

SENATE, No. 2593

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

Allows AOC to retroactively rescind or modify mandatory term of parole eligibility for certain offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/25/2020)

1 **AN ACT** concerning parole, supplementing Title 30 of the Revised
2 Statutes, and amending P.L.1979, c.441.

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

6
7 1. (New section) a. The Administrative Director of the Courts
8 may issue an order to retroactively modify the judgment of
9 conviction, in accordance with the provisions of subsection m. of
10 section 7 of P.L.1979, c.441 (C.30:4-123.51), to rescind the
11 mandatory minimum period of parole ineligibility of any inmate
12 convicted prior to the effective date of P.L. , c.)(pending
13 before the Legislature as this bill) who was sentenced in accordance
14 with:

15 (1) leader of a cargo theft network pursuant to subsection e. of
16 section 4 of P.L.2013, c.58 (C.2C:20-2.4);

17 (2) crimes involving theft from a cargo carrier pursuant to
18 subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-2.6);

19 (3) shoplifting pursuant to paragraph (4) of subsection c. of
20 N.J.S.2C:20-11;

21 (4) computer criminal activity pursuant to subsections g. or h. of
22 section 4 of P.L.1984, c.184 (C.2C:20-25);

23 (5) wrongful access, disclosure of information pursuant to
24 subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);

25 (6) leader of narcotics trafficking network pursuant to
26 N.J.S.2C:35-3;

27 (7) maintaining or operating a controlled dangerous substance
28 production facility pursuant to N.J.S.2C:35-4;

29 (8) manufacturing, distributing, or dispensing a controlled
30 dangerous substance or controlled substance analog pursuant to
31 N.J.S.2C:35-5;

32 (9) employing a juvenile in a drug distribution scheme pursuant
33 to N.J.S.2C:35-6;

34 (10) distribution on or within 1,000 feet of school property
35 pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7);

36 (11) distribution to persons under age 18 pursuant to section 1
37 of N.J.J.2C:35-8; or

38 (12) mandatory term for repeat drug offenders pursuant to
39 subsection f. of N.J.S.2C:43-6, unless the prosecutor objects in the
40 case of an inmate.

41 b. The administrative director may issue an order to
42 retroactively modify the judgment of conviction, in accordance with
43 the provisions of subsection m. of section 7 of P.L.1979, c.441
44 (C.30:4-123.51) to resentence an inmate to a fixed minimum term
45 of 50 percent of the sentence of incarceration imposed in lieu of the

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 85 percent fixed minimum term for second degree robbery in
2 violation of N.J.S.2C:15-1 or second degree burglary in violation of
3 N.J.S.2C:18-2 that was committed prior to the effective date of
4 P.L. , c. (C.)(pending before the Legislature as this bill), unless
5 the prosecutor files an objection.

6 c. An order issued pursuant to subsections a. or b. of this
7 section shall remain inoperative for thirty days, to allow the State to
8 identify the affected inmates and determine whether there was a
9 basis to file an objection in any inmate's case.

10 d. A prosecutor shall not file an objection to the retroactive
11 modification of an inmate's judgment of conviction pursuant to this
12 section without the prior approval of the Attorney General.

13 e. The Attorney General shall provide to the Department of
14 Corrections notice as to the identity of each inmate for whom a
15 determination is made to file an objection. The Department of
16 Corrections shall promptly notify the inmate and the inmate's
17 attorney or, if the inmate does not have an attorney, the public
18 defender of the determination to file an objection with respect to
19 that individual.

20 f. An objection to the retroactive modification of a judgment of
21 conviction for an inmate shall be filed with the sentencing court, or
22 the presiding criminal judge if the sentencing court is not still
23 sitting, and provided to the inmate's attorney or, if the inmate does
24 not have an attorney, the public defender.

25 g. In the event the prosecutor files an objection, the inmate's
26 judgment of conviction shall be retroactively modified in
27 accordance with the provisions of paragraphs (1) or (2) of
28 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51)
29 unless the court, after a hearing, finds by clear and convincing
30 evidence that rescinding the term of parole ineligibility imposed
31 upon the inmate would likely pose a substantial risk to public safety
32 or that the aggravating factors associated with rescinding or
33 reducing, as the case may be, the term of parole ineligibility
34 substantially outweigh the mitigating factors of doing so.

35 h. A court that finds that an inmate's sentence applies to
36 paragraphs (1) or (2) of subsection m. of section 7 of P.L.1979,
37 c.441 (C.30:4-123.51) may issue an order denying the retroactive
38 modification of the judgment of conviction, or in the alternative:

39 (1) for an inmate whose sentence applies pursuant to paragraph
40 (1) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
41 123.51), the court may modify the judgment of conviction by
42 rescinding the mandatory period of parole ineligibility and
43 sentencing the inmate to a period of discretionary parole
44 ineligibility; and

45 (2) for an inmate whose sentence applies pursuant to paragraph
46 (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
47 123.51), the court may resentence the inmate to a fixed minimum

1 term of 50 percent of the sentence of incarceration imposed with an
2 additional period of discretionary parole ineligibility.

