

2C:43-6

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:43-6, 2C:43-7 and 2C:44-3 (Parole--Mandatory period of ineligibility--  
crime committed in possession of firearm)

LAWS 1981 CHAPTER 31

Bill No. S3057

Sponsor(s) Graves and others

Date Introduced Jan. 26, 1981

Committee: Assembly Judiciary

Senate Law, Public Safety and Defense

Amended during passage  Yes  No

Date of Passage: Assembly Feb. 9, 1981

Senate Feb. 2, 1981

Date of approval Feb. 12, 1981

Following statements are attached if available:

Sponsor statement  Yes  No (Below)

Committee Statement: Assembly  Yes  No

Senate  Yes  No

Fiscal Note  Yes  No

Veto Message  Yes  No

Message on signing  Yes  No

Following were printed:

Reports  Yes  No

Hearings  Yes  No

Sponsors' statement:

This bill would establish a mandatory parole ineligibility term as part of the sentence on anyone who commits certain crimes while in possession of a firearm. Neither suspension nor other non-custodial dispositions would be permitted in those cases.

(over)

6/25/81

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Also attached:

S1071 (sponsors statement, committee statements, veto and 2nd OCR)  
veto was over-ridden by Senate only. S3057 was enacted.

974.90 N.J. Dept. of Law and Public Safety.  
C929 An institutional response to the rising crime  
1980a rate in N.J. Dec. 1980, Trenton, 1980.  
(See especially pp.38-40)

CHAPTER 31 LAWS OF N. J. 1981  
APPROVED 2-12-81

SENATE, No. 3057

STATE OF NEW JERSEY

INTRODUCED JANUARY 26, 1981

By Senators GRAVES, MERLINO, GREGORIO, ZANE, PERSKIE,  
FELDMAN, HIRKALA, RODGERS, CAUFIELD, DODD, YATES,  
LIPMAN, A. RUSSO, SKEVIN, KENNEDY, GAGLIANO, HAM-  
ILTON, WEISS, FORAN, HERBERT, ORECHIO, GALDIERI,  
MUSTO, SHEIL, PARKER, WALLWORK, LASKIN, CAFIERO,  
DIFRANCESCO, HAGEDORN, DUMONT, EWING, VREELAND,  
BEDELL and J. RUSSO

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning sentencing and amending N. J. S. 2C:43-6,  
N. J. S. 2C:43-7, and N. J. S. 2C:44-3.

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

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

2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;  
3 *Mandatory Terms.*

4 a. Except as otherwise provided, a person who has been con-  
5 victed of a crime may be sentenced to imprisonment, as follows:

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

9 (2) In the case of a crime of the second degree, for a specific  
10 term of years which shall be fixed by the court and shall be be-  
11 tween 5 years and 10 years;

12 (3) In the case of a crime of the third degree, for a specific term  
13 of years which shall be fixed by the court and shall be between 3  
14 years and 5 years;

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

18 b. As part of a sentence for [a] any crime [of the first or second  
19 degree] and notwithstanding the provision of 2C:43-9, the court  
20 may fix a minimum term not to exceed one-half of the term set  
21 pursuant to subsection a., or one-half of the term set pursuant to

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

22 a maximum period of incarceration for a crime set forth in any  
 23 statute other than this code, during which the defendant shall not  
 24 be eligible for parole provided that no defendant shall be eligible  
 25 for parole at a date earlier than otherwise provided by the law  
 26 governing parole.

27 c. A person who has been convicted under 2C:39-4a. or of a  
 28 crime under any of the following sections: 2C:11-3, 2C:11-4,  
 29 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,  
 30 2C:29-5, who, while in the course of committing or attempting to  
 31 commit the crime, including the immediate flight therefrom, used or  
 32 was in possession of a firearm as defined in 2C:39-1f., shall be sen-  
 33 tenced to a term of imprisonment by the court. The term of impris-  
 34 onment shall include the imposition of a minimum term. The mini-  
 35 mum term shall be fixed at, or between, one-third and one-half of the  
 36 sentence imposed by the court or 3 years, whichever is greater, or  
 37 18 months in the case of a fourth degree crime, during which the  
 38 defendant shall be ineligible for parole. The minimum terms es-  
 39 tablished by this section shall not prevent the court from imposing  
 40 presumptive terms of imprisonment pursuant to 2C:44-1f.(1) ex-  
 41 cept in cases of crimes of the fourth degree. A person who has been  
 42 convicted of an offense enumerated by this subsection and who used  
 43 or possessed a firearm during its commission, attempted commis-  
 44 sion or flight therefrom and who has been previously convicted of  
 45 an offense involving the use or possession of a firearm as defined  
 46 in 2C:44-3d., shall be sentenced by the court to an extended term  
 47 as authorized by 2C:43-7c., notwithstanding that extended terms  
 48 are ordinarily discretionary with the court.

