

2C:44-1, 2C:44-6

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:44-1, 2C:44-6

(Crimes against the elderly - prescribe penalties)

LAWS OF: 1983

CHAPTER: 317

Bill No: S3154

Sponsor(s): Graves and others

Date Introduced: February 24, 1983

Committee: Assembly: -----

Senate: Judiciary

Amended during passage: YES Substituted for A3229 (2nd OCR attached)

Date of Passage: Assembly: July 7, 1983

Senate: June 23, 1983

Date of Approval: August 29, 1983 Filed with Secretary of State enacted without Governor's approval)

Following statements are attached if available:

Sponsor statement: YES

Committee statement: Assembly NO

Senate YES

Fiscal Note: NO

Veto Message: NO

Message on Signing: NO

Following were printed:

Reports: NO

Hearings: NO

For background see:

Y4. Ag4/ U.S. Congress. House of Representatives. Select Committee on Aging.
2:N42J/3 Hearing, held 8/27/82. Washington, D.C., 1982.

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CHAPTER 311 LAWS OF N. J. 1983
Filed with Sec. of State APPROVED 4-29-83

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SENATE, No. 3154

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 24, 1983

By Senators GRAVES, ORECHIO, CAUFIELD, HIRKALA, BUBBA,
LYNCH, RODGERS, RAND, LIPMAN, McMANIMON, HAGEDORN,
BORNHEIMER, DALTON and BASSANO

Referred to Committee on Judiciary

[AN ACT concerning the penalty for certain offenses committed against persons over the age of 60 years and amending sections 2C:43-6, 2C:43-7, and 2C:44-3 of the New Jersey Statutes.]

An Act concerning sentencing criteria and presentence investigations and amending N. J. S. 2C:44-1 and N. J. S. 2C:44-6.

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

1 ***[1. N. J. S. 2C:43-6 is amended to read as follows:**
2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;
3 Mandatory Terms.

4 a. **Except as otherwise provided, a person who has been convicted**
5 **of a crime may be sentenced to imprisonment, as follows:**

6 (1) In the case of a crime of the first degree, for a specific term
7 of years which shall be fixed by the court and shall be between
8 10 years and 20 years;

9 (2) In the case of a crime of the second degree, for a specific
10 term of years which shall be fixed by the court and shall be between
11 five years and 10 years;

12 (3) In the case of a crime of the third degree, for a specific term
13 of years which shall be fixed by the court and shall be between three
14 years and five years;

15 (4) In the case of a crime of the fourth degree, for a specific
16 term which shall be fixed by the court and shall not exceed 18
17 months.

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted May 23, 1983.**

18 b. As part of a sentence for any crime, where the court is clearly
19 convinced that the aggravating factors substantially outweigh the
20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,
21 the court may fix a minimum term not to exceed one-half of the
22 term set pursuant to subsection a., or one-half of the term set pur-
23 suant to a maximum period of incarceration for a crime set forth
24 in any statute other than this code, during which the defendant
25 shall not be eligible for parole; provided that no defendant shall
26 be eligible for parole at a date earlier than otherwise provided by
27 the law governing parole.

28 c. A person who has been convicted under 2C:39-4a. of posses-
29 sion of a firearm with intent to use it against the person of
30 another, or of a crime under any of the following sections: 2C:11-3,
31 2C:11-4, 2C:12-1b., 2C:13-1, [2C:14-2a.] 2C:14-2, 2C:14-3a.,
32 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of committing
33 or attempting to commit the crime, including the immediate flight
34 therefrom, used or was in possession of a firearm as defined in
35 2C:39-1f., shall be sentenced to a term of imprisonment by the court.
36 The term of imprisonment shall include the imposition of a mini-
37 mum term. The minimum term shall be fixed at, or between, one-
38 third and one-half of the sentence imposed by the court or three
39 years, whichever is greater, or 18 months in the case of a fourth
40 degree crime, during which the defendant shall be ineligible for
41 parole.

42 The minimum terms established by this section shall not prevent
43 the court from imposing presumptive terms of imprisonment pur-
44 suant to 2C:44-1f. (1) except in cases of crimes of the fourth
45 degree.

46 A person who has been convicted of an offense enumerated by
47 this subsection and who used or possessed a firearm during its
48 commission, attempted commission or flight therefrom and who
49 has been previously convicted of an offense involving the use or
50 possession of a firearm as defined in 2C:44-3d., shall be sentenced
51 by the court to an extended term as authorized by 2C:43-7c., not-
52 withstanding that extended terms are ordinarily discretionary
53 with the court.

