

SENATE, No. 1104

STATE OF NEW JERSEY

INTRODUCED MAY 9, 1996

By Senator LaROSSA

1 **AN ACT** concerning juvenile justice, amending and supplementing
2 P.L.1982, c.77 and amending P.L.1995, c.126.

3

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

6

7 1. Section 25 of P.L.1982, c.77 (C.2A:4A-44) is amended to read
8 as follows:

9 25. Incarceration -- aggravating and mitigating factors
10 a. (1) Except as provided in subsections e. and f. of section 24 of
11 P.L.1982, c.77 (C.2A:4A-43), in determining whether incarceration is
12 an appropriate disposition, the court shall consider the following
13 aggravating circumstances:

14 (a) The fact that the nature and circumstances of the act, and the
15 role of the juvenile therein, was committed in an especially heinous,
16 cruel, or depraved manner;

17 (b) The fact that there was grave and serious harm inflicted on the
18 victim and that based upon the juvenile's age or mental capacity the
19 juvenile knew or reasonably should have known that the victim was
20 particularly vulnerable or incapable of resistance due to advanced age,
21 disability, ill-health, or extreme youth, or was for any other reason
22 substantially incapable;

23 (c) The character and attitude of the juvenile indicate that the
24 juvenile is likely to commit another delinquent or criminal act;

25 (d) The juvenile's prior record and the seriousness of any acts for
26 which the juvenile has been adjudicated delinquent;

27 (e) The fact that the juvenile committed the act pursuant to an
28 agreement that the juvenile either pay or be paid for the commission
29 of the act and that the pecuniary incentive was beyond that inherent in
30 the act itself;

31 (f) The fact that the juvenile committed the act against a policeman
32 or other law enforcement officer, correctional employee or fireman,
33 acting in the performance of his duties while in uniform or exhibiting
34 evidence of his authority, or the juvenile committed the act because of

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 the status of the victim as a public servant;
- 2 (g) The need for deterring the juvenile and others from violating
3 the law;
- 4 (h) The fact that the juvenile knowingly conspired with others as
5 an organizer, supervisor, or manager to commit continuing criminal
6 activity in concert with two or more persons and the circumstances of
7 the crime show that he has knowingly devoted himself to criminal
8 activity as part of an ongoing business activity;
- 9 (i) The fact that the juvenile on two separate occasions was
10 adjudged a delinquent on the basis of acts which if committed by an
11 adult would constitute crimes.
- 12 (2) In determining whether incarceration is an appropriate
13 disposition the court shall consider the following mitigating
14 circumstances:
- 15 (a) The child is under the age of 14;
- 16 (b) The juvenile's conduct neither caused nor threatened serious
17 harm;
- 18 (c) The juvenile did not contemplate that the juvenile's conduct
19 would cause or threaten serious harm;
- 20 (d) The juvenile acted under a strong provocation;
- 21 (e) There were substantial grounds tending to excuse or justify the
22 juvenile's conduct, though failing to establish a defense;
- 23 (f) The victim of the juvenile's conduct induced or facilitated its
24 commission;
- 25 (g) The juvenile has compensated or will compensate the victim for
26 the damage or injury that the victim has sustained, or will participate
27 in a program of community service;
- 28 (h) The juvenile has no history of prior delinquency or criminal
29 activity or has led a law-abiding life for a substantial period of time
30 before the commission of the present act;
- 31 (i) The juvenile's conduct was the result of circumstances unlikely
32 to recur;
- 33 (j) The character and attitude of the juvenile indicate that the
34 juvenile is unlikely to commit another delinquent or criminal act;
- 35 (k) The juvenile is particularly likely to respond affirmatively to
36 noncustodial treatment;
- 37 (l) The separation of the juvenile from the juvenile's family by
38 incarceration of the juvenile would entail excessive hardship to the
39 juvenile or the juvenile's family;
- 40 (m) The willingness of the juvenile to cooperate with law
41 enforcement authorities;
- 42 (n) The conduct of the juvenile was substantially influenced by
43 another person more mature than the juvenile.
- 44 b. (1) There shall be a presumption of nonincarceration for any
45 crime or offense of the fourth degree or less committed by a juvenile
46 who has not previously been adjudicated delinquent or convicted of a

1 crime or offense.

