

[First Reprint]

ASSEMBLY, No. 4369

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 29, 2020

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Co-Sponsored by:

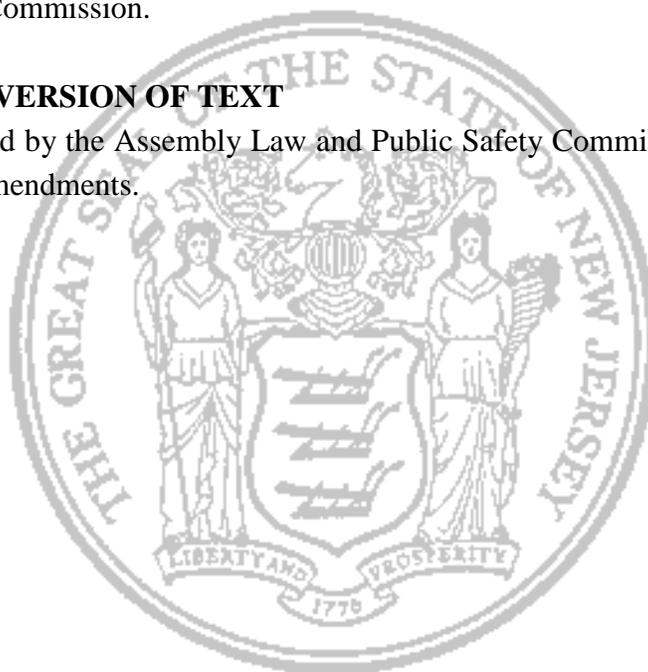
**Assemblywoman Reynolds-Jackson, Senators Scutari, Ruiz and
Assemblywoman Vainieri Huttle**

SYNOPSIS

Implements sentencing recommendations of the Criminal Sentencing and Disposition Commission.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on July 20, 2020, with amendments.



(Sponsorship Updated As Of: 1/25/2021)

1 AN ACT concerning sentencing reform and amending various
2 sections of Title 2C of the New Jersey Statutes.

3

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

6

7 1. ¹~~Section 4 of P.L.2013, c.53 (C.2C:20-2.4) is amended to~~
8 ~~read as follows:~~ Section 4 of P.L.2013, c.58 (C.2C:20-2.4) is
9 amended to read as follows:¹

10 4. a. A person is a leader of a cargo theft network if he
11 conspires with others as an organizer, supervisor, financier or
12 manager to engage for profit in a scheme or course of conduct to
13 unlawfully take, dispose of, distribute, bring into, transport, or store
14 in this State property stolen from a cargo carrier, where the amount
15 is at least \$5,000.

16 (1) Except as provided in paragraph (2) of this subsection,
17 leader of a cargo theft network is a crime of the second degree.
18 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
19 the court may impose a fine not to exceed \$250,000 or five times
20 the retail value of the property seized at the time of the arrest,
21 whichever is greater.

22 (2) Leader of a cargo theft network is a crime of the first degree
23 if the scheme or course of conduct to unlawfully take, dispose of,
24 distribute, bring into, transport, or store in this State property stolen
25 from a cargo carrier included the use or threatened use of any
26 deadly weapon, as defined in N.J.S.2C:39-1 in the commission of
27 the theft. Nothing in this subsection shall be deemed to limit the
28 authority or discretion of the State to charge or prosecute any
29 person for robbery under N.J.S.2C:15-1 or for any other offense,
30 nor shall a conviction for robbery merge with any conviction under
31 this section. Notwithstanding the provisions of subsection a. of
32 N.J.S.2C:43-3, the court may impose a fine not to exceed \$500,000
33 or five times the retail value of the property seized at the time of the
34 arrest, whichever is greater.

35 b. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction
36 of leader of a cargo theft network shall not merge with the
37 conviction for any offense which is the object of the conspiracy.
38 Nothing contained in this act shall prohibit the court from imposing
39 an extended term pursuant to N.J.S.2C:43-7; nor shall this act be
40 construed in any way to preclude or limit the prosecution or
41 conviction of any person for conspiracy under N.J.S.2C:5-2, or any
42 prosecution or conviction for any other offense.

43 c. It shall not be necessary in any prosecution under this
44 section for the State to prove that any intended profit was actually
45 realized. The trier of fact may infer that a particular scheme 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted July 20, 2020.

1 course of conduct was undertaken for profit from all of the
2 attending circumstances, including but not limited to the number of
3 persons involved in the scheme or course of conduct, the actor's net
4 worth and his expenditures in relation to his legitimate sources of
5 income, the amount of property or number of incidents of theft, or
6 the amount of cash or currency involved.

7 d. It shall not be a defense to a prosecution under this section
8 that the stolen property was brought into, transported or stored in
9 this State solely for ultimate distribution in another jurisdiction; nor
10 shall it be a defense that any profit was intended to be made in
11 another jurisdiction.

12 e. A person convicted of a second or subsequent offense under
13 this section shall be sentenced to a term of imprisonment [that shall
14 include a mandatory minimum term of one-third to one-half of the
15 sentence imposed, during which time the defendant shall not be
16 eligible for parole], and may be sentenced to an extended term of
17 imprisonment as set forth in subsection a. of N.J.S.2C:43-7,
18 notwithstanding the provisions of N.J.S.2C:44-3. The court may
19 not suspend or make any other non-custodial disposition of any
20 person sentenced as a second or subsequent offender pursuant to
21 this section. For the purposes of this section an offense is
22 considered a second or subsequent offense if the actor has at any
23 time been convicted pursuant to this section, or under any similar
24 statute of the United States, this State or any other state for an
25 offense that is substantially equivalent to this section.

26 (cf: P.L.2013, c.58, s.4)

27
28 2. ¹[Section 6 of P.L.2013, c.53 (C.2C:20-2.6) is amended to
29 read as follows:] Section 6 of P.L.2013, c.58 (C.2C:20-2.6) is
30 amended to read as follows:¹

31 6. a. A person who knowingly maintains or operates any
32 premises, place or facility used for the storage or resale of any
33 property stolen from a cargo carrier is guilty of a crime. Where the
34 property involved in the offense is valued at \$50,000 or more, the
35 offense is a crime of the second degree. Otherwise, the offense is a
36 crime of the third degree.

37 b. Notwithstanding the provisions of subsection a. of
38 N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000
39 or five times the retail value of the property stolen from the carrier
40 seized at the time of the arrest, whichever is greater.

41 c. A person convicted of a second or subsequent offense under
42 this section shall be sentenced to a term of imprisonment [that shall
43 include a mandatory minimum term of one-third to one-half of the
44 sentence imposed, during which time the defendant shall not be
45 eligible for parole], and may be sentenced to an extended term of
46 imprisonment as set forth subsection a. of N.J.S.2C:43-7,
47 notwithstanding the provision of N.J.S.2C:44-3. The court may not

1 suspend or make any other non-custodial disposition of any person
2 sentenced as a second or subsequent offender pursuant to this
3 section. For the purposes of this section an offense is considered a
4 second or subsequent offense if the actor has at any time been
5 convicted pursuant to this section, or under any similar statute of
6 the United States, this State or any other state for an offense that is
7 substantially equivalent to this section.

