

2C:44-1

**LEGISLATIVE HISTORY CHECKLIST**  
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(Repeat offenders--related offenses)

**NJSA:** 2C:44-1

**LAWS OF:** 1993 **CHAPTER:** 135

**BILL NO:** S1208

**SPONSOR(S)** Kosco

**DATE INTRODUCED:** October 5, 1992

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

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:** **ASSEMBLY:** May 13, 1993  
**SENATE:** October 19, 1992

**DATE OF APPROVAL:** June 3, 1993

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

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

**FISCAL NOTE:** Yes

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** Yes

(over)

See newspaper clipping--attached

" 'Powerful new weapons' enacted as state cracks down on car theft," 6-4-93  
Star Ledger.

"Florino signs laws stiffening punishments for car theft," 6-4-93 Asbury Park Press.

974.90 New Jersey. Legislature. Assembly. Task Force on Auto Theft.  
J97 Public hearing on auto theft, held 12-8-92, 12-15-92 and  
1992a 1-6-93, Livingston, Newark, Bloomfield, 1992-1993.

974.90 New Jersey. Legislature. Senate. Judiciary Committee.  
J97 Public hearing on "Juvenile auto theft,"  
1992

KBG:pp

P.L.1993, CHAPTER 135, *approved June 3, 1993*

1992 Senate No. 1208

1 **AN ACT** concerning the imposition of sentences in certain  
2 criminal case and amending N.J.S.2C:44-1.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the  
5 *State of New Jersey*:

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

7 2C:44-1. Criteria for Withholding or Imposing Sentence of  
8 Imprisonment. a. In determining the appropriate sentence to be  
9 imposed on a person who has been convicted of an offense, the  
10 court shall consider the following aggravating circumstances:

11 (1) The nature and circumstances of the offense, and the role  
12 of the actor therein, including whether or not it was committed  
13 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  
17 vulnerable or incapable of resistance due to advanced age,  
18 ill-health, or extreme youth, or was for any other reason  
19 substantially incapable of exercising normal physical or mental  
20 power of resistance;

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

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

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

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

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

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

40 (9) The need for deterring the defendant and others from  
41 violating the law;

42 (10) The offense involved fraudulent or deceptive practices

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 committed against any department or division of State  
2 government;

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

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

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

15 (1) The defendant's conduct neither caused nor threatened  
16 serious harm;

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

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

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

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

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

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

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

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

34 (10) The defendant is particularly likely to respond  
35 affirmatively to probationary treatment;

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

38 (12) The willingness of the defendant to cooperate with law  
39 enforcement authorities;

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

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

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

50 d. Presumption of imprisonment. The court shall deal with a  
51 person who has been convicted of a crime of the first or second  
52 degree by imposing a sentence of imprisonment unless, having  
53 regard to the character and condition of the defendant, it is of  
54 the opinion that his imprisonment would be a serious injustice

1 which overrides the need to deter such conduct by others.  
2 Notwithstanding the provisions of subsection e. of this section,  
3 the court shall deal with a person who has been convicted of theft  
4 of a motor vehicle or of the unlawful taking of a motor vehicle  
5 and who has previously been convicted of either offense by  
6 imposing a sentence of imprisonment unless, having regard to the  
7 character and condition of the defendant, it is of the opinion that  
8 his imprisonment would be a serious injustice which overrides the  
9 need to deter such conduct by others.

10 e. The court shall deal with a person convicted of an offense  
11 other than a crime of the first or second degree, who has not  
12 previously been convicted of an offense, without imposing  
13 sentence of imprisonment unless, having regard to the nature and  
14 circumstances of the offense and the history, character and  
15 condition of the defendant, it is of the opinion that his  
16 imprisonment is necessary for the protection of the public under  
17 the criteria set forth in subsection a., except that this subsection  
18 shall not apply if the person is convicted of any of the following  
19 crimes of the third degree: theft of a motor vehicle; unlawful  
20 taking of a motor vehicle; or eluding.

21 f. Presumptive Sentences. (1) Except for the crime of murder,  
22 unless the preponderance of aggravating or mitigating factors, as  
23 set forth in subsections a. and b., weighs in favor of a higher or  
24 lower term within the limits provided in N.J.S.2C:43-6, when a  
25 court determines that a sentence of imprisonment is warranted,  
26 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  
29 N.J.S.2C:13-1 when the offense constitutes a crime of the first  
30 degree;

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

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

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

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

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

40 Unless the preponderance of mitigating factors set forth in  
41 subsection b. weighs in favor of a lower term within the limits  
42 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have  
43 a presumptive term of life imprisonment. Unless the  
44 preponderance of aggravating and mitigating factors set forth in  
45 subsections a. and b. weighs in favor of a higher or lower term  
46 within the limits authorized, sentences imposed pursuant to  
47 2C:43-7a.(2) shall have a presumptive term of 50 years'  
48 imprisonment; sentences imposed pursuant to 2C:43-7a.(3) shall  
49 have a presumptive term of 15 years' imprisonment; and  
50 sentences imposed pursuant to 2C:43-7a.(4) shall have a  
51 presumptive term of seven years' imprisonment.

