

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 3006 and 3204

STATE OF NEW JERSEY
221st LEGISLATURE

ADOPTED JUNE 26, 2024

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Testa, Steinhardt, Amato, Assemblymen Bailey, Hutchison, Miller,
Wimberly and Sampson**

SYNOPSIS

Establishes crimes of home invasion burglary and residential burglary.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



(Sponsorship Updated As Of: 9/26/2024)

1 AN ACT concerning burglary of residential dwellings,
2 supplementing Title 2C of the New Jersey Statutes, and
3 amending various parts of the statutory law.

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

7
8 1. (New section) a. A person is guilty of home invasion
9 burglary if, with purpose to commit an offense therein or thereon,
10 the person, without license or privilege to do so, enters or
11 surreptitiously remains in a residential dwelling or accommodation,
12 or a separately secured portion thereof, and in the course of
13 committing the offense, the person:

14 (1) Purposely, knowingly or recklessly inflicts, attempts to
15 inflict, or threatens to inflict bodily injury on anyone; or

16 (2) Is armed with or displays what appear to be explosives or a
17 deadly weapon.

18 An act shall be deemed “in the course of committing” an offense
19 if it occurs in an attempt to commit an offense or in immediate
20 flight after the attempt or commission.

21 b. Home invasion burglary is a crime of the first degree, subject
22 to section 2 of P.L.1997, c.117 (C.2C:43-7.2).

23
24 2. (New section) a. A person is guilty of residential burglary if,
25 with purpose to commit an offense therein or thereon, the person:

26 (1) Enters a residential dwelling or accommodation, or a
27 separately secured portion thereof, unless the actor is licensed or
28 privileged to enter; or

29 (2) Surreptitiously remains in a residential dwelling or
30 accommodation, or a separately secured portion thereof, knowing
31 that the actor is not licensed or privileged to do so.

32 b. For the purposes of subsection a. of this section, it is not an
33 element of the offense that the actor knew that any other person was
34 present in the residential dwelling or accommodation when the
35 actor entered or surreptitiously remained therein, and it shall not be
36 a defense that the actor did not know that any other person was
37 present in the residential dwelling or accommodation when the
38 actor entered or surreptitiously remained therein.

39 c. Residential burglary is a crime of the second degree, subject to
40 section 2 of P.L.1997, c.117 (C.2C:43-7.2), unless the actor
41 demonstrates by a preponderance of evidence that the actor
42 reasonably believed that no resident or any other person, other than
43 a person acting in concert with the actor, was present in the
44 residential dwelling or accommodation when the actor entered or
45 surreptitiously remained therein, in which case the offense is 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.

Matter underlined thus is new matter.

1 crime of the second degree, not subject to section 2 of P.L.1997,
2 c.117 (C.2C:43-7.2).

3

4 3. Section 1 of P.L.2015, c.89 (C.2A:4A-26.1) is amended to
5 read as follows:

6 1. a. A prosecutor seeking waiver of jurisdiction of a juvenile
7 delinquency case by the Superior Court, Chancery Division, Family
8 Part to an appropriate court and prosecuting authority without the
9 consent of the juvenile shall file a motion within 60 days after the
10 receipt of the complaint, which time may be extended for good
11 cause shown. The motion shall be accompanied by a written
12 statement of reasons clearly setting forth the facts used in assessing
13 all factors contained in paragraph (3) of subsection c. of this
14 section, together with an explanation as to how evaluation of those
15 facts support waiver for each particular juvenile.

16 b. At a hearing, the court shall receive the evidence offered by
17 the State and by the juvenile. The State shall provide proof to
18 satisfy the requirements set forth in paragraphs (1) and (2) of
19 subsection c. of this section. The court also shall review whether
20 the State considered the factors set forth in paragraph (3) of
21 subsection c. of this section.

22 c. Except as provided in paragraph (3) of this subsection, the
23 court shall waive jurisdiction of a juvenile delinquency case without
24 the juvenile's consent and shall refer the case to the appropriate
25 court and prosecuting authority having jurisdiction if:

26 (1) The juvenile was 15 years of age or older at the time of the
27 alleged delinquent act; and

28 (2) There is probable cause to believe that the juvenile
29 committed a delinquent act which if committed by an adult would
30 constitute:

31 (a) criminal homicide, other than death by auto;

32 (b) strict liability for drug-induced deaths;

33 (c) first degree robbery;

34 (d) carjacking;

35 (e) aggravated sexual assault;

36 (f) sexual assault;

37 (g) second degree aggravated assault;

38 (h) kidnapping;

39 (i) aggravated arson;

40 (j) possession of a firearm with a purpose to use it unlawfully
41 against the person of another under subsection a. of N.J.S.2C:39-4,
42 or possession of a firearm while committing or attempting to
43 commit, including the immediate flight therefrom, aggravated
44 assault, aggravated criminal sexual contact, burglary, home
45 invasion burglary, residential burglary, or escape;

46 (k) a violation of N.J.S.2C:35-3 (Leader of a Narcotics
47 Trafficking Network);

48 (l) a violation of N.J.S.2C:35-4 (Maintaining and Operating a
49 CDS Production Facility);

- 1 (m) a violation of section 1 of P.L.1998, c.26 (C.2C:39-4.1)
2 (Weapons Possession while Committing certain CDS Offenses);
3 (n) an attempt or conspiracy to commit any of the crimes
4 enumerated in subparagraphs (a) through (m) of this paragraph; or
5 (o) a crime committed at a time when the juvenile previously had
6 been sentenced and confined in an adult correctional facility.
- 7 (3) The court may deny a motion by the prosecutor to waive
8 jurisdiction of a juvenile delinquency case if it is clearly convinced
9 that the prosecutor abused his discretion in considering the
10 following factors in deciding whether to seek a waiver:
- 11 (a) The nature and circumstances of the offense charged;
12 (b) Whether the offense was against a person or property,
13 allocating more weight for crimes against the person;
14 (c) Degree of the juvenile's culpability;
15 (d) Age and maturity of the juvenile;
16 (e) Any classification that the juvenile is eligible for special
17 education to the extent this information is provided to the
18 prosecution by the juvenile or by the court;
19 (f) Degree of criminal sophistication exhibited by the juvenile;
20 (g) Nature and extent of any prior history of delinquency of the
21 juvenile and dispositions imposed for those adjudications;
22 (h) If the juvenile previously served a custodial disposition in a
23 State juvenile facility operated by the Juvenile Justice Commission,
24 and the response of the juvenile to the programs provided at the
25 facility to the extent this information is provided to the prosecution
26 by the Juvenile Justice Commission;
27 (i) Current or prior involvement of the juvenile with child
28 welfare agencies;
29 (j) Evidence of mental health concerns, substance use disorder,
30 or emotional instability of the juvenile to the extent this information
31 is provided to the prosecution by the juvenile or by the court; and
32 (k) If there is an identifiable victim, the input of the victim or
33 victim's family.
- 34 The Attorney General may develop for dissemination to the
35 county prosecutors those guidelines or directives deemed necessary
36 or appropriate to ensure the uniform application of this section
37 throughout the State.
- 38 d. An order waiving jurisdiction over a case and referring the
39 case to the appropriate court and prosecuting authority shall specify
40 the alleged act upon which the referral is based and all other
41 delinquent acts charged against the juvenile arising out of or related
42 to the same transaction.
- 43 e. Testimony of a juvenile at a hearing to determine referral
44 under this section shall not be admissible for any purpose in any
45 subsequent hearing to determine delinquency or guilt of any
46 offense.
- 47 f. Upon waiver of jurisdiction and referral to the appropriate
48 court and prosecuting authority having jurisdiction:

1 (1) The case shall proceed as if it originated in that court and
2 shall be subject to the sentencing provisions available to that court;
3 provided, however, upon conviction for any offense which is
4 subject to waiver pursuant to paragraph (2) of subsection c. of this
5 section, there shall be a presumption that the juvenile shall serve
6 any custodial sentence imposed in a State juvenile facility operated
7 by the Juvenile Justice Commission until the juvenile reaches the
8 age of 21, except that:

9 (a) a juvenile who has not reached the age of 21 may, in the
10 discretion of the Juvenile Justice Commission, be transferred to the
11 Department of Corrections in accordance with the plan established
12 pursuant to subsection e. of section 7 of P.L.1995, c.284 (C.52:17B-
13 175) and regulations adopted pursuant to that section; and

14 (b) a juvenile who has reached or exceeds the age of 21 may
15 continue to serve a sentence in a State juvenile facility operated by
16 the Juvenile Justice Commission in the discretion of the Juvenile
17 Justice Commission and if the juvenile so consents; otherwise the
18 juvenile shall serve the remainder of the custodial sentence in a
19 State correctional facility;

20 (2) If a juvenile is not convicted of an offense set forth in
21 paragraph (2) of subsection c. of this section, a conviction for any
22 other offense shall be deemed a juvenile adjudication and be
23 remanded to the Superior Court, Chancery Division, Family Part for
24 disposition, in accordance with the dispositional options available
25 to that court and all records related to the act of delinquency shall
26 be subject to the provisions of section 1 of P.L.1982, c.79
27 (C.2A:4A-60);

28 (3) With the consent of the defense and the prosecutor, at any
29 point in the proceedings subsequent to the decision ordering waiver
30 the court may remand to the Superior Court, Chancery Division,
31 Family Part if it appears that:

32 (a) the interests of the public and the best interests of the juvenile
33 require access to programs or procedures uniquely available to that
34 court; and

35 (b) the interests of the public are no longer served by waiver.

36 g. (1) The Juvenile Justice Commission, in consultation with the
37 Attorney General, shall establish a program to collect, record, and
38 analyze data regarding waiver of jurisdiction of a juvenile
39 delinquency case by the Superior Court, Chancery Division, Family
40 Part to an appropriate court and prosecuting authority. In
41 furtherance of this program, the Juvenile Justice Commission shall,
42 in cooperation with the Administrative Office of the Courts,
43 Attorney General, and county prosecutors, collect data related to the
44 decision to seek waiver of jurisdiction of a juvenile delinquency
45 case, which shall include but not be limited to data concerning:

46 (a) youth demographics, including age, gender, race, and
47 ethnicity;

1 (b) case characteristics, including the degree of the offense
2 waived, the degree of the offense convicted, and the final court
3 resolution;

4 (c) case processing times; and

5 (d) waiver rates by race and ethnicity.

6 (2) The commission shall prepare and publish on its Internet
7 website biennial reports summarizing the data collected, recorded,
8 and analyzed pursuant to paragraph (1) of this subsection.

9 (3) The commission shall, pursuant to section 2 of P.L. 1991,
10 c.164 (C.52:14-19.1), biennially prepare and transmit to the
11 Governor and the Legislature the reports required in paragraph (2)
12 of this subsection, along with any recommendations the commission
13 may have for legislation concerning waiver of jurisdiction of
14 juvenile delinquency cases.

15 (cf: P.L.2023, c.177, s.1)

16
17 4. N.J.S.2C:18-1 is amended to read as follows:

18 2C:18-1. In this chapter, unless a different meaning plainly is
19 required:

20 “Structure” means any building, room, ship, vessel, car, vehicle
21 or airplane, and also means any place [adapted for overnight
22 accommodation of persons, or] for carrying on business therein,
23 whether or not a person is actually present.

24 “Utility Company Property” means property[;] (1) owned by a
25 public utility, as defined in R.S.48:2-13, or by a municipality,
26 county, water district, authority or other public agency[.]; and (2)
27 which is used for the purpose of providing electric, gas or water
28 utility service.

29 “Operational area” means any portion of a public airport, from
30 which access by the public is prohibited by fences or appropriate
31 signs, and includes runways, taxiways, all ramps, cargo ramps and
32 apron areas, aircraft parking and storage areas, fuel storage areas,
33 maintenance areas, and any other area of a public airport used or
34 intended to be used for landing, takeoff or surface maneuvering of
35 aircraft.

36 “Sterile area” means a portion of an airport, as set forth in an
37 airport security program approved by the Transportation Security
38 Administration, that provides passengers access to boarding aircraft
39 and to which the access generally is controlled by the
40 Transportation Security Administration, an aircraft operator
41 pursuant to 49 C.F.R. part 1544, or an air carrier pursuant to 49
42 C.F.R. part 1546, through the screening of persons and property.

43 “Residential dwelling or accommodation” means a permanent
44 structure intended as and currently being utilized as a residence by a
45 private person or persons, and any place adapted for overnight
46 accommodation of persons.

47 (cf: P.L.2013, c.138, s.1)

48
49 5. N.J.S.2C:18-2 is amended to read as follows:

1 2C:18-2. Burglary. a. Burglary defined. A person is guilty of
2 burglary if, with purpose to commit an offense therein or thereon,
3 **[he] the person**:
4 (1) Enters a research facility, structure other than a residential
5 dwelling, or a separately secured or occupied portion thereof unless
6 the structure was at the time open to the public or the actor is
7 licensed or privileged to enter;
8 (2) Surreptitiously remains in a research facility, structure other
9 than a residential dwelling, or a separately secured or occupied
10 portion thereof knowing that **[he] the person** is not licensed or
11 privileged to do so; or
12 (3) Trespasses in or upon utility company property where public
13 notice prohibiting trespass is given by conspicuous posting, or
14 fencing or other enclosure manifestly designed to exclude intruders.
15 b. Grading. Burglary is a crime of the second degree if in the
16 course of committing the offense, the actor:
17 (1) Purposely, knowingly or recklessly inflicts, attempts to inflict
18 or threatens to inflict bodily injury on anyone; or
19 (2) Is armed with or displays what appear to be explosives or a
20 deadly weapon.
21 Otherwise burglary is a crime of the third degree. An act shall
22 be deemed “in the course of committing” an offense if it occurs in
23 an attempt to commit an offense or in immediate flight after the
24 attempt or commission.
25 (cf: P.L.2009, c.283, s.2)
26
27 6. N.J.S.2C:35-14 is amended to read as follows:
28 2C:35-14. Rehabilitation Program for Persons with a Substance
29 Use Disorder Subject to a Presumption of Incarceration or a
30 Mandatory Minimum Period of Parole Ineligibility; Criteria for
31 Imposing Special Probation; Ineligible Offenders; Commitment to
32 Residential Treatment Facilities or Participation in a Nonresidential
33 Treatment Program; Presumption of Revocation; Brief Incarceration
34 in Lieu of Permanent Revocation.
35 a. Any person who is ineligible for probation due to a
36 conviction for a crime which is subject to a presumption of
37 incarceration or a mandatory minimum period of parole ineligibility
38 may be sentenced to a term of special probation in accordance with
39 this section, and may not apply for treatment for substance use
40 disorder pursuant to N.J.S.2C:45-1. Nothing in this section shall be
41 construed to prohibit a person who is eligible for probation in
42 accordance with N.J.S.2C:45-1 due to a conviction for an offense
43 which is not subject to a presumption of incarceration or a
44 mandatory minimum period of parole ineligibility from applying for
45 treatment for substance use disorder as a condition of probation
46 pursuant to N.J.S.2C:45-1; provided, however, that a person in need
47 of treatment as defined in subsection f. of section 2 of P.L.2012,
48 c.23 (C.2C:35-14.2) shall be sentenced in accordance with that

