[First Reprint]

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)

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SYNOPSIS

Permits retroactive modification of judgments of conviction, including rescinding mandatory minimum periods of parole ineligibility and reducing fixed minimum terms of imprisonment for certain offenses; requires study of DOC's anticipated expenses to upgrade data infrastructure.

CURRENT VERSION OF TEXT

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

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

AN ACT concerning [1]criminal justice, with an emphasis on rescinding mandatory minimum periods of[1] parole [1]ineligibility[1], supplementing Title 30 of the Revised Statutes, and amending P.L.1979, c.441 [1]and P.L.1967, c.43[1].

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

1. (New section) a. The [1]**[**Administrative Director of the Courts**]** Supreme Court[1] may issue an order to retroactively modify the judgment of conviction, in accordance with the provisions of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51), to rescind the mandatory minimum period of parole ineligibility of any inmate convicted prior to [1], and who is in the custody of the Department of Corrections on,[1] the effective date of P.L. , c. (C.)(pending before the Legislature as this bill) who was sentenced in accordance with:

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

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

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

(4) [1]**[**computer criminal activity pursuant to subsections g. or h. of section 4 of P.L.1984, c.184 (C.2C:20-25);

(5)**]**[1] wrongful access, disclosure of information pursuant to subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);

[1]**[**(6) leader of narcotics trafficking network pursuant to N.J.S.2C:35-3;

(7)**]** (5)[1] maintaining or operating a controlled dangerous substance production facility pursuant to N.J.S.2C:35-4;

[1]**[**(8)**]** (6)[1] manufacturing, distributing, or dispensing a controlled dangerous substance or controlled substance analog pursuant to N.J.S.2C:35-5;

[1]**[**(9)**]** (7)[1] employing a juvenile in a drug distribution scheme pursuant to N.J.S.2C:35-6;

[1]**[**(10)**]** (8)[1] distribution on or within 1,000 feet of school property pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7);

[1]**[**(11)**]** (9)[1] distribution to persons under age 18 pursuant to section 1 of [1]**[**N.J.J.2C:35-8**]** N.J.S.2C:35-8[1] ; [1]**[**or

(12)**]** (10) a[1] mandatory term for [1]being a[1] repeat drug [1]**[**offenders**]** offender[1] pursuant to subsection f. of N.J.S.2C:43-6 [1]; or

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:
[1]Senate SJU committee amendments adopted August 25, 2020.

(11) a mandatory term for official misconduct, N.J.S.2C:30-2, pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the offense involving or touching the office or employment once held by the convicted and sentenced public officer or employee[1],

unless the prosecutor objects in the case of an inmate [1]so sentenced in accordance with any of those paragraphs[1].

b. The [1][administrative director] Supreme Court[1] may issue an order to retroactively modify the judgment of conviction, in accordance with the provisions of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51) to resentence an inmate to a fixed minimum term of 50 percent of the sentence of incarceration imposed in lieu of the 85 percent fixed minimum term for second degree robbery in violation of N.J.S.2C:15-1 or second degree burglary in violation of N.J.S.2C:18-2 that was committed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), unless the prosecutor files an objection.

c. [1][An] The Commissioner of Corrections shall identify, from a list of defendants sentenced for the enumerated crimes provided by the Administrative Office of the Courts, those inmates in the custody of the Department of Corrections who are eligible for resentencing under an[1] order issued pursuant to subsections a. or b. of this section [1][shall remain inoperative for thirty days, to allow the State to identify the affected inmates] ,[1] and [1]provide a list of eligible inmates to the Supreme Court, the Attorney General and county prosecutors. No later than 60 days after receipt of the list, the State shall[1] determine whether there [1][was] is[1] a basis to file an objection in any inmate's case.

