

[Second Reprint]

## **ASSEMBLY, No. 4370**

# **STATE OF NEW JERSEY**

## **219th LEGISLATURE**

INTRODUCED JUNE 29, 2020

**Sponsored by:**

**Assemblywoman LINDA S. CARTER**

**District 22 (Middlesex, Somerset and Union)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**Co-Sponsored by:**

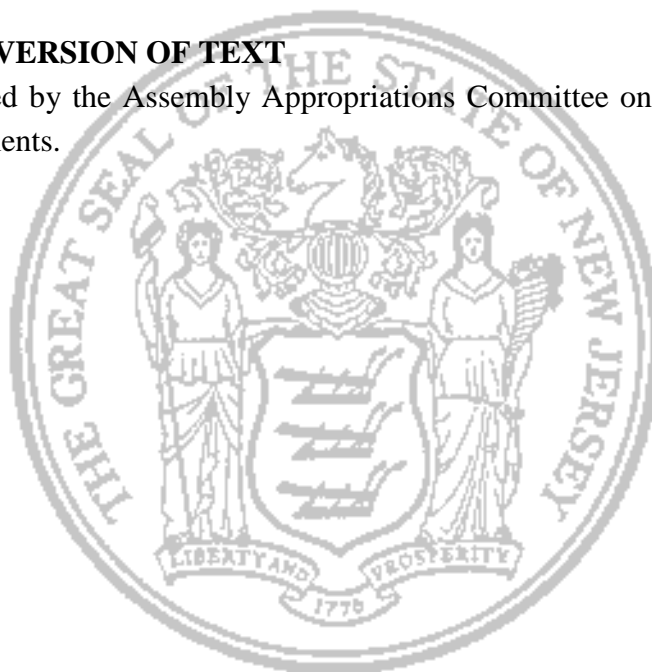
**Assemblywoman Reynolds-Jackson**

### **SYNOPSIS**

Allows AOC to retroactively rescind or modify mandatory term of parole ineligibility for certain offenses.

### **CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on July 27, 2020, with amendments.



**(Sponsorship Updated As Of: 7/23/2020)**

1 AN ACT concerning parole, supplementing Title 30 of the Revised  
2 Statutes, and amending P.L.1979, c.441.

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

6  
7 1. (New section) a. The Administrative Director of the Courts  
8 may issue an order to retroactively modify the judgment of  
9 conviction, in accordance with the provisions of subsection m. of  
10 section 7 of P.L.1979, c.441 (C.30:4-123.51), to rescind the  
11 mandatory minimum period of parole ineligibility of any inmate  
12 convicted prior to <sup>2</sup>, and who is in the custody of the Department of  
13 Corrections on,<sup>2</sup> the effective date of P.L. , c. (C. )(pending  
14 before the Legislature as this bill) who was sentenced in accordance  
15 with:

16 (1) leader of a cargo theft network pursuant to subsection e. of  
17 section 4 of P.L.2013, c.58 (C.2C:20-2.4);

18 (2) crimes involving theft from a cargo carrier pursuant to  
19 subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-2.6);

20 (3) shoplifting pursuant to paragraph (4) of subsection c. of  
21 N.J.S.2C:20-11;

22 (4) <sup>1</sup>**computer criminal activity** pursuant to subsections g. or h.  
23 of section 4 of P.L.1984, c.184 (C.2C:20-25);

24 (5) <sup>1</sup>**wrongful access, disclosure of information** pursuant to  
25 subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);

26 <sup>1</sup>**(6) leader of narcotics trafficking network** pursuant to  
27 N.J.S.2C:35-3;

28 (7) <sup>1</sup>**(5)** maintaining or operating a controlled dangerous  
29 substance production facility pursuant to N.J.S.2C:35-4;

30 <sup>1</sup>**(8) (6)** manufacturing, distributing, or dispensing a controlled  
31 dangerous substance or controlled substance analog pursuant to  
32 N.J.S.2C:35-5;

33 <sup>1</sup>**(9) (7)** employing a juvenile in a drug distribution scheme  
34 pursuant to N.J.S.2C:35-6;

35 <sup>1</sup>**(10) (8)** distribution on or within 1,000 feet of school  
36 property pursuant to section 1 of P.L.1987, c.101 (C.2C:35-7);

37 <sup>1</sup>**(11) (9)** distribution to persons under age 18 pursuant to  
38 section 1 of N.J.J.2C:35-8; or

39 <sup>1</sup>**(12) (10)** mandatory term for repeat drug offenders pursuant  
40 to subsection f. of N.J.S.2C:43-6, unless the prosecutor objects in  
41 the case of an inmate.

