



State of New Jersey  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

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**TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE and  
ALL COUNTY PROSECUTORS**

**FROM: ROBERT J. DEL TUFO  
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**DATE: APRIL 20, 1992**

**RE: DIRECTIVE IMPLEMENTING GUIDELINES FOR DETERMINING  
WHETHER TO APPLY FOR AN EXTENDED TERM PURSUANT TO  
N.J.S.A. 2C:43-6f**

**I. INTRODUCTION**

The provisions of N.J.S.A. 2C:43-6f require a defendant to be sentenced to an extended term upon application of the prosecutor in cases in which there has been a conviction for manufacturing, distributing, dispensing or possessing with intent to distribute C.D.S. or an analog, of maintaining or operating a production facility, of employing a juvenile in a distribution scheme, of being a leader of a trafficking network, or of distributing or possessing with intent to distribute in a school zone, when the offender has been previously convicted of the above specified C.D.S. crimes. The court must impose an extended term if the ground specified in the statute has been established at a hearing. The prosecutor has broad discretion under the statute to make application for enhanced punishment or to otherwise negotiate a disposition. N.J.S.A. 2C:35-12.

In State v Lagares, \_\_\_ N.J. \_\_\_ (1992), the Court required that prosecutorial decision-making be carried out in a fashion that limits potential arbitrariness. It also held that the judiciary retains the power to review decisions pursuant to N.J.S.A. 2C:43-6f to avoid prosecutorial abuses. The Court interpreted the statute to require that guidelines be adopted to assist prosecutorial decision-making under N.J.S.A. 2C:43-6f. The Court recognized that it was not familiar with all of the factors that law-enforcement agencies might consider significant in determining whether a defendant should be exempted from an extended sentence, and it requested that this Department, in

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consultation with the various county prosecutors, issue guidelines for use throughout the state. The Court expects that such guidelines will promote uniformity and provide a means for prosecutors to avoid arbitrary or abusive exercises of discretionary power. Thus, these guidelines are intended to serve as the measure of whether a prosecutor's decision is arbitrary or capricious. According to Lagares, a defendant who opposes the imposition of an extended term has a heavy burden to establish by clear and convincing evidence that he/she is entitled to relief under the standards set forth in the guidelines. The Court has made it plain that defendants will have to do more than merely make general conclusory statements that a prosecutorial determination was abusive.

The decision in Lagares is consistent with the objectives set forth in the Attorney General's Action Plan for Narcotics Enforcement (1988). S.N.A.P. Directive 9.1 stated that this Department and the county prosecutors should develop uniform statewide guidelines governing charging, plea and sentencing discretion. Cognizant of our responsibility to comply with the letter and spirit of the decision in State v. Lagares and to insure the integrity and constitutionality of the process, and in consultation with the county prosecutors, I hereby promulgate the following statewide guidelines governing the State's decision to apply for an extended term under N.J.S.A. 2C:43-6f.

## II. GUIDELINES GOVERNING EXTENDED TERMS UNDER SECTION 6f

1. Whenever a defendant is charged with any of the enumerated crimes in N.J.S.A. 2C:43-6f, the State shall determine whether the defendant has previously been convicted of manufacturing, distributing, dispensing or possessing with intent to distribute C.D.S. in this state or other jurisdictions and is therefore eligible for an extended term under N.J.S.A. 2C:43-6f.
2. The Director of the Division of Criminal Justice and each county prosecutor may designate and delegate to supervising attorneys within their office the authority to give final approval to applications for and exemptions to extended terms under N.J.S.A. 2C:43-6f. It shall be the responsibility of the Director of the Division of Criminal Justice and each county prosecutor to insure that all attorneys responsible for drug cases in their offices are familiar and comply with the provisions of these guidelines.
3. In all cases in which the State has determined to apply for an extended term, a written notice pursuant to Rule 3:21-4e shall be served on the defendant and filed with the court.
4. The decision whether to apply for an extended term shall reflect the legislative intent to make extended term sentencing

of repeat drug offenders the norm rather than the exception. At the sentencing hearing in all cases in which the State has determined to apply for an extended term, the State shall set forth its reasons for seeking an extended term. The reasons must include that there is no basis for waiving an extended term.

5. The following factors shall constitute the basis for waiving an extended term:

a. The State is unable to establish the ground for an extended term by a preponderance of the evidence in accordance with N.J.S.A. 2C:43-6f and 2C:44-4d; or

b. The prior conviction relied upon to establish the defendant's eligibility for an extended term was based on a plea or trial at which the defendant did not have the benefit of counsel, or did not effectively waive the right to counsel; or

c. The defendant pleads guilty to an offense under the following circumstances:

i. The defendant pleads guilty pursuant to a negotiated agreement involving one or more counts and which provides that the defendant will receive a term of parole ineligibility of not less than one-third of the minimum extended term authorized pursuant to N.J.S.A. 2C:43-6f or 2C:43-7a for the highest degree of crime for which the defendant was convicted, that is, not less than 6 years, 8 months in the case of a first degree conviction; 3 years, 4 months in the case of a second degree conviction; 1 year, 8 months in the case of a third degree conviction; or 1 year in the case of a fourth degree conviction, and further provided that the prosecutor represents to the court on the record that such punishment is sufficient to satisfy the deterrent purposes of the law.

ii. Subject to Rule 3:9-3c, the defendant pleads guilty to an offense which does not carry a statutorily mandated parole ineligibility term, but the plea agreement nonetheless provides that the defendant will be subject to a term of parole ineligibility of not less than one-third of the presumptive sentence authorized pursuant to N.J.S.A. 2C:44-1f (not less than 5 years in the case of a first degree conviction; 2 years, 4 months in the case of a second degree conviction; 1 year, 4 months in the case of a third degree conviction; or 3 months in the case of a fourth degree conviction), and further provided that the prosecutor represents to the court on the record that such punishment is sufficient to satisfy the deterrent purposes of the law.

iii. The defendant pleads guilty to an offense which does carry a statutorily mandated parole ineligibility term, and the defendant is subject to a parole ineligibility term of not

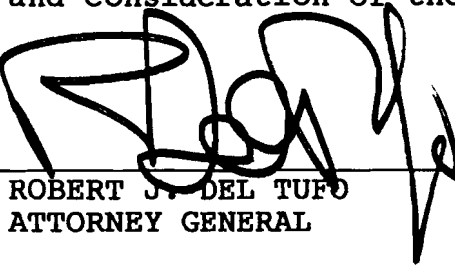
less than one-half of the presumptive sentence authorized by N.J.S.A. 2C:44-1f (not less than 7 years, 6 months in the case of a first degree conviction; 3 years, 6 months in the case of a second degree conviction; 2 years in the case of a third degree conviction; or 4-1/2 months in the case of a fourth degree conviction), and further provided that the prosecutor represents to the court on the record that such punishment is sufficient to satisfy the deterrent purposes of the law.

d. The State determines that waiver is essential to assure the defendant's cooperation with the prosecution;

e. The State determines that waiver is appropriate based on an assessment of the proofs available to sustain a conviction against the defendant for the present offense;

f. The State determines that the defendant's prior adult and juvenile record includes only convictions that are extremely remote and, if so, that there is no reason to believe that defendant at any time derived a substantial source of income from criminal activity; or

g. The State determines that waiver is appropriate based upon the existence of compelling extraordinary circumstances, including an assessment of the seriousness of the present offense and the predicate offense(s), and consideration of the nature and amount of C.D.S. involved.



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