

SENATE, No. 2804

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 13, 2013

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Assemblyman GILBERT "WHIP" L. WILSON

District 5 (Camden and Gloucester)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

Assemblywoman Watson Coleman and Assemblyman Conaway

SYNOPSIS

Upgrades certain unlawful possession of firearms to first degree crime; revises certain penalties under the "Graves Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/21/2013)

1 AN ACT concerning unlawful possession of firearms and amending
2 N.J.S.2C:39-5 and N.J.S.2C:43-6.

3

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

6

7 1. N.J.S.2C:39-5 is amended to read as follows:

8 2C:39-5. Unlawful possession of weapons. a. Machine guns.
9 Any person who knowingly has in his possession a machine gun or
10 any instrument or device adaptable for use as a machine gun,
11 without being licensed to do so as provided in N.J.S.2C:58-5, is
12 guilty of a crime of the second degree.

13 b. Handguns. (1) Any person who knowingly has in his
14 possession any handgun, including any antique handgun, without
15 first having obtained a permit to carry the same as provided in
16 N.J.S.2C:58-4, is guilty of a crime of the **[third]** second degree,
17 **[if]** (2) If the handgun is in the nature of an air gun, spring gun or
18 pistol or other weapon of a similar nature in which the propelling
19 force is a spring, elastic band, carbon dioxide, compressed or other
20 gas or vapor, air or compressed air, or is ignited by compressed air,
21 and ejecting a bullet or missile smaller than three-eighths of an inch
22 in diameter, with sufficient force to injure a person **[. Otherwise]** it
23 is a crime of the **[second]** third degree.

24 c. Rifles and shotguns. (1) Any person who knowingly has in
25 his possession any rifle or shotgun without having first obtained a
26 firearms purchaser identification card in accordance with the
27 provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

28 (2) Unless otherwise permitted by law, any person who
29 knowingly has in his possession any loaded rifle or shotgun is
30 guilty of a crime of the third degree.

31 d. Other weapons. Any person who knowingly has in his
32 possession any other weapon under circumstances not manifestly
33 appropriate for such lawful uses as it may have is guilty of a crime
34 of the fourth degree.

35 e. Firearms or other weapons in educational institutions.

36 (1) Any person who knowingly has in his possession any
37 firearm in or upon any part of the buildings or grounds of any
38 school, college, university or other educational institution, without
39 the written authorization of the governing officer of the institution,
40 is guilty of a crime of the third degree, irrespective of whether he
41 possesses a valid permit to carry the firearm or a valid firearms
42 purchaser identification card.

43 (2) Any person who knowingly possesses any weapon
44 enumerated in paragraphs (3) and (4) of subsection r. of
45 N.J.S.2C:39-1 or any components which can readily be assembled

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.

1 into a firearm or other weapon enumerated in subsection r. of
2 N.J.S.2C:39-1 or any other weapon under circumstances not
3 manifestly appropriate for such lawful use as it may have, while in
4 or upon any part of the buildings or grounds of any school, college,
5 university or other educational institution without the written
6 authorization of the governing officer of the institution is guilty of a
7 crime of the fourth degree.

8 (3) Any person who knowingly has in his possession any
9 imitation firearm in or upon any part of the buildings or grounds of
10 any school, college, university or other educational institution,
11 without the written authorization of the governing officer of the
12 institution, or while on any school bus is a disorderly person,
13 irrespective of whether he possesses a valid permit to carry a
14 firearm or a valid firearms purchaser identification card.

15 f. Assault firearms. Any person who knowingly has in his
16 possession an assault firearm is guilty of a crime of the second
17 degree except if the assault firearm is licensed pursuant to
18 N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32
19 (C.2C:58-12); or rendered inoperable pursuant to section 12 of
20 P.L.1990, c.32 (C.2C:58-13).

21 g. (1) The temporary possession of a handgun, rifle or shotgun
22 by a person receiving, possessing, carrying or using the handgun,
23 rifle, or shotgun under the provisions of section 1 of P.L.1992, c.74
24 (C.2C:58-3.1) shall not be considered unlawful possession under
25 the provisions of subsection b. or c. of this section.

26 (2) The temporary possession of a firearm by a person receiving,
27 possessing, carrying or using the firearm under the provisions of
28 section 1 of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered
29 unlawful possession under the provisions of this section.