1 section. Notwithstanding the presumption of incarceration pursuant
2 to the provisions of subsection d. of N.J.S.2C:44-1, whenever a
3 person with a substance use disorder who is subject to sentencing
4 under this section is convicted of or adjudicated delinquent for an
5 offense, other than one described in subsection b. of this section,
6 the court, upon notice to the prosecutor, may, on motion of the
7 person, or on the court's own motion, place the person on special
8 probation, which shall be for a term of five years, provided that the
9 court finds on the record that:

10 (1) the person has undergone a professional diagnostic
11 assessment to determine whether and to what extent the person has
12 a substance use disorder and would benefit from treatment; and

13 (2) the person has a substance use disorder within the meaning
14 of N.J.S.2C:35-2 and was with a substance use disorder at the time
15 of the commission of the present offense; and

16 (3) the present offense was committed while the person was
17 under the influence of a controlled dangerous substance, controlled
18 substance analog or alcohol or was committed to acquire property
19 or monies in order to support the person's substance use disorder;
20 and

21 (4) substance use disorder treatment and monitoring will serve
22 to benefit the person by addressing the person's substance use
23 disorder and will thereby reduce the likelihood that the person will
24 thereafter commit another offense; and

25 (5) the person did not possess a firearm at the time of the
26 present offense and did not possess a firearm at the time of any
27 pending criminal charge; and

28 (6) the person has not been previously convicted on two or more
29 separate occasions of crimes of the first or second degree, other
30 than those listed in paragraph (7); or the person has not been
31 previously convicted on two or more separate occasions, where one
32 of the offenses is a crime of the third degree, other than crimes
33 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
34 first or second degree; and

35 (7) the person has not been previously convicted or adjudicated
36 delinquent for, and does not have a pending charge of murder,
37 aggravated manslaughter, manslaughter, kidnapping, aggravated
38 assault, aggravated sexual assault or sexual assault, or a similar
39 crime under the laws of any other state or the United States; and

40 (8) a suitable treatment facility licensed and approved by the
41 Division of Mental Health and Addiction Services in the
42 Department of Human Services is able and has agreed to provide
43 appropriate treatment services in accordance with the requirements
44 of this section; and

45 (9) no danger to the community will result from the person
46 being placed on special probation pursuant to this section.

1 In determining whether to sentence the person pursuant to this
2 section, the court shall consider all relevant circumstances, and
3 shall take judicial notice of any evidence, testimony or information
4 adduced at the trial, plea hearing or other court proceedings, and
5 shall also consider the presentence report and the results of the
6 professional diagnostic assessment to determine whether and to
7 what extent the person has a substance use disorder and would
8 benefit from treatment. The court shall give priority to a person
9 who has moved to be sentenced to special probation over a person
10 who is being considered for a sentence to special probation on the
11 court's own motion or in accordance with the provisions of section
12 2 of P.L.2012, c.23 (C.2C:35-14.2).

13 As a condition of special probation, the court shall order the
14 person to enter a residential treatment program at a facility licensed
15 and approved by the Division of Mental Health and Addiction
16 Services in the Department of Human Services or a program of
17 nonresidential treatment by a licensed and approved treatment
18 provider, which program may include the use of medication-
19 assisted treatment as defined in paragraph (7) of subsection f. of
20 this section, to comply with program rules and the requirements of
21 the course of treatment, to cooperate fully with the treatment
22 provider, and to comply with such other reasonable terms and
23 conditions as may be required by the court or by law, pursuant to
24 N.J.S.2C:45-1, and which shall include periodic urine testing for
25 drug or alcohol usage throughout the period of special probation. In
26 determining whether to order the person to participate in a
27 nonresidential rather than a residential treatment program, the court
28 shall follow the procedure set forth in subsection j. of this section.
29 Subject to the requirements of subsection d. of this section, the
30 conditions of special probation may include different methods and
31 levels of community-based or residential supervision.

32 b. A person shall not be eligible for special probation pursuant
33 to this section if the person is convicted of or adjudicated
34 delinquent for:

35 (1) a crime of the first degree;

36 (2) a crime of the first or second degree enumerated in
37 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), other
38 than a crime of the second degree involving N.J.S.2C:15-1
39 (robbery), **[or]** N.J.S.2C:18-2 (burglary), or section 2 of P.L. , c.
40 (C.) (pending before the Legislature as this bill), residential
41 burglary;

42 (3) a crime, other than that defined in section 1 of P.L.1987,
43 c.101 (C.2C:35-7), for which a mandatory minimum period of
44 incarceration is prescribed under chapter 35 of this Title or any
45 other law; or

1 (4) an offense that involved the distribution or the conspiracy or
2 attempt to distribute a controlled dangerous substance or controlled
3 substance analog to a juvenile near or on school property.

4 c. (Deleted by amendment, P.L.2012, c.23)

5 d. Except as otherwise provided in subsection j. of this section,
6 a person convicted of or adjudicated delinquent for a crime of the
7 second degree or of a violation of section 1 of P.L.1987, c.101
8 (C.2C:35-7), or who previously has been convicted of or
9 adjudicated delinquent for an offense under subsection a. of
10 N.J.S.2C:35-5 or a similar offense under any other law of this State,
11 any other state or the United States, who is placed on special
12 probation under this section shall be committed to the custody of a
13 residential substance use disorder treatment facility licensed and
14 approved by the Division of Mental Health and Addiction Services
15 in the Department of Human Services. Subject to the authority of
16 the court to temporarily suspend imposition of all or any portion of
17 the term of commitment to a residential treatment facility pursuant
18 to subsection j. of this section, the person shall be committed to the
19 residential treatment facility immediately, unless the facility cannot
20 accommodate the person, in which case the person shall be
21 incarcerated to await commitment to the residential treatment
22 facility. The term of such commitment shall be for a minimum of
23 six months, or until the court, upon recommendation of the
24 treatment provider, determines that the person has successfully
25 completed the residential treatment program, whichever is later,
26 except that no person shall remain in the custody of a residential
27 treatment facility pursuant to this section for a period in excess of
28 five years. Upon successful completion of the required residential
29 treatment program, the person shall complete the period of special
30 probation, as authorized by subsection a. of this section, with credit
31 for time served for any imprisonment served as a condition of
32 probation and credit for each day during which the person
33 satisfactorily complied with the terms and conditions of special
34 probation while committed pursuant to this section to a residential
35 treatment facility. Except as otherwise provided in subsection l. of
36 this section, the person shall not be eligible for early discharge of
37 special probation pursuant to N.J.S.2C:45-2, or any other provision
38 of the law. The court, in determining the number of credits for time
39 spent in residential treatment, shall consider the recommendations
40 of the treatment provider. A person placed into a residential
41 treatment facility pursuant to this section shall be deemed to be
42 subject to official detention for the purposes of N.J.S.2C:29-5
43 (escape).

44 e. The probation department or other appropriate agency
45 designated by the court to monitor or supervise the person's special
46 probation shall report periodically to the court as to the person's
47 progress in treatment and compliance with court-imposed terms and

1 conditions. The treatment provider shall promptly report to the
2 probation department or other appropriate agency all significant
3 failures by the person to comply with any court-imposed term or
4 condition of special probation or any requirements of the course of
5 treatment, including but not limited to a positive drug or alcohol
6 test, which shall only constitute a violation for a person using
7 medication-assisted treatment as defined in paragraph (7) of
8 subsection f. of this section if the positive test is unrelated to the
9 person's medication-assisted treatment, or the unexcused failure to
10 attend any session or activity, and shall immediately report any act
11 that would constitute an escape. The probation department or other
12 appropriate agency shall immediately notify the court and the
13 prosecutor in the event that the person refuses to submit to a
14 periodic drug or alcohol test or for any reason terminates the
15 person's participation in the course of treatment, or commits any act
16 that would constitute an escape.

