

2 C : 43- 6. 2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:43-6.2 (Crimes committed with firearms--
increase penalties)

LAWS OF: 1989 **CHAPTER:** 53

BILL NO: S827

SPONSOR(S): Graves

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary

Senate: Law, Public Safety and Defense

Amended during passage: Yes Amendments during passage
denoted by asterisks.

Date of Passage: **Assembly:** February 23, 1989

Senate: October 3, 1988

Date of Approval: April 14, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping-- attached:

"Gun sentencing law loophole is created," 4-15-89 Trenton Times.

"Kean signs bill givin judges discretion,; 4-15-89 Star Ledger.

RDV

[SECOND REPRINT]

SENATE, No. 827

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator GRAVES

1 AN ACT ²[concerning mandatory minimum terms of
2 imprisonment for commission of certain crimes with a firearm
3 and amending N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:44-3]
4 providing for reduction in the term of imprisonment in certain
5 circumstances² ¹, and supplementing Title 2C of the New
6 Jersey Statutes¹.

7

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

10 1. ²[N.J.S.2C:43-6 is amended to read as follows:
11 2C:43-6. Sentence of Imprisonment for Crime; Ordinary
12 Terms; Mandatory Terms.

13 a. Except as otherwise provided, a person who has been
14 convicted of a crime may be sentenced to imprisonment, as
15 follows:

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

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

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

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

28 b. As part of a sentence for any crime, where the court is
29 clearly convinced that the aggravating factors substantially
30 outweigh the mitigating factors, as set forth in subsections a.
31 and b. of 2C:44-1, the court may fix a minimum term not 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.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted September 19, 1988.

² Senate floor amendments adopted September 26, 1988.

1 exceed one-half of the term set pursuant to subsection a., or
2 one-half of the term set pursuant to a maximum period of
3 incarceration for a crime set forth in any statute other than this
4 code, during which the defendant shall not be eligible for parole;
5 provided that no defendant shall be eligible for parole at a date
6 earlier than otherwise provided by the law governing parole.

7 c. A person who has been convicted under 2C:39-4a. of
8 possession of a firearm with intent to use it against the person
9 of another, or of a crime under any of the following sections:
10 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,
11 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of
12 committing or attempting to commit the crime, including the
13 immediate flight therefrom, used or was in possession of a
14 firearm as defined in 2C:39-1f., shall be sentenced to a term of
15 imprisonment by the court. The term of imprisonment shall
16 include the imposition of a minimum term during which the
17 defendant shall be ineligible for parole. The minimum term shall
18 be set at whichever of the following amounts is greater: (1) an
19 amount fixed at, or between, one-third and one-half of the
20 sentence imposed by the court; or [three years, whichever is
21 greater, or 18 months] (2) 18 months in the case of a fourth
22 degree crime, [during which the defendant shall be ineligible for
23 parole] three years in the case of a third degree crime, five
24 years in the case of a second degree crime, or seven years in the
25 case of a first degree crime.]²

26 ¹On a motion by the prosecutor made to the assignment judge
27 that the imposition of a mandatory minimum term of
28 imprisonment under ²[this]² subsection ²c. of N.J.S.2C:43-6² for
29 a defendant who has not previously been convicted of an offense
30 under ²[this] that² subsection does not serve the interests of
31 justice, the assignment judge shall place the defendant on
32 probation pursuant to paragraph (2) of subsection b. of
33 N.J.S.2C:43-2 or reduce to one year the mandatory minimum
34 term of imprisonment during which the defendant will be
35 ineligible for parole. The sentencing court may also refer a case
36 of a defendant who has not previously been convicted of an
37 offense under ²[this] that² subsection to the assignment judge,
38 with the approval of the prosecutor, if the sentencing court
39 believes that the interests of justice would not be served by the
imposition of a mandatory minimum term.¹

1 ²[The minimum terms established by this section shall not
2 prevent the court from imposing presumptive terms of
3 imprisonment pursuant to 2C:44-1f. (1) except in cases of
4 crimes of the fourth degree.

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

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

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

32 f. A person convicted of manufacturing, distributing,
33 dispensing or possessing with intent to distribute any dangerous
34 substance or controlled substance analog under N.J.S.2C:35-5,
35 of maintaining or operating a controlled dangerous substance
36 production facility under N.J.S.2C:35-4, of employing a juvenile
37 in a drug distribution scheme under N.J.S.2C:35-6, leader of a
38 narcotics trafficking network under N.J.S.2C:35-3, or of
39 distributing, dispensing or possessing with intent to distribute on

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

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

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

33 (cf: P.L.1988, c.44, s.13)]²

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

35 2C:43-7. Sentence of Imprisonment for Crime; Extended
36 Terms.

