

[First Reprint]

**SENATE, No. 2586**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JUNE 22, 2020

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

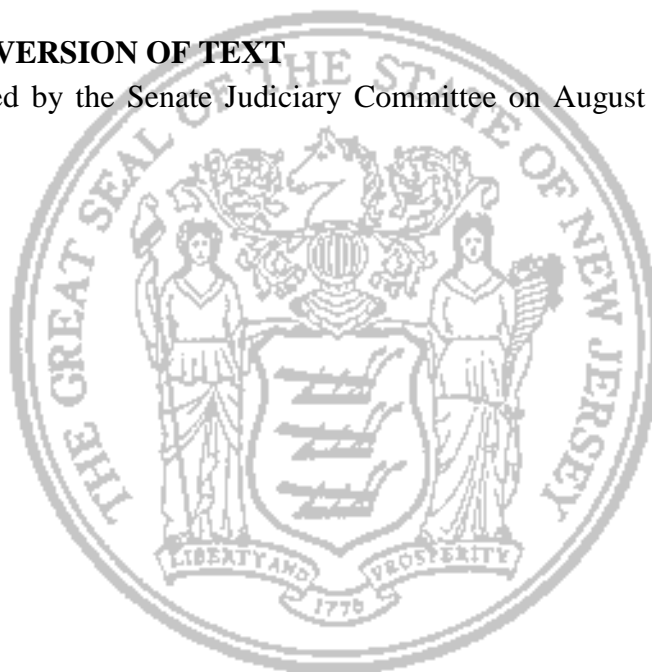
**Senators Scutari and Ruiz**

**SYNOPSIS**

Implements sentencing recommendations of the Criminal Sentencing and Disposition Commission to eliminate certain mandatory minimum terms of imprisonment; eliminates mandatory minimum term of imprisonment for crime of official misconduct.

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on August 25, 2020, with amendments.



**(Sponsorship Updated As Of: 8/27/2020)**

1 AN ACT concerning sentencing reform and amending various  
2 <sup>1</sup>**【sections of Title 2C of the New Jersey Statutes】** parts of the  
3 statutory law<sup>1</sup>.  
4

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

8 1. Section 4 of P.L.2013, <sup>1</sup>**【c.53】** c.58<sup>1</sup> (C.2C:20-2.4) is  
9 amended to read as follows:

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

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

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

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

43 c. It shall not be necessary in any prosecution under this  
44 section for the State to prove that any intended profit was actually

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SJU committee amendments adopted August 25, 2020.

1 realized. The trier of fact may infer that a particular scheme or  
2 course of conduct was undertaken for profit from all of the  
3 attending circumstances, including but not limited to the number of  
4 persons involved in the scheme or course of conduct, the actor's net  
5 worth and his expenditures in relation to his legitimate sources of  
6 income, the amount of property or number of incidents of theft, or  
7 the amount of cash or currency involved.

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

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

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

28  
29 2. Section 6 of P.L.2013, **‘【c.53】 c.58<sup>1</sup>** (C.2C:20-2.6) is  
30 amended to read as follows:

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

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

41 c. A person convicted of a second or subsequent offense under  
42 this section shall be sentenced to a term of imprisonment **【**that shall  
43 include a mandatory minimum term of one-third to one-half of the  
44 sentence imposed, during which time the defendant shall not be  
45 eligible for parole**】**, and may be sentenced to an extended term of  
46 imprisonment as set forth subsection a. of N.J.S.2C:43-7,  
47 notwithstanding the provision of N.J.S.2C:44-3. The court may not

1 suspend or make any other non-custodial disposition of any person  
2 sentenced as a second or subsequent offender pursuant to this  
3 section. For the purposes of this section an offense is considered a  
4 second or subsequent offense if the actor has at any time been  
5 convicted pursuant to this section, or under any similar statute of  
6 the United States, this State or any other state for an offense that is  
7 substantially equivalent to this section.

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

9  
10 3. N.J.S.2C:20-11 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (2) Shoplifting constitutes a crime of the third degree under  
47 subsection b. of this section if the full retail value of the  
48 merchandise exceeds \$500 but is less than \$75,000, or the offense

1 is committed in furtherance of or in conjunction with an organized  
2 retail theft enterprise and the full retail value of the merchandise is  
3 less than \$1,000.

