

ASSEMBLY, No. 1596

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman SCOTT T. RUMANA

District 40 (Bergen, Essex, Morris and Passaic)

Assemblyman DAVID C. RUSSO

District 40 (Bergen, Essex, Morris and Passaic)

Assemblyman KEVIN J. ROONEY

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Expands list of crimes with bail restriction to include gun related crimes with mandatory minimum terms of imprisonment under “Graves Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/14/2017)

1 AN ACT concerning crimes with bail restrictions and amending
2 P.L.1994, c.144.

3

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

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7 1. Section 1 of P.L.1994, c.144 (C.2A:162-12) is amended to
8 read as follows:

9 1. a. As used in this section:

10 "Crime with bail restrictions" means a crime of the first or
11 second degree charged under any of the following sections:

- 12 (1) Murder 2C:11-3.
- 13 (2) Manslaughter 2C:11-4.
- 14 (3) Kidnapping 2C:13-1.
- 15 (4) Sexual Assault 2C:14-2.
- 16 (5) Robbery 2C:15-1.
- 17 (6) Carjacking P.L.1993, c.221, s.1 (C.2C:15-2).
- 18 (7) Arson and Related Offenses 2C:17-1.
- 19 (8) Causing or Risking Widespread
20 Injury or Damage 2C:17-2.
- 21 (9) Burglary 2C:18-2.
- 22 (10) Theft by Extortion 2C:20-5.
- 23 (11) Endangering the Welfare of Children 2C:24-4.
- 24 (12) Resisting Arrest; Eluding Officer 2C:29-2.
- 25 (13) Escape 2C:29-5.
- 26 (14) Corrupting or Influencing a Jury 2C:29-8.
- 27 (15) Possession of Weapons for Unlawful Purposes 2C:39-4.
- 28 (16) Weapons Training for Illegal Activities
29 P.L.1983, c.229, s.1
30 (C.2C:39-14).
- 31 (17) Soliciting or Recruiting Gang Members
32 P.L.1999, c.160, s.1
33 (C.2C:33-28).

34 "Crime with bail restrictions" also shall include a second, third
35 or fourth degree crime charged under the following sections:

- 36 (18) Possession of a sawed-off shotgun or defaced firearm in
37 violation of subsections b. or d. of N.J.S. 2C:39-3.
- 38 (19) Unlawful possession of a machine gun, handgun, rifle or
39 shotgun in violation of subsections a., b., or c. of N.J.S. 2C:39-5.
- 40 (20) Possession of a firearm while in the course of committing
41 drug distribution or possession with intent to distribute offense in
42 violation of subsection a. of section 1 of P.L.1998, c.26 (C.2C:39-
43 4.1).
- 44 (21) Possession of certain weapons by person previously
45 convicted of specified offenses in violation of subsections a. or

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 paragraph 2 or 3 of subsection b. of section 6 of P.L.1979, c.179
2 (C.2C:39-7).

3 (22) Manufacture, transport, or disposition of a machine gun,
4 sawed-off shotgun, or assault firearm in violation of subsections a.,
5 b., or g. of N.J.S.2C:39-9.

6 (23) Defacement of a firearm in violation of subsection e. of
7 N.J.S.2C:39-9.

8 (24) Aggravated assault while in possession of a firearm in
9 violation of subsection b. of N.J.S. 2C:12-1.

10 (25) Aggravated criminal sexual contact while in possession of a
11 firearm in violation of subsection a. of N.J.S.2C:14-3.

12 "Crime with bail restrictions" also includes any first or second
13 degree drug-related crimes under chapter 35 of Title 2C of the New
14 Jersey Statutes and any first or second degree racketeering crimes
15 under chapter 41 of Title 2C of the New Jersey Statutes.

16 "Crime with bail restrictions" also includes any crime or offense
17 involving domestic violence, as defined in subsection a. of section 3
18 of P.L.1991, c. 261 (C.2C:25-19), where the defendant was subject
19 to a temporary or permanent restraining order issued pursuant to the
20 provisions of the "Prevention of Domestic Violence Act of 1991,"
21 P.L.1991, c.261 (C.2C:25-17 et al.) and is charged with a crime
22 committed against a person protected under the order or where the
23 defendant is charged with contempt pursuant to N.J.S.2C:29-9.