2 (2) Where incarceration is imposed, the court shall consider the
3 juvenile's eligibility for release under the law governing parole.

4 c. The following juveniles shall not be committed to a State
5 juvenile facility:

6 (1) Juveniles age 11 or under unless adjudicated delinquent for the
7 crime of arson or a crime which, if committed by an adult, would be
8 a crime of the first or second degree; and

9 (2) Juveniles who are developmentally disabled as defined in
10 paragraph (1) of subsection a. of section 3 of P.L.1977, c.82
11 (C.30:6D-3).

12 d. (1) When the court determines that, based on the
13 consideration of all the factors set forth in subsection a., the juvenile
14 shall be incarcerated, unless it orders the incarceration pursuant to
15 subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43), it shall
16 state on the record the reasons for imposing incarceration, including
17 any findings with regard to these factors, and commit the juvenile to
18 the custody of the Juvenile Justice Commission which shall provide for
19 the juvenile's placement in a suitable juvenile facility pursuant to the
20 conditions set forth in this subsection and for terms not to exceed the
21 maximum terms as provided herein for what would constitute the
22 following crimes if committed by an adult:

23 (a) Murder under 2C:11-3[a(1) or (2)] [20] 30 years

24 (b) [Murder under 2C:11-3a(3) 10 years]
25 (Deleted by amendment) P.L. c. (C.) now pending before the
Legislature as this bill).

27 (c) Crime of the first degree,

28 except murder [4] 20 years

29 (d) Crime of the second degree [3] 10 years

30 (e) Crime of the third degree [2] 5 years

31 (f) Crime of the fourth degree 1 year

32 (g) Disorderly persons offense 6 months

33 (2) Except as provided in subsection e. of section 24 of P.L.1982,
34 c.77 (C.2A:4A-43), the period of confinement shall continue until the
35 appropriate paroling authority determines that such a person should be
36 paroled; except that in no case shall the period of confinement and
37 parole exceed the maximum provided by law for such offense.
38 However, if a juvenile is approved for parole prior to serving one-third
39 of any term imposed for any crime of the first, second or third degree,
40 including any extended term imposed pursuant to paragraph (3) or (4)
41 of this subsection, or one-fourth of any term imposed for any other
42 crime the granting of parole shall be subject to approval of the
43 sentencing court. Prior to approving parole, the court shall give the
44 prosecuting attorney notice and an opportunity to be heard. If the
45 court denies the parole of a juvenile pursuant to this paragraph it shall
46 state its reasons in writing and notify the parole board, the juvenile and

1 the juvenile's attorney. The court shall have 30 days from the date of
2 notice of the pending parole to exercise the power granted under this
3 paragraph. If the court does not respond within that time period, the
4 parole will be deemed approved.

5 Any juvenile committed under this act who is released on parole
6 prior to the expiration of the juvenile's maximum term may be retained
7 under parole supervision for a period not exceeding the unserved
8 portion of the term and any term of post-incarceration supervision
9 imposed pursuant to paragraph (5) of this subsection. The Parole
10 Board, the juvenile, the juvenile's attorney, the juvenile's parent or
11 guardian or, with leave of the court any other interested party, may
12 make a motion to the court, with notice to the prosecuting attorney,
13 for the return of the child from a juvenile facility prior to his parole
14 and provide for an alternative disposition which would not exceed the
15 duration of the original time to be served in the facility. Nothing
16 contained in this paragraph shall be construed to limit the authority of
17 the Parole Board as set forth in section 15 of P.L.1979, c.441
18 (C.30:4-123.59).

