

ASSEMBLY, No. 5266

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 12, 2021

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

SYNOPSIS

Implements sentencing recommendations of the Criminal Sentencing and Disposition Commission to eliminate certain mandatory minimum terms of imprisonment; eliminates mandatory minimum term of imprisonment for crime of official misconduct.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning sentencing reform and amending various parts
2 of the statutory law.

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

6
7 1. Section 4 of P.L.2013, c.58 (C.2C:20-2.4) is amended to
8 read as follows:

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

26
27 2. Section 6 of P.L.2013, c.58 (C.2C:20-2.6) is amended to
28 read as follows:

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

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

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

1 second or subsequent offense if the actor has at any time been
2 convicted pursuant to this section, or under any similar statute of
3 the United States, this State or any other state for an offense that is
4 substantially equivalent to this section.

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

6
7 3. N.J.S.2C:20-11 is amended to read as follows:

8 2C:20-11. a. Definitions. The following definitions apply to
9 this section:

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

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

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

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

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

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

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

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

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

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

45 (11) "Organized retail theft enterprise" means any association of
46 two or more persons who engage in the conduct of or are associated
47 for the purpose of effectuating the transfer or sale of shoplifted
48 merchandise.

1 b. Shoplifting. Shoplifting shall consist of any one or more of
2 the following acts:

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

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

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

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

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

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

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

42 (2) Shoplifting constitutes a crime of the third degree under
43 subsection b. of this section if the full retail value of the
44 merchandise exceeds \$500 but is less than \$75,000, or the offense
45 is committed in furtherance of or in conjunction with an organized
46 retail theft enterprise and the full retail value of the merchandise is
47 less than \$1,000.

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

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

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

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

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

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

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

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

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

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

11

12 4. Section 10 of P.L.1984, c.184 (C.2C:20-31) is amended to
13 read as follows:

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

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

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

35

36 5. N.J.S.2C:35-4 is amended to read as follows:

37 2C:35-4. Except as authorized by P.L.1970, c.226 (C.24:21-1 et
38 seq.), any person who knowingly maintains or operates any
39 premises, place or facility used for the manufacture of
40 methamphetamine, lysergic acid diethylamide, phencyclidine,
41 gamma hydroxybutyrate, flunitrazepam, marijuana in an amount
42 greater than five pounds or ten plants or any substance listed in
43 Schedule I or II, or the analog of any such substance, or any person
44 who knowingly aids, promotes, finances or otherwise participates in
45 the maintenance or operations of such premises, place or facility, is
46 guilty of a crime of the first degree and shall, except as provided in
47 N.J.S.2C:35-12, be sentenced to a term of imprisonment**【which**
48 **shall include the imposition of a minimum term which shall be**

1 fixed at, or between, one-third and one-half of the sentence
2 imposed, during which the defendant shall be ineligible for parole】.
3 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
4 the court may also impose a fine not to exceed \$750,000.00 or five
5 times the street value of all controlled dangerous substances,
6 controlled substance analogs, gamma hydroxybutyrate or
7 flunitrazepam at any time manufactured or stored at such premises,
8 place or facility, whichever is greater.
9 (cf: P.L.1999, c.133, s.2)

10

11 6. N.J.S.2C:35-5 is amended to read as follows:

12 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
13 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
14 unlawful for any person knowingly or purposely:

15 (1) To manufacture, distribute or dispense, or to possess or have
16 under his control with intent to manufacture, distribute or dispense,
17 a controlled dangerous substance or controlled substance analog; or

18 (2) To create, distribute, or possess or have under his control
19 with intent to distribute, a counterfeit controlled dangerous
20 substance.

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

22 (1) Heroin, or its analog, or coca leaves and any salt, compound,
23 derivative, or preparation of coca leaves, and any salt, compound,
24 derivative, or preparation thereof which is chemically equivalent or
25 identical with any of these substances, or analogs, except that the
26 substances shall not include decocainized coca leaves or extractions
27 which do not contain cocaine or ecogine, or 3,4-
28 methylenedioxymethamphetamine or 3,4-
29 methylenedioxyamphetamine, in a quantity of five ounces or more
30 including any adulterants or dilutants is guilty of a crime of the first
31 degree. The defendant shall, except as provided in N.J.S.2C:35-12,
32 be sentenced to a term of imprisonment by the court. 【The term of
33 imprisonment shall include the imposition of a minimum term
34 which shall be fixed at, or between, one-third and one-half of the
35 sentence imposed, during which the defendant shall be ineligible for
36 parole.】 Notwithstanding the provisions of subsection a. of
37 N.J.S.2C:43-3, a fine of up to \$500,000.00 may be imposed;