54 d. The court shall not impose a mandatory sentence pursuant to
55 [subsection] subsections c. or e. of this section, sections 2C:43-7c.,
56 2C:43-7d., [or] 2C:44-3d., or 2C:44-3e. of the New Jersey
57 Statutes, unless the ground therefor has been established at a
58 hearing. At the hearing, which may occur at the time of sentencing,
59 the prosecutor shall establish by a preponderance of the evidence
60 that the weapon used or possessed was a firearm or that the offense

61 *was committed with respect to the person or property of a person*
 62 *over the age of 60 years, whichever is appropriate.* In making its
 63 finding, the court shall take judicial notice of any evidence, testi-
 64 mony or information or information adduced at the trial, plea
 65 hearing, or other court proceedings and shall also consider the
 66 presentence report and any other relevant information.

67 *e. Notwithstanding the provisions of any other law to the con-*
 68 *trary and unless the person is being sentenced pursuant to sub-*
 69 *section c. of this section, a person who has been convicted of*
 70 *violating section 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,*
 71 *2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it constitutes a*
 72 *crime of the fourth degree or greater, or 2C:20-4 if it constitutes*
 73 *a crime of the fourth degree or greater, or 2C:20-5 of the New*
 74 *Jersey Statutes with respect to the person or property of a person*
 75 *over the age of 60 years, shall be sentenced to a term of imprison-*
 76 *ment by the court. The term of imprisonment shall include at least*
 77 *the imposition of a minimum term, which shall not be less than*
 78 *one-third nor more than one-half of the sentence imposed by the*
 79 *court, during which the defendant shall be ineligible for parole.*

80 *For a second or subsequent conviction of an offense enumerated*
 81 *by this subsection with respect to the person or property of a*
 82 *person over the age of 60 years, as defined in N. J. S. 2C:44-3e., a*
 83 *person shall be sentenced by the court to an extended term as*
 84 *authorized by N. J. S. 2C:43-7d., notwithstanding that extended*
 85 *terms are ordinarily discretionary with the court.】**

1 *【2. N. J. S. 2C:43-7 is amended to read as follows:

2 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

3 a. In the cases designated in section 2C:44-3, a person who has
 4 been convicted of a crime may be sentenced to an extended term of
 5 imprisonment, as follows:

6 (1) (Deleted by amendment, P. L. ..., c. ...)

7 (2) In the case of a crime of the first degree other than murder,
 8 for a specific term of years which shall be fixed by the court and
 9 shall be between 20 years and life imprisonment;

10 (3) In the case of a crime of the second degree, for a term which
 11 shall be fixed by the court between 10 and 20 years;

12 (4) In the case of a crime of the third degree, for a term which
 13 shall be fixed by the court between five and 10 years;

14 (5) In the case of a crime of the fourth degree pursuant to
 15 2C:43-6c. and 2C:44-3d. for a term of five years【.】;

16 (6) *In the case of a crime of the fourth degree pursuant to*
 17 *N. J. S. 2C:43-6e., for a term which shall be fixed by the court*
 18 *between three and five years.*

19 b. As part of a sentence for an extended term and notwithstand-

20 ing the provisions of 2C:43-9, the court may fix a minimum term
 21 not to exceed one-half of the term set pursuant to subsection a.
 22 during which the defendant shall not be eligible for parole or a
 23 term of 25 years during which time the defendant shall not be
 24 eligible for parole where the sentence imposed was life imprison-
 25 ment; provided that no defendant shall be eligible for parole at a
 26 date earlier than otherwise provided by the law governing parole.

27 c. In the case of a person sentenced to an extended term pursuant
 28 to 2C:43-6c. and 2C:44-3d., the court shall impose a sentence
 29 within the ranges permitted by 2C:43-7a. (2), (3), (4) or (5)
 30 according to the degree or nature of the crime for which the
 31 defendant is being sentenced, which sentence shall include a mini-
 32 mum term which shall be fixed at, or between one-third and
 33 one-half of the sentence imposed by the court or five years, which-
 34 ever is greater, during which the defendant shall not be eligible
 35 for parole. Where the sentence imposed is life imprisonment, the
 36 court shall impose a minimum term of 25 years during which the
 37 defendant shall not be eligible for parole.

