

[Third 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 November 16, 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**【wrongful 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)** maintaining or operating a controlled dangerous
 31 substance production facility pursuant to N.J.S.2C:35-4;

32 ¹**【(8)** ¹(6) manufacturing, 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) employing a juvenile in a drug distribution scheme
 36 pursuant to N.J.S.2C:35-6;

37 ¹**【(10)** ¹(8) distribution 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) distribution to persons under age 18 pursuant to
 40 section 1 of ¹**【N.J.J.2C:35-8】** N.J.S.2C:35-8¹ ; ¹**【or**

41 (12)¹**【(10) a** mandatory term for ¹being a¹ repeat drug
 42 ¹**【offenders】** offender¹ pursuant to subsection f. of N.J.S.2C:43-6 ¹;

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.

³Senate floor amendments adopted November 16, 2020.

1 ³except that this paragraph shall not apply to convictions for leader
2 of narcotics trafficking network set forth in N.J.S. 2C:35-3³ or

3 (11) a mandatory term for official misconduct, N.J.S.2C:30-2,
4 pursuant to section 6 of P.L.2007, c.49 (C.2C:43-6.5), due to the
5 offense involving or touching the office or employment once held
6 by the convicted and sentenced public officer or employee¹,

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

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

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

30 ²**[d.] c.²** A prosecutor shall not file an objection to the
31 retroactive modification of an inmate's judgment of conviction
32 pursuant to this section without the prior approval of the Attorney
33 General.

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

42 ²**[f.] e.²** ¹**[An] (1)** In any case in which a determination is
43 made to file an¹ objection to the retroactive modification of a
44 judgment of conviction for an inmate ¹[shall be filed with the
45 sentencing court, or the presiding criminal judge if the sentencing
46 court is not still sitting, and provided to the inmate's attorney or, if

1 the inmate does not have an attorney, the public defender¹, the
2 prosecutor shall file any such objection with the Superior Court in
3 the county where the conviction occurred. Any such objection shall
4 be filed no later than 60 days following receipt of the list from the
5 Department of Corrections pursuant to subsection c. of this section,
6 or within 30 days of providing notice of a determination to file an
7 objection pursuant to subsection e. of this section, whichever date is
8 later.

9 (2) For those eligible inmates as to whom the prosecutor does
10 not file an objection, the court may order the retroactive
11 modification of those inmates' judgments of conviction in
12 accordance with the provisions of ³[paragraphs (1) or (2) of]³
13 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51),
14 without conducting a hearing¹.

15 ²[g.] f.² In the event the prosecutor files an objection, the
16 inmate's judgment of conviction shall be retroactively modified in
17 accordance with the provisions of ³[paragraphs (1) or (2) of]³
18 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51)
19 unless the court, after a hearing, finds by clear and convincing
20 evidence that rescinding the term of parole ineligibility imposed
21 upon the inmate would likely pose a substantial risk to public safety
22 or that the aggravating factors associated with rescinding or
23 reducing, as the case may be, the term of parole ineligibility
24 substantially outweigh the mitigating factors of doing so.

25 ²[h.] g.² A court that finds that an inmate's sentence applies to
26 ³[paragraphs (1) or (2) of]³ subsection m. of section 7 of P.L.1979,
27 c.441 (C.30:4-123.51) may issue an order denying the retroactive
28 modification of the judgment of conviction, or in the alternative³:

29 (1) for an inmate whose sentence applies pursuant to paragraph
30 (1) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
31 123.51), ³the court may modify the judgment of conviction by
32 rescinding the mandatory period of parole ineligibility and
33 sentencing the inmate to a period of discretionary parole
34 ineligibility³; and

35 (2) for an inmate whose sentence applies pursuant to paragraph
36 (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-
37 123.51), the court may resentence the inmate to a fixed minimum
38 term of 50 percent of the sentence of incarceration imposed with an
39 additional period of discretionary parole ineligibility³.

40 ²[i.] h.² Any period of parole ineligibility imposed pursuant
41 to subsection ³[g.] f.³ of this section shall not result in a period of
42 parole ineligibility in excess of the period that otherwise would
43 have applied under the judgment of conviction prior to
44 modification.

45 ²[j.] i.² An inmate who is afforded a hearing pursuant to
46 subsection ³[g.] f.³ of this section ¹[may] shall¹ be represented by

1 the ¹**['public defender]** Public Defender, unless the inmate retains
2 other counsel¹.

3 ²**['k] j.**². Nothing in this section shall be construed to authorize
4 the court to modify or in any way affect any mandatory minimum
5 term of parole ineligibility imposed pursuant to a law other than
6 those subject to subsection m. of section 7 of P.L.1979, c.441
7 (C.30:4-123.51).
8

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

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

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

43 c. Each ¹adult¹ inmate sentenced to a specific term of years
44 pursuant to the "Controlled Dangerous Substances Act," P.L.1970,
45 c.226 (C.24:21-1 et al.) shall become primarily eligible for parole
46 after having served one-third of the sentence imposed less
47 commutation time for good behavior and credits for diligent
48 application to work and other institutional assignments.

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

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

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

24 (2) ¹~~【All other】~~ Young adult¹ offenders shall be eligible for
25 parole pursuant to the provisions of N.J.S.2C:47-5, except no
26 offender shall become primarily eligible for parole prior to the
27 expiration of any judicial or statutory mandatory minimum term.

28 f. ¹~~【Each juvenile inmate committed to an indeterminate term~~
29 ~~shall be immediately eligible for parole.】~~ (Deleted by amendment,
30 P.L.2019, c.363)¹

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

1 h. When an inmate is sentenced to more than one term of
2 imprisonment, the primary parole eligibility terms calculated
3 pursuant to this section shall be aggregated by the board for the
4 purpose of determining the primary parole eligibility date ¹], except
5 that no juvenile commitment shall be aggregated with any adult
6 sentence¹. The board shall promulgate rules and regulations to
7 govern aggregation under this subsection.

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

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

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

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

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

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

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

1 additional funding necessary for the department to invest in
2 upgrades to its data infrastructure.

3

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

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

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

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

18 Representation for indigent defendants (a) may be provided in
19 any federal court in any matter arising out of or relating to an action
20 pending or recently pending in a court of criminal jurisdiction of
21 this State and (b) may be provided in any federal court in this State
22 where indigent defendants are charged with the commission of a
23 federal criminal offense and where the representation is under a
24 plan adopted pursuant to the Criminal Justice Act of 1964
25 (18 U.S.C. s. 3006A).

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

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

33

34 ¹[4.] 5.¹ This act shall take effect ¹['immediately] on the first
35 day of the sixth month following the date of enactment, provided
36 however, that the Supreme Court, Administrative Director of the
37 Courts, Commissioner of Corrections, Public Defender, Attorney
38 General and county prosecutors may take such anticipatory action
39 as deemed necessary to effectuate the provisions of this act. This
40 act shall expire upon the entry of final orders in accordance with
41 section 1 of this act with respect to all inmates eligible for
42 resentencing under this act¹.