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

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

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

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

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

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

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

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

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

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

14  
15 <sup>1</sup>[4. Section 4 of P.L.1984, c.184 (C.2C:20-25) is amended to  
16 read as follows:

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

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

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

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

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

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

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

45 g. A violation of subsection a. of this section is a crime of the  
46 third degree. A violation of subsection b. is a crime of the second  
47 degree. A violation of subsection c. is a crime of the third degree,  
48 except that it is a crime of the second degree if the value of the

1 services, property, personal identifying information, or money  
2 obtained or sought to be obtained exceeds \$5,000. A violation of  
3 subsection e. is a crime of the third degree, except that it is a crime  
4 of the second degree if the data, data base, computer program,  
5 computer software, or information:

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

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

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

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

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

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

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

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

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

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

26 (3) significant bodily injury to any person.

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

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

46 A violation of any subsection of this section shall be a distinct  
47 offense from a violation of any other subsection of this section, and  
48 a conviction for a violation of any subsection of this section shall



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

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

11 (cf: P.L.2003, c.39, s.3)]<sup>1</sup>

12  
13 <sup>1</sup>[5.] 4.<sup>1</sup> Section 10 of P.L.1984, c.184 (C.2C:20-31) is  
14 amended to read as follows:

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

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

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

36  
37 <sup>1</sup>[6. N.J.S.2C:35-3 is amended to read as follows:

38 2C:35-3. Leader of Narcotics Trafficking Network.

39 As used in this section:

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

45 A person is a leader of a narcotics trafficking network if he  
46 conspires with two or more other persons in a scheme or course of  
47 conduct to unlawfully manufacture, distribute, dispense, bring into

1 or transport in this State methamphetamine, lysergic acid  
2 diethylamide, phencyclidine, gamma hydroxybutyrate,  
3 flunitrazepam or any controlled dangerous substance classified in  
4 Schedule I or II, or any controlled substance analog thereof as a  
5 financier, or as an organizer, supervisor or manager of at least one  
6 other person.

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

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

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

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

1 It shall not be a defense that the defendant was subject to the  
2 supervision or management of another, nor that another person or  
3 persons were also leaders of the narcotics trafficking network.  
4 (cf: P.L.1999, c.133, s.1)】<sup>1</sup>

5  
6 <sup>1</sup>【7.】 5.<sup>1</sup> N.J.S.2C:35-4 is amended to read as follows:

7 2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et  
8 seq.), any person who knowingly maintains or operates any  
9 premises, place or facility used for the manufacture of  
10 methamphetamine, lysergic acid diethylamide, phencyclidine,  
11 gamma hydroxybutyrate, flunitrazepam, marijuana in an amount  
12 greater than five pounds or ten plants or any substance listed in  
13 Schedule I or II, or the analog of any such substance, or any person  
14 who knowingly aids, promotes, finances or otherwise participates in  
15 the maintenance or operations of such premises, place or facility, is  
16 guilty of a crime of the first degree and shall, except as provided in  
17 N.J.S.2C:35-12, be sentenced to a term of imprisonment【which  
18 shall include the imposition of a minimum term which shall be  
19 fixed at, or between, one-third and one-half of the sentence  
20 imposed, during which the defendant shall be ineligible for parole】.  
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,  
22 the court may also impose a fine not to exceed \$750,000.00 or five  
23 times the street value of all controlled dangerous substances,  
24 controlled substance analogs, gamma hydroxybutyrate or  
25 flunitrazepam at any time manufactured or stored at such premises,  
26 place or facility, whichever is greater.  
27 (cf: P.L.1999, c.133, s.2)

28  
29 <sup>1</sup>【8.】 6.<sup>1</sup> N.J.S.2C:35-5 is amended to read as follows:

30 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except  
31 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be  
32 unlawful for any person knowingly or purposely:

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

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

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

40 (1) Heroin, or its analog, or coca leaves and any salt, compound,  
41 derivative, or preparation of coca leaves, and any salt, compound,  
42 derivative, or preparation thereof which is chemically equivalent or  
43 identical with any of these substances, or analogs, except that the  
44 substances shall not include decocainized coca leaves or extractions  
45 which do not contain cocaine or ecogine, or 3,4-  
46 methylenedioxymethamphetamine or 3,4-  
47 methylenedioxyamphetamine, in a quantity of five ounces or more

1 including any adulterants or dilutants is guilty of a crime of the first  
2 degree. The defendant shall, except as provided in N.J.S.2C:35-12,  
3 be sentenced to a term of imprisonment by the court. **【**The term of  
4 imprisonment shall include the imposition of a minimum term  
5 which shall be fixed at, or between, one-third and one-half of the  
6 sentence imposed, during which the defendant shall be ineligible for  
7 parole.**】** Notwithstanding the provisions of subsection a. of  
8 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

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

13 (3) A substance referred to in paragraph (1) of this subsection in  
14 a quantity less than one-half ounce including any adulterants or  
15 dilutants is guilty of a crime of the third degree except that,  
16 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a  
17 fine of up to \$75,000.00 may be imposed;

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

23 (5) A substance classified as a narcotic drug in Schedule I or II  
24 other than those specifically covered in this section, or the analog of  
25 any such substance, in a quantity of less than one ounce including  
26 any adulterants or dilutants is guilty of a crime of the third degree  
27 except that, notwithstanding the provisions of subsection b. of  
28 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

29 (6) Lysergic acid diethylamide, or its analog, in a quantity of  
30 100 milligrams or more including any adulterants or dilutants, or  
31 phencyclidine, or its analog, in a quantity of 10 grams or more  
32 including any adulterants or dilutants, is guilty of a crime of the  
33 first degree. Except as provided in N.J.S.2C:35-12, the court shall  
34 impose a term of imprisonment **【**which shall include the imposition  
35 of a minimum term, fixed at, or between, one-third and one-half of  
36 the sentence imposed by the court, during which the defendant shall  
37 be ineligible for parole**】**. Notwithstanding the provisions of  
38 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be  
39 imposed;

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

46 (8) Methamphetamine, or its analog, or phenyl-2-propanone  
47 (P2P), in a quantity of five ounces or more including any  
48 adulterants or dilutants is guilty of a crime of the first degree.

1 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a  
2 fine of up to \$300,000.00 may be imposed;

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

7 (b) Methamphetamine, or its analog, or phenyl-2-propanone  
8 (P2P), in a quantity of less than one-half ounce including any  
9 adulterants or dilutants is guilty of a crime of the third degree  
10 except that notwithstanding the provisions of subsection b. of  
11 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

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

18 (b) Marijuana in a quantity of five pounds or more but less than  
19 25 pounds including any adulterants or dilutants, or 10 or more but  
20 fewer than 50 marijuana plants, regardless of weight, or hashish in a  
21 quantity of one pound or more but less than five pounds, including  
22 any adulterants and dilutants, is guilty of a crime of the second  
23 degree;

24 (11) Marijuana in a quantity of one ounce or more but less than  
25 five pounds including any adulterants or dilutants, or hashish in a  
26 quantity of five grams or more but less than one pound including  
27 any adulterants or dilutants, is guilty of a crime of the third degree  
28 except that, notwithstanding the provisions of subsection b. of  
29 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

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

34 (13) Any other controlled dangerous substance classified in  
35 Schedule I, II, III or IV, or its analog, is guilty of a crime of the  
36 third degree, except that, notwithstanding the provisions of  
37 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be  
38 imposed; or

39 (14) Any Schedule V substance, or its analog, is guilty of a  
40 crime of the fourth degree except that, notwithstanding the  
41 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to  
42 \$25,000.00 may be imposed.

