

SENATE, No. 2233

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 26, 2001

Sponsored by:

Senator LOUIS F. KOSCO

District 38 (Bergen)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

Senators Palaia, Kavanaugh and O'Toole

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117.

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

6
7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree enumerated in subsection d. of this section
11 shall fix a minimum term of 85% of the sentence during which the
12 defendant shall not be eligible for parole [if the crime is a violent
13 crime as defined in subsection d. of this section].

14 b. The provisions of subsection a. of this section shall not be
15 construed or applied to reduce the time that must be served before
16 eligibility for parole by an inmate sentenced to a mandatory minimum
17 period of incarceration. Solely for the purpose of calculating the
18 minimum term of parole ineligibility pursuant to subsection a. of this
19 section, a sentence of life imprisonment shall be deemed to be 75
20 years.

21 c. Notwithstanding any other provision of law to the contrary and
22 in addition to any other sentence imposed, a court imposing a
23 minimum period of parole ineligibility of 85 percent of the sentence
24 pursuant to this section shall also[, unless the court imposes a
25 sentence of lifetime parole supervision pursuant to P.L. , c.
26 (C.)(now pending before the Legislature as Senate Bill No. 524
27 SCS),] impose a five-year term of parole supervision if the defendant
28 is being sentenced for a crime of the first degree, or a three-year term
29 of parole supervision if the defendant is being sentenced for a crime of
30 the second degree. The term of parole supervision shall commence
31 upon the completion of the sentence of incarceration imposed by the
32 court pursuant to subsection a. of this section unless the defendant is
33 serving a sentence of incarceration for another crime at the time he
34 completes the sentence of incarceration imposed pursuant to
35 subsection a., in which case the term of parole supervision shall
36 commence immediately upon the defendant's release from
37 incarceration. During the term of parole supervision the defendant
38 shall remain in release status in the community in the legal custody of
39 the Commissioner of the Department of Corrections and shall be
40 supervised by the Bureau of Parole of the Department of Corrections
41 as if on parole and shall be subject to the provisions and conditions of
42 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

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

Matter underlined thus is new matter.

1 d. [For the purposes of this section, "violent crime" means any
2 crime in which the actor causes death, causes serious bodily injury as
3 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
4 immediate use of a deadly weapon. "Violent crime" also includes any
5 aggravated sexual assault or sexual assault in which the actor uses, or
6 threatens the immediate use of, physical force. For the purposes of
7 this section, "deadly weapon" means any firearm or other weapon,
8 device, instrument, material or substance, whether animate or
9 inanimate, which in the manner it is used or is intended to be used, is
10 known to be capable of producing death or serious bodily injury] The
11 court shall impose sentence pursuant to subsection a. of this section
12 upon conviction of the following violent crimes or an attempt or
13 conspiracy to commit any of these crimes:

14 (1) N.J.S.2C:11-3, murder;

15 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

16 (3) N.J.S.2C:11-5, vehicular homicide;

17 (4) a crime of the second degree under subsection b. of
18 N.J.S.2C:12-1, aggravated assault;

19 (5) subsection b. of N.J.S.2C:12-11, disarming a law enforcement
20 officer;

21 (6) N.J.S.2C:13-1, kidnapping;

22 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

23 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection
24 c. of N.J.S.2C:14-2, sexual assault;

25 (9) N.J.S.2C:15-1, robbery;

26 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

27 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
28 arson;

29 (12) a crime of the second degree under N.J.S.2C:18-2, burglary;

30 (13) subsection a. of N.J.S.2C:20-5, extortion;

31 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
32 booby traps in manufacturing or distribution facilities; or

33 (15) N.J.S.2C:35-9, strict liability for drug induced deaths.

34 e. [A court shall not impose sentence pursuant to this section
35 unless the ground therefor has been established at a hearing after the
36 conviction of the defendant and on written notice to him of the ground
37 proposed. The defendant shall have the right to hear and controvert
38 the evidence against him and to offer evidence upon the issue.]

