

# SENATE, No. 3363

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 12, 2021

**Sponsored by:**

**Senator SANDRA B. CUNNINGHAM**

**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-  
38 1 et 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  
48 any other provision of this title, that no juveniles were present on

1 the school property at the time of the offense or that the school was  
2 not in session.

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

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

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

41

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

43 2C:35-8. Distribution to Persons Under Age 18; Enhanced  
44 Punishment. Upon the application of the prosecuting attorney, any  
45 person being at least 18 years of age who has been convicted for  
46 violating subsection a. of N.J.S. 2C:35-5 or section 1 of P.L.1987,  
47 c.101 (C.2C:35-7) by distributing a controlled dangerous substance  
48 or controlled substance analog to a pregnant female or a person 17

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

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

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

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

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

37 2C:35-12. Waiver of Mandatory Minimum and Extended Terms.

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

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

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

13  
14 11. N.J.S.2C:43-6 is amended to read as follows:

15 2C:43-6. a. Except as otherwise provided, a person who has  
16 been convicted of a crime may be sentenced to imprisonment, as  
17 follows:

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

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

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

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

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

42 c. A person who has been convicted under subsection b. or d.  
43 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of  
44 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.  
45 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection  
46 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,  
47 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following  
48 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-

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

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

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

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

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

43 e. A person convicted of a third or subsequent offense  
44 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any  
45 other provision of this code, or under any of the provisions of Title  
46 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes,  
47 as amended and supplemented, shall be sentenced to a term of  
48 imprisonment by the court. This shall not preclude an application



1 for and imposition of an extended term of imprisonment under  
2 N.J.S.2C:44-3 if the provisions of that section are applicable to the  
3 offender.

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

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

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

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

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

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

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

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

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

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

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

20       b. Subsection a. of this section applies to a conviction of any of  
21 the following crimes:

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

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

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

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

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

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

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

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

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

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

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

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

43       (13) N.J.S.2C:28-1, perjury;

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

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

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

48       (17) **【N.J.S.2C:30-2, official misconduct;】** (Deleted by

1 amendment, P.L. , c. ) (pending before the Legislature as  
2 this bill)

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

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

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

14 (i) the court's evaluation of the significance and usefulness of  
15 the defendant's assistance, giving substantial weight to the  
16 prosecutor's evaluation of the assistance rendered;

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

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

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

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

23 In making such a determination, the court shall give substantial  
24 weight to the prosecutor's evaluation of the extent of the defendant's  
25 assistance, particularly where the extent and value of the assistance  
26 are difficult to ascertain.

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

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

41 d. (1) A prosecutor shall not recommend the admission into or  
42 consent to the referral to a pretrial intervention program of a person  
43 who serves or has served as a public officer or employee under the  
44 government of this State, or any political subdivision thereof, who  
45 is charged with a crime that involves or touches such office or  
46 employment as set forth in subsection b. of this section, without the  
47 prior approval of the Attorney General.

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

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

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

14  
15 13. N.J.S.2C:43-7 is amended to read as follows:

16 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

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

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

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

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

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

40 (5) In the case of a crime of the fourth degree pursuant to  
41 2C:43-6c, 2C:43-6g and 2C:44-3d for a term of five years, and in  
42 the case of a crime of the fourth degree pursuant to any other  
43 provision of law for a term which shall be fixed by the court  
44 between three and five years;

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

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

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

14 c. In the case of a person sentenced to an extended term  
15 pursuant to 2C:43-6c, 2C:43-6f and 2C:44-3d, the court shall  
16 impose a sentence within the ranges permitted by 2C:43-7a(2), (3),  
17 (4) or (5) according to the degree or nature of the crime for which  
18 the defendant is being sentenced, which sentence, except for a  
19 sentence imposed pursuant to subsection f. of N.J.S.2C:43-6, shall  
20 include a minimum term which shall<sup>1</sup>, except as may be  
21 specifically provided by N.J.S.2C:43-6f,<sup>2</sup> be fixed at or between  
22 one-third and one-half of the sentence imposed by the court or five  
23 years, whichever is greater, during which the defendant shall not be  
24 eligible for parole. Where the sentence imposed is life  
25 imprisonment, the court shall impose a minimum term of 25 years  
26 during which the defendant shall not be eligible for parole, except  
27 that where the term of life imprisonment is imposed on a person  
28 convicted for a violation of N.J.S.2C:35-3, the term of parole  
29 ineligibility shall be 30 years.

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

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

45  
46 14. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to  
47 read as follows:

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

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

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

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

47       (1) N.J.S.2C:11-3, murder;

48       (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

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

31  
32 15. This act shall take effect immediately.

33  
34

### 35 STATEMENT

36

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

- 39 (1) removing the crime of official misconduct from the list of  
40 offenses found in section 6 of P.L.2007, c.49 (C.2C:43-6.5) for  
41 which a person who serves or has served as a public officer or  
42 employee under the government of this State, or any political  
43 subdivision thereof, would be sentenced to a mandatory minimum  
44 term of imprisonment if the offense involved or touched upon such  
45 office or employment; and  
46 (2) implementing several of the recommendations contained in  
47 the first annual report of the New Jersey Criminal Sentencing and  
48 Disposition Commission (the CSDC), created by P.L.2009, c.81



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

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

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

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

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

32 - distribution of a controlled dangerous substance on or within  
33 1,000 feet of school property, see subsection a. of section 1 of  
34 P.L.1987, c.101 (C.2C:35-7);

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

38 - a repeat drug offender, whose current conviction was for any  
39 of the above listed crimes other than N.J.S.2C:35-8, distributing to  
40 persons under the age of 18 years or pregnant females, and who has  
41 a previous conviction for a violation of N.J.S.2C:35-5,  
42 manufacturing, distributing, dispensing or possessing with intent to  
43 manufacture, distribute, or dispense any controlled dangerous  
44 substance; however, if a repeat offender is facing a current  
45 conviction for being a leader of a narcotics trafficking network,  
46 N.J.S.2C:35-3, the bill would permit the imposition of a mandatory  
47 term of imprisonment fixed at, or between, one-third and one-half  
48 of the sentence imposed, or three years, whichever is greater.

1       As to Recommendation 2, the bill would eliminate mandatory  
2 minimum sentences for the following non-violent property crimes:  
3       - a second or subsequent offense as leader of a cargo theft  
4 network, see subsection e. of section 4 of P.L.2013, c.58 (C.2C:20-  
5 2.4);  
6       - a second or subsequent offense involving theft from a cargo  
7 carrier, see subsection c. of section 6 of P.L.2013, c.58 (C.2C:20-  
8 2.6);  
9       - a third or subsequent offense for shoplifting, see paragraph  
10 (4) of subsection c. of N.J.S.2C:20-11; and  
11       - wrongful electronic access and disclosure of information,  
12 subsection b. of section 10 of P.L.1984, c.184 (C.2C:20-31);  
13       Lastly, concerning Recommendation 3, the bill, as noted above,  
14 would reduce the mandatory term of imprisonment for second  
15 degree robbery, N.J.S.2C:15-1, and second degree burglary,  
16 N.J.S.2C:18-2, from 85 percent of the sentence imposed, as required  
17 under current law pursuant to NERA, to 50 percent of the sentence  
18 imposed.