8 (cf: P.L.2013, c.58, s.6)

9

10 3. N.J.S.2C:20-11 is amended to read as follows:

11 2C:20-11. a. Definitions. The following definitions apply to
12 this section:

13 (1) "Shopping cart" means those push carts of the type or types
14 which are commonly provided by grocery stores, drug stores or
15 other retail mercantile establishments for the use of the public in
16 transporting commodities in stores and markets and, incidentally,
17 from the stores to a place outside the store;

18 (2) "Store or other retail mercantile establishment" means a
19 place where merchandise is displayed, held, stored or sold or
20 offered to the public for sale;

21 (3) "Merchandise" means any goods, chattels, foodstuffs or
22 wares of any type and description, regardless of the value thereof;

23 (4) "Merchant" means any owner or operator of any store or
24 other retail mercantile establishment, or any agent, servant,
25 employee, lessee, consignee, officer, director, franchisee or
26 independent contractor of such owner or proprietor;

27 (5) "Person" means any individual or individuals, including an
28 agent, servant or employee of a merchant where the facts of the
29 situation so require;

30 (6) "Conceal" means to conceal merchandise so that, although
31 there may be some notice of its presence, it is not visible through
32 ordinary observation;

33 (7) "Full retail value" means the merchant's stated or advertised
34 price of the merchandise;

35 (8) "Premises of a store or retail mercantile establishment"
36 means and includes but is not limited to, the retail mercantile
37 establishment; any common use areas in shopping centers and all
38 parking areas set aside by a merchant or on behalf of a merchant for
39 the parking of vehicles for the convenience of the patrons of such
40 retail mercantile establishment;

41 (9) "Under-ring" means to cause the cash register or other sale
42 recording device to reflect less than the full retail value of the
43 merchandise;

44 (10) "Antishoplifting or inventory control device
45 countermeasure" means any item or device which is designed,
46 manufactured, modified, or altered to defeat any antishoplifting or
47 inventory control device;

1 (11) "Organized retail theft enterprise" means any association of
2 two or more persons who engage in the conduct of or are associated
3 for the purpose of effectuating the transfer or sale of shoplifted
4 merchandise.

5 b. Shoplifting. Shoplifting shall consist of any one or more of
6 the following acts:

7 (1) For any person purposely to take possession of, carry away,
8 transfer or cause to be carried away or transferred, any merchandise
9 displayed, held, stored or offered for sale by any store or other retail
10 mercantile establishment with the intention of depriving the
11 merchant of the possession, use or benefit of such merchandise or
12 converting the same to the use of such person without paying to the
13 merchant the full retail value thereof.

14 (2) For any person purposely to conceal upon his person or
15 otherwise any merchandise offered for sale by any store or other
16 retail mercantile establishment with the intention of depriving the
17 merchant of the processes, use or benefit of such merchandise or
18 converting the same to the use of such person without paying to the
19 merchant the value thereof.

20 (3) For any person purposely to alter, transfer or remove any
21 label, price tag or marking indicia of value or any other markings
22 which aid in determining value affixed to any merchandise
23 displayed, held, stored or offered for sale by any store or other retail
24 mercantile establishment and to attempt to purchase such
25 merchandise personally or in consort with another at less than the
26 full retail value with the intention of depriving the merchant of all
27 or some part of the value thereof.

28 (4) For any person purposely to transfer any merchandise
29 displayed, held, stored or offered for sale by any store or other retail
30 merchandise establishment from the container in or on which the
31 same shall be displayed to any other container with intent to deprive
32 the merchant of all or some part of the retail value thereof.

33 (5) For any person purposely to under-ring with the intention of
34 depriving the merchant of the full retail value thereof.

35 (6) For any person purposely to remove a shopping cart from the
36 premises of a store or other retail mercantile establishment without
37 the consent of the merchant given at the time of such removal with
38 the intention of permanently depriving the merchant of the
39 possession, use or benefit of such cart.

40 c. Gradation. (1) Shoplifting constitutes a crime of the second
41 degree under subsection b. of this section if the full retail value of
42 the merchandise is \$75,000 or more, or the offense is committed in
43 furtherance of or in conjunction with an organized retail theft
44 enterprise and the full retail value of the merchandise is \$1,000 or
45 more.

46 (2) Shoplifting constitutes a crime of the third degree under
47 subsection b. of this section if the full retail value of the
48 merchandise exceeds \$500 but is less than \$75,000, or the offense

1 is committed in furtherance of or in conjunction with an organized
2 retail theft enterprise and the full retail value of the merchandise is
3 less than \$1,000.

4 (3) Shoplifting constitutes a crime of the fourth degree under
5 subsection b. of this section if the full retail value of the
6 merchandise is at least \$200 but does not exceed \$500.

7 (4) Shoplifting is a disorderly persons offense under subsection
8 b. of this section if the full retail value of the merchandise is less
9 than \$200.

10 The value of the merchandise involved in a violation of this
11 section may be aggregated in determining the grade of the offense
12 where the acts or conduct constituting a violation were committed
13 pursuant to one scheme or course of conduct, whether from the
14 same person or several persons, or were committed in furtherance
15 of or in conjunction with an organized retail theft enterprise.

16 Additionally, notwithstanding the term of imprisonment provided
17 in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting
18 offense shall be sentenced to perform community service as
19 follows: for a first offense, at least ten days of community service;
20 for a second offense, at least 15 days of community service; and for
21 a third or subsequent offense, a maximum of 25 days of community
22 service and any person convicted of a third or subsequent
23 shoplifting offense shall **【serve a minimum】** be sentenced to a term
24 of imprisonment 【of not less than 90 days】.

25 d. Presumptions. Any person purposely concealing
26 unpurchased merchandise of any store or other retail mercantile
27 establishment, either on the premises or outside the premises of
28 such store or other retail mercantile establishment, shall be prima
29 facie presumed to have so concealed such merchandise with the
30 intention of depriving the merchant of the possession, use or benefit
31 of such merchandise without paying the full retail value thereof,
32 and the finding of such merchandise concealed upon the person or
33 among the belongings of such person shall be prima facie evidence
34 of purposeful concealment; and if such person conceals, or causes
35 to be concealed, such merchandise upon the person or among the
36 belongings of another, the finding of the same shall also be prima
37 facie evidence of willful concealment on the part of the person so
38 concealing such merchandise.

39 e. A law enforcement officer, or a special officer, or a
40 merchant, who has probable cause for believing that a person has
41 willfully concealed unpurchased merchandise and that he can
42 recover the merchandise by taking the person into custody, may, for
43 the purpose of attempting to effect recovery thereof, take the person
44 into custody and detain him in a reasonable manner for not more
45 than a reasonable time, and the taking into custody by a law
46 enforcement officer or special officer or merchant shall not render
47 such person criminally or civilly liable in any manner or to any
48 extent whatsoever.

1 Any law enforcement officer may arrest without warrant any
2 person he has probable cause for believing has committed the
3 offense of shoplifting as defined in this section.

4 A merchant who causes the arrest of a person for shoplifting, as
5 provided for in this section, shall not be criminally or civilly liable
6 in any manner or to any extent whatsoever where the merchant has
7 probable cause for believing that the person arrested committed the
8 offense of shoplifting.

9 f. Any person who possesses or uses any antishoplifting or
10 inventory control device countermeasure within any store or other
11 retail mercantile establishment is guilty of a disorderly persons
12 offense.

13 (cf: P.L.2006, c.56, s.1)

14

15 ¹[4. Section 4 of P.L.1984, c.184 (C.2C:20-25) is amended to
16 read as follows:

17 4. A person is guilty of computer criminal activity if the person
18 purposely or knowingly and without authorization, or in excess of
19 authorization:

20 a. Accesses any data, data base, computer storage medium,
21 computer program, computer software, computer equipment,
22 computer, computer system or computer network;

23 b. Alters, damages or destroys any data, data base, computer,
24 computer storage medium, computer program, computer software,
25 computer system or computer network, or denies, disrupts or
26 impairs computer services, including access to any part of the
27 Internet, that are available to any other user of the computer
28 services;

29 c. Accesses or attempts to access any data, data base,
30 computer, computer storage medium, computer program, computer
31 software, computer equipment, computer system or computer
32 network for the purpose of executing a scheme to defraud, or to
33 obtain services, property, personal identifying information, or
34 money, from the owner of a computer or any third party;

35 d. (Deleted by amendment, P.L.2003, c.39).