3 i. Any period of parole ineligibility imposed pursuant to
4 subsection g. of this section shall not result in a period of parole
5 ineligibility in excess of the period that otherwise would have
6 applied under the judgment of conviction prior to modification.

7 j. An inmate who is afforded a hearing pursuant to subsection
8 g. of this section may be represented by the public defender.

9 k. Nothing in this section shall be construed to authorize the
10 court to modify or in any way affect any mandatory minimum term
11 of parole ineligibility imposed pursuant to a law other than those
12 subject to subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
13 123.51).

14
15 2. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
16 read as follows:

17 7. a. Each adult inmate sentenced to a term of incarceration in
18 a county penal institution, or to a specific term of years at the State
19 Prison or the correctional institution for women shall become
20 primarily eligible for parole after having served any judicial or
21 statutory mandatory minimum term, or one-third of the sentence
22 imposed where no mandatory minimum term has been imposed less
23 commutation time for good behavior pursuant to N.J.S.2A:164-24
24 or R.S.30:4-140 and credits for diligent application to work and
25 other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-
26 28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the
27 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,
28 2C:43-6, 2C:43-7), commutation and work credits shall not in any
29 way reduce any judicial or statutory mandatory minimum term and
30 such credits accrued shall only be awarded subsequent to the
31 expiration of the term.

32 b. Each adult inmate sentenced to a term of life imprisonment
33 shall become primarily eligible for parole after having served any
34 judicial or statutory mandatory minimum term, or 25 years where
35 no mandatory minimum term has been imposed less commutation
36 time for good behavior and credits for diligent application to work
37 and other institutional assignments. If an inmate sentenced to a
38 specific term or terms of years is eligible for parole on a date later
39 than the date upon which he would be eligible if a life sentence had
40 been imposed, then in such case the inmate shall be eligible for
41 parole after having served 25 years, less commutation time for good
42 behavior and credits for diligent application to work and other
43 institutional assignments. Consistent with the provisions of the
44 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,
45 2C:43-6, 2C:43-7), commutation and work credits shall not in any
46 way reduce any judicial or statutory mandatory minimum term and
47 such credits accrued shall only be awarded subsequent to the
48 expiration of the term.

1 c. Each inmate sentenced to a specific term of years pursuant
2 to the "Controlled Dangerous Substances Act," P.L.1970, c.226
3 (C.24:21-1 et al.) shall become primarily eligible for parole after
4 having served one-third of the sentence imposed less commutation
5 time for good behavior and credits for diligent application to work
6 and other institutional assignments.

7 d. Each adult inmate sentenced to an indeterminate term of
8 years as a young adult offender pursuant to N.J.S.2C:43-5 shall
9 become primarily eligible for parole consideration pursuant to a
10 schedule of primary eligibility dates developed by the board, less
11 adjustment for program participation. In no case shall the board
12 schedule require that the primary parole eligibility date for a young
13 adult offender be greater than the primary parole eligibility date
14 required pursuant to this section for the presumptive term for the
15 crime authorized pursuant to subsection f. of N.J.S.2C:44-1.

16 e. Each adult inmate sentenced for an offense specified in
17 N.J.S.2C:47-1 shall become primarily eligible for parole as follows:

18 (1) If the court finds that the offender's conduct was not
19 characterized by a pattern of repetitive, compulsive behavior or
20 finds that the offender is not amenable to sex offender treatment, or
21 if after sentencing the Department of Corrections in its most recent
22 examination determines that the offender is not amenable to sex
23 offender treatment, the offender shall become primarily eligible for
24 parole after having served any judicial or statutory mandatory
25 minimum term or one-third of the sentence imposed where no
26 mandatory minimum term has been imposed. Neither such term
27 shall be reduced by commutation time for good behavior pursuant
28 to R.S.30:4-140 or credits for diligent application to work and other
29 institutional assignments pursuant to R.S.30:4-92.

30 (2) All other offenders shall be eligible for parole pursuant to
31 the provisions of N.J.S.2C:47-5, except no offender shall become
32 primarily eligible for parole prior to the expiration of any judicial or
33 statutory mandatory minimum term.

34 f. Each juvenile inmate committed to an indeterminate term
35 shall be immediately eligible for parole.

