

ASSEMBLY, No. 2054

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Upgrades crime of theft of scrap metal from transportation system.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning theft and amending N.J.S.2C:20-2 and
2 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 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 or
31 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 or more; or

39 (g) Any person other than the actor suffers serious bodily injury
40 as a result of the theft of scrap metal from any transportation
41 system.

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

43 (a) The amount involved exceeds \$500.00 but is less than
44 \$75,000.00;

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 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
2 horse, domestic companion animal or airplane;
- 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 or is undetermined and the
6 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 (f) It is by threat not amounting to extortion;
- 11 (g) It is of a public record, writing or instrument kept, filed or
12 deposited according to law with or in the keeping of any public
13 office or public servant;
- 14 (h) The property stolen is a person's benefits under federal or
15 State law, or from any other source, which the Department of
16 Human Services or an agency acting on its behalf has budgeted for
17 the person's health care and the amount involved is less than
18 \$75,000.00;
- 19 (i) The property stolen is any real or personal property related
20 to, necessary for, or derived from research, regardless of value,
21 including, but not limited to, any sample, specimens and
22 components thereof, research subject, including any warm-blooded
23 or cold-blooded animals being used for research or intended for use
24 in research, supplies, records, data or test results, prototypes or
25 equipment, as well as any proprietary information or other type of
26 information related to research;
- 27 (j) The property stolen is a New Jersey Prescription Blank as
28 referred to in R.S.45:14-14;
- 29 (k) The property stolen consists of an access device or a defaced
30 access device; **[or]**
- 31 (l) The property stolen consists of anhydrous ammonia and the
32 actor intends it to be used to manufacture methamphetamine; or
- 33 (m) The property stolen is scrap metal taken from any
34 transportation system and the amount involved is less than \$75,000;
35 however, the presumption of nonimprisonment set forth in
36 subsection e. of N.J.S.2C:44-1 shall not apply.
- 37 (3) Theft constitutes a crime of the fourth degree if the amount
38 involved is at least \$200.00 but does not exceed \$500.00.
- 39 (4) Theft constitutes a disorderly persons offense if:
40 (a) The amount involved was less than \$200.00; or
41 (b) The property stolen is an electronic vehicle identification
42 system transponder.
- 43 The amount involved in a theft or computer criminal activity
44 shall be determined by the trier of fact. The amount shall include,
45 but shall not be limited to, the amount of any State tax avoided,
46 evaded or otherwise unpaid, improperly retained or disposed of.
47 Amounts involved in thefts or computer criminal activities
48 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 e. As used in this section:

20 “Transportation system” means public highways, public
21 transportation projects, other transportation projects, and all
22 surface, airborne, and waterborne methods of transportation for the
23 movement of people and goods.

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

25

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

27 2C:44-1. a. In determining the appropriate sentence to be
28 imposed on a person who has been convicted of an offense, the
29 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

5 (8) The defendant committed the offense against a police or
6 other law enforcement officer, correctional employee or fireman,
7 acting in the performance of his duties while in uniform or
8 exhibiting evidence of his authority; the defendant committed the
9 offense because of the status of the victim as a public servant; or the
10 defendant committed the offense against a sports official, athletic
11 coach or manager, acting in or immediately following the
12 performance of his duties or because of the person's status as a
13 sports official, coach or manager;

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

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

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

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

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

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

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

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

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

43 (2) The defendant did not contemplate that his conduct would
44 cause or threaten serious harm;

45 (3) The defendant acted under a strong provocation;

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

- 1 (5) The victim of the defendant's conduct induced or facilitated
2 its commission;
- 3 (6) The defendant has compensated or will compensate the
4 victim of his conduct for the damage or injury that he sustained, or
5 will participate in a program of community service;
- 6 (7) The defendant has no history of prior delinquency or
7 criminal activity or has led a law-abiding life for a substantial
8 period of time before the commission of the present offense;
- 9 (8) The defendant's conduct was the result of circumstances
10 unlikely to recur;
- 11 (9) The character and attitude of the defendant indicate that he is
12 unlikely to commit another offense;
- 13 (10) The defendant is particularly likely to respond affirmatively
14 to probationary treatment;
- 15 (11) The imprisonment of the defendant would entail excessive
16 hardship to himself or his dependents;
- 17 (12) The willingness of the defendant to cooperate with law
18 enforcement authorities;
- 19 (13) The conduct of a youthful defendant was substantially
20 influenced by another person more mature than the defendant.
- 21 c. (1) A plea of guilty by a defendant or failure to so plead
22 shall not be considered in withholding or imposing a sentence of
23 imprisonment.
- 24 (2) When imposing a sentence of imprisonment the court shall
25 consider the defendant's eligibility for release under the law
26 governing parole, including time credits awarded pursuant to Title
27 30 of the Revised Statutes, in determining the appropriate term of
28 imprisonment.
- 29 d. Presumption of imprisonment. The court shall deal with a
30 person who has been convicted of a crime of the first or second
31 degree, or a crime of the third degree where the court finds that the
32 aggravating factor in paragraph (5), (14) or (15) of subsection a.
33 applies, by imposing a sentence of imprisonment unless, having
34 regard to the character and condition of the defendant, it is of the
35 opinion that his imprisonment would be a serious injustice which
36 overrides the need to deter such conduct by others.
37 Notwithstanding the provisions of subsection e. of this section, the
38 court shall deal with a person who has been convicted of theft of a
39 motor vehicle or of the unlawful taking of a motor vehicle and who
40 has previously been convicted of either offense by imposing a
41 sentence of imprisonment unless, having regard to the character and
42 condition of the defendant, it is of the opinion that his imprisonment
43 would be a serious injustice which overrides the need to deter such
44 conduct by others.
- 45 e. The court shall deal with a person convicted of an offense
46 other than a crime of the first or second degree, who has not
47 previously been convicted of an offense, without imposing a
48 sentence of imprisonment unless, having regard to the nature and