36 e. Obtains, takes, copies or uses any data, data base, computer
37 program, computer software, personal identifying information, or
38 other information stored in a computer, computer network,
39 computer system, computer equipment or computer storage
40 medium; or

41 f. Accesses and recklessly alters, damages or destroys any
42 data, data base, computer, computer storage medium, computer
43 program, computer software, computer equipment, computer system
44 or computer network.

45 g. A violation of subsection a. of this section is a crime of the
46 third degree. A violation of subsection b. is a crime of the second
47 degree. A violation of subsection c. is a crime of the third degree,
48 except that it is a crime of the second degree if the value of the

1 services, property, personal identifying information, or money
2 obtained or sought to be obtained exceeds \$5,000. A violation of
3 subsection e. is a crime of the third degree, except that it is a crime
4 of the second degree if the data, data base, computer program,
5 computer software, or information:

6 (1) is or contains personal identifying information, medical
7 diagnoses, treatments or other medical information concerning an
8 identifiable person;

9 (2) is or contains governmental records or other information that
10 is protected from disclosure by law, court order or rule of court; or

11 (3) has a value exceeding \$5,000.

12 A violation of subsection f. is a crime of the fourth degree,
13 except that it is a crime of the third degree if the value of the
14 damage exceeds \$5,000.

15 A violation of any subsection of this section is a crime of the
16 first degree if the offense results in:

17 (1) a substantial interruption or impairment of public
18 communication, transportation, supply of water, gas or power, or
19 other public service. The term "substantial interruption or
20 impairment" shall mean such interruption or impairment that:

21 (a) affects 10 or more structures or habitations;

22 (b) lasts for two or more hours; or

23 (c) creates a risk of death or significant bodily injury to any
24 person;

25 (2) damages or loss in excess of \$250,000; or

26 (3) significant bodily injury to any person.

27 **【Every sentence of imprisonment for a crime of the first degree**
28 **committed in violation of this section shall include a minimum term**
29 **of one-third to one-half of the sentence imposed, during which term**
30 **the defendant shall not be eligible for parole.】**

31 h. Every sentence imposed upon a conviction pursuant to this
32 section shall, if the victim is a government agency, include a period
33 of imprisonment. **【The period of imprisonment shall include a**
34 **minimum term of one-third to one-half of the sentence imposed,**
35 **during which term the defendant shall not be eligible for parole.】**

36 The victim shall be deemed to be a government agency if a
37 computer, computer network, computer storage medium, computer
38 system, computer equipment, computer program, computer
39 software, computer data or data base that is a subject of the crime is
40 owned, operated or maintained by or on behalf of a governmental
41 agency or unit of State or local government or a public authority.
42 The defendant shall be strictly liable under this subsection and it
43 shall not be a defense that the defendant did not know or intend that
44 the victim was a government agency, or that the defendant intended
45 that there be other victims of the crime.

46 A violation of any subsection of this section shall be a distinct
47 offense from a violation of any other subsection of this section, and
48 a conviction for a violation of any subsection of this section shall

1 not merge with a conviction for a violation of any other subsection
2 of this section or section 10 of P.L.1984, c.184 (C.2C:20-31), or for
3 conspiring or attempting to violate any subsection of this section or
4 section 10 of P.L.1984, c.184 (C.2C:20-31), and a separate sentence
5 shall be imposed for each such conviction.

6 When a violation of any subsection of this section involves an
7 offense committed against a person under 18 years of age, the
8 violation shall constitute an aggravating circumstance to be
9 considered by the court when determining the appropriate sentence
10 to be imposed.

11 (cf: P.L.2003, c.39, s.3)]¹

12
13 ¹**[5.]**4.¹ Section 10 of P.L.1984, c.184 (C.2C:20-31) is
14 amended to read as follows:

15 10. a. A person is guilty of a crime of the third degree if the
16 person purposely or knowingly and without authorization, or in
17 excess of authorization, accesses any data, data base, computer,
18 computer storage medium, computer software, computer equipment,
19 computer system and knowingly or recklessly discloses or causes to
20 be disclosed any data, data base, computer software, computer
21 programs or personal identifying information.

22 b. A person is guilty of a crime of the second degree if the
23 person purposely or knowingly and without authorization, or in
24 excess of authorization, accesses any data, data base, computer,
25 computer storage medium, computer software, computer equipment,
26 computer system or computer network and purposely or knowingly
27 discloses or causes to be disclosed any data, data base, computer
28 software, computer program or other information that is protected
29 from disclosure by any law, court order or rule of court. Every
30 sentence imposed upon a conviction pursuant to this subsection
31 shall include a period of imprisonment. **[The period of**
32 **imprisonment shall include a minimum term of one-third to one-**
33 **half of the sentence imposed, during which term the defendant shall**
34 **not be eligible for parole.]**

35 (cf: P.L.2003, c.39, s.4)

36
37 ¹**[6.N.J.S.2C:35-3** is amended to read as follows:

38 2C:35-3. Leader of Narcotics Trafficking Network.

39 As used in this section:

40 "Financier" means a person who, with the intent to derive a
41 profit, provides money or credit or other thing of value in order to
42 purchase a controlled dangerous substance or an immediate
43 precursor, or otherwise to finance the operations of a drug
44 trafficking network.

45 A person is a leader of a narcotics trafficking network if he
46 conspires with two or more other persons in a scheme or course of
47 conduct to unlawfully manufacture, distribute, dispense, bring into

1 or transport in this State methamphetamine, lysergic acid
2 diethylamide, phencyclidine, gamma hydroxybutyrate,
3 flunitrazepam or any controlled dangerous substance classified in
4 Schedule I or II, or any controlled substance analog thereof as a
5 financier, or as an organizer, supervisor or manager of at least one
6 other person.

7 Leader of narcotics trafficking network is a crime of the first
8 degree and upon conviction thereof, except as may be provided by
9 N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of
10 between twenty-five years and life imprisonment [during which the
11 person must serve 25 years before being eligible for parole].
12 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
13 the court may also impose a fine not to exceed \$750,000.00 or five
14 times the street value of the controlled dangerous substance,
15 controlled substance analog, gamma hydroxybutyrate or
16 flunitrazepam involved, whichever is greater.

17 Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of
18 leader of narcotics trafficking network shall not merge with the
19 conviction for any offense which is the object of the conspiracy.
20 Nothing contained in this section shall prohibit the court from
21 imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this
22 section be construed in any way to preclude or limit the prosecution
23 or conviction of any person for conspiracy under N.J.S.2C:5-2, or
24 any prosecution or conviction under N.J.S.2C:35-4 (maintaining or
25 operating a CDS production facility), N.J.S.2C:35-5
26 (manufacturing, distributing or dispensing), N.J.S.2C:35-6
27 (employing a juvenile in a drug distribution scheme), N.J.S.2C:35-9
28 (strict liability for drug induced death), N.J.S.2C:41-2 (racketeering
29 activities) or subsection g. of N.J.S.2C:5-2 (leader of organized
30 crime).

31 It shall not be necessary in any prosecution under this section for
32 the State to prove that any intended profit was actually realized. The
33 trier of fact may infer that a particular scheme or course of conduct
34 was undertaken for profit from all of the attendant circumstances,
35 including but not limited to the number of persons involved in the
36 scheme or course of conduct, the actor's net worth and his
37 expenditures in relation to his legitimate sources of income, the
38 amount or purity of the specified controlled dangerous substance,
39 controlled substance analog, gamma hydroxybutyrate or
40 flunitrazepam involved, or the amount of cash or currency involved.

41 It shall not be a defense to a prosecution under this section that
42 such controlled dangerous substance, controlled substance analog,
43 gamma hydroxybutyrate or flunitrazepam was brought into or
44 transported in this State solely for ultimate distribution or
45 dispensing in another jurisdiction; nor shall it be a defense that any
46 profit was intended to be made in another jurisdiction.