38 d. *In the case of a person sentenced to an extended term pur-*
 39 *suant to N. J. S. 2C:43-6e. and N. J. S. 2C:44-3e., the court shall*
 40 *impose a sentence within the ranges permitted by N. J. S. 2C:43-7a.*
 41 *(2), (3), (4), or (6) according to the nature of the offense for*
 42 *which the person is being sentenced. The sentence shall include a*
 43 *minimum term, which shall be not less than one-third nor more*
 44 *than one-half of the sentence imposed by the court, during which*
 45 *the defendant shall be ineligible for parole. If the sentence imposed*
 46 *is life imprisonment, the court shall impose a minimum term of*
 47 *25 years during which the defendant shall be ineligible for parole.】**

1-2 *【3. N. J. S. 2C:44-3 is amended to read as follows:

3 2C:44-3. Criteria for Sentence of Extended Term of Imprison-
 4 ment.

5 The court may, upon application of the prosecuting attorney,
 6 sentence a person who has been convicted of a crime of the first,
 7 second or third degree to an extended term of imprisonment if it
 8 finds one or more of the grounds specified in this section. If the
 9 grounds specified in subsection d. are found, and the person is
 10 being sentenced for commission of any of the offenses enumerated
 11 in 2C:43-6c., the court shall sentence the defendant to an extended
 12 term as required by 2C:43-6c. *or if the grounds specified in sub-*
 13 *section e. of this section are found, and the person is being sen-*
 14 *tenced for commission of any of the offenses enumerated in*
 15 *N. J. S. 2C:43-6e., the court shall sentence the defendant to an*
 16 *extended term as required by N. J. S. 2C:43-6e., and application*

17 by the prosecutor shall not be required. The finding of the court
18 shall be incorporated in the record.

19 a. The defendant is a persistent offender. A persistent offender
20 is a person who at the time of the commission of the crime is 21
21 years of age or over, who has been previously convicted on at least
22 two separate occasions of two crimes, committed at different times,
23 when he was at least 18 years of age, if the latest in time of these
24 crimes or the date of the defendant's last release from confinement,
25 whichever is later, is within 10 years of the date of the crime for
26 which the defendant is being sentenced.

27 b. The defendant is a professional criminal. A professional
28 criminal is a person who committed a crime as part of a continuing
29 criminal activity in concert with two or more persons, and the
30 circumstances of the crime show he has knowingly devoted himself
31 to criminal activity as a major source of livelihood.

32 c. The defendant committed the crime as consideration for the
33 receipt, or inexpectation of the receipt, of anything of pecuniary
34 value the amount of which was unrelated to the proceeds of the
35 crime or he procured the commission of the offense by payment
36 or promise of payment of anything of pecuniary value.

37 d. Second offender with a firearm. The defendant is at least 18
38 years of age and has been previously convicted of any of the fol-
39 lowing crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1 [2C:14-2a]
40 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has
41 been previously convicted of an offense under Title 2A of the
42 New Jersey Statutes which is equivalent of the offenses enumer-
43 ated in this subsection and he used or possessed a firearm, as
44 defined in 2C:39-1f., in the course of committing or attempting to
45 commit any of these crimes, including the immediate flight there-
46 from.

47 e. *Subsequent offender against persons over the age of 60 years.*
48 *The defendant is at least 18 years of age and previously has been*
49 *convicted of violating any of the following sections of the New*
50 *Jersey Statutes with respect to the person or property of a person*
51 *over the age of 60 years: 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b.,*
52 *2C:13-1, 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it con-*
53 *stitutes a crime of the fourth degree or greater, 2C:20-4 if it*
54 *constitutes a crime of the fourth degree or greater, or 2C:30-5; or*
55 *previously has been convicted of an offense under Title 2A of the*
56 *New Jersey Statutes that is the equivalent of any of the offenses*
57 *enumerated in this subsection, with respect to the person or prop-*
58 *erty of a person over the age of 60 years.]**

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

2 2C:44-1. Criteria for Withholding or Imposing Sentence of
3 Imprisonment. a. In determining the appropriate sentence to be
4 imposed on a person who has been convicted of an offense, the
5 court [may properly] shall consider the following aggravating
6 circumstances:

7 (1) The nature and circumstances of the offense, and the role
8 of the actor therein, including whether or not it was committed in
9 an especially heinous, cruel, or depraved manner;

10 (2) The gravity and seriousness of harm inflicted on the victim,
11 including whether or not the defendant knew or reasonably should
12 have known that the victim of the offense was particularly vulner-
13 able or incapable of resistance due to advanced age, disability,
14 ill-health, or extreme youth, or was for any other reason sub-
15 stantially incapable of exercising normal physical or mental power
16 of resistance;

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

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

22 (5) There is a substantial likelihood that the defendant is in-
23 volved in organized criminal activity;

24 (6) The extent of the defendant's prior criminal record and the
25 seriousness of the offenses of which he has been convicted;

26 (7) The defendant committed the offense pursuant to an agree-
27 ment that he either pay or be paid for the commission of the offense
28 and the pecuniary incentive was beyond that inherent in the offense
29 itself;

30 (8) The defendant committed the offense against a police or
31 other law enforcement officer, correctional employee or fireman,
32 acting in the performance of his duties while in uniform or exhibit-
33 ing evidence of his authority, or the defendant committed the
34 offense because of the status of the victim as a public servant;

35 (9) The need for deterring the defendant and others from vio-
36 lating the law.

