

CHAPTER 328

AN ACT concerning sentencing of certain defendants who are victims of abuse; amending N.J.S.2C:44-1, and supplementing Title 2C of the New Jersey Statutes.

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

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

Criteria, withholding, imposing sentences, imprisonment.

2C:44-1. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee, or firefighter, acting in the performance of the officer, employee, or firefighter duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; the defendant committed the offense against a sports official, athletic coach, or manager, acting in or immediately following the performance of the person's duties or because of the person's status as a sports official, coach, or manager; or the defendant committed the offense against any health care professional, volunteer working for a health care professional or working at a health care facility, supportive services staff member working for a health care professional or working at a health care facility, or employee of a health care professional or health care facility, while the health care professional, volunteer, supportive services staff member, or employee is performing official duties.

For the purposes of this paragraph, "health care facility" and "health care professional" mean the same as those terms are defined in subsection b. of section 3 of P.L.2023, c.48 (C.2C:12-3.1);

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

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

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

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

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

(14) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), committed in the presence of a child under 16 years of age; and

(15) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), and the defendant committed at least one act of domestic violence on more than one occasion.

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

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

(2) The defendant did not contemplate that the defendant's conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

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

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

(6) The defendant has compensated or will compensate the victim of the defendant's conduct for the damage or injury that the victim sustained, or will participate in a program of community service;

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

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

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

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

(11) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents;

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

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

(14) The defendant was under 26 years of age at the time of the commission of the offense; and

(15) For an offense other than murder or a crime for which the defendant would be required to register as a sex offender pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2), the defendant's status as a victim of domestic violence as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or other evidence that the defendant was otherwise subjected to substantial physical, sexual, or psychological abuse, and the domestic violence or abuse was a contributing factor to the defendant's conviction. The court may find that this factor applies regardless of whether the defendant raised a defense that included the abuse. In addition to any other evidence the court deems appropriate in determining whether this factor applies, the court

shall consider all relevant circumstances and shall take judicial notice of any evidence, testimony, or information adduced at the trial, plea hearing, or other court proceedings.

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

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

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree, or a crime of the third degree where the court finds that the aggravating factor in paragraph (5), (14), or (15) of subsection a. of this section applies, by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that the defendant's imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others. This subsection shall not apply to a person for whom the court finds that the mitigating factor in paragraph (15) of subsection b. of this section applies.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character, and condition of the defendant, it is of the opinion that imprisonment is necessary for the protection of the public under the criteria set forth in subsection a. of this section, except that this subsection shall not apply if the court finds that the aggravating factor in paragraph (5), (14), or (15) of subsection a. of this section applies or if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; strict liability vehicular homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture, or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; if the person is convicted of a crime of the third degree under paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

f. (Deleted by amendment, P.L.2025, c.328)

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a. of this section, finds the aggravating factor in paragraph (2), (5), (10), or (12) of subsection a. of this section and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of

a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey.

i. Notwithstanding any provision of N.J.S.2C:43-6 or any other provisions of law to the contrary, in sentencing a defendant for whom the court finds that the mitigating factor in paragraph (15) of subsection b. of this section applies, the court may impose sentence as follows:

- (a) for a crime of the first degree, a term of at least five years but not more than 10 years;
- (b) for a crime of the second degree, a term of at least three years but not more than five years;
- (c) for a crime of the third degree, a term of not more than 18 months;
- (d) for a crime of the fourth degree, a term of not more than six months; and
- (e) for a non-indictable offense, a sentence of probation or conditional discharge.

j. In determining whether the mitigating factor in paragraph (15) of subsection b. of this section applies, the court shall consider all relevant circumstances and shall take judicial notice of any evidence, testimony, or information adduced at the trial, plea hearing, or other court proceedings and any additional relevant evidence, including, but not limited to:

- (1) court records;
- (2) social services records;
- (3) presentencing reports;
- (4) hospital records;
- (5) sworn statements from a witness of the domestic violence who is not the defendant;
- (6) criminal records;
- (7) domestic violence incident reports;
- (8) protective orders;
- (9) verification of consultation with a licensed medical care provider or mental health care provider;
- (10) testimony or a sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, a health care professional, or other professional from whom the person has sought assistance in addressing the trauma associated with being a victim, or a victim of any of the underlying cases for which the defendant is being sentenced;
- (11) Department of Corrections records; and
- (12) any other evidence the court deems relevant.

