

2C:39-7

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 216
NJSA: 2C:39-7 (Firearms offenses – mandatory prison term)
BILL NO: A11 (Substituted for S1504)

SPONSOR(S): Holzapfel and DiGaetano

DATE INTRODUCED: May 11, 2000

COMMITTEE: **ASSEMBLY:** Law and Public Safety; Appropriations
SENATE: Law and Public Safety; Budget

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** July 28, 2001
SENATE: June 21, 2001

DATE OF APPROVAL: August 21, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

A11

SPONSORS STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 5-22-
2000(Law&Pub.)

6-19-2000(Appopr.)

2001(Law&Pub.) **SENATE:** Yes 3-15-

5-31-2001(Budget)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL NOTE: Yes

S1504

SPONSORS STATEMENT: (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

Identical to Senate L&PS Statement for A11

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

ASSEMBLY, No. 11

STATE OF NEW JERSEY

209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

SYNOPSIS

Increases mandatory minimum imprisonment to 5 years for certain violent crimes committed with a firearm. Amends Grave's Act to provide for 5 years mandatory minimum imprisonment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the commission of crimes involving firearms and
2 amending N.J.S.2C:43-6.

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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as
42 defined in **[2C:39-1f.]** subsection f. of N.J.S.2C:39-1, shall be

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 sentenced to a term of imprisonment by the court. The term of
2 imprisonment shall include the imposition of a minimum term. The
3 minimum term shall be fixed at, or between, one-third and one-half of
4 the sentence imposed by the court or ~~[three]~~ five years, whichever is
5 greater, or 18 months in the case of a fourth degree crime, during
6 which the defendant shall be ineligible for parole.

7 The minimum terms established by this section shall not prevent the
8 court from imposing presumptive terms of imprisonment pursuant to
9 ~~[2C:44-1f. (1)]~~ paragraph 1 of subsection f. of N.J.S.2C:44-1 except
10 in cases of crimes of the fourth degree.

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

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

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

37 f. A person convicted of manufacturing, distributing, dispensing or
38 possessing with intent to distribute any dangerous substance or
39 controlled substance analog under N.J.S.2C:35-5, of maintaining or
40 operating a controlled dangerous substance production facility under
41 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
42 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
43 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
44 to distribute on or near school property or buses under section 1 of
45 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of
46 manufacturing, distributing, dispensing or possessing with intent to

1 distribute a controlled dangerous substance or controlled substance
2 analog, shall upon application of the prosecuting attorney be sentenced
3 by the court to an extended term as authorized by subsection c. of
4 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
5 discretionary with the court. The term of imprisonment shall, except
6 as may be provided in N.J.S.2C:35-12, include the imposition of a
7 minimum term. The minimum term shall be fixed at, or between,
8 one-third and one-half of the sentence imposed by the court or three
9 years, whichever is greater, not less than seven years if the person is
10 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of
11 a fourth degree crime, during which the defendant shall be ineligible
12 for parole.

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

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

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

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

46 A person who has been convicted of an offense enumerated in this

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

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

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

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

28

29 2. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill would increase to five years the mandatory minimum term
35 of imprisonment of three years currently required under the "Grave's
36 Act" for using or possessing a firearm in the course of committing
37 certain violent crimes.

38 The Grave's Act requires courts to impose a mandatory minimum
39 term of imprisonment on persons convicted of illegal possession of a
40 firearm with the intent to use it against another person and on persons
41 who used or possessed a firearm while committing, or attempting to
42 commit, murder, manslaughter, aggravated assault, kidnapping,
43 aggravated sexual assault, aggravated criminal sexual contact, robbery,
44 burglary or escape. The minimum term is one-third to one-half of the
45 sentence imposed, or three years, whichever is greater. Under this bill,
46 the mandatory minimum term is increased to one-third to one-half of

1 the sentence imposed, or five years, whichever is greater.

2 The bill also makes technical corrections to statutory citations.

3 Federal legislation known as "Project Exile," recently passed by the
4 United States House of Representatives, would provide \$100 million
5 in firearms enforcement grants to states that require a mandatory
6 minimum sentence of five years without parole to be imposed on
7 persons who use or carry firearms during violent crimes. The purpose
8 of this bill is to ensure that this State qualifies for any Project Exile
9 funding that may become available under federal law.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 11

STATE OF NEW JERSEY

DATED: MAY 22, 2000

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 11.

Assembly Bill No. 11 increases the mandatory minimum term of imprisonment currently required under the "Grave's Act" for using or possessing a firearm in the course of committing certain violent crimes to one-third to one-half of the sentence imposed, or five years, whichever is greater.

The Grave's Act requires courts to impose a mandatory minimum term of imprisonment on persons convicted of illegal possession of a firearm with the intent to use it against another person and on persons who used or possessed a firearm while committing, or attempting to commit murder, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary or escape. The current minimum term is one-third to one-half of the sentence imposed, or three years, whichever is greater.

The bill also makes technical corrections to statutory citations.

Federal legislation known as "Project Exile," recently passed by the United States House of Representatives, would provide \$100 million in firearms enforcement grants to states that require a mandatory minimum sentence of five years without parole to be imposed on persons who use or carry firearms during violent crimes. The purpose of this bill is to ensure that this State qualifies for any Project Exile funding that may become available under federal law.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 11

STATE OF NEW JERSEY

DATED: JUNE 19, 2000

The Assembly Appropriations Committee reports favorably Assembly Bill No. 11.

Assembly Bill No. 11 increases the mandatory minimum term of imprisonment currently required under the "Graves Act" for using or possessing a firearm in the course of committing certain violent crimes to one-third to one-half of the sentence imposed, or five years, whichever is greater.

The Graves Act requires courts to impose a mandatory minimum term of imprisonment on persons convicted of illegal possession of a firearm with the intent to use it against another person and on persons who used or possessed a firearm while committing, or attempting to commit murder, manslaughter, aggravated assault, kidnaping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary or escape. The current minimum term is one-third to one-half of the sentence imposed, or three years, whichever is greater.

The bill also makes technical corrections to statutory citations.

