Statutory Changes to Sentencing Under the NJ Code of Criminal Justice: 1979 to the Present

The New Jersey Commission to Review Criminal Sentencing

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I. INTRODUCTION[1]

Enacted 28 years ago, the New Jersey Code of Criminal Justice wrought changes in sentencing practice and policy, both substantive and procedural, that constituted a major, if not revolutionary, advance over the scheme it supplanted. In short, the Code imposed a rational and comprehensive framework for imposing sentencing on a system that plausibly could be characterized as anarchic.

That having been said, 28 years is a substantial period of time by any measure, and much has changed since 1979. Specifically, during the intervening years between the Code's enactment and the present, the Legislature has consistently amended the Code by adding provisions that defined new crimes or modified (typically through enhancement) punishment for existing offenses. This ongoing accumulation of new provisions has, to some observers, fundamentally altered the underlying philosophy and architecture of the sentencing scheme established by the Code and envisioned and championed by those responsible for bringing the Code into existence.

This report endeavors to accurately chart these changes and to place them in a context that enables the reader to clearly appreciate the extent to which sentencing law and practice has been steadily transformed since 1979. It cannot be too strongly emphasized that the content of this document is intended to be descriptive rather than prescriptive – no opinion or judgment is proffered as to the wisdom or propriety of the enactments described herein. The Commission to

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[1] The Commission gratefully acknowledges and appreciates the extensive research and preparation of this report by its former Executive Director, Ben Barlyn. Ben has since left the Commission to serve as an assistant prosecutor with the Hunterdon County Prosecutor's Office. Although individual members of the Commission may not necessarily agree with every statement or principle of law or policy as contained in the report, the Commission is strongly unanimous as to its agreement with the overarching thesis and fundamental principles discussed herein.

Review Criminal Sentencing does strongly hope that this report precipitates a much-needed and manifestly long-overdue discussion among key stakeholders, including the judiciary, elected officials, law enforcement, the defense bar, corrections officials, and, importantly, the general public, regarding whether to engage in a comprehensive evaluation and reassessment of the Code's sentencing scheme and consider whether systemic reform is required.

II. THE DEVELOPMENT OF NEW JERSEY'S PRESENT SENTENCING SCHEME

Although New Jersey's Code of Criminal Justice (The Code) was enacted in 1978 and became effective the following year, its lineage can be traced as far back as the 1930s. It was then that the American Law Institute (ALI) chose to focus its attention on the state of American criminal law and criminal procedure. Comprised of distinguished jurists, the ALI was founded in 1923 in order "to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work." Following World War II, the ALI appointed an eminent Columbia law professor, Herbert Wechsler, to oversee the development of a model penal code (MPC).

The ALI intended that the MPC serve as a legislative blueprint that could be considered and subsequently codified by state legislatures. In this regard, the MPC served as a model piece of legislation: its explicit purpose was to transfer the power to make criminal law from the common-law making judiciary to the statute-law making legislation. The ALI also intended that the MPC be comprehensive. In its effort to guide the court's discretion in applying the rules generated by the legislature, the MPC left little to chance. Finally, the MPC was a code insofar as it embodied a rational system of criminal law, rather than just a compendium of existing rules. This system served to promote certain clearly identified "purposes," which the drafters made explicit. Those purposes were then implemented in the "principles," "provisions," and "definitions" that comprise the bulk of the MPC.

The ALI's work on the MPC culminated in the completion of a final draft in 1962. Six years later, at the instigation of then-Governor Richard J. Hughes, New Jersey embarked on an

ambitious effort to modernize its criminal laws. Specifically, a report of the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey proposed the establishment of a Criminal Law Revision Commission ("The Knowlton Commission"). Chaired by Professor Robert E. Knowlton of Rutgers Law School, this commission was expressly mandated by statute to "modernize the criminal law . . . to embody principles representing the best in modern statutory law . . . to eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions and to revise and codify the law in a logical, clear and concise manner."

The Knowlton Commission issued its two-volume Final Report in October 1971. A review of the Final Report, as well as subsequent writings by Professor Knowlton, highlight that the principal source for many of the Knowlton Commission's proposals was the MPC, although many variations were imported from certain states that had preceded New Jersey in the adoption of penal codes. Legislation to create a New Jersey Code of Criminal Justice was first introduced into the Legislature in 1975. On August 10, 1978, then-Governor Brendan T. Byrne signed the Code of Criminal Justice into law, which was codified in Title 2C of the New Jersey Statutes Annotated. The Code itself became effective on September 1, 1979.

III. BASIC SENTENCING UNDER THE 1979 CODE

Prior to the enactment of the Code, judicial discretion in New Jersey with respect to sentencing was essentially unfettered. This was directly attributable to the absence of a coherent and rational legislative statutory framework for channeling or guiding a judge's decision-making process with regard to formulating sentences. Consequently, judges were guided only by the general sentencing goals of rehabilitation, retribution, incapacitation, deterrence and protection of the public. Because for many judges the primary focus was on the rehabilitation of the offender, sentencing prior to the enactment of the Code was intrinsically "offender-oriented," with the punishment governed more by the particular circumstances and characteristics of the offender than by the severity of the crime or crimes for which he or she was convicted. Other judges, however, emphasized deterrence and punishment as the basis for imposing a particular sentence.

Patterned closely after Articles 6 and 7 of the ALI, Chapters 43 and 44 of the New Jersey Penal Code represented a dramatic and fundamental break with sentencing philosophy and practice that prevailed prior to its adoption. In 1984, the Supreme Court of New Jersey expounded on this paradigmatic shift in two seminal sentencing decisions, State v. Roth and State v. Hodge. The Court emphasized that the transcendent theme of the Code's sentencing provisions was the replacement of the unfettered discretion of sentencing judges with a structured system that identified the permissible aims of punishment and established a general framework to guide judicial discretion and in a manner that promoted greater uniformity in sentencing. This entailed the abandonment of the rehabilitative model and its replacement with a system premised on "just deserts," with the paramount goal being that the punishment fit the

crime, not the criminal, and that there be a predictable degree of uniformity in sentencing. The Code's elevation of uniformity as its preeminent objective was eloquently articulated by Justice Daniel O'Hern, who proclaimed on behalf of the Court in Hodge that "there can be no justice without a predictable degree of uniformity in sentencing," and that the "loss of unfettered discretion may be the price of even handed justice."

A. A COMPREHENSIVE SENTENCING ARCHITECTURE

Like the ALI, the Knowlton Commission expressly envisioned and advocated for an all-encompassing and coherent statutory framework to govern the disposition of offenders. Drawing heavily from the MPC, the Knowlton Commission proposed the promulgation of two chapters of the Code to govern sentencing. One (Chapter 43) specifically defined the authorized modes (i.e., probation, fines, imprisonment) and quantum of punishment. Another chapter, (Chapter 44) set forth the criteria for imposing or withholding authorized punishment. The Knowlton Commission's recommendations were ultimately embraced by the Legislature, with certain modifications, when the Code was enacted several years later.

B. THE GRADING OF CRIMES BY DEGREE

The Code brought all crimes within the scope of four graded categories, thus precluding the disarray and irrationality that results when legislators fix a specific penalty each time they create a new crime. Indeed, the existence of these categories and of crimes classified within them was intended by the Knowlton Commission and MPC drafters to give the legislature an opportunity to consider in a rational way the proper grading of a newly created crime.

When enacted in 1978, the Code categorized indictable crimes by degree: specifically,

there are four degrees of crimes of escalating severity, each with a corresponding range of imprisonment. For example, a first degree crime is punishable by an ordinary term of imprisonment [of] between ten to twenty years. The ordinary range of imprisonment for a second degree offense is between five and ten years; a third degree offense is between three and five years, and a fourth degree offense is up to 18 months.

C. THE IN/OUT DECISION

In imposing an appropriate sentence, the judge must determine, in the first instance, the degree of the crime for which the defendant has been convicted. The degree of the crime determines not only the range of punishment, but also whether the defendant will be sentenced to imprisonment. Under the Code, a defendant must, absent the most extraordinary circumstances, be sentenced to a term of imprisonment (as opposed to a non-custodial term) upon conviction for a first or second degree crime. On the other hand, for any crime, other than a crime of the first or second degree, there is a presumption of non-incarceration for first offenders. There is no presumption either for or against imprisonment with regard to repeat offenders convicted of a third or fourth-degree crime. These facets of the Code are graphically depicted below in Diagram A.

Diagram A.

Ordinary Terms of Imprisonment Authorized by the NJ Code of Criminal Justice Pre-Natale (2005)			
Degree	**Bottom Range**	**Presumptive Term**	**Top Range**
1st	**10 years**	**15 years**	**20 years**
2nd	**5 years**	**7 years**	**10 years**
3rd	**3 years**	**4 years**	**5 years**
4th	**0 months**	**9 months**	**18 months**
*** Presumption of Imprisonment Applicable** *** Presumption of Non-Incarceration For First-Time Offenders**			

Finally, the presumption of imprisonment for first and second degree crimes is not satisfied by what is known as a "split sentence" of up to 364 days in a county jail as a condition of probation. Thus, even where a sentencing court has decided to sentence a second degree offender as if he or she had been convicted of a third-degree offense, the court is still required to impose a state prison term of between three to five years in order satisfy the presumption of imprisonment.