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

1 (1) In case of aggravated manslaughter sentenced under
subsubsection c. of N.J.S.2C:11-4 or kidnapping, when sentenced as
3 a crime of the first degree under paragraph (1) of subsection c.
of 2C:13-1, for a specific term of years which shall be between
5 30 years and life imprisonment;

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

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

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

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

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

c. In the case of a person sentenced to an extended term
29 pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall
impose a sentence within the ranges permitted by 2C:43-7a. (2),
31 (3), (4) or (5) according to the degree or nature of the crime for
which the defendant is being sentenced, which sentence shall
33 include a minimum term, during which the defendant shall be
ineligible for parole, which shall, except as may be specifically
35 provided by N.J.S.2C:43-6f., be set at whichever of the
following amounts is greater: (1) an amount fixed at, or between
37 one-third and one-half of the sentence imposed by the court; or
[five years, whichever is greater,] (2) five years in the case of a
39 crime of the fourth or third degree, seven years in the case of a

1 crime of the second degree, [during which the defendant shall
2 not be eligible for parole] or 10 years in the case of a crime of
3 the first degree. Where the sentence imposed is life
4 imprisonment, the court shall impose a minimum term of 25
5 years during which the defendant shall not be eligible for parole,
6 except that where the term of life imprisonment is imposed on a
7 person convicted for a violation of N.J.S.2C:35-3, the term of
8 parole ineligibility shall be 30 years.

9 (cf: P.L.1988, c.44, s.14)]²

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

11 2C:44-3. Criteria for Sentence of Extended Term of
12 Imprisonment.

13 The court may, upon application of the prosecuting attorney,
14 sentence a person who has been convicted of a crime of the
15 first, second or third degree to an extended term of
16 imprisonment if it finds one or more of the grounds specified in
17 this section. If the grounds specified in subsection d. are found,
18 and the person is being sentenced for commission of any of the
19 offenses enumerated in 2C:43-6c., the court shall sentence the
20 defendant to an extended term as required by 2C:43-6c., and
21 application by the prosecutor shall not be required. The finding
22 of the court shall be incorporated in the record.

23 a. The defendant is a persistent offender. A persistent
24 offender is a person who at the time of the commission of the
25 crime is 21 years of age or over, who has been previously
26 convicted on at least two separate occasions of two crimes,
27 committed at different times, when he was at least 18 years of
28 age, if the latest in time of these crimes or the date of the
29 defendant's last release from confinement, whichever is later,
30 is within 10 years of the date of the crime for which the
31 defendant is being sentenced.

32 b. The defendant is a professional criminal. A professional
33 criminal is a person who committed a crime as part of a
34 continuing criminal activity in concert with two or more
35 persons, and the circumstances of the crime show he has
36 knowingly devoted himself to criminal activity as a major source
37 of livelihood.

38 c. The defendant committed the crime as consideration for
39 the receipt, or in expectation of the receipt, of anything of

1 pecuniary value the amount of which was unrelated to the
2 proceeds of the crime or he procured the commission of the
3 offense by payment or promise of payment of anything of
pecuniary value.

5 d. Second offender with a firearm. The defendant is at least
6 18 years of age and has been previously convicted of any of the
7 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,
8 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or
9 has been previously convicted of an offense under Title 2A of
10 the New Jersey Statutes or under any statute of the United
11 States or any other state which is equivalent of the offenses
12 enumerated in this subsection and he used or possessed a
13 firearm, as defined in 2C:39-1f., in the course of committing or
14 attempting to commit any of these crimes, including the
15 immediate flight therefrom.

(cf: P.L.1981, c.31, s.3)]²

17 ²[¹4. (New section)] ²2. Any person who, on the effective
18 date of this ²[amendatory and supplementary]² act, is serving a
19 minimum mandatory minimum sentence as provided for by
20 subsection c. of N.J.S.2C:43-6, who has not been previously
21 convicted under that subsection, and has not had his sentence
22 suspended or been paroled or discharged, may move to have his
23 sentence reviewed by the assignment judge for the sentencing
24 court. If the prosecutor agrees that the sentence under review
25 does not serve the interests of justice, the judge shall reduce the
26 minimum mandatory term of imprisonment without parole
27 eligibility to one year or place the person on probation pursuant
28 to paragraph (2) of subsection b. of N.J.S.2C:43-2.¹

29 ¹[4.] ²[^{5.}1] ^{3.}2 This act shall take effect immediately.

31

CRIMINAL JUSTICE

33

Criminal Sentences and Bail

35 Provides for reduction of term of imprisonment in certain
circumstances.

1 of livelihood.

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

9 d. Second offender with a firearm. The defendant is at least
18 years of age and has been previously convicted of any of the
11 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,
2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or
13 has been previously convicted of an offense under Title 2A of
the New Jersey Statutes or under any statute of the United
15 States or any other state which is equivalent of the offenses
enumerated in this subsection and he used or possessed a
17 firearm, as defined in 2C:39-1f., in the course of committing or
attempting to commit any of these crimes, including the
immediate flight therefrom.

19 4. This act shall take effect immediately.

