

P.L. 2007, CHAPTER 341, *approved January 13, 2008*  
Assembly, No. 4582 (*Third Reprint*)

1 AN ACT concerning criminal street gangs and amending and  
2 supplementing various parts of the statutory law.

3

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

6

7 1. (New section) a. A person is guilty of the crime of gang  
8 criminality if, while knowingly involved in criminal street gang  
9 activity, he commits, attempts to commit, or conspires to commit,  
10 whether as a principal or an accomplice, any <sup>2</sup>**[offense] crime**<sup>2</sup>  
11 specified in chapters 11 through 18, 20, 33, 35 or 37 of Title 2C of  
12 the New Jersey Statutes; N.J.S.2C:34-1; N.J.S.2C:39-3;  
13 <sup>1</sup>**[N.J.S.2C:39:4; N.J.S.2C:39-4.1] N.J.S.2C:39-4; section 1 of**  
14 **P.L.1998, c.26 (C.2C:39-4.1)**<sup>1</sup>; N.J.S.2C:39-5; or N.J.S.2C:39-9.  
15 <sup>2</sup>**[An offense] A crime**<sup>2</sup> is committed while involved in a criminal  
16 street gang related activity if the <sup>2</sup>**[offense] crime**<sup>2</sup> was committed  
17 for the benefit of, at the direction of, or in association with a  
18 criminal street gang.

19 “Criminal street gang” means three or more persons associated in  
20 fact. Individuals are associated in fact if: (1) two of the following  
21 seven criteria that indicate criminal street gang membership apply:  
22 (a) self-proclamation; (b) witness testimony or official statement;  
23 (c) written or electronic correspondence; (d) paraphernalia or  
24 photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia  
25 of street gang activity; and (2) individually or in combination with  
26 other members of a criminal street gang, while engaging in gang  
27 related activity, have committed or conspired or attempted to  
28 commit, within the preceding five years from the date of present  
29 offense, excluding any period of imprisonment, one or more  
30 offenses on separate occasions of robbery, carjacking, aggravated  
31 assault, assault, aggravated sexual assault, sexual assault, arson,  
32 burglary, kidnapping, extortion, tampering with witnesses and  
33 informants or a violation of chapter 11, sections 3, 4, 5, 6, or 7 of  
34 chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes  
35 <sup>3</sup>**[regardless of whether the prior offenses have resulted in**  
36 **convictions]**<sup>3</sup>.

37 b. Grading. Gang criminality is a crime of <sup>2</sup>**[the fourth degree**  
38 **if the underlying offense referred to in subsection a. of this section**  
39 **is a disorderly persons offense or a petty disorderly persons offense.**

**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:**

<sup>1</sup>**Assembly ALP committee amendments adopted December 10, 2007.**

<sup>2</sup>**Assembly floor amendments adopted December 13, 2007.**

<sup>3</sup>**Senate floor amendments adopted January 7, 2008.**

1 Otherwise, gang criminality is a crime of]² one degree higher than  
2 the most serious underlying ²[offense] crime² referred to in  
3 subsection a. of this section, except that where the underlying  
4 ²[offense] crime² is a crime of the first degree, gang criminality is  
5 a first degree crime and the defendant, upon conviction, and  
6 notwithstanding the provisions of paragraph (1) of subsection a. of  
7 N.J.S.2C:43-6, shall be sentenced to an ordinary term of  
8 imprisonment between 15 and 30 years. A sentence imposed upon  
9 conviction of the crime of gang criminality shall be ordered to be  
10 served consecutively to the sentence imposed upon conviction of  
11 any underlying offense referred to in subsection a. of this section.

12  
13 2. (New section) a. A person promotes organized street crime  
14 if he conspires with others as an organizer, supervisor, financier or  
15 manager to commit any ²[offense] crime² specified in chapters 11  
16 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes;  
17 N.J.S.2C:34-1; N.J.S.2C:39-3; N.J.S.2C:39-4; ¹[N.J.S.2C:39-4.1]  
18 section 1 of P.L.1998, c.26 (C.2C:39-4.1)¹; N.J.S.2C:39-5; or  
19 N.J.S.2C:39-9.

20 b. Grading. Promotion of organized street crime is a crime of  
21 ²[the fourth degree if the underlying offense referred to in  
22 subsection a. of this section is a disorderly persons offense or a  
23 petty disorderly persons offense. Otherwise, promotion of  
24 organized street crime is a crime of]² one degree higher than the  
25 most serious underlying ²[offense] crime² referred to in subsection  
26 a. of this section, except that where the underlying offense is a  
27 crime of the first degree, promotion of organized street crime is a  
28 first degree crime and the defendant, upon conviction, and  
29 notwithstanding the provisions of paragraph (1) of subsection a of  
30 N.J.S.2C:43-6, shall be sentenced to an ordinary term of  
31 imprisonment between 15 and 30 years. A sentence imposed upon  
32 conviction of the crime of promotion of organized street crime shall  
33 be ordered to be served consecutively to the sentence imposed upon  
34 conviction of any underlying offense referred to in subsection a. of  
35 this section.