42 b. The <sup>2</sup>**administrative director** Supreme Court<sup>2</sup> may issue an  
43 order to retroactively modify the judgment of conviction, in

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

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ALP committee amendments adopted July 20, 2020.

<sup>2</sup>Assembly AAP committee amendments adopted July 27, 2020.

1 accordance with the provisions of subsection m. of section 7 of  
2 P.L.1979, c.441 (C.30:4-123.51) to resentence an inmate to a fixed  
3 minimum term of 50 percent of the sentence of incarceration  
4 imposed in lieu of the 85 percent fixed minimum term for second  
5 degree robbery in violation of N.J.S.2C:15-1 or second degree  
6 burglary in violation of N.J.S.2C:18-2 that was committed prior to  
7 the effective date of P.L. , c. (C. )(pending before the  
8 Legislature as this bill), unless the prosecutor files an objection.

9 c. <sup>2</sup>**[An]** The Commissioner of Corrections shall identify, from  
10 a list of defendants sentenced for the enumerated crimes provided  
11 by the Administrative Office of the Courts, those inmates in the  
12 custody of the Department of Corrections who are eligible for  
13 resentencing under an<sup>2</sup> order issued pursuant to subsections a. or b.  
14 of this section <sup>2</sup>[shall remain inoperative for thirty days, to allow  
15 the State to identify the affected inmates and] , and provide a list of  
16 eligible inmates to the Supreme Court, the Attorney General and  
17 county prosecutors. No later than 60 days after receipt of the list,  
18 the State shall<sup>2</sup> determine whether there <sup>2</sup>[was] is<sup>2</sup> a basis to file an  
19 objection in any inmate's case.

20 d. A prosecutor shall not file an objection to the retroactive  
21 modification of an inmate's judgment of conviction pursuant to this  
22 section without the prior approval of the Attorney General.

23 e. The Attorney General shall provide to the <sup>2</sup>Administrative  
24 Director of the Courts and to the<sup>2</sup> Department of Corrections notice  
25 as to the identity of each inmate for whom a determination is made  
26 to file an objection. The Department of Corrections shall promptly  
27 notify the inmate and the inmate's attorney or, if the inmate does  
28 not have an attorney, the public defender of the determination to file  
29 an objection with respect to that individual.

30 f. <sup>2</sup>**[An ]** (1) In any case in which a determination is made to  
31 file an<sup>2</sup> objection to the retroactive modification of a judgment of  
32 conviction for an inmate <sup>2</sup>[shall be filed with the sentencing court,  
33 or the presiding criminal judge if the sentencing court is not still  
34 sitting, and provided to the inmate's attorney or, if the inmate does  
35 not have an attorney, the public defender] , the prosecutor shall file  
36 any such objection with the Superior Court in the county where the  
37 conviction occurred. Any such objection shall be filed no later than  
38 60 days following receipt of the list from the Department of  
39 Corrections pursuant to subsection c. of this section, or within 30  
40 days of providing notice of a determination to file an objection  
41 pursuant to subsection e. of this section, whichever date is later.

42 (2) For those eligible inmates as to whom the prosecutor does not  
43 file an objection, the court may order the retroactive modification of  
44 those inmates' judgments of conviction in accordance with the  
45 provisions of paragraphs (1) or (2) of subsection m. of section 7 of  
46 P.L.1979, c.441 (C.30:4-123.51), without conducting a hearing<sup>2</sup> .

1 g. In the event the prosecutor files an objection, the inmate's  
2 judgment of conviction shall be retroactively modified in  
3 accordance with the provisions of paragraphs (1) or (2) of  
4 subsection m. of section 7 of P.L.1979, c.441 (C.30:4-123.51)  
5 unless the court, after a hearing, finds by clear and convincing  
6 evidence that rescinding the term of parole ineligibility imposed  
7 upon the inmate would likely pose a substantial risk to public safety  
8 or that the aggravating factors associated with rescinding or  
9 reducing, as the case may be, the term of parole ineligibility  
10 substantially outweigh the mitigating factors of doing so.

