

# ASSEMBLY, No. 2916

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 20, 2014

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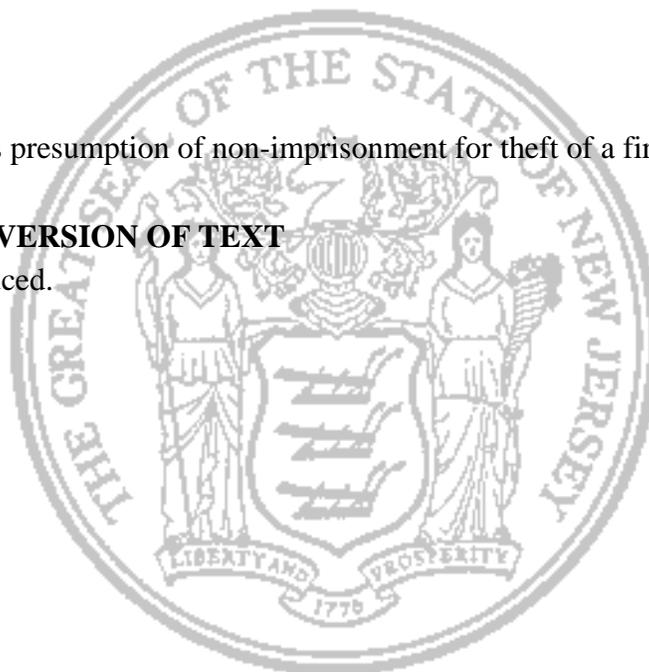
**Assemblymen Ciattarelli, C.A.Brown, Assemblywoman Simon,**  
**Assemblyman Garcia, Assemblywoman Spencer, Assemblymen Fiocchi,**  
**Caputo, Assemblywoman Angelini, Assemblyman Giblin, Assemblywoman**  
**Schepisi and Assemblyman Fuentes**

**SYNOPSIS**

Eliminates presumption of non-imprisonment for theft of a firearm.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/24/2014)**

1 AN ACT concerning theft of a firearm and amending N.J.S.2C:20-2  
2 and N.J.S.2C:44-1.

3

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

6

7 1. N.J.S.2C:20-2 is amended to read as follows:

8 2C:20-2. a. Consolidation of Theft and Computer Criminal  
9 Activity Offenses. Conduct denominated theft or computer  
10 criminal activity in this chapter constitutes a single offense, but  
11 each episode or transaction may be the subject of a separate  
12 prosecution and conviction. A charge of theft or computer criminal  
13 activity may be supported by evidence that it was committed in any  
14 manner that would be theft or computer criminal activity under this  
15 chapter, notwithstanding the specification of a different manner in  
16 the indictment or accusation, subject only to the power of the court  
17 to ensure fair trial by granting a bill of particulars, discovery, a  
18 continuance, or other appropriate relief where the conduct of the  
19 defense would be prejudiced by lack of fair notice or by surprise.

20 b. Grading of theft offenses.

21 (1) Theft constitutes a crime of the second degree if:

22 (a) The amount involved is **[\$75,000.00]** \$75,000 or more;

23 (b) The property is taken by extortion;

24 (c) The property stolen is a controlled dangerous substance or  
25 controlled substance analog as defined in N.J.S.2C:35-2 and the  
26 quantity is in excess of one kilogram;

27 (d) The property stolen is a person's benefits under federal or  
28 State law, or from any other source, which the Department of  
29 Human Services or an agency acting on its behalf has budgeted for  
30 the person's health care and the amount involved is **[\$75,000.00]**  
31 \$75,000 or more;

32 (e) The property stolen is human remains or any part thereof;  
33 except that, if the human remains are stolen by deception or  
34 falsification of a document by which a gift of all or part of a human  
35 body may be made pursuant to P.L.2008, c.50 (C.26:6-77 et al.), the  
36 theft constitutes a crime of the first degree; or

37 (f) It is in breach of an obligation by a person in his capacity as  
38 a fiduciary and the amount involved is **[\$50,000.00]** \$50,000 or  
39 more.

40 (2) Theft constitutes a crime of the third degree if:

41 (a) The amount involved exceeds **[\$500.00]** \$500 but is less  
42 than **[\$75,000.00]** \$75,000;

43 (b) The property stolen is a firearm, motor vehicle, vessel, boat,  
44 horse, domestic companion animal or airplane, except the  
45 presumption of non-imprisonment set forth in subsection e. of

**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 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall  
2 not apply to theft of a firearm;

3 (c) The property stolen is a controlled dangerous substance or  
4 controlled substance analog as defined in N.J.S.2C:35-2 and the  
5 amount involved is less than ~~【\$75,000.00】~~ \$75,000 or is  
6 undetermined and the quantity is one kilogram or less;

7 (d) It is from the person of the victim;

8 (e) It is in breach of an obligation by a person in his capacity as  
9 a fiduciary and the amount involved is less than ~~【\$50,000.00】~~  
10 \$50,000;