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

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

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

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

19 2. This act shall take effect immediately.

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#### 22 STATEMENT

23

24 In order to make the punishment for auto theft more certain,  
25 this bill would establish a presumption of incarceration for repeat  
26 offenders who have been previously convicted of motor vehicle  
27 theft or joyriding. The bill would also provide that the present  
28 presumption of nonincarceration for certain first offenders would  
29 be inapplicable to first offenders convicted of auto theft,  
30 joyriding and eluding.

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35 Creates presumption of imprisonment for repeat offenders  
36 convicted of certain motor vehicle related offenses.

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10 become final for 10 days in order to permit the appeal of such  
11 sentence by the prosecution.

12 g. Imposition of Noncustodial Sentences in Certain Cases. If  
13 the court, in considering the aggravating factors set forth in  
14 subsection a., finds the aggravating factor in paragraph a.(2) or  
15 a.(12) and does not impose a custodial sentence, the court shall  
16 specifically place on the record the mitigating factors which  
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18 (cf: P.L.1989, c.23, s.4)

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35 Creates presumption of imprisonment for repeat offenders  
36 convicted of certain motor vehicle related offenses.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

SENATE, No. 1208

STATE OF NEW JERSEY

DATED: APRIL 5, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1208.

In order to make the punishment for auto theft more certain, this bill would establish a presumption of incarceration for repeat offenders who have been previously convicted of motor vehicle theft or joyriding. The bill would also provide that the present presumption of nonincarceration for certain first offenders would be inapplicable to first offenders convicted of auto theft, joyriding and eluding.

The bill amends N.J.S.2C:44-1 concerning the court's determining the appropriate sentence to be imposed on a person who has been convicted of an offense. The bill amends subsection d. concerning the presumption of imprisonment to provide that the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence of imprisonment unless imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

The bill also amends subsection e. to provide that it shall not apply if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; or eluding.

This bill is identical to Assembly Bill No. 48.



SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1208

STATE OF NEW JERSEY

DATED: OCTOBER 8, 1992

The Senate Judiciary Committee reports favorably Senate Bill No. 1208.

In order to make the punishment for auto theft more certain, this bill would establish a presumption of incarceration for repeat offenders who have been previously convicted of motor vehicle theft or joyriding. The bill would also provide that the present presumption of nonincarceration for certain first offenders would be inapplicable to first offenders convicted of auto theft, joyriding and eluding.

FISCAL NOTE TO  
SENATE, No. 1208

STATE OF NEW JERSEY

DATED: February 18, 1993

Senate Bill No. 1208 of 1992 establishes a presumption of incarceration for repeat offenders who have been previously convicted of motor vehicle theft or joyriding. The bill also provides that the present presumption of nonincarceration for certain first offenders would be inapplicable to first offenders convicted of auto theft, joyriding and eluding.

The Department of Corrections notes that since many auto theft arrests result in charges of larceny, theft, receiving stolen property or possession of stolen property, there are no accurate statistics regarding the specific crime of auto theft. It is therefore unable to estimate the fiscal impact of this bill. However, the department adds that unofficial data maintained by the State Police indicate that there were 3,500 arrests made for auto theft in 1991. Of those arrested, 1,400 were adults and 2,100 were juveniles. The department states that enactment of this bill would increase the number of offenders incarcerated and the length of stay for those convicted of auto theft.

The Office of Legislative Services concurs.

This fiscal note has been prepared pursuant to P.L.1980, c.67.



# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**

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**TRENTON, N.J. 08625**

**Release:** Thursday  
June 3, 1993

## *GOVERNOR SIGNS LAWS GIVING POLICE NEW WEAPONS AGAINST CAR THEFT*

PLAINFIELD -- Giving police new weapons in the fight to keep New Jersey safe and secure, Governor Jim Florio today signed into law a comprehensive plan aimed at cracking down on car theft through tougher penalties aimed at both adults and juveniles. The legislation was developed by Attorney General Robert Del Tufo at the Governor's request following a rash of car theft incidents last summer.

"Car theft isn't a game. It's a reckless and increasingly violent crime. People who steal cars need to know that there's a steep price to pay even if they are juveniles," said Governor Florio, as he signed the four-bill package at the Plainfield Police Department. "These bills give police four powerful new weapons in their efforts to create a safe and secure New Jersey."

"We're sending a message to car thieves: from now on, if you do the crime, you do the time even if you're a first-time offender," he said.

### The comprehensive plan

- *increases penalties for crimes involving motor vehicle thefts.*
- *establishes mandatory penalties for juveniles involved in motor vehicle-related crimes.*
- *provides extended prison terms for persons who use stolen vehicles to commit certain crimes.*
- *imposes jail terms for repeat offenders convicted of vehicle-related offenses.*

Under the new laws, parents who neglect to exercise reasonable supervision and control over a child who commits car theft may be ordered to pay restitution to car theft victims.

