

ASSEMBLY, No. 2611

STATE OF NEW JERSEY

INTRODUCED DECEMBER 16, 1996

By Assemblywoman ALLEN and Assemblyman DeSOPO

1 AN ACT concerning parole eligibility , amending N.J.S.2C:43-6 and  
2 N.J.S.2C:43-7 and section 7 of P.L.1979, c.441 (C.30:4-123.51).

3

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

6

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

8 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;  
9 Mandatory Terms. a. Except as otherwise provided, a person who  
10 has been convicted of a crime may be sentenced to imprisonment, as  
11 follows:

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

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

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

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

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

**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 person who has been convicted under 2C:39-4a. of possession  
2 of a firearm with intent to use it against the person of another, or of  
3 a crime under any of the following sections: 2C:11-3, 2C:11-4,  
4 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,  
5 2C:29-5, who, while in the course of committing or attempting to  
6 commit the crime, including the immediate flight therefrom, used or  
7 was in possession of a firearm as defined in 2C:39-1f., shall be  
8 sentenced to a term of imprisonment by the court. The term of  
9 imprisonment shall include the imposition of a minimum term. The  
10 minimum term shall be fixed at [, or between, one-third and one-half]  
11 three-fifths of the sentence imposed by the court or three years,  
12 whichever is greater, or 18 months in the case of a fourth degree  
13 crime, during which the defendant shall be ineligible for parole.  
14 The minimum terms established by this section shall not prevent the  
15 court from imposing presumptive terms of imprisonment pursuant to  
16 2C:44-1f. (1) except in cases of crimes of the fourth degree.

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

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

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

41 f. A person convicted of manufacturing, distributing, dispensing or  
42 possessing with intent to distribute any dangerous substance or  
43 controlled substance analog under N.J.S.2C:35-5, of maintaining or  
44 operating a controlled dangerous substance production facility under  
45 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme  
46 under N.J.S.2C:35-6, leader of a narcotics trafficking network under

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

17 The court shall not impose an extended term pursuant to this  
18 subsection unless the ground therefor has been established at a  
19 hearing. At the hearing, which may occur at the time of sentencing, the  
20 prosecutor shall establish the ground therefor by a preponderance of  
21 the evidence. In making its finding, the court shall take judicial notice  
22 of 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 For the purpose of this subsection, a previous conviction exists  
26 where the actor has at any time been convicted under chapter 35 of  
27 this title or Title 24 of the Revised Statutes or under any similar  
28 statute of the United States, this State, or any other state for an  
29 offense that is substantially equivalent to N.J.S.2C:35-3,  
30 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of  
31 P.L.1987, c.101 (C.2C:35-7).

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

46 The minimum terms established by this section shall not prevent the

1 court from imposing presumptive terms of imprisonment pursuant to  
2 paragraph (1) of subsection f. of N.J.S.2C:44-1 for crimes of the first  
3 degree.

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

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

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

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

32

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

34 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

35 a. In the cases designated in section 2C:44-3, a person who has been  
36 convicted of a crime may be sentenced, and in the cases designated in  
37 subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) and in  
38 subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) a person  
39 who has been convicted of a crime shall be sentenced, to an extended  
40 term of imprisonment, as follows:

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

1 imprisonment;

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

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

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

10 (5) In the case of a crime of the fourth degree pursuant to  
11 2C:43-6c., 2C:44-3d., 2C:44-3e. for a term of five years, and in the  
12 case of a crime of the fourth degree pursuant to 2C:43-6f. and  
13 2C:43-6g. for a term which shall be fixed by the court between three  
14 and five years;

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

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

23 b. As part of a sentence for an extended term and notwithstanding  
24 the provisions of 2C:43-9, the court may fix a minimum term not to  
25 exceed [~~one-half~~] three-fifths of the term set pursuant to subsection a.  
26 during which the defendant shall not be eligible for parole or a term of  
27 25 years during which time the defendant shall not be eligible for  
28 parole where the sentence imposed was life imprisonment; provided  
29 that no defendant shall be eligible for parole at a date earlier than  
30 otherwise provided by the law governing parole.

31 c. In the case of a person sentenced to an extended term pursuant  
32 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a  
33 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)  
34 according to the degree or nature of the crime for which the defendant  
35 is being sentenced, which sentence shall include a minimum term which  
36 shall, except as may be specifically provided by N.J.S.2C:43-6f., be  
37 fixed at [~~or between one-third and one-half~~] three-fifths of the  
38 sentence imposed by the court or five years, whichever is greater,  
39 during which the defendant shall not be eligible for parole. Where the  
40 sentence imposed is life imprisonment, the court shall impose a  
41 minimum term of 25 years during which the defendant shall not be  
42 eligible for parole, except that where the term of life imprisonment is  
43 imposed on a person convicted for a violation of N.J.S.2C:35-3, the  
44 term of parole ineligibility shall be 30 years.

45 d. In the case of a person sentenced to an extended term pursuant  
46 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges

1 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the  
2 degree or nature of the crime for which the defendant is being  
3 sentenced, which sentence shall include a minimum term which shall  
4 be fixed at 15 years for a crime of the first or second degree, eight  
5 years for a crime of the third degree, or five years for a crime of the  
6 fourth degree during which the defendant shall not be eligible for  
7 parole. Where the sentence imposed is life imprisonment, the court  
8 shall impose a minimum term of 25 years during which the defendant  
9 shall not be eligible for parole, except that where the term of life  
10 imprisonment is imposed on a person convicted of a violation of  
11 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.  
12 (cf: P.L.1995, c.126, s.3)

13

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

16 7. a. Each adult inmate sentenced for an offense committed prior  
17 to the effective date of P.L. , c. (C. )(now pending before the  
18 Legislature as this bill) to a term of incarceration in a county penal  
19 institution, or to a specific term of years at the State Prison or the  
20 correctional institution for women shall become primarily eligible for  
21 parole after having served any judicial or statutory mandatory  
22 minimum term, or one-third of the sentence imposed where no  
23 mandatory minimum term has been imposed less commutation time for  
24 good behavior pursuant to N.J.S.2A:164-24 or R.S. 30:4-140 and  
25 credits for diligent application to work and other institutional  
26 assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et seq.) or  
27 R.S.30:4-92. Consistent with the provisions of the New Jersey Code  
28 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),  
29 commutation and work credits shall not in any way reduce any judicial  
30 or statutory mandatory minimum term and such credits accrued shall  
31 only be awarded subsequent to the expiration of the term.