49 d. The court shall not impose a mandatory sentence pursuant to  
 50 subsection c. of this section 2C:43-7c. or 2C:44-3d., unless the  
 51 ground therefor has been established at a hearing. At the hearing,  
 52 which may occur at the time of sentencing, the prosecutor shall  
 53 establish by a preponderance of the evidence that the weapon used  
 54 or possessed was a firearm. In making its finding, the court shall  
 55 take judicial notice of any evidence, testimony or information ad-  
 56 duced at the trial, plea hearing, or other court proceedings and shall  
 57 also consider the presentence report and any other relevant infor-  
 58 mation.

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

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

3 a. In the cases designated in section 2C:44-3 or 2C:11-3, a per-  
 4 son who has been convicted of a crime may be sentenced to an  
 5 extended term of imprisonment, as follows:

6 (1) In the case of a crime sentenced under 2C:11-3 for a spe-  
7 cific term of years which shall be between 30 years and life im-  
8 prisonment;

9 (2) In the case of a crime of the first degree, for a specific term  
10 of years which shall be fixed by the court and shall be between 20  
11 years and life imprisonment;

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

14 (4) In the case of a crime of the third degree, for a term which  
15 shall be fixed by the court between 5 and 10 years;

16 (5) *In the case of a crime of the fourth degree pursuant to*  
17 *2C:43-6c. and 2C:44-3d. for a term of 5 years.*

18 b. As part of a sentence for an extended term and notwithstand-  
19 ing the provisions of 2C:43-9, the court may fix a minimum term  
20 not to exceed one-half of the term set pursuant to subsection a.  
21 during which the defendant shall not be eligible for parole or a  
22 term of 25 years during which time the defendant shall not be  
23 eligible for parole where the sentence imposed was life imprison-  
24 ment provided that no defendant shall be eligible for parole at a  
25 date earlier than otherwise provided by the law governing parole.

26 c. *In the case of a person sentenced to an extended term pur-*  
27 *suant to 2C:43-6c. and 2C:44-3d., the court shall impose a sentence*  
28 *within the ranges permitted by 2C:43-7a.(1), (2), (3), (4) or (5)*  
29 *according to the degree or nature of the crime for which the de-*  
30 *fendant is being sentenced, which sentence shall include a minimum*  
31 *term which shall be fixed at, or between one-third and one-half of*  
32 *the sentence imposed by the court or 5 years, whichever is greater,*  
33 *during which the defendant shall not be eligible for parole. Where*  
34 *the sentence imposed is life imprisonment, the court shall impose*  
35 *a minimum term of 25 years during which the defendant shall not*  
36 *be eligible for parole.*

1 3. N. J. S. 2C:44-3 is amended to read as follows:

2 2C:44-3. Criteria for Sentence of Extended Term of Imprison-  
3 ment.

4 The court may, upon application of the prosecuting attorney,  
5 sentence a person who has been convicted of a crime of the first,  
6 second or third degree to an extended term of imprisonment if it  
7 finds one or more of the grounds specified in this section. *If the*  
8 *grounds specified in subsection d. are found, and the person is be-*  
9 *ing sentenced for commission of any of the offenses enumerated*  
10 *in 2C:43-6c., the court shall sentence the defendant to an extended*  
11 *term as required by 2C:43-6c., and application by the prosecutor*

12 *shall not be required.* The finding of the court shall be incorporated  
13 in the record.