17 f. (1) Upon a first violation of any term or condition of the
18 special probation authorized by this section or of any requirements
19 of the course of treatment, the court in its discretion may
20 permanently revoke the person's special probation.

21 (2) Upon a second or subsequent violation of any term or
22 condition of the special probation authorized by this section or of
23 any requirements of the course of treatment, the court shall, subject
24 only to the provisions of subsection g. of this section, permanently
25 revoke the person's special probation unless the court finds on the
26 record that there is a substantial likelihood that the person will
27 successfully complete the treatment program if permitted to
28 continue on special probation, and the court is clearly convinced,
29 considering the nature and seriousness of the violations, that no
30 danger to the community will result from permitting the person to
31 continue on special probation pursuant to this section. The court's
32 determination to permit the person to continue on special probation
33 following a second or subsequent violation pursuant to this
34 paragraph may be appealed by the prosecution.

35 (3) In making its determination whether to revoke special
36 probation, and whether to overcome the presumption of revocation
37 established in paragraph (2) of this subsection, the court shall
38 consider the nature and seriousness of the present infraction and any
39 past infractions in relation to the person's overall progress in the
40 course of treatment, and shall also consider the recommendations of
41 the treatment provider. The court shall give added weight to the
42 treatment provider's recommendation that the person's special
43 probation be permanently revoked, or to the treatment provider's
44 opinion that the person is not amenable to treatment or is not likely
45 to complete the treatment program successfully.

46 (4) If the court permanently revokes the person's special
47 probation pursuant to this subsection, the court shall impose any

1 sentence that might have been imposed, or that would have been
2 required to be imposed, originally for the offense for which the
3 person was convicted or adjudicated delinquent. The court shall
4 conduct a de novo review of any aggravating and mitigating factors
5 present at the time of both original sentencing and resentencing. If
6 the court determines or is required pursuant to any other provision
7 of this chapter or any other law to impose a term of imprisonment,
8 the person shall receive credit for any time served in custody
9 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
10 treatment facility pursuant to this section, and for each day during
11 which the person satisfactorily complied with the terms and
12 conditions of special probation while committed pursuant to this
13 section to a residential treatment facility. The court, in determining
14 the number of credits for time spent in a residential treatment
15 facility, shall consider the recommendations of the treatment
16 provider.

17 (5) Following a violation, if the court permits the person to
18 continue on special probation pursuant to this section, the court
19 shall order the person to comply with such additional terms and
20 conditions, including but not limited to more frequent drug or
21 alcohol testing, as are necessary to deter and promptly detect any
22 further violation.

23 (6) Notwithstanding any other provision of this subsection, if
24 the person at any time refuses to undergo urine testing for drug or
25 alcohol usage as provided in subsection a. of this section, the court
26 shall, subject only to the provisions of subsection g. of this section,
27 permanently revoke the person's special probation.
28 Notwithstanding any other provision of this section, if the person at
29 any time while committed to the custody of a residential treatment
30 facility pursuant to this section commits an act that would constitute
31 an escape, the court shall forthwith permanently revoke the person's
32 special probation.

33 (7) An action for a violation under this section may be brought
34 by a probation officer or prosecutor or on the court's own motion.
35 Failure to complete successfully the required treatment program
36 shall constitute a violation of the person's special probation. In the
37 case of the temporary or continued management of a person's
38 substance use disorder by means of medication-assisted treatment as
39 defined herein, whenever supported by a report from the treatment
40 provider of existing satisfactory progress and reasonably
41 predictable long-term success with or without further medication-
42 assisted treatment, the person's use of the medication-assisted
43 treatment, even if continuing, shall not be the basis to constitute a
44 failure to complete successfully the treatment program. A person
45 who fails to comply with the terms of the person's special probation
46 pursuant to this section and is thereafter sentenced to imprisonment
47 in accordance with this subsection shall thereafter be ineligible for

1 entry into the Intensive Supervision Program, provided however
2 that this provision shall not affect the person's eligibility for entry
3 into the Intensive Supervision Program for a subsequent conviction.

4 As used in this section, the term "medication-assisted treatment"
5 means the use of any medications approved by the federal Food and
6 Drug Administration to treat substance use disorders, including
7 extended-release naltrexone, methadone, and buprenorphine, in
8 combination with counseling and behavioral therapies, to provide a
9 whole-patient approach to the treatment of substance use disorders.

10 g. When a person on special probation is subject to a
11 presumption of revocation on a second or subsequent violation
12 pursuant to paragraph (2) of subsection f. of this section, or when
13 the person refuses to undergo drug or alcohol testing pursuant to
14 paragraph (6) of subsection f. of this section, the court may, in lieu
15 of permanently revoking the person's special probation, impose a
16 term of incarceration for a period of not less than 30 days nor more
17 than six months, after which the person's term of special probation
18 pursuant to this section may be reinstated. In determining whether
19 to order a period of incarceration in lieu of permanent revocation
20 pursuant to this subsection, the court shall consider the
21 recommendations of the treatment provider with respect to the
22 likelihood that such confinement would serve to motivate the
23 person to make satisfactory progress in treatment once special
24 probation is reinstated. This disposition may occur only once with
25 respect to any person unless the court is clearly convinced that there
26 are compelling and extraordinary reasons to justify reimposing this
27 disposition with respect to the person. Any such determination by
28 the court to reimpose this disposition may be appealed by the
29 prosecution. Nothing in this subsection shall be construed to limit
30 the authority of the court at any time during the period of special
31 probation to order a person on special probation who is not subject
32 to a presumption of revocation pursuant to paragraph (2) of
33 subsection f. of this section to be incarcerated over the course of a
34 weekend, or for any other reasonable period of time, when the court
35 in its discretion determines that such incarceration would help to
36 motivate the person to make satisfactory progress in treatment.

37 h. The court, as a condition of its order, and after considering
38 the person's financial resources, shall require the person to pay that
39 portion of the costs associated with the person's participation in any
40 residential or nonresidential treatment program imposed pursuant to
41 this section which, in the opinion of the court, is consistent with the
42 person's ability to pay, taking into account the court's authority to
43 order payment or reimbursement to be made over time and in
44 installments.

45 i. The court shall impose, as a condition of the special
46 probation, any fine, penalty, fee or restitution applicable to the

1 offense for which the person was convicted or adjudicated
2 delinquent.

3 j. Where the court finds that a person has satisfied all of the
4 eligibility criteria for special probation and would otherwise be
5 required to be committed to the custody of a residential substance
6 use disorders treatment facility pursuant to the provisions of
7 subsection d. of this section, the court may temporarily suspend
8 imposition of all or any portion of the term of commitment to a
9 residential treatment facility and may instead order the person to
10 enter a nonresidential treatment program, provided that the court
11 finds on the record that:

12 (1) the person conducting the diagnostic assessment required
13 pursuant to paragraph (1) of subsection a. of this section has
14 recommended in writing that the proposed course of nonresidential
15 treatment services is clinically appropriate and adequate to address
16 the person's treatment needs; and

17 (2) no danger to the community would result from the person
18 participating in the proposed course of nonresidential treatment
19 services; and

20 (3) a suitable treatment provider is able and has agreed to
21 provide clinically appropriate nonresidential treatment services.

22 If the prosecutor objects to the court's decision to suspend the
23 commitment of the person to a residential treatment facility
24 pursuant to this subsection, the sentence of special probation
25 imposed pursuant to this section shall not become final for 10 days
26 in order to permit the appeal by the prosecution of the court's
27 decision.

28 After a period of six months of nonresidential treatment, if the
29 court, considering all available information including but not
30 limited to the recommendation of the treatment provider, finds that
31 the person has made satisfactory progress in treatment and that
32 there is a substantial likelihood that the person will successfully
33 complete the nonresidential treatment program and period of special
34 probation, the court, on notice to the prosecutor, may permanently
35 suspend the commitment of the person to the custody of a
36 residential treatment program, in which event the special
37 monitoring provisions set forth in subsection k. of this section shall
38 no longer apply.

