

2C:44-1

LEGISLATIVE HISTORY CHECKLIST
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(Intensive Supervision --AOC)

NJSA: 2C:44-1

LAWS OF: 1993 **CHAPTER:** 123

BILL NO: S1308

SPONSOR(S) Bennett

DATE INTRODUCED: October 29, 1992

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

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denoted by superscript numbers

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

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MESSAGE ON SIGNING: No

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HEARINGS: No

974.90 New Jersey. Supreme Court. Task Force on Sanctioning & Probation.
C866 Judicial Conference: discussion paper. March, 1992. Trenton,
1992a 1992.

KBG:pp

[FIRST REPRINT]
SENATE, No. 1308

STATE OF NEW JERSEY

INTRODUCED OCTOBER 29, 1992

By Senator BENNETT

1 AN ACT clarifying eligibility requirements for the Intensive
2 Supervision Program ¹[and]¹ amending N.J.S.2C:44-1 ¹and
3 supplementing Chapter 43 of Title 2C of the New Jersey
4 Statutes¹.

5

6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

8 1. N.J.S.2C:44-1. Criteria for Withholding or Imposing
9 Sentence of Imprisonment. a. In determining the appropriate
10 sentence to be imposed on a person who has been convicted of an
11 offense, the court shall consider the following aggravating
12 circumstances:

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

16 (2) The gravity and seriousness of harm inflicted on the victim,
17 including whether or not the defendant knew or reasonably should
18 have known that the victim of the offense was particularly
19 vulnerable or incapable of resistance due to advanced age,
20 ill-health, or extreme youth, or was for any other reason
21 substantially incapable of exercising normal physical or mental
22 power of resistance;

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

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

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

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

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

36 (8) The defendant committed the offense against a police or
37 other law enforcement officer, correctional employee or fireman,
38 acting in the performance of his duties while in uniform or
39 exhibiting evidence of his authority, or the defendant committed
40 the offense because of the status of the victim as a public
41 servant;

42 (9) The need for deterring the defendant and others from

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted February 1, 1993.

1 violating the law;

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

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

11 (12) The defendant committed the offense against a person
12 who he knew or should have known was 60 years of age or older,
13 or disabled.

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

17 (1) The defendant's conduct neither caused nor threatened
18 serious harm;

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

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

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

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

26 (6) The defendant has compensated or will compensate the
27 victim of his conduct for the damage or injury that he sustained,
28 or will participate in a program of community service;

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

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

34 (9) The character and attitude of the defendant indicate that
35 he is unlikely to commit another offense;

36 (10) The defendant is particularly likely to respond
37 affirmatively to probationary treatment;

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

40 (12) The willingness of the defendant to cooperate with law
41 enforcement authorities;

42 (13) The conduct of a youthful defendant was substantially
43 influenced by another person more mature than the defendant.

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

47 (2) When imposing a sentence of imprisonment the court shall
48 consider the defendant's eligibility for release under the law
49 governing parole, including time credits awarded pursuant to
50 Title 30 of the Revised Statutes, in determining the appropriate
51 term of imprisonment.

52 d. Presumption of imprisonment. The court shall deal with a
53 person who has been convicted of a crime of the first or second
54 degree by imposing a sentence of imprisonment unless, having

1 regard to the character and condition of the defendant, it is of
2 the opinion that his imprisonment would be a serious injustice
3 which overrides the need to deter such conduct by others.

4 e. The court shall deal with a person convicted of an offense
5 other than a crime of the first or second degree, who has not
6 previously been convicted of an offense, without imposing
7 sentence of imprisonment unless, having regard to the nature and
8 circumstances of the offense and the history, character and
9 condition of the defendant, it is of the opinion that his
10 imprisonment is necessary for the protection of the public under
11 the criteria set forth in subsection a.

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

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

22 (b) Except as provided in paragraph (a) of this subsection to a
23 term of 15 years for a crime of the first degree;

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

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

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

27 In imposing a minimum term pursuant to 2C:43-6b., the
28 sentencing court shall specifically place on the record the
29 aggravating factors set forth in this section which justify the
30 imposition of a minimum term.

31 Unless the preponderance of mitigating factors set forth in
32 subsection b. weighs in favor of a lower term within the limits
33 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have
34 a presumptive term of life imprisonment. Unless the
35 preponderance of aggravating and mitigating factors set forth in
36 subsections a. and b. weighs in favor of a higher or lower term
37 within the limits authorized, sentences imposed pursuant to
38 2C:43-7a.(2) shall have a presumptive term of 50 years'
39 imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall
40 have a presumptive term of 15 years' imprisonment; and
41 sentences imposed pursuant to 2C:43-7a.(4) shall have a
42 presumptive term of seven years' imprisonment.

43 In imposing a minimum term pursuant to 2C:43-7b., the
44 sentencing court shall specifically place on the record the
45 aggravating factors set forth in this section which justify the
46 imposition of a minimum term.