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

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

47 (4) A substance classified as a narcotic drug in Schedule I or II
48 other than those specifically covered in this section, or the analog of

1 any such substance, in a quantity of one ounce or more including
2 any adulterants or dilutants is guilty of a crime of the second
3 degree;

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

10 (6) Lysergic acid diethylamide, or its analog, in a quantity of
11 100 milligrams or more including any adulterants or dilutants, or
12 phencyclidine, or its analog, in a quantity of 10 grams or more
13 including any adulterants or dilutants, is guilty of a crime of the
14 first degree. Except as provided in N.J.S.2C:35-12, the court shall
15 impose a term of imprisonment [which shall include the imposition
16 of a minimum term, fixed at, or between, one-third and one-half of
17 the sentence imposed by the court, during which the defendant shall
18 be ineligible for parole]. Notwithstanding the provisions of
19 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
20 imposed;

21 (7) Lysergic acid diethylamide, or its analog, in a quantity of
22 less than 100 milligrams including any adulterants or dilutants, or
23 where the amount is undetermined, or phencyclidine, or its analog,
24 in a quantity of less than 10 grams including any adulterants or
25 dilutants, or where the amount is undetermined, is guilty of a crime
26 of the second degree;

27 (8) Methamphetamine, or its analog, or phenyl-2-propanone
28 (P2P), in a quantity of five ounces or more including any
29 adulterants or dilutants is guilty of a crime of the first degree.
30 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
31 fine of up to \$300,000.00 may be imposed;

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

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

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

47 (b) Marijuana in a quantity of five pounds or more but less than
48 25 pounds including any adulterants or dilutants, or 10 or more but

1 fewer than 50 marijuana plants, regardless of weight, or hashish in a
2 quantity of one pound or more but less than five pounds, including
3 any adulterants and dilutants, is guilty of a crime of the second
4 degree;

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

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

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

20 (14) Any Schedule V substance, or its analog, is guilty of a
21 crime of the fourth degree except that, notwithstanding the
22 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
23 \$25,000.00 may be imposed.

24 c. Where the degree of the offense for violation of this section
25 depends on the quantity of the substance, the quantity involved
26 shall be determined by the trier of fact. Where the indictment or
27 accusation so provides, the quantity involved in individual acts of
28 manufacturing, distribution, dispensing or possessing with intent to
29 distribute may be aggregated in determining the grade of the
30 offense, whether distribution or dispensing is to the same person or
31 several persons, provided that each individual act of manufacturing,
32 distribution, dispensing or possession with intent to distribute was
33 committed within the applicable statute of limitations.

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

35
36 7. N.J.S.2C:35-6 is amended to read as follows:

37 2C:35-6. Employing a Juvenile in a Drug Distribution Scheme.

38 Any person being at least 18 years of age who knowingly uses,
39 solicits, directs, hires or employs a person 17 years of age or
40 younger to violate N.J.S.2C:35-4 or subsection a. of N.J.S.2C:35-5,
41 is guilty of a crime of the second degree and shall, except as
42 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
43 **【which shall include the imposition of a minimum term which shall**
44 **be fixed at, or between, one-third and one-half of the sentence**
45 **imposed, or five years, whichever is greater, during which the**
46 **defendant shall be ineligible for parole】**. Notwithstanding the
47 provisions of subsection a. of N.J.S.2C:43-3, the court may also
48 impose a fine not to exceed \$500,000.00 or five times the street

1 value of the controlled dangerous substance or controlled substance
2 analog involved, whichever is greater.

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

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

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

19
20 8. Section 1 of P.L.1987, c.101 (C.2C:35-7) is amended to read
21 as follows:

22 1. a. Any person who violates subsection a. of N.J.S.2C:35-5
23 by distributing, dispensing or possessing with intent to distribute a
24 controlled dangerous substance or controlled substance analog
25 while on any school property used for school purposes which is
26 owned by or leased to any elementary or secondary school or school
27 board, or within 1,000 feet of such school property or a school bus,
28 or while on any school bus, is guilty of a crime of the third degree
29 and shall, except as provided in N.J.S.2C:35-12, be sentenced by
30 the court to a term of imprisonment, notwithstanding the
31 presumption of non-imprisonment for certain offenders set forth in
32 subsection e. of N.J.S. 2C:44-1. **【**Where the violation involves less
33 than one ounce of marijuana, the term of imprisonment shall
34 include the imposition of a minimum term which shall be fixed at,
35 or between, one-third and one-half of the sentence imposed, or one
36 year, whichever is greater, during which the defendant shall be
37 ineligible for parole. In all other cases, the term of imprisonment
38 shall include the imposition of a minimum term which shall be
39 fixed at, or between, one-third and one-half of the sentence
40 imposed, or three years, whichever is greater, during which the
41 defendant shall be ineligible for parole.**】** Notwithstanding the
42 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
43 \$150,000 may also be imposed upon any conviction for a violation
44 of this section.

45 b. (1) Notwithstanding the provisions of N.J.S.2C:35-12 or
46 subsection a. of this section, the court may **【**waive or reduce the
47 minimum term of parole ineligibility required under subsection a. of
48 this section or**】** place the defendant on probation pursuant to

1 paragraph (2) of subsection b. of N.J.S.2C:43-2. In making this
2 determination, the court shall consider:

3 (a) the extent of the defendant's prior criminal record and the
4 seriousness of the offenses for which the defendant has been
5 convicted;

6 (b) the specific location of the present offense in relation to the
7 school property, including distance from the school and the
8 reasonable likelihood of exposing children to drug-related activities
9 at that location;

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

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

13 (2) The court shall not **waive or reduce the minimum term of**
14 **parole ineligibility or** sentence the defendant to probation if it
15 finds that:

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

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

21 If the court at sentencing **elects not to impose a minimum term**
22 **of imprisonment and parole ineligibility pursuant to this subsection,**
23 **imposes a term of parole ineligibility less than the minimum term**
24 **prescribed in subsection a. of this section, or** places the defendant
25 on probation for a violation of subsection a. of this section, the
26 sentence shall not become final for 10 days in order to permit the
27 prosecution to appeal the court's finding and the sentence imposed.
28 The Attorney General shall develop guidelines to ensure the
29 uniform exercise of discretion in making determinations regarding
30 whether to appeal a decision to **waive or reduce the minimum term**
31 **of parole ineligibility or** place the defendant on probation.

32 Nothing in this subsection shall be construed to establish a basis
33 for overcoming a presumption of imprisonment authorized or
34 required by subsection d. of N.J.S.2C:44-1, or a basis for not
35 imposing a term of imprisonment or term of parole ineligibility
36 authorized or required to be imposed pursuant to subsection f. of
37 N.J.S.2C:43-6 or upon conviction for a crime other than the offense
38 set forth in this subsection.

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

44 d. It shall be no defense to a prosecution for a violation of this
45 section that the actor was unaware that the prohibited conduct took
46 place while on or within 1,000 feet of any school property. Nor
47 shall it be a defense to a prosecution under this section, or under

1 any other provision of this title, that no juveniles were present on
2 the school property at the time of the offense or that the school was
3 not in session.

4 e. It is an affirmative defense to prosecution for a violation of
5 this section that the prohibited conduct took place entirely within a
6 private residence, that no person 17 years of age or younger was
7 present in such private residence at any time during the commission
8 of the offense, and that the prohibited conduct did not involve
9 distributing, dispensing or possessing with the intent to distribute or
10 dispense any controlled dangerous substance or controlled
11 substance analog for profit. The affirmative defense established in
12 this section shall be proved by the defendant by a preponderance of
13 the evidence. Nothing herein shall be construed to establish an
14 affirmative defense with respect to a prosecution for an offense
15 defined in any other section of this chapter.

16 f. In a prosecution under this section, a map produced or
17 reproduced by any municipal or county engineer for the purpose of
18 depicting the location and boundaries of the area on or within 1,000
19 feet of any property used for school purposes which is owned by or
20 leased to any elementary or secondary school or school board, or a
21 true copy of such a map, shall, upon proper authentication, be
22 admissible and shall constitute prima facie evidence of the location
23 and boundaries of those areas, provided that the governing body of
24 the municipality or county has adopted a resolution or ordinance
25 approving the map as official finding and record of the location and
26 boundaries of the area or areas on or within 1,000 feet of the school
27 property. Any map approved pursuant to this section may be
28 changed from time to time by the governing body of the
29 municipality or county. The original of every map approved or
30 revised pursuant to this section, or a true copy thereof, shall be filed
31 with the clerk of the municipality or county, and shall be
32 maintained as an official record of the municipality or county.
33 Nothing in this section shall be construed to preclude the
34 prosecution from introducing or relying upon any other evidence or
35 testimony to establish any element of this offense; nor shall this
36 section be construed to preclude the use or admissibility of any map
37 or diagram other than one which has been approved by the
38 governing body of a municipality or county, provided that the map
39 or diagram is otherwise admissible pursuant to the Rules of
40 Evidence.

