

SENATE, No. 4256

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 9, 2021

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Eliminates presumption of non-imprisonment for theft of a firearm.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning theft of a firearm and amending N.J.S.2C:20-2
2 and 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】** \$75,000 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 \$75,000 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】** \$50,000 or
39 more.

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

41 (a) The amount involved exceeds **【\$500.00】** \$500 but is less
42 than **【\$75,000.00】** \$75,000;

43 (b) The property stolen is a firearm, motor vehicle, vessel, boat,
44 horse, domestic companion animal or airplane; except the
45 presumption of non-imprisonment set forth in subsection e. of
46 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
47 not apply to theft of a firearm;

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 (c) The property stolen is a controlled dangerous substance or
2 controlled substance analog as defined in N.J.S.2C:35-2 and the
3 amount involved is less than **【\$75,000.00】** \$75,000 or is
4 undetermined and the quantity is one kilogram or less;
- 5 (d) It is from the person of the victim;
- 6 (e) It is in breach of an obligation by a person in his capacity as
7 a fiduciary and the amount involved is less than **【\$50,000.00】**
8 \$50,000;
- 9 (f) It is by threat not amounting to extortion;
- 10 (g) It is of a public record, writing or instrument kept, filed or
11 deposited according to law with or in the keeping of any public
12 office or public servant;
- 13 (h) The property stolen is a person's benefits under federal or
14 State law, or from any other source, which the Department of
15 Human Services or an agency acting on its behalf has budgeted for
16 the person's health care and the amount involved is less than
17 **【\$75,000.00】** \$75,000;
- 18 (i) The property stolen is any real or personal property related
19 to, necessary for, or derived from research, regardless of value,
20 including, but not limited to, any sample, specimens and
21 components thereof, research subject, including any warm-blooded
22 or cold-blooded animals being used for research or intended for use
23 in research, supplies, records, data or test results, prototypes or
24 equipment, as well as any proprietary information or other type of
25 information related to research;
- 26 (j) The property stolen is a New Jersey Prescription Blank as
27 referred to in **【R.S.45:14-14】** section 20 of P.L.2003, c.280
28 (C.45:14-59);
- 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.
- 33 (3) Theft constitutes a crime of the fourth degree if the amount
34 involved is at least **【\$200.00】** \$200 but does not exceed **【\$500.00】**
35 \$500.
- 36 (4) Theft constitutes a disorderly persons offense if:
- 37 (a) The amount involved was less than **【\$200.00】** \$200; or
- 38 (b) The property stolen is an electronic vehicle identification
39 system transponder.
- 40 The amount involved in a theft or computer criminal activity
41 shall be determined by the trier of fact. The amount shall include,
42 but shall not be limited to, the amount of any State tax avoided,
43 evaded or otherwise unpaid, improperly retained or disposed of.
44 Amounts involved in thefts or computer criminal activities
45 committed pursuant to one scheme or course of conduct, whether
46 from the same person or several persons, may be aggregated in
47 determining the grade of the offense.

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

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

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

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

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

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

18

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

20 2C:44-1 Criteria for withholding or imposing sentences of
21 imprisonment.

22 2C:44-1. a. In determining the appropriate sentence to be
23 imposed on a person who has been convicted of an offense, the
24 court shall consider the following aggravating circumstances:

25 (1) The nature and circumstances of the offense, and the role of
26 the actor in committing the offense, including whether or not it was
27 committed in an especially heinous, cruel, or depraved manner;

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

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

36 (4) A lesser sentence will depreciate the seriousness of the
37 defendant's offense because it involved a breach of the public trust
38 under chapters 27 and 30 of this title, or the defendant took
39 advantage of a position of trust or confidence to commit the
40 offense;

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

43 (6) The extent of the defendant's prior criminal record and the
44 seriousness of the offenses of which the defendant has been
45 convicted;

46 (7) The defendant committed the offense pursuant to an
47 agreement to either pay or be paid for the commission of the

1 offense and the pecuniary incentive was beyond that inherent in the
2 offense itself;

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

12 (9) The need for deterring the defendant and others from
13 violating the law;

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

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

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

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

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

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

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 affirmatively
13 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; theft of a firearm; unlawful taking of a motor
10 vehicle; eluding; strict liability vehicular homicide pursuant to
11 section 1 of P.L.2017, c.165 (C.2C:11-5.3); if the person is
12 convicted of a crime of the third degree constituting use of a false
13 government document in violation of subsection c. of section 1 of
14 P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime
15 of the third degree constituting distribution, manufacture or
16 possession of an item containing personal identifying information in
17 violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-
18 17.3); if the person is convicted of a crime of the third or fourth
19 degree constituting bias intimidation in violation of N.J.S.2C:16-1;
20 if the person is convicted of a crime of the third degree under
21 paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of
22 P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a
23 crime of the third or fourth degree under the provisions of section 1
24 or 2 of 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, s.1)

38

39 3. This act shall take effect immediately.

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41

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STATEMENT

43

44 This bill provides that the presumption of non-imprisonment for
45 certain third and fourth degree crimes does not apply to a person
46 convicted of theft of a firearm.

47 Theft of a firearm is a third degree crime which is punishable by
48 a fine of up to \$15,000, a term of imprisonment of three to five

1 years, or both. Currently, N.J.S.2C:44-1 provides a presumption of
2 non-imprisonment for most first-time offenders of third and fourth
3 degree crimes. Accordingly, a first-time offender is typically
4 sentenced to a term of probation, rather than a term of
5 imprisonment upon conviction. This bill expands the list of crimes
6 to which the presumption does not apply to include theft of a
7 firearm.