D. THE [FORMER] ROLE OF PRESUMPTIVE TERMS

Upon ascertaining the degree of the crime and whether incarceration is required, the sentencing court then determines the appropriate sentence within the applicable range. From the effective date of the Code in 1979 until 2005, sentencing courts were required to start the sentencing process at the presumptive term, which is the mid-point within each of range (including ordinary and extended terms) of incarceration. The applicable provision, N.J.S.A. 2C:44-1f(1), expressly required that the court "shall impose" the presumptive term for the

offense unless "the preponderance of aggravating and mitigating factors weighs in favor of a higher or lower term . . ." Stated differently, if the applicable aggravating and mitigating circumstances were in equipoise, i.e., balanced each other, the sentencing court was required to impose the presumptive sentence.

In the wake of several watershed United States Supreme Court sentencing opinions, beginning with Apprendi v. New Jersey in 2000, the constitutionality of N.J.S.A. 2C:44-1f(1) was abruptly called into question for reasons that need not be explained in this report. Ultimately, the issue was resolved by the Supreme Court of New Jersey in 2005 when it issued its opinion in State v. Natale. In Natale, the Court did indeed conclude the presumptive term provision was constitutionally infirm under both the Federal and State constitutions. As a remedy, the Court struck down presumptive sentences altogether. Accordingly, judges are no longer compelled by statute to begin their sentencing determinations at the mid-point of each sentencing range.

E. DOWNGRADING OF SENTENCES

As noted previously, the Code also provides an additional sentencing alternative for crimes of the first or second degree. In such cases, where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating ones, it may sentence the offender to a term appropriate for a crime one degree lower. Consistent with the "just deserts" philosophy of the Code, the trial court must weigh the factors with a focus on the seriousness of the offense rather than on the defendant and his prospects of rehabilitation. The court's determination to impose a downgraded sentence does not bar the imposition of any sentence within the range of that lower degree offense. The court must reweigh the factors in selecting the length of sentence. Moreover, the court cannot use the mitigating factors previously relied upon to also

justify the imposition of a sentence less than the presumptive term since to do so would constitute impermissible double counting.

F. AGGRAVATING AND MITIGATING FACTORS

Statutory aggravating and mitigating factors are particular circumstances or considerations enumerated by the Code relevant to culpability that provide an objective basis to either increase or decrease punishment in a given case. These factors serve two distinct purposes under the Code. In the first instance, their applicability and the weight determine the length of a particular term of imprisonment within the appropriate range. Prior to the Natale decision referenced earlier, after making findings of fact on the record as to the existence of the enumerated aggravating and mitigating factors, the judge weighs those factors and determines whether to deviate either above or below the presumptive term for the applicable range. If the aggravating and mitigating factors were in equipoise, the court was required to impose the presumptive term.

The second purpose of aggravating and mitigating factors is to guide the sentencing court's discretion to impose a period of parole ineligibility as part of a sentence. In particular, the sentencing court has the authority to impose a period of parole ineligibility provided it is "clearly convinced" that the aggravating factor or factors substantially outweigh the applicable mitigating factor(s). In such circumstances, the court may fix a period of parole ineligibility up to one-half of the sentence imposed.

G. EXTENDED TERMS OF IMPRISONMENT

As originally conceived by the Legislature, the Code's original sentencing framework is in fact two-tiered by virtue of a second set of sentencing ranges and corresponding presumptive terms (depicted below in Diagram B) applicable to those defendants eligible for extended terms of imprisonment. The Code now authorizes the imposition of both discretionary and mandatory extended terms of imprisonment when certain conditions are found by the sentencing court. These statutory predicates include the number and type of prior convictions incurred by the defendant or the existence of an operative fact about the offense that elevates its severity. Prior to being declared facially unconstitutional by the Supreme Court of New Jersey in a 2005 decision, State v. Franklin, the Graves Act extended term provision embodied both findings: before imposing a mandatory extended term provision under the Graves Act, a judge was required to find by a preponderance of the evidence at a post-trial hearing that the defendant used or possessed a firearm during the commission of the instant offense and that the defendant had been previously been convicted of at least one firearms-related crime. Pursuant to the decision in Franklin, any finding regarding the use of a firearm that exposes a defendant to a mandatory extended term of imprisonment must now be made by a jury rather than the sentencing judge.

Diagram B

Extended Terms of Imprisonment Authorized by the NJ Code of Criminal Justice Pre-Natale (2005)			
Degree	**Bottom Range**	**Presumptive Term**	**Top Range**
1st	**20 years**	**50 years**	**Life**
2nd	**10 years**	**15 years**	**20 years**
3rd	**5 years**	**7 years**	**10 years**
4th	**None**	**None**	**5 years**

E. FINES

The original Code incorporated only one provision, N.J.S.A. 2C:43-3, that authorizes the imposition of fines. Prior to the Code's enactment, as observed by the Knowlton Commission, "there [were] scattered throughout the New Jersey Statutes many maximum fines ranging in amount from $25 to $100,000." The new provision provided that a person who has been convicted of an offense may be sentenced to pay a fine in amounts not to exceed $100,000 for crimes of the first and second degree and $7,500 for third and fourth degree crimes.

A corresponding provision, N.J.S.A. 2C:44-2, delineated the criteria, including ability to pay, intended to govern a judge's discretion whether to impose a fine in the first instance, and, if so, the appropriate amount. As explained by the Knowlton Commission, the purpose of this section is to inhibit the merely routine imposition of a fine, at least when other types of disposition have been authorized. Thus, this section "rationalize[d] the instances in which a fine or restitution is appropriate when used as the sole punishment or as an additional punishment, and establishes criteria for the imposition of a fine and for its payment."

F. ILLUSTRATION

The following is an illustration of the above principles. Assume that a defendant has pleaded guilty to second-degree robbery. A presentence report prepared prior to the defendant's sentencing discloses that he has never been arrested before the instant offense. The report also reveals that the victim of the crime was seventy-years-old when robbed.

Because the conviction was for a second degree crime, the defendant must: 1) be sentenced to a term of imprisonment, and 2) receive a sentence anywhere from five to ten years, the range applicable to a second-degree crime absent circumstances that would warrant a downgraded sentence. Before the 2005 Natale decision, if the court determined that the applicable aggravating factor (the victim's age) and the applicable mitigating factor (defendant's lack of a criminal history) were in equipoise, it was obligated to impose a presumptive term of seven years. However, a court also has the discretion and authority to sentence a defendant below or above a presumptive term within an applicable range depending on the particular weight a judge assigns to the applicable aggravating and mitigating factors. Presently, the sentencing court can begin its determination anywhere within the applicable range.

G. THE PREFERENCE FOR DISCRETIONARY SENTENCING

To be certain, the framework outlined above imposed substantial constraints on the exercise of judicial discretion regarding the imposition of punishment, particularly as contrasted with pre-Code sentencing practice. Yet within the Code's sentencing framework, judges nonetheless retained substantial latitude with respect to the disposition of a particular offender based on the particular circumstances of the offense and the characteristics of the individual offender. In essence, the Code philosophically eschewed a "one-size fits all" conception of

punishment. This point is underscored by the virtual absence of provisions that compelled or mandated a specific sentence for a given crime. Indeed, when enacted, the Code authorized the imposition of a mandatory period of parole ineligibility in only **one** circumstance: the court was required to impose a five-year period of parole ineligibility upon a defendant convicted of a sex crime who has previously been convicted of a similar offense.

Likewise, the Code authorized, but did not compel, the imposition by sentencing judges of: 1) monetary fines, 2) restitution, 3) parole ineligibility terms as part of a particular sentence, 4) extended terms of imprisonment, and 5) consecutive (back-to-back) terms of imprisonment for multiple convictions. With regard to the latter and important facet of sentencing, the Code did incorporate a section that addressed the imposition of concurrent and consecutive sentences, but that provision did not define with any degree of specificity the standards which should be applied by trial courts in imposing sentences of imprisonment for more than one offense. The Code therefore reposed that determination, as with the other four enumerated above, within the sound discretion of the sentencing court.

IV. THE PAROLE ACT AND ACTUAL TIME SERVED

A. INTRODUCTION

Assume again that our hypothetical robbery defendant discussed earlier receives the maximum sentence – 10 years – for his second degree conviction. Further suppose that the sentencing judge elects not to impose a discretionary period of parole ineligibility so the sentence is, in common parlance, "flat," i.e., imposed without a parole ineligibility period. In this circumstance, when is the defendant eligible for release from confinement? In New Jersey, defendant's earliest actual parole eligibility date -- the date that the adult inmate is, in fact, eligible for release -- is one year, 11 months, and five days. Put differently, defendant is eligible for parole after serving only one-fifth of the term imposed by the sentencing court.

If, however, the judge elects to impose a five-year period of parole ineligibility as a component of the 10-year prison term, the defendant would be required to fully serve all five years (or one-half) of his 10-year sentence before being considered eligible for parole. These examples allow one to say without any exaggeration that with regard to actual time served by defendants sentenced to prison, the imposition of a parole ineligibility period is clearly the proverbial tail that wags the dog as far as the overall sentence is concerned. And it is this aspect of the New Jersey's sentencing scheme, perhaps above all others, that is absolutely critical in understanding many of the amendments to the Code's sentencing provisions enacted by the Legislature throughout intervening 28 years since the enactment of the Code itself.