36  
37 3. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to  
38 read as follows:

39 7. a. On motion of the prosecutor, the court shall, without the  
40 consent of the juvenile, waive jurisdiction over a case and refer that  
41 case from the Superior Court, Chancery Division, Family Part to the  
42 appropriate court and prosecuting authority having jurisdiction if it  
43 finds, after hearing, that:

44 (1) The juvenile was 14 years of age or older at the time of the  
45 charged delinquent act; and

- 1 (2) There is probable cause to believe that the juvenile  
2 committed a delinquent act or acts which if committed by an adult  
3 would constitute:
- 4 (a) Criminal homicide other than death by auto, strict liability  
5 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which  
6 would constitute a crime of the first degree, carjacking, aggravated  
7 sexual assault, sexual assault, aggravated assault which would  
8 constitute a crime of the second degree, kidnapping **[or]**,  
9 aggravated arson, or gang criminality pursuant to section 1 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill)  
11 <sup>2</sup>where the underlying crime is enumerated in this subparagraph<sup>2</sup> or  
12 promotion of organized street crime pursuant to section 2 of P.L. ,  
13 c. (C. ) (pending before the Legislature as this bill) which  
14 would constitute a crime of the first or second degree <sup>2</sup>which is  
15 enumerated in this subparagraph<sup>2</sup>; or
- 16 (b) A crime committed at a time when the juvenile had  
17 previously been adjudicated delinquent, or convicted, on the basis  
18 of any of the offenses enumerated in subsection a.(2)(a); or
- 19 (c) A crime committed at a time when the juvenile had  
20 previously been sentenced and confined in an adult penal  
21 institution; or
- 22 (d) An offense against a person committed in an aggressive,  
23 violent and willful manner, other than an offense enumerated in  
24 subsection a.(2)(a) of this section, or the unlawful possession of a  
25 firearm, destructive device or other prohibited weapon, arson or  
26 death by auto if the juvenile was operating the vehicle under the  
27 influence of an intoxicating liquor, narcotic, hallucinogenic or habit  
28 producing drug; or
- 29 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or  
30 N.J.S.2C:35-5; or
- 31 (f) Crimes which are a part of a continuing criminal activity in  
32 concert with two or more persons and the circumstances of the  
33 crimes show the juvenile has knowingly devoted himself to criminal  
34 activity as a source of livelihood; or
- 35 (g) An attempt or conspiracy to commit any of the acts  
36 enumerated in paragraph (a), (d) or (e) of this subsection; or
- 37 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of  
38 the New Jersey Statutes; or
- 39 (i) Possession of a firearm with a purpose to use it unlawfully  
40 against the person of another under subsection a. of N.J.S.2C:39-4,  
41 or the crime of aggravated assault, aggravated criminal sexual  
42 contact, burglary or escape if, while in the course of committing or  
43 attempting to commit the crime including the immediate flight  
44 therefrom, the juvenile possessed a firearm; or
- 45 (j) Computer criminal activity which would be a crime of the  
46 first or second degree pursuant to section 4 or section 10 of  
47 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and

1 (3) Except with respect to any of the acts enumerated in  
2 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this  
3 section, or with respect to any acts enumerated in subparagraph (e)  
4 of paragraph (2) of subsection a. of this section which involve the  
5 distribution for pecuniary gain of any controlled dangerous  
6 substance or controlled substance analog while on any property  
7 used for school purposes which is owned by or leased to any school  
8 or school board, or within 1,000 feet of such school property or  
9 while on any school bus, or any attempt or conspiracy to commit  
10 any of those acts, the State has shown that the nature and  
11 circumstances of the charge or the prior record of the juvenile are  
12 sufficiently serious that the interests of the public require waiver.

13 b. (Deleted by amendment, P.L.1999, c.373).

14 c. An order referring a case shall incorporate therein not only  
15 the alleged act or acts upon which the referral is premised, but also  
16 all other delinquent acts arising out of or related to the same  
17 transaction.

18 d. A motion seeking waiver shall be filed by the prosecutor  
19 within 30 days of receipt of the complaint. This time limit shall not,  
20 except for good cause shown, be extended.

21 e. If the juvenile can show that the probability of his  
22 rehabilitation by the use of the procedures, services and facilities  
23 available to the court prior to the juvenile reaching the age of 19  
24 substantially outweighs the reasons for waiver, waiver shall not be  
25 granted. This subsection shall not apply with respect to a juvenile  
26 16 years of age or older who is charged with committing any of the  
27 acts enumerated in subparagraph (a), (i) or (j) of paragraph (2) of  
28 subsection a. of this section or with respect to a violation of  
29 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26  
30 (C.2C:39-4.1).

31 f. The Attorney General shall develop for dissemination to the  
32 county prosecutors those guidelines or directives deemed necessary  
33 or appropriate to ensure the uniform application of this section  
34 throughout the State.