19 (3) Upon application by the prosecutor, the court may sentence a
20 juvenile who has been convicted of a crime of the first, second, or
21 third degree if committed by an adult, to an extended term of
22 incarceration beyond the maximum set forth in paragraph (1) of this
23 subsection, if it finds that the juvenile was adjudged delinquent on at
24 least two separate occasions, for offenses which, if committed by an
25 adult, would constitute a crime of the first or second degree, and was
26 previously committed to an adult or juvenile facility. The extended
27 term shall not exceed five additional years for an act which would
28 constitute murder and shall not exceed two additional years for all
29 other crimes of the first degree or second degree, if committed by an
30 adult, and one additional year for a crime of the third degree, if
31 committed by an adult.

32 (4) Upon application by the prosecutor, when a juvenile is before
33 the court at one time for disposition of three or more unrelated
34 offenses which, if committed by an adult, would constitute crimes of
35 the first, second or third degree and which are not part of the same
36 transaction, the court may sentence the juvenile to an extended term
37 of incarceration not to exceed the maximum of the permissible term
38 for the most serious offense for which the juvenile has been
39 adjudicated plus two additional years.

40 (5) Every disposition that includes a term of incarceration shall
41 include a term of post-incarceration supervision equivalent to
42 one-third of the term of incarceration imposed. During the term of
43 post-incarceration supervision the juvenile shall remain in the
44 community and in the legal custody of the Juvenile Justice Commission
45 established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170)
46 in accordance with the rules of the parole board, unless the

1 appropriate parole board panel determines that post-incarceration
2 supervision should be revoked and the juvenile returned to custody in
3 accordance with the procedures and standards set forth in sections 15
4 through 21 of P.L.1979, c.441 (C.30:4-123.59 through
5 C.30:4-123.65). The term of post-incarceration supervision shall
6 commence upon release from incarceration or parole, whichever is
7 later. A term of post-incarceration supervision imposed pursuant to
8 this paragraph may be terminated by the appropriate parole board
9 panel if the juvenile has made a satisfactory adjustment in the
10 community while on parole or under such supervision, if continued
11 supervision is not required and if the juvenile has made full payment
12 of any fine or restitution.

13 (cf:P.L.1995,c.280,s.11)

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15 2. Section 2 of P.L.1995, c.126 (C.2C:43-7.1) is amended to read
16 as follows:

17 2. a. Life Imprisonment Without Parole. A person convicted of a
18 crime under any of the following: N.J.S.2C:11-3; subsection a. of
19 N.J.S.2C:11-4; a crime of the first degree under N.J.S.2C:13-1,
20 subsections a. (3), a. (4), a. (5), or a. (6) of N.J.S.2C:14-2;
21 N.J.S.2C:15-1; or N.J.S.2C:15-2, who has on two or more prior and
22 separate occasions been convicted of a crime under any of the
23 foregoing sections or under any similar statute of the United States,
24 this state, or any other state for a crime that is substantially equivalent
25 to a crime under any of the foregoing sections, shall be sentenced to
26 a term of life imprisonment by the court, with no eligibility for parole.

27 b. Extended Term for Repeat Violent Offenders. A person shall be
28 sentenced to an extended term of imprisonment pursuant to
29 N.J.S.2C:43-7 if:

30 (1) The person is convicted of any of the following crimes: a crime
31 of the second degree under N.J.S.2C:11-4; a crime of the second or
32 third degree under subsection b. of N.J.S.2C:12-1; a crime of the
33 second degree under N.J.S.2C:13-1; a crime under N.J.S.2C:14-3 for
34 aggravated criminal sexual contact under any of the circumstances set
35 forth in N.J.S.2C:14-2a. (3) through (6); a crime of the second degree
36 under N.J.S.2C:15-1; a crime of the second degree under
37 N.J.S.2C:18-2; or a crime of the second degree under N.J.S.2C:39-4
38 for possession of a weapon with the purpose of using it unlawfully
39 against the person of another, and the person has on two or more prior
40 and separate occasions been convicted of any of the foregoing crimes
41 or any of the crimes enumerated in subsection a. of this section or
42 under any similar statute of the United States, this state, or any other
43 state for a crime that is substantially equivalent to a crime enumerated
44 in this subsection or in subsection a. of this section; or