B. THE PAROLE ACT OF 1979

The marked variation between the sentence imposed and the actual time served (in cases where no period of parole ineligibility is imposed) is directly attributable to the interplay between the Code and the Parole Act of 1979 (Parole Act). The Parole Act was specifically

intended by the Legislature to compliment the then recently codified criminal code.

Pre-Code sentenced inmates became eligible for parole consideration under the Parole Act of 1948 (since repealed) without regard to whether the punitive aspects of their sentences had been satisfied. Further, in terms of an inmate's fitness for parole release, the parole decision itself was intensely discretionary. It involved not only the likelihood of recidivism but also the inmate's ability to assume a responsible role in society consistent with public welfare. Thus, under the former parole system, the sufficiency of punishment was a highly relevant consideration in parole determinations. The Parole Board was required to access whether the inmate had served enough time in prison and been sufficiently punished in terms of society's need for adequate punishment and the inmate's progress towards rehabilitation.

In recognition of the more definite and longer sentences to be imposed under the Code, the Legislature reformulated the Parole Act to reduce the discretion involved in parole decisions. As enacted, the Parole Act provided that an adult inmate shall be released at parole eligibility unless it is demonstrated by a preponderance of the evidence that there is a "substantial likelihood that the inmate will commit a crime under the laws of this State if released." N.J.S.A. 30:4-123.53(a). (Effective August 19, 1997 the Parole Act was amended to provide that an adult inmate shall be released at the time of parole eligibility unless it is demonstrated by the preponderance of the evidence that the inmate "has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate conditions of parole . . . .") The Parole Act effectively eliminated the parole discretion relating to adequacy of punishment, which discretion the Legislature transferred substantially to the judiciary as a function of its sentencing authority under the Code. The longer sentences and mandatory minimum terms anticipated under the Code served to insure that the punitive aspects of the

inmate's sentence will be satisfied by the time parole eligibility arrived. Parole decisions for inmates under the Code cannot take into account or be based upon whether the punitive aspects of a sentence as such have been satisfied. The parole decision must be confined solely on whether in the case of inmate serving a sentence for an offense committed prior to August 19, 1997 there is a substantial likelihood for a repetition of criminal behavior or whether in the case of inmate serving a sentence for an offense committed on or after August 19, 1997 the inmate has failed to cooperate in his or her own rehabilitation or will violate the conditions of parole if released on parole.

Parole eligibility of inmates sentenced under the Code is calculated pursuant to N.J.S.A. 30:4-123.51. This statute in turn provides that each adult inmate sentenced to a state prison term shall be eligible for parole after having served a mandatory-minimum term or one-third of the sentence imposed less commutation time for good behavior, work credits, minimum custody credits and jail credits if applicable. Significantly, commutation or "good time" credit is not earned based on the institutional conduct of the defendant. Rather, this credit is automatically applied the computation of parole eligibility dates. Because commutation credit is based on the balance of one-third of a term (less jail credit) of imprisonment where no period of parole ineligibility has been imposed, a sizeable (if not vast) discrepancy between the prison term set by the judge and the actual time served by the defendant to be eligible for parole consideration is intrinsic to New Jersey's sentencing scheme.

Indeed, this unique facet of sentencing practice in New Jersey prompted the Legislature in 1994 to add a subsection to the Code, N.J.S.A. 2C:43-2f, which provides that at the time of sentencing, the judge shall explain the parole laws as they apply to the sentence, including the approximate period of time in years and months the defendant will serve in custody before parole

eligibility and the number of jail credits the defendant has already earned. To effectuate this provision in the Code, a court rule, Rule 3:21-4(i) was adopted by the Supreme Court of New Jersey that same year. Because the rule comprehensively and plainly articulates the applicable legal principles, it is presented here in full:

> If defendant is sentenced to prison or jail, at the time sentence is imposed, the judge shall state the approximate period of time defendant will serve in custody according to the then current State Parole Board "Parole Eligibility Tables."
>
> The judge's statement, to be given after pronouncing the sentence, shall include the following: "The purpose of this statement is to inform the public of the actual period of time this defendant is likely to spend in jail or prison as a result of this sentence. ***That actual period of jail or prison time is not determined by this judge, but by the statutes of New Jersey as applied to this sentence by the State Parole Board***. In this case, that period of estimated actual custody is at least __ years and __ months, according to the State Parole Board's published "Parole Eligibility Tables." It is an approximate estimate. The estimate assumes defendant will get full credit for good time, work time, and minimum custody time, all of the credits being provided for by [The Parole Act of 1979]: if defendant does not get those credits, the time served will be longer.
>
> Furthermore, if at defendant's parole eligibility date the Parole Board determines there is a substantial likelihood defendant will commit a crime, parole will be denied at that time. Presently more than 40% of defendants are not released by the Parole Board at the time estimated in this statement, often serving another year or more. The actual calculation can be complex, but for the majority of defendants the total real time that is served for this sentence is approximately what I have stated, namely __ years and __ months. This defendant has already served __ months of that time. Defendant should not rely on this estimate, and in particular, cannot rely on it on appeal. It is intended solely to inform the public."
>
> [Emphasis added].

The above language was subsequently truncated and redesignated as Rule 3:21-4(j) by an amendment to the court rules in 2000. Nonetheless, the original rule accurately and clearly delineates the authority and discretion allocated between the judiciary and the parole board with regard to New Jersey's sentencing system.

In jurisdictions characterized by indeterminate sentencing, a judge sentences a defendant to prison for a range of time falling within parameters set by the Legislature. Under such a system, a judge might, for example, sentence a defendant convicted of arson to prison for a minimum of two and a maximum of 15 years. A parole board then decides how much time the individual is actually confined in prison based on observations and findings by correctional authorities who have been able to closely observe the defendant while confined.

In contrast to an indeterminate sentencing system, under a determinate-discretionary sentencing scheme, a judge, when imprisoning an offender, imposes a precise term, e.g., five years, within a prescribed range. The difference, therefore, between a determinate sentencing structure and an indeterminate sentencing system is that a judge, rather than a parole board, sets the specific term of imprisonment, rather than a broad range.

Based on the foregoing, the Code's sentencing scheme is, technically speaking, a determinate sentencing system. Nonetheless, the drafters of the MPC and the Knowlton Commission thereafter, explicitly sought to diminish judicial discretion while carrying forward many features of indeterminate-sentencing schemes, which was the dominant sentencing structure in 1950's America. As observed by Professor Kevin R. Reitz:

> For prison cases, parole boards and corrections officials were the great beneficiaries of the original [MPC's] plan, measured by their enhanced power to determine actual punishment. Indeed, the single largest thrust of the [MPC's] structural innovations was to shift discretion away from trial judges and toward the "back end" of the system for choices going to durations of confinement.
>
> The [MPC's] strong preference for back-end authority grew from widely accepted policy judgments of the 1950s, many of which have become discredited or heavily qualified in the intervening years. For the majority of imprisoned offenders, the Code assumed that rehabilitation should be the chief goal of applied sanctions, that rehabilitation would in fact occur for large numbers of inmates, and that parole and prison officials could organize their efforts to watch over prisoners, sometimes, for many years, and sort those who had been reformed from those who had not.

The Knowlton Commission had indeed concluded that the "sound sharing of authority between the court and the administrative organs of corrections, rather than a wholesale shift of power, is the end to be achieved," and thus wholeheartedly endorsed the philosophy espoused by the MPC's drafters. According to the Knowlton Commission, this distribution of authority "should attempt to give the agencies involved the type of power and responsibilities that each is best equipped to exercise, given the time when it must act, the nature of the judgments called for at that stage, the type of information that will be available for judgment and the relative dangers of unfairness and abuse."

Suffice it to say, this perspective is in sharp, irreconcilable conflict with the truth-in-sentencing movement that steadily gained currency across the country throughout the 1980's and 1990's. Truth-in-sentencing specifically refers to a range of sentencing practices directed at reducing the uncertainty about the length of time that offenders must serve in prison, and of guaranteeing that offenders serve prison terms that reflect the sentences imposed by judges.

Proponents of truth-in-sentencing assert that post-sentencing parole release discretion frustrates rational sentence practice in several ways. First, proponents of truth-in-sentencing assert that it perpetuates what one commentator characterized as "bark and bite" sentencing in which the sentences pronounced in court are generally more severe than the time served in custody. This in turn breeds disrespect of the sentencing system and cynicism about its operation. In fact, Rule 3:21-4(j) is intended to convey to the general public what the "bite" of a particular sentence actually is. Second, advocates of truth-in-sentencing believe that parole release obscures judicial sentencing and, by diminishing its importance, diminishes the credibility of reform efforts.

The clearest legislative expression of truth-in-sentencing is the No Early Release Act (NERA). Enacted in 1997, the first version of NERA provided that "[a] court imposing a sentence of incarceration for a crime of the first or second degree shall fix a minimum term of 85% of the sentence during which the defendant shall not be eligible for parole if the crime is a violent crime ...." Pursuant to the original statute, there were three categories of violent crime: (1) "any crime in which the actor causes death [or] causes serious bodily injury;" (2) where the actor "uses or threatens the immediate use of a deadly weapon;" or (3) "any aggravated sexual assault or sexual assault in which the actor uses, or threatens the immediate use of, physical force."