11 (f) It is by threat not amounting to extortion;

12 (g) It is of a public record, writing or instrument kept, filed or  
13 deposited according to law with or in the keeping of any public  
14 office or public servant;

15 (h) The property stolen is a person's benefits under federal or  
16 State law, or from any other source, which the Department of  
17 Human Services or an agency acting on its behalf has budgeted for  
18 the person's health care and the amount involved is less than  
19 ~~【\$75,000.00】~~ \$75,000;

20 (i) The property stolen is any real or personal property related  
21 to, necessary for, or derived from research, regardless of value,  
22 including, but not limited to, any sample, specimens and  
23 components thereof, research subject, including any warm-blooded  
24 or cold-blooded animals being used for research or intended for use  
25 in research, supplies, records, data or test results, prototypes or  
26 equipment, as well as any proprietary information or other type of  
27 information related to research;

28 (j) The property stolen is a New Jersey Prescription Blank as  
29 referred to in ~~【R.S.45:14-14】~~ section 20 of P.L.2003, c.280  
30 (C.45:14-59);

31 (k) The property stolen consists of an access device or a defaced  
32 access device; or

33 (l) The property stolen consists of anhydrous ammonia and the  
34 actor intends it to be used to manufacture methamphetamine.

35 (3) Theft constitutes a crime of the fourth degree if the amount  
36 involved is at least ~~【\$200.00】~~ \$200 but does not exceed ~~【\$500.00】~~  
37 \$500.

38 (4) Theft constitutes a disorderly persons offense if:

39 (a) The amount involved was less than ~~【\$200.00】~~ \$200; or

40 (b) The property stolen is an electronic vehicle identification  
41 system transponder.

42 The amount involved in a theft or computer criminal activity  
43 shall be determined by the trier of fact. The amount shall include,  
44 but shall not be limited to, the amount of any State tax avoided,  
45 evaded or otherwise unpaid, improperly retained or disposed of.  
46 Amounts involved in thefts or computer criminal activities  
47 committed pursuant to one scheme or course of conduct, whether

1 from the same person or several persons, may be aggregated in  
2 determining the grade of the offense.

3 c. Claim of right. It is an affirmative defense to prosecution  
4 for theft that the actor:

5 (1) Was unaware that the property or service was that of  
6 another;

7 (2) Acted under an honest claim of right to the property or  
8 service involved or that he had a right to acquire or dispose of it as  
9 he did; or

10 (3) Took property exposed for sale, intending to purchase and  
11 pay for it promptly, or reasonably believing that the owner, if  
12 present, would have consented.

13 d. Theft from spouse. It is no defense that theft or computer  
14 criminal activity was from or committed against the actor's spouse,  
15 except that misappropriation of household and personal effects, or  
16 other property normally accessible to both spouses, is theft or  
17 computer criminal activity only if it occurs after the parties have  
18 ceased living together.

19 (cf: P.L.2013, c.58, s.2)

20

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

22 2C:44-1. a. In determining the appropriate sentence to be  
23 imposed on a person who has been convicted of an offense, the  
24 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

- 1 (8) The defendant committed the offense against a police or  
2 other law enforcement officer, correctional employee or fireman,  
3 acting in the performance of his duties while in uniform or  
4 exhibiting evidence of his authority; the defendant committed the  
5 offense because of the status of the victim as a public servant; or the  
6 defendant committed the offense against a sports official, athletic  
7 coach or manager, acting in or immediately following the  
8 performance of his duties or because of the person's status as a  
9 sports official, coach or manager;
- 10 (9) The need for deterring the defendant and others from  
11 violating the law;
- 12 (10) The offense involved fraudulent or deceptive practices  
13 committed against any department or division of State government;
- 14 (11) The imposition of a fine, penalty or order of restitution  
15 without also imposing a term of imprisonment would be perceived  
16 by the defendant or others merely as part of the cost of doing  
17 business, or as an acceptable contingent business or operating  
18 expense associated with the initial decision to resort to unlawful  
19 practices;
- 20 (12) The defendant committed the offense against a person who  
21 he knew or should have known was 60 years of age or older, or  
22 disabled; and
- 23 (13) The defendant, while in the course of committing or  
24 attempting to commit the crime, including the immediate flight  
25 therefrom, used or was in possession of a stolen motor vehicle.
- 26 b. In determining the appropriate sentence to be imposed on a  
27 person who has been convicted of an offense, the court may  
28 properly consider the following mitigating circumstances:
- 29 (1) The defendant's conduct neither caused nor threatened  
30 serious harm;
- 31 (2) The defendant did not contemplate that his conduct would  
32 cause or threaten serious harm;
- 33 (3) The defendant acted under a strong provocation;
- 34 (4) There were substantial grounds tending to excuse or justify  
35 the defendant's conduct, though failing to establish a defense;
- 36 (5) The victim of the defendant's conduct induced or facilitated  
37 its commission;
- 38 (6) The defendant has compensated or will compensate the  
39 victim of his conduct for the damage or injury that he sustained, or  
40 will participate in a program of community service;
- 41 (7) The defendant has no history of prior delinquency or  
42 criminal activity or has led a law-abiding life for a substantial  
43 period of time before the commission of the present offense;
- 44 (8) The defendant's conduct was the result of circumstances  
45 unlikely to recur;
- 46 (9) The character and attitude of the defendant indicate that he is  
47 unlikely to commit another offense;

