed \$250,000 or five times
21 the retail value of the property seized at the time of the arrest,
22 whichever is greater.

23 (2) Leader of a cargo theft network is a crime of the first degree
24 if the scheme or course of conduct to unlawfully take, dispose of,
25 distribute, bring into, transport, or store in this State property stolen
26 from a cargo carrier included the use or threatened use of any
27 deadly weapon, as defined in N.J.S.2C:39-1 in the commission of
28 the theft. Nothing in this subsection shall be deemed to limit the
29 authority or discretion of the State to charge or prosecute any
30 person for robbery under N.J.S.2C:15-1 or for any other offense,
31 nor shall a conviction for robbery merge with any conviction under
32 this section. Notwithstanding the provisions of subsection a. of
33 N.J.S.2C:43-3, the court may impose a fine not to exceed \$500,000
34 or five times the retail value of the property seized at the time of the
35 arrest, whichever is greater.

36 b. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction
37 of leader of a cargo theft network shall not merge with the
38 conviction for any offense which is the object of the conspiracy.
39 Nothing contained in this act shall prohibit the court from imposing
40 an extended term pursuant to N.J.S.2C:43-7; nor shall this act be
41 construed in any way to preclude or limit the prosecution or
42 conviction of any person for conspiracy under N.J.S.2C:5-2, or any
43 prosecution or conviction for any other offense.

44 c. It shall not be necessary in any prosecution under this
45 section for the State to prove that any intended profit was actually
46 realized. The trier of fact may infer that a particular scheme or
47 course of conduct was undertaken for profit from all of the
48 attending circumstances, including but not limited to the number of

1 persons involved in the scheme or course of conduct, the actor's net
2 worth and his expenditures in relation to his legitimate sources of
3 income, the amount of property or number of incidents of theft, or
4 the amount of cash or currency involved.

5 d. It shall not be a defense to a prosecution under this section
6 that the stolen property was brought into, transported or stored in
7 this State solely for ultimate distribution in another jurisdiction; nor
8 shall it be a defense that any profit was intended to be made in
9 another jurisdiction.

10 e. A person convicted of a second or subsequent offense under
11 this section shall be sentenced to a term of imprisonment [that shall
12 include a mandatory minimum term of one-third to one-half of the
13 sentence imposed, during which time the defendant shall not be
14 eligible for parole], and may be sentenced to an extended term of
15 imprisonment as set forth in subsection a. of N.J.S.2C:43-7,
16 notwithstanding the provisions of N.J.S.2C:44-3. The court may
17 not suspend or make any other non-custodial disposition of any
18 person sentenced as a second or subsequent offender pursuant to
19 this section. For the purposes of this section an offense is
20 considered a second or subsequent offense if the actor has at any
21 time been convicted pursuant to this section, or under any similar
22 statute of the United States, this State or any other state for an
23 offense that is substantially equivalent to this section.

24 (cf: P.L.2013, c.58, s.4)

25

26 3. Section 6 of P.L.2013, c.58 (C.2C:20-2.6) is amended to
27 read as follows:

28 6. a. A person who knowingly maintains or operates any
29 premises, place or facility used for the storage or resale of any
30 property stolen from a cargo carrier is guilty of a crime. Where the
31 property involved in the offense is valued at \$50,000 or more, the
32 offense is a crime of the second degree. Otherwise, the offense is a
33 crime of the third degree.

34 b. Notwithstanding the provisions of subsection a. of
35 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
36 or five times the retail value of the property stolen from the carrier
37 seized at the time of the arrest, whichever is greater.

38 c. A person convicted of a second or subsequent offense under
39 this section shall be sentenced to a term of imprisonment [that shall
40 include a mandatory minimum term of one-third to one-half of the
41 sentence imposed, during which time the defendant shall not be
42 eligible for parole], and may be sentenced to an extended term of
43 imprisonment as set forth subsection a. of N.J.S.2C:43-7,
44 notwithstanding the provision of N.J.S.2C:44-3. The court may not
45 suspend or make any other non-custodial disposition of any person
46 sentenced as a second or subsequent offender pursuant to this
47 section. For the purposes of this section an offense is considered a
48 second or subsequent offense if the actor has at any time been

1 convicted pursuant to this section, or under any similar statute of
2 the United States, this State or any other state for an offense that is
3 substantially equivalent to this section.

4 (cf: P.L.2013, c.58, s.6)

5

6 4. N.J.S.2C:20-11 is amended to read as follows:

7 2C:20-11. a. Definitions. The following definitions apply to
8 this section:

9 (1) "Shopping cart" means those push carts of the type or types
10 which are commonly provided by grocery stores, drug stores or
11 other retail mercantile establishments for the use of the public in
12 transporting commodities in stores and markets and, incidentally,
13 from the stores to a place outside the store;

14 (2) "Store or other retail mercantile establishment" means a
15 place where merchandise is displayed, held, stored or sold or
16 offered to the public for sale;

17 (3) "Merchandise" means any goods, chattels, foodstuffs or
18 wares of any type and description, regardless of the value thereof;

19 (4) "Merchant" means any owner or operator of any store or
20 other retail mercantile establishment, or any agent, servant,
21 employee, lessee, consignee, officer, director, franchisee or
22 independent contractor of such owner or proprietor;

23 (5) "Person" means any individual or individuals, including an
24 agent, servant or employee of a merchant where the facts of the
25 situation so require;

26 (6) "Conceal" means to conceal merchandise so that, although
27 there may be some notice of its presence, it is not visible through
28 ordinary observation;

29 (7) "Full retail value" means the merchant's stated or advertised
30 price of the merchandise;

31 (8) "Premises of a store or retail mercantile establishment"
32 means and includes but is not limited to, the retail mercantile
33 establishment; any common use areas in shopping centers and all
34 parking areas set aside by a merchant or on behalf of a merchant for
35 the parking of vehicles for the convenience of the patrons of such
36 retail mercantile establishment;

37 (9) "Under-ring" means to cause the cash register or other sale
38 recording device to reflect less than the full retail value of the
39 merchandise;

40 (10) "Antishoplifting or inventory control device
41 countermeasure" means any item or device which is designed,
42 manufactured, modified, or altered to defeat any antishoplifting or
43 inventory control device;

44 (11) "Organized retail theft enterprise" means any association
45 of two or more persons who engage in the conduct of or are
46 associated for the purpose of effectuating the transfer or sale of
47 shoplifted merchandise.

1 b. Shoplifting. Shoplifting shall consist of any one or more of
2 the following acts:

3 (1) For any person purposely to take possession of, carry away,
4 transfer or cause to be carried away or transferred, any merchandise
5 displayed, held, stored or offered for sale by any store or other retail
6 mercantile establishment with the intention of depriving the
7 merchant of the possession, use or benefit of such merchandise or
8 converting the same to the use of such person without paying to the
9 merchant the full retail value thereof.

10 (2) For any person purposely to conceal upon his person or
11 otherwise any merchandise offered for sale by any store or other
12 retail mercantile establishment with the intention of depriving the
13 merchant of the processes, use or benefit of such merchandise or
14 converting the same to the use of such person without paying to the
15 merchant the value thereof.

16 (3) For any person purposely to alter, transfer or remove any
17 label, price tag or marking indicia of value or any other markings
18 which aid in determining value affixed to any merchandise
19 displayed, held, stored or offered for sale by any store or other retail
20 mercantile establishment and to attempt to purchase such
21 merchandise personally or in consort with another at less than the
22 full retail value with the intention of depriving the merchant of all
23 or some part of the value thereof.

24 (4) For any person purposely to transfer any merchandise
25 displayed, held, stored or offered for sale by any store or other retail
26 merchandise establishment from the container in or on which the
27 same shall be displayed to any other container with intent to deprive
28 the merchant of all or some part of the retail value thereof.

29 (5) For any person purposely to under-ring with the intention of
30 depriving the merchant of the full retail value thereof.

31 (6) For any person purposely to remove a shopping cart from the
32 premises of a store or other retail mercantile establishment without
33 the consent of the merchant given at the time of such removal with
34 the intention of permanently depriving the merchant of the
35 possession, use or benefit of such cart.

36 c. Gradation. (1) Shoplifting constitutes a crime of the second
37 degree under subsection b. of this section if the full retail value of
38 the merchandise is \$75,000 or more, or the offense is committed in
39 furtherance of or in conjunction with an organized retail theft
40 enterprise and the full retail value of the merchandise is \$1,000 or
41 more.