In addition to the mandatory imposition of the 85% period of parole ineligibility, NERA authorizes the sentencing court to impose a separate five-year term of parole supervision for crimes of the first degree or a three-year term of parole supervision for crimes of the second degree. The imposition of a separate parole term in effect increases the maximum sentence for first and second degree crimes because it allows a defendant to serve more than 20 years for a first degree crime and more than ten years for a second degree crime.

Under NERA, a defendant's commutation and work credits may reduce his maximum sentence, but not the 85% parole disqualifier. The 85% rule also supersedes all but one or two other parole disqualifiers. The practical effect is that almost all inmates with NERA sentences "max out" on the same day that they become eligible for parole. For example, if the court imposes a sentence of 20 years with a ten-year parole disqualifier under this statute, the 10 years is in fact meaningless since defendant will have to serve 85%, or 17 years, before being eligible for release.

Following the enactment of NERA in 1997, a great deal of litigation ensued over what offenses constituted "violent crime[s]." As a result, the statute was significantly amended in 2001. This amendment dispensed with the "violent crime" language, and specified the offenses to which NERA applies, including murder and extended term life sentences. The offenses subject to NERA are: murder, aggravated manslaughter, manslaughter, vehicular homicide, aggravated assault, disarming a law enforcement officer, kidnapping, aggravated sexual assault, sexual assault, robbery, carjacking, aggravated arson, burglary, extortion, booby traps in CDS manufacturing or distribution facilities, strict liability for drug-induced deaths, terrorism, and producing or possessing weapons of mass destruction.

V. STATUTORY CHANGES SINCE 1979

A. METHODOLOGY

The approach taken by the Commission to prepare this report was straightforward: all legislative enactments pertinent to sentencing under the Code from 1979 to the present were compiled and carefully scrutinized. Because the primary focus of this report are legislative changes that: 1) altered the amount of punishment proscribed by the Code; and/or 2) modified the sentencing architecture of the Code, the following typology was established to logically categorize sentencing legislation enacted since 1979:

- **Upgrades:** Legislation that increases the degree of an existing crime, thereby increasing the applicable range of punishment.
- **Reductions of Existing Punishment:** Legislation that reduces the length or amount of punishment (e.g., imprisonment and fines) authorized by the Code.
- **Mandatory Minimum Periods of Parole Ineligibility:** Legislation that authorizes the imposition of a mandatory, as opposed to discretionary, period of parole ineligibility as a component of an ordinary or extended term of imprisonment.
- **New Fines:** Legislation that authorizes the imposition of fiscal penalties in addition to that authorized by N.J.S.A. 2C:43-3. This category includes both discretionary and mandatory fiscal penalties and further encompasses "assessments."
- **Increased Fines:** Legislation that increases existing fines, penalties, and assessments.
- **Extended Terms of Imprisonment:** Legislation that specifically authorizes enhanced punishment beyond the ordinary range based on a finding of aggravating circumstances about the offense, offender or both. Includes both extended terms that are mandatory and discretionary.

- **Anomalous Terms of Imprisonment**: This describes a sentence authorized by the Code that is not an extended term of imprisonment and does not conform to any of the prescribed ranges (both ordinary and extended) for terms of imprisonment delineated by the Code. Notably, only two anomalous sentences were authorized in 1979: murder, a first degree crime, was punishable by a thirty-year sentence and first-degree kidnapping was punishable by a prison sentence of between 15 and 30 years.

- **Presumption Changes:** Legislation that alters or abrogates, either expressly or implicitly, the presumption for non-imprisonment established by in N.J.S.A. 2C:44-1d.

- **Consecutive/Concurrent Changes:** Legislation that governs whether multiple sentences, i.e., sentences being imposed in the same judicial proceeding, shall be served concurrently (side-by-side) or consecutive (back-to-back) to one another.

- **Outside of Chapters 43 and 44:** Recall that the original Code incorporated all relevant sentencing provisions into two chapters: Chapter 43 defined the permissible modes of punishment, and Chapter 44 enunciated with particularity the criteria for either withholding or imposing those sanctions referenced in the preceding chapter. Provisions that are not referenced in either chapter are denoted as such.

Legislation implicating one or more of the above categories was incorporated into the chart depicted in Appendix A that serves as the cornerstone of this report. Conversely, the chart excludes the many new crimes codified by Legislature that were graded in a manner consonant with the original Code's framework, i.e., as a first, second, third, or fourth degree offense without a mandatory period of parole ineligibility. Similarly, the chart does not include statutory mitigating or aggravating factors subsequently incorporated into the Code.

B RESULTS: THE RAW NUMBERS

From 1979 to the present, the Legislature enacted 112 bills that merited inclusion into the chart. Importantly, several bills, including the Graves Act, The Comprehensive Drug Reform Act and the Three Strikes law created or amended numerous provisions that fall within one or more of the categories discussed in the previous section. For example, L. 1986, c. 172, is counted only once but in fact increased punishment for two separate crimes, kidnapping and

aggravated manslaughter. In this vein, the raw numbers significantly under-represent the scope of the changes effectuated by the Legislature, a deficiency which is partially addressed by the inclusion of a brief description of each piece of legislation in the chart.

1. **There were a total of 112 legislative changes since 1979:**

- 50 included an upgrade
- 39 included a mandatory minimum
- 14 included an extended term provision
- 7 included a new fine
- 4 included an increased fine
- 18 included an anomalous sentence
- 13 included a consecutive sentence provision
- 14 involved a change in the presumption for non-incarceration
- 0 involved a reduction in punishment
- 39 were outside the provisions of Chapters 43 and 44

2. **Of the 50 upgrades:**

- 10 included a mandatory minimum
- 1 included an extended term provision
- 6 included an anomalous sentence
- 3 included a consecutive sentence provision
- 1 involved a change in the presumption for non-incarceration
- 11 were outside of Chapters 43 and 44

3. **Of the 39 mandatory minimums**

- 10 included an upgrade
- 8 included an extended term provision
- 2 included a new fine
- 16 included an anomalous sentence
- 2 included a consecutive sentence provision
- 9 involved a change in the presumption for non-incarceration
- 1 involved a reduction in punishment
- 24 were outside the provisions of Chapters 43 and 44

4. Of the 18 anomalous sentences

- 6 included an upgrade
- 16 included a mandatory minimum
- 4 included an extended term provision
- 1 included a consecutive sentence provision
- 3 involved a change in the presumption for non-incarceration
- 11 were outside the provisions of Chapters 43 and 44

5. Of the 39 outside of Chapters 43 and 44

- 11 included an upgrade
- 24 included a mandatory minimum
- 2 included an extended term provision
- 3 included a new fine
- 2 included an increased fine
- 11 included an anomalous sentence
- 8 included a consecutive sentence provision
- 8 involved a change in the presumption for non-incarceration

6. Of the 39 mandatory minimums

- 7 were enacted prior to 1987
- 32 were enacted in 1987 or later

7. Of the 18 anomalous sentences

- 3 were enacted prior to 1987
- 15 were enacted in 1987 or later

8. Of the 13 consecutive sentence provisions

- 2 were enacted prior to 1987
- 11 were enacted in 1987 or later

9. Of the 14 extended term provisions

- 1 was enacted prior to 1987
- 13 were enacted in 1987 or later

C. OBSERVATIONS

The following observations regarding the trajectory of statutory changes to sentencing under the Code can rationally and objectively be derived from the Commission's research:

- Since the effective date of the Code, September 1, 1979, sentencing has moved only in one direction: to provide for tougher punishment with longer periods of incarceration. To use a descriptive and evocative term coined by a commission participant, sentencing has become a "one-way ratchet" based on the proliferation of upgrades, mandatory periods of parole ineligibility, required consecutive sentences, mandatory and discretionary extended terms of imprisonment, mandatory fines and increased penalties.

- Not once in 28 years has the Legislature reduced punishment authorized by previous legislation. In only one circumstance did the Legislature, in 1989, provide a narrowly circumscribed escape mechanism for first-time Graves Act offenders. This provision allows an eligible defendant to move for a reduction of his or her mandatory sentence before the assignment judge. That motion, incidentally, can only be granted if the prosecutor agrees that "the sentence under review does not serve the interests of justice . . ." Notably, this provision has been implicitly abrogated by the subsequent enactment of the No Early Release Act.

- The propagation of offense-specific anomalous sentences, mandatory periods of parole ineligibility, as well as the implicit and explicit abrogation of the presumption against imprisonment in an increasing number of enumerated circumstances, has distorted, if not decimated, the original architecture of the Code's sentencing features. This development, in turn, has greatly complicated the byzantine process by which sentences are determined and imposed.

- The complexities inherent in sentencing practice pursuant to a constantly shifting scheme have been exacerbated by the impact of recent United States Supreme Court sentencing jurisprudence. The elimination of the Code's presumptive term provision by the Supreme Court of New Jersey in Natale – a ruling necessitated by U.S. Supreme Court precedent - is but one notable example.