1 It shall not be a defense that the defendant was subject to the
2 supervision or management of another, nor that another person or
3 persons were also leaders of the narcotics trafficking network.
4 (cf: P.L.1999, c.133, s.1)】¹

5
6 ¹【7.】5.¹ N.J.S.2C:35-4 is amended to read as follows:

7 2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et
8 seq.), any person who knowingly maintains or operates any
9 premises, place or facility used for the manufacture of
10 methamphetamine, lysergic acid diethylamide, phencyclidine,
11 gamma hydroxybutyrate, flunitrazepam, marijuana in an amount
12 greater than five pounds or ten plants or any substance listed in
13 Schedule I or II, or the analog of any such substance, or any person
14 who knowingly aids, promotes, finances or otherwise participates in
15 the maintenance or operations of such premises, place or facility, is
16 guilty of a crime of the first degree and shall, except as provided in
17 N.J.S.2C:35-12, be sentenced to a term of imprisonment【which
18 shall include the imposition of a minimum term which shall be
19 fixed at, or between, one-third and one-half of the sentence
20 imposed, during which the defendant shall be ineligible for parole】.
21 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
22 the court may also impose a fine not to exceed \$750,000.00 or five
23 times the street value of all controlled dangerous substances,
24 controlled substance analogs, gamma hydroxybutyrate or
25 flunitrazepam at any time manufactured or stored at such premises,
26 place or facility, whichever is greater.

27 (cf: P.L.1999, c.133, s.2)

28
29 ¹【8.】6.¹ N.J.S.2C:35-5 is amended to read as follows:

30 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
31 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
32 unlawful for any person knowingly or purposely:

33 (1) To manufacture, distribute or dispense, or to possess or have
34 under his control with intent to manufacture, distribute or dispense,
35 a controlled dangerous substance or controlled substance analog; or

36 (2) To create, distribute, or possess or have under his control
37 with intent to distribute, a counterfeit controlled dangerous
38 substance.

39 b. Any person who violates subsection a. with respect to:

40 (1) Heroin, or its analog, or coca leaves and any salt, compound,
41 derivative, or preparation of coca leaves, and any salt, compound,
42 derivative, or preparation thereof which is chemically equivalent or
43 identical with any of these substances, or analogs, except that the
44 substances shall not include decocainized coca leaves or extractions
45 which do not contain cocaine or ecogine, or 3,4-
46 methylenedioxyamphetamine or 3,4-
47 methylenedioxyamphetamine, in a quantity of five ounces or more

1 including any adulterants or dilutants is guilty of a crime of the first
2 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
3 be sentenced to a term of imprisonment by the court. [The term of
4 imprisonment shall include the imposition of a minimum term
5 which shall be fixed at, or between, one-third and one-half of the
6 sentence imposed, during which the defendant shall be ineligible for
7 parole.] Notwithstanding the provisions of subsection a. of
8 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

9 (2) A substance referred to in paragraph (1) of this subsection,
10 in a quantity of one-half ounce or more but less than five ounces,
11 including any adulterants or dilutants is guilty of a crime of the
12 second degree;

13 (3) A substance referred to in paragraph (1) of this subsection in
14 a quantity less than one-half ounce including any adulterants or
15 dilutants is guilty of a crime of the third degree except that,
16 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
17 fine of up to \$75,000.00 may be imposed;

18 (4) A substance classified as a narcotic drug in Schedule I or II
19 other than those specifically covered in this section, or the analog of
20 any such substance, in a quantity of one ounce or more including
21 any adulterants or dilutants is guilty of a crime of the second
22 degree;

23 (5) A substance classified as a narcotic drug in Schedule I or II
24 other than those specifically covered in this section, or the analog of
25 any such substance, in a quantity of less than one ounce including
26 any adulterants or dilutants is guilty of a crime of the third degree
27 except that, notwithstanding the provisions of subsection b. of
28 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

29 (6) Lysergic acid diethylamide, or its analog, in a quantity of
30 100 milligrams or more including any adulterants or dilutants, or
31 phencyclidine, or its analog, in a quantity of 10 grams or more
32 including any adulterants or dilutants, is guilty of a crime of the
33 first degree. Except as provided in N.J.S.2C:35-12, the court shall
34 impose a term of imprisonment [which shall include the imposition
35 of a minimum term, fixed at, or between, one-third and one-half of
36 the sentence imposed by the court, during which the defendant shall
37 be ineligible for parole]. Notwithstanding the provisions of
38 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
39 imposed;

40 (7) Lysergic acid diethylamide, or its analog, in a quantity of
41 less than 100 milligrams including any adulterants or dilutants, or
42 where the amount is undetermined, or phencyclidine, or its analog,
43 in a quantity of less than 10 grams including any adulterants or
44 dilutants, or where the amount is undetermined, is guilty of a crime
45 of the second degree;

46 (8) Methamphetamine, or its analog, or phenyl-2-propanone
47 (P2P), in a quantity of five ounces or more including any
48 adulterants or dilutants is guilty of a crime of the first degree.

1 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
2 fine of up to \$300,000.00 may be imposed;

3 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
4 (P2P), in a quantity of one-half ounce or more but less than five
5 ounces including any adulterants or dilutants is guilty of a crime of
6 the second degree;

7 (b) Methamphetamine, or its analog, or phenyl-2-propanone
8 (P2P), in a quantity of less than one-half ounce including any
9 adulterants or dilutants is guilty of a crime of the third degree
10 except that notwithstanding the provisions of subsection b. of
11 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

12 (10) (a) Marijuana in a quantity of 25 pounds or more including
13 any adulterants or dilutants, or 50 or more marijuana plants,
14 regardless of weight, or hashish in a quantity of five pounds or
15 more including any adulterants or dilutants, is guilty of a crime of
16 the first degree. Notwithstanding the provisions of subsection a. of
17 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

18 (b) Marijuana in a quantity of five pounds or more but less than
19 25 pounds including any adulterants or dilutants, or 10 or more but
20 fewer than 50 marijuana plants, regardless of weight, or hashish in a
21 quantity of one pound or more but less than five pounds, including
22 any adulterants and dilutants, is guilty of a crime of the second
23 degree;

24 (11) Marijuana in a quantity of one ounce or more but less than
25 five pounds including any adulterants or dilutants, or hashish in a
26 quantity of five grams or more but less than one pound including
27 any adulterants or dilutants, is guilty of a crime of the third degree
28 except that, notwithstanding the provisions of subsection b. of
29 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

30 (12) Marijuana in a quantity of less than one ounce including
31 any adulterants or dilutants, or hashish in a quantity of less than five
32 grams including any adulterants or dilutants, is guilty of a crime of
33 the fourth degree;

34 (13) Any other controlled dangerous substance classified in
35 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
36 third degree, except that, notwithstanding the provisions of
37 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
38 imposed; or

39 (14) Any Schedule V substance, or its analog, is guilty of a
40 crime of the fourth degree except that, notwithstanding the
41 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
42 \$25,000.00 may be imposed.

43 c. Where the degree of the offense for violation of this section
44 depends on the quantity of the substance, the quantity involved
45 shall be determined by the trier of fact. Where the indictment or
46 accusation so provides, the quantity involved in individual acts of
47 manufacturing, distribution, dispensing or possessing with intent to
48 distribute may be aggregated in determining the grade of the

1 offense, whether distribution or dispensing is to the same person or
2 several persons, provided that each individual act of manufacturing,
3 distribution, dispensing or possession with intent to distribute was
4 committed within the applicable statute of limitations.