14 a. The defendant is a persistent offender. A persistent offender  
15 is a person who at the time of the commission of the crime is 21  
16 years of age or over, who has been previously convicted on at least  
17 two separate occasions of two crimes, committed at different times,  
18 when he was at least 18 years of age, if the latest in time of these  
19 crimes or the date of the defendant's last release from confinement,  
20 whichever is later, is within 10 years of the date of the crime for  
21 which the defendant is being sentenced.

22 b. The defendant is a professional criminal. A professional  
23 criminal is a person who committed a crime as part of a continuing  
24 criminal activity in concert with two or more persons, and the  
25 circumstances of the crime show he has knowingly devoted himself  
26 to criminal activity as a major source of livelihood.

27 c. The defendant committed the crime as consideration for the  
28 receipt, or in expectation of the receipt, of anything of pecuniary  
29 value the amount of which was unrelated to the proceeds of the  
30 crime or he procured the commission of the offense by payment  
31 or promise of payment of anything of pecuniary value.

32 *d. Second offender with a firearm. The defendant is at least 18*  
33 *years of age and has been previously convicted of any of the fol-*  
34 *lowing crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a.,*  
35 *2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been pre-*  
36 *viously convicted of an offense under Title 2A of the New Jersey*  
37 *Statutes which is equivalent of the offenses enumerated in this sub-*  
38 *section and he used or possessed a firearm, as defined in 2C:39-1f.,*  
39 *in the course of committing or attempting to commit any of these*  
40 *crimes, including the immediate flight therefrom.*

1 4. This act shall take effect immediately and shall apply to all  
2 sentences for offenses committed on or subsequent to its effective  
3 date.

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#### STATEMENT

This bill would establish a mandatory parole ineligibility term as part of the sentence on anyone who commits certain crimes while in possession of a firearm. Neither suspension nor other non-custodial dispositions would be permitted in those cases.

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Also attached:

S1071 (sponsors statement, committee statements, veto and 2nd OCR)  
veto was over-ridden by Senate only. S3057 was enacted.

974.90 N.J. Dept. of Law and Public Safety.  
C929 An institutional response to the rising crime  
1980a rate in N.J. Dec. 1980, Trenton, 1980.  
(See especially pp.38-40)

REFERENCE USE ONLY

SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO

SENATE, No. 3057

STATE OF NEW JERSEY

DATED: JANUARY 26, 1981

This bill provides for mandatory minimum sentences for individuals convicted of certain specified violent crimes where they possess or use a firearm during the commission of the crime. Persons sentenced pursuant to this law would be ineligible for parole. Neither suspensions nor non-custodial dispositions would be permitted in such cases. The bill would require mandatory sentences in cases involving:

- a. Murder;
- b. Manslaughter;
- c. Aggravated assault;
- d. Kidnapping;
- e. Sexual Assault;
- f. Criminal Sexual Contact;
- g. Robbery;
- h. Burglary;
- i. Escape; or
- j. Possession of firearms for unlawful purposes.

For the first time offenders, the sentence would be fixed at between one-third and one-half of the sentence imposed or 3 years, whichever is greater, for first, second and third degree crimes; and 18 months for fourth degree crimes.

Second or subsequent offenses would subject the person to mandatory sentencing under the extended term provisions of the Criminal Code, which would mean the person would be sentenced to between one-third and one-half of the extended term sentence, or 5 years, whichever is greater. Where the sentence imposed is life imprisonment, the court is required to impose a minimum term of 25 years.

The bill provides for a separate hearing for a determination, to be made by the judge, that a firearm was possessed or used by the person at the time of the commission of the crime.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 13, 1981

PATRICK SWEENEY

Governor Brendan Byrne signed the following bills:

S-3057, sponsored by Francis X. Graves (D-Bergen), which mandates jail sentences with parole ineligibility for the use of firearms during the commission of violent street crimes. The bill primarily addresses the use of handguns in the commission of murder, manslaughter, aggravated assault, kidnapping, robbery, burglary, aggravated sexual assault or contact, escape or possession of a weapon for unlawful use.

On the first conviction, the term of imprisonment shall include a minimal parole ineligibility (flat time, no credit for work or good behavior deducted.) This term shall be fixed at between 1/3 and 1/2 of the sentence imposed or three years, whichever is greater.