42 (2) Shoplifting constitutes a crime of the third degree under
43 subsection b. of this section if the full retail value of the
44 merchandise exceeds \$500 but is less than \$75,000, or the offense
45 is committed in furtherance of or in conjunction with an organized
46 retail theft enterprise and the full retail value of the merchandise is
47 less than \$1,000.

1 (3) Shoplifting constitutes a crime of the fourth degree under
2 subsection b. of this section if the full retail value of the
3 merchandise is at least \$200 but does not exceed \$500.

4 (4) Shoplifting is a disorderly persons offense under subsection
5 b. of this section if the full retail value of the merchandise is less
6 than \$200.

7 The value of the merchandise involved in a violation of this
8 section may be aggregated in determining the grade of the offense
9 where the acts or conduct constituting a violation were committed
10 pursuant to one scheme or course of conduct, whether from the
11 same person or several persons, or were committed in furtherance
12 of or in conjunction with an organized retail theft enterprise.

13 Additionally, notwithstanding the term of imprisonment provided
14 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
15 offense shall be sentenced to perform community service as
16 follows: for a first offense, at least ten days of community service;
17 for a second offense, at least 15 days of community service; and for
18 a third or subsequent offense, a maximum of 25 days of community
19 service and any person convicted of a third or subsequent
20 shoplifting offense shall **【serve a minimum】** be sentenced to a term
21 of imprisonment **【of not less than 90 days】**.

22 d. Presumptions. Any person purposely concealing
23 unpurchased merchandise of any store or other retail mercantile
24 establishment, either on the premises or outside the premises of
25 such store or other retail mercantile establishment, shall be prima
26 facie presumed to have so concealed such merchandise with the
27 intention of depriving the merchant of the possession, use or benefit
28 of such merchandise without paying the full retail value thereof,
29 and the finding of such merchandise concealed upon the person or
30 among the belongings of such person shall be prima facie evidence
31 of purposeful concealment; and if such person conceals, or causes
32 to be concealed, such merchandise upon the person or among the
33 belongings of another, the finding of the same shall also be prima
34 facie evidence of willful concealment on the part of the person so
35 concealing such merchandise.

36 e. A law enforcement officer, or a special officer, or a
37 merchant, who has probable cause for believing that a person has
38 willfully concealed unpurchased merchandise and that he can
39 recover the merchandise by taking the person into custody, may, for
40 the purpose of attempting to effect recovery thereof, take the person
41 into custody and detain him in a reasonable manner for not more
42 than a reasonable time, and the taking into custody by a law
43 enforcement officer or special officer or merchant shall not render
44 such person criminally or civilly liable in any manner or to any
45 extent whatsoever.

46 Any law enforcement officer may arrest without warrant any
47 person he has probable cause for believing has committed the
48 offense of shoplifting as defined in this section.

1 A merchant who causes the arrest of a person for shoplifting, as
2 provided for in this section, shall not be criminally or civilly liable
3 in any manner or to any extent whatsoever where the merchant has
4 probable cause for believing that the person arrested committed the
5 offense of shoplifting.

6 f. Any person who possesses or uses any antishoplifting or
7 inventory control device countermeasure within any store or other
8 retail mercantile establishment is guilty of a disorderly persons
9 offense.

10 (cf: P.L.2006, c.56, s.1)

11

12 5. Section 4 of P.L.1984, c.184 (C.2C:20-25) is amended to
13 read as follows:

14 4. A person is guilty of computer criminal activity if the person
15 purposely or knowingly and without authorization, or in excess of
16 authorization:

17 a. Accesses any data, data base, computer storage medium,
18 computer program, computer software, computer equipment,
19 computer, computer system or computer network;

20 b. Alters, damages or destroys any data, data base, computer,
21 computer storage medium, computer program, computer software,
22 computer system or computer network, or denies, disrupts or
23 impairs computer services, including access to any part of the
24 Internet, that are available to any other user of the computer
25 services;

26 c. Accesses or attempts to access any data, data base,
27 computer, computer storage medium, computer program, computer
28 software, computer equipment, computer system or computer
29 network for the purpose of executing a scheme to defraud, or to
30 obtain services, property, personal identifying information, or
31 money, from the owner of a computer or any third party;

32 d. (Deleted by amendment, P.L.2003, c.39).

33 e. Obtains, takes, copies or uses any data, data base, computer
34 program, computer software, personal identifying information, or
35 other information stored in a computer, computer network,
36 computer system, computer equipment or computer storage
37 medium; or

38 f. Accesses and recklessly alters, damages or destroys any
39 data, data base, computer, computer storage medium, computer
40 program, computer software, computer equipment, computer system
41 or computer network.

42 g. A violation of subsection a. of this section is a crime of the
43 third degree. A violation of subsection b. is a crime of the second
44 degree. A violation of subsection c. is a crime of the third degree,
45 except that it is a crime of the second degree if the value of the
46 services, property, personal identifying information, or money
47 obtained or sought to be obtained exceeds \$5,000. A violation of
48 subsection e. is a crime of the third degree, except that it is a crime

1 of the second degree if the data, data base, computer program,
2 computer software, or information:

3 (1) is or contains personal identifying information, medical
4 diagnoses, treatments or other medical information concerning an
5 identifiable person;

6 (2) is or contains governmental records or other information that
7 is protected from disclosure by law, court order or rule of court; or

8 (3) has a value exceeding \$5,000.

9 A violation of subsection f. is a crime of the fourth degree,
10 except that it is a crime of the third degree if the value of the
11 damage exceeds \$5,000.

12 A violation of any subsection of this section is a crime of the
13 first degree if the offense results in:

14 (1) a substantial interruption or impairment of public
15 communication, transportation, supply of water, gas or power, or
16 other public service. The term "substantial interruption or
17 impairment" shall mean such interruption or impairment that:

18 (a) affects 10 or more structures or habitations;

19 (b) lasts for two or more hours; or

20 (c) creates a risk of death or significant bodily injury to any
21 person;

22 (2) damages or loss in excess of \$250,000; or

23 (3) significant bodily injury to any person.

24 **【Every sentence of imprisonment for a crime of the first degree**
25 **committed in violation of this section shall include a minimum term**
26 **of one-third to one-half of the sentence imposed, during which term**
27 **the defendant shall not be eligible for parole.】**

28 h. Every sentence imposed upon a conviction pursuant to this
29 section shall, if the victim is a government agency, include a period
30 of imprisonment. **【The period of imprisonment shall include a**
31 **minimum term of one-third to one-half of the sentence imposed,**
32 **during which term the defendant shall not be eligible for parole.】**

33 The victim shall be deemed to be a government agency if a
34 computer, computer network, computer storage medium, computer
35 system, computer equipment, computer program, computer
36 software, computer data or data base that is a subject of the crime is
37 owned, operated or maintained by or on behalf of a governmental
38 agency or unit of State or local government or a public authority.
39 The defendant shall be strictly liable under this subsection and it
40 shall not be a defense that the defendant did not know or intend that
41 the victim was a government agency, or that the defendant intended
42 that there be other victims of the crime.

43 A violation of any subsection of this section shall be a distinct
44 offense from a violation of any other subsection of this section, and
45 a conviction for a violation of any subsection of this section shall
46 not merge with a conviction for a violation of any other subsection
47 of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for
48 conspiring or attempting to violate any subsection of this section or

1 section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence
2 shall be imposed for each such conviction.

3 When a violation of any subsection of this section involves an
4 offense committed against a person under 18 years of age, the
5 violation shall constitute an aggravating circumstance to be
6 considered by the court when determining the appropriate sentence
7 to be imposed.

8 (cf: P.L.2003, c.39, s.3)

9

10 6. Section 10 of P.L.1984, c.184 (C.2C:20-31) is amended to
11 read as follows:

12 10. a. A person is guilty of a crime of the third degree if the
13 person purposely or knowingly and without authorization, or in
14 excess of authorization, accesses any data, data base, computer,
15 computer storage medium, computer software, computer equipment,
16 computer system and knowingly or recklessly discloses or causes to
17 be disclosed any data, data base, computer software, computer
18 programs or personal identifying information.