36 g. Each adult inmate of a county jail, workhouse or
37 penitentiary shall become primarily eligible for parole upon service
38 of 60 days of his aggregate sentence or as provided for in
39 subsection a. of this section, whichever is greater. Whenever any
40 such inmate's parole eligibility is within six months of the date of
41 such sentence, the judge shall state such eligibility on the record
42 which shall satisfy all public and inmate notice requirements. The
43 chief executive officer of the institution in which county inmates
44 are held shall generate all reports pursuant to subsection d. of
45 section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board
46 shall have the authority to promulgate time periods applicable to the
47 parole processing of inmates of county penal institutions, except
48 that no inmate may be released prior to the primary eligibility date

1 established by this subsection, unless consented to by the
2 sentencing judge. No inmate sentenced to a specific term of years
3 at the State Prison or the correctional institution for women shall
4 become primarily eligible for parole until service of a full nine
5 months of his aggregate sentence.

6 h. When an inmate is sentenced to more than one term of
7 imprisonment, the primary parole eligibility terms calculated
8 pursuant to this section shall be aggregated by the board for the
9 purpose of determining the primary parole eligibility date, except
10 that no juvenile commitment shall be aggregated with any adult
11 sentence. The board shall promulgate rules and regulations to
12 govern aggregation under this subsection.

13 i. The primary eligibility date shall be computed by a
14 designated representative of the board and made known to the
15 inmate in writing not later than 90 days following the
16 commencement of the sentence. In the case of an inmate sentenced
17 to a county penal institution such notice shall be made pursuant to
18 subsection g. of this section. Each inmate shall be given the
19 opportunity to acknowledge in writing the receipt of such
20 computation. Failure or refusal by the inmate to acknowledge the
21 receipt of such computation shall be recorded by the board but shall
22 not constitute a violation of this subsection.

23 j. Except as provided in this subsection, each inmate sentenced
24 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
25 N.J.S.2A:164-17 for a fixed minimum and maximum term or
26 subsection b. of N.J.S.2C:1-1 shall not be primarily eligible for
27 parole on a date computed pursuant to this section, but shall be
28 primarily eligible on a date computed pursuant to P.L.1948, c.84
29 (C.30:4-123.1 et seq.), which is continued in effect for this purpose.
30 Inmates classified as second, third or fourth offenders pursuant to
31 section 12 of P.L.1948, c.84 (C.30:4-123.12) shall become
32 primarily eligible for parole after serving one-third, one-half or
33 two-thirds of the maximum sentence imposed, respectively, less in
34 each instance commutation time for good behavior and credits for
35 diligent application to work and other institutional assignments;
36 provided, however, that if the prosecuting attorney or the
37 sentencing court advises the board that the punitive aspects of the
38 sentence imposed on such inmates will not have been fulfilled by
39 the time of parole eligibility calculated pursuant to this subsection,
40 then the inmate shall not become primarily eligible for parole until
41 serving an additional period which shall be one-half of the
42 difference between the primary parole eligibility date calculated
43 pursuant to this subsection and the parole eligibility date calculated
44 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the
45 prosecuting attorney or the sentencing court advises the board that
46 the punitive aspects of the sentence have not been fulfilled, such
47 advice need not be supported by reasons and will be deemed
48 conclusive and final. Any such decision shall not be subject to

1 judicial review except to the extent mandated by the New Jersey
2 and United States Constitutions. The board shall, reasonably prior
3 to considering any such case, advise the prosecuting attorney and
4 the sentencing court of all information relevant to such inmate's
5 parole eligibility.

6 k. Notwithstanding any provisions of this section to the
7 contrary, a person sentenced to imprisonment pursuant to paragraph
8 (2), (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible
9 for parole.

10 l. **【**Notwithstanding the provisions of subsections a. through j.
11 of this section, the appropriate board panel, as provided in section 1
12 of P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving
13 a sentence of imprisonment on medical parole at any time.**】 Deleted**
14 by amendment, P.L. , c. (C.)(pending before the Legislature
15 as this bill).

16 m. (1) A person serving a custodial sentence on the effective
17 date of P.L. , c. (C.)(pending before the Legislature as this
18 bill) and subject to a mandatory minimum term of parole
19 ineligibility pursuant to subsection e. of section 4 of P.L.2013, c.58
20 (C.2C:20-2.4), subsection c. of section 6 of P.L.2013, c.58 (c.2c:20-
21 2.6), paragraph (4) of subsection c. of N.J.S.2C:20-11, subsections
22 g. or h. of section 4 of P.L.1984, c.184 (C.2C:20-25), subsection b.
23 of section 10 of P.L.1984, c.184 (C.2C:20-31), 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, section 1 of
25 P.L.1987, c.101 (C.2C:35-7), N.J.S.2C:35-8, or subsection f. of
26 N.J.S.2C:43-6 shall be eligible for parole after the effective date of
27 P.L. , c. (C.)(pending before the Legislature as this bill) in
28 accordance with subsection a. of section 1 of
29 P.L. , c. (C.)(pending before the Legislature as this bill).