30 h. A person who is convicted of a crime under subsection a., b.,
31 **[or]** f. or j. of this section shall be ineligible for participation in any
32 program of intensive supervision; provided, however, that this
33 provision shall not apply to a crime under subsection b. involving
34 only a handgun which is in the nature of an air gun, spring gun or
35 pistol or other weapon of a similar nature in which the propelling
36 force is a spring, elastic band, carbon dioxide, compressed or other
37 gas or vapor, air or compressed air, or is ignited by compressed air,
38 and ejecting a bullet or missile smaller than three-eighths of an inch
39 in diameter, with sufficient force to injure a person.

40 i. A person convicted of violating subsection a., b. or f. of this
41 section shall be sentenced by the court to a term of imprisonment,
42 which shall include the imposition of a minimum term during which
43 the defendant shall be ineligible for parole, if the court finds that
44 the aggravating circumstance set forth in paragraph (5) of
45 subsection a. of N.J.S.2C:44-1 applies. The minimum term of
46 parole ineligibility shall be fixed at five years. The sentencing
47 court shall make a finding on the record as to whether the
48 aggravating circumstance set forth in paragraph (5) of subsection a.

1 of N.J.S.2C:44-1 applies, and the court shall presume that there is a
2 substantial likelihood that the defendant is involved in organized
3 criminal activity if there is a substantial likelihood that the
4 defendant is a member of an organization or group that engages in
5 criminal activity. The prosecution at the sentencing hearing shall
6 have the initial burden of producing evidence or information
7 concerning the defendant's membership in such an organization or
8 group.

9 j. A violation of subsections a., b., c. or f. of this section by a
10 person who has a prior conviction of any of the crimes enumerated
11 in subsection d. of section 2 of of P.L.1997, c.117 (C.2C:43-7.2) is
12 a first degree crime.

13 (c.f. P.L.2009, c.13, s.1)

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

16 2C:43-6. a. Except as otherwise provided, a person who has been
17 convicted of a crime may be sentenced to imprisonment, as follows:

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

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

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

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

30 b. As part of a sentence for any crime, where the court is
31 clearly convinced that the aggravating factors substantially
32 outweigh the mitigating factors, as set forth in subsections a. and b.
33 of 2C:44-1, or the court finds that the aggravating factor set forth in
34 paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, the court
35 may fix a minimum term not to exceed one-half of the term set
36 pursuant to subsection a., or one-half of the term set pursuant to a
37 maximum period of incarceration for a crime set forth in any statute
38 other than this code, during which the defendant shall not be
39 eligible for parole; provided that no defendant shall be eligible for
40 parole at a date earlier than otherwise provided by the law
41 governing parole.

42 c. A person who has been convicted under subsection b. or d.
43 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
44 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., **[or]** c.,
45 or f. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of
46 subsection b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or
47 subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any
48 of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,

1 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the
2 course of committing or attempting to commit the crime, including
3 the immediate flight therefrom, used or was in possession of a
4 firearm as defined in 2C:39-1f., shall be sentenced to a term of
5 imprisonment by the court. The term of imprisonment shall include
6 the imposition of a minimum term. The minimum term shall be
7 fixed at **【**, or between, one-third and**】** one-half of the sentence
8 imposed by the court or **【three years】** 42 months, whichever is
9 greater, or 18 months in the case of a fourth degree crime, during
10 which the defendant shall be ineligible for parole.

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

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

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

33 (2) The court shall not impose a mandatory sentence pursuant to
34 subsection c. of this section for a violation of paragraph (2) of
35 subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of
36 subsection c. of N.J.S.2C:39-5, if that rifle or shotgun is in the
37 nature of an air gun, spring gun or pistol or other weapon of a
38 similar nature in which the propelling force is a spring, elastic band,
39 carbon dioxide, compressed or other gas or vapor, air or compressed
40 air, or is ignited by compressed air, and electing a bullet or missile
41 smaller than three-eighths of an inch in diameter, with sufficient
42 force to injure a person; or a violation of paragraph (1) of
43 subsection c. of N.J.S.2C:39-5.