39 Nothing in this subsection shall be construed to limit the
40 authority of the court at any time during the term of special
41 probation to order the person to be committed to a residential or
42 nonresidential treatment facility if the court determines that such
43 treatment is clinically appropriate and necessary to address the
44 person's present treatment needs.

45 k. (1) When the court temporarily suspends the commitment of
46 the person to a residential treatment facility pursuant to subsection
47 j. of this section, the court shall, in addition to ordering

1 participation in a prescribed course of nonresidential treatment and
2 any other appropriate terms or conditions authorized or required by
3 law, order the person to undergo urine testing for drug or alcohol
4 use not less than once per week unless otherwise ordered by the
5 court. The court-ordered testing shall be conducted by the
6 probation department or the treatment provider. The results of all
7 tests shall be reported promptly to the court and to the prosecutor.
8 If the person is involved with a program that is providing the person
9 medication-assisted treatment as defined in paragraph (7) of
10 subsection f. of this section, only a positive urine test for drug or
11 alcohol use unrelated to the medication-assisted treatment shall
12 constitute a violation of the terms and conditions of special
13 probation. In addition, the court shall impose appropriate curfews
14 or other restrictions on the person's movements, and may order the
15 person to wear electronic monitoring devices to enforce such
16 curfews or other restrictions as a condition of special probation.

17 (2) The probation department or other appropriate agency shall
18 immediately notify the court and the prosecutor in the event that the
19 person fails or refuses to submit to a drug or alcohol test, knowingly
20 defrauds the administration of a drug or alcohol test, terminates the
21 person's participation in the course of treatment, or commits any act
22 that would constitute absconding from parole. If the person at any
23 time while entered in a nonresidential treatment program pursuant
24 to subsection j. of this section knowingly defrauds the
25 administration of a drug or alcohol test, goes into hiding, or leaves
26 the State with a purpose of avoiding supervision, the court shall
27 permanently revoke the person's special probation.

28 1. If the court finds that the person has made exemplary
29 progress in the course of treatment, the court may, upon
30 recommendation of the person's supervising probation officer or on
31 the court's own motion, and upon notice to the prosecutor, grant
32 early discharge from a term of special probation provided that the
33 person: (1) has satisfactorily completed the treatment program
34 ordered by the court; (2) has served at least two years of special
35 probation; (3) within the preceding 12 months, did not commit a
36 substantial violation of any term or condition of special probation,
37 including but not limited to a positive urine test, which shall only
38 constitute a violation for a person using medication-assisted
39 treatment as defined in paragraph (7) of subsection f. of this section
40 if the positive test is unrelated to the person's medication-assisted
41 treatment; and (4) is not likely to relapse or commit an offense if
42 probation supervision and related services are discontinued.

43 m. (1) The Superior Court may order the expungement of all
44 records and information relating to all prior arrests, detentions,
45 convictions, and proceedings for any offense enumerated in Title
46 2C of the New Jersey Statutes upon successful discharge from a
47 term of special probation as provided in this section, regardless of

1 whether the person was sentenced to special probation under this
2 section, section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-
3 1, if the person satisfactorily completed a substance use disorder
4 treatment program as ordered by the court and was not convicted of
5 any crime, or adjudged a disorderly person or petty disorderly
6 person, during the term of special probation. The provisions of
7 N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to an
8 expungement pursuant to this paragraph and no fee shall be charged
9 to a person eligible for relief pursuant to this paragraph. The court
10 shall grant the relief requested unless it finds that the need for the
11 availability of the records outweighs the desirability of having the
12 person freed from any disabilities associated with their availability,
13 or it finds that the person is otherwise ineligible for expungement
14 pursuant to paragraph (2) of this subsection. An expungement
15 under this paragraph shall proceed in accordance with rules and
16 procedures developed by the Supreme Court.

17 (2) A person shall not be eligible for expungement under
18 paragraph (1) of this subsection if the records include a conviction
19 for any offense barred from expungement pursuant to subsection b.
20 or c. of N.J.S.2C:52-2. It shall be the obligation of the prosecutor
21 to notify the court of any disqualifying convictions or any other
22 factors related to public safety that should be considered by the
23 court when deciding to grant an expungement under paragraph (1)
24 of this subsection.

25 (3) The Superior Court shall provide a copy of the expungement
26 order granted pursuant to paragraph (1) of this subsection to the
27 prosecutor and to the person and, if the person was represented by
28 the Public Defender, to the Public Defender. The person or, if the
29 person was represented by the Public Defender, the Public Defender
30 on behalf of the person, shall promptly distribute copies of the
31 expungement order to appropriate agencies who have custody and
32 control of the records specified in the order so that the agencies may
33 comply with the requirements of N.J.S.2C:52-15.

34 (4) If the person whose records are expunged pursuant to
35 paragraph (1) of this subsection is convicted of any crime following
36 discharge from special probation, the full record of arrests and
37 convictions may be restored to public access and no future
38 expungement shall be granted to such person.

39 (5) A person who, prior to the effective date of P.L.2015, c.261,
40 was successfully discharged from a term of special probation as
41 provided in this section, regardless of whether the person was
42 sentenced to special probation under this section, section 2 of
43 P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, may seek an
44 expungement of all records and information relating to all arrests,
45 detentions, convictions, and proceedings for any offense
46 enumerated in Title 2C of the New Jersey Statutes that existed at
47 the time of discharge from special probation by presenting an

1 application to the Superior Court in the county in which the person
2 was sentenced to special probation, which contains a duly verified
3 petition as provided in N.J.S.2C:52-7 for each crime or offense
4 sought to be expunged. The petition for expungement shall proceed
5 pursuant to N.J.S.2C:52-1 et seq. except that the requirements
6 related to the expiration of the time periods specified in
7 N.J.S.2C:52-2 through section 1 of P.L.1980, c.163 (C.2C:52-4.1)
8 shall not apply. A person who was convicted of any offense barred
9 from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2,
10 or who has been convicted of any crime or offense since the date of
11 discharge from special probation shall not be eligible to apply for
12 an expungement under this paragraph. In addition, no application
13 for expungement shall be considered until any pending charges are
14 disposed. It shall be the obligation of the prosecutor to notify the
15 court of any disqualifying convictions or any other factors related to
16 public safety that should be considered by the court when deciding
17 to grant an expungement under this paragraph. The Superior Court
18 shall consider the person's verified petition and may order the
19 expungement of all records and information relating to all arrests,
20 detentions, convictions, and proceedings of the person that existed
21 at the time of discharge from special probation as appropriate. The
22 court shall grant the relief requested unless it finds that the need for
23 the availability of the records outweighs the desirability of having
24 the person freed from any disabilities associated with their
25 availability, or it finds that the person is otherwise ineligible for
26 expungement pursuant to this paragraph. No fee shall be charged to
27 a person eligible for relief pursuant to this paragraph.