24 b. Subject to the provisions of subsection c. of this section, a
25 person charged with a crime with bail restrictions may post the
26 required amount of bail only in the form of:

27 (1) Full cash;

28 (2) A surety bond executed by a corporation authorized under
29 chapter 31 of Title 17 of the Revised Statutes; or

30 (3) A bail bond secured by real property situated in this State
31 with an unencumbered equity equal to the amount of bail
32 undertaken plus \$20,000.

33 c. There shall be a presumption in favor of the court
34 designating the posting of full United States currency cash bail to
35 the exclusion of other forms of bail when a defendant is charged
36 with an offense as set forth in subsection a. of this section and:

37 (1) has two other indictable cases pending at the time of the
38 arrest; or

39 (2) has two prior convictions for a first or second degree crime
40 or for a violation of section 1 of P.L.1987, c.101 (C.2C:35-7) or any
41 combination thereof; or

42 (3) has one prior conviction for murder, aggravated
43 manslaughter, aggravated sexual assault, kidnapping or bail
44 jumping; or

45 (4) was on parole at the time of the arrest; or

46 (5) was subject to a temporary or permanent restraining order
47 issued pursuant to the provisions of the "Prevention of Domestic
48 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.), was

1 charged with a crime committed against a person protected under
2 that order, including a charge of contempt pursuant to N.J.S.2C:29-
3 9, and either: (a) is charged with commission of a domestic violence
4 crime that resulted in serious bodily injury to the victim; or (b) has
5 at least one prior conviction for a crime or offense involving
6 domestic violence against the same victim or has previously
7 violated a final restraining order protecting the same victim,

8 unless the court finds on the record that another form of bail
9 authorized in subsection b. of this section will ensure the
10 defendant's presence in court when required.

11 d. When bail is posted in the form of a bail bond secured by
12 real property, the owner of the real property, whether the person is
13 admitted to bail or a surety, shall also file an affidavit containing:

14 (1) A legal description of the real property;

15 (2) A description of each encumbrance on the real property;

16 (3) The market value of the unencumbered equity owned by the
17 affiant as determined in a full appraisal conducted by an appraiser
18 licensed by the State of New Jersey; and

19 (4) A statement that the affiant is the sole owner of the
20 unencumbered equity.

21 e. Nothing herein is intended to preclude a court from releasing
22 a person on the person's own recognizance when the court
23 determines that such person is deserving.

24 (cf: P.L.2011, c.138, s.1)

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26 2. This act shall take effect immediately.

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STATEMENT

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31 This bill places bail restriction on certain firearms related crimes
32 enumerated under the "Graves Act."

33 Generally, a court may allow defendants to be released on bail
34 after they post 10 percent of the amount of bail in cash. Current
35 law, however, provides that defendants charged with certain violent
36 crimes of the first or second degree are ineligible for the 10 percent
37 cash option and are subject to restrictions when posting bail. These
38 restrictions include posting bail in the form of a full cash amount, a
39 surety bond issued by a licensed corporation, or a bail bond secured
40 by real property situated in the State with an unencumbered equity
41 equal to the amount of bail plus \$20,000.

42 P.L.1981, c.31, also known as the "Graves Act," sets forth
43 mandatory minimum terms of imprisonment for individuals
44 convicted of certain firearms related crimes or crimes where the
45 offender possessed or used a firearm during the commission of the
46 crime.

47 This bill would add certain "Graves Act" offenses to the list of
48 crimes with bail restrictions. The list of offenses would be

1 expanded to include the following second, third, and fourth degree
2 crimes:

- 3 • Possession of a sawed-off shotgun or defaced firearm;
- 4 • Unlawful possession of a machine gun, handgun, rifle or
5 shotgun;
- 6 • Possession of a firearm while in the course of committing
7 drug distribution or possession with intent to distribute
8 offense;
- 9 • Possession of certain weapons by person previously
10 convicted of specified offenses;
- 11 • Manufacture, transport, or disposition of a machine gun,
12 sawed-off shotgun, or assault firearm;
- 13 • Defacement of a firearm;
- 14 • Aggravated assault while in possession of a firearm; and
- 15 • Aggravated criminal sexual contact while in possession of a
16 firearm.

17 The provisions of this bill are based on recommendations made
18 in the New Jersey SAFE Task Force Report, which was issued on
19 April 10, 2013.