

ASSEMBLY, No. 1300

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman GREENWALD

1 AN ACT concerning mandatory minimum terms of imprisonment for
2 offenses involving the use of a handgun and amending
3 N.J.S.2C:43-6

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

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8 1. N.J.S.2C:43-6 is amended to read as follows:

9 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;
10 Mandatory Terms. a. Except as otherwise provided, a person who
11 has been convicted of a crime may be sentenced to imprisonment, as
12 follows:

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

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

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

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

24 b. As part of a sentence for any crime, where the court is clearly
25 convinced that the aggravating factors substantially outweigh the
26 mitigating factors, as set forth in subsections a. and b. of 2C:44-1, the
27 court may fix a minimum term not to exceed one-half of the term set
28 pursuant to subsection a., or one-half of the term set pursuant to a
29 maximum period of incarceration for a crime set forth in any statute
30 other than this code, during which the defendant shall not be eligible
31 for parole; provided that no defendant shall be eligible for parole at a
32 date earlier than otherwise provided by the law governing parole.

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

Matter underlined thus is new matter.

1 c. [A] Except as otherwise provided in subsections g. and h. of this
2 section for crimes involving the use or possession of a handgun,
3 machine gun or assault firearm, a person who has been convicted
4 under 2C:39-4a. of possession of a firearm with intent to use it against
5 the person of another, or of a crime under any of the following
6 sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a.,
7 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 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 firearm as
10 defined in 2C:39-1f., shall be sentenced to a term of imprisonment by
11 the court. The term of imprisonment shall include the imposition of a
12 minimum term. The minimum term shall be fixed at, or between,
13 one-third and one-half of the sentence imposed by the court or three
14 years, whichever is greater, or 18 months in the case of a fourth
15 degree crime, during which the defendant shall be ineligible for parole.

16 The minimum terms established by this section shall not prevent the
17 court from imposing presumptive terms of imprisonment pursuant to
18 2C:44-1f. (1) except in cases of crimes of the fourth degree.

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

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

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

43 f. A person convicted of manufacturing, distributing, dispensing or
44 possessing with intent to distribute any dangerous substance or
45 controlled substance analog under N.J.S.2C:35-5, of maintaining or
46 operating a controlled dangerous substance production facility under

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

19 The court shall not impose an extended term pursuant to this
20 subsection unless the ground therefor has been established at a
21 hearing. At the hearing, which may occur at the time of sentencing, the
22 prosecutor shall establish the ground therefor by a preponderance of
23 the evidence. In making its finding, the court shall take judicial notice
24 of any evidence, testimony or information adduced at the trial, plea
25 hearing, or other court proceedings and shall also consider the
26 presentence report and any other relevant information.

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

34 g. Any person who has been convicted under subsection a. of
35 N.J.S.2C:39-4 of possessing a handgun, machine gun or assault
36 firearm with intent to use it against the person of another, or of a
37 crime under any of the following sections: N.J.S.2C:11-3,
38 N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a.,
39 N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5,
40 N.J.S.2C:35-5, who, while in the course of committing or attempting
41 to commit the crime, including the immediate flight therefrom, used or
42 was in possession of a handgun, machine gun or assault firearm shall
43 be sentenced to a term of imprisonment by the court. The term of
44 imprisonment shall include the imposition of a minimum term. The
45 minimum term shall be fixed at 10 years for a crime of the first or
46 second degree, five years for a crime of the third degree, or 18 months

1 in the case of a fourth degree crime, during which the defendant shall
2 be ineligible for parole.

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

7 A person who has been convicted of an offense enumerated in this
8 subsection and who used or possessed a handgun, machine gun or
9 assault firearm during its commission, attempted commission or flight
10 therefrom and who has been previously convicted of an offense
11 involving the use or possession of any firearm as defined in subsection
12 d. of N.J.S.2C:44-3, shall be sentenced by the court to an extended
13 term as authorized by subsection d. of N.J.S.2C:43-7, notwithstanding
14 that extended terms are ordinarily discretionary with the court.

15 h. The court shall not impose a mandatory sentence pursuant to
16 subsection g. of this section, subsections d. of N.J.S.2C:43-7 or
17 N.J.S.2C:44-3, unless the ground therefor has been established at a
18 hearing. At the hearing, which may occur at the time of sentencing,
19 the prosecutor shall establish by a preponderance of the evidence that
20 the weapon used or possessed was a handgun, machine gun or assault
21 firearm. In making its finding, the court shall take judicial notice of
22 any evidence, testimony or information adduced at the trial, plea
23 hearing, or other court proceedings and shall also consider the
24 presentence report and any other relevant information.

25 i. A person who has been convicted under paragraph (6) of
26 subsection b. of 2C:12-1 of causing bodily injury while eluding shall
27 be sentenced to a term of imprisonment by the court. The term of
28 imprisonment shall include the imposition of a minimum term. The
29 minimum term shall be fixed at, or between one-third and one-half of
30 the sentence imposed by the court. The minimum term established by
31 this subsection shall not prevent the court from imposing a
32 presumptive term of imprisonment pursuant to paragraph (1) of
33 subsection f. of 2C:44-1.

34 (cf: P.L.1993, c.219, s.6)

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36 2. This act shall take effect immediately.

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STATEMENT

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41 This bill amends N.J.S.2C:43-6 to increase the mandatory minimum
42 term of imprisonment the court must impose upon persons who use a
43 handgun in the commission of a violent crime.

44 Under the "Graves Act," a person who uses any firearm in the
45 commission of a violent crime is subject to a mandatory minimum
46 sentence of three years (or for a term fixed at between one-third and

1 one-half the court imposed term, if longer). In the case of a fourth
2 degree crime, the mandatory minimum is 18 months. Violent crimes
3 include: murder, manslaughter, aggravated assault, kidnapping, sexual
4 assault, aggravated criminal sexual contact, robbery, burglary, escape,
5 and distributing or dispensing a controlled dangerous substance.

6 This bill would require the court to impose longer mandatory
7 minimum sentences on individuals who use a handgun in the
8 commission of a violent crime. In the case of a crime of the first or
9 second degree, the bill directs the court to impose a mandatory
10 minimum sentence of 10 years; in the case of a crime of the third
11 degree, the bill provides for a mandatory minimum of 5 years; and in
12 the case of a crime of the fourth degree, a mandatory minimum of 18
13 months.

14 The mandatory minimums specified in this bill are identical to those
15 the law current directs the court to impose upon individuals who have
16 used a machine gun or assault weapon in the commission of a crime.

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21 _____
22 Increases the mandatory minimum sentence the court must impose for
crimes involving the use of a handgun.