

ASSEMBLY, No. 2178

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblymen GREEN, R.SMITH, Assemblywoman Buono  
and Assemblyman Barnes

1 AN ACT concerning crimes against children and amending  
2 N.J.S.2C:44-1.

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

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

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

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

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

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

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

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

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

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

33 (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; the defendant committed the offense because of the  
4 status of the victim as a public servant; or the defendant committed the  
5 offense against a sports official, athletic coach or manager, acting in  
6 or immediately following the performance of his duties or because of  
7 the person's status as a sports official, coach or manager;

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

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

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

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

19 (13) The defendant, while in the course of committing or  
20 attempting to commit the crime, including the immediate flight  
21 therefrom, used or was in possession of a stolen motor vehicle;

22 (14) The defendant committed the offense against a person who he  
23 knew or should have known was less than 16 years old.

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

27 (1) The defendant's conduct neither caused nor threatened serious  
28 harm;

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

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

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

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

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

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

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

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

46 (10) The defendant is particularly likely to respond affirmatively to

1 probationary treatment;

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

4 (12) The willingness of the defendant to cooperate with law  
5 enforcement authorities;

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

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

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

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

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

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

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

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

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

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

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

6 In imposing a minimum term pursuant to 2C:43-6b., the sentencing  
7 court shall specifically place on the record the aggravating factors set  
8 forth in this section which justify the imposition of a minimum term.

9 Unless the preponderance of mitigating factors set forth in  
10 subsection b. weighs in favor of a lower term within the limits  
11 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
12 presumptive term of life imprisonment. Unless the preponderance of  
13 aggravating and mitigating factors set forth in subsections a. and b.  
14 weighs in favor of a higher or lower term within the limits authorized,  
15 sentences imposed pursuant to 2C:43-7a.(2) shall have a presumptive  
16 term of 50 years' imprisonment; sentences imposed pursuant to  
17 2C:43-7a.(3) shall have a presumptive term of 15 years' imprisonment;  
18 and sentences imposed pursuant to 2C:43-7a.(4) shall have a  
19 presumptive term of seven years' imprisonment.

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

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

33 g. Imposition of Noncustodial Sentences in Certain Cases. If the  
34 court, in considering the aggravating factors set forth in subsection a.,  
35 finds the aggravating factor in paragraph a.(2) or a.(12) and does not  
36 impose a custodial sentence, the court shall specifically place on the  
37 record the mitigating factors which justify the imposition of a  
38 noncustodial sentence.

39 h. Except as provided in section 2 of P.L.1993, c.123  
40 (C.2C:43-11), the presumption of imprisonment as provided in  
41 subsection d. of this section shall not preclude the admission of a  
42 person to the Intensive Supervision Program, established pursuant to  
43 the Rules Governing the Courts of the State of New Jersey.

44 (cf: P.L.1995, c.6, s.2)

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46 2. This act shall take effect immediately.

STATEMENT

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3 This bill would require the court to consider as an "aggravating  
4 factor" in determining sentence whether the crime was committed  
5 against a child.

6 Under the Criminal Code, the court must weigh the "aggravating  
7 factors" of the particular case against the "mitigating factors" before  
8 pronouncing sentence.

9 This bill would add, as another aggravating factor for the court to  
10 consider, whether the victim was under the age of 16.

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15 Adds the fact that the crime was committed against a child under  
16 the age of 16 as an aggravating factor in sentencing.