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

40 (1) The defendant's conduct neither caused nor threatened
41 serious harm;

42 (2) The defendant did not contemplate that his conduct would
43 cause or threaten serious harm;

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

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

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

49 (6) The defendant has compensated or will compensate the vic-
50 tim of his conduct for the damage or injury that he sustained, or
51 will participate in a program of community service;

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

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

57 (9) The character and attitudes of the defendant indicate that
58 he is unlikely to commit another offense;

59 (10) The defendant is particularly likely to respond affirmatively
60 to probationary treatment;

61 (11) The imprisonment of the defendant would entail excessive
62 hardship to himself or his dependents;

63 (12) The willingness of the defendant to cooperate with law
64 enforcement authorities;

65 (13) The conduct of a youthful defendant was substantially in-
66 fluenced by another person more mature than the defendant.

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

70 (2) When imposing a sentence of imprisonment the court shall
71 consider the defendant's eligibility for release under the law gov-
72 erning parole, including time credits awarded pursuant to Title 30
73 of the Revised Statutes, in determining the appropriate term of
74 imprisonment.

75 d. Presumption of imprisonment. The court shall deal with a
76 person who has been convicted of a crime of the first or second
77 degree by imposing a sentence of imprisonment unless, having
78 regard to the character and condition of the defendant, it is of
79 the opinion that his imprisonment would be a serious injustice
80 which overrides the need to deter such conduct by others.

81 e. The court shall deal with a person convicted of an offense
82 other than a crime of the first or second degree, who has not
83 previously been convicted of an offense, without imposing sentence
84 of imprisonment unless, having regard to the nature and circum-
85 stances of the offense and the history, character and condition of
86 the defendant, it is of the opinion that his imprisonment is neces-
87 sary for the protection of the public under the criteria set forth in
88 subsection a.

89 f. Presumptive Sentences. (1) When a court determines that
90 a sentence of imprisonment be imposed, it shall, except for murder
91 or kidnapping, sentence the defendant to a term of 15 years for a
92 crime of the first degree, to a term of seven years for a crime of the
93 second degree, to a term of four years for a crime of the third
94 degree and for a term of nine months for a crime of the fourth
95 degree unless the preponderance of aggravating factors or pre-
96 ponderance of mitigating factors, as set forth in subsections a. and
97 b., weighs in favor of higher or lower terms within the limits pro-
98 vided in 2C:43-6.

99 In imposing a minimum term pursuant to 2C:43-6b, the sentenc-
100 ing court shall specifically place on the record the aggravating
101 factors set forth in this section which justify the imposition of a
102 minimum term.

103 Unless the preponderance of mitigating factors set forth in
104 subsection b. weighs in favor of a lower term within the limits
105 authorized, sentences imposed pursuant to 2C:43-7a(1) shall have
106 a presumptive term of life imprisonment. Unless the preponder-
107 ance of aggravating and mitigating factors set forth in subsections
108 a. and b. weighs in favor of a higher or lower term within the limits
109 authorized, sentences imposed pursuant to 2C:43-7a (2) shall have
110 a presumptive term of 50 years' imprisonment; sentences imposed
111 pursuant to 2C:43-7a (3) shall have a presumptive term of 15
112 years' imprisonment; and sentences imposed pursuant to 2C:43-7a
113 (4) shall have a presumptive term of seven years' imprisonment.

114 In imposing a minimum term pursuant to 2C:43-7b, the sentenc-
115 ing court shall specifically place on the record the aggravating
116 factors set forth in this section which justify the imposition of a
117 minimum term.

118 (2) In cases of convictions for crimes of the first or second degree
119 where the court is clearly convinced that the mitigating factors sub-
120 stantially outweigh the aggravating factors and where the interest
121 of justice demands, the court may sentence the defendant to a term
122 appropriate to a crime of one degree lower than that of the crime
123 for which he was convicted. If the court does impose sentence pur-
124 suant to this paragraph, or if the court imposes a noncustodial
125 or probationary sentence upon conviction for a crime of the first
126 or second degree, such sentence shall not become final for 10 days
127 in order to permit the appeal of such sentence by the prosecution.

