

2C:44-3

LEGISLATIVE HISTORY CHECKLIST

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(Firearms--imprisonment)

NJSA: 2C:44-3

LAWS OF: 1997 CHAPTER: 120

BILL NO: S74

SPONSOR(S): Bassano

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary  
SENATE: Judiciary

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DATE OF PASSAGE: ASSEMBLY: May 8, 1997  
SENATE: October 24, 1996

DATE OF APPROVAL: June 20, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes  
SENATE: Yes

FISCAL NOTE: No

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P.L. 1997, CHAPTER 120, *approved June 20, 1997*  
Senate, No. 74

1 **AN ACT** concerning the criteria for extended terms of imprisonment  
2 and amending N.J.S.2C:44-3.

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:44-3 is amended to read as follows:

8 2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

9 The court may, upon application of the prosecuting attorney,  
10 sentence a person who has been convicted of a crime of the first,  
11 second or third degree to an extended term of imprisonment if it finds  
12 one or more of the grounds specified in subsection a., b., c., or f. of  
13 this section. The court shall, upon application of the prosecuting  
14 attorney, sentence a person who has been convicted of a crime, other  
15 than a violation of N.J.S.2C:12-1a., N.J.S.2C:33-4, or a violation of  
16 N.J.S.2C:14-2 or 2C:14-3 if the grounds for the application is purpose  
17 to intimidate because of gender, to an extended term if it finds, by a  
18 preponderance of the evidence, the grounds in subsection e. If the  
19 grounds specified in subsection d. are found, and the person is being  
20 sentenced for commission of any of the offenses enumerated in  
21 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall sentence the  
22 defendant to an extended term as required by N.J.S.2C:43-6c. or  
23 N.J.S.2C:43-6g., and application by the prosecutor shall not be  
24 required. The court shall, upon application of the prosecuting  
25 attorney, sentence a person who has been convicted of a crime under  
26 N.J.S.2C:14-2 or N.J.S.2C:14-3 to an extended term of imprisonment,  
27 upon application of the prosecutor, if the grounds specified in  
28 subsection g. of this section are found. The finding of the court shall  
29 be incorporated in the record.

30 a. The defendant has been convicted of a crime of the first, second  
31 or third degree and is a persistent offender. A persistent offender is a  
32 person who at the time of the commission of the crime is 21 years of  
33 age or over, who has been previously convicted on at least two  
34 separate occasions of two crimes, committed at different times, when

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 he was at least 18 years of age, if the latest in time of these crimes or  
2 the date of the defendant's last release from confinement, whichever is  
3 later, is within 10 years of the date of the crime for which the  
4 defendant is being sentenced.

5 b. The defendant has been convicted of a crime of the first, second  
6 or third degree and is a professional criminal. A professional criminal  
7 is a person who committed a crime as part of a continuing criminal  
8 activity in concert with two or more persons, and the circumstances of  
9 the crime show he has knowingly devoted himself to criminal activity  
10 as a major source of livelihood.

11 c. The defendant has been convicted of a crime of the first, second  
12 or third degree and committed the crime as consideration for the  
13 receipt, or in expectation of the receipt, of anything of pecuniary value  
14 the amount of which was unrelated to the proceeds of the crime or he  
15 procured the commission of the offense by payment or promise of  
16 payment of anything of pecuniary value.

17 d. Second offender with a firearm. The defendant is at least 18  
18 years of age and has been previously convicted of any of the following  
19 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,  
20 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously  
21 convicted of an offense under Title 2A of the New Jersey Statutes or  
22 under any statute of the United States or any other state which is  
23 [equivalent of] substantially equivalent to the offenses enumerated in  
24 this subsection and he used or possessed a firearm, as defined in  
25 2C:39-1f., in the course of committing or attempting to commit any of  
26 these crimes, including the immediate flight therefrom.

27 e. The defendant in committing the crime acted with a purpose to  
28 intimidate an individual or group of individuals because of race, color,  
29 gender, handicap, religion, sexual orientation or ethnicity.

30 f. The defendant has been convicted of a crime under any of the  
31 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,  
32 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,  
33 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of  
34 committing or attempting to commit the crime, including the  
35 immediate flight therefrom, the defendant used or was in possession  
36 of a stolen motor vehicle.

37 g. The defendant has been convicted of a crime under  
38 N.J.S.2C:14-2 or N.J.S.2C:14-3 involving violence or the threat of  
39 violence and the victim of the crime was 16 years of age or less.

40 For purposes of this subsection, a crime involves violence or the  
41 threat of violence if the victim sustains serious bodily injury as defined  
42 in subsection b. of N.J.S.2C:11-1, or the actor is armed with and uses  
43 a deadly weapon or threatens by word or gesture to use a deadly  
44 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to

1 inflect serious bodily injury.

2 (cf: P.L.1995, c.211, s.3)

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4 2. This act shall take effect immediately.

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9 Requires the imposition of a mandatory extended term for repeat  
10 firearm offenders in cases where the prior conviction occurred in  
11 another jurisdiction.

1 defendant is being sentenced.

2 b. The defendant has been convicted of a crime of the first, second  
3 or third degree and is a professional criminal. A professional criminal  
4 is a person who committed a crime as part of a continuing criminal  
5 activity in concert with two or more persons, and the circumstances of  
6 the crime show he has knowingly devoted himself to criminal activity  
7 as a major source of livelihood.

8 c. The defendant has been convicted of a crime of the first, second  
9 or third degree and committed the crime as consideration for the  
10 receipt, or in expectation of the receipt, of anything of pecuniary value  
11 the amount of which was unrelated to the proceeds of the crime or he  
12 procured the commission of the offense by payment or promise of  
13 payment of anything of pecuniary value.

14 d. Second offender with a firearm. The defendant is at least 18  
15 years of age and has been previously convicted of any of the following  
16 crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,  
17 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or has been previously  
18 convicted of an offense under Title 2A of the New Jersey Statutes or  
19 under any statute of the United States or any other state which is  
20 **【equivalent of】** substantially equivalent to the offenses enumerated in  
21 this subsection and he used or possessed a firearm, as defined in  
22 2C:39-1f., in the course of committing or attempting to commit any of  
23 these crimes, including the immediate flight therefrom.

24 e. The defendant in committing the crime acted, at least in part,  
25 with ill will, hatred or bias toward, and with a purpose to intimidate,  
26 an individual or group of individuals because of race, color, religion,  
27 sexual orientation or ethnicity.

28 f. The defendant has been convicted of a crime under any of the  
29 following sections: N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1,  
30 N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2,  
31 N.J.S.2C:29-2b., N.J.S.2C:29-5, N.J.S.2C:35-5, and in the course of  
32 committing or attempting to commit the crime, including the  
33 immediate flight therefrom, the defendant used or was in possession  
34 of a stolen motor vehicle.

35 (cf: P.L.1993, c.132, s.2)

36

37 2. This act shall take effect immediately.

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#### STATEMENT

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42 Presently, under the provisions of N.J.S.2C:44-3, if a person, who  
43 had previously been convicted of a serious crime while armed with a  
44 firearm, is convicted again of a serious crime involving the use of a  
45 firearm, a mandatory extended term of imprisonment must be imposed.  
46 In State v. Coperman, 197 N.J. Super. 261 (App. Div. 1984), the

1 court ruled that the language of N.J.S.2C:44-3 does not permit the  
2 imposition of an extended term of imprisonment if the prior conviction  
3 occurred in a jurisdiction other than New Jersey. This bill would  
4 amend 2C:44-3 to provide that a conviction in another jurisdiction  
5 would constitute a prior conviction for purposes of the extended term  
6 of imprisonment for repeat firearm offenders.

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11 Requires the imposition of a mandatory extended term for repeat  
12 firearm offenders in cases where the prior conviction occurred in  
13 another jurisdiction.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 74**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 10, 1997

The Assembly Judiciary Committee reports favorably Senate Bill No. 74.

Presently, under the provisions of N.J.S.2C:44-3, if a person who had previously been convicted of a serious crime while armed with a firearm is convicted again of a serious crime involving the use of a firearm, a mandatory extended term of imprisonment must be imposed. In State v. Copeman, 197 N.J. Super. 261 (App. Div. 1984), the court ruled that the language of N.J.S.2C:44-3 does not permit the imposition of an extended term of imprisonment if the prior conviction occurred in a jurisdiction other than New Jersey. This bill would amend 2C:44-3 to provide that a conviction in another jurisdiction would constitute a prior conviction for purposes of the extended term of imprisonment for repeat firearm offenders.

This bill is identical to Assembly Bill No. 1887.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 74**

**STATE OF NEW JERSEY**

DATED: JANUARY 18, 1996

The Senate Judiciary Committee reports favorably Senate Bill No. 74.

Presently, under the provisions of N.J.S.2C:44-3, if a person who had previously been convicted of a serious crime while armed with a firearm is convicted again of a serious crime involving the use of a firearm, a mandatory extended term of imprisonment must be imposed. In State v. Coperman, 197 N.J. Super. 261 (App. Div. 1984), the court ruled that the language of N.J.S.2C:44-3 does not permit the imposition of an extended term of imprisonment if the prior conviction occurred in a jurisdiction other than New Jersey. This bill would amend 2C:44-3 to provide that a conviction in another jurisdiction would constitute a prior conviction for purposes of the extended term of imprisonment for repeat firearm offenders.

The bill was prefiled in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.