On the second conviction, the defendant shall be sentenced to an extended term of imprisonment, as follows:

- a) 30 years to life for murder;
- b) 20 years to life for a crime of the first degree;
- c) 10 to 20 years for a crime of the second degree;
- d) 5 to 10 years for a crime of the third degree;
- e) 3 to 5 years for a crime of the fourth degree;
- f) As part of the extended term, the defendant shall also be sentenced to serve 1/3 to 1/2 of the term or 5 years, whichever is greater before being eligible for parole.
- g) Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole.

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1071

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 21, 1980

By Senator GRAVES

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning firearms and **\*\*[supplementing chapter 39 of Title 2C of the New Jersey Statutes]\*\*** **\*\*\*amending\*\*\*** **[N. J. S. 2C:39-4\*\*\*]** **\*\*\*N. J. S. 2C:43-6, N. J. S. 2C:43-7, and N. J. S. 2C:44-3\*\*\***.

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

1 **\*\*[1. Notwithstanding the provisions of chapter 43 of Title 2C of**  
2 **the New Jersey Statutes to the contrary, any person who commits**  
3 **or attempts to commit a \* [crime in this State, other than a violation**  
4 **of this chapter,]\*\*** *\*a violation of any of the following sections of*  
4A *the New Jersey Code of Criminal Justice: 2C:11-3, 2C:11-4a,*  
5 *2C:11-4b(1), 2C:12-1b, 2C:12-3, 2C:13-1, 2C:13-2, 2C:13-5,*  
6 *2C:14-2, 2C:14-3, 2C:15-1, 2C:17-1, 2C:18-2, 2C:20-3,*  
7 *2C:20-5, 2C:20-7, 2C:27-3, 2C:28-5, 2C:29-5, or 2C:33-1\**  
8 **and who knowingly has in his possession any firearm, shall in**  
9 **addition to the punishment provided for the crime, be sentenced on**  
10 **a first conviction by imprisonment for not less than 5 nor more than**  
11 **10 years, upon a second conviction imprisonment for not less than**  
12 **10 nor more than 25 years, and upon a third conviction imprison-**  
13 **ment for life.**

14 Any sentence imposed pursuant to this section shall be a fixed  
15 minimum sentence during which the defendant shall not be eligible  
16 for parole. The court may not suspend or make any other non-  
17 custodial disposition of any person sentenced pursuant to this  
18 section.]\*\*

1 **\*\*\*[\*\*1. N. J. S. 2C:39-4 is amended to read as follows:**

2 2C:39-4. Possession of Weapons for Unlawful Purposes. a. Fire-  
3 arms. Any person who has in his possession any firearm with a

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

4 purpose to use it unlawfully against the person or property of  
 5 another is guilty of a crime of the second degree, *and, notwith-*  
 6 *standing the provisions of N. J. S. 2C:43-9 and N. J. S. 2C:44-1,*  
 7 *shall, as part of a sentence set pursuant to N. J. S. 2C:43-6, be*  
 8 *sentenced to a term of incarceration of no less than 3 years for*  
 9 *a first offense, 5 years for a second offense and 10 years for a*  
 10 *third offense under this section during which the defendant shall*  
 11 *not be eligible for parole, provided that no defendant shall be*  
 12 *eligible for parole on a date earlier than otherwise provided by the*  
 13 *law governing parole. Notwithstanding the provisions of N. J. S.*  
 14 *2C:44-5, this sentence shall run consecutively with any sentence*  
 15 *for the commission of an offense in the course of which the defend-*  
 16 *ant was found to have used a firearm.*

17 b. Explosives. Any person who has in his possession or carries  
 18 any explosive substance with a purpose to use it unlawfully against  
 19 the person or property of another is guilty of a crime of the second  
 20 degree.

21 c. Destructive devices. Any person who has in his possession  
 22 any destructive device with a purpose to use it unlawfully against  
 23 the person or property of another is guilty of a crime of the second  
 24 degree.

