

2C:44-5

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 2C:44-5

LAWS OF: 1993 **CHAPTER:** 223

BILL NO: A2408

SPONSOR(S) Hartman

DATE INTRODUCED: March 29, 1993

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

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 20, 1993
SENATE: June 28, 1993

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached.

KBG:pp

1 AN ACT concerning sentencing for multiple offenses and
2 amending N.J.S.2C:44-5.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.2C:44-5 is amended to read as follows:
7 2C:44-5. Multiple Sentences; Concurrent and Consecutive
8 Terms.

9 a. Sentences of imprisonment for more than one offense.
10 When multiple sentences of imprisonment are imposed on a
11 defendant for more than one offense, including an offense for
12 which a previous suspended sentence or sentence of probation has
13 been revoked, such multiple sentences shall run concurrently or
14 consecutively as the court determines at the time of sentence,
15 except that:

16 (1) The aggregate of consecutive terms to a county institution
17 shall not exceed 18 months; and

18 (2) Not more than one sentence for an extended term shall be
19 imposed.

20 There shall be no overall outer limit on the cumulation of
21 consecutive sentences for multiple offenses.

22 b. Sentences of imprisonment imposed at different times.
23 When a defendant who has previously been sentenced to
24 imprisonment is subsequently sentenced to another term for an
25 offense committed prior to the former sentence, other than an
26 offense committed while in custody;

27 (1) The multiple sentences imposed shall so far as possible
28 conform to subsection a. of this section; and

29 (2) Whether the court determines that the terms shall run
30 concurrently or consecutively, the defendant shall be credited
31 with time served in imprisonment on the prior sentence in
32 determining the permissible aggregate length of the term or
33 terms remaining to be served; and

34 (3) When a new sentence is imposed on a prisoner who is on
35 parole, the balance of the parole term on the former sentence
36 shall not be deemed to run during the period of the new
37 imprisonment unless the court determines otherwise at the time
38 of sentencing.

39 c. Sentence of imprisonment for offense committed while on
40 parole. When a defendant is sentenced to imprisonment for an
41 offense committed while on parole in this State, such term of
42 imprisonment and any period of reimprisonment that the parole
43 board may require the defendant to serve upon the revocation of
44 his parole shall run consecutively unless the court orders these

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 sentences to run concurrently.

2 d. Multiple sentences of imprisonment in other cases. Except
3 as otherwise provided in this section, multiple terms of
4 imprisonment shall run concurrently or consecutively as the court
5 determines when the second or subsequent sentence is imposed.

6 e. Calculation of concurrent and consecutive terms of
7 imprisonment.

8 (1) When terms of imprisonment run concurrently, the shorter
9 terms merge in and are satisfied by discharge of the longest term.

10 (2) When terms of imprisonment run consecutively, the terms
11 are added to arrive at an aggregate term to be served equal to
12 the sum of all terms.

13 f. Suspension of sentence or probation and imprisonment;
14 multiple terms of suspension and probation. When a defendant is
15 sentenced for more than one offense or a defendant already under
16 sentence is sentenced for another offense committed prior to the
17 former sentence:

18 (1) The court shall not sentence to probation a defendant who
19 is under sentence of imprisonment, except as authorized by
20 section 2C:43-2b.(2);

21 (2) Multiple periods of suspension or probation shall run
22 consecutively, unless the court orders these sentences to run
23 concurrently from the date of the first such disposition;

24 (3) When a sentence of imprisonment in excess of 1 year is
25 imposed, the service of such sentence shall satisfy a suspended
26 sentence on another count or prior suspended sentence or
27 sentence to probation, unless the suspended sentence or probation
28 has been violated in which case any imprisonment for the
29 violation shall run consecutively; and

30 (4) When a sentence of imprisonment of 1 year or less is
31 imposed, the period of a suspended sentence on another count or
32 a prior suspended sentence or sentence to probation shall run
33 during the period of such imprisonment, unless the suspended
34 sentence or probation has been violated in which case any
35 imprisonment for the violation shall run consecutively.

36 g. Offense committed while under suspension of sentence or
37 probation. When a defendant is convicted of an offense
38 committed while under suspension of sentence or on probation
39 and such suspension or probation is not revoked:

40 (1) If the defendant is sentenced to imprisonment in excess of
41 1 year, the service of such sentence shall not satisfy the prior
42 suspended sentence or sentence to probation, unless the court
43 determines otherwise at the time of sentencing;

44 (2) If the defendant is sentenced to imprisonment of 1 year or
45 less, the period of the suspension or probation shall not run during
46 the period of such imprisonment; and

47 (3) If sentence is suspended or the defendant is sentenced to
48 probation, the period of such suspension or probation shall run
49 concurrently with or consecutively to the remainder of the prior
50 periods, as the court determines at the time of sentence.

51 h. Offense committed while released pending disposition of a
52 previous offense. When a defendant is sentenced to imprisonment
53 for an offense committed while released, with or without bail,
54 pending disposition of a previous offense, the term of

1 imprisonment shall run consecutively, unless the court orders
2 these sentences to run concurrently, to any sentence of
3 imprisonment imposed for the previous offense.

4 (cf: P.L.1983, c.462, s.1)

5 2. This act shall take effect immediately.