19 b. A person is guilty of a crime of the second degree if the
20 person purposely or knowingly and without authorization, or in
21 excess of authorization, accesses any data, data base, computer,
22 computer storage medium, computer software, computer equipment,
23 computer system or computer network and purposely or knowingly
24 discloses or causes to be disclosed any data, data base, computer
25 software, computer program or other information that is protected
26 from disclosure by any law, court order or rule of court. Every
27 sentence imposed upon a conviction pursuant to this subsection
28 shall include a period of imprisonment. **【The period of**
29 **imprisonment shall include a minimum term of one-third to one-**
30 **half of the sentence imposed, during which term the defendant shall**
31 **not be eligible for parole.】**

32 (cf: P.L.2003, c.39, s.4)

33

34 7. Section 5 of P.L.1994, c.121 (2C:21-27) is amended to read
35 as follows:

36 5. a. The offense defined in subsections a. b. and c. of section
37 3 of P.L.1994, c.121 (C.2C:21-25) constitutes a crime of the first
38 degree if the amount involved is \$500,000.00 or more. If the
39 amount involved is at least \$75,000.00 but less than \$500,000.00
40 the offense constitutes a crime of the second degree; otherwise, the
41 offense constitutes a crime of the third degree. The offense defined
42 in subsection e. of section 3 of P.L.1994, c.121 (C.2C:21-25)
43 constitutes a crime of the third degree. Notwithstanding the
44 provisions of N.J.S.2C:43-3, the court may also impose a fine up to
45 \$500,000.00. The amount involved in a prosecution for violation of
46 this section shall be determined by the trier of fact. Amounts
47 involved in transactions conducted pursuant to one scheme or
48 course of conduct may be aggregated in determining the degree of

1 the offense. **【**Notwithstanding the provisions of paragraph (1) of
2 subsection a. of N.J.S.2C:43-6, a person convicted of a crime of the
3 first degree pursuant to the provisions of this subsection shall be
4 sentenced to a term of imprisonment that shall include the
5 imposition of a minimum term which shall be fixed at, or between,
6 one-third and one-half of the sentence imposed, during which time
7 the defendant shall not be eligible for parole.**】**

8 b. In addition to any other dispositions authorized by this Title,
9 upon conviction of a violation of this section, the court may
10 sentence the defendant to pay an amount as calculated pursuant to
11 subsection a. of section 6 of P.L.1994, c.121 (C.2C:21-28).

12 c. Notwithstanding N.J.S.2C:1-8 or any other provision of law,
13 a conviction of an offense defined in this section shall not merge
14 with the conviction of any other offense constituting the criminal
15 activity involved or from which the property was derived, and a
16 conviction of any offense constituting the criminal activity involved
17 or from which the property was derived shall not merge with a
18 conviction of an offense defined in section 3 of P.L.1994, c.121
19 (C.2C:21-25), and the sentence imposed upon a conviction of any
20 offense defined in section 3 of P.L.1994, c.121 (C.2C:21-25) shall
21 be ordered to be served consecutively to that imposed for a
22 conviction of any offense constituting the criminal activity involved
23 or from which the property was derived. Nothing in P.L.1994, c.121
24 (C.2C:21-23 et seq.) shall be construed in any way to preclude or
25 limit a prosecution or conviction for any other offense defined in
26 this Title or any other criminal law of this State.

27 (cf: P.L.2002, c.26, s.15)

28

29 8. N.J.S.2C:29-3 is amended to read as follows:

30 2C:29-3. Hindering Apprehension or Prosecution. a. A person
31 commits an offense if, with purpose to hinder the detention,
32 apprehension, investigation, prosecution, conviction or punishment
33 of another for an offense or violation of Title 39 of the Revised
34 Statutes or a violation of chapter 33A of Title 17 of the Revised
35 Statutes he:

36 (1) Harbors or conceals the other;

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

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

46 (4) Warns the other of impending discovery or apprehension,
47 except that this paragraph does not apply to a warning given in

1 connection with an effort to bring another into compliance with
2 law;

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

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

9 (7) Gives false information to a law enforcement officer or a
10 civil State investigator assigned to the Office of the Insurance Fraud
11 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
12 16).

13 An offense under paragraph (5) of subsection a. of this section is
14 a crime of the second degree, unless the actor is a spouse, domestic
15 partner, partner in a civil union, parent or child to the person aided
16 who is the victim of the offense, in which case the offense is a
17 crime of the fourth degree. An offense under paragraph (3) or (7) of
18 subsection a. of this section is a crime of the third degree if the
19 conduct which the actor knows has been charged or is liable to be
20 charged against another person would constitute leaving the scene
21 of a motor vehicle accident that results in the death of another
22 person in violation of section 1 of P.L.1997, c.111 (C.2C:11-5.1).
23 Notwithstanding the presumption of non-imprisonment for certain
24 offenders set forth in subsection e. of N.J.S.2C:44-1, the actor shall
25 serve a term of imprisonment], which shall be fixed at not less than
26 one year, during which the actor shall not be eligible for parole].
27 Otherwise, the offense under subsection a. of this section is a crime
28 of the third degree if the conduct which the actor knows has been
29 charged or is liable to be charged against the person aided would
30 constitute a crime of the second degree or greater, unless the actor
31 is a spouse, domestic partner, partner in a civil union, parent or
32 child of the person aided, in which case the offense is a crime of the
33 fourth degree. The offense is a crime of the fourth degree if such
34 conduct would constitute a crime of the third degree. Otherwise it is
35 a disorderly persons offense.

36 b. A person commits an offense if, with purpose to hinder his
37 own detention, apprehension, investigation, prosecution, conviction
38 or punishment for an offense or violation of Title 39 of the Revised
39 Statutes or a violation of chapter 33A of Title 17 of the Revised
40 Statutes, he:

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

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

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

6 (4) Gives false information to a law enforcement officer or a
7 civil State investigator assigned to the Office of the Insurance Fraud
8 Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-
9 16).

10 An offense under paragraph (3) of subsection b. of this section is
11 a crime of the second degree. An offense under paragraph (1) or (4)
12 of subsection b. of this section is a crime of the third degree if the
13 conduct which the actor knows has been charged or is liable to be
14 charged against him would constitute leaving the scene of a motor
15 vehicle accident that results in the death of another person in
16 violation of section 1 of P.L.1997, c.111 (C.2C:11-5.1).
17 Notwithstanding the presumption of non-imprisonment for certain
18 offenders set forth in subsection e. of N.J.S.2C:44-1, the actor shall
19 serve a term of imprisonment [which shall be fixed at not less than
20 one year, during which the actor shall not be eligible for parole].

21 Otherwise, the offense under subsection b. of this section is a
22 crime of the third degree if the conduct which the actor knows has
23 been charged or is liable to be charged against him would constitute
24 a crime of the second degree or greater. The offense is a crime of
25 the fourth degree if such conduct would constitute a crime of the
26 third degree. Otherwise it is a disorderly persons offense.

27 (cf: P.L.2015, c.265)

28
29 9. N.J.S.2C:29-6 is amended to read as follows:

30 2C:29-6. a. Escape implements. (1) A person commits an
31 offense if he knowingly and unlawfully introduces within an
32 institution for commitment of persons under N.J.S. 2C:4-8 or a
33 detention facility, or knowingly and unlawfully provides an inmate
34 with any weapon, tool, instrument, document or other thing which
35 may be useful for escape. The offense is a crime of the second
36 degree and shall be punished by a minimum term of imprisonment,
37 which shall be fixed at no less than three years if the item is a
38 weapon as defined by N.J.S. 2C:39-1(r) and any person suffers
39 bodily injury or death as a result. Otherwise it is a crime of the
40 third degree.

41 (2) An inmate of an institution or facility defined by paragraph
42 (1) of subsection a. of this section commits an offense if he
43 knowingly and unlawfully procures, makes, or otherwise provides
44 himself with, or has in his possession, any such implement of
45 escape. The offense is a crime of the second degree and shall be
46 punished by a minimum term of imprisonment, which shall be fixed
47 at no less than three years if the item is a weapon as defined by

1 N.J.S. 2C:39-1(r) and any person suffers bodily injury or death as a
2 result. Otherwise it is a crime of the third degree.

3 "Unlawfully" means surreptitiously or contrary to law, regulation
4 or order of the detaining authority.

5 b. Other contraband. A person commits a petty disorderly
6 persons offense if he provides an inmate with any other thing which
7 the actor knows or should know it is unlawful for the inmate to
8 possess.

9 (cf: P.L.1983, c.87)

10

11 10. N.J.S.2C:35-3 is amended to read as follows:

12 2C:35-3. Leader of Narcotics Trafficking Network.

13 As used in this section:

14 "Financier" means a person who, with the intent to derive a
15 profit, provides money or credit or other thing of value in order to
16 purchase a controlled dangerous substance or an immediate
17 precursor, or otherwise to finance the operations of a drug
18 trafficking network.