C.2C:44-1.2 Defendants with prior convictions, petition for resentencing.

2. a. A defendant convicted of a crime prior to the effective date of section 2 of P.L.2025, c.328 (C.2C:44-1.2) may petition the court for resentencing in accordance with the provisions of this section, if the defendant:

- (1) was convicted of a crime, other than murder or a crime for which the defendant would be required to register as a sex offender pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2);
- (2) is incarcerated in a State correctional facility or county jail, or is otherwise under the custody or supervision of the Department of Corrections;
- (3) does not have an appeal pending and the time for filing an appeal has expired;
- (4) has not had their sentence suspended or been paroled or discharged;
- (5) was a victim of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or was otherwise subjected to substantial physical, sexual, or psychological abuse;
- (6) was convicted of a crime in which the domestic violence or abuse was a contributing factor; and
- (7) has not been resentenced or previously granted relief under this section.

b. A defendant shall be eligible for resentencing pursuant to this section regardless of whether the defendant:

- (1) raised a defense that included the abuse; or
- (2) entered a guilty plea prior to the original sentencing.

c. Notwithstanding any court rule or any other provision of law to the contrary, the court, upon consideration of a petition filed pursuant to this section, may, in its discretion, modify, reduce, or suspend the sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the person.

d. If the court determines that a change in the defendant's original sentence is not warranted, the court shall issue a written order stating the reasons for denying modification.

e. A defendant who seeks resentencing shall be represented by the Office of the Public Defender for the purpose of filing a motion under this section, unless the defendant retains other counsel.

f. A petition for resentencing pursuant to this section shall include an affidavit setting forth the facts tending to establish that:

(1) the defendant was a victim of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or has otherwise been subjected to substantial physical, sexual, or psychological abuse; and

(2) the domestic violence or abuse was a contributing factor to the defendant's conviction.

g. (1) A motion pursuant to this section shall be filed with the Superior Court in the county where the conviction occurred. A copy of the motion shall be served on the agency that prosecuted the case.

(2) The prosecutor shall file any response within 60 days. The court may grant an extension of time for good cause.

(3) Except as otherwise provided in paragraph (4) of this subsection, within 30 days of the date of filing of a motion for resentencing pursuant to this section, the court shall set a date for a resentencing hearing to be held within 180 days of the date of filing, unless the court finds that the defendant has not met the requirements for resentencing pursuant to this section, in which case the court shall notify the defendant of any deficiencies in the application and dismiss the petition without prejudice. A resentencing hearing on a motion filed pursuant to this section shall be held in the Superior Court in accordance with the Rules of Court.

(4) If the prosecutor does not file a written objection to the motion for resentencing, the defendant's application shall be deemed unopposed and the court may grant relief without a hearing. Any objection filed by the prosecutor shall not be deemed determinative, and the court may grant relief over an objection.

h. The Director of the Administrative Office of the Courts, in consultation with the State Domestic Violence Working Group, shall develop and promulgate a form, which a defendant shall use to initiate an application for resentencing. This form shall be readily available in all State correctional facilities, county jails, and all Superior and municipal courts. The form shall be made available in at least the five most common languages spoken in the State.

i. Applications made to the Superior Court under this section and all associated supporting documents filed with the applications shall remain confidential and shall not be disseminated or disclosed publicly, in whole or in part, except to another court, or a law enforcement or correctional agency as required by law, or a victim of any of the underlying cases for which the petitioner is seeking resentencing. The county prosecutor shall immediately notify the victim of an underlying case for which a petitioner is seeking resentencing pursuant to this section.

j. At the hearing for resentencing, the court shall determine whether:

(1) the defendant was a victim of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or was otherwise subjected to substantial physical, sexual, or psychological abuse;

(2) the domestic violence or abuse was a contributing factor to the person's conviction; and

(3) the defendant would have been entitled to a reduced sentence pursuant to paragraph (15) of subsection b. of N.J.S.2C:44-1.

k. If the court finds by a preponderance of the evidence that the provisions of subsection j. of this section apply, the court shall modify, reduce, or suspend the defendant's original sentence, including any minimum or mandatory sentence or a portion of the sentence imposed upon the defendant, in accordance with subsection i. of N.J.S.2C:44-1. In calculating the new term to be served by the defendant, the defendant shall be credited for any time served.