35 (cf: P.L.2003, c.39, s.8)

36

37 4. N.J.S.2C:41-1 is amended to read as follows:

38 2C:41-1. For purposes of this section and N.J.S.2C:41-2 through  
39 N.J.S.2C:41-6:

40 a. "Racketeering activity" means (1) any of the following  
41 crimes which are crimes under the laws of New Jersey or are  
42 equivalent crimes under the laws of any other jurisdiction:

43 (a) murder

44 (b) kidnapping

45 (c) gambling

46 (d) promoting prostitution

47 (e) obscenity

48 (f) robbery

- 1 (g) bribery  
2 (h) extortion  
3 (i) criminal usury  
4 (j) violations of Title 33 of the Revised Statutes  
5 (k) violations of Title 54A of the New Jersey Statutes and Title  
6 54 of the Revised Statutes  
7 (l) arson  
8 (m) burglary  
9 (n) theft and all crimes defined in chapter 20 of Title 2C of the  
10 New Jersey Statutes  
11 (o) forgery and fraudulent practices and all crimes defined in  
12 chapter 21 of Title 2C of the New Jersey Statutes  
13 (p) fraud in the offering, sale or purchase of securities  
14 (q) alteration of motor vehicle identification numbers  
15 (r) unlawful manufacture, purchase, use or transfer of firearms  
16 (s) unlawful possession or use of destructive devices or  
17 explosives  
18 (t) violation of sections 112 through 116 inclusive of the  
19 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-  
20 116)  
21 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6  
22 and all crimes involving illegal distribution of a controlled  
23 dangerous substance or controlled substance analog, except  
24 possession of less than one ounce of marijuana  
25 (v) violation of subsection b. of N.J.S.2C:24-4 except for  
26 subparagraph (b) of paragraph (5) of subsection b.  
27 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),  
28 leader of firearms trafficking network  
29 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),  
30 weapons training for illegal activities  
31 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),  
32 terrorism [.]  
33 (z) violation of section 1 of P.L.2005,c.77 (C.2C:13-8), human  
34 trafficking [.]  
35 (aa) violation of N.J.S.2C:12-1 requiring purposeful or knowing  
36 conduct  
37 (bb) violation of N.J.S.2C:12-3, terroristic threats.  
38 (2) any conduct defined as "racketeering activity" under Title  
39 18, U.S.C.s.1961(1)(A), (B) and (D).  
40 b. "Person" includes any individual or entity or enterprise as  
41 defined herein holding or capable of holding a legal or beneficial  
42 interest in property.  
43 c. "Enterprise" includes any individual, sole proprietorship,  
44 partnership, corporation, business or charitable trust, association, or  
45 other legal entity, any union or group of individuals associated in  
46 fact although not a legal entity, and it includes illicit as well as licit  
47 enterprises and governmental as well as other entities.  
48 d. "Pattern of racketeering activity" requires

1 (1) Engaging in at least two incidents of racketeering conduct  
2 one of which shall have occurred after the effective date of this act  
3 and the last of which shall have occurred within 10 years (excluding  
4 any period of imprisonment) after a prior incident of racketeering  
5 activity; and

6 (2) A showing that the incidents of racketeering activity  
7 embrace criminal conduct that has either the same or similar  
8 purposes, results, participants or victims or methods of commission  
9 or are otherwise interrelated by distinguishing characteristics and  
10 are not isolated incidents.

11 e. "Unlawful debt" means a debt

12 (1) Which was incurred or contracted in gambling activity  
13 which was in violation of the law of the United States, a state or  
14 political subdivision thereof; or

15 (2) Which is unenforceable under state or federal law in whole  
16 or in part as to principal or interest because of the laws relating to  
17 usury.

18 f. "Documentary material" includes any book, paper,  
19 document, writing, drawing, graph, chart, photograph, phonorecord,  
20 magnetic or recording or video tape, computer printout, other data  
21 compilation from which information can be obtained or from which  
22 information can be translated into useable form or other tangible  
23 item.

24 g. "Attorney General" includes the Attorney General of New  
25 Jersey, his assistants and deputies. The term shall also include a  
26 county prosecutor or his designated assistant prosecutor if a county  
27 prosecutor is expressly authorized in writing by the Attorney  
28 General to carry out the powers conferred on the Attorney General  
29 by this chapter.

30 h. "Trade or commerce" shall include all economic activity  
31 involving or relating to any commodity or service.

32 (cf: P.L.2005, c.77, s.3)

33

34 5. N.J.S.2C:43-6 is amended to read as follows:

35 2C:43-6 a. Except as otherwise provided, a person who has  
36 been convicted of a crime may be sentenced to imprisonment, as  
37 follows:

38 (1) In the case of a crime of the first degree, for a specific term  
39 of years which shall be fixed by the court and shall be between 10  
40 years and 20 years;

41 (2) In the case of a crime of the second degree, for a specific  
42 term of years which shall be fixed by the court and shall be between  
43 five years and 10 years;

44 (3) In the case of a crime of the third degree, for a specific term  
45 of years which shall be fixed by the court and shall be between  
46 three years and five years;

1 (4) In the case of a crime of the fourth degree, for a specific  
2 term which shall be fixed by the court and shall not exceed 18  
3 months.

4 b. As part of a sentence for any crime, where the court is  
5 clearly convinced that the aggravating factors substantially  
6 outweigh the mitigating factors, as set forth in subsections a. and b.  
7 of 2C:44-1, or the court find that the aggravating factor set forth in  
8 paragraph <sup>1</sup>【5】 (5) of subsection a. of N.J.S.2C:44-1 applies, the  
9 court may fix a minimum term not to exceed one-half of the term  
10 set pursuant to subsection a., or one-half of the term set pursuant to  
11 a maximum period of incarceration for a crime set forth in any  
12 statute other than this code, during which the defendant shall not be  
13 eligible for parole; provided that no defendant shall be eligible for  
14 parole at a date earlier than otherwise provided by the law  
15 governing parole.