28 (6) (a) A person who is not eligible for expungement relief
29 pursuant to paragraph (1) or (5) of this subsection because of a
30 conviction occurring prior to, on, or after the effective date of
31 P.L.2021, c.460, for any offense set forth in paragraph (2) of
32 subsection a. of N.J.S.2C:24-4, involving endangering the welfare
33 of a child, which is barred from expungement pursuant to
34 subsection b. of N.J.S.2C:52-2 and therefore renders the person
35 ineligible under those paragraphs, may be eligible to seek
36 expungement relief pursuant to this paragraph. The person shall
37 have been successfully discharged from a term of special probation
38 as provided in this section, regardless of whether the person was
39 sentenced to special probation under this section, section 2 of
40 P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, for a period of at
41 least 10 years prior to seeking an expungement of all records and
42 information relating to all arrests, detentions, convictions, and
43 proceedings for any offense enumerated in Title 2C of the New
44 Jersey Statutes that existed at the time of discharge from special
45 probation. The person shall present an application to the Superior
46 Court in the county in which the person was sentenced to special
47 probation, which contains a duly verified petition as provided in

1 N.J.S.2C:52-7 for each crime or offense sought to be expunged.
2 The petition for expungement shall proceed pursuant to
3 N.J.S.2C:52-1 et seq. A person shall not be eligible to apply for an
4 expungement under this paragraph if that person was convicted of
5 any offense barred from expungement pursuant to subsection b. or
6 c. of N.J.S.2C:52-2, other than a conviction for endangering the
7 welfare of a child under paragraph (2) of subsection a. of
8 N.J.S.2C:24-4, which crime is also determined by the court, based
9 upon a review by the prosecutor in accordance with subparagraph
10 (b) of this paragraph, to have been nonviolent with respect to the
11 facts and elements of the criminal act, or if that person has been
12 convicted of any crime or offense since the date of discharge from
13 special probation. In addition, no application for expungement
14 shall be considered until any pending charges are disposed. It shall
15 be the obligation of the prosecutor to notify the court of any
16 disqualifying convictions, any conviction for endangering the
17 welfare of a child reviewed by the prosecutor and found to be
18 violent, or any other factors related to public safety that should be
19 considered by the court when deciding to grant an expungement
20 under this paragraph. The Superior Court shall consider the
21 person's verified petition and may order the expungement of all
22 records and information relating to all arrests, detentions,
23 convictions, and proceedings of the person that existed at the time
24 of discharge from special probation as appropriate. The court shall
25 grant the relief requested unless it finds that the need for the
26 availability of the records outweighs the desirability of having the
27 person freed from any disabilities associated with their availability,
28 or it finds that the person is otherwise ineligible for expungement
29 pursuant to this paragraph. No fee shall be charged to a person
30 eligible for relief pursuant to this paragraph.

31 (b) The prosecutor, when reviewing a conviction for
32 endangering the welfare of a child under paragraph (2) of
33 subsection a. of N.J.S.2C:24-4 as to whether the facts and elements
34 of the criminal act were nonviolent and therefore do not prevent, as
35 to this conviction, a person's eligibility for expungement relief
36 under this paragraph, shall consider any act which falls under the
37 following definitions to be violent acts, and render the person
38 ineligible for expungement relief:

39 any act of "abuse," as defined in R.S.9:6-1, that is specifically
40 listed in part (c) of the definition, employing or permitting a child to
41 be employed in any occupation, employment or vocation dangerous
42 to the morals of such child; part (e) of the definition, the performing
43 of any indecent, immoral or unlawful act or deed, in the presence of
44 a child, that may tend to debauch or endanger or degrade the morals
45 of the child; part (f) of the definition, permitting or allowing any
46 other person to perform any indecent, immoral or unlawful act in
47 the presence of the child that may tend to debauch or endanger the

1 morals of such child; or part (g) of the definition, using excessive
2 physical restraint on the child under circumstances which do not
3 indicate that the child's behavior is harmful to himself, others or
4 property;

5 any act of "cruelty," as defined in R.S.9:6-1; and
6 any act resulting in an "abused or neglected child," as defined by
7 subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21), that is
8 specifically listed in paragraph (1) of the definition, inflicting or
9 allowing to be inflicted upon such child physical injury by other
10 than accidental means which causes or creates a substantial risk of
11 death, or serious or protracted disfigurement, or protracted
12 impairment of physical or emotional health or protracted loss or
13 impairment of the function of any bodily organ; paragraph (2) of the
14 definition, creating or allowing to be created a substantial or
15 ongoing risk of physical injury to such child by other than
16 accidental means which would be likely to cause death or serious or
17 protracted disfigurement, or protracted loss or impairment of the
18 function of any bodily organ; paragraph (3) of the definition,
19 committing or allowing to be committed an act of sexual abuse
20 against the child; subparagraph (b) of paragraph (4) of the
21 definition, solely as to a child whose physical, mental, or emotional
22 condition has been impaired or is in imminent danger of becoming
23 impaired as the result of the failure of the child's parent or guardian
24 to exercise a minimum degree of care in providing the child with
25 proper supervision or guardianship, by unreasonably inflicting or
26 allowing to be inflicted excessive corporal punishment, or the
27 substantial risk thereof; paragraph (6) of the definition, for a child
28 upon whom excessive physical restraint has been used under
29 circumstances which do not indicate that the child's behavior is
30 harmful to himself, others, or property; or paragraph (7) of the
31 definition, for a child who is in an institution and, pursuant to
32 subparagraph (a) of that paragraph, has been placed there
33 inappropriately for a continued period of time with the knowledge
34 that the placement has resulted or may continue to result in harm to
35 the child's mental or physical well-being or, pursuant to
36 subparagraph (b) of that paragraph, who has been willfully isolated
37 from ordinary social contact under circumstances which indicate
38 emotional or social deprivation.

39 (cf.: P.L.2023, c.177, s.7)

40

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

42 2C:43-6. a. Except as otherwise provided, a person who has
43 been convicted of a crime may be sentenced to imprisonment, as
44 follows:

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

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

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

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

10 b. As part of a sentence for any crime, where the court is
11 clearly convinced that the aggravating factors substantially
12 outweigh the mitigating factors, as set forth in subsections a. and b.
13 of 2C:44-1, or the court finds that the aggravating factor set forth in
14 paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, the court
15 may fix a minimum term not to exceed one-half of the term set
16 pursuant to subsection a., or one-half of the term set pursuant to a
17 maximum period of incarceration for a crime set forth in any statute
18 other than this code, during which the defendant shall not be
19 eligible for parole; provided that no defendant shall be eligible for
20 parole at a date earlier than otherwise provided by the law
21 governing parole.

22 c. A person who has been convicted under subsection b. or d.
23 of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of
24 section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., c., or f.
25 of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection
26 b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b.,
27 e. or g. of N.J.S.2C:39-9, or of a crime under any of the following
28 sections: N.J.S.2C:11-3, N.J.S.2C:11-4, [2C:12-1b.] subsection b.
29 of N.J.S.2C:12-1, N.J.S.2C:13-1, [2C:14-2a., 2C:14-3a.] subsection
30 a of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3, N.J.S.2C:15-1,
31 N.J.S.2C:18-2, N.J.S.2C:29-5, section 1 of P.L. , c. (C.)
32 (pending before the Legislature as this bill), or section 2 of P.L. ,
33 c. (C.) (pending before the Legislature as this bill), who,
34 while in the course of committing or attempting to commit the
35 crime, including the immediate flight therefrom, used or was in
36 possession of a firearm as defined in 2C:39-1f., shall be sentenced
37 to a term of imprisonment by the court. The term of imprisonment
38 shall include the imposition of a minimum term. The minimum
39 term shall be fixed at one-half of the sentence imposed by the court
40 or 42 months, whichever is greater, or 18 months in the case of a
41 fourth degree crime, during which the defendant shall be ineligible
42 for parole.

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

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

9 d. (1) The court shall not impose a mandatory sentence
10 pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d.,
11 unless the ground therefor has been established at a hearing. At the
12 hearing, which may occur at the time of sentencing, the prosecutor
13 shall establish by a preponderance of the evidence that the weapon
14 used or possessed was a firearm. In making its finding, the court
15 shall take judicial notice of any evidence, testimony or information
16 adduced at the trial, plea hearing, or other court proceedings and
17 shall also consider the presentence report and any other relevant
18 information.