5 (cf: P.L.2000, c.136)

6
7 ¹**[9.] 7.**¹ N.J.S.2C:35-6 is amended to read as follows:

8 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

9 Any person being at least 18 years of age who knowingly uses,
10 solicits, directs, hires or employs a person 17 years of age or
11 younger to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5,
12 is guilty of a crime of the second degree and shall, except as
13 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
14 **[which shall include the imposition of a minimum term which shall**
15 **be fixed at, or between, one-third and one-half of the sentence**
16 **imposed, or five years, whichever is greater, during which the**
17 **defendant shall be ineligible for parole].** Notwithstanding the
18 provisions of subsection a. of N.J.S.2C:43-3, the court may also
19 impose a fine not to exceed \$500,000.00 or five times the street
20 value of the controlled dangerous substance or controlled substance
21 analog involved, whichever is greater.

22 It shall be no defense to a prosecution under this section that the
23 actor mistakenly believed that the person which the actor used,
24 solicited, directed, hired or employed was 18 years of age or older,
25 even if such mistaken belief was reasonable.

26 Nothing in this section shall be construed to preclude or limit a
27 prosecution or conviction for a violation of any offense defined in
28 this chapter pursuant to N.J.S.2C:2-6 or any other provision of law
29 governing an actor's liability for the conduct of another, and,
30 notwithstanding the provisions of N.J.S.2C:1-8 or any other
31 provision of law, a conviction arising under this section shall not
32 merge with a conviction for a violation of N.J.S.2C:35-3 (leader of
33 narcotics trafficking network), N.J.S.2C:35-4 (maintaining or
34 operating a CDS production facility), N.J.S.2C:35-5
35 (manufacturing, distributing or dispensing), or N.J.S.2C:35-9 (strict
36 liability for drug induced death).

37 (cf: P.L.1997, c.181, s.4)

38
39 ¹**[10.] 8.**¹ Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended
40 to read as follows:

41 C.2C:35-7. Distribution on or within 1,000 feet of school
42 property.

43 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
44 by distributing, dispensing or possessing with intent to distribute a
45 controlled dangerous substance or controlled substance analog
46 while on any school property used for school purposes which is
47 owned by or leased to any elementary or secondary school or school
48 board, or within 1,000 feet of such school property or a school bus,

1 or while on any school bus, is guilty of a crime of the third degree
2 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
3 the court to a term of imprisonment, notwithstanding the
4 presumption of non-imprisonment for certain offenders set forth in
5 subsection e. of N.J.S. 2C:44-1. **【**Where the violation involves less
6 than one ounce of marijuana, the term of imprisonment shall
7 include the imposition of a minimum term which shall be fixed at,
8 or between, one-third and one-half of the sentence imposed, or one
9 year, whichever is greater, during which the defendant shall be
10 ineligible for parole. In all other cases, the term of imprisonment
11 shall include the imposition of a minimum term which shall be
12 fixed at, or between, one-third and one-half of the sentence
13 imposed, or three years, whichever is greater, during which the
14 defendant shall be ineligible for parole.**】** Notwithstanding the
15 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
16 \$150,000 may also be imposed upon any conviction for a violation
17 of this section.

18 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
19 subsection a. of this section, the court may **【**waive or reduce the
20 minimum term of parole ineligibility required under subsection a. of
21 this section or**】** place the defendant on probation pursuant to
22 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
23 determination, the court shall consider:

24 (a) the extent of the defendant's prior criminal record and the
25 seriousness of the offenses for which the defendant has been
26 convicted;

27 (b) the specific location of the present offense in relation to the
28 school property, including distance from the school and the
29 reasonable likelihood of exposing children to drug-related activities
30 at that location;

31 (c) whether school was in session at the time of the offense; and

32 (d) whether children were present at or in the immediate vicinity
33 of the location when the offense took place.

34 (2) The court shall not **【**waive or reduce the minimum term of
35 parole ineligibility or**】** sentence the defendant to probation if it
36 finds that:

37 (a) the offense took place while on any school property used for
38 school purposes which is owned by or leased to any elementary or
39 secondary school or school board, or while on any school bus; or

40 (b) the defendant in the course of committing the offense used
41 or threatened violence or was in possession of a firearm.

42 If the court at sentencing **【**elects not to impose a minimum term
43 of imprisonment and parole ineligibility pursuant to this subsection,
44 imposes a term of parole ineligibility less than the minimum term
45 prescribed in subsection a. of this section, or**】** places the defendant
46 on probation for a violation of subsection a. of this section, the
47 sentence shall not become final for 10 days in order to permit the

1 prosecution to appeal the court's finding and the sentence imposed.
2 The Attorney General shall develop guidelines to ensure the
3 uniform exercise of discretion in making determinations regarding
4 whether to appeal a decision to [waive or reduce the minimum term
5 of parole ineligibility or] place the defendant on probation.

6 Nothing in this subsection shall be construed to establish a basis
7 for overcoming a presumption of imprisonment authorized or
8 required by subsection d. of N.J.S.2C:44-1, or a basis for not
9 imposing a term of imprisonment or term of parole ineligibility
10 authorized or required to be imposed pursuant to subsection f. of
11 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
12 set forth in this subsection.

13 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other
14 provisions of law, a conviction arising under this section shall not
15 merge with a conviction for a violation of subsection a. of
16 N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or
17 N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme).

18 d. It shall be no defense to a prosecution for a violation of this
19 section that the actor was unaware that the prohibited conduct took
20 place while on or within 1,000 feet of any school property. Nor
21 shall it be a defense to a prosecution under this section, or under
22 any other provision of this title, that no juveniles were present on
23 the school property at the time of the offense or that the school was
24 not in session.

25 e. It is an affirmative defense to prosecution for a violation of
26 this section that the prohibited conduct took place entirely within a
27 private residence, that no person 17 years of age or younger was
28 present in such private residence at any time during the commission
29 of the offense, and that the prohibited conduct did not involve
30 distributing, dispensing or possessing with the intent to distribute or
31 dispense any controlled dangerous substance or controlled
32 substance analog for profit. The affirmative defense established in
33 this section shall be proved by the defendant by a preponderance of
34 the evidence. Nothing herein shall be construed to establish an
35 affirmative defense with respect to a prosecution for an offense
36 defined in any other section of this chapter.

37 f. In a prosecution under this section, a map produced or
38 reproduced by any municipal or county engineer for the purpose of
39 depicting the location and boundaries of the area on or within 1,000
40 feet of any property used for school purposes which is owned by or
41 leased to any elementary or secondary school or school board, or a
42 true copy of such a map, shall, upon proper authentication, be
43 admissible and shall constitute prima facie evidence of the location
44 and boundaries of those areas, provided that the governing body of
45 the municipality or county has adopted a resolution or ordinance
46 approving the map as official finding and record of the location and
47 boundaries of the area or areas on or within 1,000 feet of the school
48 property. Any map approved pursuant to this section may be

1 changed from time to time by the governing body of the
2 municipality or county. The original of every map approved or
3 revised pursuant to this section, or a true copy thereof, shall be filed
4 with the clerk of the municipality or county, and shall be
5 maintained as an official record of the municipality or county.
6 Nothing in this section shall be construed to preclude the
7 prosecution from introducing or relying upon any other evidence or
8 testimony to establish any element of this offense; nor shall this
9 section be construed to preclude the use or admissibility of any map
10 or diagram other than one which has been approved by the
11 governing body of a municipality or county, provided that the map
12 or diagram is otherwise admissible pursuant to the Rules of
13 Evidence.