39 (Deleted by amendment, P.L. , c.) (now pending before the
40 Legislature as this bill.)

41 (cf: P.L.1997, c.117, s.2)

42

43 2. This act shall take effect immediately.

STATEMENT

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3 Under current law, known as the "No Early Release Act"
4 (N.J.S.A.2C:43-7.2), persons convicted of violent crimes of the first
5 or second degree must serve at least 85% of the sentence imposed by
6 the court before being eligible for parole. Currently, NERA defines
7 "violent crime" as "any crime in which the actor causes death, . . .
8 serious bodily injury . . . or uses or threatens the immediate use of a
9 deadly weapon. . . 'Violent crime' also includes any aggravated sexual
10 assault or sexual assault in which the actor uses, or threatens the
11 immediate use of, physical force." However, several recent Appellate
12 Division decisions have held that in its present form, NERA is
13 inapplicable to certain crimes, including murder.

14 In State v. Manzie, No. A-5310-98T3 (decided November 29,
15 2000), the Appellate Division held that NERA does not apply to
16 murder because this crime is not specifically referred to in NERA or
17 in the language of the murder statute, N.J.S.A.2C:11-3.

18 In State v. Mosley, 2000 WL 1716257 (decided Nov. 17, 2000)
19 and State v. Thomas, 322 N.J. Super. 512 (App. Div. 1999); *cert.*
20 *granted* 162 N.J. 489 (1999), the Appellate Division held that NERA
21 does not apply to cases where the defendant is guilty of sexual assault
22 under N.J.S.A.2C:14-2 on grounds that the victim is under the age of
23 13, since the current language of NERA requires the element of some
24 additional "physical force."

25 In order to overcome the issues raised by these cases and clarify the
26 provisions of the "No Early Release Act," this bill would amend NERA
27 to specifically list the crimes that are intended to be encompassed by
28 the statute.

29 Under the bill, NERA would be specifically applicable to the
30 following list of crimes:

- 31 (1) N.J.S.A.2C:11-3, murder;
- 32 (2) N.J.S.A.2C:11-4, aggravated manslaughter and manslaughter;
- 33 (3) N.J.S.2C:11-5, vehicular homicide;
- 34 (4) a crime of the second degree under subsection b. of
35 N.J.S.A.2C:12-1, aggravated assault;
- 36 (5) subsection b. of N.J.S.A.2C:12-11, disarming a law
37 enforcement officer;
- 38 (6) N.J.S.A.2C:13-1, kidnapping;
- 39 (7) subsection a. of N.J.S.A.2C:14-2, aggravated sexual assault;
- 40 (8) subsection b. of N.J.S.A.2C:14-2 and paragraph (1) of
41 subsection c. of N.J.S.A.2C:14-2, sexual assault;
- 42 (9) N.J.S.A.2C:15-1, robbery;
- 43 (10) N.J.S.A.2C:15-2, carjacking;
- 44 (11) paragraph (1) of subsection a. of N.J.S.A.2C:17-1, aggravated
45 arson;

1 (12) a crime of the second degree under N.J.S.A.2C:18-2,
2 burglary;

3 (13) subsection a. of N.J.S.A.2C:20-5, extortion;

4 (14) subsection b. of 2C:35-4.1., booby traps in CDS manufacturing
5 or distribution facilities; or

6 (15) N.J.S.A.2C:35-9, strict liability for drug induced deaths.

7 In addition, the bill provides that, solely for the purpose of
8 calculating the minimum term of parole eligibility, a sentence of life
9 imprisonment shall be deemed to be 75 years. This is the current
10 practice of the State Parole Board.

11 Finally, the bill would eliminate the requirement set out in
12 subsection e. of the NERA statute for a separate hearing conducted by
13 the court prior to imposing sentence, because the specific references
14 to the crimes encompassed by the statute would make such a hearing
15 unnecessary.