- A corollary to the above is that an integrated, comprehensive, **and comprehensible** sentencing system is essential for the fair and just application of the criminal law. This is particularly true today because plea bargaining is the predominant means by which criminal cases are resolved in New Jersey. Thus, it is not only judicial discretion that must be appropriately guided, but prosecutorial discretion as well. It is fair to conclude that New Jersey's Code of Criminal Justice does not sufficiently account for the reality of a plea-driven criminal justice system.

- By authorizing mandatory parole ineligibility periods, mandatory extended term provisions, and presumptive or mandatory consecutive sentencing, the Legislature has significantly curtailed judicial discretion, especially with regard to sentencing for violent offenses.

- Arguably the most significant legislative shift as been directed at increasing punishment for drug crimes pursuant to the Comprehensive Drug Reform Act (CDRA). The CDRA was the first comprehensive legislation that authorized mandatory periods of parole ineligibility, mandatory fiscal penalties, and mandatory extended terms of imprisonment for numerous non-violent drug offenses.

- A key provision of the CDRA, N.J.S.A. 2C:35-12, states that whenever a drug offense specifies a mandatory term of parole ineligibility, a mandatory extended term with a mandatory minimum sentence, or an anti-drug profiteering penalty then "the court upon conviction shall impose the mandatory sentence . . . unless the defendant has pleaded guilty pursuant to a negotiated agreement, or, in cases resulting in trial, the defendant and the prosecution have entered into a post-conviction agreement which provides for a lesser sentence . . . ." Put bluntly, this provision confers essentially final sentencing authority in many drug cases to prosecutors, and has been the subject of significant and recurring litigation since its enactment. There is no comparable provision in the Code governing the disposition of violent crimes. Furthermore, in a 1998 decision, State v. Brimage, the Supreme Court of New Jersey directed the Attorney General to promulgate new, uniform guidelines to govern plea agreements in cases implicating N.J.S.A. 2C:35-12. The new "Brimage Guidelines" became effective on May 20, 1998. For purposes of this report, it is sufficient and accurate to note that the Brimage Guidelines constitute a complex sentencing scheme (similar in design to the Federal Sentencing Guidelines) overlaid on an already intricate sentencing structure.

- Based on the growing number of parole ineligibility periods, particularly those authorized by the No Early Release Act and the Comprehensive Drug Reform Act, which reflect the trend in New Jersey toward truth-in-sentencing, it is absolutely necessary to revisit and reexamine the present method of computing parole eligibility pursuant to the Parole Act of 1979.

- The Code's rigid dichotomy between probation and imprisonment has remained fixed despite a recognized need for more flexible alternatives – punishments that in harshness fall between prison and probation – that has led many states to experiment with intermediate sanctions, such as day reporting centers, house arrest, electronic monitoring and so on.

- As sentencing under the Code has become progressively tougher, no legislative allowance or dispensation has been made for juveniles sentenced as adults. This despite significant legislative changes to provisions governing transfer or "waiver" of juvenile offenders to adult criminal court. The most significant of these changes occurred in 2000. In a bill signed into law by then-Governor Christine T. Whitman, juveniles 16 and 17 years old charged with any one of a broad array of serious offenses are now automatically waived to adult court once the prosecutor files a motion seeking waiver and probable cause is established that the offense occurred. In these cases, the rehabilitative potential of the juvenile is totally absent from the equation as to the appropriateness of waiver, thereby almost completely eliminating judicial discretion from the waiver determination.

- The Legislature has focused on sentencing enhancement while failing to routinely prune the Code of sentencing provisions that have been supplanted by more recently enacted provisions or provisions that have been rendered constitutionally infirm in the wake of the United States Supreme Court's watershed decisions in Apprendi v. New Jersey and Blakely v. Washington:

    - The former circumstance is exemplified by the 1981 Graves Act, which has been almost entirely superceded by the No Early Release Act (NERA) as amended in 2003. That legislation enumerated all but one of the predicate crimes that also trigger enhanced sentencing under the Graves Act. NERA, however, requires the imposition of a much longer period of parole ineligibility than the Graves Act.

    - The latter circumstance is definitively illustrated by the fact that the provision that requires the imposition of a presumptive term of imprisonment, N.J.S.A. 2C:44-1f(1) remains in the Code despite being unambiguously declared unconstitutional under both the state and federal constitutions by the Supreme Court of New Jersey in 2005 in State v. Natale. That same year the Supreme Court likewise declared the Graves Act extended term provision unconstitutional in State v. Franklin. That provision also has yet to be excised from the Code.

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Appendix A

Statutory Changes to the Code
1979 to the Present

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
1	1979	c.396	2C:43-3.1	Establishes Violent Crimes Compensation Board Penalty. Authorized mandatory penalty of $25 penalty per count on persons convicted of any crime or of disorderly persons assaults.
2	1981	c.569	2C:43-6b	Amends provision by authorizing imposition of discretionary period of parole ineligibility for all four degrees of crime (original provision permitted such terms only for second and first degree crimes)
3	1981	c.31	2C:43-6; 2C:44-3	Amends 2C:43-6 by authorizing imposition of mandatory period of parole ineligibility between one-third and one-half of the sentence, whichever is greater when enumerated crime (murder, manslaughter, aggravated assault, kidnapping, robbery, sexual assault, aggravated sexual contact, escape, and burglary) is committed with a firearm. Amends 2C:44-4 by authorizing the imposition of a mandatory extended term of imprisonment with a mandatory period of parole ineligibility for repeat gun offenders.
4	1982	c.199	2C:13-4	Amends provision by upgrading crime of interference with custody from third to fourth degree.
5	1982	c.211	2C:34-2	Amends provision by upgrading disorderly persons offense selling of obscene material to one 18 years of age to a fourth degree crime.
6	1982	c.111	2C:11-3	Amends murder statute by increasing mandatory period of parole ineligibility from 15 years to 30 years.
7	1982	c.160	2C:12-2	Amends provision by authorizing mandatory imposition of parole ineligibility period of two months for fourth degree crime of recklessly endangering another person.
8	1983	c.462	2C:44-5	Amends statute by establishing presumption of consecutive sentences when the defendant commits offense while on parole or probation.
9	1983	c.124	2C:45-1	Amends provision to increase from 180 to 364 days a defendant may be sentenced to jail as a condition of probation.

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Number	Year	Chapter Law	Code Provision	Description
10	1983	c.87	2C:29-6	Amends provision by upgrading crime of escape from third to second degree under certain circumstances. Also authorizes imposition of mandatory period of parole ineligibility.
11	1983	c.39	2C:11-5	Amends statute by authorizing mandatory minimum term of 120 days imprisonment upon conviction for fourth degree death by auto during which defendant the defendant shall be ineligible for parole.
12	1984	c.212	2C:11-5	Amends provision by upgrading crime of death by auto from fourth to third degree.
13	1985	c.97	2C:11-5	Amends provision by increasing mandatory period of parole ineligibility for death by auto conviction from 120 to 270 days.
14	1986	c.190	2C:5-4	Amends attempt statute by upgrading crime of attempt from second to first degree when the attempted crime is murder.
15	1986	c.172	2C:11-4, 2C:13-1, 2C:43-7, 2C:44-1.	Amends 2C:11-4 (aggravated manslaughter statute) by expanding range of punishment for aggravated manslaughter from 10 to 20 years to 10 to 30 years. Amends 2C:13-1 (kidnapping statute) by: 1) authorizing imposition of mandatory period of parole ineligibility period of 25 years or a specific term of 25 years to life with a 25 year period of parole ineligibility; 2) authorizing imposition of mandatory consecutive prison term if kidnapping results in criminal homicide.
16	1986	c.34	2C:29-1	Amends provision by upgrading disorderly persons offense of obstructing justice to fourth degree crime in certain cases.
17	1986	c.140	2C:29-8	Amends provision by upgrading crime of corrupting or influencing a jury from third to second degree under certain circumstances.
18	1987	c.106	CDRA - 2C:35-4	Establishes first degree crime of maintaining or operating a CDS production facility. Authorizes a mandatory minimum period of parole ineligibility between one-third and one-half the sentence imposed.
19	1987	c.106	CDRA - 2C:35-16	Establishes provision which authorizes mandatory revocation of a driver's license upon conviction for any drug offense.

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Number	Year	Chapter Law	Code Provision	Description
20	1987	c.101	CDRA - 2C:35-7	Establishes the third degree crime of distribution of CDS within 1,000 of school property. Authorizes the imposition of a mandatory period of parole ineligibility between one-third and one-half of the sentence imposed.
21	1987	c.106	CDRA - 2C:43-6e	Amends provision to authorizes the imposition of mandatory extended term for repeat drug offenders including imposition of mandatory period of parole ineligibility between one-third and one-half the sentence imposed, not less than 7 years if the person is convicted of a violation of 2C:35-6, or 18 months in the case of a fourth degree crime.
22	1987	c.106	CDRA - 2C:35-20	Authorizes mandatory $50 laboratory fee for each drug conviction.
23	1987	c.106	CDRA - 2C35-15	Establishes mandatory drug enforcement and demand reduction penalty provision.
24	1987	c.106	CDRA - 2C:35-8	Establishes provision which authorizes the mandatory doubling of a custodial sentence, including parole ineligibility, for underlying drug offense where it established that the defendant sold drugs to either a pregnant female or person 17 years of age or younger.
25	1987	c.106	CDRA - 2C:35-6	Establishes second degree crime of crime of employing a juvenile in a drug distribution scheme. Authorizes imposition of a mandatory period of parole ineligibility of between one-third and one-half the sentence imposed.
26	1987	c.106	CDRA - 2C:35-b(1)	Establishes first degree crime of distribution of heroin/cocaine. Provision authorizes imposition of mandatory period of parole ineligibility of between one-third and one-half of the sentence imposed.
27	1987	c.106	CDRA - 2C:35-3	Establishes first degree crime of leader of narcotics trafficking network. Authorizes mandatory sentence of life imprisonment during which the defendant must serve 25 years before being eligible for parole.
28	1987	c.6	2C:33-3	Amends provision by upgrading crime of causing false public alarms from fourth to third degree under certain circumstances.