16 c. A person who has been convicted under 【2C:39-4a. of  
17 possession of a firearm with intent to use it against the person of  
18 another, or】 subsection b. or d. of N.J.S.2C:39-3, subsection a. of  
19 N.J.S.2C:39-4, subsection a. of <sup>1</sup>【N.J.S.2C:39-4.1】 section 1 of  
20 P.L.1998, c.26 (C.2C:39-4.1)<sup>1</sup>, subsection a., b. or c. of  
21 N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection b.  
22 of <sup>1</sup>【N.J.S.2C:39-7】 section 6 of P.L.1979, c.179 (C.2C:39-7)<sup>1</sup>, or  
23 subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any  
24 of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,  
25 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the  
26 course of committing or attempting to commit the crime, including  
27 the immediate flight therefrom, used or was in possession of a  
28 firearm as defined in 2C:39-1f., shall be sentenced to a term of  
29 imprisonment by the court. The term of imprisonment shall include  
30 the imposition of a minimum term. The minimum term shall be  
31 fixed at, or between, one-third and one-half of the sentence imposed  
32 by the court or three years, whichever is greater, or 18 months in  
33 the case of a fourth degree crime, during which the defendant shall  
34 be ineligible for parole.

35 The minimum terms established by this section shall not prevent  
36 the court from imposing presumptive terms of imprisonment  
37 pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth  
38 degree.

39 A person who has been convicted of an offense enumerated by  
40 this subsection and who used or possessed a firearm during its  
41 commission, attempted commission or flight therefrom and who has  
42 been previously convicted of an offense involving the use or  
43 possession of a firearm as defined in 2C:44-3d., shall be sentenced  
44 by the court to an extended term as authorized by 2C:43-7c.,  
45 notwithstanding that extended terms are ordinarily discretionary  
46 with the court.

1 d. The court shall not impose a mandatory sentence pursuant to  
2 subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the  
3 ground therefor has been established at a hearing. At the hearing,  
4 which may occur at the time of sentencing, the prosecutor shall  
5 establish by a preponderance of the evidence that the weapon used  
6 or possessed was a firearm. In making its finding, the court shall  
7 take judicial notice of any evidence, testimony or information  
8 adduced at the trial, plea hearing, or other court proceedings and  
9 shall also consider the presentence report and any other relevant  
10 information.

11 e. A person convicted of a third or subsequent offense  
12 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any  
13 other provision of this code, or under any of the provisions of Title  
14 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,  
15 as amended and supplemented, shall be sentenced to a term of  
16 imprisonment by the court. This shall not preclude an application  
17 for and imposition of an extended term of imprisonment under  
18 N.J.S.2C:44-3 if the provisions of that section are applicable to the  
19 offender.

20 f. A person convicted of manufacturing, distributing,  
21 dispensing or possessing with intent to distribute any dangerous  
22 substance or controlled substance analog under N.J.S.2C:35-5, of  
23 maintaining or operating a controlled dangerous substance  
24 production facility under N.J.S.2C:35-4, of employing a juvenile in  
25 a drug distribution scheme under N.J.S.2C:35-6, leader of a  
26 narcotics trafficking network under N.J.S.2C:35-3, or of  
27 distributing, dispensing or possessing with intent to distribute on or  
28 near school property or buses under section 1 of P.L.1987, c.101  
29 (C.2C:35-7), who has been previously convicted of manufacturing,  
30 distributing, dispensing or possessing with intent to distribute a  
31 controlled dangerous substance or controlled substance analog,  
32 shall upon application of the prosecuting attorney be sentenced by  
33 the court to an extended term as authorized by subsection c. of  
34 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily  
35 discretionary with the court. The term of imprisonment shall,  
36 except as may be provided in N.J.S.2C:35-12, include the  
37 imposition of a minimum term. The minimum term shall be fixed  
38 at, or between, one-third and one-half of the sentence imposed by  
39 the court or three years, whichever is greater, not less than seven  
40 years if the person is convicted of a violation of N.J.S.2C:35-6, or  
41 18 months in the case of a fourth degree crime, during which the  
42 defendant shall be ineligible for parole.

43 The court shall not impose an extended term pursuant to this  
44 subsection unless the ground therefor has been established at a  
45 hearing. At the hearing, which may occur at the time of sentencing,  
46 the prosecutor shall establish the ground therefor by a  
47 preponderance of the evidence. In making its finding, the court shall  
48 take judicial notice of any evidence, testimony or information

1 adduced at the trial, plea hearing, or other court proceedings and  
2 shall also consider the presentence report and any other relevant  
3 information.

4 For the purpose of this subsection, a previous conviction exists  
5 where the actor has at any time been convicted under chapter 35 of  
6 this title or Title 24 of the Revised Statutes or under any similar  
7 statute of the United States, this State, or any other state for an  
8 offense that is substantially equivalent to N.J.S.2C:35-3,  
9 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of  
10 P.L.1987, c.101 (C.2C:35-7).

11 g. Any person who has been convicted under subsection a. of  
12 N.J.S.2C:39-4 [of possessing a machine gun or assault firearm with  
13 intent to use it against the person of another,] or of a crime under  
14 any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,  
15 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,  
16 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5[.],  
17 who, while in the course of committing or attempting to commit the  
18 crime, including the immediate flight therefrom, used or was in  
19 possession of a machine gun or assault firearm shall be sentenced to  
20 a term of imprisonment by the court. The term of imprisonment  
21 shall include the imposition of a minimum term. The minimum  
22 term shall be fixed at 10 years for a crime of the first or second  
23 degree, five years for a crime of the third degree, or 18 months in  
24 the case of a fourth degree crime, during which the defendant shall  
25 be ineligible for parole.