14 (cf: P.L.2009, c.192, s.1)

15

16 ¹**[11.] 9.**¹ N.J.S.2C:35-8 is amended to read as follows:

17 2C:35-8. Distribution to Persons Under Age 18; Enhanced
18 Punishment. Upon the application of the prosecuting attorney, any
19 person being at least 18 years of age who has been convicted for
20 violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L.1987,
21 c.101 (C.2C:35-7) by distributing a controlled dangerous substance
22 or controlled substance analog to a pregnant female or a person 17
23 years of age or younger shall, except as provided in N.J.S. 2C:35-
24 12, be subject to twice the term of imprisonment, fine and penalty**],**
25 including twice the term of parole ineligibility, if any,**]** authorized
26 or required to be imposed by subsection b. of N.J.S. 2C:35-5 or
27 section 1 of P.L.1987, c.101 (C.2C:35-7) or any other provision of
28 this title. In addition, the presumption of non-imprisonment for
29 certain offenders set forth in subsection e. of N.J.S. 2C:44-1 shall
30 not apply to any person subject to enhanced punishment pursuant to
31 this section.

32 The court shall not impose more than one enhanced sentence
33 pursuant to this section. If the defendant is convicted of more than
34 one offense which is otherwise subject to enhanced punishment
35 pursuant to this section, the court shall impose enhanced
36 punishment based upon the most serious such offense for which the
37 defendant was convicted**],** or, where applicable, the offense which
38 mandates the imposition of the longest term of parole ineligibility**].**

39 Notwithstanding the provisions of paragraph (2) of subsection a.
40 of 2C:44-5, nothing herein shall prevent the court from also
41 imposing an extended term pursuant to subsection f. of N.J.S.
42 2C:43-6. The court shall not impose an enhanced sentence pursuant
43 to this section unless the prosecutor has established the ground
44 therefor by a preponderance of the evidence at a hearing, which
45 may occur at the time of sentencing. In making its finding, the
46 court shall take judicial notice of any evidence, testimony or
47 information adduced at the trial, plea hearing or other court

1 proceedings, and shall also consider the presentence report and any
2 other relevant information. It shall not be relevant to the imposition
3 of enhanced punishment pursuant to this section that the defendant
4 mistakenly believed that the recipient of the substance was 18 years
5 of age or older, even if the mistaken belief was reasonable. Nor
6 shall it be relevant to the imposition of enhanced punishment
7 pursuant to this section that the defendant did not know that the
8 recipient was pregnant.

9 (cf: P.L.1988, c.44, s.4)

10

11 ¹**[12.] 10.**¹ N.J.S.2C:35-12 is amended to read as follows:

12 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

13 Whenever an offense defined in this chapter specifies a
14 mandatory sentence of imprisonment **[**which includes a minimum
15 term during which the defendant shall be ineligible for parole**]**, a
16 mandatory extended term **[**which includes a period of parole
17 ineligibility**]**, or an anti-drug profiteering penalty pursuant to
18 section 2 of P.L.1997, c.187 (N.J.S.2C:35A-1 et seq.), the court
19 upon conviction shall impose the mandatory sentence of
20 imprisonment or anti-drug profiteering penalty unless the defendant
21 has pleaded guilty pursuant to a negotiated agreement or, in cases
22 resulting in trial, the defendant and the prosecution have entered
23 into a post-conviction agreement, which provides for a lesser
24 sentence**[**, period of parole ineligibility or**]** anti-drug profiteering
25 penalty. The negotiated plea or post-conviction agreement may
26 provide for a specified term of imprisonment within the range of
27 ordinary or extended sentences authorized by law, **[**a specified
28 period of parole ineligibility**]**, a specified fine, a specified anti-drug
29 profiteering penalty, or other disposition. In that event, the court at
30 sentencing shall not impose a lesser term of imprisonment, **[**lesser
31 period of parole ineligibility**]**, lesser fine or lesser anti-drug
32 profiteering penalty than that expressly provided for under the
33 terms of the plea or post-conviction agreement.

34 (cf: P.L.1997, c.187, s.1)

35

36 ¹**[13.] 11.**¹ N.J.S.2C:43-6 is amended to read as follows:

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

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

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

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

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

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

19 c. A person who has been convicted under subsection b. or d.
20 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
21 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.
22 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection
23 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,
24 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following
25 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-
26 3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of
27 committing or attempting to commit the crime, including the
28 immediate flight therefrom, used or was in possession of a firearm
29 as defined in 2C:39-1f., shall be sentenced to a term of
30 imprisonment by the court. The term of imprisonment shall include
31 the imposition of a minimum term. The minimum term shall be
32 fixed at one-half of the sentence imposed by the court or 42 months,
33 whichever is greater, or 18 months in the case of a fourth degree
34 crime, during which the defendant shall 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.

47 d. (1) The court shall not impose a mandatory sentence
48 pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d.,

1 unless the ground therefor has been established at a hearing. At the
2 hearing, which may occur at the time of sentencing, the prosecutor
3 shall establish by a preponderance of the evidence that the weapon
4 used or possessed was a firearm. In making its finding, the court
5 shall take judicial notice of any evidence, testimony or information
6 adduced at the trial, plea hearing, or other court proceedings and
7 shall also consider the presentence report and any other relevant
8 information.

9 (2) The court shall not impose a mandatory sentence pursuant to
10 subsection c. of this section for a violation of paragraph (2) of
11 subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of
12 subsection c. of N.J.S.2C:39-5, if that rifle or shotgun is in the
13 nature of an air gun, spring gun or pistol or other weapon of a
14 similar nature in which the propelling force is a spring, elastic band,
15 carbon dioxide, compressed or other gas or vapor, air or compressed
16 air, or is ignited by compressed air, and ejecting a bullet or missile
17 smaller than three-eighths of an inch in diameter, with sufficient
18 force to injure a person; or a violation of paragraph (1) of
19 subsection c. of N.J.S.2C:39-5.

20 e. A person convicted of a third or subsequent offense
21 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any
22 other provision of this code, or under any of the provisions of Title
23 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,
24 as amended and supplemented, shall be sentenced to a term of
25 imprisonment by the court. This shall not preclude an application
26 for and imposition of an extended term of imprisonment under
27 N.J.S.2C:44-3 if the provisions of that section are applicable to the
28 offender.

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

1 years if the person is convicted of a violation of N.J.S.2C:35-6, or
2 18 months in the case of a fourth degree crime, during which the
3 defendant shall be ineligible for parole.] 1If the person is convicted
4 of a violation of N.J.S.2C:35-3, the term of imprisonment shall,
5 except as may be provided in N.J.S.2C:35-12, include the
6 imposition of a minimum term which shall be fixed at, or between,
7 one-third and one-half of the sentence imposed by the court or three
8 years, whichever is greater, during which the defendant shall be
9 ineligible for parole.¹

10 The court shall not impose an extended term pursuant to this
11 subsection unless the ground therefor has been established at a
12 hearing. At the hearing, which may occur at the time of sentencing,
13 the prosecutor shall establish the ground therefor by a
14 preponderance of the evidence. In making its finding, the court shall
15 take judicial notice of any evidence, testimony or information
16 adduced at the trial, plea hearing, or other court proceedings and
17 shall also consider the presentence report and any other relevant
18 information.

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

26 g. Any person who has been convicted under subsection a. of
27 N.J.S.2C:39-4 or of a crime under any of the following sections:
28 N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,
29 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,
30 N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of
31 committing or attempting to commit the crime, including the
32 immediate flight therefrom, used or was in possession of a machine
33 gun or assault firearm shall be sentenced to a term of imprisonment
34 by the court. The term of imprisonment shall include the
35 imposition of a minimum term. The minimum term shall be fixed at
36 10 years for a crime of the first or second degree, five years for a
37 crime of the third degree, or 18 months in the case of a fourth
38 degree crime, during which the defendant shall be ineligible for
39 parole.

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

44 A person who has been convicted of an offense enumerated in
45 this subsection and who used or possessed a machine gun or assault
46 firearm during its commission, attempted commission or flight
47 therefrom and who has been previously convicted of an offense
48 involving the use or possession of any firearm as defined in

1 subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an
2 extended term as authorized by subsection d. of N.J.S.2C:43-7,
3 notwithstanding that extended terms are ordinarily discretionary
4 with the court.