11 h. A court that finds that an inmate's sentence applies to  
12 paragraphs (1) or (2) of subsection m. of section 7 of P.L.1979,  
13 c.441 (C.30:4-123.51) may issue an order denying the retroactive  
14 modification of the judgment of conviction, or in the alternative:

15 (1) for an inmate whose sentence applies pursuant to paragraph  
16 (1) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-  
17 123.51), the court may modify the judgment of conviction by  
18 rescinding the mandatory period of parole ineligibility and  
19 sentencing the inmate to a period of discretionary parole  
20 ineligibility; and

21 (2) for an inmate whose sentence applies pursuant to paragraph  
22 (2) of subsection m. of section 7 of P.L.1979, c.441 (C.30:4-  
23 123.51), the court may resentence the inmate to a fixed minimum  
24 term of 50 percent of the sentence of incarceration imposed with an  
25 additional period of discretionary parole ineligibility.

26 i. Any period of parole ineligibility imposed pursuant to  
27 subsection g. of this section shall not result in a period of parole  
28 ineligibility in excess of the period that otherwise would have  
29 applied under the judgment of conviction prior to modification.

30 j. An inmate who is afforded a hearing pursuant to subsection  
31 g. of this section <sup>2</sup>~~may~~ shall<sup>2</sup> be represented by the public  
32 defender <sup>2</sup>, unless the inmate retains other counsel<sup>2</sup>.

33 k. Nothing in this section shall be construed to authorize the  
34 court to modify or in any way affect any mandatory minimum term  
35 of parole ineligibility imposed pursuant to a law other than those  
36 subject to subsection m. of section 7 of P.L.1979, c.441 (C.30:4-  
37 123.51).

38

39 2. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to  
40 read as follows:

41 7. a. Each adult inmate sentenced to a term of incarceration in  
42 a county penal institution, or to a specific term of years at the State  
43 Prison or the correctional institution for women shall become  
44 primarily eligible for parole after having served any judicial or  
45 statutory mandatory minimum term, or one-third of the sentence  
46 imposed where no mandatory minimum term has been imposed less  
47 commutation time for good behavior pursuant to N.J.S.2A:164-24  
48 or R.S.30:4-140 and credits for diligent application to work and

1 other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-  
2 28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the  
3 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,  
4 2C:43-6, 2C:43-7), commutation and work credits shall not in any  
5 way reduce any judicial or statutory mandatory minimum term and  
6 such credits accrued shall only be awarded subsequent to the  
7 expiration of the term.

8 b. Each adult inmate sentenced to a term of life imprisonment  
9 shall become primarily eligible for parole after having served any  
10 judicial or statutory mandatory minimum term, or 25 years where  
11 no mandatory minimum term has been imposed less commutation  
12 time for good behavior and credits for diligent application to work  
13 and other institutional assignments. If an inmate sentenced to a  
14 specific term or terms of years is eligible for parole on a date later  
15 than the date upon which he would be eligible if a life sentence had  
16 been imposed, then in such case the inmate shall be eligible for  
17 parole after having served 25 years, less commutation time for good  
18 behavior and credits for diligent application to work and other  
19 institutional assignments. Consistent with the provisions of the  
20 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,  
21 2C:43-6, 2C:43-7), commutation and work credits shall not in any  
22 way reduce any judicial or statutory mandatory minimum term and  
23 such credits accrued shall only be awarded subsequent to the  
24 expiration of the term.

25 c. Each inmate sentenced to a specific term of years pursuant  
26 to the "Controlled Dangerous Substances Act," P.L.1970, c.226  
27 (C.24:21-1 et al.) shall become primarily eligible for parole after  
28 having served one-third of the sentence imposed less commutation  
29 time for good behavior and credits for diligent application to work  
30 and other institutional assignments.

31 d. Each adult inmate sentenced to an indeterminate term of  
32 years as a young adult offender pursuant to N.J.S.2C:43-5 shall  
33 become primarily eligible for parole consideration pursuant to a  
34 schedule of primary eligibility dates developed by the board, less  
35 adjustment for program participation. In no case shall the board  
36 schedule require that the primary parole eligibility date for a young  
37 adult offender be greater than the primary parole eligibility date  
38 required pursuant to this section for the presumptive term for the  
39 crime authorized pursuant to subsection f. of N.J.S.2C:44-1.

40 e. Each adult inmate sentenced for an offense specified in  
41 N.J.S.2C:47-1 shall become primarily eligible for parole as follows:

42 (1) If the court finds that the offender's conduct was not  
43 characterized by a pattern of repetitive, compulsive behavior or  
44 finds that the offender is not amenable to sex offender treatment, or  
45 if after sentencing the Department of Corrections in its most recent  
46 examination determines that the offender is not amenable to sex  
47 offender treatment, the offender shall become primarily eligible for  
48 parole after having served any judicial or statutory mandatory

1 minimum term or one-third of the sentence imposed where no  
2 mandatory minimum term has been imposed. Neither such term  
3 shall be reduced by commutation time for good behavior pursuant  
4 to R.S.30:4-140 or credits for diligent application to work and other  
5 institutional assignments pursuant to R.S.30:4-92.