Federal legislation known as "Project Exile," recently passed by the United States House of Representatives, would provide \$100 million in firearms enforcement grants to states that require a mandatory minimum sentence of five years without parole to be imposed on persons who use or carry firearms during violent crimes. The purpose of this bill is to ensure that this State qualifies for any Project Exile funding that may become available under federal law.

FISCAL IMPACT:

According to the Executive Branch, it is not known what the expenditure would be from the General Fund. This bill increases the mandatory minimum term, whereby, ongoing operating expenses of housing a State sentenced prison inmate is approximately \$26,000 per year. The Graves Act does not apply to juveniles, except those waived to adult court and this is a very small number sentenced to adult prisons. This bill should not have an impact on the number of offenders, although some offenders may be subject to an increase in length-of-stay.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 11

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2001

The Senate Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 11.

As amended and released by the committee, this bill would impose a mandatory minimum sentence of five years imprisonment, without eligibility for parole, on a person who is convicted of purchasing, owning, or possessing a firearm and who had previously been convicted of a violent crime or certain crimes involving controlled dangerous substances.

According to the sponsor's statement, federal legislation known as "Project Exile," would provide \$100 million in firearms enforcement grants to states that require a mandatory minimum sentence of five years without parole to be imposed on persons who use or carry firearms during violent crimes. It is the committee's understanding that the purpose of this bill is to ensure that this State qualifies for any Project Exile funding that may become available under federal law.

As introduced, the bill increased the mandatory minimum term of imprisonment currently required under the "Graves Act" (N.J.S.2C:43-6) for using or possessing a firearm in the course of committing certain violent crimes. The committee amended the bill to ensure that it would fulfill its stated objective.

As amended and released by the committee, this bill is identical to Senate Bill No. 1504, which also was amended and released by the committee on this same date.

[Corrected Copy]

ASSEMBLY, No. 11

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

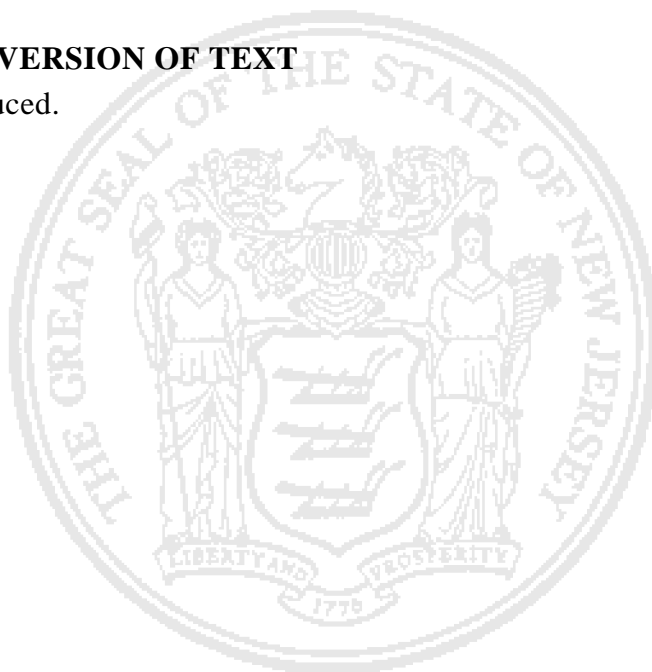
Assemblywoman Heck and Assemblyman LeFevre

SYNOPSIS

Amends Grave's Act to provide for 5 years mandatory minimum imprisonment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/16/2000)

1 AN ACT concerning the commission of crimes involving firearms and
2 amending N.J.S.2C:43-6.

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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as
42 defined in **[2C:39-1f.]** subsection f. of N.J.S.2C:39-1, shall be

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 sentenced to a term of imprisonment by the court. The term of
2 imprisonment shall include the imposition of a minimum term. The
3 minimum term shall be fixed at, or between, one-third and one-half of
4 the sentence imposed by the court or ~~[three]~~ five years, whichever is
5 greater, or 18 months in the case of a fourth degree crime, during
6 which the defendant shall be ineligible for parole.

7 The minimum terms established by this section shall not prevent the
8 court from imposing presumptive terms of imprisonment pursuant to
9 ~~[2C:44-1f. (1)]~~ paragraph 1 of subsection f. of N.J.S.2C:44-1 except
10 in cases of crimes of the fourth degree.

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

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

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

37 f. A person convicted of manufacturing, distributing, dispensing or
38 possessing with intent to distribute any dangerous substance or
39 controlled substance analog under N.J.S.2C:35-5, of maintaining or
40 operating a controlled dangerous substance production facility under
41 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
42 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
43 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
44 to distribute on or near school property or buses under section 1 of
45 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of
46 manufacturing, distributing, dispensing or possessing with intent to

1 distribute a controlled dangerous substance or controlled substance
2 analog, shall upon application of the prosecuting attorney be sentenced
3 by the court to an extended term as authorized by subsection c. of
4 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
5 discretionary with the court. The term of imprisonment shall, except
6 as may be provided in N.J.S.2C:35-12, include the imposition of a
7 minimum term. The minimum term shall be fixed at, or between,
8 one-third and one-half of the sentence imposed by the court or three
9 years, whichever is greater, not less than seven years if the person is
10 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of
11 a fourth degree crime, during which the defendant shall be ineligible
12 for parole.

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

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

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

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

46 A person who has been convicted of an offense enumerated in this

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

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

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

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

28

29 2. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill would increase to five years the mandatory minimum term
35 of imprisonment of three years currently required under the "Grave's
36 Act" for using or possessing a firearm in the course of committing
37 certain violent crimes.

38 The Grave's Act requires courts to impose a mandatory minimum
39 term of imprisonment on persons convicted of illegal possession of a
40 firearm with the intent to use it against another person and on persons
41 who used or possessed a firearm while committing, or attempting to
42 commit, murder, manslaughter, aggravated assault, kidnapping,
43 aggravated sexual assault, aggravated criminal sexual contact, robbery,
44 burglary or escape. The minimum term is one-third to one-half of the
45 sentence imposed, or three years, whichever is greater. Under this bill,
46 the mandatory minimum term is increased to one-third to one-half of

1 the sentence imposed, or five years, whichever is greater.