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

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

24 (cf: P.L.2013, c.113, s.2)

25

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

27 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

28 a. In the cases designated in section 2C:44-3, a person who has
29 been convicted of a crime may be sentenced, and in the cases
30 designated in subsection e. of section 2 of P.L.1994, c.130
31 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
32 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
33 c.410 (C.2C:44-5.1), a person who has been convicted of a crime
34 shall be sentenced, to an extended term of imprisonment, as
35 follows:

36 (1) In case of aggravated manslaughter sentenced under
37 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
38 crime of the first degree under paragraph (1) of subsection c. of
39 2C:13-1; or aggravated sexual assault if the person is eligible for an
40 extended term pursuant to the provisions of subsection g. of
41 N.J.S.2C:44-3 for a specific term of years which shall be between
42 30 years and life imprisonment;

43 (2) Except for the crime of murder and except as provided in
44 paragraph (1) of this subsection, in the case of a crime of the first
45 degree, for a specific term of years which shall be fixed by the court
46 and shall be between 20 years and life imprisonment;

47 (3) In the case of a crime of the second degree, for a term which
48 shall be fixed by the court between 10 and 20 years;

- 1 (4) In the case of a crime of the third degree, for a term which
2 shall be fixed by the court between five and 10 years;
- 3 (5) In the case of a crime of the fourth degree pursuant to
4 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in
5 the case of a crime of the fourth degree pursuant to any other
6 provision of law for a term which shall be fixed by the court
7 between three and five years;
- 8 (6) In the case of the crime of murder, for a specific term of
9 years which shall be fixed by the court between 35 years and life
10 imprisonment, of which the defendant shall serve 35 years before
11 being eligible for parole;
- 12 (7) In the case of kidnapping under paragraph (2) of subsection
13 c. of 2C:13-1, for a specific term of years which shall be fixed by
14 the court between 30 years and life imprisonment, of which the
15 defendant shall serve 30 years before being eligible for parole.
- 16 b. As part of a sentence for an extended term and
17 notwithstanding the provisions of 2C:43-9, the court may fix a
18 minimum term not to exceed one-half of the term set pursuant to
19 subsection a. during which the defendant shall not be eligible for
20 parole or a term of 25 years during which time the defendant shall
21 not be eligible for parole where the sentence imposed was life
22 imprisonment; provided that no defendant shall be eligible for
23 parole at a date earlier than otherwise provided by the law
24 governing parole.
- 25 c. In the case of a person sentenced to an extended term
26 pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall
27 impose a sentence within the ranges permitted by 2C:43-7a(2), (3),
28 (4) or (5) according to the degree or nature of the crime for which
29 the defendant is being sentenced, which sentence, except for a
30 sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall
31 include a minimum term which shall **],** except as may be
32 specifically provided by N.J.S.2C:43-6f, **]** be fixed at or between
33 one-third and one-half of the sentence imposed by the court or five
34 years, whichever is greater, during which the defendant shall not be
35 eligible for parole. Where the sentence imposed is life
36 imprisonment, the court shall impose a minimum term of 25 years
37 during which the defendant shall not be eligible for parole, except
38 that where the term of life imprisonment is imposed on a person
39 convicted for a violation of N.J.S.2C:35-3, the term of parole
40 ineligibility shall be 30 years.
- 41 d. In the case of a person sentenced to an extended term
42 pursuant to N.J.S.2C:43-6g, the court shall impose a sentence
43 within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5)
44 according to the degree or nature of the crime for which the
45 defendant is being sentenced, which sentence shall include a
46 minimum term which shall be fixed at 15 years for a crime of the
47 first or second degree, eight years for a crime of the third degree, or
48 five years for a crime of the fourth degree during which the

1 defendant shall not be eligible for parole. Where the sentence
2 imposed is life imprisonment, the court shall impose a minimum
3 term of 25 years during which the defendant shall not be eligible for
4 parole, except that where the term of life imprisonment is imposed
5 on a person convicted of a violation of N.J.S.2C:35-3, the term of
6 parole eligibility shall be 30 years.
7 (cf: P.L.2003, c.267, s.4)

8
9 ¹**[15.] 13.** Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is
10 amended to read as follows:

11 2. a. A court imposing a sentence of incarceration for a crime
12 of the first or second degree enumerated in subsection d. of this
13 section, other than second degree robbery or second degree
14 burglary, shall fix a minimum term of 85% of the sentence imposed,
15 during which the defendant shall not be eligible for parole. A court
16 imposing a sentence of incarceration for a crime of second degree
17 robbery or second degree burglary shall fix a minimum term of 50%
18 of the sentence imposed, during which the defendant shall not be
19 eligible for parole.

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

33 c. Notwithstanding any other provision of law to the contrary
34 and in addition to any other sentence imposed, a court imposing a
35 minimum period of parole ineligibility of 85 percent of the sentence
36 pursuant to this section, or 50 percent in the case of second degree
37 robbery or second degree burglary, shall also impose a five-year
38 term of parole supervision if the defendant is being sentenced for a
39 crime of the first degree, or a three-year term of parole supervision
40 if the defendant is being sentenced for a crime of the second degree.
41 The term of parole supervision shall commence upon the
42 completion of the sentence of incarceration imposed by the court
43 pursuant to subsection a. of this section unless the defendant is
44 serving a sentence of incarceration for another crime at the time he
45 completes the sentence of incarceration imposed pursuant to
46 subsection a., in which case the term of parole supervision shall
47 commence immediately upon the defendant's release from
48 incarceration. During the term of parole supervision the defendant

1 shall remain in release status in the community in the legal custody
2 of the Commissioner of the Department of Corrections and shall be
3 supervised by the State Parole Board as if on parole and shall be
4 subject to the provisions and conditions of section 3 of P.L.1997,
5 c.117 (C.30:4-123.51b).

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

- 9 (1) N.J.S.2C:11-3, murder;
- 10 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 11 (3) N.J.S.2C:11-5, vehicular homicide;
- 12 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 13 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),
14 disarming a law enforcement officer;
- 15 (6) N.J.S.2C:13-1, kidnapping;
- 16 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 17 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
18 subsection c. of N.J.S.2C:14-2, sexual assault;
- 19 (9) N.J.S.2C:15-1, robbery;
- 20 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 21 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
22 arson;
- 23 (12) N.J.S.2C:18-2, burglary;
- 24 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 25 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
26 booby traps in manufacturing or distribution facilities;
- 27 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 28 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 29 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
30 possessing chemical weapons, biological agents or nuclear or
31 radiological devices;
- 32 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
33 degree;
- 34 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or
- 35 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or
36 permitting a child to engage in a prohibited sexual act, knowing that
37 the act may be reproduced or reconstructed in any manner, or be
38 part of an exhibition or performance.