44 e. A person convicted of a third or subsequent offense
45 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any
46 other provision of this code, or under any of the provisions of Title
47 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,
48 as amended and supplemented, shall be sentenced to a term of

1 imprisonment by the court. This shall not preclude an application
2 for and imposition of an extended term of imprisonment under
3 N.J.S.2C:44-3 if the provisions of that section are applicable to the
4 offender.

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

28 The court shall not impose an extended term pursuant to this
29 subsection unless the ground therefor has been established at a
30 hearing. At the hearing, which may occur at the time of sentencing,
31 the prosecutor shall establish the ground therefor by a
32 preponderance of the evidence. In making its finding, the court shall
33 take judicial notice of any evidence, testimony or information
34 adduced at the trial, plea hearing, or other court proceedings and
35 shall also consider the presentence report and any other relevant
36 information.

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

44 g. Any person who has been convicted under subsection a. of
45 N.J.S.2C:39-4 or of a crime under any of the following sections:
46 N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
47 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
48 N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of

1 committing or attempting to commit the crime, including the
2 immediate flight therefrom, used or was in possession of a machine
3 gun or assault firearm shall be sentenced to a term of imprisonment
4 by the court. The term of imprisonment shall include the
5 imposition of a minimum term. The minimum term shall be fixed at
6 10 years for a crime of the first or second degree, five years for a
7 crime of the third degree, or 18 months in the case of a fourth
8 degree crime, during which the defendant shall be ineligible for
9 parole.

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

14 A person who has been convicted of an offense enumerated in
15 this subsection and who used or possessed a machine gun or assault
16 firearm during its commission, attempted commission or flight
17 therefrom and who has been previously convicted of an offense
18 involving the use or possession of any firearm as defined in
19 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
20 extended term as authorized by subsection d. of N.J.S.2C:43-7,
21 notwithstanding that extended terms are ordinarily discretionary
22 with the court.

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

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

42 (cf: P.L.2007, c.341, s.5)

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44 3. This act shall take effect immediately.

STATEMENT

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This bill upgrades the crime of unlawful possession of a firearm to a first degree crime in certain circumstances and amends various penalty provisions under the Graves Act.

The provisions of the bill make it crime of the first degree for a person to unlawfully possess a machine gun, handgun, rifle or shotgun, or an assault firearm following a conviction for a crime enumerated in subsection d. of section 2 of of P.L.1997, c. 117 (C.2C:43-7.1) (the No Early Release Act.) Under current law violations of these provisions are either a second degree offense, in the case of machine guns, handguns and assault firearms, or a third degree offense, in the case of rifles and shotguns.

The bill also amends sentencing under the Graves Act, P.L.1981, c.31 (C.2C:43-6), which sets forth mandatory minimum terms of imprisonment for persons convicted of certain firearms related offenses or offenses where a person possessed or used a firearm during the commission of a crime.

The Graves Act provides that a person convicted of unlawful possession of a machine gun, handgun, rifle or shotgun, in violation of subsections a., b. and c., respectively, of N.J.S.2C:39-5 is subject to a mandatory minimum period of parole ineligibility. Under current law the minimum term of imprisonment is three years.

In addition, the bill adds the unlawful possession of an assault firearm to the list of crimes that are subject to Graves Act sentencing.

The bill also increases the mandatory minimum period of parole ineligibility under the Graves Act from three years to 42 months.

Finally, the bill clarifies that individuals convicted of the unlawful possession of a BB gun, air gun or spring gun, be it a handgun, rifle, shotgun, are not subject to the mandatory sentences imposed under the Graves Act. Similarly, individuals convicted of the unlawful possession of an unloaded rifle or shotgun are also exempt from the mandatory sentences imposed under the Graves Act.

The bill adds unlawful possession of an assault firearm to the list of crimes for which Graves Act sentencing applies. Further, the provisions of the bill increase the mandatory minimum period of parole eligibility from three years to 42 months. The bill also provides that the mandatory minimum term will not apply to unlawful possession of a handgun, rifle or shotgun if the firearms are in the nature of an air gun, spring gun or pistol or other weapon of a similar nature, or to the unlawful possession of an unloaded rifle or shotgun.

It is the understanding of the sponsor that the bill would not preclude a defendant convicted of unlawful possession of an unloaded rifle or shotgun or a BB gun, air gun, or spring gun, from being eligible for participation in a pretrial intervention program.