

[First Reprint]
SENATE, No. 338

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators MARTIN, BENNETT, Matheussen, Sinagra and Kosco

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.]

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted October 24, 1996.

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

3 c. A person who has been convicted under 2C:39-4a. of possession
4 of a firearm with intent to use it against the person of another, or of
5 a crime under any of the following sections: 2C:11-3, 2C:11-4,
6 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,
7 2C:29-5, who, while in the course of committing or attempting to
8 commit the crime, including the immediate flight therefrom, used or
9 was in possession of a firearm as defined in 2C:39-1f., shall be
10 sentenced to a term of imprisonment by the court. The term of
11 imprisonment shall include the imposition of a minimum term. The
12 minimum term shall be fixed at [, or between, one-third and one-half]
13 three-fifths of the sentence imposed by the court or three years,
14 whichever is greater, or 18 months in the case of a fourth degree
15 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] three-fifths of the sentence imposed by the
15 court or three years, whichever is greater, not less than seven years if
16 the person is convicted of a violation of N.J.S.2C:35-6, or 18 months
17 in the case of a fourth degree crime, during which the defendant shall
18 be ineligible 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 machine gun or assault firearm with
36 intent to use it against the person of another, or of a crime under any
37 of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4,
38 N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a.,
39 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,
40 while in the course of committing or attempting to commit the crime,
41 including the immediate flight therefrom, used or was in possession of
42 a machine gun or assault firearm shall be sentenced to a term of
43 imprisonment by the court. The term of imprisonment shall include the
44 imposition of a minimum term. The minimum term shall be fixed at 10
45 years for a crime of the first or second degree, five years for a crime
46 of the third degree, or 18 months in the case of a fourth degree crime,

1 during which the defendant shall be ineligible for parole.

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

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

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

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

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

34

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

36 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

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

43 (1) In case of aggravated manslaughter sentenced under subsection
44 c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the
45 first degree under paragraph (1) of subsection c. of 2C:13-1; or
46 aggravated sexual assault if the person is eligible for an extended term

1 pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a
2 specific term of years which shall be between 30 years and life
3 imprisonment;

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

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

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

12 (5) In the case of a crime of the fourth degree pursuant to
13 2C:43-6c., 2C:44-3d., 2C:44-3e. for a term of five years, and in the
14 case of a crime of the fourth degree pursuant to 2C:43-6f. and
15 2C:43-6g. for a term which shall be fixed by the court between three
16 and five years;

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

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

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

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

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

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

18 7. a. Each adult inmate sentenced ¹for an offense committed¹ prior
19 to the effective date of P.L. c. (C.) (now pending before the
20 Legislature as this bill) to a term of incarceration in a county penal
21 institution, or to a specific term of years at the State Prison or the
22 correctional institution for women shall become primarily eligible for
23 parole after having served any judicial or statutory mandatory
24 minimum term, or one-third of the sentence imposed where no
25 mandatory minimum term has been imposed less commutation time for
26 good behavior pursuant to N.J.S.2A:164-24 or R.S. 30:4-140 and
27 credits for diligent application to work and other institutional
28 assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et seq.) or
29 R.S.30:4-92. Consistent with the provisions of the New Jersey Code
30 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
31 commutation and work credits shall not in any way reduce any judicial
32 or statutory mandatory minimum term and such credits accrued shall
33 only be awarded subsequent to the expiration of the term.

34 b. Each adult inmate sentenced ¹for an offense committed¹ prior to
35 the effective date of P.L. c. (C.) (now pending before the
36 Legislature as this bill) to a term of life imprisonment shall become
37 primarily eligible for parole after having served any judicial or
38 statutory mandatory minimum term, or 25 years where no mandatory
39 minimum term has been imposed less commutation time for good
40 behavior and credits for diligent application to work and other
41 institutional assignments. If an inmate sentenced to a specific term or
42 terms of years is eligible for parole on a date later than the date upon
43 which he would be eligible if a life sentence had been imposed, then in
44 such case the inmate shall be eligible for parole after having served 25
45 years, less commutation time for good behavior and credits for diligent
46 application to work and other institutional assignments. Consistent

1 with the provisions of the New Jersey Code of Criminal Justice
2 (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work
3 credits shall not in any way reduce any judicial or statutory mandatory
4 minimum term and such credits accrued shall only be awarded
5 subsequent to the expiration of the term.

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

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

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

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

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

46 h. When an inmate is sentenced to more than one term of

1 imprisonment, the primary parole eligibility terms calculated pursuant
2 to this section shall be aggregated by the board for the purpose of
3 determining the primary parole eligibility date, except that no juvenile
4 commitment shall be aggregated with any adult sentence. The board
5 shall promulgate rules and regulations to govern aggregation under
6 this subsection.

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

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

45 k. ¹[Each adult inmate sentenced on or after the effective date of
46 P.L. ., c. (C.)(now pending before the Legislature as this bill) to

1 a term of incarceration or to a specific term of years at the State
2 Prison or the correctional institution for women shall become primarily
3 eligible for parole after serving any judicial or statutory mandatory
4 minimum term, or one-half of the sentence imposed where no
5 mandatory minimum has been imposed.

6 1. Each adult inmate sentenced on or after the effective date of
7 P.L. , c. (C.)(now pending before the Legislature as this bill) to
8 a term of life imprisonment shall become primarily eligible for parole
9 after having served any judicial or statutory mandatory minimum term
10 or 25 years where no mandatory term has been imposed.]

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

15 (1) After serving 25 years, if sentenced to a term of life
16 imprisonment;

17 (2) After serving 85% of the sentence imposed, if convicted of a
18 crime of the first or second degree involving violence; and

19 (3) After serving 50% of the sentence imposed, if convicted of a
20 crime not covered by the provisions of paragraphs (1) or (2).¹

21 (cf: P.L.1982, c.71, s.2)

22

23 4. This act shall take effect on the 30th day following the approval
24 by the voters of the "Correctional Facilities Construction Bond Act of
25 1996," P.L. , c. (now pending before the Legislature as Senate Bill
26 No.¹²⁹⁵¹ of 1996).

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31 Increases minimum which an inmate must serve before being eligible
32 for parole.