21 STATEMENT

23 This bill increases the ordinary and extended minimum
mandatory terms of imprisonment without parole eligibility for
25 conviction of certain crimes of the first and second degree
under the Graves Act. The Graves Act imposes mandatory,
27 minimum terms of imprisonment upon persons convicted of
committing, attempting to commit, or fleeing from certain
29 crimes while in possession of a firearm. This bill also requires
the imposition of a mandatory extended term upon persons
31 previously convicted under United States law or the laws of
another state of a crime equivalent to a crime under the Graves
33 Act.

35 CRIMINAL JUSTICE

Criminal Sentences and Bail

37
39 Increases minimum mandatory terms of imprisonment for
certain crimes committed with a firearm.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 827

STATE OF NEW JERSEY

DATED: NOVEMBER 21, 1988

The Assembly Judiciary Committee reports favorably Senate Bill No. 827. This bill permits the reduction of sentence for a person convicted of a first offense under the Graves Act, N.J.S.2C:43-6, upon motion by prosecutor before the assignment judge where the interests of justice would not be served by the imposition of the mandatory minimum term. In the alternative, the sentencing court may, with the approval of the prosecutor, refer the case to the assignment judge for review, if the sentencing court believes the imposition of the mandatory minimum term will not serve the interests of justice. Anyone currently serving a mandatory minimum term for a first offense under the Graves Act may petition to have his sentence reviewed by the assignment judge for the possibility of reduction to probation or one year imprisonment without parole eligibility.

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

STATEMENT TO

SENATE, No. 827

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1988

The Senate Law, Public Safety and Defense Committee reports favorably Senate Bill No. 827 with amendments.

As amended, this bill increases the ordinary and extended minimum mandatory terms of imprisonment without parole eligibility for conviction of a Graves Act offense. The Graves Act (subsection c. of N.J.S.2C:43-6) imposes mandatory minimum terms of imprisonment upon persons convicted of committing, attempting to commit, or fleeing from certain crimes while in possession of a firearm.

Under section 1 of the bill dealing with ordinary prison terms, a person convicted of a Graves Act offense would receive the greater mandatory minimum term of (1) between one-third and one-half of the sentence imposed by the court, or (2) 18 months for a crime of the fourth degree, 3 years for a crime of the third degree, 5 years for a crime of the second degree, or 7 years for a crime of the first degree. Under section 2 of the bill dealing with extended prison terms, a person convicted of a Graves Act offense would receive the greater mandatory minimum term of (1) between one-third and one-half of the sentence imposed by the court, or (2) 5 years for a crime of the fourth or third degree, 7 years for a crime of the second degree, or 10 years for a crime of the first degree.

Section 3 of the bill amends N.J.S.2C:44-3 to require the imposition of a mandatory extended term upon persons previously convicted under United States law or the laws of another state of a crime equivalent to a Graves Act offense.

In addition, the committee amended the bill to permit the reduction of sentence for a person convicted of a first offense under the Graves Act if the prosecutor makes a motion before the assignment judge stating that the interests of justice would not be served by the imposition of the mandatory minimum term under the Graves Act. Also, the sentencing court, with the approval of the prosecutor, may refer the case to the assignment judge for review if

the sentencing court judge believes that the imposition of the mandatory minimum term in that particular case does not serve the interests of justice.

The bill also permits anyone currently serving an ordinary minimum mandatory term without parole eligibility under the Graves Act for a first offense to have his sentence reviewed for the possibility of reduction.

This bill was pre-filed for introduction in the 1988 legislative session pending technical review. As reported, the bill includes changes required by technical review which has been performed.



OFFICE OF THE GOVERNOR

NEWS RELEASE

Governor Thomas H. Kean
TRENTON, N.J. 08625
Release:

CN-001

Contact: CARL GOLDEN
FRI., 4/14/89
609-292-8956 OR 609-292-6000 EXT. 207

Governor Thomas H. Kean today signed legislation to permit a judge to reduce the minimum mandatory sentence under the so-called Graves Act if the interests of justice are served by such a reduction.

The bill, S-827, was sponsored by Senator Frank Graves, D-Passaic. An identical bill, A-3826, was sponsored in the Assembly by Assemblymen Robert Franks, R-Union and John Girgenti, D-Passaic.

The Graves Act requires the imposition of a minimum three-year sentence for conviction of a crime in which a firearm was used.

The bill signed today permits a judge to reduce that minimum upon motion of the prosecutor in the case. The legislation is in response to a number of incidents in the past several years in which persons were sentenced to the three-year minimum even though the crimes involved were minor or the relationship between the crime and the firearm was tenuous.

Other bill signed by the Governor today include:

S-2729/S-3472, sponsored by Senator Thomas Cowan, Sr., D-Hudson, Assemblyman Newton Miller, R-Passaic and Assemblyman Gerald Zecker, R-Essex, appropriating \$9.9 million for construction of additional prison beds in Hudson and Passaic counties.

The bill, pursuant to the \$198 million Correctional Facilities Construction Bond Act of 1987, provides \$8,429,051 for construction of 50 beds in Hudson County and \$1,497,342 for construction of 20 beds in Passaic County.

- more -