

ASSEMBLY, No. 4740

STATE OF NEW JERSEY 221st LEGISLATURE

INTRODUCED SEPTEMBER 12, 2024

Sponsored by:

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District 32 (Hudson)

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SYNOPSIS

Establishes new mitigating factor for defendant who is survivor of abuse.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/12/2024)

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:

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

7 Criteria for withholding or imposing sentences of imprisonment.

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 court
10 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 vulnerable
17 or incapable of resistance due to advanced age, ill-health, or extreme
18 youth, or was for any other reason substantially incapable of
19 exercising normal physical or mental power of resistance;

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

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

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

27 (6) The extent of the defendant's prior criminal record and the
28 seriousness of the offenses of which the defendant has been
29 convicted;

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

33 (8) The defendant committed the offense against a police or other
34 law enforcement officer, correctional employee or firefighter, acting
35 in the performance of the officer, employee, or firefighter duties
36 while in uniform or exhibiting evidence of his authority; the
37 defendant committed the offense because of the status of the victim
38 as a public servant; the defendant committed the offense against a
39 sports official, athletic coach or manager, acting in or immediately
40 following the performance of the person's duties or because of the
41 person's status as a sports official, coach or manager; or the defendant
42 committed the offense against any health care professional, volunteer
43 working for a health care professional or working at a health care
44 facility, supportive services staff member working for a health care
45 professional or working at a health care facility, or employee of a

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 health care professional or health care facility, while the health care
2 professional, volunteer, supportive services staff member, or
3 employee is performing official duties.

4 For the purposes of this paragraph, "health care facility" and
5 "health care professional" mean the same as those terms are defined
6 in subsection b. of section 3 of P.L.2023, c.48 (C.2C:12-3.1);

7 (9) The need for deterring the defendant and others from violating
8 the law;

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

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

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

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

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

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

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

33 (1) The defendant's conduct neither caused nor threatened serious
34 harm;

35 (2) The defendant did not contemplate that the defendant's conduct
36 would cause or threaten serious harm;

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

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

40 (5) The victim of the defendant's conduct induced or facilitated its
41 commission;

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

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

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

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

5 (10) The defendant is particularly likely to respond affirmatively
6 to probationary treatment;

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

9 (12) The willingness of the defendant to cooperate with law
10 enforcement authorities;

11 (13) The conduct of a youthful defendant was substantially
12 influenced by another person more mature than the defendant; **[and]**

13 (14) The defendant was under 26 years of age at the time of the
14 commission of the offense **[.]**; and

15 (15) The defendant suffered physical, sexual, or emotional abuse
16 and such abuse was a contributing factor to the defendant's criminal
17 behavior.

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

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

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

42 e. The court shall deal with a person convicted of an offense
43 other than a crime of the first or second degree, who has not
44 previously been convicted of an offense, without imposing a sentence
45 of imprisonment unless, having regard to the nature and
46 circumstances of the offense and the history, character, and condition
47 of the defendant, it is of the opinion that imprisonment is necessary
48 for the protection of the public under the criteria set forth in

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

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

27 (a) To a term of 20 years for aggravated manslaughter or
28 kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-
29 1 when the offense constitutes a crime of the first degree;

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

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

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

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

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

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

1 subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 15
2 years' imprisonment; and sentences imposed pursuant to paragraph
3 (4) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term
4 of seven years' imprisonment.

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

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

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

26 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
27 11), the presumption of imprisonment as provided in subsection d. of
28 this section shall not preclude the admission of a person to the
29 Intensive Supervision Program, established pursuant to the Rules
30 Governing the Courts of the State of New Jersey.
31 (cf: P.L.2023, c.48, s.2)

32

33 2. This act shall take effect immediately.

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STATEMENT

37

38 This bill establishes a new mitigating factor that the court may
39 consider when sentencing certain defendants who are survivors of
40 abuse. The bill incorporates the recommendation in Part B of the
41 New Jersey Criminal Sentencing and Disposition Commission's third
42 report, dated March 2023, to create a new mitigating factor for
43 survivors of abuse.

44 Under current law, N.J.S.2C:44-1 enumerates 14 mitigating
45 factors that a court may consider in determining the appropriate
46 sentence to impose on a criminal defendant. These mitigating factors
47 do not include consideration of whether the defendant suffered from
48 physical, sexual, or psychological abuse.

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1 The bill amends the current law to establish an additional
2 mitigating factor that a court may consider in determining the
3 appropriate sentence to impose on a defendant who has been
4 convicted of a crime. Specifically, under the bill, the court may also
5 consider whether the defendant suffered physical, sexual, or
6 emotional abuse and that such abuse was a contributing factor to the
7 defendant's criminal behavior.