SENATE, No. 2586



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED JUNE 22, 2020

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senator Scutari

SYNOPSIS

Implements sentencing recommendations of the Criminal Sentencing and Disposition Commission.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning sentencing reform and amending various sections of Title 2C of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

c. It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attending circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, the amount of property or number of incidents of theft, or the amount of cash or currency involved.

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

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

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

2. Section 6 of P.L.2013, c.53 (C.2C:20-2.6) is amended to read as follows:

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

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

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

(cf: P.L.2013, c.53, s.6)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. A violation of subsection a. of this section is a crime of the third degree. A violation of subsection b. is a crime of the second degree. A violation of subsection c. is a crime of the third degree, except that it is a crime of the second degree if the value of the services, property, personal identifying information, or money obtained or sought to be obtained exceeds $5,000. A violation of subsection e. is a crime of the third degree, except that it is a crime of the second degree if the data, data base, computer program, computer software, or information:

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

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

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

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

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

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

(a) affects 10 or more structures or habitations;

(b) lasts for two or more hours; or

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

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

(3) significant bodily injury to any person.

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

h. Every sentence imposed upon a conviction pursuant to this section shall, if the victim is a government agency, include a period of imprisonment. **[**The period of imprisonment shall include a minimum term of one-third to one-half of the sentence imposed, during which term the defendant shall not be eligible for parole.**]** The victim shall be deemed to be a government agency if a computer, computer network, computer storage medium, computer system, computer equipment, computer program, computer software, computer data or data base that is a subject of the crime is owned, operated or maintained by or on behalf of a governmental agency or unit of State or local government or a public authority. The defendant shall be strictly liable under this subsection and it shall not be a defense that the defendant did not know or intend that the victim was a government agency, or that the defendant intended that there be other victims of the crime.

A violation of any subsection of this section shall be a distinct offense from a violation of any other subsection of this section, and a conviction for a violation of any subsection of this section shall not merge with a conviction for a violation of any other subsection of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for conspiring or attempting to violate any subsection of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence shall be imposed for each such conviction.

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

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

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

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

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

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

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

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

As used in this section:

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

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

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

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

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

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

It shall not be a defense that the defendant was subject to the supervision or management of another, nor that another person or persons were also leaders of the narcotics trafficking network.

(cf: P.L.1999, c.133, s.1)

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

2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any person who knowingly maintains or operates any premises, place or facility used for the manufacture of methamphetamine, lysergic acid diethylamide, phencyclidine, gamma hydroxybutyrate, flunitrazepam, marijuana in an amount greater than five pounds or ten plants or any substance listed in Schedule I or II, or the analog of any such substance, or any person who knowingly aids, promotes, finances or otherwise participates in the maintenance or operations of such premises, place or facility, is guilty of a crime of the first degree and shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment**[**which 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, the court may also impose a fine not to exceed $750,000.00 or five times the street value of all controlled dangerous substances, controlled substance analogs, gamma hydroxybutyrate or flunitrazepam at any time manufactured or stored at such premises, place or facility, whichever is greater.

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

8. 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 $500,000.00 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 $75,000.00 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 $75,000.00 may be imposed;

(6) Lysergic acid diethylamide, or its analog, in a quantity of 100 milligrams or more including any adulterants or dilutants, or phencyclidine, or its analog, in a quantity of 10 grams or more including any adulterants or dilutants, is guilty of a crime of the first degree. Except as provided in N.J.S.2C:35-12, the court shall impose a term of imprisonment **[**which shall include the imposition of a minimum term, fixed at, or between, one-third and one-half of the sentence imposed by the court, 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 $500,000.00 may be imposed;

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

(8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of five ounces or more including any adulterants or dilutants is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000.00 may be imposed;

(9) (a) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), 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;

(b) Methamphetamine, or its analog, or phenyl-2-propanone (P2P), in a quantity of 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 $75,000.00 may be imposed;

(10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000.00 may be imposed;

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

(11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants or dilutants, or hashish in a quantity of five grams or more but less than one pound 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 $25,000.00 may be imposed;

(12) Marijuana in a quantity of less than one ounce including any adulterants or dilutants, or hashish in a quantity of less than five grams including any adulterants or dilutants, is guilty of a crime of the fourth degree;

(13) Any other controlled dangerous substance classified in Schedule I, II, III or IV, or its analog, 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 $25,000.00 may be imposed; or

(14) Any Schedule V substance, or its analog, is guilty of a crime of the fourth degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $25,000.00 may be imposed.

c. Where the degree of the offense for violation of this section depends on the quantity of the substance, the quantity involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the quantity involved in individual acts of manufacturing, distribution, dispensing or possessing with intent to distribute may be aggregated in determining the grade of the offense, whether distribution or dispensing is to the same person or several persons, provided that each individual act of manufacturing, distribution, dispensing or possession with intent to distribute was committed within the applicable statute of limitations.