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

42

43 9. N.J.S.2C:35-8 is amended to read as follows:

44 2C:35-8. Distribution to Persons Under Age 18; Enhanced
45 Punishment. Upon the application of the prosecuting attorney, any
46 person being at least 18 years of age who has been convicted for
47 violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L.1987,
48 c.101 (C.2C:35-7) by distributing a controlled dangerous substance

1 or controlled substance analog to a pregnant female or a person 17
2 years of age or younger shall, except as provided in N.J.S. 2C:35-
3 12, be subject to twice the term of imprisonment, fine and penalty【,
4 including twice the term of parole ineligibility, if any,】 authorized
5 or required to be imposed by subsection b. of N.J.S. 2C:35-5 or
6 section 1 of P.L.1987, c.101 (C.2C:35-7) or any other provision of
7 this title. In addition, the presumption of non-imprisonment for
8 certain offenders set forth in subsection e. of N.J.S. 2C:44-1 shall
9 not apply to any person subject to enhanced punishment pursuant to
10 this section.

11 The court shall not impose more than one enhanced sentence
12 pursuant to this section. If the defendant is convicted of more than
13 one offense which is otherwise subject to enhanced punishment
14 pursuant to this section, the court shall impose enhanced
15 punishment based upon the most serious such offense for which the
16 defendant was convicted【, or, where applicable, the offense which
17 mandates the imposition of the longest term of parole ineligibility】.

18 Notwithstanding the provisions of paragraph (2) of subsection a.
19 of 2C:44-5, nothing herein shall prevent the court from also
20 imposing an extended term pursuant to subsection f. of N.J.S.
21 2C:43-6. The court shall not impose an enhanced sentence pursuant
22 to this section unless the prosecutor has established the ground
23 therefor by a preponderance of the evidence at a hearing, which
24 may occur at the time of sentencing. In making its finding, the
25 court shall take judicial notice of any evidence, testimony or
26 information adduced at the trial, plea hearing or other court
27 proceedings, and shall also consider the presentence report and any
28 other relevant information. It shall not be relevant to the imposition
29 of enhanced punishment pursuant to this section that the defendant
30 mistakenly believed that the recipient of the substance was 18 years
31 of age or older, even if the mistaken belief was reasonable. Nor
32 shall it be relevant to the imposition of enhanced punishment
33 pursuant to this section that the defendant did not know that the
34 recipient was pregnant.

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

36

37 10. N.J.S.2C:35-12 is amended to read as follows:

38 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

39 Whenever an offense defined in this chapter specifies a
40 mandatory sentence of imprisonment 【which includes a minimum
41 term during which the defendant shall be ineligible for parole】, a
42 mandatory extended term 【which includes a period of parole
43 ineligibility】, or an anti-drug profiteering penalty pursuant to
44 section 2 of P.L.1997, c.187 (N.J.S.2C:35A-1 et seq.), the court
45 upon conviction shall impose the mandatory sentence of
46 imprisonment or anti-drug profiteering penalty unless the defendant
47 has pleaded guilty pursuant to a negotiated agreement or, in cases

1 resulting in trial, the defendant and the prosecution have entered
2 into a post-conviction agreement, which provides for a lesser
3 sentence[, period of parole ineligibility or] anti-drug profiteering
4 penalty. The negotiated plea or post-conviction agreement may
5 provide for a specified term of imprisonment within the range of
6 ordinary or extended sentences authorized by law, [a specified
7 period of parole ineligibility,] a specified fine, a specified anti-drug
8 profiteering penalty, or other disposition. In that event, the court at
9 sentencing shall not impose a lesser term of imprisonment, [lesser
10 period of parole ineligibility,] lesser fine or lesser anti-drug
11 profiteering penalty than that expressly provided for under the
12 terms of the plea or post-conviction agreement.