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Number	Year	Chapter Law	Code Provision	Description
29	1987	c.106	CDRA - 2C:35-5b(6)	Establishes first degree crime of distribution of LSD. Authorizes imposition of a mandatory period of parole ineligibility of between one-third and one-half of the sentence imposed.
30	1988	c.76	2C:39-14	Amends provision by upgrading crime of training in unlawful use of a weapon from third to second degree.
31	1989	c.84	2C:29-2	Authorizes mandatory suspension of defendant's driver's license upon conviction for eluding.
32	1989	c.33	2C:21-18	Amends provision criminalizing fraudulent use of slugs by authorizing mandatory fines and a minimum term of imprisonment of 30 days for third or subsequent offense.
33	1989	c.53	2C:43-6	Amends Graves Act to allow reduction of mandatory period of parole ineligibility upon motion by the prosecutor where: 1) defendant has not previously been convicted of a firearms offense, 2) mandatory minimum would not serve the interests of justice. Permits assignment judge to place defendant on probation or reduce to one year the mandatory minimum.
34	1990	c.87	2C:44-3	Amends provision by authorizing imposition of mandatory extended term of imprisonment where the defendant committed the underlying offense with hatred or bias based on the victim's color, sexual orientation or ethnicity.
35	1990	c.104	2C:13-4	Amends statute criminalizing interference with custody by providing that the presumption of non-imprisonment set forth in 2C:44-1 for a first offense shall not apply.
36	1990	c.32	2C:43-6g	Amends provision to provide mandatory terms of parole ineligibility where the defendant used a machine gun or assault firearm to commit an enumerated offense. The minimum term for a first or second degree crime is 10 years, five years for a third degree crime, and 18 months for fourth degree crime. Authorized imposition of mandatory extended term where the offense was committed with use of a machine gun or assault firearm.

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Number	Year	Chapter Law	Code Provision	Description
37	1991	c.341	2C:11-4, 2C:29-2	Amends 2C:11-4 to authorize term of imprisonment of between five and 15 years for second degree manslaughter where death occurred while defendant was a eluding a law enforcement officer. Amends 2C:29-2 by upgrading eluding from a disorderly persons offense to a fourth degree crime under certain circumstances.
38	1991	c.211	2C:34-1	Amends provision by upgrading offenses involving prostitution from third to second degree.
39	1991	c.329	2C:43-3.1	Amends provision by increasing minimum amount payable to the Violent Crimes Compensation Board.
40	1991	c.33	2C:13-5	Amends provision to upgrade criminal coercion from fourth degree to third degree in certain circumstances.
41	1991	c.498	2C:17-1	Amends provision by preventing the court from imposing any non-custodial disposition for second-degree arson where the target of the offense was a health care facility.
42	1992	c.307	2C:24-4	Amends provision by upgrading crime of endangering the welfare of a child from fourth to third degree.
43	1992	c.115	2C:33-3	Amends provision by upgrading crime of causing false alarms from third and fourth degree to, respectively, first, second and third degrees under certain circumstances.
44	1992	c.8	2C:14-4	Amends provision to upgrade disorderly persons of lewdness to a fourth degree crime under certain circumstances.
45	1993	c.223	2C:44-5	Amends provision by clarifying that "there shall be no overall outer limit on the accumulation of consecutive sentences."
46	1993	c.132	2C:44-3	Amends provision by authorizing discretionary extended term of imprisonment where that defendant used or was in possession of a stolen motor vehicle to commit certain crimes.

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Number	Year	Chapter Law	Code Provision	Description
47	1993	c.49	2C:39-10	Amends provisions by establishing third degree crimes giving a firearm to a minor. Authorizes imposition of a mandatory period of parole ineligibility of three years.
48	1993	c.134	2C:20-10	Amends provision by upgrading joyriding from a disorderly persons offense to a crime of the fourth or third degree.
49	1993	c.135	2C:44-1	Amends provision to establish presumption of incarceration for defendants who have been previously convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle. Also renders presumption against imprisonment inapplicable to first time offenders convicted of third degree theft of motor vehicles.
50	1993	c.221	2C:15-2	Establishes first-degree crime of carjacking. Authorizes a sentence of between 10 to 30 years and mandatory imposition of a parole ineligibility period of no less than five years.
51	1993	c.219	2C:29-2, 2C:43-6	Amends 2C:29-2 by upgrading from crime of eluding from a fourth to a second degree crime if the flight or attempt to elude creates a risk of death injury Amends 2C:43-6 by authorizing the imposition of a mandatory period of parole ineligibility for a person who has been convicted of 2C:12-1 (second degree aggravated assault) of causing bodily injury while eluding by the court.
52	1994	c.130	2C:43-6.4, 2C:43-7, 2C:44-3	Amends provisions by establishing extended term of murder between 35 years and life and authorizes a 35 mandatory period of parole of parole ineligibility. Amends provision by establishing extended term for first-degree kidnapping of between 30 years and life imprisonment and authorizes a 30-year mandatory period of parole ineligibility. Establishes provision that authorizes mandatory supervision for life upon conviction for enumerated sex crimes.

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Number	Year	Chapter Law	Code Provision	Description
53	1994	c.127	2C:43-7	Amends provision to authorize imposition of a mandatory extended term of imprisonment where defendant has been convicted of sexual assault or aggravated sexual assault and the crime involved violence and the victim was 16 years of age or less. Also, authorizes extended term between 30 years and life imprisonment although aggravated sexual assault is first degree crime.
54	1994	c.90	2C:18-3	Amends provision by upgrading disorderly persons offense of trespassing to a fourth degree crime under certain circumstances.
55	1995	c.307	2C:12-1	Amends provision by upgrading disorderly persons offense of simple assault to fourth degree crime if the victim suffers serious bodily injury.
56	1995	c.211	2C:44-3	Amends provision to authorize extended term of imprisonment if the underlying criminal act was committed to intimidate because of the victim's gender or handicap.
57	1995	c.126	2C:43-7.1	Authorizes mandatory imprisonment of life without possibility of parole upon third conviction of a first degree crime under one of the listed sections. Authorizes mandatory extended term of imprisonment for a person who: (1) has been convicted of either one of the listed, mostly second degree, crimes or one of the first degree crimes listed in subsection, and (2) has been convicted before of two crimes from either list.
58	1997	c.185	CDRA - 2C:35-4.1	Amends statute by making it crime of the second degree for any person to knowingly assemble or place a booby trap on property, which is used for the manufacturing of drugs. Amends provision by upgrading crime from second to first degree under certain circumstances Amends provision by authorizing imposition of mandatory consecutive sentence to any sentence for violating any other provision of chapter 35.

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Number	Year	Chapter Law	Code Provision	Description
59	1997	c.182	2C:12-13	Establishes fourth degree crime of throwing bodily fluid at a corrections employee or law enforcement officer and third degree crime of the victim is injured. Requires that a term of imprisonment for this offense must run consecutively to any to any term currently being served.
60	1997	c.410	2C:44-5	Amends provision to authorize mandatory extended term of imprisonment where, at the time of the commission of an enumerated crime involving a firearm, defendant was released on bail or on his own recognizance. Also authorizes mandatory doubling of applicable fines.
61	1997	c.42	2C:12-1	Amends provision by upgrading simple assault to aggravated assault where the victim is a judge.
62	1997	c.111	2C:11-5.1, 2C:12-1.1	Establishes fourth crime of leaving the scene of a motor vehicle accident involving serious injury. Authorizes imposition of mandatory consecutive terms of imprisonment for multiple convictions.
63	1997	c.181	Title 2C	Amends multiple provisions of the Code to substantially increase fines and penalties for various offenses.
64	1997	c.186	CDRA - 2C:35-4, 2C:35-5	Amends 2C:35-4 by adding marijuana to the list of substances which may be used as the basis for a conviction of maintaining a CDS production facility, a conviction for which requires imposition of a mandatory period of parole ineligibility. Amends 2C:35-5 as follows: 1) upgrades distribution of over five ounces of meth from second to first degree crime; 2) upgrades distribution over one-half ounce to five ounces of meth from third to second degree; and 3) upgrades distribution of 25 pounds of marijuana of 50 marijuana plants from second to first degree.
65	1997	c.187	CDRA - 2C:35-12, 2C:35A	Mandates imposition of anti-drug profiteering penalty.
66	1997	c.201	2C:34-5	Amends provision to upgrade crime of knowingly transmitting a sexual disease from fourth to a third degree in certain circumstances.