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STATEMENT

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10 Under current law, the court has discretion to impose either
11 concurrent or consecutive sentences on a defendant who has
12 committed multiple crimes. However, sentencing guidelines
13 established by the New Jersey Supreme Court serve to eliminate
14 much of that discretion, because the guidelines set overall
15 limitations on the cumulation of consecutive sentences. This bill
16 is intended to eliminate these overall limits set by the Supreme
17 Court and to once again vest the trial courts with the discretion
18 to determine whether sentences should be served concurrently or
19 consecutively.

20 In State v. Yarbough, 100 N.J. 627 (1985), cert. denied 475 U.S.
21 1014 (1986), the Court set outside limits on the total sentence
22 which may be imposed for multiple convictions. Successive terms
23 for the same offense should not ordinarily be equal to the
24 punishment for the first offense, the Court ruled, and the
25 cumulation of consecutive sentences for multiple offenses shall
26 not exceed the sum of the longest terms which could be imposed
27 for the two most serious offenses. Although the Court
28 recognized that "there are cases so extreme and so extraordinary
29 that deviation from the guidelines may be called for," Court
30 decisions in subsequent cases have allowed virtually no deviation
31 from the Yarbough guidelines, even in shocking cases.

32 Thus, even in State v. Reynolds, A-591-97T4 (decided June 19,
33 1990), 124 N.J. 559 (1992) (decided on other grounds), where the
34 trial judge was struck by the unusual cruelty and viciousness of
35 the crimes, the Appellate Division and the Supreme Court refused
36 to allow any deviation from Yarbough. The defendant, Jan E.
37 Reynolds, had broken into a woman's home, raped her repeatedly
38 over the course of the night, threatened to kill her two children
39 and stabbed her 17 times. His knife became lodged in her
40 breastbone and he removed it only by using his hand or the heel of
41 his foot for leverage. The victim lost eight pints of blood but
42 survived. During the attack, Reynolds told the woman that if she
43 called the police he would "come back and finish the job, even if
44 it takes 30 years."

45 Although the trial judge stated that "the cruelty, depravity,
46 wickedness and viciousness of the defendant and the
47 incomprehensible torture, terror and pain inflicted on the victim"
48 made the Yarbough guidelines inapplicable in this case, the
49 Appellate Division and the Supreme Court disagreed. The
50 sentence ordered by the judge, which included consecutive terms
51 for a number of the crimes the defendant had committed, was
52 overturned by the upper courts because it did not comply with the
53 guidelines. The judge had sentenced the defendant to a total of
54 120 years, with a period of 60 years during which the defendant

1 would be ineligible for parole. However, because Yarbough
2 requires that the total term imposed for all of a defendant's
3 crimes stemming from one incident cannot be greater than the
4 sum of the longest terms which could be imposed for the two
5 most serious offenses, the judge was forced to re-sentence
6 Reynolds. The new term, 60 years with a 30-year period of
7 parole ineligibility, would allow Reynolds to be eligible for parole
8 before he reaches the age of 60.

9 The sponsor believes that the imposition of outside limits on
10 consecutive terms for multiple crimes constitutes a grave
11 injustice, both for victims and for society as a whole. This bill
12 would eliminate the Yarbough sentencing limitations and allow
13 the trial court complete discretion in this regard, in accordance
14 with current law.

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19 Eliminates outside limits on sentences imposed for multiple
20 crimes.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2408

STATE OF NEW JERSEY

DATED: APRIL 29, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 2408.

Under current law, the court has discretion to impose either concurrent or consecutive sentences on a defendant who has committed multiple crimes. However, sentencing guidelines established by the New Jersey Supreme Court serve to eliminate much of that discretion, because the guidelines set overall limitations on the cumulation of consecutive sentences. This bill is intended to eliminate these overall limits set by the Supreme Court and to once again vest the trial courts with the discretion to determine whether sentences should be served concurrently or consecutively.

In State v. Yarbough, 100 N.J. 627 (1985), cert. denied 475 U.S. 1014 (1986), the Court set outside limits on the total sentence which may be imposed for multiple convictions. Successive terms for the same offense should not ordinarily be equal to the punishment for the first offense and the cumulation of consecutive sentences for multiple offenses shall not exceed the sum of the longest terms which could be imposed for the two most serious offenses. Although the Court recognized that "there are cases so extreme and so extraordinary that deviation from the guidelines may be called for," court decisions in subsequent cases have allowed virtually no deviation from the Yarbough guidelines, even in shocking cases.

Thus, even in State v. Reynolds, A-591-97T4 (decided June 19, 1990), 124 N.J. 559 (1992) (decided on other grounds), where the trial judge was struck by the unusual cruelty and viciousness of the crimes, the Appellate Division and the Supreme Court refused to allow any deviation from Yarbough. Although the trial judge stated that "the cruelty, depravity, wickedness and viciousness of the defendant and the incomprehensible torture, terror and pain inflicted on the victim" made the Yarbough guidelines inapplicable in this case, the Appellate Division and the Supreme Court disagreed. The sentence ordered by the judge, which included consecutive terms for a number of the crimes the defendant had committed, was overturned by the upper courts because it did not comply with the guidelines. The judge had sentenced the defendant to a total of 120 years, with a period of 60 years during which the defendant would be ineligible for parole. However, because Yarbough requires that the total term imposed for all of a defendant's crimes stemming from one incident cannot be greater than the sum of the longest terms which could be imposed for the two most serious offenses the judge was forced to re-sentence Reynolds. The new term, 60 years with a 30-year period of parole ineligibility, would allow Reynolds to be eligible for parole before he reaches the age of 60.

This bill would eliminate the Yarbough sentencing limitations and allow the trial court complete discretion in this regard, in accordance with current law.