25 d. Other weapons. Any person who has in his possession any  
 26 weapon, except a firearm, with a purpose to use it unlawfully  
 27 against the person or property of another is guilty of a crime of  
 28 the third degree.\*\*\*]

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

2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms.

3 a. Except as otherwise provided, a person who has been con-  
 4 victed of a crime may be sentenced to imprisonment, as follows:

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

8 (2) In the case of a crime of the second degree, for a specific  
 9 term of years which shall be fixed by the court and shall be between  
 10 5 years and 10 years;

11 (3) In the case of a crime of the third degree, for a specific term  
 12 of years which shall be fixed by the court and shall be between 3  
 13 years and 5 years;

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

17 b. As part of a sentence for a crime of the first or second degree  
 18 and notwithstanding the provision of 2C:43-9, the court may fix

19 a minimum term not to exceed one-half of the term set pursuant  
 20 to subsection a. during which the defendant shall not be eligible  
 21 for parole provided that no defendant shall be eligible for parole  
 22 at a date earlier than otherwise provided by the law governing  
 23 parole.

24 c. A person who has been convicted of any of the following  
 25 crimes: 2C:11-3; 2C:11-4; 2C:12-1b; 2C:12-3; 2C:13-1; 2C:13-2;  
 26 2C:13-5; 2C:14-2; 2C:14-3; 2C:15-1; 2C:17-1; 2C:18-2; 2C:20-3;  
 27 2C:20-5; 2C:20-7; 2C:27-3; 2C:27-5; 2C:28-5; 2C:29-5;  
 28 2C:33-1\*\*\*\*; 2C:39-4a\*\*\*\*, who, while in the course of committing  
 29 or attempting to commit the crime, including the immediate flight  
 30 therefrom, used or was in possession of a firearm as defined in  
 31 2C:39-1f, shall be sentenced to a term of imprisonment by the court.  
 32 The term of imprisonment shall include the imposition of a mini-  
 33 mum term as specified in 2C:43-6b or 2C:43-7b. The minimum  
 34 term shall be fixed at, or between, one-third and one-half of the  
 35 sentence imposed by the court or 3 years, \*\*\*\*whichever is  
 36 greater,\*\*\*\* or in the case of a fourth degree crime 18 months,  
 37 \*\*\*\*[whichever is greater,]\*\*\*\* during which the defendant shall  
 37A be ineligible for parole. In the event that the defendant has been  
 38 previously convicted on one or more prior occasions as defined in  
 39 2C:44-3d, the court shall sentence him to an extended term in the  
 40 manner authorized by 2C:43-7, notwithstanding that extended terms  
 41 are ordinarily discretionary with the court.

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

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

3 a. In the cases designated in section 2C:44-3 or 2C:11-3, a person  
 4 who has been convicted of a crime may be sentenced to an extended  
 5 term of imprisonment, as follows:

6 (1) In the case of a crime sentenced under 2C:11-3 for a specific  
 7 term of years which shall be between 30 years and life imprison-  
 8 ment;

9 (2) In the case of a crime of the first degree, for a specific term  
 10 of years which shall be fixed by the court and shall be between  
 11 20 years and life imprisonment;

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

14 (4) In the case of a crime of the third degree, for a term which  
 15 shall be fixed by the court between 5 and 10 years;

16 (5) In the case of a crime of the fourth degree pursuant to  
 17 2C:43-6c and 2C:44-3d for a term which shall be fixed by the court  
 18 between 3 and 5 years.

19 b. As part of a sentence for an extended term and notwithstand-  
 20 ing the provisions of 2C:43-9, the court may fix a minimum term  
 21 not to exceed one-half of the term set pursuant to subsection a.  
 22 during which the defendant shall not be eligible for parole or a  
 23 term of 25 years during which time the defendant shall not be  
 24 eligible for parole where the sentence imposed was life imprison-  
 25 ment provided that no defendant shall be eligible for parole at a  
 26 date earlier than otherwise provided by the law governing parole.