30 (2) Notwithstanding the provisions of section 2 of P.L.1997,
31 c.117 (2C:43-7.2) or any provisions of this section to the contrary, a
32 person
33 sentenced prior to the effective date of P.L. , c. (C.)(pending
34 before the Legislature as this bill) to a fixed minimum term of 85
35 percent of the sentence imposed for second degree robbery in
36 violation of N.J.S.2C:15-1 or second degree burglary in violation of
37 N.J.S.2C:18-2 and who is serving a term of incarceration after the
38 effective date of P.L. , c. (C.)(pending before the
39 Legislature as this bill) shall be eligible for parole after serving 50
40 percent of the fixed minimum term in accordance with subsection b.
41 of section 1 of P.L. , c. (C.)(pending before the Legislature
42 as this bill).

43 (cf: P.L.2007, c.204, s.6)

44
45 3. The Commissioner of Corrections shall conduct a study on
46 the anticipated expenses to upgrade the department's existing data
47 infrastructure in order to improve its ability to collect, track, and
48 analyze data related to the criminal justice system. The commission

1 shall within six months of the effective date of P.L. , c.
2 (pending before the Legislature as this bill) submit a report to the
3 Governor, and the Legislature pursuant to section 2 of P.L.1991,
4 c.164 (C.52:14-19.1) with recommendations for additional funding
5 necessary for the department to invest in upgrades to its data
6 infrastructure.

7
8 4. This act shall take effect immediately.

9
10
11 STATEMENT

12
13 This bill authorizes the Director of the Administrative Office of
14 the Courts to issue an order to retroactively rescind the mandatory
15 minimum period of parole ineligibility of inmates who committed
16 certain offenses prior to the effective date of the bill. The offenses
17 eligible for a retroactive modification of judgment include
18 convictions for:

- 19 • being the leader of a cargo theft network;
20 • crimes involving theft from a cargo carrier;
21 • shoplifting;
22 • computer criminal activity;
23 • wrongful access, disclosure of information;
24 • leader of narcotics trafficking network;
25 • maintaining or operating a controlled dangerous substance
26 production facility;
27 • manufacturing, distributing, or dispensing controlled
28 dangerous substances;
29 • employing a juvenile in a drug distribution scheme;
30 • distribution on or within 1,000 feet of school property;
31 • distribution to persons under the age of 18; or
32 • mandatory term for repeat drug offenders, unless the
33 prosecutor files an objection;

34 In addition, the bill authorizes the administrative director to
35 retroactively modify the judgments of conviction made prior to the
36 bill's enactment to resentence an inmate to a fixed minimum term
37 of 50 percent of the sentence of incarceration imposed in lieu of the
38 85 percent fixed minimum term for second degree robbery or
39 burglary, unless the prosecutor objects in the case of an inmate.

40 Orders to modify judgements would remain inactive for 30 days
41 to allow the State to identify the affected inmates and determine
42 whether there was a basis to file an objection in any inmate's case.
43 The bill prohibits prosecutors from filing an objection without the
44 prior approval of the Attorney General. The Attorney General is
45 required to provide to the Department of Corrections (DOC) notice
46 as to the identity of each inmate for whom a determination is made
47 to file an objection. The DOC is to notify the inmate and the

1 inmate's attorney or, if the inmate does not have an attorney, the
2 public defender of the determination to file an objection. An
3 objection is to be filed with the sentencing court, or the presiding
4 criminal judge if the sentencing court is not still sitting, and
5 provided to the inmate's attorney or, if the inmate does not have an
6 attorney, the public defender.

7 In the event the prosecutor files an objection, the bill requires the
8 inmate's judgment of conviction to be retroactively modified unless
9 the court, after a hearing, finds by clear and convincing evidence
10 that rescinding the term of parole ineligibility imposed upon the
11 inmate would likely pose a substantial risk to public safety. The
12 court also may find by clear and convincing evidence that
13 aggravating factors associated with rescinding or reducing, as the
14 case may be, the term of parole ineligibility substantially outweigh
15 the mitigating factors of doing so.

16 A court that denies retroactive modification of the judgment of
17 conviction may sentence the inmate to a period of parole
18 ineligibility. However, the court is prohibited from imposing a
19 period of parole ineligibility in excess of the period that would have
20 applied prior to the prosecutor's objection. The bill allows an
21 inmate afforded a hearing to rescind or reduce, as the case may be,
22 the term of parole ineligibility to be represented by the public
23 defender.

24 Finally, the bill requires the Commissioner of Corrections to
25 conduct a study on the anticipated expenses to upgrade the
26 department's existing data infrastructure in order to improve its
27 ability to collect, track, and analyze data related to the criminal
28 justice system. Within six months of the bill's enactment the
29 commission is to submit a report to the Governor and the
30 Legislature with recommendations for additional funding necessary
31 for the department to invest in upgrades to its data infrastructure.