128 *g. Imposition of Noncustodial Sentences in Certain Cases. If*
129 *the court, in considering the aggravating factors set forth in sub-*
130 *section a., finds the aggravating factor in paragraph a. (2) and*
131 *does not impose a custodial sentence, the court shall specifically*

132 *place on the record the mitigating factors which justify the im-*
133 *position of a noncustodial sentence.*

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

2 2C:44-6. Procedure on Sentence; Presentence Investigation and
3 Report. a. The court shall not impose sentence without first order-
4 ing a presentence investigation of the defendant and according due
5 consideration to a written report of such investigation when re-
6 quired by Rules of Court. The court may order a presentence
7 investigation in any other case.

8 b. The presentence investigation shall include an analysis of
9 the circumstances attending the commission of the offense, the
10 defendant's history of delinquency or criminality, family situation,
11 personal habits, the disposition of any charge made against any
12 codefendants and may include a report on his physical and mental
13 condition and any other matters that the probation officer deems
14 relevant or the court directs to be included. The presentence report
15 may also include a statement by the victim of the offense for which
16 the defendant is being sentenced. The statement may include the
17 nature and extent of any physical harm or psychological or emo-
18 tional harm or trauma suffered by the victim, the extent of any
19 loss of earnings or ability to work suffered by the victim and the
20 effect of the crime upon the victim's family. The probation depart-
21 ment shall notify the victim of his right to make a statement for
22 inclusion in the presentence report if the victim so desires. Any
23 such statement shall be made within 20 days of notification by the
24 probation department.

25 *The presentence report shall specifically include an assessment*
26 *of the gravity and seriousness of harm inflicted on the victim in-*
27 *cluding whether or not the defendant knew or reasonably should*
28 *have known that the victim of the offense was particularly vul-*
29 *nerable or incapable of resistance due to advanced age, disability,*
30 *ill-health, or extreme youth, or was for any other reason substan-*
31 *tially incapable of exercising normal physical or mental power of*
32 *resistance.*

33 c. If, after the presentence investigation, the court desires ad-
34 ditional information concerning an offender convicted of an offense
35 before imposing sentence, it may order that he be examined as to
36 his medical or mental condition except that he may not be com-
37 mitted to an institution for such examination.

38 d. Disclosure of any presentence investigation report or psychi-
39 atric examination report shall be in accordance with law and the
40 Rules of Court.

41 e. The court shall not impose a sentence of imprisonment for
42 an extended term unless the ground therefor has been established
43 at a hearing after the conviction of the defendant and on written
44 notice to him of the ground proposed. The defendant shall have
45 the right to hear and controvert the evidence against him and to
46 offer evidence upon the issue.

47 f. "Victim" means "victim" as defined by the "Criminal Injuries
48 Compensation Act of 1971," P. L. 1971, c. 317 (C. 52:4B-1 et seq.).*

1 ***[4.]*** *3.* This act shall take effect immediately.

SENATE, No. 3154
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 24, 1983

By Senators GRAVES, ORECHIO, CAUFIELD, HIRKALA, BUBBA,
LYNCH, RODGERS, RAND, LIPMAN, McMANIMON, HAGE-
DORN, BORNHEIMER, DALTON and BASSANO

Referred to Committee on Judiciary

**AN ACT concerning the penalty for certain offenses committed
against persons over the age of 60 years and amending sections
2C:43-6, 2C:43-7, and 2C:44-3 of the New Jersey Statutes.**

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

1 1. N. J. S. 2C:43-6 is amended to read as follows:

**2 2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms;
3 Mandatory Terms.**

**4 a. Except as otherwise provided, a person who has been convicted
5 of a crime may be sentenced to imprisonment, as follows:**

**6 (1) In the case of a crime of the first degree, for a specific term
7 of years which shall be fixed by the court and shall be between
8 10 years and 20 years;**

**9 (2) In the case of a crime of the second degree, for a specific
10 term of years which shall be fixed by the court and shall be between
11 five years and 10 years;**

**12 (3) In the case of a crime of the third degree, for a specific term
13 of years which shall be fixed by the court and shall be between three
14 years and five years;**

**15 (4) In the case of a crime of the fourth degree, for a specific
16 term which shall be fixed by the court and shall not exceed 18
17 months.**

**18 b. As part of a sentence for any crime, where the court is clearly
19 convinced that the aggravating factors substantially outweigh the**

**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 printed in italics *thus* is new matter.

20 mitigating factors, as set forth in subsections a. and b. of 2C:44-1,
21 the court may fix a minimum term not to exceed one-half of the
22 term set pursuant to subsection a., or one-half of the term set pur-
23 suant to a maximum period of incarceration for a crime set forth
24 in any statute other than this code, during which the defendant
25 shall not be eligible for parole; provided that no defendant shall
26 be eligible for parole at a date earlier than otherwise provided by
27 the law governing parole.