47 (2) In cases of convictions for crimes of the first or second
48 degree where the court is clearly convinced that the mitigating
49 factors substantially outweigh the aggravating factors and where
50 the interest of justice demands, the court may sentence the
51 defendant to a term appropriate to a crime of one degree lower
52 than that of the crime for which he was convicted. If the court
53 does impose sentence pursuant to this paragraph, or if the court
54 imposes a noncustodial or probationary sentence upon conviction

1 for a crime of the first or second degree, such sentence shall not
2 become final for 10 days in order to permit the appeal of such
3 sentence by the prosecution.

4 g. Imposition of Noncustodial Sentences in Certain Cases. If
5 the court, in considering the aggravating factors set forth in
6 subsection a., finds the aggravating factor in paragraph a.(2) or
7 a.(12) and does not impose a custodial sentence, the court shall
8 specifically place on the record the mitigating factors which
9 justify the imposition of a noncustodial sentence.

10 h. ¹[The] Except as provided in section 2 of P.L. 1993, c. (now
11 pending before the Legislature as section 2 of this bill), the¹
12 presumption of imprisonment as provided in subsection d. of this
13 section shall not preclude the admission of a person to the
14 Intensive Supervision Program, established pursuant to the Rules
15 Governing the Courts of the State of New Jersey.

16 (cf: P.L.1989, c.23, s.4)

17 ^{12.} (New section) a. No custodial sentence imposed pursuant
18 to Chapters 43, 44 or 45 of Title 2C shall be changed to permit
19 entry into any program of intensive supervision established
20 pursuant to Rules Governing the Courts of the State of New
21 Jersey if the inmate:

22 (1) Is serving a sentence for a conviction of any crime of the
23 first degree; or

24 (2) Is serving a sentence for a conviction of any offense in
25 which the sentencing court found that there is a substantial
26 likelihood that the defendant is involved in organized criminal
27 activity pursuant to N.J.S. 2C:44-1a(5); or

28 (3) Is serving any statutorily mandated parole ineligibility, or
29 any parole ineligibility imposed by the court pursuant to
30 subsection b. of N.J.S. 2C:43-6; or

31 (4) Has previously completed a program of intensive
32 supervision established pursuant to the Rules Governing the
33 Courts of the State of New Jersey; or

34 (5) Has previously been convicted of a crime of the first
35 degree, or of any offense in any other jurisdiction which, if
36 committed in New Jersey, would constitute a crime of the first
37 degree and the inmate was released from incarceration on the
38 first degree offense within five years of the commission of the
39 offense for which the inmate is applying for intensive supervision.

40 Nothing in this subsection shall be construed to preclude the
41 program of intensive supervision from imposing more restrictive
42 standards for admission.

43 b. Unless the inmate is within nine months of parole eligibility
44 and has served at least six months of the sentence, no custodial
45 sentence of an inmate serving a sentence for conviction of any
46 crime of the second degree shall be changed to permit entry into
47 any program of intensive supervision established pursuant to the
48 Rules Governing the Courts of the State of New Jersey, if, within
49 20 days of receipt of notice the inmate's application, the county
50 prosecutor or Attorney General objects in writing.

51 c. If an inmate's application for a change of custodial
52 sentence to permit entry into any program of intensive
53 supervision established pursuant to the Rules Governing the
54 Courts of the State of New Jersey is granted over the objection

1 of the county prosecutor or the Attorney General, the order shall
2 not become final for 20 days or until reconsideration by the
3 Intensive Supervision Resentencing Panel in order to permit the
4 county prosecutor or the Attorney General to appear personally
5 or in writing, with notice to defense counsel, to request
6 reconsideration of the application approval.

7 d. A victim of the offense for which the inmate was sentenced
8 shall have the right to make a written statement or to appear at
9 a proceeding regarding the application for a change of custodial
10 sentence imposed pursuant to Chapters 43, 44 or 45 of Title 2C
11 for entry into any program of intensive supervision established
12 pursuant to the Rules Governing the Courts of the State of New
13 Jersey.¹

14 ¹[2.] 3.¹ This act shall take effect immediately¹, except that
15 nothing in section 2 of this act shall be construed to require
16 persons previously admitted to the Intensive Supervision Program,
17 established pursuant to the Rules Governing the Courts of the
18 State of New Jersey to make reapplication for change of
19 sentence¹.

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24 Clarifies eligibility criteria for the Intensive Supervision Program
25 (ISP).

1 the court, in considering the aggravating factors set forth in
2 subsection a., finds the aggravating factor in paragraph a.(2) or
3 a.(12) and does not impose a custodial sentence, the court shall
4 specifically place on the record the mitigating factors which
5 justify the imposition of a noncustodial sentence.