43 c. Where the degree of the offense for violation of this section  
44 depends on the quantity of the substance, the quantity involved  
45 shall be determined by the trier of fact. Where the indictment or  
46 accusation so provides, the quantity involved in individual acts of  
47 manufacturing, distribution, dispensing or possessing with intent to  
48 distribute may be aggregated in determining the grade of the

1 offense, whether distribution or dispensing is to the same person or  
2 several persons, provided that each individual act of manufacturing,  
3 distribution, dispensing or possession with intent to distribute was  
4 committed within the applicable statute of limitations.  
5 (cf: P.L.2000, c.136)

6  
7 <sup>1</sup>**【9.】 7.**<sup>1</sup> N.J.S.2C:35-6 is amended to read as follows:

8 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

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

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

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

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

38  
39 <sup>1</sup>**【10.】 8.**<sup>1</sup> Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended  
40 to read as follows:

41 <sup>1</sup>**【C.2C:35-7. Distribution on or within 1,000 feet of school**  
42 **property.】**<sup>1</sup>

43 1. a. Any person who violates subsection a. of N.J.S.2C:35-5  
44 by distributing, dispensing or possessing with intent to distribute a  
45 controlled dangerous substance or controlled substance analog  
46 while on any school property used for school purposes which is  
47 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

1 sentence shall not become final for 10 days in order to permit the  
2 prosecution to appeal the court's finding and the sentence imposed.  
3 The Attorney General shall develop guidelines to ensure the  
4 uniform exercise of discretion in making determinations regarding  
5 whether to appeal a decision to **waive or reduce the minimum term**  
6 **of parole ineligibility or** place the defendant on probation.

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

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

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

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

38 f. In a prosecution under this section, a map produced or  
39 reproduced by any municipal or county engineer for the purpose of  
40 depicting the location and boundaries of the area on or within 1,000  
41 feet of any property used for school purposes which is owned by or  
42 leased to any elementary or secondary school or school board, or a  
43 true copy of such a map, shall, upon proper authentication, be  
44 admissible and shall constitute prima facie evidence of the location  
45 and boundaries of those areas, provided that the governing body of  
46 the municipality or county has adopted a resolution or ordinance  
47 approving the map as official finding and record of the location and  
48 boundaries of the area or areas on or within 1,000 feet of the school



1 property. Any map approved pursuant to this section may be  
2 changed from time to time by the governing body of the  
3 municipality or county. The original of every map approved or  
4 revised pursuant to this section, or a true copy thereof, shall be filed  
5 with the clerk of the municipality or county, and shall be  
6 maintained as an official record of the municipality or county.  
7 Nothing in this section shall be construed to preclude the  
8 prosecution from introducing or relying upon any other evidence or  
9 testimony to establish any element of this offense; nor shall this  
10 section be construed to preclude the use or admissibility of any map  
11 or diagram other than one which has been approved by the  
12 governing body of a municipality or county, provided that the map  
13 or diagram is otherwise admissible pursuant to the Rules of  
14 Evidence.

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

16  
17 **‘[11.] 9.’** N.J.S.2C:35-8 is amended to read as follows:

18 2C:35-8. Distribution to Persons Under Age 18; Enhanced  
19 Punishment. Upon the application of the prosecuting attorney, any  
20 person being at least 18 years of age who has been convicted for  
21 violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L.1987,  
22 c.101 (C.2C:35-7) by distributing a controlled dangerous substance  
23 or controlled substance analog to a pregnant female or a person 17  
24 years of age or younger shall, except as provided in N.J.S. 2C:35-  
25 12, be subject to twice the term of imprisonment, fine and penalty**],**  
26 including twice the term of parole ineligibility, if any,**]** authorized  
27 or required to be imposed by subsection b. of N.J.S. 2C:35-5 or  
28 section 1 of P.L.1987, c.101 (C.2C:35-7) or any other provision of  
29 this title. In addition, the presumption of non-imprisonment for  
30 certain offenders set forth in subsection e. of N.J.S. 2C:44-1 shall  
31 not apply to any person subject to enhanced punishment pursuant to  
32 this section.

