

ASSEMBLY, No. 4373

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 29, 2020

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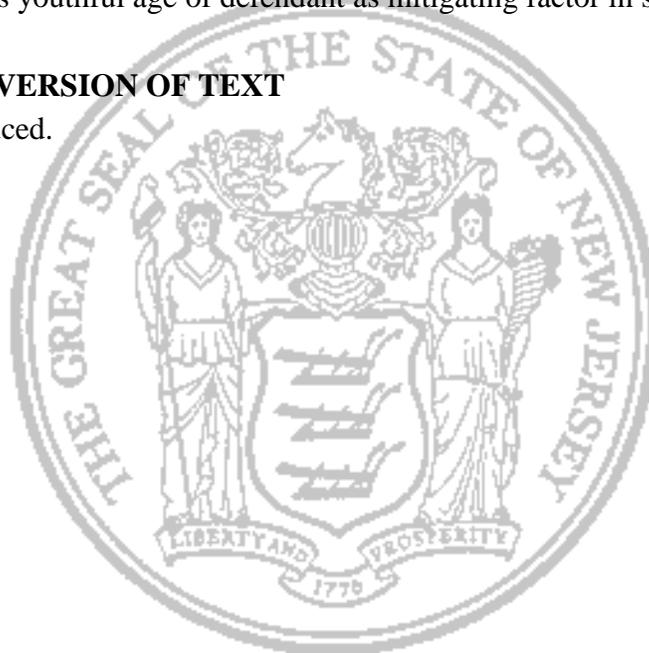
Assemblyman Moen, Assemblywoman Sumter, Senators Scutari and Ruiz

SYNOPSIS

Establishes youthful age of defendant as mitigating factor in sentencing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning sentencing and amending N.J.S.2C:44-1.

2

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

5

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

7 2C:44-1. a. In determining the appropriate sentence to be
8 imposed on a person who has been convicted of an offense, the
9 court shall consider the following aggravating circumstances:

10 (1) The nature and circumstances of the offense, and the role of
11 the actor **[therein]** in committing the offense, including whether or
12 not it was committed in an especially heinous, cruel, or depraved
13 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 of this title, or the defendant took
25 advantage of a position of trust or confidence to commit the
26 offense;

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

29 (6) The extent of the defendant's prior criminal record and the
30 seriousness of the offenses of which **[he]** the defendant has been
31 convicted;