(cf: P.L.2000, c.136)

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

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

Any person being at least 18 years of age who knowingly uses, solicits, directs, hires or employs a person 17 years of age or younger to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5, is guilty of a crime of the second degree and shall, except as provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment **[**which shall include the imposition of a minimum term which shall be fixed at, or between, one-third and one-half of the sentence imposed, or five years, whichever is greater, during which the defendant shall be ineligible for parole**]**. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed $500,000.00 or five times the street value of the controlled dangerous substance or controlled substance analog involved, whichever is greater.

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

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

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

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

C.2C:35-7. Distribution on or within 1,000 feet of school property.

1. a. Any person who violates subsection a. of N.J.S.2C:35-5 by distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog while on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property or a school bus, or while on any school bus, is guilty of a crime of the third degree and shall, except as provided in N.J.S.2C:35-12, be sentenced by the court to a term of imprisonment, notwithstanding the presumption of non-imprisonment for certain offenders set forth in subsection e. of N.J.S. 2C:44-1. **[**Where the violation involves less than one ounce of marijuana, 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, or one year, whichever is greater, during which the defendant shall be ineligible for parole. In all other cases, 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, or three years, whichever is greater, during which the defendant shall be ineligible for parole.**]** Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $150,000 may also be imposed upon any conviction for a violation of this section.

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

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

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

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

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

(2) The court shall not **[**waive or reduce the minimum term of parole ineligibility or**]** sentence the defendant to probation if it finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall impose a sentence within the ranges permitted by 2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence, except for a sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall include a minimum term which shall**[**, except as may be specifically provided by N.J.S.2C:43-6f,**]** be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

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

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

15. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read as follows:

2. a. A court imposing a sentence of incarceration for a crime of the first or second degree enumerated in subsection d. of this section, other than second degree robbery or second degree burglary, shall fix a minimum term of 85% of the sentence imposed, during which the defendant shall not be eligible for parole. A court imposing a sentence of incarceration for a crime of second degree robbery or second degree burglary shall fix a minimum term of 50% of the sentence imposed, during which the defendant shall not be eligible for parole.

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

c. Notwithstanding any other provision of law to the contrary and in addition to any other sentence imposed, a court imposing a minimum period of parole ineligibility of 85 percent of the sentence pursuant to this section, or 50 percent in the case of second degree robbery or second degree burglary, shall also impose a five-year term of parole supervision if the defendant is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the defendant is being sentenced for a crime of the second degree. The term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the Commissioner of the Department of Corrections and shall be supervised by the State Parole Board as if on parole and shall be subject to the provisions and conditions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

d. The court shall impose sentence pursuant to subsection a. of this section upon conviction of the following crimes or an attempt or conspiracy to commit any of these crimes:

(1) N.J.S.2C:11-3, murder;

(2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

(3) N.J.S.2C:11-5, vehicular homicide;

(4) subsection b. of N.J.S.2C:12-1, aggravated assault;

(5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;

(6) N.J.S.2C:13-1, kidnapping;

(7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

(8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;

(9) N.J.S.2C:15-1, robbery;

(10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

(11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;

(12) N.J.S.2C:18-2, burglary;

(13) subsection a. of N.J.S.2C:20-5, extortion;

(14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities;

(15) N.J.S.2C:35-9, strict liability for drug induced deaths;

(16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

(17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices;

(18) N.J.S.2C:41-2, racketeering, when it is a crime of the first degree:

(19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or

(20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or permitting a child to engage in a prohibited sexual act, knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance.

e. (Deleted by amendment, P.L.2001, c.129).