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

40 Notwithstanding the provisions of paragraph (2) of subsection a.  
41 of 2C:44-5, nothing herein shall prevent the court from also  
42 imposing an extended term pursuant to subsection f. of N.J.S.  
43 2C:43-6. The court shall not impose an enhanced sentence pursuant  
44 to this section unless the prosecutor has established the ground  
45 therefor by a preponderance of the evidence at a hearing, which  
46 may occur at the time of sentencing. In making its finding, the  
47 court shall take judicial notice of any evidence, testimony or

1 information adduced at the trial, plea hearing or other court  
2 proceedings, and shall also consider the presentence report and any  
3 other relevant information. It shall not be relevant to the imposition  
4 of enhanced punishment pursuant to this section that the defendant  
5 mistakenly believed that the recipient of the substance was 18 years  
6 of age or older, even if the mistaken belief was reasonable. Nor  
7 shall it be relevant to the imposition of enhanced punishment  
8 pursuant to this section that the defendant did not know that the  
9 recipient was pregnant.

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

11  
12 <sup>1</sup>**【12.】 10.**<sup>1</sup> N.J.S.2C:35-12 is amended to read as follows:

13 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

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

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

36  
37 <sup>1</sup>**【13.】 11.**<sup>1</sup> N.J.S.2C:43-6 is amended to read as follows:

38 2C:43-6. a. Except as otherwise provided, a person who has  
39 been convicted of a crime may be sentenced to imprisonment, as  
40 follows:

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

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

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

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

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

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

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

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

47 d. (1) The court shall not impose a mandatory sentence  
48 pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d.,

1 unless the ground therefor has been established at a hearing. At the  
2 hearing, which may occur at the time of sentencing, the prosecutor  
3 shall establish by a preponderance of the evidence that the weapon  
4 used or possessed was a firearm. In making its finding, the court  
5 shall take judicial notice of any evidence, testimony or information  
6 adduced at the trial, plea hearing, or other court proceedings and  
7 shall also consider the presentence report and any other relevant  
8 information.

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

20 e. A person convicted of a third or subsequent offense  
21 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any  
22 other provision of this code, or under any of the provisions of Title  
23 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,  
24 as amended and supplemented, shall be sentenced to a term of  
25 imprisonment by the court. This shall not preclude an application  
26 for and imposition of an extended term of imprisonment under  
27 N.J.S.2C:44-3 if the provisions of that section are applicable to the  
28 offender.

29 f. A person convicted of manufacturing, distributing,  
30 dispensing or possessing with intent to distribute any dangerous  
31 substance or controlled substance analog under N.J.S.2C:35-5, of  
32 maintaining or operating a controlled dangerous substance  
33 production facility under N.J.S.2C:35-4, of employing a juvenile in  
34 a drug distribution scheme under N.J.S.2C:35-6, leader of a  
35 narcotics trafficking network under N.J.S.2C:35-3, or of  
36 distributing, dispensing or possessing with intent to distribute on or  
37 near school property or buses under section 1 of P.L.1987, c.101  
38 (C.2C:35-7), who has been previously convicted of manufacturing,  
39 distributing, dispensing or possessing with intent to distribute a  
40 controlled dangerous substance or controlled substance analog,  
41 shall upon application of the prosecuting attorney be sentenced by  
42 the court to an extended term as authorized by subsection c. of  
43 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily  
44 discretionary with the court. [The term of imprisonment shall,  
45 except as may be provided in N.J.S.2C:35-12, include the  
46 imposition of a minimum term. The minimum term shall be fixed  
47 at, or between, one-third and one-half of the sentence imposed by  
48 the court or three years, whichever is greater, not less than seven

1 years if the person is convicted of a violation of N.J.S.2C:35-6, or  
2 18 months in the case of a fourth degree crime, during which the  
3 defendant shall be ineligible for parole.】 <sup>1</sup>If the person is  
4 convicted of a violation of N.J.S.2C:35-3, the term of imprisonment  
5 shall, except as may be provided in N.J.S.2C:35-12, include the  
6 imposition of a minimum term which shall be fixed at, or between,  
7 one-third and one-half of the sentence imposed by the court or three  
8 years, whichever is greater, during which the defendant shall be  
9 ineligible for parole.<sup>1</sup>

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

19 For the purpose of this subsection, a previous conviction exists  
20 where the actor has at any time been convicted under chapter 35 of  
21 this title or Title 24 of the Revised Statutes 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 N.J.S.2C:35-3,  
24 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of  
25 P.L.1987, c.101 (C.2C:35-7).