2 The bill also makes technical corrections to statutory citations.

3 Federal legislation known as "Project Exile," recently passed by the
4 United States House of Representatives, would provide \$100 million
5 in firearms enforcement grants to states that require a mandatory
6 minimum sentence of five years without parole to be imposed on
7 persons who use or carry firearms during violent crimes. The purpose
8 of this bill is to ensure that this State qualifies for any Project Exile
9 funding that may become available under federal law.

[Second Corrected Copy]

ASSEMBLY, No. 11

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

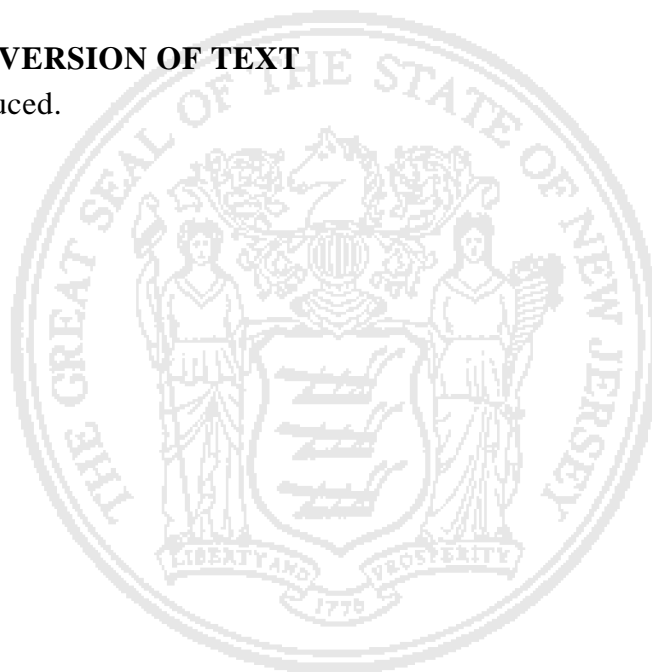
Assemblywoman Heck, Assemblymen LeFevre and Conaway

SYNOPSIS

Amends Graves Act to provide for 5 years mandatory minimum imprisonment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/27/2000)

1 AN ACT concerning the commission of crimes involving firearms and
2 amending N.J.S.2C:43-6.

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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as
42 defined in **[2C:39-1f.]** subsection f. of N.J.S.2C:39-1, shall be

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 sentenced to a term of imprisonment by the court. The term of
2 imprisonment shall include the imposition of a minimum term. The
3 minimum term shall be fixed at, or between, one-third and one-half of
4 the sentence imposed by the court or ~~[three]~~ five years, whichever is
5 greater, or 18 months in the case of a fourth degree crime, during
6 which the defendant shall be ineligible for parole.

7 The minimum terms established by this section shall not prevent the
8 court from imposing presumptive terms of imprisonment pursuant to
9 ~~[2C:44-1f. (1)]~~ paragraph 1 of subsection f. of N.J.S.2C:44-1 except
10 in cases of crimes of the fourth degree.

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

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

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

37 f. A person convicted of manufacturing, distributing, dispensing or
38 possessing with intent to distribute any dangerous substance or
39 controlled substance analog under N.J.S.2C:35-5, of maintaining or
40 operating a controlled dangerous substance production facility under
41 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
42 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
43 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
44 to distribute on or near school property or buses under section 1 of
45 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of
46 manufacturing, distributing, dispensing or possessing with intent to

1 distribute a controlled dangerous substance or controlled substance
2 analog, shall upon application of the prosecuting attorney be sentenced
3 by the court to an extended term as authorized by subsection c. of
4 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
5 discretionary with the court. The term of imprisonment shall, except
6 as may be provided in N.J.S.2C:35-12, include the imposition of a
7 minimum term. The minimum term shall be fixed at, or between,
8 one-third and one-half of the sentence imposed by the court or three
9 years, whichever is greater, not less than seven years if the person is
10 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of
11 a fourth degree crime, during which the defendant shall be ineligible
12 for parole.

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

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

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

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

46 A person who has been convicted of an offense enumerated in this

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

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

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

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

28

29 2. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill would increase to five years the mandatory minimum term
35 of imprisonment of three years currently required under the "Graves
36 Act" for using or possessing a firearm in the course of committing
37 certain violent crimes.

38 The Graves Act requires courts to impose a mandatory minimum
39 term of imprisonment on persons convicted of illegal possession of a
40 firearm with the intent to use it against another person and on persons
41 who used or possessed a firearm while committing, or attempting to
42 commit, murder, manslaughter, aggravated assault, kidnapping,
43 aggravated sexual assault, aggravated criminal sexual contact, robbery,
44 burglary or escape. The minimum term is one-third to one-half of the
45 sentence imposed, or three years, whichever is greater. Under this bill,
46 the mandatory minimum term is increased to one-third to one-half of

1 the sentence imposed, or five years, whichever is greater.

2 The bill also makes technical corrections to statutory citations.

3 Federal legislation known as "Project Exile," recently passed by the
4 United States House of Representatives, would provide \$100 million
5 in firearms enforcement grants to states that require a mandatory
6 minimum sentence of five years without parole to be imposed on
7 persons who use or carry firearms during violent crimes. The purpose
8 of this bill is to ensure that this State qualifies for any Project Exile
9 funding that may become available under federal law.

FISCAL NOTE
[SECOND CORRECTED COPY]
ASSEMBLY, No. 11
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JULY 27, 2000

SUMMARY

Synopsis: Amends Graves Act to provide for 5 years mandatory minimum imprisonment

Type of Impact: Unknown expenditure from the General Fund

Agencies Affected: Department of Corrections

Executive Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Unknown	Unknown	Unknown