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
67	1997	c.60	2C:11-3	Amends provision to authorize imposition of life without the possibility of parole when the victim is less than 14 years old or the victim was a law enforcement officer and was murdered while performing his official duties.
68	1997	c.117	2C:43-7.2	Authorizes court to impose a mandatory period of period ineligibility of 85% of the sentence imposed if the crime is a violent crime.
69	1997	c.120	2C:44-3	Amends provision by authorizing imposition of a mandatory extended term for repeat firearm offenders in cases where the prior conviction occurred in another jurisdiction.
70	1998	c.26	2C:39-4.1	Provision establishes three new offenses: 1) second degree possession of a firearm during the commission of a drug offense; 2) second degree possession of a weapon used against person or property while during the commission of a drug offense; 3) second degree possession of a weapon while in the course of committing a drug offense. Provision authorizes mandatory imposition of consecutive sentence to that for any underlying drug conviction. Note: considered upgrade since unlawful possession of a firearm is a third degree crime.
71	1998	c.102	2C:24-9	Establishes crime of using juvenile to commit criminal offense. Classifies crime as one degree higher than the underlying offense.
72	1998	c.277	2C:13-6	Amends third-degree luring or enticing of a child provision by authorizing the imposition of a mandatory period of parole ineligibility for repeat offenders of this provision.
73	1998	c.126	2C:24-4	Amends provision by upgrading endangering welfare of a child from second to first degree under certain circumstances.
74	1998	c.54	2C:17-3	Amends provision to upgrade criminal mischief from disorderly persons offense to fourth degree crime under certain circumstances.

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Number	Year	Chapter Law	Code Provision	Description
75	1999	c.14	2C:29-3.1	Amends provision to upgrade crime of killing law enforcement animal from fourth to third degree.
76	1999	c.121	2C:21-27	Amends money laundering provision by authoring mandatory imposition of parole ineligibility where the defendant is convicted of a first degree offense; authorizes mandatory imposition of consecutive sentence to that imposed for a conviction of any offense constituting the criminal activity involved or from which the property was derived. Authorizes mandatory fines.
77	1999	c.160	2C:33-28, 2C:35A-4, 2C:44-3	Establishes second degree crime of street gang recruitment. Authorizes mandatory extended term of imprisonment where person recruited is under 18 years of age and authorizes mandatory imposition of consecutive sentence to any conviction that the actor committed while involved in criminal street gang related activity. Amends 2C:44-3 to require extended term of imprisonment where predicate crime was committed while actor was involved in criminal street gang activity.
78	1999	c.117	2C:21-17	Amends provision by upgrading crime of wrongful impersonation and theft of identity from third to second degree.
79	1999	c.8	2C:24-8	Amends provision by upgrading crime of endangering the welfare of an elderly person from fourth to third degree.
80	1999	c.162	2C:21-22.1	Establishes third degree crime of using a runner. Authorizes mandatory imposition of imprisonment absent compelling circumstances.
81	2000	c.88	2C:11-3	Amends provision by requiring mandatory imposition of mandatory life without parole where the jury finds an aggravating factor in death penalty hearing but fails to impose a death sentence.
82	2000	c.16	2C:20-11.1	Amends provision to upgrade disorderly persons offense of shoplifting to a second degree crime where value of merchandise is $75,000 or more, to a third degree where value exceeds $500, and fourth degree where value is at least $200.

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
83	2000	c.18	2C:29-2	Upgrades crime of eluding from disorderly persons and fourth degree to fourth degree and third degree.
84	2000	c.174	2C:12-1.2	Establishes third degree crime of endangering an injured victim. Authorizes imposition of mandatory consecutive sentence to that imposed for nay conviction of the crime that rendered the person physically helpless or mentally incapacitated.
85	2000	c.55	CDRA - 2C:35-5	Amends provision by upgrading crime of distributing MDA (ecstasy) in a quantify of five ounces or more from second to first degree Authorizes mandatory period of parole ineligibility.
86	2000	c.110	2C:28-8	Amends provision by upgrading disorderly persons offense of impersonating a public servant to a fourth degree crime.
87	2001	c.413	2C:33-14	Amends provision by upgrading disorderly persons offense of transportation vandalism to crimes of the fourth and third degrees.
88	2001	c.79	2C:43-7.2	Amends provision by enumerating crimes that require imposition of mandatory 85% period of parole ineligibility. These crimes are: murder, manslaughter, aggravated manslaughter, aggravated assault, vehicular homicide, aggravated assault, disarming a law enforcement officer, kidnapping, aggravated sexual assault, sexual assault, robbery, carjacking, aggravated arson, burglary, extortion, booby traps in manufacturing of a CDS production facility, strict liability for drug induced deaths, terrorism, and producing or possessing weapons of mass destruction.
89	2001	c.124	2C:21-2.3	Amends provision to upgrade crime of making and selling false insurance cards from fourth to third degree
90	2001	c.16	2C:44-5i	Amends provision to require sentence imposed on inmates for assault on corrections and law enforcement employees to run consecutively to other sentences.

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
91	2001	c.216	2C:43-6, 2C:39-7	Amends Graves Act by increasing minimum period of parole ineligibility from three to five years. Amends 2C:39--7 (certain persons not have weapons) to require imposition of mandatory five year period of parole ineligibility.
92	2002	c.26	2C:38-3	Establishes first degree crime of producing or possessing chemical weapons. Authorizes imposition of mandatory 30-year, during which the person shall not be eligible for parole, or to a specific term of years, which shall be between 30 years and life imprisonment, of which the person shall serve not less than 30 years before eligible for parole.
93	2002	c.53	2C:12-1	Upgrades simple assault to aggravated assault at youth sports events.
94	2002	c.26	2C:38-2	Establishes first degree crime of terrorism. Authorizes imposition of mandatory 30-year period of parole ineligibility or to a specific term of years which shall be between 30 years and life imprisonment, of which the person shall serve not less than 30 years before being eligible for parole.
95	2003	c.229	2C:13-6	Amends provision by upgrading crime of luring or enticing a child from a third to a second degree.
96	2003	c.537	2C:12-1	Amends provision by upgrading assault where the victim is a correctional officer.
97	2003	c.31	2C:30-6, 2C:30-7	2C:30-6 establishes crime of official deprivation of civil rights. Provision authorizes mandatory imposition of consecutive sentence "upon each violation of this section and any other criminal offense." 2C;30-7 established crime of patter of official misconduct. Authorizes imposition mandatory consecutive sentence to that imposed for violation of 2C:30-6.
98	2003	c.37	2C:35-5.11	Amends provision to double the Drug Enforcement and Demand Reduction fines imposed for the possession or distribution of certain club drugs.

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
99	2003	C. 55	2C:11-5.1, 2C:12-1.1	2C:11-5.1 establishes fourth degree crime of knowingly leaving scene of a motor vehicles. Renders presumption of nonimprisonment inapplicable. Amends, 2C:12-1.1 (crime of knowingly leaving scene of motor vehicle accident resulting in serious bodily injury) by rendering presumption of nonimprisonment inapplicable.
100	2003	c.184	2C:21-2.1	Amends provision relating to false government documents by upgrading the following: 1) selling false documents is upgraded from a third to a second degree; 2) making false documents is upgraded from a third to a second degree; 3) displaying a false document is upgraded from a fourth to a third degree; and 4) possessing a false document is upgraded from a disorderly persons offense to a crime of the fourth degree.
101	2003	c.184	2C:20-25, 2C:20-31	2C:20-25 establishes crime of computer criminal activity. Authorizes imposition of mandatory periods of parole ineligibility for computer offenses of the first degree. Provision also requires imposition of mandatory period of parole when the victim is a government agency regardless of whether the crime is of fourth, third, second or first degree. 2C:20-31 establishes the crime of accessing and disclosing. Where the crime is graded as second degree, the provision authorizes the imposition of a mandatory period of parole ineligibility.
102	2005	c.2	2C:12-1	Upgrades penalties for certain assaults committed against employees of public utilities, cable television or telecommunications services.
103	2005	c.272	2C:17-2	Amends provision to upgrade disorderly persons offense of criminal mischief to a fourth degree crime under certain circumstances.
104	2005	c.205	CDRA - 2C:35-10.5	Amends provision re: unlawful distribution of prescription drug legends by upgrading from third to second degree. Also upgrades disorderly persons offense of obtaining legend drug by forgery to fourth degree crime.