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

14
15 11. N.J.S.2C:43-6 is amended to read as follows:

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

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

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

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

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

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

43 c. A person who has been convicted under subsection b. or d.
44 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
45 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.
46 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection
47 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,

1 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following
2 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-
3 3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of
4 committing or attempting to commit the crime, including the
5 immediate flight therefrom, used or was in possession of a firearm
6 as defined in 2C:39-1f., shall be sentenced to a term of
7 imprisonment by the court. The term of imprisonment shall include
8 the imposition of a minimum term. The minimum term shall be
9 fixed at one-half of the sentence imposed by the court or 42 months,
10 whichever is greater, or 18 months in the case of a fourth degree
11 crime, during which the defendant shall be ineligible for parole.

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

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

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

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

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

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

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

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

44 For the purpose of this subsection, a previous conviction exists
45 where the actor has at any time been convicted under chapter 35 of
46 this title or Title 24 of the Revised Statutes or under any similar
47 statute of the United States, this State, or any other state for an
48 offense that is substantially equivalent to N.J.S.2C:35-3,

1 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of
2 P.L.1987, c.101 (C.2C:35-7).

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

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

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

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

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

1 imposing a presumptive term of imprisonment pursuant to
2 paragraph (1) of subsection f. of 2C:44-1.

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

4

5 12. Section 6 of P.L.2007, c.49 (C.2C:43-6.5) is amended to
6 read as follows:

7 6. a. Notwithstanding the provisions of subsection a. of
8 N.J.S.2C:43-6 and except as otherwise provided in subsection c. of
9 this section, a person who serves or has served as a public officer or
10 employee under the government of this State, or any political
11 subdivision thereof, who is convicted of a crime that involves or
12 touches such office or employment as set forth in subsection b. of
13 this section, shall be sentenced to a mandatory minimum term of
14 imprisonment without eligibility for parole as follows: for a crime
15 of the fourth degree, the mandatory minimum term shall be one
16 year; for a crime of the third degree, two years; for a crime of the
17 second degree, five years; and for a crime of the first degree, 10
18 years; unless the provisions of any other law provide for a higher
19 mandatory minimum term. As used in this subsection, "a crime that
20 involves or touches such office or employment" means that the
21 crime was related directly to the person's performance in, or
22 circumstances flowing from, the specific public office or
23 employment held by the person.

24 b. Subsection a. of this section applies to a conviction of any of
25 the following crimes:

26 (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal
27 coercion;

28 (2) N.J.S.2C:20-4, theft by deception, if the amount involved
29 exceeds \$10,000;

30 (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;

31 (4) N.J.S.2C:20-9, theft by failure to make required disposition
32 of property received, if the amount involved exceeds \$10,000;

33 (5) N.J.S.2C:21-10, commercial bribery;

34 (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money
35 laundering;

36 (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract
37 payment claims;

38 (8) N.J.S.2C:27-2, bribery in official matters;

39 (9) N.J.S.2C:27-3, threats and other improper influence in
40 official and political matters;

41 (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful
42 official business transaction where interest is involved;

43 (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or
44 receipt of unlawful benefit by public servant for official behavior;

45 (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of
46 unlawful benefit to public servant for official behavior;

47 (13) N.J.S.2C:28-1, perjury;

48 (14) N.J.S.2C:28-5, tampering with witnesses;

1 (15) N.J.S.2C:28-7, tampering with public records or
2 information;

3 (16) N.J.S.2C:29-4, compounding;

4 (17) **【N.J.S.2C:30-2, official misconduct;】** (Deleted by
5 amendment, P.L. , c.) (pending before the Legislature as this
6 bill)

7 (18) N.J.S.2C:30-3, speculating or wagering on official action or
8 information; or

9 (19) Section 3 of P.L.2003, c.31 (C.2C:30-7), pattern of official
10 misconduct.

11 c. (1) On motion by the prosecutor stating that the defendant
12 has provided substantial assistance in a criminal investigation or
13 prosecution of another person, the court may waive or reduce the
14 mandatory minimum term of imprisonment required by subsection
15 a. of this section. The appropriate waiver or reduction shall be
16 determined by the court for reasons stated that may include, but are
17 not limited to, consideration of the following:

18 (i) the court's evaluation of the significance and usefulness of
19 the defendant's assistance, giving substantial weight to the
20 prosecutor's evaluation of the assistance rendered;

21 (ii) the truthfulness, completeness, and reliability of any
22 information or testimony provided by the defendant;

23 (iii) the nature and extent of the defendant's assistance;

24 (iv) any injury suffered, or any danger or risk of injury to the
25 defendant or his family resulting from his assistance;

26 (v) the timeliness of the defendant's assistance.