27 c. *In the case of a person mandatorily sentenced to an extended*  
 28 *term pursuant to 2C:44-3d and 2C:43-6c, the court shall impose a*  
 29 *sentence within the ranges permitted by 2C:43-7a(1), (2), (3),*  
 30 *(4) or (5) according to the degree or nature of the crime for which*  
 31 *defendant is being sentenced, which sentence shall include a mini-*  
 32 *imum term which shall be fixed at, or between, one-third and one-*  
 33 *half of the sentence authorized by this section or 5 years,*  
 34 *whichever is greater, during which the defendant shall not be*  
 35 *eligible for parole. Where the sentence imposed is life imprison-*  
 36 *ment, the court shall impose a minimum term of 25 years during*  
 37 *which the defendant shall not be eligible for parole.*

1 3. N. J. S. 2C:44-3 is amended to read as follows:

2 2C:44-3. Criteria for Sentence of Extended Term of Imprison-  
 3 ment. The court may, upon application of the prosecuting attorney,  
 4 sentence a person who has been convicted of a crime of the  
 5 first, second or third degree to an extended term of imprison-  
 6 ment if it finds one or more of the grounds specified in this  
 7 section. *If the grounds specified hereinafter in subsection d. are*  
 8 *found, the court shall sentence the defendant to an extended term*  
 9 *as required by 2C:43-6c and application by the prosecutor shall*  
 10 *not be required.* The finding of the court shall be incorporated in  
 11 the record.

12 a. The defendant is a persistent offender. A persistent offender  
 13 is a person who at the time of the commission of the crime is 21  
 14 years of age or over, who has been previously convicted on at least  
 15 two separate occasions of two crimes, committed at different times,  
 16 when he was at least 18 years of age, if the latest in time of these  
 17 crimes or the date of the defendant's last release from confine-  
 18 ment, whichever is later, is within 10 years of the date of the  
 19 crime for which the defendant is being sentenced.

20 b. The defendant is a professional criminal. A professional crim-  
 21 inal is a person who committed a crime as part of a continuing  
 22 criminal activity in concert with two or more persons, and the  
 23 circumstances of the crime show he has knowingly devoted himself  
 24 to criminal activity as a major source of livelihood.

25 c. The defendant committed the crime as consideration for  
26 the receipt, or in expectation of the receipt, of anything of  
27 pecuniary value the amount of which was unrelated to the proceeds  
28 of the crime or he procured the commission of the offense by pay-  
29 ment or promise of payment of anything of pecuniary value.

30 d. *Second offender with a firearm. The defendant is at least*  
31 *18 years of age and has been convicted of one or more prior oc-*  
32 *casions of any of the following crimes: 2C:11-3; 2C:11-4;*  
33 *2C:12-1b; 2C:12-3; 2C:13-1; 2C:13-2; 2C:13-5; 2C:14-2; 2C:14-3;*  
34 *2C:15-1; 2C:17-1; 2C:18-2; 2C:20-3; 2C:20-5; 2C:20-7; 2C:27-3;*  
35 *2C:27-5; 2C:28-5; 2C:29-5; 2C:33-1 or has been convicted on one*  
36 *or more prior occasions of a former Title 2A offense which is*  
37 *equivalent to the offenses enumerated in this subsection and he*  
38 *used or possessed a firearm, as defined in 2C:39-1f, in the course*  
39 *of committing or attempting to commit any of these crimes, includ-*  
40 *ing the immediate flight therefrom.\*\*\**

1 \*\*\*[2.]\*\*\* \*\*\*4.\*\*\* This act shall take effect immediately.

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO

**SENATE, No. 1071**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JULY 24, 1980

This bill, as amended, would establish a fixed minimum mandatory sentence of incarceration for the possession of a firearm for unlawful purposes. The sentence would run consecutively with any sentence for the commission of a crime while using a firearm. Neither parole, nor suspension or other noncustodial dispositions would be permitted during the period of the sentence imposed.

Crimes committed with guns are on the rise and deaths from these crimes are also increasing. Guns are particularly dangerous weapons, all too easy to use and to kill with if used. The purpose of this bill is to make criminals think twice before going forth to commit crimes armed with guns. Publicizing the provisions of this bill, and the penalty for unlawful gun use, is necessary for this bill to be effective. As such, the Assembly Judiciary, Law, Public Safety and Defense Committee intends to propose a separate bill providing for such publicity.