6 (2) All other offenders shall be eligible for parole pursuant to  
7 the provisions of N.J.S.2C:47-5, except no offender shall become  
8 primarily eligible for parole prior to the expiration of any judicial or  
9 statutory mandatory minimum term.

10 f. Each juvenile inmate committed to an indeterminate term  
11 shall be immediately eligible for parole.

12 g. Each adult inmate of a county jail, workhouse or  
13 penitentiary shall become primarily eligible for parole upon service  
14 of 60 days of his aggregate sentence or as provided for in  
15 subsection a. of this section, whichever is greater. Whenever any  
16 such inmate's parole eligibility is within six months of the date of  
17 such sentence, the judge shall state such eligibility on the record  
18 which shall satisfy all public and inmate notice requirements. The  
19 chief executive officer of the institution in which county inmates  
20 are held shall generate all reports pursuant to subsection d. of  
21 section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board  
22 shall have the authority to promulgate time periods applicable to the  
23 parole processing of inmates of county penal institutions, except  
24 that no inmate may be released prior to the primary eligibility date  
25 established by this subsection, unless consented to by the  
26 sentencing judge. No inmate sentenced to a specific term of years  
27 at the State Prison or the correctional institution for women shall  
28 become primarily eligible for parole until service of a full nine  
29 months of his aggregate sentence.

30 h. When an inmate is sentenced to more than one term of  
31 imprisonment, the primary parole eligibility terms calculated  
32 pursuant to this section shall be aggregated by the board for the  
33 purpose of determining the primary parole eligibility date, except  
34 that no juvenile commitment shall be aggregated with any adult  
35 sentence. The board shall promulgate rules and regulations to  
36 govern aggregation under this subsection.

37 i. The primary eligibility date shall be computed by a  
38 designated representative of the board and made known to the  
39 inmate in writing not later than 90 days following the  
40 commencement of the sentence. In the case of an inmate sentenced  
41 to a county penal institution such notice shall be made pursuant to  
42 subsection g. of this section. Each inmate shall be given the  
43 opportunity to acknowledge in writing the receipt of such  
44 computation. Failure or refusal by the inmate to acknowledge the  
45 receipt of such computation shall be recorded by the board but shall  
46 not constitute a violation of this subsection.

47 j. Except as provided in this subsection, each inmate sentenced  
48 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,

1 N.J.S.2A:164-17 for a fixed minimum and maximum term or  
2 subsection b. of N.J.S.2C:1-1 shall not be primarily eligible for  
3 parole on a date computed pursuant to this section, but shall be  
4 primarily eligible on a date computed pursuant to P.L.1948, c.84  
5 (C.30:4-123.1 et seq.), which is continued in effect for this purpose.  
6 Inmates classified as second, third or fourth offenders pursuant to  
7 section 12 of P.L.1948, c.84 (C.30:4-123.12) shall become  
8 primarily eligible for parole after serving one-third, one-half or  
9 two-thirds of the maximum sentence imposed, respectively, less in  
10 each instance commutation time for good behavior and credits for  
11 diligent application to work and other institutional assignments;  
12 provided, however, that if the prosecuting attorney or the  
13 sentencing court advises the board that the punitive aspects of the  
14 sentence imposed on such inmates will not have been fulfilled by  
15 the time of parole eligibility calculated pursuant to this subsection,  
16 then the inmate shall not become primarily eligible for parole until  
17 serving an additional period which shall be one-half of the  
18 difference between the primary parole eligibility date calculated  
19 pursuant to this subsection and the parole eligibility date calculated  
20 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the  
21 prosecuting attorney or the sentencing court advises the board that  
22 the punitive aspects of the sentence have not been fulfilled, such  
23 advice need not be supported by reasons and will be deemed  
24 conclusive and final. Any such decision shall not be subject to  
25 judicial review except to the extent mandated by the New Jersey  
26 and United States Constitutions. The board shall, reasonably prior  
27 to considering any such case, advise the prosecuting attorney and  
28 the sentencing court of all information relevant to such inmate's  
29 parole eligibility.

30 k. Notwithstanding any provisions of this section to the  
31 contrary, a person sentenced to imprisonment pursuant to paragraph  
32 (2), (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible  
33 for parole.