1 circumstances of the offense and the history, character and
2 condition of the defendant, it is of the opinion that his imprisonment
3 is necessary for the protection of the public under the criteria set
4 forth in subsection a., except that this subsection shall not apply if
5 the court finds that the aggravating factor in paragraph (5), (14) or
6 (15) of subsection a. applies or if the person is convicted of any of
7 the following crimes of the third degree: theft of a motor vehicle;
8 unlawful taking of a motor vehicle; eluding; strict liability vehicular
9 homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if
10 the person is convicted of a crime of the third degree constituting
11 use of a false government document in violation of subsection c. of
12 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is
13 convicted of a crime of the third degree constituting distribution,
14 manufacture or possession of an item containing personal
15 identifying information in violation of subsection b. of section 6 of
16 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a
17 crime of the third or fourth degree constituting bias intimidation in
18 violation of N.J.S.2C:16-1; if the person is convicted of a crime of
19 the third degree under paragraph (12) of subsection b. of
20 N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); **[or]**
21 if the person is convicted of a crime of the third or fourth degree
22 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-
23 29 or C.2C:33-30); or if the person is convicted of a crime of the
24 third degree under subparagraph (m.) of paragraph (2) of subsection
25 b. of N.J.S.2C:20-2.

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

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

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

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

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

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

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

45 Unless the preponderance of mitigating factors set forth in
46 subsection b. weighs in favor of a lower term within the limits
47 authorized, sentences imposed pursuant to paragraph (1) of
48 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life

1 imprisonment. Unless the preponderance of aggravating and
2 mitigating factors set forth in subsections a. and b. weighs in favor
3 of a higher or lower term within the limits authorized, sentences
4 imposed pursuant to paragraph (2) of subsection a. of N.J.S.2C:43-7
5 shall have a presumptive term of 50 years' imprisonment; sentences
6 imposed pursuant to paragraph (3) of subsection a. of N.J.S.2C:43-7
7 shall have a presumptive term of 15 years' imprisonment; and
8 sentences imposed pursuant to paragraph (4) of subsection a. of
9 N.J.S.2C:43-7 shall have a presumptive term of seven years'
10 imprisonment.

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

15 (2) In cases of convictions for crimes of the first or second
16 degree where the court is clearly convinced that the mitigating
17 factors substantially outweigh the aggravating factors and where the
18 interest of justice demands, the court may sentence the defendant to
19 a term appropriate to a crime of one degree lower than that of the
20 crime for which he was convicted. If the court does impose
21 sentence pursuant to this paragraph, or if the court imposes a
22 noncustodial or probationary sentence upon conviction for a crime
23 of the first or second degree, such sentence shall not become final
24 for 10 days in order to permit the appeal of such sentence by the
25 prosecution.

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

33 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
34 11), the presumption of imprisonment as provided in subsection d.
35 of this section shall not preclude the admission of a person to the
36 Intensive Supervision Program, established pursuant to the Rules
37 Governing the Courts of the State of New Jersey.
38 (cf: P.L.2017, c.165, s.6)

39

40 3. This act shall take effect immediately.

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STATEMENT

44

45 This bill provides that theft of scrap metal from any
46 transportation system under the amount of \$75,000 is automatically
47 a crime of the third degree. However, if anyone other than the actor

1 is seriously injured as a result of the theft of scrap metal from any
2 transportation system, then the theft is a crime of the second degree.

3 Under current law, theft is graded as a crime of the second
4 degree if, among other things, the amount involved is \$75,000 or
5 more; the property is taken by extortion; or the property is a
6 controlled dangerous substance or controlled substance analog in
7 excess of one kilogram. This bill provides that theft of scrap metal
8 from any transportation system that results in any person other than
9 the actor suffering serious bodily injury would be graded as a crime
10 of the second degree. A crime of the second degree is punishable
11 by imprisonment of five to 10 years, up to a \$150,000 fine, or both.

12 Under current law, a theft is graded as a crime of the third degree
13 if, among other things, the amount involved is over \$500 but less
14 than \$75,000; the property stolen is a firearm, boat, vessel, motor
15 vehicle, airplane, domestic companion animal, or horse; or it is
16 from the person of the victim. This bill provides that theft of scrap
17 metal from any transportation system under the amount of \$75,000
18 is automatically a crime of the third degree. In addition, this bill
19 also amends subsection e. of N.J.S.2C:44-1 to eliminate the
20 presumption of nonimprisonment for a first time conviction of the
21 offense. A crime of the third degree is punishable by imprisonment
22 of three to five years, a fine of up to \$15,000, or both.

23 “Transportation system” is defined in the bill as any public
24 highways, public transportation projects, other transportation
25 projects, and all surface, airborne, and waterborne methods of
26 transportation for the movement of people and goods.