19 A person is a leader of a narcotics trafficking network if he
20 conspires with two or more other persons in a scheme or course of
21 conduct to unlawfully manufacture, distribute, dispense, bring into
22 or transport in this State methamphetamine, lysergic acid
23 diethylamide, phencyclidine, gamma hydroxybutyrate,
24 flunitrazepam or any controlled dangerous substance classified in
25 Schedule I or II, or any controlled substance analog thereof as a
26 financier, or as an organizer, supervisor or manager of at least one
27 other person.

28 Leader of narcotics trafficking network is a crime of the first
29 degree and upon conviction thereof, except as may be provided by
30 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of
31 between twenty-five years and life imprisonment [during which the
32 person must serve 25 years before being eligible for parole].
33 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
34 the court may also impose a fine not to exceed \$750,000.00 or five
35 times the street value of the controlled dangerous substance,
36 controlled substance analog, gamma hydroxybutyrate or
37 flunitrazepam involved, whichever is greater.

38 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
39 leader of narcotics trafficking network shall not merge with the
40 conviction for any offense which is the object of the conspiracy.
41 Nothing contained in this section shall prohibit the court from
42 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
43 section be construed in any way to preclude or limit the prosecution
44 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
45 any prosecution or conviction under N.J.S.2C:35-4 (maintaining or
46 operating a CDS production facility), N.J.S.2C:35-5
47 (manufacturing, distributing or dispensing), N.J.S.2C:35-6
48 (employing a juvenile in a drug distribution scheme), N.J.S.2C:35-9

1 (strict liability for drug induced death), N.J.S.2C:41-2 (racketeering
2 activities) or subsection g. of N.J.S.2C:5-2 (leader of organized
3 crime).

4 It shall not be necessary in any prosecution under this section for
5 the State to prove that any intended profit was actually realized. The
6 trier of fact may infer that a particular scheme or course of conduct
7 was undertaken for profit from all of the attendant circumstances,
8 including but not limited to the number of persons involved in the
9 scheme or course of conduct, the actor's net worth and his
10 expenditures in relation to his legitimate sources of income, the
11 amount or purity of the specified controlled dangerous substance,
12 controlled substance analog, gamma hydroxybutyrate or
13 flunitrazepam involved, or the amount of cash or currency involved.

14 It shall not be a defense to a prosecution under this section that
15 such controlled dangerous substance, controlled substance analog,
16 gamma hydroxybutyrate or flunitrazepam was brought into or
17 transported in this State solely for ultimate distribution or
18 dispensing in another jurisdiction; nor shall it be a defense that any
19 profit was intended to be made in another jurisdiction.

20 It shall not be a defense that the defendant was subject to the
21 supervision or management of another, nor that another person or
22 persons were also leaders of the narcotics trafficking network.
23 (cf: P.L.1999, c.133, s.1)

24

25 11. N.J.S.2C:35-4 is amended to read as follows:

26 2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-
27 1 et seq.), any person who knowingly maintains or operates any
28 premises, place or facility used for the manufacture of
29 methamphetamine, lysergic acid diethylamide, phencyclidine,
30 gamma hydroxybutyrate, flunitrazepam, marijuana in an amount
31 greater than five pounds or ten plants or any substance listed in
32 Schedule I or II, or the analog of any such substance, or any person
33 who knowingly aids, promotes, finances or otherwise participates in
34 the maintenance or operations of such premises, place or facility, is
35 guilty of a crime of the first degree and shall, except as provided in
36 N.J.S.2C:35-12, be sentenced to a term of imprisonment [which
37 shall include the imposition of a minimum term which shall be
38 fixed at, or between, one-third and one-half of the sentence
39 imposed, during which the defendant shall be ineligible for parole].
40 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
41 the court may also impose a fine not to exceed \$750,000.00 or five
42 times the street value of all controlled dangerous substances,
43 controlled substance analogs, gamma hydroxybutyrate or
44 flunitrazepam at any time manufactured or stored at such premises,
45 place or facility, whichever is greater.

46 (cf: P.L.1999, c.133, s.2)

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12. N.J.S.2C:35-5 is amended to read as follows:

2C:35-5. Manufacturing, Distributing or Dispensing.

a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

(1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, or analogs, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecogine, or 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxyamphetamine, in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. The defendant shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court. [The term of imprisonment shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, during which the defendant shall be ineligible for parole.] Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000 may be imposed;

(2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants is guilty of a crime of the second degree;

(3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$75,000 may be imposed;

(4) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of one ounce or more including any adulterants or dilutants is guilty of a crime of the second degree;

(5) A substance classified as a narcotic drug in Schedule I or II other than those specifically covered in this section, or the analog of any such substance, in a quantity of less than one ounce including any adulterants or dilutants is guilty of a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$75,000 may be imposed;

1 (6) Lysergic acid diethylamide, or its analog, in a quantity of
2 100 milligrams or more including any adulterants or dilutants, or
3 phencyclidine, or its analog, in a quantity of 10 grams or more
4 including any adulterants or dilutants, is guilty of a crime of the
5 first degree. Except as provided in N.J.S.2C:35-12, the court shall
6 impose a term of imprisonment [which shall include the imposition
7 of a minimum term, fixed at, or between, one-third and one-half of
8 the sentence imposed by the court, during which the defendant shall
9 be ineligible for parole]. Notwithstanding the provisions of
10 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000 may be
11 imposed;

12 (7) Lysergic acid diethylamide, or its analog, in a quantity of
13 less than 100 milligrams including any adulterants or dilutants, or
14 where the amount is undetermined, or phencyclidine, or its analog,
15 in a quantity of less than 10 grams including any adulterants or
16 dilutants, or where the amount is undetermined, is guilty of a crime
17 of the second degree;

18 (8) Methamphetamine, or its analog, or phenyl-2-propanone
19 (P2P), in a quantity of five ounces or more including any
20 adulterants or dilutants is guilty of a crime of the first degree.
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
22 fine of up to \$300,000 may be imposed;

23 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
24 (P2P), in a quantity of one-half ounce or more but less than five
25 ounces including any adulterants or dilutants is guilty of a crime of
26 the second degree;

27 (b) Methamphetamine, or its analog, or phenyl-2-propanone
28 (P2P), in a quantity of less than one-half ounce including any
29 adulterants or dilutants is guilty of a crime of the third degree
30 except that notwithstanding the provisions of subsection b. of
31 N.J.S.2C:43-3, a fine of up to \$75,000 may be imposed;

32 (10) (a) Marijuana in a quantity of 25 pounds or more including
33 any adulterants or dilutants, or 50 or more marijuana plants,
34 regardless of weight, or hashish in a quantity of five pounds or
35 more including any adulterants or dilutants, is guilty of a crime of
36 the first degree. Notwithstanding the provisions of subsection a. of
37 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed;

38 (b) Marijuana in a quantity of five pounds or more but less than
39 25 pounds including any adulterants or dilutants, or 10 or more but
40 fewer than 50 marijuana plants, regardless of weight, or hashish in a
41 quantity of one pound or more but less than five pounds, including
42 any adulterants and dilutants, is guilty of a crime of the second
43 degree;

44 (11) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
45 23.1 et al.), marijuana in a quantity of one ounce or more but less
46 than five pounds including any adulterants or dilutants, or hashish
47 in a quantity of five grams or more but less than one pound
48 including any adulterants or dilutants, is guilty of a crime of the

1 third degree except that, notwithstanding the provisions of
2 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
3 imposed;

4 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
5 23.1 et al.), marijuana in a quantity of more than one ounce but less
6 than five pounds including any adulterants or dilutants, or hashish
7 in a quantity of more than five grams but less than one pound
8 including any adulterants or dilutants, is guilty of a crime of the
9 third degree except that, notwithstanding the provisions of
10 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
11 imposed;

12 (12) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
13 23.1 et al.), marijuana in a quantity of less than one ounce including
14 any adulterants or dilutants, or hashish in a quantity of less than five
15 grams including any adulterants or dilutants, is guilty of a crime of
16 the fourth degree;

17 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
18 23.1 et al.), marijuana in a quantity of one ounce or less including
19 any adulterants or dilutants, or hashish in a quantity of five grams
20 or less including any adulterants or dilutants, is, for a first offense,
21 subject to a written warning, which also indicates that any
22 subsequent violation is a crime punishable by a term of
23 imprisonment, a fine, or both, and for a second or subsequent
24 offense, is guilty of a crime of the fourth degree;

25 (i) The odor of marijuana or hashish, or burnt marijuana or
26 hashish, shall not constitute reasonable articulable suspicion to
27 initiate a search of a person to determine a violation of
28 subparagraph (b) of paragraph (12) of this subsection. A person
29 who violates this subparagraph shall not be subject to arrest,
30 detention, or otherwise be taken into custody, unless the person is
31 being arrested, detained, or otherwise taken into custody for also
32 committing another violation of law for which that action is legally
33 permitted or required;

