

SENATE, No. 638

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator GIRGENTI

1 AN ACT increasing the range of penalties for aggravated sexual assault
2 and amending N.J.S.2C:14-2, N.J.S.2C:43-7 and 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:14-2 is amended to read as follows:

8 2C:14-2. Sexual Assault.

9 a. An actor is guilty of aggravated sexual assault if he commits an
10 act of sexual penetration with another person under any one of the
11 following circumstances:

12 (1) The victim is less than 13 years old;

13 (2) The victim is at least 13 but less than 16 years old; and

14 (a) The actor is related to the victim by blood or affinity to the
15 third degree, or

16 (b) The actor has supervisory or disciplinary power over the victim
17 by virtue of the actor's legal, professional, or occupational status, or

18 (c) The actor is a foster parent, a guardian, or stands in loco
19 parentis within the household;

20 (3) The act is committed during the commission, or attempted
21 commission, whether alone or with one or more other persons, of
22 robbery, kidnapping, homicide, aggravated assault on another,
23 burglary, arson or criminal escape;

24 (4) The actor is armed with a weapon or any object fashioned in
25 such a manner as to lead the victim to reasonably believe it to be a
26 weapon and threatens by word or gesture to use the weapon or object;

27 (5) The actor is aided or abetted by one or more other persons and
28 either of the following circumstances exists:

29 (a) The actor uses physical force or coercion, or

30 (b) The victim is one whom the actor knew or should have known
31 was physically helpless, mentally defective or mentally incapacitated;

32 (6) The actor uses physical force or coercion and severe personal
33 injury is sustained by the victim.

34 Aggravated sexual assault is a crime of the first degree and upon

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

Matter underlined thus is new matter.

1 conviction thereof, a person may, notwithstanding the provisions of
2 paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an
3 ordinary term of imprisonment between 15 and 30 years.

4 b. An actor is guilty of sexual assault if he commits an act of sexual
5 contact with a victim who is less than 13 years old and the actor is at
6 least 4 years older than the victim.

7 c. An actor is guilty of sexual assault if he commits an act of sexual
8 penetration with another person under any one of the following
9 circumstances:

10 (1) The actor uses physical force or coercion, but the victim does
11 not sustain severe personal injury;

12 (2) The victim is one whom the actor knew or should have known
13 was physically helpless, mentally defective or mentally incapacitated;

14 (3) The victim is on probation or parole, or is detained in a
15 hospital, prison or other institution and the actor has supervisory or
16 disciplinary power over the victim by virtue of the actor's legal,
17 professional or occupational status;

18 (4) The victim is at least 16 but less than 18 years old and: (a)
19 The actor is related to the victim by blood or affinity to the third
20 degree; or

21 (b) The actor has supervisory or disciplinary power over the
22 victim; or

23 (c) The actor is a foster parent, a guardian, or stands in loco
24 parentis within the household;

25 (5) The victim is at least 13 but less than 16 years old and the actor
26 is at least 4 years older than the victim.

27 Sexual assault is a crime of the second degree.

28 (cf: P.L.1989, c.228, s.3)

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30 2. N.J.S.2C:43-7 is amended to read as follows:

31 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

32 a. In the cases designated in section 2C:44-3, a person who has been
33 convicted of a crime may be sentenced, and in cases designated in
34 subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) and in
35 subsection b. of section 2 of P.L.1995, c.126, s.2(C.2C:43-7.1) a
36 person who has been convicted of a crime shall be sentenced to an
37 extended term of imprisonment, as follows:

38 (1) In case of aggravated manslaughter sentenced under subsection
39 c. of N.J.S.2C:11-4 or kidnapping when sentenced as a crime of the
40 first degree under paragraph (1) of subsection c. of 2C:13-1 or
41 aggravated sexual assault when sentenced as a crime of the first degree
42 under subsection a. of N.J.S.2C:14-2 for a specific term of years which
43 shall be between 30 years and life imprisonment;

44 (2) Except for the crime of murder and except as provided in
45 paragraph (1) of this subsection, in the case of a crime of the first
46 degree, for a specific term of years which shall be fixed by the court

1 and shall be between 20 years and life imprisonment;

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

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

6 (5) In the case of a crime of the fourth degree pursuant to
7 2C:43-6c., 2C:44-3d. and 2C:44-3e. for a term of five years, and in the
8 case of a crime of the fourth degree pursuant to 2C:43-6f. for a term
9 which shall be fixed by the court between three and five years.

10 b. As part of a sentence for an extended term and notwithstanding
11 the provisions of 2C:43-9, the court may fix a minimum term not to
12 exceed one-half of the term set pursuant to subsection a. during which
13 the defendant shall not be eligible for parole or a term of 25 years
14 during which time the defendant shall not be eligible for parole where
15 the sentence imposed was life imprisonment; provided that no
16 defendant shall be eligible for parole at a date earlier than otherwise
17 provided by the law governing parole.

18 c. In the case of a person sentenced to an extended term pursuant
19 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a
20 sentence within the ranges permitted by 2C:43-7a. (2), (3), (4) or (5)
21 according to the degree or nature of the crime for which the defendant
22 is being sentenced, which sentence shall include a minimum term which
23 shall, except as may be specifically provided by N.J.S.2C:43-6f., be
24 fixed at or between one-third and one-half of the sentence imposed by
25 the court or five years, whichever is greater, during which the
26 defendant shall not be eligible for parole. Where the sentence imposed
27 is life imprisonment, the court shall impose a minimum term of 25
28 years during which the defendant shall not be eligible for parole,
29 except that where the term of life imprisonment is imposed on a person
30 convicted for a violation of N.J.S.2C:35-3, the term of parole
31 ineligibility shall be 30 years.