26 g. Any person who has been convicted under subsection a. of  
27 N.J.S.2C:39-4 or of a crime under any of the following sections:  
28 N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,  
29 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,  
30 N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of  
31 committing or attempting to commit the crime, including the  
32 immediate flight therefrom, used or was in possession of a machine  
33 gun or assault firearm shall be sentenced to a term of imprisonment  
34 by the court. The term of imprisonment shall include the  
35 imposition of a minimum term. The minimum term shall be fixed at  
36 10 years for a crime of the first or second degree, five years for a  
37 crime of the third degree, or 18 months in the case of a fourth  
38 degree crime, during which the defendant shall be ineligible for  
39 parole.

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

44 A person who has been convicted of an offense enumerated in  
45 this subsection and who used or possessed a machine gun or assault  
46 firearm during its commission, attempted commission or flight  
47 therefrom and who has been previously convicted of an offense  
48 involving the use or possession of any firearm as defined in

1 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an  
2 extended term as authorized by subsection d. of N.J.S.2C:43-7,  
3 notwithstanding that extended terms are ordinarily discretionary  
4 with the court.

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

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

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

25

26 <sup>1</sup>12. Section 6 of P.L.2007, c.49 (C.2C:43-6.5) is amended to  
27 read as follows:

28 6. a. Notwithstanding the provisions of subsection a. of  
29 N.J.S.2C:43-6 and except as otherwise provided in subsection c. of  
30 this section, 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 sentenced to a mandatory minimum term of  
35 imprisonment without eligibility for parole as follows: for a crime  
36 of the fourth degree, the mandatory minimum term shall be one  
37 year; for a crime of the third degree, two years; for a crime of the  
38 second degree, five years; and for a crime of the first degree, 10  
39 years; unless the provisions of any other law provide for a higher  
40 mandatory minimum term. As used in this subsection, "a crime that  
41 involves or touches such office or employment" means that the  
42 crime was related directly to the person's performance in, or  
43 circumstances flowing from, the specific public office or  
44 employment held by the person.

45 b. Subsection a. of this section applies to a conviction of any of  
46 the following crimes:

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

- 1 (2) N.J.S.2C:20-4, theft by deception, if the amount involved
- 2 exceeds \$10,000;
- 3 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;
- 4 (4) N.J.S.2C:20-9, theft by failure to make required disposition
- 5 of property received, if the amount involved exceeds \$10,000;
- 6 (5) N.J.S.2C:21-10, commercial bribery;
- 7 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money
- 8 laundering;
- 9 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
- 10 payment claims;
- 11 (8) N.J.S.2C:27-2, bribery in official matters;
- 12 (9) N.J.S.2C:27-3, threats and other improper influence in
- 13 official and political matters;
- 14 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
- 15 official business transaction where interest is involved;
- 16 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
- 17 receipt of unlawful benefit by public servant for official behavior;
- 18 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of
- 19 unlawful benefit to public servant for official behavior;
- 20 (13) N.J.S.2C:28-1, perjury;
- 21 (14) N.J.S.2C:28-5, tampering with witnesses;
- 22 (15) N.J.S.2C:28-7, tampering with public records or
- 23 information;
- 24 (16) N.J.S.2C:29-4, compounding;
- 25 (17) **【N.J.S.2C:30-2, official misconduct;】** (Deleted by
- 26 amendment, P.L. , c. ) (pending before the Legislature as this
- 27 bill)
- 28 (18) N.J.S.2C:30-3, speculating or wagering on official action or
- 29 information; or
- 30 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
- 31 misconduct.
- 32 c. (1) On motion by the prosecutor stating that the defendant
- 33 has provided substantial assistance in a criminal investigation or
- 34 prosecution of another person, the court may waive or reduce the
- 35 mandatory minimum term of imprisonment required by subsection
- 36 a. of this section. The appropriate waiver or reduction shall be
- 37 determined by the court for reasons stated that may include, but are
- 38 not limited to, consideration of the following:
- 39 (i) the court's evaluation of the significance and usefulness of
- 40 the defendant's assistance, giving substantial weight to the
- 41 prosecutor's evaluation of the assistance rendered;
- 42 (ii) the truthfulness, completeness, and reliability of any
- 43 information or testimony provided by the defendant;
- 44 (iii) the nature and extent of the defendant's assistance;
- 45 (iv) any injury suffered, or any danger or risk of injury to the
- 46 defendant or his family resulting from his assistance;
- 47 (v) the timeliness of the defendant's assistance.