19 (2) The court shall not impose a mandatory sentence pursuant to
20 subsection c. of this section for a violation of paragraph (2) of
21 subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of
22 subsection c. of N.J.S.2C:39-5, if that rifle or shotgun is in the
23 nature of an air gun, spring gun or pistol or other weapon of a
24 similar nature in which the propelling force is a spring, elastic band,
25 carbon dioxide, compressed or other gas or vapor, air or compressed
26 air, or is ignited by compressed air, and ejecting a bullet or missile
27 smaller than three-eighths of an inch in diameter, with sufficient
28 force to injure a person; or a violation of paragraph (1) of
29 subsection c. of N.J.S.2C:39-5.

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

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

1 (C.2C:35-7), who has been previously convicted of manufacturing,
2 distributing, dispensing or possessing with intent to distribute a
3 controlled dangerous substance or controlled substance analog,
4 shall upon application of the prosecuting attorney be sentenced by
5 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,
8 except as may be provided in N.J.S.2C:35-12, include the
9 imposition of a minimum term. The minimum term shall be fixed
10 at, or between, one-third and one-half of the sentence imposed by
11 the court or three years, whichever is greater, not less than seven
12 years if the person is convicted of a violation of N.J.S.2C:35-6, or
13 18 months in the case of a fourth degree crime, during which the
14 defendant shall be ineligible 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,
18 the prosecutor shall establish the ground therefor by a
19 preponderance of the evidence. In making its finding, the court
20 shall take judicial notice of any evidence, testimony or information
21 adduced at the trial, plea hearing, or other court proceedings and
22 shall also consider the presentence report and any other relevant
23 information.

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

31 g. Any person who has been convicted under subsection a. of
32 N.J.S.2C:39-4 or of a crime under any of the following sections:
33 N.J.S.2C:11-3, N.J.S.2C:11-4, **[N.J.S.2C:12-1b.]** subsection b. of
34 N.J.S.2C:12-1, N.J.S.2C:13-1, **[N.J.S.2C:14-2a., N.J.S.2C:14-3a.]**
35 subsection a of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3,
36 N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5,
37 section 1 of P.L. , c. (C.) (pending before the Legislature
38 as this bill), or section 2 of P.L. , c. (C.) (pending before
39 the Legislature as this bill), who, while in the course of committing
40 or attempting to commit the crime, including the immediate flight
41 therefrom, used or was in possession of a machine gun or assault
42 firearm shall be sentenced to a term of imprisonment by the court.
43 The term of imprisonment shall include the imposition of a
44 minimum term. The minimum term shall be fixed at 10 years for a
45 crime of the first or second degree, five years for a crime of the
46 third degree, or 18 months in the case of a fourth degree crime,
47 during which the defendant shall be ineligible for parole.

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

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

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

24 i. A person who has been convicted under paragraph (6) of
25 subsection b. of 2C:12-1 of causing bodily injury while eluding
26 shall be sentenced to a term of imprisonment by the court. The
27 term of imprisonment shall include the imposition of a minimum
28 term. The minimum term shall be fixed at, or between one-third
29 and one-half of the sentence imposed by the court. The minimum
30 term established by this subsection shall not prevent the court from
31 imposing a presumptive term of imprisonment pursuant to
32 paragraph (1) of subsection f. of 2C:44-1.
33 (cf.: P.L.2013, c.113, s.2)

34
35 8. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to
36 read as follows:

37 2. a. A court imposing a sentence of incarceration for a crime of
38 the first or second degree enumerated in subsection d. of this
39 section shall fix a minimum term of 85% of the sentence imposed,
40 during which the defendant shall not be eligible for parole.

41 b. The minimum term required by subsection a. of this section
42 shall be fixed as a part of every sentence of incarceration imposed
43 upon every conviction of a crime enumerated in subsection d. of
44 this section, whether the sentence of incarceration is determined
45 pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any
46 other provision of law, and shall be calculated based upon the
47 sentence of incarceration actually imposed. The provisions of
48 subsection a. of this section shall not be construed or applied to

1 reduce the time that must be served before eligibility for parole by
2 an inmate sentenced to a mandatory minimum period of
3 incarceration. Solely for the purpose of calculating the minimum
4 term of parole ineligibility pursuant to subsection a. of this section,
5 a sentence of life imprisonment shall be deemed to be 75 years.

6 c. Notwithstanding any other provision of law to the contrary
7 and in addition to any other sentence imposed, a court imposing a
8 minimum period of parole ineligibility of 85 percent of the sentence
9 pursuant to this section shall also impose a five-year term of parole
10 supervision if the defendant is being sentenced for a crime of the
11 first degree, or a three-year term of parole supervision if the
12 defendant is being sentenced for a crime of the second degree. The
13 term of parole supervision shall commence upon the completion of
14 the sentence of incarceration imposed by the court pursuant to
15 subsection a. of this section unless the defendant is serving a
16 sentence of incarceration for another crime at the time **[he]** the
17 defendant completes the sentence of incarceration imposed pursuant
18 to subsection a., in which case the term of parole supervision shall
19 commence immediately upon the defendant's release from
20 incarceration. During the term of parole supervision the defendant
21 shall remain in release status in the community in the legal custody
22 of the Commissioner of the Department of Corrections and shall be
23 supervised by the State Parole Board as if on parole and shall be
24 subject to the provisions and conditions of section 3 of P.L.1997,
25 c.117 (C.30:4-123.51b).

26 d. The court shall impose sentence pursuant to subsection a. of
27 this section upon conviction of the following crimes or an attempt
28 or conspiracy to commit any of these crimes:

- 29 (1) N.J.S.2C:11-3, murder;
- 30 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
- 31 (3) N.J.S.2C:11-5, vehicular homicide;
- 32 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
- 33 (5) subsection b. of section 1 of P.L.1996, c.14 (2C:12-11),
34 disarming a law enforcement officer;
- 35 (6) N.J.S.2C:13-1, kidnapping;
- 36 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
- 37 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
38 subsection c. of N.J.S.2C:14-2, sexual assault;
- 39 (9) N.J.S.2C:15-1, robbery;
- 40 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 41 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
42 arson;
- 43 (12) N.J.S.2C:18-2, burglary;
- 44 (13) subsection a. of N.J.S.2C:20-5, extortion;
- 45 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
46 booby traps in manufacturing or distribution facilities;
- 47 (15) N.J.S.2C:35-9, strict liability for drug induced deaths;
- 48 (16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

- 1 (17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or
2 possessing chemical weapons, biological agents or nuclear or
3 radiological devices;
- 4 (18) N.J.S.2C:41-2, racketeering, when it is a crime of the first
5 degree~~[:]~~;
- 6 (19) subsection i. of N.J.S.2C:39-9, firearms trafficking; **[or]**
- 7 (20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or
8 permitting a child to engage in a prohibited sexual act, knowing that
9 the act may be reproduced or reconstructed in any manner, or be
10 part of an exhibition or performance;
- 11 (21) section 1 of P.L. , c. (C.) (pending before the
12 Legislature as this bill), home invasion burglary; or
- 13 (22) section 2 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), residential burglary.
- 15 e. (Deleted by amendment, P.L.2001, c.129).
16 (cf: P.L.2013, c.136, s.4)
17
- 18 9. N.J.S.2C:44-3 is amended to read as follows:
19 2C:44-3. The court may, upon application of the prosecuting
20 attorney, sentence a person who has been convicted of a crime of
21 the first, second or third degree to an extended term of
22 imprisonment if it finds one or more of the grounds specified in
23 subsection a., b., c., or f. of this section. If the grounds specified in
24 subsection d. are found, and the person is being sentenced for
25 commission of any of the offenses enumerated in **[N.J.S.2C:43-6c.**
26 **or N.J.S.2C:43-6g.]** subsections c. or g. of N.J.S.2C:43-6, the court
27 shall sentence the defendant to an extended term as required by
28 **[N.J.S.2C:43-6c. or N.J.S.2C:43-6g.]** subsections c. or g. of
29 N.J.S.2C:43-6, and application by the prosecutor shall not be
30 required. The court shall, upon application of the prosecuting
31 attorney, sentence a person who has been convicted of a crime
32 under N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of
33 imprisonment if the grounds specified in subsection g. of this
34 section are found. The court shall, upon application of the
35 prosecuting attorney, sentence a person to an extended term if the
36 imposition of such term is required pursuant to the provisions of
37 section 2 of P.L.1994, c.130 (C.2C:43-6.4). The finding of the
38 court shall be incorporated in the record.
- 39 a. The defendant has been convicted of a crime of the first,
40 second or third degree and is a persistent offender. A persistent
41 offender is a person who at the time of the commission of the crime
42 is 21 years of age or over, who has been previously convicted on at
43 least two separate occasions of two crimes, committed at different
44 times, when he was at least 18 years of age, if the latest in time of
45 these crimes or the date of the defendant's last release from
46 confinement, whichever is later, is within 10 years of the date of the
47 crime for which the defendant is being sentenced.