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

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

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

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

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

12 (2) When imposing a sentence of imprisonment the court shall  
13 consider the defendant's eligibility for release under the law  
14 governing parole, including time credits awarded pursuant to Title  
15 30 of the Revised Statutes, in determining the appropriate term of  
16 imprisonment.

17 d. Presumption of imprisonment. The court shall deal with a  
18 person who has been convicted of a crime of the first or second  
19 degree, or a crime of the third degree where the court finds that the  
20 aggravating factor in paragraph (5) of subsection a. applies, by  
21 imposing a sentence of imprisonment unless, having regard to the  
22 character and condition of the defendant, it is of the opinion that his  
23 imprisonment would be a serious injustice which overrides the need  
24 to deter such conduct by others. Notwithstanding the provisions of  
25 subsection e. of this section, the court shall deal with a person who  
26 has been convicted of theft of a motor vehicle or of the unlawful  
27 taking of a motor vehicle and who has previously been convicted of  
28 either offense by imposing a sentence of imprisonment unless,  
29 having regard to the character and condition of the defendant, it is  
30 of the opinion that his imprisonment would be a serious injustice  
31 which overrides the need to deter such conduct by others.

32 e. The court shall deal with a person convicted of an offense  
33 other than a crime of the first or second degree, who has not  
34 previously been convicted of an offense, without imposing a  
35 sentence of imprisonment unless, having regard to the nature and  
36 circumstances of the offense and the history, character and  
37 condition of the defendant, it is of the opinion that his imprisonment  
38 is necessary for the protection of the public under the criteria set  
39 forth in subsection a., except that this subsection shall not apply if  
40 the court finds that the aggravating factor in paragraph (5) of  
41 subsection a. applies or if the person is convicted of any of the  
42 following crimes of the third degree: theft of a motor vehicle;  
43 unlawful taking of a motor vehicle; theft of a firearm; eluding; if  
44 the person is convicted of a crime of the third degree constituting  
45 use of a false government document in violation of subsection c. of  
46 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is  
47 convicted of a crime of the third degree constituting distribution,  
48 manufacture or possession of an item containing personal

1 identifying information in violation of subsection b. of section 6 of  
2 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a  
3 crime of the third or fourth degree constituting bias intimidation in  
4 violation of N.J.S.2C:16-1; if the person is convicted of a crime of  
5 the third degree under section 2 of P.L.1997, c.111 (C.2C:12-1.1);  
6 or if the person is convicted of a crime of the third or fourth degree  
7 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-  
8 29 or C.2C:33-30).

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

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

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

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

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

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

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

28 Unless the preponderance of mitigating factors set forth in  
29 subsection b. weighs in favor of a lower term within the limits  
30 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a  
31 presumptive term of life imprisonment. Unless the preponderance  
32 of aggravating and mitigating factors set forth in subsections a. and  
33 b. weighs in favor of a higher or lower term within the limits  
34 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a  
35 presumptive term of 50 years' imprisonment; sentences imposed  
36 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'  
37 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)  
38 shall have a presumptive term of seven years' imprisonment.

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

43 (2) In cases of convictions for crimes of the first or second  
44 degree where the court is clearly convinced that the mitigating  
45 factors substantially outweigh the aggravating factors and where the  
46 interest of justice demands, the court may sentence the defendant to  
47 a term appropriate to a crime of one degree lower than that of the  
48 crime for which he was convicted. If the court does impose

1 sentence pursuant to this paragraph, or if the court imposes a  
2 noncustodial or probationary sentence upon conviction for a crime  
3 of the first or second degree, such sentence shall not become final  
4 for 10 days in order to permit the appeal of such sentence by the  
5 prosecution.

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

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

17 (cf: P.L.2010, c.30, s.1)

18

19 3. This act shall take effect immediately.

20

21

22

#### STATEMENT

23

24 This bill provides that the presumption of non-imprisonment for  
25 certain third and fourth degree crimes does not apply to a person  
26 convicted of theft of a firearm.

27 Theft of a firearm is a third degree crime which is punishable by  
28 a fine of up to \$15,000, a term of imprisonment of three to five  
29 years, or both. Currently, N.J.S.2C:44-1 provides a presumption of  
30 non-imprisonment for most first-time offenders of third and fourth  
31 degree crimes. Accordingly, a first-time offender is typically  
32 sentenced to a term of probation, rather than a term of  
33 imprisonment upon conviction. This bill expands the list of crimes  
34 to which the presumption does not apply to include theft of a  
35 firearm.