

ASSEMBLY, No. 1808

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

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SYNOPSIS

Provides for an additional aggravating factor in sentencing a person who has committed an act of domestic violence against certain minors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain domestic violence victims and
2 amending 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:44-1 is amended to read as follows:

8 2C:44-1. a. In determining the appropriate sentence to be
9 imposed on a person who has been convicted of an offense, the
10 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

34 (8) The defendant committed the offense against a police or
35 other law enforcement officer, correctional employee or fireman,
36 acting in the performance of his duties while in uniform or
37 exhibiting evidence of his authority; the defendant committed the
38 offense because of the status of the victim as a public servant; or the
39 defendant committed the offense against a sports official, athletic
40 coach or manager, acting in or immediately following the
41 performance of his duties or because of the person's status as a
42 sports official, coach or manager;

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

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 (10) The offense involved fraudulent or deceptive practices
2 committed against any department or division of State government;
- 3 (11) The imposition of a fine, penalty or order of restitution
4 without also imposing a term of imprisonment would be perceived
5 by the defendant or others merely as part of the cost of doing
6 business, or as an acceptable contingent business or operating
7 expense associated with the initial decision to resort to unlawful
8 practices;
- 9 (12) The defendant committed the offense against a person who
10 he knew or should have known was 60 years of age or older, or
11 disabled;
- 12 (13) The defendant, while in the course of committing or
13 attempting to commit the crime, including the immediate flight
14 therefrom, used or was in possession of a stolen motor vehicle;
- 15 (14) The offense involved an act of domestic violence, as that
16 term is defined in subsection a. of section 3 of P.L.1991, c. 261
17 (C.2C:25-19), committed in the presence of a child under 16 years
18 of age; **【and】**
- 19 (15) The offense involved an act of domestic violence, as that
20 term is defined in subsection a. of section 3 of P.L.1991, c. 261
21 (C.2C:25-19) and the defendant committed at least one act of
22 domestic violence on more than one occasion; and
- 23 (16) The offense involved an act of domestic violence, as that
24 term is defined in subsection a. of section 3 of P.L.1991, c. 261
25 (C.2C:25-19), committed against a minor who is a victim of
26 domestic violence as defined in subsections d. and e. of section 3 of
27 P.L.1991, c. 261 (C.2C:25-19).
- 28 b. In determining the appropriate sentence to be imposed on a
29 person who has been convicted of an offense, the court may
30 properly consider the following mitigating circumstances:
- 31 (1) The defendant's conduct neither caused nor threatened
32 serious harm;
- 33 (2) The defendant did not contemplate that his conduct would
34 cause or threaten serious harm;
- 35 (3) The defendant acted under a strong provocation;
- 36 (4) There were substantial grounds tending to excuse or justify
37 the defendant's conduct, though failing to establish a defense;
- 38 (5) The victim of the defendant's conduct induced or facilitated
39 its commission;
- 40 (6) The defendant has compensated or will compensate the
41 victim of his conduct for the damage or injury that he sustained, or
42 will participate in a program of community service;
- 43 (7) The defendant has no history of prior delinquency or
44 criminal activity or has led a law-abiding life for a substantial
45 period of time before the commission of the present offense;
- 46 (8) The defendant's conduct was the result of circumstances
47 unlikely to recur;