34 (ii) A person shall not be deprived of any legal or civil right,
35 privilege, benefit, or opportunity provided pursuant to any law
36 solely by reason of committing a violation of subparagraph (b) of
37 paragraph (12) of this subsection, nor shall committing one or more
38 violations modify any legal or civil right, privilege, benefit, or
39 opportunity provided pursuant to any law, including, but not limited
40 to, the granting, renewal, forfeiture, or denial of a license, permit,
41 or certification, qualification for and the receipt, alteration,
42 continuation, or denial of any form of financial assistance, housing
43 assistance, or other social services, rights of or custody by a
44 biological parent, or adoptive or foster parent, or other legal
45 guardian of a child or newborn infant, or pregnant woman, in any
46 action or proceeding by the Division of Child Protection and
47 Permanency in the Department of Children and Families, or

1 qualification, approval, or disapproval to serve as a foster parent or
2 other legal guardian;

3 (iii) All local and county law enforcement authorities shall,
4 following the submission process used for the uniform crime
5 reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et
6 seq.), submit a quarterly report to the Uniform Crime Reporting
7 Unit, within the Division of State Police in the Department of Law
8 and Public Safety, or to another designated recipient determined by
9 the Attorney General, containing the number of violations of
10 subparagraph (b) of paragraph (12) of this subsection committed
11 within their respective jurisdictions, plus the race, ethnicity, gender,
12 and age of each person committing a violation, and the disposition
13 of each person's violation. These violations and associated
14 information, along with a quarterly summary of violations
15 investigated, and associated information collected, by the Division
16 of State Police for the same period shall be summarized by county
17 and municipality in an annual report, and both quarterly summaries
18 and annual reports shall be made available at no cost to the public
19 on the Division of State Police's Internet website;

20 (13) Any other controlled dangerous substance classified in
21 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
22 third degree, except that, notwithstanding the provisions of
23 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
24 imposed; or

25 (14) Any Schedule V substance, or its analog, is guilty of a
26 crime of the fourth degree except that, notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
28 \$25,000 may be imposed.

29 c. Where the degree of the offense for violation of this section
30 depends on the quantity of the substance, the quantity involved
31 shall be determined by the trier of fact, other than with respect to a
32 first violation of subparagraph (b) of paragraph (12) of subsection
33 b. of this section which is subject to a written warning as set forth in
34 that subparagraph. Where the indictment or accusation so provides,
35 the quantity involved in individual acts of manufacturing,
36 distribution, dispensing or possessing with intent to distribute may
37 be aggregated in determining the grade of the offense, whether
38 distribution or dispensing is to the same person or several persons,
39 provided that each individual act of manufacturing, distribution,
40 dispensing or possession with intent to distribute was committed
41 within the applicable statute of limitations.

42 (cf: P.L.2021, c.19, s.1)

43

44 13. N.J.S.2C:35-6 is amended to read as follows:

45 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

46 Any person being at least 18 years of age who knowingly uses,
47 solicits, directs, hires or employs a person 17 years of age or
48 younger to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5,

1 is guilty of a crime of the second degree and shall, except as
2 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
3 **【**which shall include the imposition of a minimum term which shall
4 be fixed at, or between, one-third and one-half of the sentence
5 imposed, or five years, whichever is greater, during which the
6 defendant shall be ineligible for parole**】**. Notwithstanding the
7 provisions of subsection a. of N.J.S.2C:43-3, the court may also
8 impose a fine not to exceed \$500,000.00 or five times the street
9 value of the controlled dangerous substance or controlled substance
10 analog involved, whichever is greater.

11 It shall be no defense to a prosecution under this section that the
12 actor mistakenly believed that the person which the actor used,
13 solicited, directed, hired or employed was 18 years of age or older,
14 even if such mistaken belief was reasonable.

15 Nothing in this section shall be construed to preclude or limit a
16 prosecution or conviction for a violation of any offense defined in
17 this chapter pursuant to N.J.S.2C:2-6 or any other provision of law
18 governing an actor's liability for the conduct of another, and,
19 notwithstanding the provisions of N.J.S.2C:1-8 or any other
20 provision of law, a conviction arising under this section shall not
21 merge with a conviction for a violation of N.J.S.2C:35-3 (leader of
22 narcotics trafficking network), N.J.S.2C:35-4 (maintaining or
23 operating a CDS production facility), N.J.S.2C:35-5
24 (manufacturing, distributing or dispensing), or N.J.S.2C:35-9 (strict
25 liability for drug induced death).

26 (cf: P.L.1997, c.181, s.4)

27

28 14. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
29 as follows:

30 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
31 by distributing, dispensing or possessing with intent to distribute a
32 controlled dangerous substance or controlled substance analog
33 while on any school property used for school purposes which is
34 owned by or leased to any elementary or secondary school or school
35 board, or within 1,000 feet of such school property or a school bus,
36 or while on any school bus, is guilty of a crime of the third degree
37 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
38 the court to a term of imprisonment, notwithstanding the
39 presumption of non-imprisonment for certain offenders set forth in
40 subsection e. of N.J.S. 2C:44-1. **【**Where the violation involves less
41 than one ounce of marijuana, the term of imprisonment shall
42 include the imposition of a minimum term which shall be fixed at,
43 or between, one-third and one-half of the sentence imposed, or one
44 year, whichever is greater, during which the defendant shall be
45 ineligible for parole. In all other cases, the term of imprisonment
46 shall include the imposition of a minimum term which shall be
47 fixed at, or between, one-third and one-half of the sentence
48 imposed, or three years, whichever is greater, during which the

1 defendant shall be ineligible for parole.】 Notwithstanding the
2 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
3 \$150,000 may also be imposed upon any conviction for a violation
4 of this section.

5 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
6 subsection a. of this section, the court may 【waive or reduce the
7 minimum term of parole ineligibility required under subsection a. of
8 this section or】 place the defendant on probation pursuant to
9 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
10 determination, the court shall consider:

11 (a) the extent of the defendant's prior criminal record and the
12 seriousness of the offenses for which the defendant has been
13 convicted;

14 (b) the specific location of the present offense in relation to the
15 school property, including distance from the school and the
16 reasonable likelihood of exposing children to drug-related activities
17 at that location;

18 (c) whether school was in session at the time of the offense; and

19 (d) whether children were present at or in the immediate vicinity
20 of the location when the offense took place.

21 (2) The court shall not 【waive or reduce the minimum term of
22 parole ineligibility or】 sentence the defendant to probation if it
23 finds that:

24 (a) the offense took place while on any school property used for
25 school purposes which is owned by or leased to any elementary or
26 secondary school or school board, or while on any school bus; or

27 (b) the defendant in the course of committing the offense used
28 or threatened violence or was in possession of a firearm.

29 If the court at sentencing 【elects not to impose a minimum term
30 of imprisonment and parole ineligibility pursuant to this subsection,
31 imposes a term of parole ineligibility less than the minimum term
32 prescribed in subsection a. of this section, or】 places the defendant
33 on probation for a violation of subsection a. of this section, the
34 sentence shall not become final for 10 days in order to permit the
35 prosecution to appeal the court's finding and the sentence imposed.
36 The Attorney General shall develop guidelines to ensure the
37 uniform exercise of discretion in making determinations regarding
38 whether to appeal a decision to 【waive or reduce the minimum term
39 of parole ineligibility or】 place the defendant on probation.

40 Nothing in this subsection shall be construed to establish a basis
41 for overcoming a presumption of imprisonment authorized or
42 required by subsection d. of N.J.S.2C:44-1, or a basis for not
43 imposing a term of imprisonment or term of parole ineligibility
44 authorized or required to be imposed pursuant to subsection f. of
45 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
46 set forth in this subsection.

1 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
2 provisions of law, a conviction arising under this section shall not
3 merge with a conviction for a violation of subsection a. of
4 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
5 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

6 d. It shall be no defense to a prosecution for a violation of this
7 section that the actor was unaware that the prohibited conduct took
8 place while on or within 1,000 feet of any school property. Nor
9 shall it be a defense to a prosecution under this section, or under
10 any other provision of this title, that no juveniles were present on
11 the school property at the time of the offense or that the school was
12 not in session.