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

40 (cf: P.L.2013, c.136, s.4)

41
42 ¹¶16. N.J.S.2C:44-1 is amended to read as follows:

43 2C:44-1. a. In determining the appropriate sentence to be
44 imposed on a person who has been convicted of an offense, the
45 court shall consider the following aggravating circumstances:

- 46 (1) The nature and circumstances of the offense, and the role of
47 the actor therein, including whether or not it was committed in an
48 especially heinous, cruel, or depraved manner;

- 1 (2) The gravity and seriousness of harm inflicted on the victim,
2 including whether or not the defendant knew or reasonably should
3 have known that the victim of the offense was particularly
4 vulnerable or incapable of resistance due to advanced age, ill-
5 health, or extreme youth, or was for any other reason substantially
6 incapable of exercising normal physical or mental power of
7 resistance;
- 8 (3) The risk that the defendant will commit another offense;
- 9 (4) A lesser sentence will depreciate the seriousness of the
10 defendant's offense because it involved a breach of the public trust
11 under chapters 27 and 30, or the defendant took advantage of a
12 position of trust or confidence to commit the offense;
- 13 (5) There is a substantial likelihood that the defendant is
14 involved in organized criminal activity;
- 15 (6) The extent of the defendant's prior criminal record and the
16 seriousness of the offenses of which he has been convicted;
- 17 (7) The defendant committed the offense pursuant to an
18 agreement that he either pay or be paid for the commission of the
19 offense and the pecuniary incentive was beyond that inherent in the
20 offense itself;
- 21 (8) The defendant committed the offense against a police or
22 other law enforcement officer, correctional employee or fireman,
23 acting in the performance of his duties while in uniform or
24 exhibiting evidence of his authority; the defendant committed the
25 offense because of the status of the victim as a public servant; or the
26 defendant committed the offense against a sports official, athletic
27 coach or manager, acting in or immediately following the
28 performance of his duties or because of the person's status as a
29 sports official, coach or manager;
- 30 (9) The need for deterring the defendant and others from
31 violating the law;
- 32 (10) The offense involved fraudulent or deceptive practices
33 committed against any department or division of State government;
- 34 (11) The imposition of a fine, penalty or order of restitution
35 without also imposing a term of imprisonment would be perceived
36 by the defendant or others merely as part of the cost of doing
37 business, or as an acceptable contingent business or operating
38 expense associated with the initial decision to resort to unlawful
39 practices;
- 40 (12) The defendant committed the offense against a person who
41 he knew or should have known was 60 years of age or older, or
42 disabled;
- 43 (13) The defendant, while in the course of committing or
44 attempting to commit the crime, including the immediate flight
45 therefrom, used or was in possession of a stolen motor vehicle;
- 46 (14) The offense involved an act of domestic violence, as that
47 term is defined in subsection a. of section 3 of P.L.1991, c.261

1 (C.2C:25-19), committed in the presence of a child under 16 years
2 of age; and

3 (15) The offense involved an act of domestic violence, as that
4 term is defined in subsection a. of section 3 of P.L.1991, c.261
5 (C.2C:25-19) and the defendant committed at least one act of
6 domestic violence on more than one occasion.

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

10 (1) The defendant's conduct neither caused nor threatened
11 serious harm;

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

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

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

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

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

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

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

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

29 (10) The defendant is particularly likely to respond affirmatively
30 to probationary treatment;

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

33 (12) The willingness of the defendant to cooperate with law
34 enforcement authorities;

35 (13) The conduct of a youthful defendant was substantially
36 influenced by another person more mature than the defendant; and

37 (14) The defendant was under 26 at the time of the commission
38 of the offense.

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

42 (2) When imposing a sentence of imprisonment the court shall
43 consider the defendant's eligibility for release under the law
44 governing parole, including time credits awarded pursuant to Title
45 30 of the Revised Statutes, in determining the appropriate term of
46 imprisonment.

47 d. Presumption of imprisonment. The court shall deal with a
48 person who has been convicted of a crime of the first or second

1 degree, or a crime of the third degree where the court finds that the
2 aggravating factor in paragraph (5), (14) or (15) of subsection a.
3 applies, by imposing a sentence of imprisonment unless, having
4 regard to the character and condition of the defendant, it is of the
5 opinion that his imprisonment would be a serious injustice which
6 overrides the need to deter such conduct by others.
7 Notwithstanding the provisions of subsection e. of this section, the
8 court shall deal with a person who has been convicted of theft of a
9 motor vehicle or of the unlawful taking of a motor vehicle and who
10 has previously been convicted of either offense by imposing a
11 sentence of imprisonment unless, having regard to the character and
12 condition of the defendant, it is of the opinion that his imprisonment
13 would be a serious injustice which overrides the need to deter such
14 conduct by others.

15 e. The court shall deal with a person convicted of an offense
16 other than a crime of the first or second degree, who has not
17 previously been convicted of an offense, without imposing a
18 sentence of imprisonment unless, having regard to the nature and
19 circumstances of the offense and the history, character and
20 condition of the defendant, it is of the opinion that his imprisonment
21 is necessary for the protection of the public under the criteria set
22 forth in subsection a., except that this subsection shall not apply if
23 the court finds that the aggravating factor in paragraph (5), (14) or
24 (15) of subsection a. applies or if the person is convicted of any of
25 the following crimes of the third degree: theft of a motor vehicle;
26 unlawful taking of a motor vehicle; eluding; strict liability vehicular
27 homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if
28 the person is convicted of a crime of the third degree constituting
29 use of a false government document in violation of subsection c. of
30 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is
31 convicted of a crime of the third degree constituting distribution,
32 manufacture or possession of an item containing personal
33 identifying information in violation of subsection b. of section 6 of
34 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a
35 crime of the third or fourth degree constituting bias intimidation in
36 violation of N.J.S.2C:16-1; if the person is convicted of a crime of
37 the third degree under paragraph (12) of subsection b. of
38 N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if
39 the person is convicted of a crime of the third or fourth degree
40 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-
41 29 or C.2C:33-30).

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

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

5 (b) Except as provided in subparagraph (a) of this paragraph to a
6 term of 15 years for a crime of the first degree;

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

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

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

10 In imposing a minimum term pursuant to subsection b. of
11 N.J.S.2C:43-6, the sentencing court shall specifically place on the
12 record the aggravating factors set forth in this section which justify
13 the imposition of a minimum term.

14 Unless the preponderance of mitigating factors set forth in
15 subsection b. weighs in favor of a lower term within the limits
16 authorized, sentences imposed pursuant to paragraph (1) of
17 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life
18 imprisonment. Unless the preponderance of aggravating and
19 mitigating factors set forth in subsections a. and b. weighs in favor
20 of a higher or lower term within the limits authorized, sentences
21 imposed pursuant to paragraph (2) of subsection a. of N.J.S.2C:43-7
22 shall have a presumptive term of 50 years' imprisonment; sentences
23 imposed pursuant to paragraph (3) of subsection a. of N.J.S.2C:43-7
24 shall have a presumptive term of 15 years' imprisonment; and
25 sentences imposed pursuant to paragraph (4) of subsection a. of
26 N.J.S.2C:43-7 shall have a presumptive term of seven years'
27 imprisonment.

28 In imposing a minimum term pursuant to subsection b. of
29 N.J.S.2C:43-7, the sentencing court shall specifically place on the
30 record the aggravating factors set forth in this section which justify
31 the imposition of a minimum term.

32 (2) In cases of convictions for crimes of the first or second
33 degree where the court is clearly convinced that the mitigating
34 factors substantially outweigh the aggravating factors and where the
35 interest of justice demands, the court may sentence the defendant to
36 a term appropriate to a crime of one degree lower than that of the
37 crime for which he was convicted. If the court does impose
38 sentence pursuant to this paragraph, or if the court imposes a
39 noncustodial or probationary sentence upon conviction for a crime
40 of the first or second degree, such sentence shall not become final
41 for 10 days in order to permit the appeal of such sentence by the
42 prosecution.

43 g. Imposition of Noncustodial Sentences in Certain Cases. If
44 the court, in considering the aggravating factors set forth in
45 subsection a., finds the aggravating factor in paragraph (2), (5),
46 (10), or (12) of subsection a. and does not impose a custodial
47 sentence, the court shall specifically place on the record the

1 mitigating factors which justify the imposition of a noncustodial
2 sentence.

3 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
4 11), the presumption of imprisonment as provided in subsection d.
5 of this section shall not preclude the admission of a person to the
6 Intensive Supervision Program, established pursuant to the Rules
7 Governing the Courts of the State of New Jersey.
8 (cf: P.L.2017, c.165, s.6) **1**

9
10 **1** **[17.] 14.** **1** This act shall take effect immediately.