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

e. The Attorney General shall provide to the [1]Administrative Director of the Courts and to the[1] Department of Corrections notice as to the identity of each inmate for whom a determination is made to file an objection. The Department of Corrections shall promptly notify the inmate and the inmate's attorney or, if the inmate does not have an attorney, the [1][public defender] Public Defender[1] of the determination to file an objection with respect to that individual.

f. [1][An] (1) In any case in which a determination is made to file an[1] objection to the retroactive modification of a judgment of conviction for an inmate [1][shall be filed with the sentencing court, or the presiding criminal judge if the sentencing court is not still sitting, and provided to the inmate's attorney or, if the inmate does not have an attorney, the public defender] , the prosecutor shall file any such objection with the Superior Court in the county where the conviction occurred. Any such objection shall be filed no later than 60 days following receipt of the list from the Department of

Corrections pursuant to subsection c. of this section, or within 30 days of providing notice of a determination to file an objection pursuant to subsection e. of this section, whichever date is later.

(2) For those eligible inmates as to whom the prosecutor does not file an objection, the court may order the retroactive modification of those inmates' judgments of conviction in accordance with the provisions of paragraphs (1) or (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51), without conducting a hearing[1] .

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

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

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

(2) for an inmate whose sentence applies pursuant to paragraph (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51), the court may resentence the inmate to a fixed minimum term of 50 percent of the sentence of incarceration imposed with an additional period of discretionary parole ineligibility.

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

j. An inmate who is afforded a hearing pursuant to subsection g. of this section [1]**[**may**]** shall[1] be represented by the [1]**[**public defender**]** Public Defender, unless the inmate retains other counsel[1].

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

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

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

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

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

d. Each adult inmate sentenced to an indeterminate term of years as a young adult offender pursuant to N.J.S.2C:43-5 shall become primarily eligible for parole consideration pursuant to a schedule of primary eligibility dates developed by the board, less adjustment for program participation. In no case shall the board schedule require that the primary parole eligibility date for a young adult offender be greater than the primary parole eligibility date

required pursuant to this section for the presumptive term for the crime authorized pursuant to subsection f. of N.J.S.2C:44-1.

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

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

(2) [1]**[**All other**]** Young adult[1] offenders shall be eligible for parole pursuant to the provisions of N.J.S.2C:47-5, except no offender shall become primarily eligible for parole prior to the expiration of any judicial or statutory mandatory minimum term.

f. [1]**[**Each juvenile inmate committed to an indeterminate term shall be immediately eligible for parole.**]** (Deleted by amendment, P.L.2019, c.363)[1]

g. Each adult inmate of a county jail, workhouse, or penitentiary shall become primarily eligible for parole upon service of 60 days of his aggregate sentence or as provided for in subsection a. of this section, whichever is greater. Whenever any such inmate's parole eligibility is within six months of the date of such sentence, the judge shall state such eligibility on the record which shall satisfy all public and inmate notice requirements. The chief executive officer of the institution in which county inmates are held shall generate all reports pursuant to subsection d. of section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board shall have the authority to promulgate time periods applicable to the parole processing of inmates of county penal institutions, except that no inmate may be released prior to the primary eligibility date established by this subsection, unless consented to by the sentencing judge. No inmate sentenced to a specific term of years at the State Prison or the correctional institution for women shall become primarily eligible for parole until service of a full nine months of his aggregate sentence.

h. When an inmate is sentenced to more than one term of imprisonment, the primary parole eligibility terms calculated pursuant to this section shall be aggregated by the board for the purpose of determining the primary parole eligibility date [1]**[**, except that no juvenile commitment shall be aggregated with any adult

sentence**]**[1]. The board shall promulgate rules and regulations to govern aggregation under this subsection.