13 e. It is an affirmative defense to prosecution for a violation of
14 this section that the prohibited conduct took place entirely within a
15 private residence, that no person 17 years of age or younger was
16 present in such private residence at any time during the commission
17 of the offense, and that the prohibited conduct did not involve
18 distributing, dispensing or possessing with the intent to distribute or
19 dispense any controlled dangerous substance or controlled
20 substance analog for profit. The affirmative defense established in
21 this section shall be proved by the defendant by a preponderance of
22 the evidence. Nothing herein shall be construed to establish an
23 affirmative defense with respect to a prosecution for an offense
24 defined in any other section of this chapter.

25 f. In a prosecution under this section, a map produced or
26 reproduced by any municipal or county engineer for the purpose of
27 depicting the location and boundaries of the area on or within 1,000
28 feet of any property used for school purposes which is owned by or
29 leased to any elementary or secondary school or school board, or a
30 true copy of such a map, shall, upon proper authentication, be
31 admissible and shall constitute prima facie evidence of the location
32 and boundaries of those areas, provided that the governing body of
33 the municipality or county has adopted a resolution or ordinance
34 approving the map as official finding and record of the location and
35 boundaries of the area or areas on or within 1,000 feet of the school
36 property. Any map approved pursuant to this section may be
37 changed from time to time by the governing body of the
38 municipality or county. The original of every map approved or
39 revised pursuant to this section, or a true copy thereof, shall be filed
40 with the clerk of the municipality or county, and shall be
41 maintained as an official record of the municipality or county.
42 Nothing in this section shall be construed to preclude the
43 prosecution from introducing or relying upon any other evidence or
44 testimony to establish any element of this offense; nor shall this
45 section be construed to preclude the use or admissibility of any map
46 or diagram other than one which has been approved by the
47 governing body of a municipality or county, provided that the map

1 or diagram is otherwise admissible pursuant to the Rules of
2 Evidence.

3 (cf: P.L.2009, c.192, s.1)

4

5 15. N.J.S.2C:35-8 is amended to read as follows:

6 2C:35-8. Distribution to Persons Under Age 18; Enhanced
7 Punishment. Upon the application of the prosecuting attorney, any
8 person being at least 18 years of age who has been convicted for
9 violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L.1987,
10 c.101 (C.2C:35-7) by distributing a controlled dangerous substance
11 or controlled substance analog to a pregnant female or a person 17
12 years of age or younger shall, except as provided in N.J.S. 2C:35-
13 12, be subject to twice the term of imprisonment, fine and penalty
14 **【**, including twice the term of parole ineligibility, if any,**】**
15 authorized or required to be imposed by subsection b. of N.J.S.
16 2C:35-5 or section 1 of P.L.1987, c.101 (C.2C:35-7) or any other
17 provision of this title. In addition, the presumption of non-
18 imprisonment for certain offenders set forth in subsection e. of
19 N.J.S. 2C:44-1 shall not apply to any person subject to enhanced
20 punishment pursuant to this section.

21 The court shall not impose more than one enhanced sentence
22 pursuant to this section. If the defendant is convicted of more than
23 one offense which is otherwise subject to enhanced punishment
24 pursuant to this section, the court shall impose enhanced
25 punishment based upon the most serious such offense for which the
26 defendant was convicted **【**, or, where applicable, the offense which
27 mandates the imposition of the longest term of parole ineligibility**】**.

28 Notwithstanding the provisions of paragraph (2) of subsection a.
29 of 2C:44-5, nothing herein shall prevent the court from also
30 imposing an extended term pursuant to subsection f. of N.J.S.
31 2C:43-6. The court shall not impose an enhanced sentence pursuant
32 to this section unless the prosecutor has established the ground
33 therefor by a preponderance of the evidence at a hearing, which
34 may occur at the time of sentencing. In making its finding, the
35 court shall take judicial notice of any evidence, testimony or
36 information adduced at the trial, plea hearing or other court
37 proceedings, and shall also consider the presentence report and any
38 other relevant information. It shall not be relevant to the imposition
39 of enhanced punishment pursuant to this section that the defendant
40 mistakenly believed that the recipient of the substance was 18 years
41 of age or older, even if the mistaken belief was reasonable. Nor
42 shall it be relevant to the imposition of enhanced punishment
43 pursuant to this section that the defendant did not know that the
44 recipient was pregnant.

45 (cf: P.L.1988, c.44, s.4)

46

47 16. N.J.S.2C:35-12 is amended to read as follows:

48 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

1 Whenever an offense defined in this chapter specifies a
2 mandatory sentence of imprisonment [which includes a minimum
3 term during which the defendant shall be ineligible for parole], a
4 mandatory extended term [which includes a period of parole
5 ineligibility], or an anti-drug profiteering penalty pursuant to
6 section 2 of P.L.1997, c.187 (N.J.S.2C:35A-1 et seq.), the court
7 upon conviction shall impose the mandatory sentence of
8 imprisonment or anti-drug profiteering penalty unless the defendant
9 has pleaded guilty pursuant to a negotiated agreement or, in cases
10 resulting in trial, the defendant and the prosecution have entered
11 into a post-conviction agreement, which provides for a lesser
12 sentence [, period of parole ineligibility] or anti-drug profiteering
13 penalty. The negotiated plea or post-conviction agreement may
14 provide for a specified term of imprisonment within the range of
15 ordinary or extended sentences authorized by law, [a specified
16 period of parole ineligibility,] a specified fine, a specified anti-drug
17 profiteering penalty, or other disposition. In that event, the court at
18 sentencing shall not impose a lesser term of imprisonment, [lesser
19 period of parole ineligibility,] lesser fine or lesser anti-drug
20 profiteering penalty than that expressly provided for under the
21 terms of the plea or post-conviction agreement.

22 (cf: P.L.1997, c.187, s.1)

23
24 17. N.J.S.2C:43-6 is amended to read as follows:

25 2C:43-6. a. Except as otherwise provided, a person who has
26 been convicted of a crime may be sentenced to imprisonment, as
27 follows:

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

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

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

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

40 b. As part of a sentence for any crime, where the court is
41 clearly convinced that the aggravating factors substantially
42 outweigh the mitigating factors, as set forth in subsections a. and b.
43 of 2C:44-1, or the court finds that the aggravating factor set forth in
44 paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, the court
45 may fix a minimum term not to exceed one-half of the term set
46 pursuant to subsection a., or one-half of the term set pursuant to a
47 maximum period of incarceration for a crime set forth in any statute

1 other than this code, during which the defendant shall not be
2 eligible for parole; provided that no defendant shall be eligible for
3 parole at a date earlier than otherwise provided by the law
4 governing parole.

5 c. A person who has been convicted under subsection b. or d.
6 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
7 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.
8 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection
9 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,
10 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following
11 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-
12 3a., 2C:15-1, 2C:18-2, 2C:29-5, 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 firearm
15 as defined in 2C:39-1f., shall be sentenced to a term of
16 imprisonment by the court. The term of imprisonment shall include
17 the imposition of a minimum term. The minimum term shall be
18 fixed at one-half of the sentence imposed by the court or 42 months,
19 whichever is greater, or 18 months in the case of a fourth degree
20 crime, during which the defendant shall be ineligible for parole.

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

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

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

43 (2) The court shall not impose a mandatory sentence pursuant to
44 subsection c. of this section for a violation of paragraph (2) of
45 subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of
46 subsection c. of N.J.S.2C:39-5, if that rifle or shotgun is in the
47 nature of an air gun, spring gun or pistol or other weapon of a
48 similar nature in which the propelling force is a spring, elastic band,

1 carbon dioxide, compressed or other gas or vapor, air or compressed
2 air, or is ignited by compressed air, and ejecting a bullet or missile
3 smaller than three-eighths of an inch in diameter, with sufficient
4 force to injure a person; or a violation of paragraph (1) of
5 subsection c. of N.J.S.2C:39-5.

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

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

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

47 For the purpose of this subsection, a previous conviction exists
48 where the actor has at any time been convicted under chapter 35 of

1 this title or Title 24 of the Revised Statutes or under any similar
2 statute of the United States, this State, or any other state for an
3 offense that is substantially equivalent to N.J.S.2C:35-3,
4 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
5 P.L.1987, c.101 (C.2C:35-7).

