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AN ACT concerning sentencing for repeat offenders for certain drug crimes and designated the "Community Safety and Fair Sentencing Act," and amending N.J.S.2C:43-6.

The "Community Safety and Fair Sentencing Act"; provides discretion to court in sentencing repeat offenders to extended term of imprisonment for certain drug crimes.

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PRIME Sponsor _____ / _____

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Same as _____ 10/11 Same as _____ 12/13

Suggested allocation:

AN ACT concerning sentencing for repeat offenders for certain drug crimes, and amending N.J.S.2C:43-6.

WHEREAS, Fair and effective criminal justice policies are in the best interest of the citizens of New Jersey; and

WHEREAS, Mandatory minimum sentencing has been ineffective at achieving its purported goals: reducing the level of substance abuse and crime, and punishing for the most serious offenders; and

WHEREAS, Twenty-five years of mandatory minimum sentencing has resulted in a tremendous increase in the New Jersey prison population, particularly of drug offenders; and

WHEREAS, The number of people incarcerated in New Jersey has grown from 8,000 in 1982 to more than 23,000 in 2013; and

WHEREAS, The percentage of individuals serving mandatory minimum sentences in New Jersey rose from 11 percent in 1982 to 72 percent in 2013, and the percentage of individuals incarcerated for drug offenses has doubled; and

WHEREAS, Mandatory minimum sentencing has exacerbated racial disparities in the criminal justice system, and has resulted in the disproportionate incarceration of African Americans and Latinos; and

WHEREAS, In New Jersey, African Americans and Latinos account for only 27 percent of the population but 81 percent of those incarcerated in the State; and

WHEREAS, People incarcerated for drug offenses return to their communities facing barriers to employment, housing, public assistance, and education opportunities; and

WHEREAS, Almost two-thirds of prisoners have dependent children, and their prolonged absence destabilizes families and threatens the economic and social vitality of communities; and

WHEREAS, Individuals incarcerated for drug offenses frequently struggle with chemical dependence and need treatment, not longer sentences; and

WHEREAS, A growing body of evidence shows that longer sentences do not reduce crime or recidivism and may actually harden low level offenders and hurt rehabilitation; and

WHEREAS, Mandatory minimum sentencing reflects a “one-size fits all” approach that does not allow courts to impose appropriate sentences that take into account the full circumstances of the offense and the characteristics of the offender; and

WHEREAS, A broad array of governmental representatives, Supreme Court Justices, and independent organizations have harshly criticized mandatory minimum sentencing, including the United States Sentencing Commission, the United States Conference of Mayors, Supreme Court Justice Anthony Kennedy, the Judicial Conference of the United States, the American Bar Association, former Drug Czar Barry McCaffrey and former U.S. Attorney General Edwin Meese; now, therefore,

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.

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

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

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

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

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

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

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

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

c. A person who has been convicted under subsection b. or d. of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b. or c. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any of the following sections: 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, who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in 2C:39-1f., shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

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

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

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

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

f. (1) A person convicted of manufacturing, distributing, dispensing or possessing with intent to distribute any dangerous substance or controlled substance analog under N.J.S.2C:35-5, of maintaining or operating a controlled dangerous substance production facility under N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme under N.J.S.2C:35-6, leader of a narcotics trafficking network under N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent to distribute on or near school property or buses under section 1 of P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of manufacturing, distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog, **【shall upon application of the prosecuting attorney】** may be sentenced by the court to an extended term as authorized by subsection c. of N.J.S.2C:43-7 **【, notwithstanding that extended terms are ordinarily discretionary with the court】**. The term of imprisonment **【shall, except as】** may **【be provided in N.J.S.2C:35-**

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12,] include the imposition of a minimum term. The minimum term, if imposed, shall be fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater, not less than seven years if the person is convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

(2) (a) The court shall not impose an extended term pursuant to this subsection unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish the ground therefor by a preponderance of the evidence.

(b) In making its finding to impose or not impose an extended term, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information, including but not limited to:

(i) the extent of the person's prior criminal record pertaining to any of the offenses enumerated in this subsection;

(ii) whether the one or more prior convictions for the offenses enumerated in this subsection is remote in time to the circumstances involved in the person's current conviction for an offense enumerated in paragraph (1) of this subsection;

(iii) whether the person has been previously convicted of a crime of the first or second degree involving the use or possession of a firearm as defined in N.J.S.2C:39-1f.;

(iv) whether the person used or threatened violence, or possessed a firearm as defined in N.J.S.2C:39-1f., in the course of committing the offense enumerated in paragraph (1) of this subsection that resulted in the current conviction;

(v) whether the person was less than 26 years of age at the time of committing the offense enumerated in paragraph (1) of this subsection that resulted in the current conviction;

(vi) whether the person was on any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or on any school bus, when that person committed the offense enumerated in paragraph (1) of this subsection that resulted in the current conviction;

(vii) whether the person was knowingly involved in criminal street gang related activity as set forth in section 1 of P.L.2007, c.341 (C.2C:33-29) at the time of committing the offense enumerated in paragraph (1) of this subsection that resulted in the current conviction;

(viii) whether the person's current conviction for an offense enumerated in paragraph (1) of this subsection involved, in the aggregate, an amount of controlled dangerous substance or controlled substance analog that is less than one-quarter of the amount needed to establish a crime of the second degree for manufacturing, distributing, dispensing, or possessing with intent to

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distribute a controlled dangerous substance or controlled substance analog pursuant to N.J.S.2C:35-5;

(ix) whether the person was subject, based upon disposition of another criminal offense or juvenile delinquency matter, to release on bail or personal recognizance, parole, probation, pretrial intervention, or any other form of supervision administered in connection with that other matter at the time of committing the offense enumerated in paragraph (1) of this subsection that resulted in the current conviction; and

(x) whether the person has provided substantial assistance in a criminal investigation or prosecution of another person for any offense related to a controlled dangerous substance or controlled substance analog enumerated in chapter 35 of Title 2C of the New Jersey Statutes.