6 h. The presumption of imprisonment as provided in subsection
7 d. of this section shall not preclude the admission of a person to
8 the Intensive Supervision Program, established pursuant to the
9 Rules Governing the Courts of the State of New Jersey.

10 (cf: P.L.1989, c.23, s.4)

11 2. This act shall take effect immediately.

12

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14 STATEMENT

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16 Currently, the Probation Services Division in the
17 Administrative Office of the Courts (AOC) manages the Intensive
18 Supervision Program (ISP), a community-based alternative to
19 incarceration. One study concluded that the ISP saves the state
20 approximately \$7,500 per year for each inmate diverted from
21 incarceration. Program guidelines established by the AOC
22 prohibit a person who has been convicted of murder, robbery, or a
23 sex offense, or who is serving a prison term with a period of
24 parole ineligibility from participating in ISP.

25 With regard to program eligibility, the New Jersey Supreme
26 Court recently ruled, however, that ISP cannot admit persons
27 convicted of first or second degree crimes to the program after
28 January 1, 1993, because this practice conflicts with
29 N.J.S.2C:44-1d, which provides a presumption of incarceration
30 for all first and second degree offenders. This bill would amend
31 N.J.S.2C:44-1d to provide that the presumption of incarceration
32 for first and second degree offenders shall not preclude admission
33 into the ISP. Currently, approximately 48 percent of all program
34 participants (over 300 persons) have been convicted of a first or
35 second degree crime.

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40 Clarifies eligibility criteria for the Intensive Supervision Program
41 (ISP).

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1308

STATE OF NEW JERSEY

DATED: MARCH 22, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1308(1R).

The Probation Services Division in the Administrative Office of the Courts (AOC) presently administers the Intensive Supervision Program (ISP), a community-based alternative to incarceration. In State v. Cannon, 128 N.J. 546 (1992), the Supreme Court ruled that ISP cannot admit persons convicted of first or second degree crimes to the program after January 1, 1993, because this practice conflicts with N.J.S.2C:44-1d, which provides a presumption of incarceration for all first and second degree offenders.

This bill is intended to establish eligibility statutorily for participation in ISP. The bill would provide that the following persons would be ineligible for admission to ISP:

1. Persons convicted of crimes of the first degree;
 2. Persons sentenced on the basis of a finding of involvement in organized criminal activity;
 3. Persons serving any statutorily mandated period of parole ineligibility;
 4. Persons who previously participated in ISP;
- and,
5. The inmate was released from incarceration for a crime of the first degree within 5 years of the commission of the offense for which the person is applying for ISP.

With regard to offenders convicted of crimes of the second degree, a county prosecutor or the Attorney General may object in writing to an inmate's participation in ISP unless the person had already served 6 months and was within 9 months of parole eligibility. If an inmate convicted of a second degree offense is admitted to ISP over the objection of the prosecutor or Attorney General, that order would not be final for 20 days in order to permit the prosecutor to request reconsideration of that application by the Intensive Supervision Resentencing Panel.

The victim of the offense for which the inmate seeking admission to ISP was convicted may submit a written statement or appear at a proceeding regarding the inmate's application.

Nothing in this bill shall be construed to require persons previously admitted to ISP to make reapplication for the program.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1308

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 1, 1993

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1308.

The Probation Services Division in the Administrative Office of the Courts (AOC) presently administers the Intensive Supervision Program (ISP), a community-based alternative to incarceration. In State v. Cannon (decided July 14, 1992), the Supreme Court ruled that ISP cannot admit persons convicted of first or second degree crimes to the program after January 1, 1993, because this practice conflicts with N.J.S.2C:44-1d, which provides a presumption of incarceration for all first and second degree offenders.

This bill is intended to establish statutorily eligibility for participation in ISP. As amended by the committee, the bill would provide that the following persons would be ineligible for admission to ISP:

1. Persons convicted of crimes of the first degree;
2. Persons sentenced on the basis of a finding of involvement in organized criminal activity;
3. Persons who previously participated in ISP;
4. Persons serving any statutorily mandated period of parole ineligibility; and,
5. The inmate was released from incarceration for a crime of the first degree within 5 years of the commission of the offense for which the person is applying for ISP.

With regard to offenders convicted of crimes of the second degree, the amendments would permit a county prosecutor or the Attorney General to object to an inmate's participation in ISP unless the person had already served 6 months and was within 9 months of parole eligibility. If an inmate convicted of a second degree offense is admitted to ISP over the objection of a prosecutor agency, that order would not be final for 20 days in order to permit the prosecutor to request reconsideration of that application by the Intensive Supervision Resentencing Panel.

The amendments would also permit the victim of the offense for which the inmate seeking admission to ISP was convicted to submit a written statement or appear at a proceeding regarding the inmate's application.

In addition, the amendments clarify that nothing in this bill shall be construed to require persons previously admitted to ISP to make reapplication for the program.