- 1 (9) The character and attitude of the defendant indicate that he is
2 unlikely to commit another offense;
- 3 (10) The defendant is particularly likely to respond affirmatively
4 to probationary treatment;
- 5 (11) The imprisonment of the defendant would entail excessive
6 hardship to himself or his dependents;
- 7 (12) The willingness of the defendant to cooperate with law
8 enforcement authorities;
- 9 (13) The conduct of a youthful defendant was substantially
10 influenced by another person more mature than the defendant.
- 11 c. (1) A plea of guilty by a defendant or failure to so plead
12 shall not be considered in withholding or imposing a sentence of
13 imprisonment.
- 14 (2) When imposing a sentence of imprisonment the court shall
15 consider the defendant's eligibility for release under the law
16 governing parole, including time credits awarded pursuant to Title
17 30 of the Revised Statutes, in determining the appropriate term of
18 imprisonment.
- 19 d. Presumption of imprisonment. The court shall deal with a
20 person who has been convicted of a crime of the first or second
21 degree, or a crime of the third degree where the court finds that the
22 aggravating factor in paragraph (5), (14) or (15) of subsection a.
23 applies, by imposing a sentence of imprisonment unless, having
24 regard to the character and condition of the defendant, it is of the
25 opinion that his imprisonment would be a serious injustice which
26 overrides the need to deter such conduct by others.
27 Notwithstanding the provisions of subsection e. of this section, the
28 court shall deal with a person who has been convicted of theft of a
29 motor vehicle or of the unlawful taking of a motor vehicle and who
30 has previously been convicted of either offense by imposing a
31 sentence of imprisonment unless, having regard to the character and
32 condition of the defendant, it is of the opinion that his imprisonment
33 would be a serious injustice which overrides the need to deter such
34 conduct by others.
- 35 e. The court shall deal with a person convicted of an offense
36 other than a crime of the first or second degree, who has not
37 previously been convicted of an offense, without imposing a
38 sentence of imprisonment unless, having regard to the nature and
39 circumstances of the offense and the history, character and
40 condition of the defendant, it is of the opinion that his imprisonment
41 is necessary for the protection of the public under the criteria set
42 forth in subsection a., except that this subsection shall not apply if
43 the court finds that the aggravating factor in paragraph (5), (14) or
44 (15) of subsection a. applies or if the person is convicted of any of
45 the following crimes of the third degree: theft of a motor vehicle;
46 unlawful taking of a motor vehicle; eluding; if the person is
47 convicted of a crime of the third degree constituting use of a false
48 government document in violation of subsection c. of section 1 of

1 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
2 of the third degree constituting distribution, manufacture or
3 possession of an item containing personal identifying information in
4 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
5 17.3); if the person is convicted of a crime of the third or fourth
6 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
7 if the person is convicted of a crime of the third degree under
8 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of
9 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a
10 crime of the third or fourth degree under the provisions of section 1
11 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

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

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

22 (b) Except as provided in subparagraph (a) of this paragraph to a
23 term of 15 years for a crime of the first degree;

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

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

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

27 In imposing a minimum term pursuant to subsection b. of
28 N.J.S.2C:43-6, the sentencing court shall specifically place on the
29 record the aggravating factors set forth in this section which justify
30 the imposition of a minimum term.

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

45 In imposing a minimum term pursuant to subsection b. of
46 N.J.S.2C:43-7, the sentencing court shall specifically place on the
47 record the aggravating factors set forth in this section which justify
48 the imposition of a minimum term.

1 (2) In cases of convictions for crimes of the first or second
2 degree where the court is clearly convinced that the mitigating
3 factors substantially outweigh the aggravating factors and where the
4 interest of justice demands, the court may sentence the defendant to
5 a term appropriate to a crime of one degree lower than that of the
6 crime for which he was convicted. If the court does impose
7 sentence pursuant to this paragraph, or if the court imposes a
8 noncustodial or probationary sentence upon conviction for a crime
9 of the first or second degree, such sentence shall not become final
10 for 10 days in order to permit the appeal of such sentence by the
11 prosecution.

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

19 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
20 11), the presumption of imprisonment as provided in subsection d.
21 of this section shall not preclude the admission of a person to the
22 Intensive Supervision Program, established pursuant to the Rules
23 Governing the Courts of the State of New Jersey.
24 (cf: P.L.2015, c.98, s.5)

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26 2. This act shall take effect immediately.

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STATEMENT

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31 This bill would amend N.J.S.2C:44-1 to add an aggravating
32 factor for courts to consider when sentencing an individual who has
33 committed a domestic violence offense against a minor.

34 Under the bill, it would be an aggravating factor if the offense
35 involved an act of domestic violence committed against a minor
36 who was a domestic violence victim pursuant to N.J.S.2C:25-19.
37 Those victims would include minors in a dating relationship or
38 emancipated minors. An emancipated minor includes a person who
39 is under 18 years of age but who has been married, has entered
40 military service, has a child or is pregnant or has been previously
41 declared by a court or an administrative agency to be emancipated.