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

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

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

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

43 i. A person who has been convicted under paragraph (6) of
44 subsection b. of 2C:12-1 of causing bodily injury while eluding
45 shall be sentenced to a term of imprisonment by the court. The
46 term of imprisonment shall include the imposition of a minimum
47 term. The minimum term shall be fixed at, or between one-third
48 and one-half of the sentence imposed by the court. The minimum

1 term established by this subsection shall not prevent the court from
2 imposing a presumptive term of imprisonment pursuant to
3 paragraph (1) of subsection f. of 2C:44-1.
4 (cf: P.L.2013, c.113, s.2)

5
6 18. Section 6 of P.L.2007, c.49 (C.2C:43-6.5) is amended to
7 read as follows:

8 6. a. Notwithstanding the provisions of subsection a. of
9 N.J.S.2C:43-6 and except as otherwise provided in subsection c. of
10 this section, a person who serves or has served as a public officer or
11 employee under the government of this State, or any political
12 subdivision thereof, who is convicted of a crime that involves or
13 touches such office or employment as set forth in subsection b. of
14 this section, shall be sentenced to a mandatory minimum term of
15 imprisonment without eligibility for parole as follows: for a crime
16 of the fourth degree, the mandatory minimum term shall be one
17 year; for a crime of the third degree, two years; for a crime of the
18 second degree, five years; and for a crime of the first degree, 10
19 years; unless the provisions of any other law provide for a higher
20 mandatory minimum term. As used in this subsection, "a crime that
21 involves or touches such office or employment" means that the
22 crime was related directly to the person's performance in, or
23 circumstances flowing from, the specific public office or
24 employment held by the person.

25 b. Subsection a. of this section applies to a conviction of any of
26 the following crimes:

27 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal
28 coercion;

29 (2) **【N.J.S.2C:20-4, theft by deception, if the amount involved
30 exceeds \$10,000;】** (Deleted by amendment, P.L. , c.) (pending
31 before the Legislature as this bill)

32 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

33 (4) **【N.J.S.2C:20-9, theft by failure to make required disposition
34 of property received, if the amount involved exceeds \$10,000;】**
35 (Deleted by amendment, P.L. , c.) (pending before the
36 Legislature as this bill)

37 (5) **【N.J.S.2C:21-10, commercial bribery;】** (Deleted by
38 amendment, P.L. , c.) (pending before the Legislature as this
39 bill)

40 (6) **【Section 3 of P.L.1994, c.121 (C.2C:21-25), money
41 laundering;】** (Deleted by amendment, P.L. , c.) (pending before
42 the Legislature as this bill)

43 (7) **【Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
44 payment claims;】** (Deleted by amendment, P.L. , c.) (pending
45 before the Legislature as this bill)

- 1 (8) **【N.J.S.2C:27-2, bribery in official matters;】** (Deleted by
2 amendment, P.L. , c.) (pending before the Legislature as this
3 bill)
- 4 (9) N.J.S.2C:27-3, threats and other improper influence in
5 official and political matters; or
- 6 (10) **【Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful**
7 **official business transaction where interest is involved;】** (Deleted
8 by amendment, P.L. , c.) (pending before the Legislature as this
9 bill)
- 10 (11) **【Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or**
11 **receipt of unlawful benefit by public servant for official behavior;】**
12 (Deleted by amendment, P.L. , c.) (pending before the
13 Legislature as this bill)
- 14 (12) **【Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of**
15 **unlawful benefit to public servant for official behavior;】** (Deleted
16 by amendment, P.L. , c.) (pending before the Legislature as this
17 bill)
- 18 (13) **【N.J.S.2C:28-1, perjury;】** (Deleted by amendment,
19 P.L. , c.) (pending before the Legislature as this bill)
- 20 (14) N.J.S.2C:28-5, tampering with witnesses;
- 21 (15) **【N.J.S.2C:28-7, tampering with public records or**
22 **information;】** (Deleted by amendment, P.L. , c.) (pending
23 before the Legislature as this bill)
- 24 (16) **【N.J.S.2C:29-4, compounding;】** (Deleted by amendment,
25 P.L. , c.) (pending before the Legislature as this bill)
- 26 (17) **【N.J.S.2C:30-2, official misconduct;】** (Deleted by
27 amendment, P.L. , c.) (pending before the Legislature as this
28 bill)
- 29 (18) **【N.J.S.2C:30-3, speculating or wagering on official action**
30 **or information; or】** (Deleted by amendment, P.L. , c.) (pending
31 before the Legislature as this bill)
- 32 (19) **【Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of**
33 **official misconduct.】** (Deleted by amendment, P.L. , c.)
34 (pending before the Legislature as this bill)
- 35 c. (1) On motion by the prosecutor stating that the defendant
36 has provided substantial assistance in a criminal investigation or
37 prosecution of another person, the court may waive or reduce the
38 mandatory minimum term of imprisonment required by subsection
39 a. of this section. The appropriate waiver or reduction shall be
40 determined by the court for reasons stated that may include, but are
41 not limited to, consideration of the following:
- 42 (i) the court's evaluation of the significance and usefulness of
43 the defendant's assistance, giving substantial weight to the
44 prosecutor's evaluation of the assistance rendered;
- 45 (ii) the truthfulness, completeness, and reliability of any
46 information or testimony provided by the defendant;

- 1 (iii) the nature and extent of the defendant's assistance;
2 (iv) any injury suffered, or any danger or risk of injury to the
3 defendant or his family resulting from his assistance;
4 (v) the timeliness of the defendant's assistance.

5 In making such a determination, the court shall give substantial
6 weight to the prosecutor's evaluation of the extent of the defendant's
7 assistance, particularly where the extent and value of the assistance
8 are difficult to ascertain.

9 (2) If the court finds by clear and convincing evidence that
10 extraordinary circumstances exist such that imposition of a
11 mandatory minimum term would be a serious injustice which
12 overrides the need to deter such conduct in others, the court may
13 waive or reduce the mandatory minimum term of imprisonment
14 required by subsection a. of this section. In making any such
15 finding, the court must state with specificity its reasons for waiving
16 or reducing the mandatory minimum sentence that would otherwise
17 apply.

18 (3) If, pursuant to paragraph (1) or (2) of this subsection, the
19 court waives or reduces the mandatory minimum term required by
20 subsection a. of this section, such sentence shall not become final
21 for 10 days in order to permit the appeal of the sentence by the
22 prosecution.

23 d. (1) A prosecutor shall not recommend the admission into or
24 consent to the referral to a pretrial intervention program of a person
25 who serves or has served as a public officer or employee under the
26 government of this State, or any political subdivision thereof, who
27 is charged with a crime that involves or touches such office or
28 employment as set forth in subsection b. of this section, without the
29 prior approval of the Attorney General.

30 (2) A person who serves or has served as a public officer or
31 employee under the government of this State, or any political
32 subdivision thereof, who is convicted of a crime that involves or
33 touches such office or employment as set forth in subsection b. of
34 this section shall be ineligible for participation in any program of
35 intensive supervision during any period of parole ineligibility.

36 e. The Attorney General shall develop guidelines to ensure the
37 uniform exercise of discretion in making determinations regarding
38 the waiver or reduction of a mandatory minimum term of
39 imprisonment pursuant to paragraph (1) of subsection c. of this
40 section and participation in a pretrial intervention program pursuant
41 to paragraph (1) of subsection d. of this section.

42 (cf: P.L.2007, c.49, s.6)

43

44 19. N.J.S.2C:43-7 is amended to read as follows:

45 2C:43-7. Sentence of Imprisonment for Crime; Extended
46 Terms.

47 a. In the cases designated in section 2C:44-3, a person who has
48 been convicted of a crime may be sentenced, and in the cases

1 designated in subsection e. of section 2 of P.L.1994, c.130
2 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
3 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
4 c.410 (C.2C:44-5.1), a person who has been convicted of a crime
5 shall be sentenced, to an extended term of imprisonment, as
6 follows:

7 (1) In case of aggravated manslaughter sentenced under
8 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
9 crime of the first degree under paragraph (1) of subsection c. of
10 2C:13-1; or aggravated sexual assault if the person is eligible for an
11 extended term pursuant to the provisions of subsection g. of
12 N.J.S.2C:44-3 for a specific term of years which shall be between
13 30 years and life imprisonment;

14 (2) Except for the crime of murder and except as provided in
15 paragraph (1) of this subsection, in the case of a crime of the first
16 degree, for a specific term of years which shall be fixed by the court
17 and shall be between 20 years and life imprisonment;

18 (3) In the case of a crime of the second degree, for a term which
19 shall be fixed by the court between 10 and 20 years;

20 (4) In the case of a crime of the third degree, for a term which
21 shall be fixed by the court between five and 10 years;

22 (5) In the case of a crime of the fourth degree pursuant to
23 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in
24 the case of a crime of the fourth degree pursuant to any other
25 provision of law for a term which shall be fixed by the court
26 between three and five years;

27 (6) In the case of the crime of murder, for a specific term of
28 years which shall be fixed by the court between 35 years and life
29 imprisonment, of which the defendant shall serve 35 years before
30 being eligible for parole;

31 (7) In the case of kidnapping under paragraph (2) of subsection
32 c. of 2C:13-1, for a specific term of years which shall be fixed by
33 the court between 30 years and life imprisonment, of which the
34 defendant shall serve 30 years before being eligible for parole.

