

[Second Reprint]  
**SENATE, No. 338**

**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators MARTIN, BENNETT, Matheussen, Sinagra, Kosco and Scott

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:**

<sup>1</sup> Senate SJU committee amendments adopted October 24, 1996.

<sup>2</sup> Senate SBA committee amendments adopted February 10, 1997.

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 <sup>1</sup>for an offense committed<sup>1</sup> 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 <sup>2</sup>[P.L.1972, c.115 (C.30:8-28.1 et seq.)]  
29 section 1 of P.L.1981, c.140 (C.30:8-28.4)<sup>2</sup> or R.S.30:4-92.  
30 Consistent with the provisions of the New Jersey Code of Criminal  
31 Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and  
32 work credits shall not in any way reduce any judicial or statutory  
33 mandatory minimum term and such credits accrued shall only be  
34 awarded subsequent to the expiration of the term.

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

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

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

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

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

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

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

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

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

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

1     k. <sup>1</sup>[Each adult inmate sentenced on or after the effective date of  
 2 P.L.     , c. (C.     )(now pending before the Legislature as this bill) to  
 3 a term of incarceration or to a specific term of years at the State  
 4 Prison or the correctional institution for women shall become primarily  
 5 eligible for parole after serving any judicial or statutory mandatory  
 6 minimum term, or one-half of the sentence imposed where no  
 7 mandatory minimum has been imposed.

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

13     Except if required to serve a longer judicial or statutory mandatory  
 14 minimum term, each adult inmate sentenced <sup>2</sup>for an offense committed<sup>2</sup>  
 15 on or after the effective date of P.L.     , c.     (now pending before  
 16 the Legislature as this bill) shall become primarily eligible for parole  
 17 as follows:

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

20     (2) After serving 85% of the sentence imposed, if convicted of a cri  
 21 of the first or second degree involving violence; and

22     (3) After serving 50% of the sentence imposed, if convicted of a  
 23 crime not covered by the provisions of paragraphs (1) or (2) <sup>2</sup>of this  
 24 subsection<sup>2, 1</sup>.

25     (cf: P.L.1982, c.71, s.2)

26

27     4. This act shall take effect on the 30th day following the approval  
 28 by the voters of the "Correctional Facilities Construction Bond Act of  
 29 1996," P.L.     , c.     (now pending before the Legislature as Senate Bill  
 30 No.<sup>1</sup>295<sup>1</sup> of 1996).

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35     Increases minimum which an inmate must serve before being eligible  
 36 for parole.