27 In making such a determination, the court shall give substantial
28 weight to the prosecutor's evaluation of the extent of the defendant's
29 assistance, particularly where the extent and value of the assistance
30 are difficult to ascertain.

31 (2) If the court finds by clear and convincing evidence that
32 extraordinary circumstances exist such that imposition of a
33 mandatory minimum term would be a serious injustice which
34 overrides the need to deter such conduct in others, the court may
35 waive or reduce the mandatory minimum term of imprisonment
36 required by subsection a. of this section. In making any such
37 finding, the court must state with specificity its reasons for waiving
38 or reducing the mandatory minimum sentence that would otherwise
39 apply.

40 (3) If, pursuant to paragraph (1) or (2) of this subsection, the
41 court waives or reduces the mandatory minimum term required by
42 subsection a. of this section, such sentence shall not become final
43 for 10 days in order to permit the appeal of the sentence by the
44 prosecution.

45 d. (1) A prosecutor shall not recommend the admission into or
46 consent to the referral to a pretrial intervention program of a person
47 who serves or has served as a public officer or employee under the
48 government of this State, or any political subdivision thereof, who

1 is charged with a crime that involves or touches such office or
2 employment as set forth in subsection b. of this section, without the
3 prior approval of the Attorney General.

4 (2) A person who serves or has served as a public officer or
5 employee under the government of this State, or any political
6 subdivision thereof, who is convicted of a crime that involves or
7 touches such office or employment as set forth in subsection b. of
8 this section shall be ineligible for participation in any program of
9 intensive supervision during any period of parole ineligibility.

10 e. The Attorney General shall develop guidelines to ensure the
11 uniform exercise of discretion in making determinations regarding
12 the waiver or reduction of a mandatory minimum term of
13 imprisonment pursuant to paragraph (1) of subsection c. of this
14 section and participation in a pretrial intervention program pursuant
15 to paragraph (1) of subsection d. of this section.

16 (cf: P.L.2007, c.49, s.6)

17

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

19 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

20 a. In the cases designated in section 2C:44-3, a person who has
21 been convicted of a crime may be sentenced, and in the cases
22 designated in subsection e. of section 2 of P.L.1994, c.130
23 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126
24 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,
25 c.410 (C.2C:44-5.1), a person who has been convicted of a crime
26 shall be sentenced, to an extended term of imprisonment, as
27 follows:

28 (1) In case of aggravated manslaughter sentenced under
29 subsection c. of N.J.S.2C:11-4; or kidnapping when sentenced as a
30 crime of the first degree under paragraph (1) of subsection c. of
31 2C:13-1; or aggravated sexual assault if the person is eligible for an
32 extended term pursuant to the provisions of subsection g. of
33 N.J.S.2C:44-3 for a specific term of years which shall be between
34 30 years and life imprisonment;

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

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

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

43 (5) In the case of a crime of the fourth degree pursuant to
44 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in
45 the case of a crime of the fourth degree pursuant to any other
46 provision of law for a term which shall be fixed by the court
47 between three and five years;

1 (6) In the case of the crime of murder, for a specific term of
2 years which shall be fixed by the court between 35 years and life
3 imprisonment, of which the defendant shall serve 35 years before
4 being eligible for parole;

5 (7) In the case of kidnapping under paragraph (2) of subsection
6 c. of 2C:13-1, for a specific term of years which shall be fixed by
7 the court between 30 years and life imprisonment, of which the
8 defendant shall serve 30 years before being eligible for parole.

9 b. As part of a sentence for an extended term and
10 notwithstanding the provisions of 2C:43-9, the court may fix a
11 minimum term not to exceed one-half of the term set pursuant to
12 subsection a. during which the defendant shall not be eligible for
13 parole or a term of 25 years during which time the defendant shall
14 not be eligible for parole where the sentence imposed was life
15 imprisonment; provided that no defendant shall be eligible for
16 parole at a date earlier than otherwise provided by the law
17 governing parole.

18 c. In the case of a person sentenced to an extended term
19 pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall
20 impose a sentence within the ranges permitted by 2C:43-7a(2), (3),
21 (4) or (5) according to the degree or nature of the crime for which
22 the defendant is being sentenced, which sentence, except for a
23 sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall
24 include a minimum term which shall **],** except as may be
25 specifically provided by N.J.S.2C:43-6f, **]** be fixed at or between
26 one-third and one-half of the sentence imposed by the court or five
27 years, whichever is greater, during which the defendant shall not be
28 eligible for parole. Where the sentence imposed is life
29 imprisonment, the court shall impose a minimum term of 25 years
30 during which the defendant shall not be eligible for parole, except
31 that where the term of life imprisonment is imposed on a person
32 convicted for a violation of N.J.S.2C:35-3, the term of parole
33 ineligibility shall be 30 years.

