

SENATE, No. 3272

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 14, 2020

Sponsored by:
Senator KRISTIN M. CORRADO
District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Adds aggravating factor of committing crime against person because of status as servicemember.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning crime against servicemembers and amending
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: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 in committing the offense, including whether or not it was
13 committed in an 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 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 the defendant has been
31 convicted;

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

36 (8) The defendant committed the offense against a police or
37 other law enforcement officer, correctional employee or firefighter,
38 acting in the performance of the officer, employee, or firefighter
39 duties while in uniform or exhibiting evidence of his authority; the
40 defendant committed the offense because of the status of the victim
41 as a public servant; or the defendant committed the offense against
42 a sports official, athletic coach or manager, acting in or immediately
43 following the performance of the person's duties or because of the
44 person's status as a sports official, coach or 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 the defendant knew or should have known was 60 years of age or
13 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; and
- 25 (16) The defendant committed the offense against a person
26 because of the person's perceived status, whether or not the person
27 is an actual servicemember. Perceived status may be inferred from,
28 but is not limited to, manner, speech, clothing, labels or other
29 insignia, associations or affiliations of the victim. As used in this
30 paragraph "servicemember" means any veteran or enlisted person or
31 officer, regardless of war service, of the United States Armed
32 Forces, or a Reserve Component thereof, or the New Jersey
33 National Guard. As used herein, "veteran" shall mean that the
34 person had served at any time in such armed forces, reserve or
35 National Guard capacity.
- 36 b. In determining the appropriate sentence to be imposed on a
37 person who has been convicted of an offense, the court may
38 properly consider the following mitigating circumstances:
- 39 (1) The defendant's conduct neither caused nor threatened
40 serious harm;
- 41 (2) The defendant did not contemplate that the defendant's
42 conduct would cause or threaten serious harm;
- 43 (3) The defendant acted under a strong provocation;
- 44 (4) There were substantial grounds tending to excuse or justify
45 the defendant's conduct, though failing to establish a defense;
- 46 (5) The victim of the defendant's conduct induced or facilitated
47 its commission;

1 (6) The defendant has compensated or will compensate the
2 victim of the defendant's conduct for the damage or injury that the
3 victim sustained, or will participate in a program of community
4 service;

5 (7) The defendant has no history of prior delinquency or
6 criminal activity or has led a law-abiding life for a substantial
7 period of time before the commission of the present offense;

8 (8) The defendant's conduct was the result of circumstances
9 unlikely to recur;

10 (9) The character and attitude of the defendant indicate that the
11 defendant is unlikely to commit another offense;

12 (10) The defendant is particularly likely to respond
13 affirmatively to probationary treatment;

14 (11) The imprisonment of the defendant would entail excessive
15 hardship to the defendant or the defendant's dependents;

16 (12) The willingness of the defendant to cooperate with law
17 enforcement authorities;

18 (13) The conduct of a youthful defendant was substantially
19 influenced by another person more mature than the defendant; and

20 (14) The defendant was under 26 years of age at the time of the
21 commission of the offense.

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

25 (2) When imposing a sentence of imprisonment the court shall
26 consider the defendant's eligibility for release under the law
27 governing parole, including time credits awarded pursuant to Title
28 30 of the Revised Statutes, in determining the appropriate term of
29 imprisonment.

30 d. Presumption of imprisonment. The court shall deal with a
31 person who has been convicted of a crime of the first or second
32 degree, or a crime of the third degree where the court finds that the
33 aggravating factor in paragraph (5), (14), or (15) of subsection a. of
34 this section applies, by imposing a sentence of imprisonment unless,
35 having regard to the character and condition of the defendant, it is
36 of the opinion that the defendant's imprisonment would be a serious
37 injustice which overrides the need to deter such conduct by others.
38 Notwithstanding the provisions of subsection e. of this section, the
39 court shall deal with a person who has been convicted of theft of a
40 motor vehicle or of the unlawful taking of a motor vehicle and who
41 has previously been convicted of either offense by imposing a
42 sentence of imprisonment unless, having regard to the character and
43 condition of the defendant, it is of the opinion that imprisonment
44 would be a serious injustice which overrides the need to deter such
45 conduct by others.

46 e. The court shall deal with a person convicted of an offense
47 other than a crime of the first or second degree, who has not
48 previously been convicted of an offense, without imposing a

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

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

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

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

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

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

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

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

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

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

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

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

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

32 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
33 11), the presumption of imprisonment as provided in subsection d.
34 of this section shall not preclude the admission of a person to the
35 Intensive Supervision Program, established pursuant to the Rules
36 Governing the Courts of the State of New Jersey.
37 (cf: P.L. 2020, c.110)

38

39 2. This act shall take effect immediately.

40

41

42

STATEMENT

43

44 N.J.S.A.2C:44-1 enumerates factors for consideration by a
45 sentencing court in determining whether to withhold or impose a
46 sentence of imprisonment, criteria including the existence of
47 aggravating and mitigating circumstances. This bill adds the
48 aggravating factor of having committed a crime offense against a

S3272 CORRADO

7

1 servicemember because of the status of the victim as a
2 servicemember. Under the bill, "servicemember" means any
3 veteran or enlisted person or officer of the United States Armed
4 Forces, or a reserve component thereof, or the organized militia of
5 the State of New Jersey. "Veteran" means that the person had
6 served at any time in such armed forces, reserve or National Guard
7 capacity.