Any sentence by a court that does not impose an extended term of imprisonment following a hearing for an extended term as set forth in subparagraph (a) of paragraph (2) of this subsection shall be subject to appeal by the prosecuting attorney for 10 days following the entrance of the court's sentencing order.

(3) For the purpose of this subsection, a previous conviction exists where the actor has **[at any time]** been convicted under chapter 35 of this title or Title 24 of the Revised Statutes or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to 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 section 1 of P.L.1987, c.101 (C.2C:35-7).

g. Any person who has been convicted under subsection a. of N.J.S.2C:39-4 or of a crime under any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5 who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a machine gun or assault firearm shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at 10 years for a crime of the first or second degree, five years for a crime of the third degree, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

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

A person who has been convicted of an offense enumerated in this subsection and who used or possessed a machine gun or assault firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of any firearm as defined in

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subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an extended term as authorized by subsection d. of N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily discretionary with the court.

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

i. A person who has been convicted under paragraph (6) of subsection b. of 2C:12-1 of causing bodily injury while eluding shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at, or between one-third and one-half of the sentence imposed by the court. The minimum term established by this subsection shall not prevent the court from imposing a presumptive term of imprisonment pursuant to paragraph (1) of subsection f. of 2C:44-1.
(cf: P.L.2007, c.341, s.5)

2. This act shall take effect immediately, and apply to any person charged on or after that date with a crime subject to an extended term of imprisonment under subsection f. of N.J.S.2C:43-6.

STATEMENT

This bill, designated the “Community Safety and Fair Sentencing Act,” provides discretion to courts in sentencing repeat offenders to extended terms of imprisonment for the following drug crimes, currently enumerated in subsection f. of N.J.S.2C:43-6: (1) being a leader of a narcotics trafficking network under N.J.S.2C:35-3; (2) maintaining or operating a controlled dangerous substance production facility under N.J.S.2C:35-4; (3) manufacturing, distributing, dispensing or possessing with intent to distribute any controlled dangerous substance or controlled substance analog under N.J.S.2C:35-5; (4) employing a juvenile in a drug distribution scheme under N.J.S.2C:35-6; or (5) distributing, dispensing or possessing with intent to distribute on or near school property or buses under section 1 of P.L.1987, c.101 (C.2C:35-7).

An extended term of imprisonment, if imposed, could include the imposition of a minimum term; if a minimum term was set by a court, it would be fixed at, or between, one-third and one-half of the sentence imposed or three years, whichever is greater, not less than seven years if the person was convicted of employing a juvenile in a

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drug distribution scheme (see N.J.S.2C:35-6), or 18 months in the case of conviction for a crime of the fourth degree, during which the person would be ineligible for parole.

The court would not impose an extended term of imprisonment on the repeat offender unless the ground therefor was established at a hearing. In making its finding to impose or not impose an extended term, the court would consider information on:

(1) the extent of the person's prior criminal record pertaining to any of the above enumerated offenses;

(2) whether the one or more prior convictions was remote in time to the circumstances involved in the person's current conviction;

(3) whether the person had been previously convicted of a crime of the first or second degree involving the use or possession of a firearm as defined in subsection f. of N.J.S.2C:39-1;

(4) whether the person used or threatened violence, or possessed a firearm as defined in subsection f. of N.J.S.2C:39-1, in the course of committing the offense resulting in the current conviction;

(5) whether the person was less than 26 years of age at the time of committing the offense resulting in the current conviction;

(6) whether the person was on any school property or on any school bus when committing the offense that resulted in the current conviction;

(7) whether the person was knowingly involved in criminal street gang related activity as set forth in section 1 of P.L.2007, c.341 (C.2C:33-29) at the time of committing the offense resulting in the current conviction;

(8) whether the person's current conviction involved, in the aggregate, an amount of controlled dangerous substance or controlled substance analog that is less than one-quarter of the amount needed to establish a crime of the second degree for manufacturing, distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog (see N.J.S.2C:35-5);

(9) whether the person was subject, based upon disposition of another criminal offense or juvenile delinquency matter, to release on bail or personal recognizance, parole, probation, pretrial intervention, or any other form of supervision administered in connection with that other matter at the time of committing the offense resulting in the current conviction; and

(10) whether the person has provided substantial assistance in a criminal investigation or prosecution of another person for any offense related to a controlled dangerous substance or controlled substance analog enumerated in chapter 35 of Title 2C of the New Jersey Statutes.

Any sentence by a court that does not impose an extended term of imprisonment following a hearing for such would be subject to appeal by the prosecuting attorney for 10 days following the entrance of the court's sentencing order.

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Under current law, repeat offenders of the above described enumerated crimes in subsection f. of N.J.S.2C:43-6 are only subject to extended terms of imprisonment upon application by the prosecuting attorney, notwithstanding that such extended terms are ordinarily discretionary with the court. This bill, as explained, changes the current law to place this discretion with the court.

The “Community Safety and Fair Sentencing Act”; provides discretion to court in sentencing repeat offenders to extended term of imprisonment for certain drug crimes.

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