34 d. In the case of a person sentenced to an extended term
35 pursuant to N.J.S.2C:43-6g, the court shall impose a sentence
36 within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5)
37 according to the degree or nature of the crime for which the
38 defendant is being sentenced, which sentence shall include a
39 minimum term which shall be fixed at 15 years for a crime of the
40 first or second degree, eight years for a crime of the third degree, or
41 five years for a crime of the fourth degree during which the
42 defendant shall not be eligible for parole. Where the sentence
43 imposed is life imprisonment, the court shall impose a minimum
44 term of 25 years during which the defendant shall not be eligible for
45 parole, except that where the term of life imprisonment is imposed
46 on a person convicted of a violation of N.J.S.2C:35-3, the term of
47 parole eligibility shall be 30 years.

48 (cf: P.L.2003, c.267, s.4)

1 14. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
2 read as follows:

3 2. a. A court imposing a sentence of incarceration for a crime
4 of the first or second degree enumerated in subsection d. of this
5 section, other than second degree robbery or second degree
6 burglary, shall fix a minimum term of 85% of the sentence imposed,
7 during which the defendant shall not be eligible for parole. A court
8 imposing a sentence of incarceration for a crime of second degree
9 robbery or second degree burglary shall fix a minimum term of 50%
10 of the sentence imposed, during which the defendant shall not be
11 eligible for parole.

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

25 c. Notwithstanding any other provision of law to the contrary
26 and in addition to any other sentence imposed, a court imposing a
27 minimum period of parole ineligibility of 85 percent of the sentence
28 pursuant to this section, or 50 percent in the case of second degree
29 robbery or second degree burglary, shall also impose a five-year
30 term of parole supervision if the defendant is being sentenced for a
31 crime of the first degree, or a three-year term of parole supervision
32 if the defendant is being sentenced for a crime of the second degree.
33 The term of parole supervision shall commence upon the
34 completion of the sentence of incarceration imposed by the court
35 pursuant to subsection a. of this section unless the defendant is
36 serving a sentence of incarceration for another crime at the time he
37 completes the sentence of incarceration imposed pursuant to
38 subsection a., in which case the term of parole supervision shall
39 commence immediately upon the defendant's release from
40 incarceration. During the term of parole supervision the defendant
41 shall remain in release status in the community in the legal custody
42 of the Commissioner of the Department of Corrections and shall be
43 supervised by the State Parole Board as if on parole and shall be
44 subject to the provisions and conditions of section 3 of P.L.1997,
45 c.117 (C.30:4-123.51b).

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

- 1 (1) N.J.S.2C:11-3, murder;
- 2 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 3 (3) N.J.S.2C:11-5, vehicular homicide;
- 4 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 5 (5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11),
- 6 disarming a law enforcement officer;
- 7 (6) N.J.S.2C:13-1, kidnapping;
- 8 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 9 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
- 10 subsection c. of N.J.S.2C:14-2, sexual assault;
- 11 (9) N.J.S.2C:15-1, robbery;
- 12 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 13 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
- 14 arson;
- 15 (12) N.J.S.2C:18-2, burglary;
- 16 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 17 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
- 18 booby traps in manufacturing or distribution facilities;
- 19 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 20 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;
- 21 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
- 22 possessing chemical weapons, biological agents or nuclear or
- 23 radiological devices;
- 24 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
- 25 degree:
- 26 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; or
- 27 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or
- 28 permitting a child to engage in a prohibited sexual act, knowing that
- 29 the act may be reproduced or reconstructed in any manner, or be
- 30 part of an exhibition or performance.
- 31 e. (Deleted by amendment, P.L.2001, c.129).
- 32 (cf: P.L.2013, c.136, s.4)

33
34 15. This act shall take effect immediately.