26 The minimum terms established by this section shall not prevent  
27 the court from imposing presumptive terms of imprisonment  
28 pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for  
29 crimes of the first degree.

30 A person who has been convicted of an offense enumerated in  
31 this subsection and who used or possessed a machine gun or assault  
32 firearm during its commission, attempted commission or flight  
33 therefrom and who has been previously convicted of an offense  
34 involving the use or possession of any firearm as defined in  
35 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an  
36 extended term as authorized by subsection d. of N.J.S.2C:43-7,  
37 notwithstanding that extended terms are ordinarily discretionary  
38 with the court.

39 h. The court shall not impose a mandatory sentence pursuant to  
40 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or  
41 N.J.S.2C:44-3, unless the ground therefor has been established at a  
42 hearing. At the hearing, which may occur at the time of sentencing,  
43 the prosecutor shall establish by a preponderance of the evidence  
44 that the weapon used or possessed was a machine gun or assault  
45 firearm. In making its finding, the court shall take judicial notice of  
46 any evidence, testimony or information adduced at the trial, plea  
47 hearing, or other court proceedings and shall also consider the  
48 presentence report and any other relevant information.

1 i. A person who has been convicted under paragraph (6) of  
2 subsection b. of 2C:12-1 of causing bodily injury while eluding  
3 shall be sentenced to a term of imprisonment by the court. The  
4 term of imprisonment shall include the imposition of a minimum  
5 term. The minimum term shall be fixed at, or between one-third  
6 and one-half of the sentence imposed by the court. The minimum  
7 term established by this subsection shall not prevent the court from  
8 imposing a presumptive term of imprisonment pursuant to  
9 paragraph (1) of subsection f. of 2C:44-1.

10 (cf: P.L.1993, c.219, s.6)

11  
12 6. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to  
13 read as follows:

14 2. a. A court imposing a sentence of incarceration for a crime  
15 of the first or second degree enumerated in subsection d. of this  
16 section shall fix a minimum term of 85% of the sentence imposed,  
17 during which the defendant shall not be eligible for parole.

18 b. The minimum term required by subsection a. of this section  
19 shall be fixed as a part of every sentence of incarceration imposed  
20 upon every conviction of a crime enumerated in subsection d. of  
21 this section, whether the sentence of incarceration is determined  
22 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any  
23 other provision of law, and shall be calculated based upon the  
24 sentence of incarceration actually imposed. The provisions of  
25 subsection a. of this section shall not be construed or applied to  
26 reduce the time that must be served before eligibility for parole by  
27 an inmate sentenced to a mandatory minimum period of  
28 incarceration. Solely for the purpose of calculating the minimum  
29 term of parole ineligibility pursuant to subsection a. of this section,  
30 a sentence of life imprisonment shall be deemed to be 75 years.

31 c. Notwithstanding any other provision of law to the contrary  
32 and in addition to any other sentence imposed, a court imposing a  
33 minimum period of parole ineligibility of 85 percent of the sentence  
34 pursuant to this section shall also impose a five-year term of parole  
35 supervision if the defendant is being sentenced for a crime of the  
36 first degree, or a three-year term of parole supervision if the  
37 defendant is being sentenced for a crime of the second degree. The  
38 term of parole supervision shall commence upon the completion of  
39 the sentence of incarceration imposed by the court pursuant to  
40 subsection a. of this section unless the defendant is serving a  
41 sentence of incarceration for another crime at the time he completes  
42 the sentence of incarceration imposed pursuant to subsection a., in  
43 which case the term of parole supervision shall commence  
44 immediately upon the defendant's release from incarceration.  
45 During the term of parole supervision the defendant shall remain in  
46 release status in the community in the legal custody of the  
47 Commissioner of the Department of Corrections and shall be  
48 supervised by the State Parole Board as if on parole and shall be

1 subject to the provisions and conditions of section 3 of P.L.1997,  
2 c.117 (C.30:4-123.51b).

3 d. The court shall impose sentence pursuant to subsection a. of  
4 this section upon conviction of the following crimes or an attempt  
5 or conspiracy to commit any of these crimes:

- 6 (1) N.J.S.2C:11-3, murder;  
7 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;  
8 (3) N.J.S.2C:11-5, vehicular homicide;  
9 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;  
10 (5) subsection b. of N.J.S.2C:12-11, disarming a law  
11 enforcement officer;  
12 (6) N.J.S.2C:13-1, kidnapping;  
13 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;  
14 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of  
15 subsection c. of N.J.S.2C:14-2, sexual assault;  
16 (9) N.J.S.2C:15-1, robbery;  
17 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;  
18 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated  
19 arson;  
20 (12) N.J.S.2C:18-2, burglary;  
21 (13) subsection a. of N.J.S.2C:20-5, extortion;  
22 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),  
23 booby traps in manufacturing or distribution facilities; **[or]**  
24 (15) N.J.S.2C:35-9, strict liability for drug induced deaths<sup>2</sup>**[.]**<sup>2</sup>  
25 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism; **[or]**  
26 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or  
27 possessing chemical weapons, biological agents or nuclear or  
28 radiological devices; <sup>2</sup>**or**<sup>2</sup>  
29 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first  
30 degree <sup>2</sup>**[or when the racketeering activity includes any crime**  
31 enumerated in this subsection;  
32 (19) section 1 of P.L. , c. (C. ) (pending before the  
33 Legislature as this bill), gang criminality, if the underlying  
34 criminality consisted of any of the crimes enumerated in this  
35 subsection; or  
36 (20) section 2 of P.L. , c. (C. ) (pending before the  
37 Legislature as this bill), promotion of organized street crime, if the  
38 underlying crime consisted of any of the crimes enumerated in this  
39 subsection]<sup>2</sup>.