BILL DESCRIPTION

The Second Corrected Copy of Assembly Bill No. 11 of 2000 increases the mandatory minimum term of imprisonment currently required under the "Graves Act" for using or possessing a firearm in the course of committing certain violent crimes to one-third to one-half of the sentence imposed, or five years, whichever is greater. The "Graves Act" requires courts to impose a mandatory minimum term of imprisonment on persons convicted of illegal possession of a firearm with the intent to use it against another person and on persons who used or possessed a firearm while committing, or attempting to commit murder, manslaughter, aggravated assault, kidnaping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary or escape. The current minimum term is one-third to one-half of the sentence imposed, or three years, whichever is greater, or 18 months in the case of a fourth degree crime, during which, the defendant shall be ineligible for parole.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of Corrections states that the "Graves Act" currently requires a mandatory minimum sentence of 18 months to 3 years for crimes committed with the use of a firearm. A comparison of the "Graves Act" with the "No Early Release" (2C:43-7.2) provisions shows that

the same offenses are covered. Under "No Early Release", possession or use of a firearm during the commission of a specified offense is a condition requiring the imposition of an 85 percent term. In these cases, the "Graves" mandatory minimums are certain to be merged with the 85 percent term, thereby having no real impact on the time served for the offense. Most "No Early Release" cases (90 percent) have terms in excess of 5 years; therefore, the firearms sentence alone is likely to add little to the amount of time to be served. Because the Grave's Act is a sentencing enhancement rather than an offense, available databases code the controlling offense (i.e. murder, manslaughter, kidnaping, etc.) but do not capture add-ons such as firearms use. As a result, a time-consuming manual review of potential Graves cases would have to be conducted in order to identify and code the impact of this legislation.

The department further states that the bill would not impact on the number of offenders committed to the DOC, although some offenders may be subject to an increase in length of stay.

The Juvenile Justice Commission (JJC) states the "Graves Act" does not apply to juveniles, except those waived to adult court. This does not happen in a large number of cases. Of the small number of juveniles waived to adult court, many are sentenced to adult prisons. Therefore, the JJC does not anticipate that this bill would impact its prison population.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive estimate, but adds that DOC data indicate that the cost of constructing one additional prison bed space range between \$60,000 and \$95,000 depending upon the security level of the bed. The ongoing operations expenses of housing a State sentenced prison inmate is \$26,000 per year for the duration of that offender's incarceration.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

ASSEMBLY, No. 11

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MAY 11, 2000

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman PAUL DIGAETANO

District 36 (Bergen, Essex and Passaic)

Co-Sponsored by:

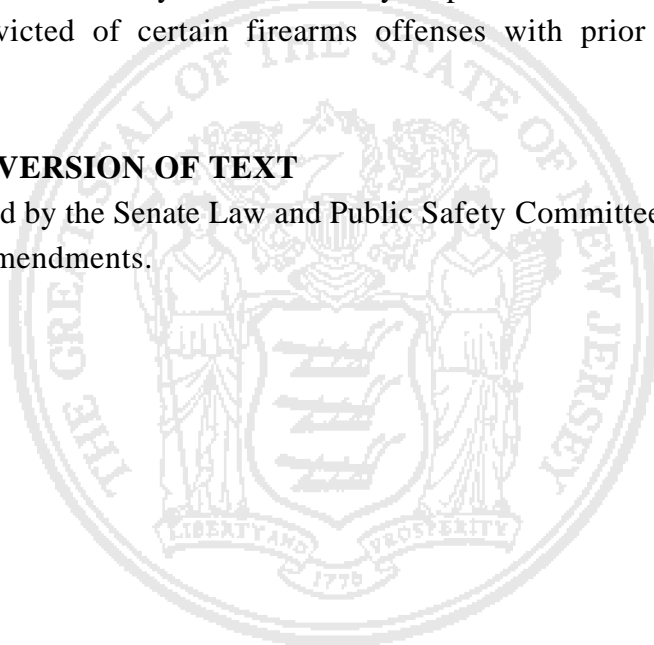
Assemblywoman Heck, Assemblymen LeFevre, Conaway, Senators Ciesla, Kosco, Singer, Robertson, Bucco, Allen, Matheussen, Assemblymen Azzolina, Blee, Corodemus, Assemblywoman Crecco, Assemblymen Geist, Kelly, T.Smith, Thompson and Zecker

SYNOPSIS

Provides for mandatory minimum five year prison term without parole for persons convicted of certain firearms offenses with prior violent crime convictions.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on March 15, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning the commission of crimes involving firearms and
2 amending ¹[N.J.S.2C:43-6] P.L.1979, c.179¹.

3

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

6

7 ¹[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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted March 15, 2001.

1 defined in [2C:39-1f.] subsection f. of N.J.S.2C:39-1, shall be
2 sentenced to a term of imprisonment by the court. The term of
3 imprisonment shall include the imposition of a minimum term. The
4 minimum term shall be fixed at, or between, one-third and one-half of
5 the sentence imposed by the court or ~~[three]~~ five years, whichever is
6 greater, or 18 months in the case of a fourth degree crime, during
7 which the defendant shall be ineligible for parole.

8 The minimum terms established by this section shall not prevent the
9 court from imposing presumptive terms of imprisonment pursuant to
10 [2C:44-1f. (1)] paragraph 1 of subsection f. of N.J.S.2C:44-1 except
11 in cases of crimes of the fourth degree.

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

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

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

38 f. A person convicted of manufacturing, distributing, dispensing or
39 possessing with intent to distribute any dangerous substance or
40 controlled substance analog under N.J.S.2C:35-5, of maintaining or
41 operating a controlled dangerous substance production facility under
42 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
43 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
44 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
45 to distribute on or near school property or buses under section 1 of
46 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of

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

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

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

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

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

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

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

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

28 (cf: P.L.1993, c.219, s.6)]¹

29

30 ¹1. Section 6 of P.L. 1979, c.179 (C.2C:39-7) is amended to read
31 as follows:

32 6. Certain Persons Not to Have Weapons.

33 a. Except as provided in subsection b. of this section, any person,
34 having been convicted in this State or elsewhere of the crime of
35 aggravated assault, arson, burglary, escape, extortion, homicide,
36 kidnapping, robbery, aggravated sexual assault, sexual assault or
37 endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether
38 or not armed with or having in his possession any weapon enumerated
39 in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime
40 pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or
41 N.J.S.2C:39-9, or any person who has ever been committed for a
42 mental disorder to any hospital, mental institution or sanitarium unless
43 he possesses a certificate of a medical doctor or psychiatrist licensed
44 to practice in New Jersey or other satisfactory proof that he is no
45 longer suffering from a mental disorder which interferes with or
46 handicaps him in the handling of a firearm, or any person who has been

1 convicted of other than a disorderly persons or petty disorderly
2 persons offense for the unlawful use, possession or sale of a controlled
3 dangerous substance as defined in N.J.S.2C:35-2 who purchases,
4 owns, possesses or controls any of the said weapons is guilty of a
5 crime of the fourth degree.

