

[Second 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)

Co-Sponsored by:

Senators Scutari and Ruiz

SYNOPSIS

Permits retroactive modification of certain judgments of conviction; requires study of DOC's anticipated expenses to upgrade data infrastructure.

CURRENT VERSION OF TEXT

As amended by the Senate on October 29, 2020.



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

1 AN ACT concerning ¹criminal justice, with an emphasis on
 2 rescinding mandatory minimum periods of¹ parole
 3 ¹ineligibility¹, supplementing Title 30 of the Revised Statutes,
 4 and amending P.L.1979, c.441 ¹and P.L.1967, c.43¹.

5
 6 **BE IT ENACTED** by the Senate and General Assembly of the State
 7 of New Jersey:
 8

9 1. (New section) a. The ¹**【Administrative Director of the**
 10 **Courts】** Supreme Court¹ may issue an order to retroactively modify
 11 the judgment of conviction, in accordance with the provisions of
 12 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51), to
 13 rescind the mandatory minimum period of parole ineligibility of any
 14 inmate convicted prior to ¹, and who is in the custody of the
 15 Department of Corrections on,¹ the effective date of P.L. ,
 16 c. (C.)(pending before the Legislature as this bill) who was
 17 sentenced in accordance with:
 18 (1) leader of a cargo theft network pursuant to subsection e. of
 19 section 4 of P.L.2013, c.58 (C.2C:20-2.4);
 20 (2) crimes involving theft from a cargo carrier pursuant to
 21 subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-2.6);
 22 (3) shoplifting pursuant to paragraph (4) of subsection c. of
 23 N.J.S.2C:20-11;
 24 (4) ¹**【computer criminal activity pursuant to subsections g. or h.**
 25 **of section 4 of P.L.1984, c.184 (C.2C:20-25);**
 26 (5)¹**】** ¹wrongful access, disclosure of information pursuant to
 27 subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);
 28 ¹**【(6) leader of narcotics trafficking network pursuant to**
 29 **N.J.S.2C:35-3;**
 30 (7)¹**【(5)** ¹maintaining or operating a controlled dangerous
 31 substance production facility pursuant to N.J.S.2C:35-4;
 32 ¹**【(8)】** ¹(6) ¹manufacturing, distributing, or dispensing a
 33 controlled dangerous substance or controlled substance analog
 34 pursuant to N.J.S.2C:35-5;
 35 ¹**【(9)】** ¹(7) ¹employing a juvenile in a drug distribution scheme
 36 pursuant to N.J.S.2C:35-6;
 37 ¹**【(10)】** ¹(8) ¹distribution on or within 1,000 feet of school
 38 property pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7);
 39 ¹**【(11)】** ¹(9) ¹distribution to persons under age 18 pursuant to
 40 section 1 of ¹**【N.J.J.2C:35-8】** ¹N.J.S.2C:35-8¹ ; ¹**【or**
 41 (12)¹**】** ¹(10) ¹a ¹mandatory term for ¹being a¹ repeat drug
 42 ¹**【offenders】** ¹offender¹ pursuant to subsection f. of N.J.S.2C:43-6 ¹;
 43 or
 44 (11) a mandatory term for official misconduct, N.J.S.2C:30-2,

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:

¹Senate SJU committee amendments adopted August 25, 2020.

²Senate floor amendments adopted October 29, 2020.

1 pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the
2 offense involving or touching the office or employment once held
3 by the convicted and sentenced public officer or employee¹,

4 unless the prosecutor objects in the case of an inmate ¹so
5 sentenced in accordance with any of those paragraphs¹.

6 b. ²**【The** ¹**【administrative director】** Supreme Court¹ may issue
7 an order to retroactively modify the judgment of conviction, in
8 accordance with the provisions of subsection m. of section 7 of
9 P.L.1979, c.441 (C.30:4-123.51) to resentence an inmate to a fixed
10 minimum term of 50 percent of the sentence of incarceration
11 imposed in lieu of the 85 percent fixed minimum term for second
12 degree robbery in violation of N.J.S.2C:15-1 or second degree
13 burglary in violation of N.J.S.2C:18-2 that was committed prior to
14 the effective date of P.L. , c. (C.) (pending before the
15 Legislature as this bill), unless the prosecutor files an objection.