1 b. The defendant has been convicted of a crime of the first,
2 second or third degree and is a professional criminal. A
3 professional criminal is a person who committed a crime as part of
4 a continuing criminal activity in concert with two or more persons,
5 and the circumstances of the crime show he has knowingly devoted
6 himself to criminal activity as a major source of livelihood.

7 c. The defendant has been convicted of a crime of the first,
8 second or third degree and committed the crime as consideration for
9 the receipt, or in expectation of the receipt, of anything of pecuniary
10 value the amount of which was unrelated to the proceeds of the
11 crime or he procured the commission of the offense by payment or
12 promise of payment of anything of pecuniary value.

13 d. Second offender with a firearm. The defendant is at least 18
14 years of age and has been previously convicted of any of the
15 following crimes: N.J.S.2C:11-3, N.J.S.2C:11-4, [2C:12-1b.]
16 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, [2C:14-2a., 2C:14-
17 3a.] subsection a. of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3,
18 N.J.S.2C:15-1, N.J.S.2C:18-2, section 1 of P.L. _____, c. _____
19 (pending before the Legislature as this bill), N.J.S.2C:29-5, [2C:39-
20 4a.] subsection a. of N.J.S.2C:39-4, or has been previously
21 convicted of an offense under Title 2A of the New Jersey Statutes
22 or under any statute of the United States or any other state which is
23 substantially equivalent to the offenses enumerated in this
24 subsection and he used or possessed a firearm, as defined in
25 **[2C:39-1f.] N.J.S.2C:39-1,** in the course of committing or
26 attempting to commit any of these crimes, including the immediate
27 flight therefrom.

28 e. (Deleted by amendment, P.L.2001, c.443).

29 f. The defendant has been convicted of a crime under any of the
30 following sections: N.J.S.2C:11-4, [N.J.S.2C:12-1b.] subsection b.
31 of N.J.S.2C:12-1, N.J.S.2C:13-1, [N.J.S.2C:14-2a., N.J.S.2C:14-
32 3a.] subsection a. of N.J.S.2C:14-2, subsection a. of N.J.S.2C:14-3,
33 N.J.S.2C:15-1, N.J.S.2C:18-2, section 1 of P.L. _____, c. _____
34 (pending before the Legislature as this bill), section 2 of P.L. _____, c.
35 (C. _____) (pending before the Legislature as this bill), [N.J.S.2C:29-
36 2b.] subsection b. of N.J.S.2C:29-2, N.J.S.2C:29-5, N.J.S.2C:35-5,
37 and in the course of committing or attempting to commit the crime,
38 including the immediate flight therefrom, the defendant used or was
39 in possession of a stolen motor vehicle.

40 g. The defendant has been convicted of a crime under
41 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of
42 violence and the victim of the crime was 16 years of age or less.

43 For purposes of this subsection, a crime involves violence or the
44 threat of violence if the victim sustains serious bodily injury as
45 defined in subsection b. of N.J.S.2C:11-1, or the actor is armed with
46 and uses a deadly weapon or threatens by word or gesture to use a
47 deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or
48 threatens to inflict serious bodily injury.

1 h. (Deleted by amendment, P.L.2007, c.341).
2 (cf: P.L.2007, c.341, s.8)

3
4 10. Section 3 of P.L.1989, c.331 (C.34:8-44) is amended to read
5 as follows:

6 3. In addition to any other procedure, condition or information
7 required by this act:

8 a. Every applicant shall file a disclosure statement with the chief
9 stating whether or not the applicant has been convicted of any
10 crime, which for the purposes of this act shall mean a violation of
11 any of the following provisions of the “New Jersey Code of
12 Criminal Justice,” Title 2C of the New Jersey Statutes as amended
13 and supplemented, or the equivalent under the laws of any other
14 jurisdiction:

15 (1) Any crime of the first degree;

16 (2) Any crime which is a second or third degree crime and is a
17 violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes;
18 or

19 (3) Any other crime which is a violation of N.J.S.2C:5-1,
20 N.J.S.2C:5-2, N.J.S.2C:11-2 through N.J.S.2C:11-4, N.J.S.2C:12-1,
21 N.J.S.2C:12-3, N.J.S.2C:13-1, N.J.S.2C:14-2, N.J.S.2C:15-1,
22 subsection a. or b. of N.J.S.2C:17-1, subsection a. or b. of
23 N.J.S.2C:17-2, N.J.S.2C:18-2, section 1 of P.L. _____, c. _____
24 (pending before the Legislature as this bill), section 2 of P.L. _____, c.
25 (C. _____) (pending before the Legislature as this bill), N.J.S.2C:20-1,
26 N.J.S.2C:20-2, N.J.S.2C:20-4, N.J.S.2C:20-5, N.J.S.2C:20-7,
27 section 1 or 2 of P.L.2023, c.101 (C.2C:20-10.1 or C.2C:20-10.2),
28 N.J.S.2C:20-9, N.J.S.2C:21-2 through N.J.S.2C:21-4, N.J.S.2C:21-
29 6, N.J.S.2C:21-7, N.J.S.2C:21-12, N.J.S.2C:21-14, N.J.S.2C:21-15,
30 or N.J.S.2C:21-19, chapter 27 or 28 of Title 2C of the New Jersey
31 Statutes, N.J.S.2C:30-2, N.J.S.2C:30-3, N.J.S.2C:35-5,
32 N.J.S.2C:35-10, or N.J.S.2C:37-1 through N.J.S.2C:37-4.

33 b. Each disclosure statement may be reviewed and used by the
34 director as grounds for denying licensure or registration, except that
35 in cases in which the provisions of P.L.1968, c.282 (C.2A:168A-1
36 et seq.) apply, the director shall comply with the requirements of
37 that act.

38 c. An applicant who is denied licensure or registration pursuant
39 to this section shall, upon a written request transmitted to the
40 director within 30 calendar days of the denial, be afforded an
41 opportunity for a hearing in the manner provided for contested
42 cases pursuant to the “Administrative Procedure Act,” P.L.1968,
43 c.410 (C.52:14B-1 et seq.).

44 d. An applicant shall have the continuing duty to provide any
45 assistance or information requested by the director, and to cooperate
46 in any inquiry, investigation, or hearing conducted by the director.

47 e. If any of the information required to be included in the
48 disclosure statement changes, or if any additional information
49 should be added after the filing of the statement, the applicant shall

1 provide that information to the chief, in writing, within 30 calendar
2 days of the change or addition.
3 (cf: P.L.2023, c.101, s.6)

4

5 11. This act shall take effect immediately.