6 b. A person having been convicted in this State or elsewhere of the
7 crime of aggravated assault, arson, burglary, escape, extortion,
8 homicide, kidnapping, robbery, aggravated sexual assault, sexual
9 assault or endangering the welfare of a child pursuant to
10 N.J.S.2C:24-4, whether or not armed with or having in his possession
11 a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person
12 having been convicted of a crime pursuant to the provisions of
13 N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of
14 P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3;
15 N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or
16 controls a firearm is guilty of a crime of the second degree and upon
17 conviction thereof, the person shall be sentenced to a term of
18 imprisonment by the court. The term of imprisonment shall include the
19 imposition of a minimum term, which shall be fixed at five years,
20 during which the defendant shall be ineligible for parole. If the
21 defendant is sentenced to an extended term of imprisonment pursuant
22 to N.J.S. 2C:43-7, the extended term of imprisonment shall include the
23 imposition of a minimum term, which shall be fixed at, or between,
24 one-third and one-half of the sentence imposed by the court or five
25 years, whichever is greater, during which the defendant shall be
26 ineligible for parole.

27 c. Whenever any person shall have been convicted in another state,
28 territory, commonwealth or other jurisdiction of the United States, or
29 any country in the world, in a court of competent jurisdiction, of a
30 crime which in said other jurisdiction or country is comparable to one
31 of the crimes enumerated in subsection a. or b. of this section, then
32 that person shall be subject to the provisions of this section.¹
33 (cf: P.L.1995, c.114, s.1)

34

35 2. This act shall take effect immediately.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 11

STATE OF NEW JERSEY

DATED: MAY 31, 2001

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 11 (1R).

This bill amends the law prohibiting a person convicted of a violent crime or drug offense from buying or owning a firearm, imposing a minimum term of imprisonment for violating the prohibition.

Under current law, it is a crime of the second degree for a person to purchase, own, possess or control a firearm if that person has been convicted, in New Jersey or elsewhere, of any of the following:

- < homicide,
- < aggravated assault,
- < aggravated sexual assault or simple sexual assault,
- < kidnapping,
- < robbery,
- < burglary,
- < arson,
- < escape,
- < extortion,
- < child endangerment,
- < illegal manufacture or sale of or trafficking in a controlled dangerous substance, or
- < various firearms offenses.

The ordinary term of imprisonment to which a person may be sentenced upon being convicted of a crime of the second degree is from five to 10 years. However, the person may be eligible for parole after service of as little as one-third of that term.

Under this bill, a person who, after having been convicted of a violent crime or drug offense, violates the prohibition against buying or owning a firearm would be subject to minimum five years' imprisonment without eligibility for parole.

The provisions of this bill are identical to those of Senate Bill No. 1504 (1R), which the committee also reports this day.

FISCAL IMPACT

This legislation would have the effect, in some cases, of prolonging the imprisonment of persons convicted of a firearms offense after

having been convicted of one of the predicate offenses listed above. No information is available on the length of time by which such imprisonment might be extended. It may, however, be noted that data supplied by the Department of Corrections indicates that the annual operating cost of housing a State-sentenced inmate is \$26,000.

It may further be noted that federal legislation (H.R.534, pending before the House Judiciary Committee's Subcommittee on Crimes) would authorize appropriations, over a five-year period, of a total of \$100 million in firearms enforcement grants to states that impose a minimum sentence of five years' imprisonment without parole on persons who, having at least one prior conviction for a violent crime, are found to possess a firearm.

SENATE, No. 1504

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 29, 2000

Sponsored by:

Senator ANDREW R. CIESLA
District 10 (Monmouth and Ocean)
Senator LOUIS F. KOSCO
District 38 (Bergen)

Co-Sponsored by:

Senators Singer, Robertson, Bucco and Allen

SYNOPSIS

Amends Graves Act to provide for 5 years mandatory minimum imprisonment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2000)

S1504 CIESLA, KOSCO

2

1 AN ACT concerning the commission of crimes involving firearms and
2 amending N.J.S.2C:43-6.

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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as
42 defined in **[2C:39-1f.]** subsection f. of N.J.S.2C:39-1, shall be

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 sentenced to a term of imprisonment by the court. The term of
2 imprisonment shall include the imposition of a minimum term. The
3 minimum term shall be fixed at, or between, one-third and one-half of
4 the sentence imposed by the court or ~~[three]~~ five years, whichever is
5 greater, or 18 months in the case of a fourth degree crime, during
6 which the defendant shall be ineligible for parole.

7 The minimum terms established by this section shall not prevent the
8 court from imposing presumptive terms of imprisonment pursuant to
9 ~~[2C:44-1f. (1)]~~ paragraph 1 of subsection f. of N.J.S.2C:44-1 except
10 in cases of crimes of the fourth degree.

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

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

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

37 f. A person convicted of manufacturing, distributing, dispensing or
38 possessing with intent to distribute any dangerous substance or
39 controlled substance analog under N.J.S.2C:35-5, of maintaining or
40 operating a controlled dangerous substance production facility under
41 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
42 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
43 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
44 to distribute on or near school property or buses under section 1 of
45 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of
46 manufacturing, distributing, dispensing or possessing with intent to

1 distribute a controlled dangerous substance or controlled substance
2 analog, shall upon application of the prosecuting attorney be sentenced
3 by the court to an extended term as authorized by subsection c. of
4 N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily
5 discretionary with the court. The term of imprisonment shall, except
6 as may be provided in N.J.S.2C:35-12, include the imposition of a
7 minimum term. The minimum term shall be fixed at, or between,
8 one-third and one-half of the sentence imposed by the court or three
9 years, whichever is greater, not less than seven years if the person is
10 convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of
11 a fourth degree crime, during which the defendant shall be ineligible
12 for parole.

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

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

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

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

46 A person who has been convicted of an offense enumerated in this

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

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

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

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

28

29 2. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill increases the mandatory minimum term of imprisonment
35 currently required under the "Graves Act" for using or possessing a
36 firearm in the course of committing certain violent crimes to one-third
37 to one-half of the sentence imposed, or five years, whichever is
38 greater.