16 c. ²¹**【An】** The Commissioner of Corrections shall identify, from
17 a list of defendants sentenced for the enumerated crimes provided
18 by the Administrative Office of the Courts, those inmates in the
19 custody of the Department of Corrections who are eligible for
20 resentencing under an¹ order issued pursuant to ²**【subsections】**
21 subsection² a. ²**【or b.】**² of this section ¹**【shall remain inoperative**
22 for thirty days, to allow the State to identify the affected inmates ¹,
23 and ¹provide a list of eligible inmates to the Supreme Court, the
24 Attorney General and county prosecutors. No later than 60 days
25 after receipt of the list, the State shall¹ determine whether there
26 ¹**【was】** is¹ a basis to file an objection in any inmate's case.

27 ²**【d.】** ²c.² A prosecutor shall not file an objection to the
28 retroactive modification of an inmate's judgment of conviction
29 pursuant to this section without the prior approval of the Attorney
30 General.

31 ²**【e.】** ²d.² The Attorney General shall provide to the
32 ¹Administrative Director of the Courts and to the¹ Department of
33 Corrections notice as to the identity of each inmate for whom a
34 determination is made to file an objection. The Department of
35 Corrections shall promptly notify the inmate and the inmate's
36 attorney or, if the inmate does not have an attorney, the ¹**【public**
37 **defender】** Public Defender¹ of the determination to file an objection
38 with respect to that individual.

39 ²**【f.】** ²e.² ¹**【An】** (1) In any case in which a determination is
40 made to file an¹ objection to the retroactive modification of a
41 judgment of conviction for an inmate ¹**【shall be filed with the**
42 sentencing court, or the presiding criminal judge if the sentencing
43 court is not still sitting, and provided to the inmate's attorney or, if
44 the inmate does not have an attorney, the public defender ¹, the
45 prosecutor shall file any such objection with the Superior Court in
46 the county where the conviction occurred. Any such objection shall

1 be filed no later than 60 days following receipt of the list from the
2 Department of Corrections pursuant to subsection c. of this section,
3 or within 30 days of providing notice of a determination to file an
4 objection pursuant to subsection e. of this section, whichever date is
5 later.

6 (2) For those eligible inmates as to whom the prosecutor does
7 not file an objection, the court may order the retroactive
8 modification of those inmates' judgments of conviction in
9 accordance with the provisions of paragraphs (1) or (2) of
10 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51),
11 without conducting a hearing¹.

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

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

26 (1) for an inmate whose sentence applies pursuant to paragraph
27 (1) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
28 123.51), the court may modify the judgment of conviction by
29 rescinding the mandatory period of parole ineligibility and
30 sentencing the inmate to a period of discretionary parole
31 ineligibility; and

32 (2) for an inmate whose sentence applies pursuant to paragraph
33 (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
34 123.51), the court may resentence the inmate to a fixed minimum
35 term of 50 percent of the sentence of incarceration imposed with an
36 additional period of discretionary parole ineligibility.

37 ²**[i.] h.**² Any period of parole ineligibility imposed pursuant
38 to subsection g. of this section shall not result in a period of parole
39 ineligibility in excess of the period that otherwise would have
40 applied under the judgment of conviction prior to modification.

41 ²**[j.] i.**² An inmate who is afforded a hearing pursuant to
42 subsection g. of this section ¹**[may] shall¹** be represented by the
43 ¹**[public defender] Public Defender, unless the inmate retains other**
44 **counsel¹.**

45 ²**[k.] j.**² Nothing in this section shall be construed to authorize
46 the court to modify or in any way affect any mandatory minimum
47 term of parole ineligibility imposed pursuant to a law other than

1 those subject to subsection m. of section 7 of P.L.1979, c.441
2 (C.30:4-123.51).