45 (2) The person is convicted of a crime enumerated in subsection a.
46 of this section, does not have two or more prior convictions that

1 require sentencing under subsection a. and has two or more prior
2 convictions that would require sentencing under paragraph 1 of this
3 subsection if the person had been convicted of a crime enumerated in
4 paragraph 1.

5 c. The provisions of this section shall not apply unless the prior
6 convictions are for crimes committed on separate occasions and unless
7 the crime for which the defendant is being sentenced was committed
8 either within 10 years of the date of the defendant's last release from
9 confinement for commission of any crime or within 10 years of the
10 date of the commission of the most recent of the crimes for which the
11 defendant has a prior conviction.

12 d. The court shall not impose a sentence of imprisonment pursuant
13 to this section, unless the ground therefor has been established at a
14 hearing after the conviction of the defendant and on written notice to
15 the defendant of the ground proposed. The defendant shall have the
16 right to hear and controvert the evidence against him and to offer
17 evidence upon the issue. Prior convictions shall be defined and proven
18 in accordance with 2C:44-4.

19 e. For purposes of this section, a term of life shall mean the natural
20 life of a person sentenced pursuant to this section. Except that a
21 defendant who is at least 70 years of age and who has served at least
22 35 years in prison pursuant to a sentence imposed under this section
23 shall be released on parole if the full Parole Board determines that the
24 defendant is not a danger to the safety of any other person or the
25 community.

26 f. As used in this section a prior conviction shall include an
27 adjudication of delinquency.

28 (cf: P.L.1995, c.126, s.2)

29

30 3. (New section) Notwithstanding any other provision of law to
31 the contrary, if a person who has been sentenced to a term of
32 incarceration pursuant to section section 25 of P.L.1982, c.77
33 (C.2A:4A-44) for a crime of the first, second or third degree shall
34 attain the age of eighteen years during the term of incarceration, the
35 court shall, at the time the sentence of incarceration is imposed,
36 further order that the Juvenile Justice Commission transfer the person,
37 upon attaining the age of 18 years, to the Department of Corrections
38 for transfer to an appropriate adult correctional facility or facility for
39 young adult offenders for the remainder of the term of incarceration.

40

41 4. This act shall take effect immediately.

STATEMENT

This bill increases the penalties for offenses committed by juvenile offenders by raising the maximum terms of incarceration which may be imposed for what would constitute crimes of the first, second or third degree if committed by an adult. Under the bill, the new maximum terms would be comparable to adult sentences. An adjudication for the crime of murder would be punishable by a maximum of 30 years imprisonment. Currently, the maximum adjudication for murder committed by a juvenile is twenty years. Adjudications for other first degree offenses would be punishable by up to 20 years; currently, the maximum is four years. Adjudications for second degree crimes would be punishable by up to ten years imprisonment; currently, the maximum is three years. Adjudications for crimes of the third degree would be punishable by up to five years imprisonment; currently, the maximum penalty is two years.

17 The bill would further include adjudications of delinquency for
18 serious violent offenses in the category of offenses which determine
19 whether an offender shall receive a mandatory life imprisonment
20 sentence or an extended term.

Finally, the bill provides that if a person who is sentenced to a term of incarceration under the code of juvenile justice for a crime of the first, second or third degree, attains the age of eighteen years during the period of incarceration, that person shall be transferred to an appropriate adult correctional facility.

Increases maximum juvenile sentences; includes adjudications of delinquency for serious violent offenses in determining mandatory adult sentences; requires transfer to adult facility of offenders over eighteen years of age.