35 36 37 STATEMENT

38
39 This bill would address the elimination of mandatory minimum
40 terms of imprisonment by:

- 41 (1) removing the crime of official misconduct from the list of
- 42 offenses found in section 6 of P.L.2007, c.49 (C.2C:43-6.5) for
- 43 which a person who serves or has served as a public officer or
- 44 employee under the government of this State, or any political
- 45 subdivision thereof, would be sentenced to a mandatory minimum
- 46 term of imprisonment if the offense involved or touched upon such
- 47 office or employment; and

1 (2) implementing several of the recommendations contained in
2 the first annual report of the New Jersey Criminal Sentencing and
3 Disposition Commission (the CSDC), created by P.L.2009, c.81
4 (C.2C:48A-1 et seq.) but delayed in being constituted and actively
5 reviewing the State's sentencing laws. The specific focus of this
6 aspect of the bill involves Recommendations 1 through 3 of the
7 commission's report, issued in November 2019. In accordance with
8 Recommendations 1 and 2, the bill would eliminate mandatory
9 minimum terms of imprisonment for various nonviolent drug-
10 related and property crimes, which under current law are typically
11 fixed at, or between, one-third and one-half of the sentence
12 imposed. The bill would also reduce the mandatory term of
13 imprisonment for second degree robbery and second degree
14 burglary from 85 percent of the sentence imposed, as required under
15 current law pursuant to section 2 of P.L.1997, c.117 (C.2C:43-7.2),
16 known as the No Early Release Act (NERA), to 50 percent of the
17 sentence imposed, based on Recommendation 3.

18 As to Recommendation 1, the bill would eliminate mandatory
19 minimum sentences for the following non-violent drug offenses:

20 - maintaining or operating a controlled dangerous substance
21 production facility used to manufacture methamphetamine, lysergic
22 acid diethylamide (LSD), phencyclidine (PCP or "angel dust"),
23 gamma hydroxybutyrate (e.g. one form of "date rape" drug),
24 flunitrazepam (e.g., "Rohypnol" or "roofies," another "date rape"
25 drug), marijuana in an amount greater than five pounds or ten plants
26 or any substance listed in Schedule I or II, see N.J.S.2C:35-4;

27 - manufacturing, distributing, dispensing, or possessing with
28 intent to manufacture, distribute or dispense, heroin or coca leaves
29 in a quantity of five ounces or more, lysergic acid diethylamide
30 (LSD) in a quantity of 100 milligrams or more, or phencyclidine
31 (PCP or "angel dust") in a quantity of 10 grams or more, see
32 paragraphs (1) and (6) of subsection b. of N.J.S.2C:35-5;

33 - employing a juvenile in a drug distribution scheme, see
34 N.J.S.2C:35-6;

35 - distribution of a controlled dangerous substance on or within
36 1,000 feet of school property, see subsection a. of section 1 of
37 P.L.1987, c.101 (C.2C:35-7);

38 - distribution of a controlled dangerous substance to persons
39 under the age of 18 years or pregnant females, see N.J.S.2C:35-8;
40 and

41 - a repeat drug offender, whose current conviction was for any
42 of the above listed crimes other than N.J.S.2C:35-8, distributing to
43 persons under the age of 18 years or pregnant females, and who has
44 a previous conviction for a violation of N.J.S.2C:35-5,
45 manufacturing, distributing, dispensing or possessing with intent to
46 manufacture, distribute, or dispense any controlled dangerous
47 substance; however, if a repeat offender is facing a current
48 conviction for being a leader of a narcotics trafficking network,

1 N.J.S.2C:35-3, the bill would permit the imposition of a mandatory
2 term of imprisonment fixed at, or between, one-third and one-half
3 of the sentence imposed, or three years, whichever is greater.

4 As to Recommendation 2, the bill would eliminate mandatory
5 minimum sentences for the following non-violent property crimes:

- 6 - a second or subsequent offense as leader of a cargo theft
7 network, see subsection e. of section 4 of P.L.2013, c.58 (C.2C:20-
8 2.4);
- 9 - a second or subsequent offense involving theft from a cargo
10 carrier, see subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-
11 2.6);
- 12 - a third or subsequent offense for shoplifting, see paragraph
13 (4) of subsection c. of N.J.S.2C:20-11; and
- 14 - wrongful electronic access and disclosure of information,
15 subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);

16 Lastly, concerning Recommendation 3, the bill, as noted above,
17 would reduce the mandatory term of imprisonment for second
18 degree robbery, N.J.S.2C:15-1, and second degree burglary,
19 N.J.S.2C:18-2, from 85 percent of the sentence imposed, as required
20 under current law pursuant to NERA, to 50 percent of the sentence
21 imposed.