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

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

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 (9) The need for deterring the defendant and others from
2 violating the law;
- 3 (10) The offense involved fraudulent or deceptive practices
4 committed against any department or division of State government;
- 5 (11) The imposition of a fine, penalty, or order of restitution
6 without also imposing a term of imprisonment would be perceived
7 by the defendant or others merely as part of the cost of doing
8 business, or as an acceptable contingent business or operating
9 expense associated with the initial decision to resort to unlawful
10 practices;
- 11 (12) The defendant committed the offense against a person who
12 **【he】** the defendant knew or should have known was 60 years of age
13 or older, or disabled;
- 14 (13) The defendant, while in the course of committing or
15 attempting to commit the crime, including the immediate flight
16 therefrom, used or was in possession of a stolen motor vehicle;
- 17 (14) The offense involved an act of domestic violence, as that
18 term is defined in subsection a. of section 3 of P.L.1991, c. 261
19 (C.2C:25-19), committed in the presence of a child under 16 years
20 of age; and
- 21 (15) The offense involved an act of domestic violence, as that
22 term is defined in subsection a. of section 3 of P.L.1991, c. 261
23 (C.2C:25-19) and the defendant committed at least one act of
24 domestic violence on more than one occasion.
- 25 b. In determining the appropriate sentence to be imposed on a
26 person who has been convicted of an offense, the court may
27 properly consider the following mitigating circumstances:
- 28 (1) The defendant's conduct neither caused nor threatened
29 serious harm;
- 30 (2) The defendant did not contemplate that **【his】** the defendant's
31 conduct would cause or threaten serious harm;
- 32 (3) The defendant acted under a strong provocation;
- 33 (4) There were substantial grounds tending to excuse or justify
34 the defendant's conduct, though failing to establish a defense;
- 35 (5) The victim of the defendant's conduct induced or facilitated
36 its commission;
- 37 (6) The defendant has compensated or will compensate the
38 victim of **【his】** the defendant's conduct for the damage or injury
39 that **【he】** the victim sustained, or will participate in a program of
40 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
47 **【he】** the defendant is 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】** the defendant or **【his】** the defendant's
5 dependents;
- 6 (12) The willingness of the defendant to cooperate with law
7 enforcement authorities;
- 8 (13) The conduct of a youthful defendant was substantially
9 influenced by another person more mature than the defendant ; and
- 10 (14) The defendant was under 26 years of age at the time of the
11 commission of the offense.
- 12 c. (1) A plea of guilty by a defendant or failure to so plead shall
13 not be considered in withholding or imposing a sentence of
14 imprisonment.
- 15 (2) When imposing a sentence of imprisonment the court shall
16 consider the defendant's eligibility for release under the law
17 governing parole, including time credits awarded pursuant to Title
18 30 of the Revised Statutes, in determining the appropriate term of
19 imprisonment.
- 20 d. Presumption of imprisonment. The court shall deal with a
21 person who has been convicted of a crime of the first or second
22 degree, or a crime of the third degree where the court finds that the
23 aggravating factor in paragraph (5), (14),¹ or (15) of subsection a. of
24 this section applies, by imposing a sentence of imprisonment unless,
25 having regard to the character and condition of the defendant, it is
26 of the opinion that **【his】** the defendant's imprisonment would be a
27 serious injustice which overrides the need to deter such conduct by
28 others. Notwithstanding the provisions of subsection e. of this
29 section, the court shall deal with a person who has been convicted
30 of theft of a motor vehicle or of the unlawful taking of a motor
31 vehicle and who has previously been convicted of either offense by
32 imposing a sentence of imprisonment unless, having regard to the
33 character and condition of the defendant, it is of the opinion that
34 **【his】** imprisonment would be a serious injustice which overrides
35 the need to deter such conduct by others.
- 36 e. The court shall deal with a person convicted of an offense
37 other than a crime of the first or second degree, who has not
38 previously been convicted of an offense, without imposing a
39 sentence of imprisonment unless, having regard to the nature and
40 circumstances of the offense and the history, character,² and
41 condition of the defendant, it is of the opinion that **【his】**
42 imprisonment is necessary for the protection of the public under the
43 criteria set forth in subsection a. of this section, except that this
44 subsection shall not apply if the court finds that the aggravating
45 factor in paragraph (5), (14) or (15) of subsection a. of this section
46 applies or if the person is convicted of any of the following crimes
47 of the third degree: theft of a motor vehicle; unlawful taking of a
48 motor vehicle; eluding; strict liability vehicular homicide pursuant

1 to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if the person is
2 convicted of a crime of the third degree constituting use of a false
3 government document in violation of subsection c. of section 1 of
4 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
5 of the third degree constituting distribution, manufacture or
6 possession of an item containing personal identifying information in
7 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
8 17.3); if the person is convicted of a crime of the third or fourth
9 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
10 if the person is convicted of a crime of the third degree under
11 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of
12 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a
13 crime of the third or fourth degree under the provisions of section 1
14 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

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

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

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

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

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

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

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

34 Unless the preponderance of mitigating factors set forth in
35 subsection b. weighs in favor of a lower term within the limits
36 authorized, sentences imposed pursuant to paragraph (1) of
37 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life
38 imprisonment. Unless the preponderance of aggravating and
39 mitigating factors set forth in subsections a. and b. of this section
40 weighs in favor of a higher or lower term within the limits
41 authorized, sentences imposed pursuant to paragraph (2) of
42 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 50
43 years' imprisonment; sentences imposed pursuant to paragraph (3)
44 of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of
45 15 years' imprisonment; and sentences imposed pursuant to
46 paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a
47 presumptive term of seven years' imprisonment.

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

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

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

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

29
30 2. This act shall take effect immediately.

31
32
33 STATEMENT

34
35 This bill provides the court with discretion to consider the age of
36 a youthful defendant as a mitigating factor during sentencing.

37 Current law provides 13 mitigating factors that the court may
38 consider when sentencing a defendant. The only mitigating factor
39 related to the age of a youthful defendant permits the court to
40 consider whether the defendant's conduct was substantially
41 influenced by another, more mature person. Under the bill's
42 provisions, the court would be permitted broadly to consider as a
43 mitigating factor whether a defendant was under the age of 26 when
44 an offense was committed.