39 The Graves Act requires courts to impose a mandatory minimum
40 term of imprisonment on persons convicted of illegal possession of a
41 firearm with the intent to use it against another person and on persons
42 who used or possessed a firearm while committing, or attempting to
43 commit murder, manslaughter, aggravated assault, kidnapping,
44 aggravated sexual assault, aggravated criminal sexual contact, robbery,
45 burglary or escape. The current minimum term is one-third to one-half
46 of the sentence imposed, or three years, whichever is greater.

S1504 CIESLA, KOSCO

6

1 The bill also makes technical corrections to statutory citations.
2 Federal legislation known as "Project Exile," recently passed by the
3 United States House of Representatives, would provide \$100 million
4 in firearms enforcement grants to states that require a mandatory
5 minimum sentence of five years without parole to be imposed on
6 persons who use or carry firearms during violent crimes. The purpose
7 of this bill is to ensure that this State qualifies for any Project Exile
8 funding that may become available under federal law.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1504

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2001

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1504.

As amended and released by the committee, this bill would impose a mandatory minimum sentence of five years imprisonment, without eligibility for parole, on a person who is convicted of purchasing, owning, or possessing a firearm and who had previously been convicted of a violent crime or certain crimes involving controlled dangerous substances.

According to the sponsor's statement, federal legislation known as "Project Exile" would provide \$100 million in firearms enforcement grants to states that require a mandatory minimum sentence of five years without parole to be imposed on persons who use or carry firearms during violent crimes. It is the committee's understanding that the purpose of this bill is to ensure that this State qualifies for any Project Exile funding that may become available under federal law.

As introduced, the bill increased the mandatory minimum term of imprisonment currently required under the "Graves Act" (N.J.S.2C:43-6) for using or possessing a firearm in the course of committing certain violent crimes. The committee amended the bill to ensure that it would fulfill its stated objective.

As amended and released by the committee, this bill is identical to Assembly Bill No. 11, which also was amended and released by the committee on this same date.

[First Reprint]

SENATE, No. 1504

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 29, 2000

Sponsored by:

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

Senator LOUIS F. KOSCO

District 38 (Bergen)

Co-Sponsored by:

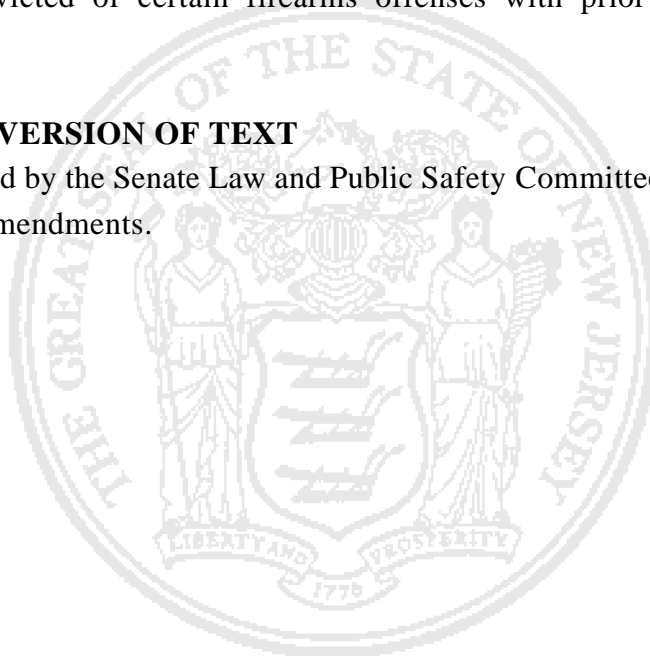
Senators Singer, Robertson, Bucco, Allen and Matheussen

SYNOPSIS

Provides for mandatory minimum five year prison term without parole for persons convicted of certain firearms offenses with prior violent crime convictions.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on March 15, 2001, with amendments.



(Sponsorship Updated As Of: 6/22/2001)

1 AN ACT concerning the commission of crimes involving firearms and
2 amending ¹[N.J.S.2C:43-6] P.L.1979, c.179¹.

3

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

6

7 ¹[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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including the
41 immediate flight therefrom, used or was in possession of a firearm as

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted March 15, 2001.

1 defined in [2C:39-1f.] subsection f. of N.J.S.2C:39-1, shall be
2 sentenced to a term of imprisonment by the court. The term of
3 imprisonment shall include the imposition of a minimum term. The
4 minimum term shall be fixed at, or between, one-third and one-half of
5 the sentence imposed by the court or ~~[three]~~ five years, whichever is
6 greater, or 18 months in the case of a fourth degree crime, during
7 which the defendant shall be ineligible for parole.

8 The minimum terms established by this section shall not prevent the
9 court from imposing presumptive terms of imprisonment pursuant to
10 [2C:44-1f. (1)] paragraph 1 of subsection f. of N.J.S.2C:44-1 except
11 in cases of crimes of the fourth degree.

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

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

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

38 f. A person convicted of manufacturing, distributing, dispensing or
39 possessing with intent to distribute any dangerous substance or
40 controlled substance analog under N.J.S.2C:35-5, of maintaining or
41 operating a controlled dangerous substance production facility under
42 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
43 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
44 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
45 to distribute on or near school property or buses under section 1 of
46 P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of

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

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

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

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

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

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

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

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

28 (cf: P.L.1993, c.219, s.6)]¹

29

30 ¹1. Section 6 of P.L. 1979, c.179 (C.2C:39-7) is amended to read
31 as follows:

32 6. Certain Persons Not to Have Weapons.

33 a. Except as provided in subsection b. of this section, any person,
34 having been convicted in this State or elsewhere of the crime of
35 aggravated assault, arson, burglary, escape, extortion, homicide,
36 kidnapping, robbery, aggravated sexual assault, sexual assault or
37 endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether
38 or not armed with or having in his possession any weapon enumerated
39 in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime
40 pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or
41 N.J.S.2C:39-9, or any person who has ever been committed for a
42 mental disorder to any hospital, mental institution or sanitarium unless
43 he possesses a certificate of a medical doctor or psychiatrist licensed
44 to practice in New Jersey or other satisfactory proof that he is no
45 longer suffering from a mental disorder which interferes with or
46 handicaps him in the handling of a firearm, or any person who has been

1 convicted of other than a disorderly persons or petty disorderly
2 persons offense for the unlawful use, possession or sale of a controlled
3 dangerous substance as defined in N.J.S.2C:35-2 who purchases,
4 owns, possesses or controls any of the said weapons is guilty of a
5 crime of the fourth degree.