40 e. (Deleted by amendment, P.L.2001, c.129).

41 (cf: P.L.2002, c.26, s.19)

42

43 7. N.J.S.2C:44-1 is amended to read as follows:

44 2C:44-1. a. In determining the appropriate sentence to be  
45 imposed on a person who has been convicted of an offense, the  
46 court shall consider the following aggravating circumstances:

- 1 (1) The nature and circumstances of the offense, and the role of  
2 the actor therein, including whether or not it was committed in an  
3 especially heinous, cruel, or depraved manner;
- 4 (2) The gravity and seriousness of harm inflicted on the victim,  
5 including whether or not the defendant knew or reasonably should  
6 have known that the victim of the offense was particularly  
7 vulnerable or incapable of resistance due to advanced age, ill-  
8 health, or extreme youth, or was for any other reason substantially  
9 incapable of exercising normal physical or mental power of  
10 resistance;
- 11 (3) The risk that the defendant will commit another offense;
- 12 (4) A lesser sentence will depreciate the seriousness of the  
13 defendant's offense because it involved a breach of the public trust  
14 under chapters 27 and 30, or the defendant took advantage of a  
15 position of trust or confidence to commit the offense;
- 16 (5) There is a substantial likelihood that the defendant is  
17 involved in organized criminal activity;
- 18 (6) The extent of the defendant's prior criminal record and the  
19 seriousness of the offenses of which he has been convicted;
- 20 (7) The defendant committed the offense pursuant to an  
21 agreement that he either pay or be paid for the commission of the  
22 offense and the pecuniary incentive was beyond that inherent in the  
23 offense itself;
- 24 (8) The defendant committed the offense against a police or  
25 other law enforcement officer, correctional employee or fireman,  
26 acting in the performance of his duties while in uniform or  
27 exhibiting evidence of his authority; the defendant committed the  
28 offense because of the status of the victim as a public servant; or the  
29 defendant committed the offense against a sports official, athletic  
30 coach or manager, acting in or immediately following the  
31 performance of his duties or because of the person's status as a  
32 sports official, coach or manager;
- 33 (9) The need for deterring the defendant and others from  
34 violating the law;
- 35 (10) The offense involved fraudulent or deceptive practices  
36 committed against any department or division of State government;
- 37 (11) The imposition of a fine, penalty or order of restitution  
38 without also imposing a term of imprisonment would be perceived  
39 by the defendant or others merely as part of the cost of doing  
40 business, or as an acceptable contingent business or operating  
41 expense associated with the initial decision to resort to unlawful  
42 practices;
- 43 (12) The defendant committed the offense against a person who  
44 he knew or should have known was 60 years of age or older, or  
45 disabled; and
- 46 (13) The defendant, while in the course of committing or  
47 attempting to commit the crime, including the immediate flight  
48 therefrom, used or was in possession of a stolen motor vehicle.

1       b. In determining the appropriate sentence to be imposed on a  
2 person who has been convicted of an offense, the court may  
3 properly consider the following mitigating circumstances:

4       (1) The defendant's conduct neither caused nor threatened  
5 serious harm;

6       (2) The defendant did not contemplate that his conduct would  
7 cause or threaten serious harm;

8       (3) The defendant acted under a strong provocation;

9       (4) There were substantial grounds tending to excuse or justify  
10 the defendant's conduct, though failing to establish a defense;

11       (5) The victim of the defendant's conduct induced or facilitated  
12 its commission;

13       (6) The defendant has compensated or will compensate the  
14 victim of his conduct for the damage or injury that he sustained, or  
15 will participate in a program of community service;

16       (7) The defendant has no history of prior delinquency or  
17 criminal activity or has led a law-abiding life for a substantial  
18 period of time before the commission of the present offense;

19       (8) The defendant's conduct was the result of circumstances  
20 unlikely to recur;

21       (9) The character and attitude of the defendant indicate that he is  
22 unlikely to commit another offense;

23       (10) The defendant is particularly likely to respond affirmatively  
24 to probationary treatment;

25       (11) The imprisonment of the defendant would entail excessive  
26 hardship to himself or his dependents;

27       (12) The willingness of the defendant to cooperate with law  
28 enforcement authorities;

29       (13) The conduct of a youthful defendant was substantially  
30 influenced by another person more mature than the defendant.

31       c. (1) A plea of guilty by a defendant or failure to so plead  
32 shall not be considered in withholding or imposing a sentence of  
33 imprisonment.

34       (2) When imposing a sentence of imprisonment the court shall  
35 consider the defendant's eligibility for release under the law  
36 governing parole, including time credits awarded pursuant to Title  
37 30 of the Revised Statutes, in determining the appropriate term of  
38 imprisonment.