"The signing of these bills today is the culmination of the most comprehensive and effective law enforcement program in recent memory," said Frederick DeVesa, First Assistant Attorney General. "Punishment for car theft will be more certain. Jail terms for

repeat offenders will be the rule rather than the exception, and jail terms for first offenders will be a strong possibility."

The legislative component signed today is only one piece of the comprehensive plan developed by the state. The plan was developed following a meeting of Governor Florio, Attorney General Del Tufo, state officials and Essex and Union county law enforcement, government and community leaders in Newark last September.

Other components of the plan include:

- partnering state troopers, vehicles, computers and other equipment to an already-successful auto theft task force in Union and Essex counties.
- developing a special unit in the Essex County Prosecutor's office to deal exclusively with auto theft cases.
- increased state and local police patrols at shopping malls statewide.
- a statewide public information campaign to alert the public on tips to avoid carjacking and car theft.

The state's efforts to combat car theft have contributed to a decrease in auto thefts across the state. In Union and Essex Counties where the problem of car theft is most severe, car theft rates have decreased 20 percent and 5 percent respectively from 1991 to 1992.

"We're taking the joy out of joyriding. We know from experience that tough measures work," said Governor Florio. "These new laws help us continue our efforts to put the brakes on crime and car theft, and to get the thugs who commit these crimes out of the headlines and into jail."

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## **CAR THEFT CRIME PACKAGE FACT SHEET**

- **INCREASED PENALTIES FOR CRIMES INVOLVING MOTOR VEHICLE THEFTS**

Previously, joyriding was punishable as a disorderly persons offense with jail terms of up to six months and a \$1,000 fine. Under the new law, "joyriding" is classified as a fourth degree crime. If the stolen vehicle is also operated in a way that creates a risk of injury or property damage, the crime would be upgraded to third degree, carrying a penalty of three to five years in jail and a maximum \$7,500 fine. The penalty for a fourth-degree crime is 18 months in prison and a maximum \$7,500 fine.

For both third and fourth-degree offenses, there is a presumption against incarceration for first-time offenders. Under another law signed by the Governor as part of the package, the presumption against incarceration would be eliminated in cases involving joyriding that creates a risk of injury and auto theft. The new law also permits occupants who knowingly ride in a stolen vehicle to be charged with a fourth-degree crime. The offense was previously graded as a petty disorderly persons offense.

S 1207/A 47; sponsored by Senators Joe Bubba and Ronald Rice, and Assemblypersons Marion Crecco and John Hartmann.

- **ESTABLISHES MANDATORY PENALTIES FOR JUVENILES INVOLVED IN MOTOR VEHICLE-RELATED CRIMES**

Under previous law, penalties for juveniles were within the discretion of the court. The new law sets the following mandatory penalties for juveniles who commit certain motor vehicle-related offenses:

- Minimum 60 days incarceration for any juvenile guilty of aggravated assault who causes injury as the result of joyriding or eluding police, or for eluding if the offense creates a risk of injury, or for motor vehicle theft by a repeat offender.
- Minimum 30 days incarceration for repeated offenders guilty of joyriding or for eluding police which does not create a risk of injury.
- Sixty days mandatory community service, or a term of incarceration, for first offenders guilty of motor vehicle theft, for joyriding which creates a risk of injury or for eluding which does not create a risk of injury.
- Thirty days mandatory community service or some term of incarceration for joyriding which does not create a risk of injury.

Parents who neglect to exercise reasonable supervision and control over a child who commits car theft may be ordered to pay restitution to car theft victims.

S 1206/A 46/314: sponsored by Senators Louis Bassano and Randy Corman, and Assemblypersons Paul DiGaetano, John Kelly and Marion Crecco.

- ***INCREASED JAIL TIME FOR PERSONS WHO USE STOLEN VEHICLES TO COMMIT CERTAIN CRIMES***

The new law authorizes prosecutors to seek an extended term of imprisonment for persons who use stolen vehicles to commit certain crimes, such as robbery, aggravated assault, manslaughter eluding the police, sexual assault, kidnapping, burglary, escape and drug distribution.

An extended term means a longer sentence. For example, if a person committed a burglary and used a stolen car to leave the scene, the court could, at the prosecutor's request, sentence the defendant to between five and ten years in prison, even though the sentence for burglary is ordinarily between three to five years. The defendant could also be tried and punished for the actual theft of the vehicle as well.

S 1090/A 1719/1841; sponsored by Senators Joe Bubba and Ronald Rice, and Assemblypersons Marion Crecco, Maureen Ogden and Monroe Jay Lustbader.

- ***REQUIRES JAIL TERMS FOR REPEAT OFFENDERS CONVICTED OF VEHICLE-RELATED OFFENSES***

In order to make the punishment for auto theft more certain, this law establishes a presumption of incarceration for repeat offenders who have been previously convicted of motor vehicle theft or joyriding. Under previous law, there was no presumption of incarceration no matter how many cars a person stole.

S 1208/A 48; sponsored by Senators Louis Kosco and Jack Sinagra, and Assemblyman Monroe Jay Lustbader.

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