ASSEMBLY, No. 3718

STATE OF NEW JERSEY

219th LEGISLATURE

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Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Upgrades penalties for theft of certain law enforcement and emergency vehicles.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the theft of certain vehicles and amending N.J.S.2C:20-2 and P.L.1997, c.117.

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

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

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

b. Grading of theft offenses.

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

(a) The amount involved is $75,000.00 or more;

(b) The property is taken by extortion;

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

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

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

(f) It is in breach of an obligation by a person in his capacity as a fiduciary and the amount involved is $50,000.00 or more; or

(g) The property stolen is a law enforcement or emergency vehicle that is owned by the federal government, the State, a public institution of higher education, or a local unit as defined in section 3 of P.L.1976, c.141 (C.58:10-23.11b). For the purposes of this subparagraph, the term "law enforcement or emergency vehicle" includes, but is not limited to, cars, trucks, ambulances, and rescue vehicles used for fire fighting or emergency purposes.

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.

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

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

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal, or airplane, except that if the property stolen is a law enforcement or emergency vehicle, as described in subparagraph (g) of paragraph (1) of this subsection, the theft shall constitute a crime of the second degree;

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

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

(e) It is in breach of an obligation by a person in his capacity as a fiduciary and the amount involved is less than $50,000.00;

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

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

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

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

(j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14;

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

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

(3) Theft constitutes a crime of the fourth degree if the amount involved is at least $200.00 but does not exceed $500.00.

(4) Theft constitutes a disorderly persons offense if:

(a) The amount involved was less than $200.00; or

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

The amount involved in a theft or computer criminal activity shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of.

Amounts involved in thefts or computer criminal activities committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

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

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

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

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

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

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

2. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read as follows:

2. a. A court imposing a sentence of incarceration for a crime of the first or second degree enumerated in subsection d. of this section shall fix a minimum term of 85% of the sentence imposed, during which the defendant shall not be eligible for parole.

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

c. Notwithstanding any other provision of law to the contrary and in addition to any other sentence imposed, a court imposing a minimum period of parole ineligibility of 85 percent of the sentence pursuant to this section shall also impose a five-year term of parole supervision if the defendant is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the defendant is being sentenced for a crime of the second degree. The

term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the Commissioner of the Department of Corrections and shall be supervised by the State Parole Board as if on parole and shall be subject to the provisions and conditions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

d. The court shall impose sentence pursuant to subsection a. of this section upon conviction of the following crimes or an attempt or conspiracy to commit any of these crimes:

(1) N.J.S.2C:11-3, murder;

(2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

(3) N.J.S.2C:11-5, vehicular homicide;

(4) subsection b. of N.J.S.2C:12-1, aggravated assault;

(5) subsection b. of section 1 of P.L.1996, c.14 (C.2C:12-11), disarming a law enforcement officer;

(6) N.J.S.2C:13-1, kidnapping;

(7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

(8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;

(9) N.J.S.2C:15-1, robbery;

(10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

(11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;

(12) N.J.S.2C:18-2, burglary;

(13) subsection a. of N.J.S.2C:20-5, extortion;

(14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities;

(15) N.J.S.2C:35-9, strict liability for drug induced deaths;

(16) section 2 of P.L.2002, c.26 (C.2C:38-2), terrorism;

(17) section 3 of P.L.2002, c.26 (C.2C:38-3), producing or possessing chemical weapons, biological agents or nuclear or radiological devices;

(18) N.J.S.2C:41-2, racketeering, when it is a crime of the first degree:

(19) subsection i. of N.J.S.2C:39-9, firearms trafficking; **[**or**]**

(20) paragraph (3) of subsection b. of N.J.S.2C:24-4, causing or permitting a child to engage in a prohibited sexual act, knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance; or

(21) subparagraph (g) of paragraph (1) of subsection b. of N.J.S.2C:20-2, theft of a law enforcement or emergency vehicle that is owned by the state or a local unit.

e. (Deleted by amendment, P.L.2001, c.129).

(cf: P.L.2013, c.136, s.4)

3. This act shall take effect immediately.

STATEMENT

This bill upgrades the crime of theft of a law enforcement or emergency vehicle, if the vehicle is owned by the federal government, the State, a public institution of higher education, or a local unit, from a crime of the third degree to a crime of the second degree.

Under current law, a crime of the third degree is punishable with a term of imprisonment for a term of between three and five years, a fine not to exceed $15,000, or both. Under current law, a crime of the second degree is punishable with a term of imprisonment for a term of between five and 10 years, a fine not to exceed $150,000, or both.

Under the bill, a person who commits theft of a law enforcement or emergency vehicle is subject to the provisions of the No Early Release Act (NERA). Under NERA, persons convicted of certain enumerated crimes of the first or second degree are required to serve a minimum term of at least 85 percent of the sentence imposed.

Theft of a law enforcement or emergency vehicle can pose serious risks to public safety and deprives police, emergency personnel, or other first responders of valuable public resources that are necessary to protect the public and respond to emergencies.

The bill takes effect immediately upon enactment.