39       d. Presumption of imprisonment. The court shall deal with a  
40 person who has been convicted of a crime of the first or second  
41 degree <sup>1</sup>, or a crime of the third degree where the court finds that  
42 the aggravating factor in paragraph (5) of subsection a. applies. <sup>1</sup> by  
43 imposing a sentence of imprisonment unless, having regard to the  
44 character and condition of the defendant, it is of the opinion that his  
45 imprisonment would be a serious injustice which overrides the need  
46 to deter such conduct by others. Notwithstanding the provisions of  
47 subsection e. of this section, the court shall deal with a person who  
48 has been convicted of theft of a motor vehicle or of the unlawful

1 taking of a motor vehicle and who has previously been convicted of  
2 either offense by imposing a sentence of imprisonment unless,  
3 having regard to the character and condition of the defendant, it is  
4 of the opinion that his imprisonment would be a serious injustice  
5 which overrides the need to deter such conduct by others.

6 e. The court shall deal with a person convicted of an offense  
7 other than a crime of the first or second degree, who has not  
8 previously been convicted of an offense, without imposing a  
9 sentence of imprisonment unless, having regard to the nature and  
10 circumstances of the offense and the history, character and  
11 condition of the defendant, it is of the opinion that his imprisonment  
12 is necessary for the protection of the public under the criteria set  
13 forth in subsection a., except that this subsection shall not apply if  
14 the court finds that the aggravating factor in paragraph (5) of  
15 subsection a. applies or if the person is convicted of any of the  
16 following crimes of the third degree: theft of a motor vehicle;  
17 unlawful taking of a motor vehicle; eluding; if the person is  
18 convicted of a crime of the third degree constituting use of a false  
19 government document in violation of subsection c. of section 1 of  
20 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime  
21 of the third degree constituting distribution, manufacture or  
22 possession of an item containing personal identifying information  
23 in violation of subsection b. of section 6 of P.L.2003, c.184  
24 (C.2C:21-17.3); **[or]** if the person is convicted of a crime of the  
25 third or fourth degree constituting bias intimidation in violation of  
26 N.J.S.2C:16-1; or if the person is convicted of a crime of the third  
27 degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the  
28 person is convicted of a crime of the third or fourth degree under  
29 the provisions of section 1 or 2 of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill).

31 f. Presumptive Sentences. (1) Except for the crime of murder,  
32 unless the preponderance of aggravating or mitigating factors, as set  
33 forth in subsections a. and b., weighs in favor of a higher or lower  
34 term within the limits provided in N.J.S.2C:43-6, when a court  
35 determines that a sentence of imprisonment is warranted, it shall  
36 impose sentence as follows:

37 (a) To a term of 20 years for aggravated manslaughter or  
38 kidnapping pursuant to paragraph (1) of subsection c. of  
39 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
40 degree;

41 (b) Except as provided in paragraph (a) of this subsection to a  
42 term of 15 years for a crime of the first degree;

43 (c) To a term of seven years for a crime of the second degree;

44 (d) To a term of four years for a crime of the third degree; and

45 (e) To a term of nine months for a crime of the fourth degree.

46 In imposing a minimum term pursuant to 2C:43-6b., the  
47 sentencing court shall specifically place on the record the

1 aggravating factors set forth in this section which justify the  
2 imposition of a minimum term.

3 Unless the preponderance of mitigating factors set forth in  
4 subsection b. weighs in favor of a lower term within the limits  
5 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
6 presumptive term of life imprisonment. Unless the preponderance  
7 of aggravating and mitigating factors set forth in subsections a. and  
8 b. weighs in favor of a higher or lower term within the limits  
9 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a  
10 presumptive term of 50 years' imprisonment; sentences imposed  
11 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'  
12 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)  
13 shall have a presumptive term of seven years' imprisonment.

14 In imposing a minimum term pursuant to 2C:43-7b., the  
15 sentencing court shall specifically place on the record the  
16 aggravating factors set forth in this section which justify the  
17 imposition of a minimum term.

18 (2) In cases of convictions for crimes of the first or second  
19 degree where the court is clearly convinced that the mitigating  
20 factors substantially outweigh the aggravating factors and where the  
21 interest of justice demands, the court may sentence the defendant to  
22 a term appropriate to a crime of one degree lower than that of the  
23 crime for which he was convicted. If the court does impose  
24 sentence pursuant to this paragraph, or if the court imposes a  
25 noncustodial or probationary sentence upon conviction for a crime  
26 of the first or second degree, such sentence shall not become final  
27 for 10 days in order to permit the appeal of such sentence by the  
28 prosecution.

29 g. Imposition of Noncustodial Sentences in Certain Cases. If  
30 the court, in considering the aggravating factors set forth in  
31 subsection a., finds the aggravating factor in paragraph a.(2), a.(5),  
32 or a.(12) and does not impose a custodial sentence, the court shall  
33 specifically place on the record the mitigating factors which justify  
34 the imposition of a noncustodial sentence.

35 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-  
36 11), the presumption of imprisonment as provided in subsection d.  
37 of this section shall not preclude the admission of a person to the  
38 Intensive Supervision Program, established pursuant to the Rules  
39 Governing the Courts of the State of New Jersey.