1 In making such a determination, the court shall give substantial  
2 weight to the prosecutor's evaluation of the extent of the defendant's  
3 assistance, particularly where the extent and value of the assistance  
4 are difficult to ascertain.

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

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

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

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

32 e. The Attorney General shall develop guidelines to ensure the  
33 uniform exercise of discretion in making determinations regarding  
34 the waiver or reduction of a mandatory minimum term of  
35 imprisonment pursuant to paragraph (1) of subsection c. of this  
36 section and participation in a pretrial intervention program pursuant  
37 to paragraph (1) of subsection d. of this section.<sup>1</sup>

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

39  
40 <sup>1</sup>**[14.] 13.** N.J.S.2C:43-7 is amended to read as follows:

41 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

42 a. In the cases designated in section 2C:44-3, a person who has  
43 been convicted of a crime may be sentenced, and in the cases  
44 designated in subsection e. of section 2 of P.L.1994, c.130  
45 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126  
46 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,  
47 c.410 (C.2C:44-5.1), a person who has been convicted of a crime



1 shall be sentenced, to an extended term of imprisonment, as  
2 follows:

3 (1) In case of aggravated manslaughter sentenced under  
4 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a  
5 crime of the first degree under paragraph (1) of subsection c. of  
6 2C:13-1; or aggravated sexual assault if the person is eligible for an  
7 extended term pursuant to the provisions of subsection g. of  
8 N.J.S.2C:44-3 for a specific term of years which shall be between  
9 30 years and life imprisonment;

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

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

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

18 (5) In the case of a crime of the fourth degree pursuant to  
19 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in  
20 the case of a crime of the fourth degree pursuant to any other  
21 provision of law for a term which shall be fixed by the court  
22 between three and five years;

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

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

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

40 c. In the case of a person sentenced to an extended term  
41 pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall  
42 impose a sentence within the ranges permitted by 2C:43-7a(2), (3),  
43 (4) or (5) according to the degree or nature of the crime for which  
44 the defendant is being sentenced, which sentence, except for a  
45 sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall  
46 include a minimum term which shall【, except as may be  
47 specifically provided by N.J.S.2C:43-6f,】 be fixed at or between  
48 one-third and one-half of the sentence imposed by the court or five

1 years, whichever is greater, during which the defendant shall not be  
2 eligible for parole. Where the sentence imposed is life  
3 imprisonment, the court shall impose a minimum term of 25 years  
4 during which the defendant shall not be eligible for parole, except  
5 that where the term of life imprisonment is imposed on a person  
6 convicted for a violation of N.J.S.2C:35-3, the term of parole  
7 ineligibility shall be 30 years.

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

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

23  
24 <sup>1</sup>**[15.] 14.**<sup>1</sup> Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is  
25 amended to read as follows:

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

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

- 1 c. Notwithstanding any other provision of law to the contrary  
2 and in addition to any other sentence imposed, a court imposing a  
3 minimum period of parole ineligibility of 85 percent of the sentence  
4 pursuant to this section, or 50 percent in the case of second degree  
5 robbery or second degree burglary, shall also impose a five-year  
6 term of parole supervision if the defendant is being sentenced for a  
7 crime of the first degree, or a three-year term of parole supervision  
8 if the defendant is being sentenced for a crime of the second degree.  
9 The term of parole supervision shall commence upon the  
10 completion of the sentence of incarceration imposed by the court  
11 pursuant to subsection a. of this section unless the defendant is  
12 serving a sentence of incarceration for another crime at the time he  
13 completes the sentence of incarceration imposed pursuant to  
14 subsection a., in which case the term of parole supervision shall  
15 commence immediately upon the defendant's release from  
16 incarceration. During the term of parole supervision the defendant  
17 shall remain in release status in the community in the legal custody  
18 of the Commissioner of the Department of Corrections and shall be  
19 supervised by the State Parole Board as if on parole and shall be  
20 subject to the provisions and conditions of section 3 of P.L.1997,  
21 c.117 (C.30:4-123.51b).
- 22 d. The court shall impose sentence pursuant to subsection a. of  
23 this section upon conviction of the following crimes or an attempt  
24 or conspiracy to commit any of these crimes:
- 25 (1) N.J.S.2C:11-3, murder;
  - 26 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
  - 27 (3) N.J.S.2C:11-5, vehicular homicide;
  - 28 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
  - 29 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),  
30 disarming a law enforcement officer;
  - 31 (6) N.J.S.2C:13-1, kidnapping;
  - 32 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
  - 33 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
34 subsection c. of N.J.S.2C:14-2, sexual assault;
  - 35 (9) N.J.S.2C:15-1, robbery;
  - 36 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
  - 37 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
38 arson;
  - 39 (12) N.J.S.2C:18-2, burglary;
  - 40 (13) subsection a. of N.J.S.2C:20-5, extortion;
  - 41 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
42 booby traps in manufacturing or distribution facilities;
  - 43 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
  - 44 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
  - 45 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
46 possessing chemical weapons, biological agents or nuclear or  
47 radiological devices;

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

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

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

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

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

10

11 <sup>1</sup>[16. N.J.S.2C:44-1 is amended to read as follows:

12 2C:44-1. a. In determining the appropriate sentence to be  
13 imposed on a person who has been convicted of an offense, the  
14 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30       (3) The defendant acted under a strong provocation;

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

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

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

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

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

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

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

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

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

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

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

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

10 (2) When imposing a sentence of imprisonment the court shall  
11 consider the defendant's eligibility for release under the law  
12 governing parole, including time credits awarded pursuant to Title  
13 30 of the Revised Statutes, in determining the appropriate term of  
14 imprisonment.

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

31 e. The court shall deal with a person convicted of an offense  
32 other than a crime of the first or second degree, who has not  
33 previously been convicted of an offense, without imposing a  
34 sentence of imprisonment unless, having regard to the nature and  
35 circumstances of the offense and the history, character and  
36 condition of the defendant, it is of the opinion that his imprisonment  
37 is necessary for the protection of the public under the criteria set  
38 forth in subsection a., except that this subsection shall not apply if  
39 the court finds that the aggravating factor in paragraph (5), (14) or  
40 (15) of subsection a. applies or if the person is convicted of any of  
41 the following crimes of the third degree: theft of a motor vehicle;  
42 unlawful taking of a motor vehicle; eluding; strict liability vehicular  
43 homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if  
44 the person is convicted of a crime of the third degree constituting  
45 use of a false government document in violation of subsection c. of  
46 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is  
47 convicted of a crime of the third degree constituting distribution,  
48 manufacture or possession of an item containing personal

1 identifying information in violation of subsection b. of section 6 of  
2 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a  
3 crime of the third or fourth degree constituting bias intimidation in  
4 violation of N.J.S.2C:16-1; if the person is convicted of a crime of  
5 the third degree under paragraph (12) of subsection b. of  
6 N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if  
7 the person is convicted of a crime of the third or fourth degree  
8 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-  
9 29 or C.2C:33-30).

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

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

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

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

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

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

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

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

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

47 (2) In cases of convictions for crimes of the first or second  
48 degree where the court is clearly convinced that the mitigating

1 factors substantially outweigh the aggravating factors and where the  
2 interest of justice demands, the court may sentence the defendant to  
3 a term appropriate to a crime of one degree lower than that of the  
4 crime for which he was convicted. If the court does impose  
5 sentence pursuant to this paragraph, or if the court imposes a  
6 noncustodial or probationary sentence upon conviction for a crime  
7 of the first or second degree, such sentence shall not become final  
8 for 10 days in order to permit the appeal of such sentence by the  
9 prosecution.

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

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

22 (cf: P.L.2017, c.165, s.6) **1**<sup>1</sup>

23

24 **<sup>1</sup>[17.] 15.<sup>1</sup>** This act shall take effect immediately.