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

j. Except as provided in this subsection, each inmate sentenced pursuant to N.J.S.2A:113-4 for a term of life imprisonment, N.J.S.2A:164-17 for a fixed minimum and maximum term or subsection b. of N.J.S.2C:1-1 shall not be primarily eligible for parole on a date computed pursuant to this section, but shall be primarily eligible on a date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.), which is continued in effect for this purpose. Inmates classified as second, third or fourth offenders pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12) shall become primarily eligible for parole after serving one-third, one-half, or two-thirds of the maximum sentence imposed, respectively, less in each instance commutation time for good behavior and credits for diligent application to work and other institutional assignments; provided, however, that if the prosecuting attorney or the sentencing court advises the board that the punitive aspects of the sentence imposed on such inmates will not have been fulfilled by the time of parole eligibility calculated pursuant to this subsection, then the inmate shall not become primarily eligible for parole until serving an additional period which shall be one-half of the difference between the primary parole eligibility date calculated pursuant to this subsection and the parole eligibility date calculated pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the prosecuting attorney or the sentencing court advises the board that the punitive aspects of the sentence have not been fulfilled, such advice need not be supported by reasons and will be deemed conclusive and final. Any such decision shall not be subject to judicial review except to the extent mandated by the New Jersey and United States Constitutions. The board shall, reasonably prior to considering any such case, advise the prosecuting attorney and the sentencing court of all information relevant to such inmate's parole eligibility.

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

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

m. (1) A person serving a custodial sentence on the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and subject to a mandatory minimum term of parole ineligibility pursuant to subsection e. of section 4 of P.L.2013, c.58 (C.2C:20-2.4), subsection c. of section 6 of P.L.2013, c.58 **1[**(c.2c:20-2.6)**]** (C.2C:20-2.6)**1** , paragraph (4) of subsection c. of N.J.S.2C:20-11, **1[**subsections g. or h. of section 4 of P.L.1984, c.184 (C.2C:20-25),**]1** subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31), **1[**N.J.S.2C:35-3,**]1** N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), N.J.S.2C:35-8, or subsection f. of N.J.S.2C:43-6 shall be eligible for parole after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in accordance with subsection a. of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

(cf: P.L.2019, c.363, s.10)

3. The Commissioner of Corrections shall conduct a study on the anticipated expenses to upgrade the department's existing data infrastructure in order to improve its ability to collect, track, and analyze data related to the criminal justice system. The commission shall within six months of the effective date of P.L. , c. (pending before the Legislature as this bill) submit a report to the Governor, and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) with recommendations for additional funding necessary for the department to invest in upgrades to its data infrastructure.

[1]4. Section 5 of P.L.1967, c.43 (C.2A:158A-5) is amended to read as follows:

5. It shall be the duty of the Public Defender to provide for the legal representation of any indigent defendant who is formally charged with the commission of an indictable offense.

All necessary services and facilities of representation (including investigation and other preparation) shall be provided in every case. The factors of need and real value to a defense may be weighed against the financial constraints of the Public Defender's office in determining what are the necessary services and facilities of representation.

Representation as herein provided for shall include any direct appeal from conviction and such post-conviction proceedings as would warrant the assignment of counsel pursuant to the court rules.

Representation for indigent defendants (a) may be provided in any federal court in any matter arising out of or relating to an action pending or recently pending in a court of criminal jurisdiction of this State and (b) may be provided in any federal court in this State where indigent defendants are charged with the commission of a federal criminal offense and where the representation is under a plan adopted pursuant to the Criminal Justice Act of 1964 (18 U.S.C. s. 3006A).

The Public Defender also shall provide for the legal representation of any eligible inmate who is serving a custodial prison sentence in matters in which a prosecutor objects to the retroactive modification of a judgment of conviction in accordance with section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).[1]

(cf: P.L.1987, c.170, s.2)

[1][4.] 5.[1] This act shall take effect [1][immediately] on the first day of the sixth month following the date of enactment, provided however, that the Supreme Court, Administrative Director of the Courts, Commissioner of Corrections, Public Defender, Attorney General and county prosecutors may take such anticipatory action as deemed necessary to effectuate the provisions of this act. This act shall expire upon the entry of final orders in accordance with section 1 of this act with respect to all inmates eligible for resentencing under this act[1].