28 c. A person who has been convicted under 2C:39-4a. of posses-
29 sion of a firearm with intent to use it against the person of
30 another, or of a crime under any of the following sections: 2C:11-3,
31 2C:11-4, 2C:12-1b., 2C:13-1, [2C:14-2a.] 2C:14-2, 2C:14-3a.,
32 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of committing
33 or attempting to commit the crime, including the immediate flight
34 therefrom, used or was in possession of a firearm as defined in
35 2C:39-1f., shall be sentenced to a term of imprisonment by the court.
36 The term of imprisonment shall include the imposition of a mini-
37 mum term. The minimum term shall be fixed at, or between, one-
38 third and one-half of the sentence imposed by the court or three
39 years, whichever is greater, or 18 months in the case of a fourth
40 degree crime, during which the defendant shall be ineligible for
41 parole.

42 The minimum terms established by this section shall not prevent
43 the court from imposing presumptive terms of imprisonment pur-
44 suant to 2C:44-1f. (1) except in cases of crimes of the fourth
45 degree.

46 A person who has been convicted of an offense enumerated by
47 this subsection and who used or possessed a firearm during its
48 commission, attempted commission or flight therefrom and who
49 has been previously convicted of an offense involving the use or
50 possession of a firearm as defined in 2C:44-3d., shall be sentenced
51 by the court to an extended term as authorized by 2C:43-7c., not-
52 withstanding that extended terms are ordinarily discretionary
53 with the court.

54 d. The court shall not impose a mandatory sentence pursuant to
55 [subsection] subsections c. or e. of this section, sections 2C:43-7c.,
56 2C:43-7d., [or] 2C:44-3d., or 2C:44-3e. of the New Jersey
57 Statutes, unless the ground therefor has been established at a
58 hearing. At the hearing, which may occur at the time of sentencing,
59 the prosecutor shall establish by a preponderance of the evidence
60 that the weapon used or possessed was a firearm or that the offense
61 was committed with respect to the person or property of a person
62 over the age of 60 years, whichever is appropriate. In making its

63 finding, the court shall take judicial notice of any evidence, testi-
 64 mony or information or information adduced at the trial, plea
 65 hearing, or other court proceedings and shall also consider the
 66 presentence report and any other relevant information.

67 *e. Notwithstanding the provisions of any other law to the con-*
 68 *trary and unless the person is being sentenced pursuant to sub-*
 69 *section c. of this section, a person who has been convicted of*
 70 *violating section 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,*
 71 *2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it constitutes a*
 72 *crime of the fourth degree or greater, or 2C:20-4 if it constitutes*
 73 *a crime of the fourth degree or greater, or 2C:20-5 of the New*
 74 *Jersey Statutes with respect to the person or property of a person*
 75 *over the age of 60 years, shall be sentenced to a term of imprison-*
 76 *ment by the court. The term of imprisonment shall include at least*
 77 *the imposition of a minimum term, which shall not be less than*
 78 *one-third nor more than one-half of the sentence imposed by the*
 79 *court, during which the defendant shall be ineligible for parole.*

80 *For a second or subsequent conviction of an offense enumerated*
 81 *by this subsection with respect to the person or property of a*
 82 *person over the age of 60 years, as defined in N. J. S. 2C:44-3e., a*
 83 *person shall be sentenced by the court to an extended term as*
 84 *authorized by N. J. S. 2C:43-7d., notwithstanding that extended*
 85 *terms are ordinarily discretionary with the court.*

1 2. N. J. S. 2C:43-7 is amended to read as follows:

2 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

3 a. In the cases designated in section 2C:44-3, a person who has
 4 been convicted of a crime may be sentenced to an extended term of
 5 imprisonment, as follows:

6 (1) (Deleted by amendment, P. L. . . ., c. . . .)

7 (2) In the case of a crime of the first degree other than murder,
 8 for a specific term of years which shall be fixed by the court and
 9 shall be between 20 years and life imprisonment;

10 (3) In the case of a crime of the second degree, for a term which
 11 shall be fixed by the court between 10 and 20 years;

12 (4) In the case of a crime of the third degree, for a term which
 13 shall be fixed by the court between five and 10 years;

14 (5) In the case of a crime of the fourth degree pursuant to
 15 2C:43-6c. and 2C:44-3d. for a term of five years[.];

16 (6) *In the case of a crime of the fourth degree pursuant to*
 17 *N. J. S. 2C:43-6e., for a term which shall be fixed by the court*
 18 *between three and five years.*

19 b. As part of a sentence for an extended term and notwithstand-
 20 ing the provisions of 2C:43-9, the court may fix a minimum term

21 not to exceed one-half of the term set pursuant to subsection a.
 22 during which the defendant shall not be eligible for parole or a
 23 term of 25 years during which time the defendant shall not be
 24 eligible for parole where the sentence imposed was life imprison-
 25 ment; provided that no defendant shall be eligible for parole at a
 26 date earlier than otherwise provided by the law governing parole.
 27 c. In the case of a person sentenced to an extended term pursuant
 28 to 2C:43-6c. and 2C:44-3d., the court shall impose a sentence
 29 within the ranges permitted by 2C:43-7a. (2), (3), (4) or (5)
 30 according to the degree or nature of the crime for which the
 31 defendant is being sentenced, which sentence shall include a mini-
 32 mum term which shall be fixed at, or between one-third and
 33 one-half of the sentence imposed by the court or five years, which
 34 never is greater, during which the defendant shall not be eligible
 35 for parole. Where the sentence imposed is life imprisonment, the
 36 court shall impose a minimum term of 25 years during which the
 37 defendant shall not be eligible for parole.

38 d. *In the case of a person sentenced to an extended term pur-*
 39 *suant to N. J. S. 2C:43-6e. and N. J. S. 2C:44-3e., the court shall*
 40 *impose a sentence within the ranges permitted by N. J. S. 2C:43-7a.*
 41 *(2), (3), (4), or (6) according to the nature of the offense for*
 42 *which the person is being sentenced. The sentence shall include a*
 43 *minimum term, which shall be not less than one-third nor more*
 44 *than one-half of the sentence imposed by the court, during which*
 45 *the defendant shall be ineligible for parole. If the sentence imposed*
 46 *is life imprisonment, the court shall impose a minimum term of*
 47 *25 years during which the defendant shall be ineligible for parole.*

1-2 3. N. J. S. 2C:44-3 is amended to read as follows:

3 2C:44-3. Criteria for Sentence of Extended Term of Imprison-
 4 ment.
 5 The court may, upon application of the prosecuting attorney,
 6 sentence a person who has been convicted of a crime of the first,
 7 second or third degree to an extended term of imprisonment if it
 8 finds one or more of the grounds specified in this section. If the
 9 grounds specified in subsection d. are found, and the person is
 10 being sentenced for commission of any of the offenses enumerated
 11 in 2C:43-6c., the court shall sentence the defendant to an extended
 12 term as required by 2C:43-6c. or if the grounds specified in sub-
 13 section e. of this section are found, and the person is being sen-
 14 tenced for commission of any of the offenses enumerated in
 15 N. J. S. 2C:43-6e., the court shall sentence the defendant to an
 16 extended term as required by N. J. S. 2C:43-6e., and application
 17 by the prosecutor shall not be required. The finding of the court
 18 shall be incorporated in the record.

19 a. The defendant is a persistent offender. A persistent offender
 20 is a person who at the time of the commission of the crime is 21
 21 years of age or over, who has been previously convicted on at least
 22 two separate occasions of two crimes, committed at different times,
 23 when he was at least 18 years of age, if the latest in time of these
 24 crimes or the date of the defendant's last release from confinement,
 25 whichever is later, is within 10 years of the date of the crime for
 26 which the defendant is being sentenced.

27 b. The defendant is a professional criminal. A professional
 28 criminal is a person who committed a crime as part of a continuing
 29 criminal activity in concert with two or more persons, and the
 30 circumstances of the crime show he has knowingly devoted himself
 31 to criminal activity as a major source of livelihood.

32 c. The defendant committed the crime as consideration for the
 33 receipt, or in expectation of the receipt, of anything of pecuniary
 34 value the amount of which was unrelated to the proceeds of the
 35 crime or he procured the commission of the offense by payment
 36 or promise of payment of anything of pecuniary value.

37 d. Second offender with a firearm. The defendant is at least 18
 38 years of age and has been previously convicted of any of the fol-
 39 lowing crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1 [2C:14-2a]
 40 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has
 41 been previously convicted of an offense under Title 2A of the
 42 New Jersey Statutes which is equivalent of the offenses enumer-
 43 ated in this subsection and he used or possessed a firearm, as
 44 defined in 2C:39-1f., in the course of committing or attempting to
 45 commit any of these crimes, including the immediate flight there-
 46 from.