l. In determining whether the defendant shall be resentenced, the court shall consider all relevant circumstances and shall take judicial notice of any evidence, testimony, or information adduced at the trial, plea hearing, or other court proceedings, including, but not limited to:

(1) the defendant's affidavit filed pursuant to subsection f. of this section; and

(2) any additional relevant evidence, including, but not limited to:

(a) court records;

(b) social services records;

(c) presentencing reports;

(d) hospital records;

(e) sworn statements from a witness of the domestic violence who is not the defendant;

(f) criminal records;

(g) domestic violence incident reports;

(h) protective orders;

(i) verification of consultation with a licensed medical care provider or mental health care provider;

(j) testimony or a sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, a health care professional, or other professional from whom the person has sought assistance in addressing the trauma associated with being a victim, or the victim of any of the underlying cases for which the petitioner is seeking resentencing; and

(k) Department of Corrections records, including the institutional record of confinement, which shall include, but not be limited to, any participation in domestic violence awareness, parenting education, substance abuse treatment, and other treatment or programming while incarcerated, as well as the defendant's disciplinary history; the fact that the defendant was unable to participate in treatment or programming despite a willingness to do so shall not be considered against the defendant; and

(l) any other evidence the court deems relevant.

m. If the court resentences the defendant pursuant to this section, the sentence shall not become final for 10 days in order to permit the prosecutor to appeal the sentence.

n. An appeal may be taken as of right from an order denying the motion for resentencing or from a new sentence imposed pursuant to this section. The appeal may be based on the grounds that the term of the new sentence is unduly harsh or excessive, or that the term of the new sentence is unauthorized as a matter of law. The defendant may request that the court assign a public defender to assist the defendant with the preparation of, and representation in, any proceedings related to an appeal. The public defender shall be assigned pursuant to P.L.1967, c.43 (C.2A:158A-1 et seq.).

o. The court shall note in any decision on an application for resentencing pursuant to this section that the application was made and decided pursuant to P.L.2025, c.328 (C. 2C:44-1.2 et al.).

p. A defendant may be granted relief only once pursuant to this section. Nothing in this section shall prohibit a defendant from pursuing resentencing under any other provision of Title 2C of the New Jersey Statutes or the Rules of Court.

q. The Supreme Court may issue Rules of Court to effectuate the purposes of this section.

C.2C:44-1.3 Notification to eligible incarcerated persons.

3. a. The Commissioner of Corrections shall notify each eligible incarcerated person who was convicted of a crime prior to the effective date of N.J.S.2C:44-1, as amended by P.L.2025, c.328 (C.2C:44-1.2 et al.), and is serving a sentence, of the right to seek resentencing pursuant to section 2 of P.L.2025, c.328 (C. 2C:44-1.2). The commissioner shall also provide the notification to the public defender and the incarcerated person's attorney, as appropriate.

b. The notification shall state that an application for resentencing may be filed by a person:

(1) who was convicted of a crime, other than murder or a crime for which the defendant would be required to register as a sex offender pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2);

(2) for whom the time for appeal has expired and no appeal is pending;

(3) who has not had their sentence suspended or been paroled or discharged;

(4) who was a victim of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or was otherwise subjected to substantial physical, sexual, or psychological abuse;

(5) for whom the domestic violence or abuse was a contributing factor to the person's conviction; and

(6) who has not been resentenced or previously granted relief under this section.

C.2C:44-1.4 Training course, curriculum; report to the Governor and Legislature.

4. a. The Administrative Office of the Courts shall develop and approve a training course and a curriculum to implement the provisions of P.L.2025, c.328 (C.2C:44-1.2 et al.). The training course shall be reviewed at least every two years and modified by the Administrative Office of the Courts from time to time as need may require.

b. The Administrative Office of the Courts shall make the training course, curriculum, and supporting materials available, through annual in-service judicial training programs or other means, to appropriate judges and judicial personnel who may be involved with the court-related aspects of prosecutions of a defendant who may be a victim of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), or otherwise was subjected to substantial physical, sexual, or psychological abuse.

c. The Administrative Office of the Courts shall report to the Governor and the Legislature annually on the number of applications for resentencing pursuant to P.L.2025, c.328 (C.2C:44-1.2 et al.) that were received, considered, granted, and denied.

5. Section 1 of this act shall take effect immediately, and sections 2 through 4 of this act shall take effect on the first day of the third month next following the date of enactment.

Approved January 20, 2026.