34 l. **【**Notwithstanding the provisions of subsections a. through j.  
35 of this section, the appropriate board panel, as provided in section 1  
36 of P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving  
37 a sentence of imprisonment on medical parole at any time.**】** Deleted  
38 by amendment, P.L. , c. (C. )(pending before the Legislature  
39 as this bill).

40 m. (1) A person serving a custodial sentence on the effective  
41 date of P.L. , c. (C. )(pending before the Legislature as this  
42 bill) and subject to a mandatory minimum term of parole  
43 ineligibility pursuant to subsection e. of section 4 of P.L.2013, c.58  
44 (C.2C:20-2.4), subsection c. of section 6 of P.L.2013, c.58 (c.2c:20-  
45 2.6), paragraph (4) of subsection c. of N.J.S.2C:20-11,<sup>1</sup>【subsections  
46 g. or h. of section 4 of P.L.1984, c.184 (C.2C:20-25),<sup>1</sup> subsection  
47 b. of section 10 of P.L.1984, c.184 (C.2C:20-31), <sup>1</sup>【N.J.S.2C:35-

3.<sup>1</sup> N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, section 1 of P.L.1987, c.101 (C.2C:35-7), N.J.S.2C:35-8, or subsection f. of N.J.S.2C:43-6 shall be eligible for parole after the effective date of P.L. , c. (C. )(pending before the Legislature as this bill) in accordance with subsection a. of section 1 of P.L. , c. (C. )(pending before the Legislature as this bill).

(2) Notwithstanding the provisions of section 2 of P.L.1997, c.117 (2C:43-7.2) or any provisions of this section to the contrary, a person

sentenced prior to the effective date of P.L. , c. (C. )(pending before the Legislature as this bill) to a fixed minimum term of 85 percent of the sentence imposed for second degree robbery in violation of N.J.S.2C:15-1 or second degree burglary in violation of N.J.S.2C:18-2 and who is serving a term of incarceration after the effective date of P.L. , c. (C. )(pending before the Legislature as this bill) shall be eligible for parole after serving 50 percent of the fixed minimum term in accordance with subsection b. of section 1 of P.L. , c. (C. )(pending before the Legislature as this bill).

(cf: P.L.2007, c.204, s.6)

3. The Commissioner of Corrections shall conduct a study on the anticipated expenses to upgrade the department's existing data infrastructure in order to improve its ability to collect, track, and analyze data related to the criminal justice system. The commission shall within six months of the effective date of P.L. , c. (pending before the Legislature as this bill) submit a report to the Governor, and the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) with recommendations for additional funding necessary for the department to invest in upgrades to its data infrastructure.

<sup>2</sup>4. Section 5 of P.L.1967, c.43 (C.2A:158A-5) is amended to read as follows:

It shall be the duty of the Public Defender to provide for the legal representation of any indigent defendant who is formally charged with the commission of an indictable offense.

All necessary services and facilities of representation (including investigation and other preparation) shall be provided in every case. The factors of need and real value to a defense may be weighed against the financial constraints of the Public Defender's office in determining what are the necessary services and facilities of representation.

Representation as herein provided for shall include any direct appeal from conviction and such post-conviction proceedings as would warrant the assignment of counsel pursuant to the court rules.

Representation for indigent defendants (a) may be provided in any federal court in any matter arising out of or relating to an action



1 pending or recently pending in a court of criminal jurisdiction of  
2 this State and (b) may be provided in any federal court in this State  
3 where indigent defendants are charged with the commission of a  
4 federal criminal offense and where the representation is under a  
5 plan adopted pursuant to the Criminal Justice Act of 1964  
6 (18 U.S.C. s. 3006A).

7 The Public Defender also shall provide for the legal  
8 representation of any eligible inmate who is serving a custodial  
9 prison sentence in matters in which a prosecutor objects to the  
10 retroactive modification of a judgment of conviction in accordance  
11 with section 1 of P.L. , c. (C. )(pending before the Legislature  
12 as this bill).<sup>2</sup>

13 (cf: P.L.1987, c.170, s.2)

14  
15 <sup>2</sup>**[4.] 5.**<sup>2</sup> This act shall take effect <sup>2</sup>**[immediately]** on the first  
16 day of the sixth month following the date of enactment, provided  
17 however, that the Supreme Court, Administrative Director of the  
18 Courts, Commissioner of Corrections, Public Defender, Attorney  
19 General and county prosecutors may take such anticipatory action  
20 as deemed necessary to effectuate the provisions of this act. This  
21 act shall expire upon the entry of final orders in accordance with  
22 section 1 of this act with respect to all inmates eligible for  
23 resentencing under this act<sup>2</sup>