6 b. A person having been convicted in this State or elsewhere of the
7 crime of aggravated assault, arson, burglary, escape, extortion,
8 homicide, kidnapping, robbery, aggravated sexual assault, sexual
9 assault or endangering the welfare of a child pursuant to
10 N.J.S.2C:24-4, whether or not armed with or having in his possession
11 a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person
12 having been convicted of a crime pursuant to the provisions of
13 N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of
14 P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3;
15 N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or
16 controls a firearm is guilty of a crime of the second degree and upon
17 conviction thereof, the person shall be sentenced to a term of
18 imprisonment by the court. The term of imprisonment shall include the
19 imposition of a minimum term, which shall be fixed at five years,
20 during which the defendant shall be ineligible for parole. If the
21 defendant is sentenced to an extended term of imprisonment pursuant
22 to N.J.S. 2C:43-7, the extended term of imprisonment shall include the
23 imposition of a minimum term, which shall be fixed at, or between,
24 one-third and one-half of the sentence imposed by the court or five
25 years, whichever is greater, during which the defendant shall be
26 ineligible for parole.

27 c. Whenever any person shall have been convicted in another state,
28 territory, commonwealth or other jurisdiction of the United States, or
29 any country in the world, in a court of competent jurisdiction, of a
30 crime which in said other jurisdiction or country is comparable to one
31 of the crimes enumerated in subsection a. or b. of this section, then
32 that person shall be subject to the provisions of this section.¹
33 (cf: P.L.1995, c.114, s.1)

34

35 2. This act shall take effect immediately.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1504

STATE OF NEW JERSEY

DATED: MAY 31, 2001

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1504 (1R).

This bill amends the law prohibiting a person convicted of a violent crime or drug offense from buying or owning a firearm, imposing a minimum term of imprisonment for violating the prohibition.

Under current law, it is a crime of the second degree for a person to purchase, own, possess or control a firearm if that person has been convicted, in New Jersey or elsewhere, of any of the following:

- < homicide,
- < aggravated assault,
- < aggravated sexual assault or simple sexual assault,
- < kidnapping,
- < robbery,
- < burglary,
- < arson,
- < escape,
- < extortion,
- < child endangerment,
- < illegal manufacture or sale of or trafficking in a controlled dangerous substance, or
- < various firearms offenses.

The ordinary term of imprisonment to which a person may be sentenced upon being convicted of a crime of the second degree is from five to 10 years. However, the person may be eligible for parole after service of as little as one-third of that term.

Under this bill, a person who, after having been convicted of a violent crime or drug offense, violates the prohibition against buying or owning a firearm would be subject to minimum five years' imprisonment without eligibility for parole.

The provisions of this bill are identical to those of Assembly Bill No. 11 (1R), which the committee also reports this day.

FISCAL IMPACT

This legislation would have the effect, in some cases, of prolonging the imprisonment of persons convicted of a firearms offense after

having been convicted of one of the predicate offenses listed above. No information is available on the length of time by which such imprisonment might be extended. It may, however, be noted that data supplied by the Department of Corrections indicates that the annual operating cost of housing a State-sentenced inmate is \$26,000.

It may further be noted that federal legislation (H.R.534, pending before the House Judiciary Committee's Subcommittee on Crimes) would authorize appropriations, over a five-year period, of a total of \$100 million in firearms enforcement grants to states that impose a minimum sentence of five years' imprisonment without parole on persons who, having at least one prior conviction for a violent crime, are found to possess a firearm.

P.L. 2001, CHAPTER 216, *approved August 21, 2001*
Assembly, No. 11 (*First Reprint*)

1 AN ACT concerning the commission of crimes involving firearms and
2 amending ¹[N.J.S.2C:43-6] P.L.1979, c.179¹.

3

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

6

7 ¹[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
26 N.J.S.2C:44-1, the court may fix a minimum term not to exceed
27 one-half of the term set pursuant to subsection a., or one-half of the
28 term set pursuant to a maximum period of incarceration for a crime set
29 forth in any statute other than this code, during which the defendant
30 shall not be eligible for parole; provided that no defendant shall be
31 eligible for parole at a date earlier than otherwise provided by the law
32 governing parole.

33 c. A person who has been convicted under **[2C:39-4a.]** subsection
34 a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it
35 against the person of another, or of a crime under any of the following
36 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, **[2C:12-1b.]** subsection b. of
37 N.J.S.2C:12-1, N.J.S.2C:13-1, **[2C:14-2a.]** subsection a. of
38 N.J.S.2C:14-2, **[2C:14-3a.]** subsection a. of N.J.S.2C:14-3,
39 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, who, while in the
40 course of committing or attempting to commit the crime, including 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted March 15, 2001.

1 immediate flight therefrom, used or was in possession of a firearm as
2 defined in [2C:39-1f.] subsection f. of N.J.S.2C:39-1, shall be
3 sentenced to a term of imprisonment by the court. The term of
4 imprisonment shall include the imposition of a minimum term. The
5 minimum term shall be fixed at, or between, one-third and one-half of
6 the sentence imposed by the court or ~~[three]~~ five years, whichever is
7 greater, or 18 months in the case of a fourth degree crime, during
8 which the defendant shall be ineligible for parole.

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

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

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

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

39 f. A person convicted of manufacturing, distributing, dispensing or
40 possessing with intent to distribute any dangerous substance or
41 controlled substance analog under N.J.S.2C:35-5, of maintaining or
42 operating a controlled dangerous substance production facility under
43 N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme
44 under N.J.S.2C:35-6, leader of a narcotics trafficking network under
45 N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent
46 to distribute on or near school property or buses under section 1 of

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

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

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

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

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

1 degree.

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

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

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

29 (cf: P.L.1993, c.219, s.6)]¹

30

31 ¹1. Section 6 of P.L. 1979, c.179 (C.2C:39-7) is amended to read
32 as follows:

33 6. Certain Persons Not to Have Weapons.