It is likely that one of the effects of this bill will be, at least in the short run, to increase the number of State prisoners and the length of their incarceration. Therefore, the Assembly Judiciary, Law, Public Safety and Defense Committee recommends that if the projected consequences of this bill result in a need for new bed-spaces, moneys for new cells for State prisoners be included in a proposed State bond issue.

Assembly Judiciary, Law, Public Safety and Defense Committee amendments attempt to respond to constitutional and procedural objections which were raised to the bill as originally written.

SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO

**SENATE, No. 1071**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: FEBRUARY 25, 1980

This bill would establish a fixed minimum mandatory sentence for commission of certain crimes by anyone in possession of a firearm. Neither parole, nor suspension or other noncustodial dispositions of offenses would be permitted during the period of the sentence imposed.

This bill was amended in committee to provide those specific violations for which the penalties would apply. They include, murder, manslaughter (other than a crime of passion), terroristic threats, kidnapping, criminal restraint, criminal coercion, sexual assault, sexual contact, robbery, arson, burglary, theft by unlawful taking or disposition, theft by extortion, receiving stolen property, tampering with witnesses and informants and retaliation against them, threats and other improper influence in official and political matters, escape, or riot.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

December 11, 1980

VETO MESSAGE

S-1071

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(a) of the Constitution, I herewith return Senate Bill No. 1071 without my approval.

Senate Bill No. 1071 would provide for the imposition of mandatory minimum sentences upon anyone who uses or possesses a firearm during the commission of certain enumerated crimes.

I agree wholeheartedly with the underlying purpose of this bill; namely, to reduce significantly the rate of violent crimes committed with firearms by insuring that those convicted of such offenses are sentenced to prison. I share the Legislature's and the general public's concern and outrage at the ever-increasing crime rate in our State, which surely prompted this legislation. I disagree, however, that the means to achieve that purpose is to strip judges of the ability to use discretion when imposing sentences in the cases described above.

Our Criminal Justice Code has been in effect now for a little over a year. In adopting that Code, which was the product of many years of study, debate and development, we rejected mandatory sentences because in general they are unworkable and, in some cases, unjust. Instead, the Code put in place a sentencing scheme designed to be tough on violent criminals, while preserving the discretionary aspects of sentencing. Our State Police, Department of Corrections and the Administrative Office of the Courts have been keeping a close watch on sentences imposed under our new Code. All three agencies' statistics show that our judges have been following that "get-tough-on-crime" spirit of the law to which I referred earlier. The number of commitments has increased considerably, as has the length of sentences. In addition, in roughly 25% of all cases, judges are imposing minimum parole ineligibility terms as part of the sentence. I mention all this to emphasize two points:

STATE OF NEW JERSEY  
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1) that our Code already permits the types of sentences mandated by this bill; and (2) that a review of sentences under the Code evidences no sign that the use of weapons has not been subjected to stiff sentences.

Under these circumstances, I find no reason to amend our newly enacted sentencing statutes in the drastic manner proposed by this bill.

Additionally, I note that S-1071 does not prohibit plea negotiations between prosecutors and defendants with regard to "while armed" charges. This means, of course, that all of the discretion that must and should be exercised in imposing sentence will rest with the prosecutors. Again, I find no reason to take discretion away from judges and turn it over to prosecutors. By this I do not imply that plea bargaining should be eliminated or curtailed; I believe that the delicate balance that now exists in this area should be preserved, absent proof that the system is not functioning as the Legislature intended it to when it adopted the Criminal Justice Code.

Finally, I must mention that enactment of S-1071 would naturally have a very serious impact on our correctional facilities. And, while I have and will continue to support the building of more jails to accommodate those in our society who prey on our law-abiding citizens, I would be remiss if I did not recognize the practicalities and realities involved in the building of prisons in our State. We ought not to institute a system that will have such drastic effects on our correctional facilities without carefully planning and providing for it.

I also offer the following comments for the benefit of legislators who may wish to consider legislation similar to S-1071. The list of offenses in S-1071 for which minimum terms must be imposed if the defendant possesses a firearm includes some which I believe do not have a great potential for violence, such as 2C:20-3 (Theft by Unlawful Taking); 2C:20-5 (Retaliation for Past Official Action); 2C:20-7 (Receiving Stolen Property); and 2C:33-1b (Failure to Disperse).