32 (cf: P.L.1995, c.126, s.3)

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

35 2C:44-1. Criteria for Withholding or Imposing Sentence of
36 Imprisonment. a. In determining the appropriate sentence to be
37 imposed on a person who has been convicted of an offense, the court
38 shall consider the following aggravating circumstances:

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

42 (2) The gravity and seriousness of harm inflicted on the victim,
43 including whether or not the defendant knew or reasonably should
44 have known that the victim of the offense was particularly vulnerable
45 or incapable of resistance due to advanced age, ill-health, or extreme
46 youth, or was for any other reason substantially incapable of exercising

- 1 normal physical or mental power of resistance;
- 2 (3) The risk that the defendant will commit another offense;
- 3 (4) A lesser sentence will depreciate the seriousness of the
- 4 defendant's offense because it involved a breach of the public trust
- 5 under chapters 27 and 30, or the defendant took advantage of a
- 6 position of trust or confidence to commit the offense;
- 7 (5) There is a substantial likelihood that the defendant is involved
- 8 in organized criminal activity;
- 9 (6) The extent of the defendant's prior criminal record and the
- 10 seriousness of the offenses of which he has been convicted;
- 11 (7) The defendant committed the offense pursuant to an agreement
- 12 that he either pay or be paid for the commission of the offense and the
- 13 pecuniary incentive was beyond that inherent in the offense itself;
- 14 (8) The defendant committed the offense against a police or other
- 15 law enforcement officer, correctional employee or fireman, acting in
- 16 the performance of his duties while in uniform or exhibiting evidence
- 17 of his authority, or the defendant committed the offense because of the
- 18 status of the victim as a public servant or the defendant committed the
- 19 offense against a sports official, athletic coach or manager, acting in
- 20 or immediately following the performance of his duties or because of
- 21 the person's status as a sports official, coach or manager;
- 22 (9) The need for deterring the defendant and others from violating
- 23 the law;
- 24 (10) The offense involved fraudulent or deceptive practices
- 25 committed against any department or division of State government;
- 26 (11) The imposition of a fine, penalty or order of restitution
- 27 without also imposing a term of imprisonment would be perceived by
- 28 the defendant or others merely as part of the cost of doing business,
- 29 or as an acceptable contingent business or operating expense
- 30 associated with the initial decision to resort to unlawful practices;
- 31 (12) The defendant committed the offense against a person who he
- 32 knew or should have known was 60 years of age or older, or disabled.
- 33 b. In determining the appropriate sentence to be imposed on a
- 34 person who has been convicted of an offense, the court may properly
- 35 consider the following mitigating circumstances:
- 36 (1) The defendant's conduct neither caused nor threatened serious
- 37 harm;
- 38 (2) The defendant did not contemplate that his conduct would
- 39 cause or threaten serious harm;
- 40 (3) The defendant acted under a strong provocation;
- 41 (4) There were substantial grounds tending to excuse or justify the
- 42 defendant's conduct, though failing to establish a defense;
- 43 (5) The victim of the defendant's conduct induced or facilitated its
- 44 commission;
- 45 (6) The defendant has compensated or will compensate the victim
- 46 of his conduct for the damage or injury that he sustained, or will

1 participate in a program of community service;

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

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

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

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

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

13 (12) The willingness of the defendant to cooperate with law
14 enforcement authorities;

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

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

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

24 d. Presumption of imprisonment. The court shall deal with a
25 person who has been convicted of a crime of the first or second degree
26 by imposing a sentence of imprisonment unless, having regard to the
27 character and condition of the defendant, it is of the opinion that his
28 imprisonment would be a serious injustice which overrides the need to
29 deter such conduct by others.

30 e. The court shall deal with a person convicted of an offense other
31 than a crime of the first or second degree, who has not previously been
32 convicted of an offense, without imposing sentence of imprisonment
33 unless, having regard to the nature and circumstances of the offense
34 and the history, character and condition of the defendant, it is of the
35 opinion that his imprisonment is necessary for the protection of the
36 public under the criteria set forth in subsection a.

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

43 (a) To a term of 20 years for aggravated manslaughter [or],
44 kidnapping pursuant to paragraph (1) of subsection c. of
45 N.J.S.2C:13-1, or aggravated sexual assault pursuant to subsection a.
46 of N.J.S.2C:14-2, when the offense constitutes a crime of the first

1 degree;

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

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

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

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

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

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

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

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

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

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

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42 4. This act shall take effect on the 90th day after enactment.

STATEMENT

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This bill increases the range of penalties available for persons who are convicted of aggravated sexual assault. Currently, aggravated sexual assault is a crime of the first degree. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$100,000, or both. This bill provides that a person convicted of aggravated sexual assault would be sentenced to an ordinary term of imprisonment of between 15 and 30 years. The bill also amends N.J.S.A.2C:44-1 to provide that a presumptive sentence of 20 years would be applicable to persons sentenced for this crime. This is an increase from the ordinary presumptive term applicable for first degree crimes. This provision would make the penalties for aggravated sexual assault comparable to the enhanced penalties available for aggravated manslaughter and certain kidnapping crimes.

The bill also amends N.J.S.A.2C:43-7 to include aggravated sexual assault with aggravated manslaughter and kidnapping for purposes of the extended terms which may be applicable.

The Administrative Office of the Courts (AOC) has reported that the average length of sentence for the crime of aggravated sexual assault was approximately 12 years in calendar year 1988. The bill could increase the average length of sentence by as much as five years.

Increases ordinary term of imprisonment for crimes of aggravated sexual assault; provides for presumptive sentence of 20 years.