34 a. Except as provided in subsection b. of this section, any person,
35 having been convicted in this State or elsewhere of the crime of
36 aggravated assault, arson, burglary, escape, extortion, homicide,
37 kidnapping, robbery, aggravated sexual assault, sexual assault or
38 endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether
39 or not armed with or having in his possession any weapon enumerated
40 in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime
41 pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or
42 N.J.S.2C:39-9, or any person who has ever been committed for a
43 mental disorder to any hospital, mental institution or sanitarium unless
44 he possesses a certificate of a medical doctor or psychiatrist licensed
45 to practice in New Jersey or other satisfactory proof that he is no
46 longer suffering from a mental disorder which interferes with or

1 handicaps him in the handling of a firearm, or any person who has been
2 convicted of other than a disorderly persons or petty disorderly
3 persons offense for the unlawful use, possession or sale of a controlled
4 dangerous substance as defined in N.J.S.2C:35-2 who purchases,
5 owns, possesses or controls any of the said weapons is guilty of a
6 crime of the fourth degree.

7 b. A person having been convicted in this State or elsewhere of the
8 crime of aggravated assault, arson, burglary, escape, extortion,
9 homicide, kidnapping, robbery, aggravated sexual assault, sexual
10 assault or endangering the welfare of a child pursuant to
11 N.J.S.2C:24-4, whether or not armed with or having in his possession
12 a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person
13 having been convicted of a crime pursuant to the provisions of
14 N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of
15 P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3;
16 N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or
17 controls a firearm is guilty of a crime of the second degree and upon
18 conviction thereof, the person shall be sentenced to a term of
19 imprisonment by the court. The term of imprisonment shall include the
20 imposition of a minimum term, which shall be fixed at five years,
21 during which the defendant shall be ineligible for parole. If the
22 defendant is sentenced to an extended term of imprisonment pursuant
23 to N.J.S. 2C:43-7, the extended term of imprisonment shall include the
24 imposition of a minimum term, which shall be fixed at, or between,
25 one-third and one-half of the sentence imposed by the court or five
26 years, whichever is greater, during which the defendant shall be
27 ineligible for parole.

28 c. Whenever any person shall have been convicted in another state,
29 territory, commonwealth or other jurisdiction of the United States, or
30 any country in the world, in a court of competent jurisdiction, of a
31 crime which in said other jurisdiction or country is comparable to one
32 of the crimes enumerated in subsection a. or b. of this section, then
33 that person shall be subject to the provisions of this section.¹

34 (cf: P.L.1995, c.114, s.1)

35

36 2. This act shall take effect immediately.

37

38

39

40

41 Provides for mandatory minimum five year prison term without parole
42 for persons convicted of certain firearms offenses with prior violent
43 crime convictions.

CHAPTER 216

AN ACT concerning the commission of crimes involving firearms and amending P.L.1979, c.179.

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

1. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as follows:

C.2C:39-7 Certain persons not to have weapons.

6. Certain Persons Not to Have Weapons.

a. Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession any weapon enumerated in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium unless he possesses a certificate of a medical doctor or psychiatrist licensed to practice in New Jersey or other satisfactory proof that he is no longer suffering from a mental disorder which interferes with or handicaps him in the handling of a firearm, or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree.

b. A person having been convicted in this State or elsewhere of the crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having in his possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person having been convicted of a crime pursuant to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or controls a firearm is guilty of a crime of the second degree and upon conviction thereof, the person shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term, which shall be fixed at five years, during which the defendant shall be ineligible for parole. If the defendant is sentenced to an extended term of imprisonment pursuant to N.J.S. 2C:43-7, the extended term of imprisonment shall include the imposition of a minimum term, which shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall be ineligible for parole.

c. Whenever any person shall have been convicted in another state, territory, commonwealth or other jurisdiction of the United States, or any country in the world, in a court of competent jurisdiction, of a crime which in said other jurisdiction or country is comparable to one of the crimes enumerated in subsection a. or b. of this section, then that person shall be subject to the provisions of this section.

2. This act shall take effect immediately.

Approved August 21, 2001.

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Office of the Governor
NEWS RELEASE

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RELEASE: August 21, 2001

DIFRANCESCO SIGNS LAW TO KEEP GUNS OUT OF THE HANDS OF VIOLENT CRIMINALS, Establishes Mandatory Minimum Five-Year Prison Terms

Acting Governor Donald T. DiFrancesco signed legislation today banning violent criminals and drug traffickers from purchasing, owning or possessing a firearm. Those criminals who break this law will receive a five-year mandatory minimum sentence without the possibility of parole.

"This legislation will keep us moving forward in the fight against crime. Assembly Bill 11 puts violent criminals or those convicted of drug offenses on notice that they can't purchase, own, possess or control a firearm. And someone who has been convicted of homicide, aggravated assault, robbery, arson, drug trafficking or similar offenses isn't entitled to own or possess a firearm. Period. No exceptions. No excuses," said the acting Governor.

"We continue to see our overall crime rate drop. It's now at the lowest level in almost three decades. This means that we have fewer citizens falling victim to crime. It means our neighborhoods and streets are safer. It means that our quality of life continues to improve," said DiFrancesco.

Federal legislation known as "Project Exile" would provide \$100 million in firearms enforcement grants to states that require a mandatory minimum sentence of five years without parole. Under this new law, the State will qualify for any Project Exile funding that may become available under federal law.

"It's clear that the best way to reduce crime is to ensure that we keep guns out of the hands of those who shouldn't have a gun in the first place. This law puts us one step closer to achieving that goal," said DiFrancesco.

A-11 was sponsored by Assemblymembers Paul DiGaetano (R-Bergen/Essex/Passaic), Jim Holzapfel (R-Monmouth/Ocean), Rose Heck (R-Bergen), Ken LeFevre (R-Atlantic), Herb Conway (R-Burlington/Camden) and Senators Andrew Ciesla (R-Monmouth/Ocean), Lou Kosco (R-Bergen), Norm Robertson (R-Essex/Passaic), Tony Bucco (R-Morris) and Dianne Allen (R-Burlington/Camden).