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S-1071 does not require a mandatory minimum term for illegal possession of a firearm. If the Legislature is interested in eradicating illegal guns from New Jersey, legislation in this area should include such a provision.

For these reasons, I am returning Senate Bill No. 1071 without my approval.

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY



Honorable Brendan T. Byrne  
Governor

# AN INSTITUTIONAL RESPONSE TO THE RISING CRIME RATE IN NEW JERSEY

**Submitted by:**

John J. Degnan, Attorney General

Edwin H. Stier, Director  
Division of Criminal Justice

Colonel Clinton L. Pagano  
Superintendent, N.J. State Police

December 1, 1980

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## Sentencing and Parole

Although total elimination of violent crime is not presently within law enforcement's grasp, the incidence of the occurrence of such offenses can be reduced through utilization of effective law enforcement techniques. The judiciary, through its effective utilization of statutorily authorized dispositional alternatives can assist in the fight against violent crime.

One technique is the imposition of terms of incarceration which may serve to deter future misconduct. The new Code of Criminal Justice is a partial legislative solution to this aspect of the problem. As we have previously noted, violent crime may be discouraged by swift justice and by a sentence which is certain in its terms of which is known to the offender prior to the commission of the offense. The new Code of Criminal Justice goes far in providing that certainty. An offender who commits an armed robbery knows full well at the moment of the commission of his offense that he is facing a presumptive term of 15 years imprisonment. The Penal Code has established a scheme of presumptive sentencing which announces to the offender, the courts, and to the public, the actual terms of imprisonment which will be served by those committing violent crimes. Moreover, the Legislature has provided sentencing courts with the ability to impose terms of imprisonment which are not subject to parole, i.e., mandatory-minimum sentences.

While these provisions will serve as a deterrent to violent crime, more can be accomplished in this area. The Criminal Disposition Commission, created by the criminal code, should vigorously pursue other means of utilizing correctional reform as a deterrent to violent crime. We recommend that those convicted of certain enumerated violent crimes be subject to the discretionary ability of the court to impose mandatory minimum sentences. These same individuals should also be subject to extended terms of imprisonment beyond the range of years ordinarily provided for offenses of the grade involved. While the criminal code presently allows for extended terms for those convicted of homicide, or persistent offenders convicted on more than one occasion, we recommend that the commission of other enumerated violent crimes, such as rape and robbery in the first degree render an individual eligible for such treatment. Moreover, the court's ability to impose sentences of imprisonment without parole eligibility should be broadened to include all forms of "street offenses."

Stronger measures are needed to deter the use of firearms during the commission of violent crimes. Statistics reveal the widespread use of firearms during the commission of those violent offenses which most imperil the physical well-being of our citizens. In 1978, 45 percent of all reported murders resulted from the use of a firearm. Firearms were employed in 30.8 percent of all robberies and in 25.6 percent of all atrocious assaults. The experience in Massachusetts, which has had a one-year mandatory-minimum sentence

for mere possession of firearms since 1975, shows a significant decline in gun related violent crimes. New York has recently enacted a similar statute. Consistent with the thesis that the punishment should fit the crime, a mandatory prison term may be unduly harsh in the circumstances of mere possession of a firearm. We firmly believe, however, that mandatory prison terms are certainly an appropriate response where a violent crime is committed with the use of a firearm. Consequently, we propose that legislation be enacted which will provide for nondiscretionary fixed mandatory-minimum sentences for those who use a firearm during the commission of a crime of violence.

Finally, our laws governing parole should also recognize that those convicted of violent offenses ought to be deterred from future misconduct. The parole bill which was recently enacted establishes a system of presumptive parole which provides for certainty in sentencing and, in conjunction with the Penal Code sentencing provisions, provides fair warning to those who would commit violent crimes that their conduct will result in a fixed term of incarceration not subject to reduction. The parole bill is an integral component of the correctional scheme which has been recently put in place by the Code.

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S-1071, now on the Governor's desk, accomplishes this purpose except for its overenumeration of offenses to which its provisions would apply.