Appendix A. Statutory Changes to the Code 1979 to the Present

Number	Year	Chapter Law	Code Provision	Description
105	2005	c.77	2C:13-8, 2C:34-1	Establishes first degree crime of human trafficking. Authorizes the mandatory imposition of a 20 year period of parole ineligibility or a specific term between 20 years and life imprisonment, of which the defendant shall serve 20 years before being eligible for parole. Amends 2C:34-1 governing prostitution offenses by upgrading crime of promoting prostitution of a child under 18 from a second to first degree. Upgrades promotion of prostitution from third to second and first degree crimes.
106	2005	c.1	2C:13-7	Amends provision by defining as third degree crime the attempt to lure or entice using via electronic means. Requires that the court "shall impose separate sentences upon each violation of this section". Also prevents the court from "making any other non-custodial disposition."
107	2005	c.73	2C:14-10	Imposes additional fines on sex offenders.
108	2006	c.78	2C:12-1	Amends provision by upgrading simple assault against a private school teacher to second degree aggravated assault.
109	2007	c.49	2C:51-2, 2C:43-6.5	Provides the following re: punishment for public officials convicted of crime that touches or involves such office: authorizes imposition of mandatory minimum terms for fourth degree convictions (one year), third degree (two years), second degree (five years) and first degree (10 years).
110	2007	c.421	2C:40-16	Amends provision by upgrading crime of tampering from fourth to third degree and upgrading tampering to second degree crime under certain circumstances. Authorizes court to impose sentence of imprisonment for second degree conviction.
111	2007	c.24	2C:39-4	Amends provision by creating second degree crime of possession or use of "community gun." Authorizes mandatory imposition of period of parole ineligibility.
112	2007	c.133	2C:7-2.1	Amends provision by upgrading crime of failing to register as a sex offender from fourth to third degree.

Appendix B

State Parole Board
Parole Eligibility Table

STATE PAROLE BOARD
PAROLE ELIGIBILITY TABLE

A	B	C**	D**	E**	F**	G**
Sentence	Flat Eligibility (where no man. min.)	Commutation Credits (Note: Based on 1/3 of max minus jail credits)	Estimated Work Credits (Maximum possible)	Estimated Minimum Custody Credits (Maximum possible)	Earliest Eligibility Includes: 1. C.C. 2. Max W.C. 3. Max M.C.	Latest Eligibility Includes: 1. C.C. 2. No W.C. 3. No M.C.
Years	yrs.-mos.	days	days	days	yrs.-mos.-days	yrs.-mos.-days
1	0 - 4	24	19	8	0 - 9 - 0*	0 - 9 - 0*
2	0 - 8	48	38	16	0 - 9 - 0*	0 - 9 - 0*
3	1 - 0	72	45	22	0 - 9 - 0*	0 - 9 - 23
	1 - 1	79	48	24	0 - 9 - 0*	0 - 10 - 17
	1 - 2	86	52	26	0 - 9 - 0*	0 - 11 - 8
	1 - 3	93	57	28	0 - 9 - 7	0 - 11 - 28
4	1 - 4	100	59	30	0 - 9 - 26	1 - 0 - 20
	1 - 5	107	62	31	0 - 10 - 16	1 - 1 - 14
	1 - 6	114	66	33	0 - 11 - 3	1 - 2 - 7
	1 - 7	121	69	35	0 - 11 - 22	1 - 3 - 1
5	1 - 8	128	73	37	1 - 0 - 5	1 - 3 - 25
	1 - 9	135	76	40	1 - 0 - 22	1 - 4 - 18
	1 - 10	142	80	43	1 - 1 - 9	1 - 5 - 12
	1 - 11	149	83	46	1 - 1 - 26	1 - 6 - 5
6	2 - 0	156	87	49	1 - 2 - 13	1 - 6 - 29
	2 - 1	164	90	51	1 - 3 - 1	1 - 7 - 22
	2 - 2	172	93	53	1 - 3 - 16	1 - 8 - 12
	2 - 3	180	96	56	1 - 4 - 3	1 - 9 - 5
7	2 - 4	188	100	59	1 - 4 - 18	1 - 9 - 27
	2 - 5	196	103	61	1 - 5 - 6	1 - 10 - 20
	2 - 6	204	106	64	1 - 5 - 22	1 - 11 - 12
	2 - 7	212	109	67	1 - 6 - 9	2 - 0 - 0
8	2 - 8	220	113	70	1 - 6 - 25	2 - 0 - 23
	2 - 9	228	116	73	1 - 7 - 11	2 - 1 - 15
	2 - 10	236	119	76	1 - 7 - 28	2 - 2 - 8
	2 - 11	244	122	78	1 - 8 - 15	2 - 3 - 0
9	3 - 0	252	126	81	1 - 9 - 1	2 - 3 - 23
	3 - 1	260	129	83	1 - 9 - 19	2 - 4 - 16
	3 - 2	268	132	86	1 - 10 - 3	2 - 5 - 6
	3 - 3	276	135	89	1 - 10 - 20	2 - 5 - 29
10	3 - 4	284	139	92	1 - 11 - 5	2 - 6 - 21
	3 - 5	292	150	41	2 - 1 - 3	2 - 7 - 14
	3 - 6	300	154	43	2 - 1 - 19	2 - 8 - 6
	3 - 7	308	157	46	2 - 2 - 6	2 - 8 - 29
11	3 - 8	316	160	49	2 - 2 - 23	2 - 9 - 22
	3 - 9	324	163	52	2 - 3 - 9	2 - 10 - 14
	3 - 10	332	167	55	2 - 3 - 25	2 - 11 - 7
	3 - 11	340	170	58	2 - 4 - 11	2 - 11 - 25
12	4 - 0	348	173	61	2 - 4 - 28	3 - 0 - 17
	4 - 1	356	176	63	2 - 5 - 16	3 - 1 - 10
	4 - 2	364	180	66	2 - 5 - 29	3 - 2 - 0
	4 - 3	372	183	68	2 - 6 - 17	3 - 2 - 23
13	4 - 4	380	186	71	2 - 7 - 3	3 - 3 - 15
	4 - 5	388	189	74	2 - 7 - 20	3 - 4 - 8
	4 - 6	396	193	77	2 - 8 - 5	3 - 5 - 0
	4 - 7	404	196	79	2 - 8 - 23	3 - 5 - 23
14	4 - 8	412	199	81	2 - 9 - 11	3 - 6 - 16
	4 - 9	420	202	84	2 - 9 - 27	3 - 7 - 8
	4 - 10	428	206	88	2 - 10 - 12	3 - 8 - 1
	4 - 11	436	209	90	2 - 10 - 29	3 - 8 - 23
15	5 - 0	444	213	93	2 - 11 - 15	3 - 9 - 16
	5 - 1	452	224	43	3 - 1 - 12	3 - 10 - 9
	5 - 2	460	227	45	3 - 1 - 27	3 - 10 - 29
	5 - 3	468	231	48	3 - 2 - 13	3 - 11 - 22
16	5 - 4	476	233	51	3 - 3 - 0	4 - 0 - 9
	5 - 5	484	237	53	3 - 3 - 17	4 - 1 - 2
	5 - 6	492	241	56	3 - 4 - 2	4 - 1 - 24
	5 - 7	500	244	59	3 - 4 - 19	4 - 2 - 17
17	5 - 8	508	247	62	3 - 5 - 6	4 - 3 - 10
	5 - 9	516	250	64	3 - 5 - 23	4 - 4 - 2
	5 - 10	524	254	67	3 - 6 - 9	4 - 4 - 25
	5 - 11	532	257	70	3 - 6 - 25	4 - 5 - 11
18	6 - 0	540	260	73	3 - 7 - 12	4 - 6 - 10
	6 - 1	548	264	76	3 - 7 - 28	4 - 7 - 3
	6 - 2	556	267	78	3 - 8 - 13	4 - 7 - 23
	6 - 3	564	270	81	3 - 9 - 0	4 - 8 - 16
19	6 - 4	572	273	83	3 - 9 - 17	4 - 9 - 8
	6 - 5	580	276	86	3 - 10 - 4	4 - 10 - 1
	6 - 6	588	280	89	3 - 10 - 19	4 - 10 - 23
	6 - 7	596	283	92	3 - 11 - 6	4 - 11 - 16
20	6 - 8	604	286	95	3 - 11 - 23	5 - 0 - 4
21	7 - 0	636	308	52	4 - 3 - 7	5 - 3 - 4
22	7 - 4	676	319	61	4 - 5 - 4	5 - 5 - 24
23	7 - 8	716	330	71	4 - 7 - 5	5 - 8 - 14
24	8 - 0	756	342	81	4 - 9 - 9	5 - 11 - 9
25	8 - 4	796	358	89	4 - 11 - 2	6 - 1 - 24
26	8 - 8	836	374	47	5 - 2 - 20	6 - 4 - 16
27	9 - 0	876	392	62	5 - 4 - 10	6 - 7 - 9
28	9 - 4	916	397	67	5 - 6 - 18	6 - 9 - 26
29	9 - 8	956	409	77	5 - 8 - 18	7 - 0 - 17
30	10 - 0	996	421	87	5 - 10 - 20	7 - 3 - 9
35	11 - 8	1196	488	83	6 - 9 - 28	8 - 4 - 21
40	13 - 4	1412	550	134	7 - 6 - 20	9 - 5 - 18
45	15 - 0	1632	593	170	8 - 5 - 8	10 - 6 - 13
50	16 - 8	1852	660	226	9 - 1 - 27	11 - 7 - 5
55	18 - 4	2088	712	269	9 - 10 - 29	12 - 7 - 10
60	20 - 0	2328	768	316	10 - 7 - 26	13 - 7 - 17
65	21 - 8	2568	795	348	11 - 5 - 29	14 - 7 - 25
70	23 - 4	2824	843	383	12 - 2 - 24	15 - 7 - 4
Life	25 - 0	3084	916	439	12 - 10 - 4	16 - 6 - 21

* Nine month restriction applies to all 2C cases only.
** All figures based on zero jail credits.

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