

SENATE, No. 1247

STATE OF NEW JERSEY

INTRODUCED JUNE 3, 1996

By Senators CONNORS, McNAMARA and Bubba

1 AN ACT concerning the terms of incarceration that may be imposed on  
2 juveniles adjudicated delinquent and amending P.L.1982, c.77.

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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. 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 his age or mental capacity the juvenile  
19 knew or reasonably should have known that the victim was particularly  
20 vulnerable or incapable of resistance due to advanced age, disability,  
21 ill-health, or extreme youth, or was for any other reason substantially  
22 incapable;

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

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

27 (e) The fact that the juvenile committed the act pursuant to an  
28 agreement that he either pay or be paid for the commission of the act  
29 and that the pecuniary incentive was beyond that inherent in the act  
30 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 his conduct would cause  
19 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 he is  
34 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 his family by incarceration  
38 of the juvenile would entail excessive hardship to himself or his family;
- 39 (m) The willingness of the juvenile to cooperate with law  
40 enforcement authorities;
- 41 (n) The conduct of the juvenile was substantially influenced by  
42 another person more mature than the juvenile.
- 43 b. (1) There shall be a presumption of nonincarceration for any  
44 crime or offense of the fourth degree or less committed by a juvenile  
45 who has not previously been adjudicated delinquent or convicted of a  
46 crime or offense.

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

3 c. The following juveniles shall not be committed to a State  
4 correctional facility:

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

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

11 d. (1) When the court determines that, based on the consideration  
12 of all the factors set forth in subsection a., the juvenile shall be  
13 incarcerated, unless it orders the incarceration pursuant to subsection  
14 c. of section 24 of this act, it shall state on the record the reasons for  
15 imposing incarceration, including any findings with regard to these  
16 factors, and commit the juvenile to a suitable institution maintained by  
17 the Department of Corrections for the rehabilitation of delinquents  
18 pursuant to the conditions set forth in this subsection and for terms not  
19 to exceed the maximum terms as provided herein for what would  
20 constitute the following crimes if committed by an adult:

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

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

25 (c) Crime of the first degree, except murder ...[4] 10 years

26 (d) Crime of the second degree .....[3] 5 years

27 (e) Crime of the third degree .....[2] 3 years

28 (f) Crime of the fourth degree .....1 year

29 (g) Disorderly persons offense .....6 months

30 (2) Except as provided in subsection e. of section 24 of P.L.1982,  
31 c.77 (C.2A:4A-43), the period of confinement shall continue until the  
32 appropriate paroling authority determines that such a person should be  
33 paroled; except that in no case shall the period of confinement and  
34 parole exceed the maximum provided by law for such offense.  
35 However, if a juvenile is approved for parole prior to serving one-third  
36 of any term imposed for any crime of the first, second or third degree,  
37 including any extended term imposed pursuant to paragraph (3) or (4)  
38 of this subsection, or one-fourth of any term imposed for any other  
39 crime the granting of parole shall be subject to approval of the  
40 sentencing court. Prior to approving parole, the court shall give the  
41 prosecuting attorney notice and an opportunity to be heard. If the  
42 court denies the parole of a juvenile pursuant to this paragraph it shall  
43 state its reasons in writing and notify the parole board, the juvenile and  
44 the juvenile's attorney. The court shall have 30 days from the date of  
45 notice of the pending parole to exercise the power granted under this  
46 paragraph. If the court does not respond within that time period, the

1 parole will be deemed approved.

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

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

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

35 (cf: P.L.1993, c.133, s.2)

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37 2. This act shall take effect immediately.

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#### STATEMENT

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42 This bill would raise the maximum terms of incarceration which  
43 may be imposed under New Jersey's juvenile code on juveniles  
44 adjudicated delinquent for serious criminal offenses. Presently, if a  
45 juvenile is adjudicated delinquent for a crime of the first degree other  
46 than murder the maximum term of incarceration which may be imposed

1 is four years. This bill would raise the maximum term of incarceration  
2 for first degree crimes to 10 years. Presently, the maximum term  
3 which may be imposed on juveniles adjudicated delinquent for crimes  
4 of the second degree is three years and for those adjudicated  
5 delinquent for crimes of the third degree, two years. This bill would  
6 raise these maximum terms to five years for second degree crimes and  
7 three years for third degree crimes.

8 With regard to murder, the juvenile code presently sets a maximum  
9 term of twenty years incarceration for intentional murders. For  
10 murders committed under the felony-murder rule, the maximum term  
11 of incarceration set by the juvenile code is ten years. This bill would  
12 eliminate this ten year term and thus provide that the maximum term  
13 of incarceration which may be imposed on all juveniles adjudicated  
14 delinquent for murder would be twenty years.

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20 Raises maximum terms of incarceration that may be imposed under the  
juvenile code for serious offenses.