40 (cf: P.L.2007, c.83, s.3)

41

42 8. N.J.S.2C:44-3 is amended to read as follows:

43 2C:44-3. The court may, upon application of the prosecuting  
44 attorney, sentence a person who has been convicted of a crime of  
45 the first, second or third degree to an extended term of  
46 imprisonment if it finds one or more of the grounds specified in  
47 subsection a., b., c., or f. of this section. If the grounds specified in  
48 subsection d. are found, and the person is being sentenced for

1 commission of any of the offenses enumerated in N.J.S.2C:43-6c.  
2 or N.J.S.2C:43-6g., the court shall sentence the defendant to an  
3 extended term as required by N.J.S.2C:43-6c. or N.J.S.2C:43-6g.,  
4 and application by the prosecutor shall not be required. The court  
5 shall, upon application of the prosecuting attorney, sentence a  
6 person who has been convicted of a crime under N.J.S.2C:14-2 or  
7 N.J.S.2C:14-3 to an extended term of imprisonment if the grounds  
8 specified in subsection g. of this section are found. [The court  
9 shall, upon application of the prosecuting attorney, sentence a  
10 person who has been convicted of a crime to an extended term of  
11 imprisonment if the grounds specified in subsection h. of this  
12 section are found.] The court shall, upon application of the  
13 prosecuting attorney, sentence a person to an extended term if the  
14 imposition of such term is required pursuant to the provisions of  
15 section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the  
16 court shall be incorporated in the record.

17 a. The defendant has been convicted of a crime of the first,  
18 second or third degree and is a persistent offender. A persistent  
19 offender is a person who at the time of the commission of the crime  
20 is 21 years of age or over, who has been previously convicted on at  
21 least two separate occasions of two crimes, committed at different  
22 times, when he was at least 18 years of age, if the latest in time of  
23 these crimes or the date of the defendant's last release from  
24 confinement, whichever is later, is within 10 years of the date of the  
25 crime for which the defendant is being sentenced.

26 b. The defendant has been convicted of a crime of the first,  
27 second or third degree and is a professional criminal. A  
28 professional criminal is a person who committed a crime as part of  
29 a continuing criminal activity in concert with two or more persons,  
30 and the circumstances of the crime show he has knowingly devoted  
31 himself to criminal activity as a major source of livelihood.

32 c. The defendant has been convicted of a crime of the first,  
33 second or third degree and committed the crime as consideration for  
34 the receipt, or in expectation of the receipt, of anything of pecuniary  
35 value the amount of which was unrelated to the proceeds of the  
36 crime or he procured the commission of the offense by payment or  
37 promise of payment of anything of pecuniary value.

38 d. Second offender with a firearm. The defendant is at least 18  
39 years of age and has been previously convicted of any of the  
40 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-  
41 2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been  
42 previously convicted of an offense under Title 2A of the New  
43 Jersey Statutes or under any statute of the United States or any other  
44 state which is substantially equivalent to the offenses enumerated in  
45 this subsection and he used or possessed a firearm, as defined in  
46 2C:39-1f., in the course of committing or attempting to commit any  
47 of these crimes, including the immediate flight therefrom.

48 e. (Deleted by amendment, P.L.2001, c.443).

1 f. The defendant has been convicted of a crime under any of  
2 the following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b.,  
3 N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1,  
4 N.J.S.2C:18-2, N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and  
5 in the course of committing or attempting to commit the crime,  
6 including the immediate flight therefrom, the defendant used or was  
7 in possession of a stolen motor vehicle.

8 g. The defendant has been convicted of a crime under  
9 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of  
10 violence and the victim of the crime was 16 years of age or less.

11 For purposes of this subsection, a crime involves violence or the  
12 threat of violence if the victim sustains serious bodily injury as  
13 defined in subsection b. of N.J.S.2C:11-1, or the actor is armed with  
14 and uses a deadly weapon or threatens by word or gesture to use a  
15 deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or  
16 threatens to inflict serious bodily injury.

17 h. **[**The crime was committed while the defendant was  
18 knowingly involved in criminal street gang related activity. A  
19 crime is committed while the defendant was involved in criminal  
20 street gang related activity if the crime was committed for the  
21 benefit of, at the direction of, or in association with a criminal street  
22 gang. "Criminal street gang" means three or more persons  
23 associated in fact. Individuals are associated in fact if (1) they have  
24 in common a group name or identifying sign, symbol, tattoo or  
25 other physical marking, style of dress or use of hand signs or other  
26 indicia of association or common leadership, and (2) individually or  
27 in combination with other members of a criminal street gang, while  
28 engaging in gang related activity, have committed, conspired or  
29 attempted to commit, within the preceding three years, two or more  
30 offenses of robbery, carjacking, aggravated assault, assault,  
31 aggravated sexual assault, sexual assault, arson, burglary,  
32 kidnapping, extortion, or a violation of chapter 11, section 3, 4, 5, 6  
33 or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey  
34 Statutes regardless of whether the prior offenses have resulted in  
35 convictions.

36 The court shall not impose a sentence pursuant to this subsection  
37 unless the ground therefore has been established by a  
38 preponderance of the evidence established at a hearing, which may  
39 occur at the time of sentencing. In making its finding, the court  
40 shall take judicial notice of any testimony or information adduced at  
41 the trial, plea hearing or other court proceedings and also shall  
42 consider the presentence report and any other relevant information.]

43 Deleted by amendment, P.L. , c. (pending before the Legislature  
44 as this bill).

45 (cf: P.L.2001, c.443, s.8)

46

47 9. This act shall take effect immediately.

1

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2

3       Creates offenses of gang criminality and promoting organized

4 street crime.