(cf: P.L.2013, c.136, s.4)

16. N.J.S.2C:44-1 is amended to read as follows:

2C:44-1. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted;

(7) The defendant committed the offense pursuant to an agreement that he either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of his duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty or order of restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who he knew or should have known was 60 years of age or older, or disabled;

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle;

(14) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), committed in the presence of a child under 16 years of age; and

(15) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) and the defendant committed at least one act of domestic violence on more than one occasion.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that his conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of his conduct for the damage or injury that he sustained, or will participate in a program of community service;

(7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances unlikely to recur;

(9) The character and attitude of the defendant indicate that he is unlikely to commit another offense;

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive hardship to himself or his dependents;

(12) The willingness of the defendant to cooperate with law enforcement authorities;

(13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant; and

(14) The defendant was under 26 at the time of the commission of the offense.

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree, or a crime of the third degree where the court finds that the aggravating factor in paragraph (5), (14) or (15) of subsection a. applies, by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character and condition of the defendant, it is of the opinion that his imprisonment is necessary for the protection of the public under the criteria set forth in subsection a., except that this subsection shall not apply if the court finds that the aggravating factor in paragraph (5), (14) or (15) of subsection a. applies or if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; strict liability vehicular homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; if the person is convicted of a crime of the third degree under paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b., weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in subparagraph (a) of this paragraph to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to subsection b. of N.J.S.2C:43-6, the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to paragraph (1) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to paragraph (2) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to paragraph (3) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to subsection b. of N.J.S.2C:43-7, the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which he was convicted. If the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, such sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a., finds the aggravating factor in paragraph (2), (5), (10), or (12) of subsection a. and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

(cf: P.L.2017, c.165, s.6)

17. This act shall take effect immediately.

STATEMENT

This bill implements several of the recommendations contained in the first annual report of the New Jersey Criminal Sentencing and Disposition Commission (the CSDC). The CSDC is a legislative body charged with conducting a thorough analysis of New Jersey’s sentencing laws for consideration of possible recommendations for revisions, and considering issues regarding disparity in the criminal justice process. The first annual report produced a total of nine recommendations. The bill concerns 4 of these recommendations that involve changes to provisions in Title 2C of the New Jersey Statutes.

This bill eliminates mandatory minimum terms of imprisonment for nonviolent property and drug-related crimes. The bill further reduces the mandatory term for second degree robbery and second degree burglary from 85 percent to 50 percent of the sentence imposed.

The bill adds an additional mitigating factor for court consideration when determining the appropriate sentence to be imposed on a person who has been convicted of a crime, to wit, if the defendant was under the age of 26 at the time of the commission of the crime.

The bill provides that eligibility for persons convicted for second degree robbery and second degree burglary would be established at 50% of the sentence imposed instead of the No Early Release Act (NERA) 85%.

Recommendation #1 would eliminate mandatory minimum sentencing for the following non-violent drug offenses:

N.J.S.A. 2C:35-3 Leader of narcotics trafficking network

N.J.S.A. 2C:35-4 Maintaining or operating a CDS production facility

N.J.S.A. 2C:35-5 Manufacturing, distributing or dispensing CDS

N.J.S.A.2C:35-6 Employing a Juvenile in a Drug Distribution Scheme

N.J.S.A. 2C:35-7 Distributing, dispensing, or possessing CDS within 1,000 feet of school

N.J.S.A. 2C:35-8 Distribution of CDS to persons underage 18

N.J.S.A. 2C:43-6(f) Recidivist CDS offense

These changes are generally found in sections 6 through 14 of the bill.

Recommendation #2 would eliminate mandatory minimum sentencing for the following non-violent property crimes:

N.J.S.A. 2C:20-2.4(e) Recidivist leader of cargo theft network

N.J.S.A. 2C:20-2.6(c) Recidivist theft from cargo carrier

N.J.S.A. 2C:20-11(c)(4) Shoplifting (third offense)

N.J.S.A. 2C:20-25(g) First degree computer hacking

N.J.S.A. 2C:20-25(h) Hacking of a government computer

N.J.S.A. 2C:20-31 Improper computer access and disclosure

These changes are generally found in sections 1 through 5 of the bill.

Recommendation #3 would reduce mandatory minimum sentencing for the following NERA crimes from 85 percent to 50 percent of the sentence imposed:

N.J.S.A. 2C:15-1 Robbery, second degree

N.J.S.A. 2C:18-1 Burglary, second degree

These changes are found in the amendments to N.J.S.A. 2C:43-7.2 which is section 15 of the bill.

Pursuant to Recommendation #5, the bill would amend N.J.S.A.2C:44-1, criteria for withholding or imposing sentence of imprisonment, to create a new mitigating factor that allows judges to consider a defendant’s youthfulness at the time of the offense.

This bill would take effect immediately.