32 b. Each adult inmate sentenced for an offense committed prior to  
33 the effective date of P.L. , c. (C. )(now pending before the  
34 Legislature as this bill) to a term of life imprisonment shall become  
35 primarily eligible for parole after having served any judicial or  
36 statutory mandatory minimum term, or 25 years where no mandatory  
37 minimum term has been imposed less commutation time for good  
38 behavior and credits for diligent application to work and other  
39 institutional assignments. If an inmate sentenced to a specific term or  
40 terms of years is eligible for parole on a date later than the date upon  
41 which he would be eligible if a life sentence had been imposed, then in  
42 such case the inmate shall be eligible for parole after having served 25  
43 years, less commutation time for good behavior and credits for diligent  
44 application to work and other institutional assignments. Consistent  
45 with the provisions of the New Jersey Code of Criminal Justice  
46 (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work

1 credits shall not in any way reduce any judicial or statutory mandatory  
2 minimum term and such credits accrued shall only be awarded  
3 subsequent to the expiration of the term.

4 c. Each inmate sentenced to a specific term of years pursuant to the  
5 "Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1  
6 through 45) shall become primarily eligible for parole after having  
7 served one-third of the sentence imposed less commutation time for  
8 good behavior and credits for diligent application to work and other  
9 institutional assignments.

10 d. Each adult inmate sentenced to an indeterminate term of years  
11 as a young adult offender pursuant to N.J.S.2C:43-5 shall become  
12 primarily eligible for parole consideration pursuant to a schedule of  
13 primary eligibility dates developed by the board, less adjustment for  
14 program participation. In no case shall the board schedule require that  
15 the primary parole eligibility date for a young adult offender be greater  
16 than the primary parole eligibility date required pursuant to this section  
17 for the presumptive term for the crime authorized pursuant to  
18 N.J.S.2C:44-1(f).

19 e. Each adult inmate sentenced to the Adult Diagnostic and  
20 Treatment Center, Avenel, shall become primarily eligible for parole  
21 upon recommendation by the special classification review board  
22 pursuant to N.J.S.2C:47-5, except that no such inmate shall become  
23 primarily eligible prior to the expiration of any mandatory or fixed  
24 minimum term imposed pursuant to N.J.S.2C:14-6.

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

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

44 h. When an inmate is sentenced to more than one term of  
45 imprisonment, the primary parole eligibility terms calculated pursuant  
46 to this section shall be aggregated by the board for the purpose of

1 determining the primary parole eligibility date, except that no juvenile  
2 commitment shall be aggregated with any adult sentence. The board  
3 shall promulgate rules and regulations to govern aggregation under  
4 this subsection.

5 i. The primary eligibility date shall be computed by a designated  
6 representative of the board and made known to the inmate in writing  
7 not later than 90 days following the commencement of the sentence.  
8 In the case of an inmate sentenced to a county penal institution such  
9 notice shall be made pursuant to subsection g. of this section. Each  
10 inmate shall be given the opportunity to acknowledge in writing the  
11 receipt of such computation. Failure or refusal by the inmate to  
12 acknowledge the receipt of such computation shall be recorded by the  
13 board but shall not constitute a violation of this subsection.

14 j. Except as provided in this subsection, each inmate sentenced  
15 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,  
16 N.J.S.2A:164-17 for a fixed minimum and maximum term or  
17 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date  
18 computed pursuant to this section, but shall be primarily eligible on a  
19 date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),  
20 which is continued in effect for this purpose. Inmates classified as  
21 second, third or fourth offenders pursuant to section 12 of P.L.1948,  
22 c. 84 (C.30:4-123.12) shall become primarily eligible for parole after  
23 serving one-third, one-half or two-thirds of the maximum sentence  
24 imposed, respectively, less in each instance commutation time for good  
25 behavior and credits for diligent application to work and other  
26 institutional assignments; provided, however, that if the prosecuting  
27 attorney or the sentencing court advises the board that the punitive  
28 aspects of the sentence imposed on such inmates will not have been  
29 fulfilled by the time of parole eligibility calculated pursuant to this  
30 subsection, then the inmate shall not become primarily eligible for  
31 parole until serving an additional period which shall be one-half of the  
32 difference between the primary parole eligibility date calculated  
33 pursuant to this subsection and the parole eligibility date calculated  
34 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the  
35 prosecuting attorney or the sentencing court advises the board that the  
36 punitive aspects of the sentence have not been fulfilled, such advice  
37 need not be supported by reasons and will be deemed conclusive and  
38 final. Any such decision shall not be subject to judicial review except  
39 to the extent mandated by the New Jersey and United States  
40 Constitutions. The board shall, reasonably prior to considering any  
41 such case, advise the prosecuting attorney and the sentencing court of  
42 all information relevant to such inmate's parole eligibility.

43 k. Except if required to serve a longer judicial or statutory  
44 mandatory minimum term, each adult inmate sentenced on or after the  
45 effective date of P.L. , c. (now pending before the Legislature as  
46 this bill) shall become primarily eligible for parole as follows:

