

2C:43-6

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:43-6 (Sentences - minimum/no parole--criteria)

LAWS 1981 CHAPTER 569

Bill No. A1904

Sponsor(s) Herman

Date Introduced July 28, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes ~~Yes~~ Amendments during passage denoted by asterisks.

Date of Passage: Assembly Dec. 8, 1980

Senate June 25, 1981

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Following statements are attached if available:

Sponsor statement	Yes	Yes
Committee Statement: Assembly	Yes	Yes
Senate	Yes	Yes
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	Yes
Following were printed:		
Reports	Yes	No
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CHAPTER 569 LAWS OF N. J. 1981
APPROVED 1-18-82

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ASSEMBLY, No. 1904

STATE OF NEW JERSEY

INTRODUCED JULY 28, 1980

By Assemblyman HERMAN

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT defining the criteria for minimum sentences and amending
N. J. S. 2C:43-6.

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

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

8 (2) In the case of a crime of the second degree, for a specific
9 term of years which shall be fixed by the court and shall be between
10 5 years and 10 years;

11 (3) In the case of a crime of the third degree, for a specific term
12 of years which shall be fixed by the court and shall be between 3
13 years and 5 years;

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

17 b. As part of a sentence for ***[a]*** *any* crime ***[**of the first or
18 second degree and notwithstanding the provision of 2C:43-9**]***,
19 *where the court is clearly convinced that the aggravating factors*
20 *substantially outweigh the mitigating factors, as set forth in sub-*
21 *sections a. and b. of 2C:44-1, the court may fix a minimum term not*
22 *to exceed one-half of the term set pursuant to subsection a.***, or
23 *one-half of the term set pursuant to a maximum period of incarcera-*
24 *tion for a crime set forth in any statute other than this code,***

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

25 during which the defendant shall not be eligible for parole provided
26 that no defendant shall be eligible for parole at a date earlier than
27 otherwise provided by the law governing parole.

28 ***c. A person who has been convicted under 2C:39-4a. or of a*
29 *crime under any of the following sections: 2C:11-3, 2C:11-4,*
30 *2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2,*
31 *2C:29-5, who, while in the course of committing or attempting to*
32 *commit the crime, including the immediate flight therefrom, used or*
33 *was in possession of a firearm as defined in 2C:39-1f., shall be sen-*
34 *tenced to a term of imprisonment by the court. The term of impris-*
35 *onment shall include the imposition of a minimum term. The mini-*
36 *imum term shall be fixed at, or between, one-third and one-half of the*
37 *sentence imposed by the court or 3 years, whichever is greater, or*
38 *18 months in the case of a fourth degree crime, during which the*
39 *defendant shall be ineligible for parole. The minimum terms es-*
40 *tablished by this section shall not prevent the court from imposing*
41 *presumptive terms of imprisonment pursuant to 2C:44-1f.(1) ex-*
42 *cept in cases of crimes of the fourth degree. A person who has been*
43 *convicted of an offense enumerated by this subsection and who used*
44 *or possessed a firearm during its commission, attempted commis-*
45 *sion or flight therefrom and who has been previously convicted of*
46 *an offense involving the use or possession of a firearm as defined*
47 *in 2C:44-3d., shall be sentenced by the court to an extended term*
48 *as authorized by 2C:43-7c., notwithstanding that extended terms*
49 *are ordinarily discretionary with the court.*

50 *d. The court shall not impose a mandatory sentence pursuant to*
51 *subsection c. of this section 2C:43-7c. or 2C:44-3d., unless the*
52 *ground therefor has been established at a hearing. At the hearing,*
53 *which may occur at the time of sentencing, the prosecutor shall*
54 *establish by a preponderance of the evidence that the weapon used*
55 *or possessed was a firearm. In making its finding, the court shall*
56 *take judicial notice of any evidence, testimony or information ad-*
57 *duced at the trial, plea hearing, or other court proceedings and shall*
58 *also consider the presentence report and any other relevant infor-*
59 *mation.***

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to clarify the criteria a judge must use to set a minimum/no parole sentence, under 2C:43-6b. This act would thereby make sentencing procedures under 2C:43-6b. consistent with other sentencing provisions of the Criminal Code and with the overall plan of sentencing in the Criminal Code. The sentencing provisions of the Criminal Code temper judicial discretion with legislative criteria. Statutory presumptions are created which can be overcome by the court if certain criteria are met and reasons are stated on the record. Thus, for example, there are provided "Criteria for Withholding or Imposing Sentence of Imprisonment" in 2C:44-1, "Criteria for Imposing Fines and Restitutions" in 2C:44-2, and "Criteria for Sentence of Extended Term of Imprisonment" in 2C:44-3.

This bill fills a gap in the system of sentencing criteria, and provides that if a court wants to set a minimum sentence, it should follow the procedures appropriate to other sentencing decisions, based on the provisions of 2C:44-1f.

A 1904 (1980)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1904

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 30, 1980

The purpose of this bill as amended is to clarify the criteria a judge must use to set a minimum/no parole sentence, under 2C:43-6b. This act would thereby make sentencing procedures under 2C:43-6b consistent with other sentencing provisions of the Criminal Code and with the overall plan of sentencing in the Criminal Code. The sentencing provisions of the Criminal Code temper judicial discretion with legislative criteria. Statutory presumptions are created which can be overcome by the court if certain criteria are met and reasons are stated on the record. Thus, for example, there are provided "Criteria for Withholding or Imposing Sentence of Imprisonment" in 2C:44-1, "Criteria for Imposing Fines and Restitutions" in 2C:44-2, and "Criteria for Sentence of Extended Term of Imprisonment" in 2C:44-3.

This bill fills a gap in the system of sentencing criteria, and provides that if a court wants to set a minimum sentence, it should follow the procedures appropriate to other sentencing decisions, based on the provisions of 2C:44-1f.

The committee amendments coincide with revisions contained in S-1537 suggested by the Attorney General's Office.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1904

STATE OF NEW JERSEY

DATED: JUNE 8, 1981

Presently, the penal code sets forth various criteria which must be considered by a sentencing court in determining whether to impose certain sentences. For example, criteria is provided for determining whether to withhold or impose a sentence of imprisonment; whether to impose fine and/or restitution and whether to impose an extended term of imprisonment.

There is, however, no criteria provided to guide a court in determining whether to impose a mandatory term of parole ineligibility. Assembly Bill No. 1904 would provide that if the court is clearly convinced that the aggravating factors (i.e. the seriousness of harm to the victim) set forth in 2C:44-1a. substantially outweighs the mitigating factors (i.e. no prior criminal history) set forth in 2C:44-1b., the court shall impose a term of parole ineligibility.

The committee amendments conform Assembly Bill No. 1904 with provisions of P. L. 1981, c. 31 (mandatory sentence for armed offenses). The Assembly Judiciary Committee had previously amended Assembly Bill No. 1904 to conform with the provisions of Senate Bill No. 1537 which is awaiting Senate concurrence with Assembly amendments.

JANUARY 18, 1982 -1-

A-1904, sponsored by Assemblyman Martin A. Herman (D-Salem), setting guidelines for the fixing of minimum sentences by judges. Under current law, a judge may fix a minimum term as part of a sentence for any crime; the minimum term cannot exceed one-half of the maximum term allowed by the applicable statute.

Under this bill, a judge may fix such minimums only when the aggravating circumstances surrounding an offense substantially outweigh the mitigating circumstances. The "substantially outweigh" language is defined in current sentencing guideline statutes.

A-2090, sponsored by Assemblywoman Barbara W. McConnell (D-Hunterdon), increasing from 12,000 to \$25,000 the amount which the governing body of one municipality may pay to the fire department of an adjoining municipality. The appropriation would be in payment to departments which regularly respond to fire emergencies in neighboring communities.

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