

ASSEMBLY, No. 757

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman BUONO

1 AN ACT concerning burglary and amending N.J.S.2C:44-1.

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

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6 1. N.J.S.2C:44-1 is amended to read as follows:

7 2C:44-1. Criteria for Withholding or Imposing Sentence of  
8 Imprisonment. a. In determining the appropriate sentence to be  
9 imposed on a person who has been convicted of an offense, the court  
10 shall consider the following aggravating circumstances:

11 (1) The nature and circumstances of the offense, and the role of the  
12 actor therein, including whether or not it was committed in an  
13 especially heinous, cruel, or depraved manner;

14 (2) The gravity and seriousness of harm inflicted on the victim,  
15 including whether or not the defendant knew or reasonably should  
16 have known that the victim of the offense was particularly vulnerable  
17 or incapable of resistance due to advanced age, ill-health, or extreme  
18 youth, or was for any other reason substantially incapable of exercising  
19 normal physical or mental power of resistance;

20 (3) The risk that the defendant will commit another offense;

21 (4) A lesser sentence will depreciate the seriousness of the  
22 defendant's offense because it involved a breach of the public trust  
23 under chapters 27 and 30, or the defendant took advantage of a  
24 position of trust or confidence to commit the offense;

25 (5) There is a substantial likelihood that the defendant is involved  
26 in organized criminal activity;

27 (6) The extent of the defendant's prior criminal record and the  
28 seriousness of the offenses of which he has been convicted;

29 (7) The defendant committed the offense pursuant to an agreement  
30 that he either pay or be paid for the commission of the offense and the  
31 pecuniary incentive was beyond that inherent in the offense itself;

32 (8) The defendant committed the offense against a police or other

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 law enforcement officer, correctional employee or fireman, acting in  
2 the performance of his duties while in uniform or exhibiting evidence  
3 of his authority, or the defendant committed the offense because of the  
4 status of the victim as a public servant;

5 (9) The need for deterring the defendant and others from violating  
6 the law;

7 (10) The offense involved fraudulent or deceptive practices  
8 committed against any department or division of State government;

9 (11) The imposition of a fine, penalty or order of restitution  
10 without also imposing a term of imprisonment would be perceived by  
11 the defendant or others merely as part of the cost of doing business,  
12 or as an acceptable contingent business or operating expense  
13 associated with the initial decision to resort to unlawful practices;

14 (12) The defendant committed the offense against a person who he  
15 knew or should have known was 60 years of age or older, or disabled;

16 (13) The defendant, while in the course of committing or  
17 attempting to commit the crime, including the immediate flight  
18 therefrom, used or was in possession of a stolen motor vehicle.

19 b. In determining the appropriate sentence to be imposed on a  
20 person who has been convicted of an offense, the court may properly  
21 consider the following mitigating circumstances:

22 (1) The defendant's conduct neither caused nor threatened serious  
23 harm;

24 (2) The defendant did not contemplate that his conduct would  
25 cause or threaten serious harm;

26 (3) The defendant acted under a strong provocation;

27 (4) There were substantial grounds tending to excuse or justify the  
28 defendant's conduct, though failing to establish a defense;

29 (5) The victim of the defendant's conduct induced or facilitated its  
30 commission;

31 (6) The defendant has compensated or will compensate the victim  
32 of his conduct for the damage or injury that he sustained, or will  
33 participate in a program of community service;

34 (7) The defendant has no history of prior delinquency or criminal  
35 activity or has led a law-abiding life for a substantial period of time  
36 before the commission of the present offense;

37 (8) The defendant's conduct was the result of circumstances  
38 unlikely to recur;

39 (9) The character and attitude of the defendant indicate that he is  
40 unlikely to commit another offense;

41 (10) The defendant is particularly likely to respond affirmatively to  
42 probationary treatment;

43 (11) The imprisonment of the defendant would entail excessive  
44 hardship to himself or his dependents;

45 (12) The willingness of the defendant to cooperate with law  
46 enforcement authorities;

1 (13) The conduct of a youthful defendant was substantially  
2 influenced by another person more mature than the defendant.

3 c. (1) A plea of guilty by a defendant or failure to so plead shall not  
4 be considered in withholding or imposing a sentence of imprisonment.

5 (2) When imposing a sentence of imprisonment the court shall  
6 consider the defendant's eligibility for release under the law governing  
7 parole, including time credits awarded pursuant to Title 30 of the  
8 Revised Statutes, in determining the appropriate term of imprisonment.

9 d. Presumption of imprisonment. The court shall deal with a  
10 person who has been convicted of a crime of the first or second degree  
11 by imposing a sentence of imprisonment unless, having regard to the  
12 character and condition of the defendant, it is of the opinion that his  
13 imprisonment would be a serious injustice which overrides the need  
14 to deter such conduct by others. Notwithstanding the provisions of  
15 subsection e. of this section, the court shall deal with a person who has  
16 been convicted of theft of a motor vehicle or of the unlawful taking of  
17 a motor vehicle and who has previously been convicted of either  
18 offense by imposing a sentence of imprisonment unless, having regard  
19 to the character and condition of the defendant, it is of the opinion that  
20 his imprisonment would be a serious injustice which overrides the need  
21 to deter such conduct by others.