35 b. As part of a sentence for an extended term and
36 notwithstanding the provisions of 2C:43-9, the court may fix a
37 minimum term not to exceed one-half of the term set pursuant to
38 subsection a. during which the defendant shall not be eligible for
39 parole or a term of 25 years during which time the defendant shall
40 not be eligible for parole where the sentence imposed was life
41 imprisonment; provided that no defendant shall be eligible for
42 parole at a date earlier than otherwise provided by the law
43 governing parole.

44 c. In the case of a person sentenced to an extended term
45 pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall
46 impose a sentence within the ranges permitted by 2C:43-7a(2), (3),
47 (4) or (5) according to the degree or nature of the crime for which
48 the defendant is being sentenced, which sentence, except for a

1 sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall
2 include a minimum term which shall **],** except as may be
3 specifically provided by N.J.S.2C:43-6f,**]** be fixed at or between
4 one-third and one-half of the sentence imposed by the court or five
5 years, whichever is greater, during which the defendant shall not be
6 eligible for parole. Where the sentence imposed is life
7 imprisonment, the court shall impose a minimum term of 25 years
8 during which the defendant shall not be eligible for parole, except
9 that where the term of life imprisonment is imposed on a person
10 convicted for a violation of N.J.S.2C:35-3, the term of parole
11 ineligibility shall be 30 years.

12 d. In the case of a person sentenced to an extended term
13 pursuant to N.J.S.2C:43-6g, the court shall impose a sentence
14 within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5)
15 according to the degree or nature of the crime for which the
16 defendant is being sentenced, which sentence shall include a
17 minimum term which shall be fixed at 15 years for a crime of the
18 first or second degree, eight years for a crime of the third degree, or
19 five years for a crime of the fourth degree during which the
20 defendant shall not be eligible for parole. Where the sentence
21 imposed is life imprisonment, the court shall impose a minimum
22 term of 25 years during which the defendant shall not be eligible for
23 parole, except that where the term of life imprisonment is imposed
24 on a person convicted of a violation of N.J.S.2C:35-3, the term of
25 parole eligibility shall be 30 years.

26 (cf: P.L.2003, c.267, s.4)

27

28 20. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill would eliminate mandatory minimum terms of
34 imprisonment determined by the Legislature to be of a non-violent
35 nature. The bill incorporates all of the drug and non-violent crimes
36 that the New Jersey Criminal Sentencing and Disposition Commission
37 recommended in a November 2019 report to have mandatory
38 minimum terms eliminated, as these types of sentences, noted in the
39 introduction to that report, contributed to “exponentially” increasing
40 the State’s prison population and “substantially curtailed judicial
41 discretion” in the issue of determining the appropriate level of
42 punishment to match offender accountability. Applying the same
43 reasoning, this bill would include a broader array of non-violent
44 crimes not addressed in the report, which would return decision
45 making to the courts for matching an individual’s punishment to
46 account for the nature and circumstances of the crime committed, and
47 to strive for a reduction in the State’s prison populations of non-violent

1 offenders who do not pose a danger to their surrounding communities
2 on the basis of the crimes they committed.

3 The crimes for which mandatory minimum terms of imprisonment
4 would be eliminated are:

5 - N.J.S.2C:35-3, leader of a narcotics trafficking network;

6 - N.J.S.2C:35-4, maintaining, operating, aiding, or financing a
7 controlled dangerous substance production facility used to
8 manufacture methamphetamine, lysergic acid diethylamide (LSD),
9 phencyclidine, gamma, flunitrazepam, marijuana in an amount greater
10 than five pounds or ten plants or any substance listed in Schedule I or
11 II;

12 - N.J.S.2C:35-5, manufacturing, distributing, or dispensing, or
13 possessing with intent to manufacture, distribute, or dispense heroin or
14 coca leaves in a quantity of five ounces or more, lysergic acid
15 diethylamide (LSD) in a quantity of 100 milligrams or more, or
16 phencyclidine (PCP or “angel dust”) in a quantity of 10 grams or
17 more;

18 - N.J.S.2C:35-6, employing a juvenile in a production facility or
19 drug distribution scheme as described above;

20 - Section 1 of P.L.1987, c.101 (C.2C:35-7), distribution of a
21 controlled dangerous substance on or within 1,000 feet of school
22 property; and

23 - N.J.S.2C:35-8, distribution of a controlled dangerous substance to
24 a juvenile or pregnant female of any age.

25 Additionally, the bill would eliminate the imposition of a
26 mandatory minimum term of imprisonment, but not the possibility of a
27 longer, extended term that is greater than an ordinary term, for a
28 multiple offender, whose current conviction was for any of the above
29 listed crimes other than N.J.S.2C:35-8, distributing to a juvenile or
30 pregnant female, and whose previous conviction was for a violation of
31 N.J.S.2C:35-5, manufacturing, distributing, dispensing or possessing
32 with intent to manufacture, distribute, or dispense any controlled
33 dangerous substance. See N.J.S.2C:43-6, subsection f.

34 - section 4 of P.L.2013, c.53 (C.2C:20-2.4), for a second or
35 subsequent offense of leader of a cargo theft network;

36 - section 6 of P.L.2013, c.53 (C.2C:20-2.6), for a second or
37 subsequent offense for maintaining or operating any place used for the
38 storage or resale of property stolen from a cargo carrier;

39 - N.J.S.2C:20-11, for a third or subsequent shoplifting offense;

40 - section 4 of P.L.1984, c.184 (C.2C:20-25), computer hacking
41 when graded as a crime of the first degree;

42 - section 10 of P.L.1984, c.184 (C.2C:20-31), unauthorized
43 computer access and disclosure of information protected from
44 disclosure by any law, court order, or rule of court;

45 - section 5 of P.L.1994, c.121, (2C:21-27), money laundering;

46 - N.J.S.2C:29-3, hindering apprehension or prosecution; and

47 - N.J.S.2C:29-6, introducing within an institution or detention
48 facility or providing an inmate with implements useful for escape. If

1 the implement is a weapon then a mandatory minimum term of three
2 years would still be imposed if any person suffered bodily injury or
3 death.

4 Finally, the following crimes currently punishable with a
5 mandatory minimum term of imprisonment for a person who serves or
6 has served as a State or local public officer or employee, when the
7 criminal act involves or touches upon the person's office or
8 employment, would no longer be subject to such a mandatory
9 minimum:

10 - N.J.S.2C:20-4, theft by deception, when the amount involved
11 exceeds \$10,000;

12 - N.J.S.2C:20-9, theft by failure to make required disposition of
13 property received, if the amount involved exceeds \$10,000;

14 - N.J.S.2C:21-10, commercial bribery;

15 - section 3 of P.L.1994, c.121 (C.2C:21-25), money laundering (for
16 which a mandatory minimum would be eliminated under the bill when
17 committed by any person);

18 - section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
19 payment claims;

20 - N.J.S.2C:27-2, bribery in official matters;

21 - section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful official
22 business transaction where interest is involved;

23 - section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or receipt
24 of unlawful benefit by public servant for official behavior;

25 - section 6 of P.L.2003, c.255 (C.2C:27-11), offer of unlawful
26 benefit to public servant for official behavior;

27 - N.J.S.2C:28-1, perjury;

28 - N.J.S.2C:28-7, tampering with public records or information;

29 - N.J.S.2C:29-4, compounding, by accepting any pecuniary benefit
30 to refrain from reporting to law enforcement authorities the
31 commission or suspected commission of any offense, or information
32 relating to an offense, or from seeking prosecution of an offense, or
33 agree to give any pecuniary benefit to another to refrain from reporting
34 of seeking prosecution;

35 - N.J.S.2C:30-2, official misconduct;

36 - N.J.S.2C:30-3, speculating or wagering on official action or
37 information; and

38 - section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
39 misconduct.

40 As stated in the introductory remarks to this statement, the intent
41 with respect to all of the listed non-violent crimes for which a
42 mandatory minimum term or imprisonment would no longer apply
43 would allow the return of decision making to the courts for matching
44 each individual's punishment to account for the nature and
45 circumstances of the crime committed, and to strive for a reduction in
46 the State's prison populations of non-violent offenders who do not
47 pose a danger to their surrounding communities on the basis of the
48 crimes they committed.