47 e. *Subsequent offender against persons over the age of 60 years.*
 48 *The defendant is at least 18 years of age and previously has been*
 49 *convicted of violating any of the following sections of the New*
 50 *Jersey Statutes with respect to the person or property of a person*
 51 *over the age of 60 years: 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b.,*
 52 *2C:13-1, 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it con-*
 53 *stitutes a crime of the fourth degree or greater, 2C:20-4 if it*
 54 *constitutes a crime of the fourth degree or greater, or 2C:30-5; or*
 55 *previously has been convicted of an offense under Title 2A of the*
 56 *New Jersey Statutes that is the equivalent of any of the offenses*
 57 *enumerated in this subsection, with respect to the person or prop-*
 58 *erty of a person over the age of 60 years.*

1 4. This act shall take effect immediately.

STATEMENT

This bill requires that persons who commit certain serious crimes against the elderly be sentenced to mandatory terms of imprisonment without eligibility for parole. The bill prescribes longer mandatory terms for repeat offenders against the elderly than for first offenders.

The bill requires that a person convicted of criminal homicide, murder, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, robbery, second-degree burglary, theft by unlawful taking or disposition, theft by deception, or theft by extortion against a person over 60 years of age be sentenced to a mandatory term of imprisonment during which he would not be eligible for parole.

The mandatory minimum term would be between one-third and one-half of the sentence imposed by the court. For example, for committing a crime of the first degree against an elderly person, a person would be required to serve at a minimum between three and one-half years and 10 years before being granted parole; for a crime of the second degree, between one and two-thirds years and five years; for a crime of the third degree, between one year and two and one-half years; for a crime of the fourth degree, up to nine months. Under the current operation of the parole law, a person is eligible for parole after serving one-third of his sentence, less time for good behavior and work credits. This means that most of the time, he will be released before he has served one-third of his sentence.

The bill requires a person who commits one of the specified offenses against an elderly person a subsequent time to be sentenced to an extended term of imprisonment and to a mandatory minimum term of between one-third and one-half of the term imposed. For a crime of the first degree, the mandatory term would be between six and two-thirds years and 25 years; for a crime of the second degree, between three and one-third years and 10 years; for a crime of the third degree, between one and one-third years and five years; and for a crime of the fourth degree, between one year and two and one-half years.

The bill also provides that if a person commits one of the specified offenses against an elderly person and that offense is also covered by the law requiring a mandatory sentence for a crime committed with a firearm, the person will be sentenced under the law dealing with crimes committed with a firearm (N. J. S. 2C:43-6c.).

The bill requires that a hearing be held before a person is sentenced to a mandatory term for committing one of the specified offenses against an elderly person. The purpose of the hearing is to establish that the offense was committed with respect to the person or property of a person over the age of 60 years.

Finally, the bill makes one change in the law requiring a mandatory sentence for certain crimes committed with a firearm. According to this law, a person who commits aggravated criminal sexual contact (N. J. S. 2C:14-3a.) with a firearm is subject to a mandatory term of imprisonment, but a person who commits the more serious crime of sexual assault (N. J. S. 2C:14-2b. and c.) with a firearm is not. This bill adds sexual assault to the list of crimes, which, if committed with a firearm, are punished by a mandatory term of imprisonment.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3154

STATE OF NEW JERSEY

DATED: MAY 19, 1983

Senate Bill No. 3154, as originally drafted, would have required the imposition of mandatory minimum terms of imprisonment on persons convicted of certain crimes against persons over the age of 60. In reviewing this proposal, the committee felt that the establishment of a special sentence for crimes committed against a particular age group might raise serious constitutional questions. The committee also was of the view that, in addition to the elderly, other group members in society such as the handicapped and the young are also extremely vulnerable to violent criminal conduct and the vulnerability of all crime victims should be consideration in sentencing.

As a result of the committee's position that Senate Bill No. 3154, as originally drafted, was not the best approach to protecting the vulnerable members of society from crime, the committee adopted amendments deleting the sections of the bill which would have established mandatory sentences. In place of these sections, the committee adopted amendments requiring the sentencing court to consider in sentencing both the extent of the victim's injuries and the degree of the victim's vulnerability because of age or physical or mental condition. The amendments also require that when the court finds that a crime has resulted in serious injury or that the victim was particularly vulnerable and does not impose a noncustodial sentence that the reasons for the noncustodial sentence be entered on the record. The amendments further require that an assessment of the victim's injuries and vulnerability be specifically included in the presentence report.