22 e. The court shall deal with a person convicted of an offense other  
23 than a crime of the first or second degree, who has not previously been  
24 convicted of an offense, without imposing sentence of imprisonment  
25 unless, having regard to the nature and circumstances of the offense  
26 and the history, character and condition of the defendant, it is of the  
27 opinion that his imprisonment is necessary for the protection of the  
28 public under the criteria set forth in subsection a., except that this  
29 subsection shall not apply if the person is convicted of any of the  
30 following crimes of the third degree: theft of a motor vehicle; unlawful  
31 taking of a motor vehicle[; or]; eluding; or burglary.

32 f. Presumptive Sentences. (1) Except for the crime of murder,  
33 unless the preponderance of aggravating or mitigating factors, as set  
34 forth in subsections a. and b., weighs in favor of a higher or lower  
35 term within the limits provided in N.J.S.2C:43-6, when a court  
36 determines that a sentence of imprisonment is warranted, it shall  
37 impose sentence as follows:

38 (a) To a term of 20 years for aggravated manslaughter or  
39 kidnapping pursuant to paragraph (1) of subsection c. of  
40 N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

41 (b) Except as provided in paragraph (a) of this subsection to a term  
42 of 15 years for a crime of the first degree;

43 (c) To a term of seven years for a crime of the second degree;

44 (d) To a term of four years for a crime of the third degree; and

45 (e) To a term of nine months for a crime of the fourth degree.

46 In imposing a minimum term pursuant to 2C:43-6b., the sentencing

1 court shall specifically place on the record the aggravating factors set  
2 forth in this section which justify the imposition of a minimum term.

3 Unless the preponderance of mitigating factors set forth in  
4 subsection b. weighs in favor of a lower term within the limits  
5 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
6 presumptive term of life imprisonment. Unless the preponderance of  
7 aggravating and mitigating factors set forth in subsections a. and b.  
8 weighs in favor of a higher or lower term within the limits authorized,  
9 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
10 term of 50 years' imprisonment; sentences imposed pursuant to  
11 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;  
12 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
13 presumptive term of seven years' imprisonment.

14 In imposing a minimum term pursuant to 2C:43-7b., the sentencing  
15 court shall specifically place on the record the aggravating factors set  
16 forth in this section which justify the imposition of a minimum term.

17 (2) In cases of convictions for crimes of the first or second degree  
18 where the court is clearly convinced that the mitigating factors  
19 substantially outweigh the aggravating factors and where the interest  
20 of justice demands, the court may sentence the defendant to a term  
21 appropriate to a crime of one degree lower than that of the crime for  
22 which he was convicted. If the court does impose sentence pursuant  
23 to this paragraph, or if the court imposes a noncustodial or  
24 probationary sentence upon conviction for a crime of the first or  
25 second degree, such sentence shall not become final for 10 days in  
26 order to permit the appeal of such sentence by the prosecution.

27 g. Imposition of Noncustodial Sentences in Certain Cases. If the  
28 court, in considering the aggravating factors set forth in subsection a.,  
29 finds the aggravating factor in paragraph a.(2) or a.(12) and does not  
30 impose a custodial sentence, the court shall specifically place on the  
31 record the mitigating factors which justify the imposition of a  
32 noncustodial sentence.

33 h. Except as provided in section 2 of P.L.1993, c.123  
34 (C.2C:43-11), the presumption of imprisonment as provided in  
35 subsection d. of this section shall not preclude the admission of a  
36 person to the Intensive Supervision Program, established pursuant to  
37 the Rules Governing the Courts of the State of New Jersey.  
38 (cf: P.L.1993, c.135)

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40 2. This act shall take effect immediately.

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#### STATEMENT

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45 This bill strengthens the statutory sanctions against burglary.

46 Currently, N.J.S.A.2C:44-1 provides that first offenders convicted

1 of crimes of the third or fourth degree will generally not be sentenced  
2 to imprisonment. The court may sentence the offender to prison only  
3 if, after considering the nature and circumstances of the offense and  
4 the history, character and condition of the defendant, it is of the  
5 opinion that imprisonment is necessary for the protection of the public.  
6 This provision does not apply to offenders convicted of the third  
7 degree crimes of theft of a motor vehicle, unlawful taking of a motor  
8 vehicle or eluding.

9 Under the bill, the nonimprisonment presumption would also not  
10 apply to first offenders convicted of the third degree crime of burglary.

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15 Eliminates presumption of nonincarceration for first offenders  
16 convicted of third degree crime of burglary.