3

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

6 7. a. Each adult inmate sentenced to a term of incarceration in
7 a county penal institution, or to a specific term of years at the State
8 Prison or the correctional institution for women shall become
9 primarily eligible for parole after having served any judicial or
10 statutory mandatory minimum term, or one-third of the sentence
11 imposed where no mandatory minimum term has been imposed less
12 commutation time for good behavior pursuant to N.J.S.2A:164-24
13 or R.S.30:4-140 and credits for diligent application to work and
14 other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-
15 28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the
16 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,
17 2C:43-6, 2C:43-7), commutation and work credits shall not in any
18 way reduce any judicial or statutory mandatory minimum term and
19 such credits accrued shall only be awarded subsequent to the
20 expiration of the term.

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

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

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

1 schedule require that the primary parole eligibility date for a young
2 adult offender be greater than the primary parole eligibility date
3 required pursuant to this section for the presumptive term for the
4 crime authorized pursuant to subsection f. of N.J.S.2C:44-1.

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

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

19 (2) ~~‘[All other]~~ Young adult¹ offenders shall be eligible for
20 parole pursuant to the provisions of N.J.S.2C:47-5, except no
21 offender shall become primarily eligible for parole prior to the
22 expiration of any judicial or statutory mandatory minimum term.

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

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

44 h. When an inmate is sentenced to more than one term of
45 imprisonment, the primary parole eligibility terms calculated
46 pursuant to this section shall be aggregated by the board for the
47 purpose of determining the primary parole eligibility date ¹~~‘[~~, except

1 that no juvenile commitment shall be aggregated with any adult
2 sentence¹. The board shall promulgate rules and regulations to
3 govern aggregation under this subsection.

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

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

45 k. Notwithstanding any provisions of this section to the
46 contrary, a person sentenced to imprisonment pursuant to paragraph
47 (2), (3), or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible
48 for parole.

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

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

22 ²【(2) Notwithstanding the provisions of section 2 of
 23 P.L.1997, c.117 (2C:43-7.2) or any provisions of this section to the
 24 contrary, a person sentenced prior to the effective date of P.L. , c.
 25 (C _____) (pending before the Legislature as this bill) to a fixed
 26 minimum term of 85 percent of the sentence imposed for second
 27 degree robbery in violation of N.J.S.2C:15-1 or second degree
 28 burglary in violation of N.J.S.2C:18-2 and who is serving a term of
 29 incarceration after the effective date of P.L. , c. (C. _____)
 30 (pending before the Legislature as this bill) shall be eligible for
 31 parole after serving 50 percent of the fixed minimum term in
 32 accordance with subsection b. of section 1 of P.L. , c. (C. _____)
 33 (pending before the Legislature as this bill).】²
 34 (cf: P.L.2019, c.363, s.10)

35
 36 3. The Commissioner of Corrections shall conduct a study on
 37 the anticipated expenses to upgrade the department's existing data
 38 infrastructure in order to improve its ability to collect, track, and
 39 analyze data related to the criminal justice system. The commission
 40 shall within six months of the effective date of P.L. _____ ,
 41 c. _____ (pending before the Legislature as this bill) submit a report
 42 to the Governor, and the Legislature pursuant to section 2 of
 43 P.L.1991, c.164 (C.52:14-19.1) with recommendations for
 44 additional funding necessary for the department to invest in
 45 upgrades to its data infrastructure.

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

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

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

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

15 Representation for indigent defendants (a) may be provided in
16 any federal court in any matter arising out of or relating to an action
17 pending or recently pending in a court of criminal jurisdiction of
18 this State and (b) may be provided in any federal court in this State
19 where indigent defendants are charged with the commission of a
20 federal criminal offense and where the representation is under a
21 plan adopted pursuant to the Criminal Justice Act of 1964
22 (18 U.S.C. s. 3006A).

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

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

30

31 ¹**[4.] 5.**¹ This act shall take effect ¹**[immediately]** on the first
32 day of the sixth month following the date of enactment, provided
33 however, that the Supreme Court, Administrative Director of the
34 Courts, Commissioner of Corrections, Public Defender, Attorney
35 General and county prosecutors may take such anticipatory action
36 as deemed necessary to effectuate the provisions of this act. This
37 act shall expire upon the entry of final orders in accordance with
38 section 1 of this act with respect to all inmates eligible for
39 resentencing under this act¹.