

CRIMINAL PROCEDURE—Sentencing Provisions For Aggravated Manslaughter and Kidnapping—N.J. Stat. Ann. §§ 2C:11-4, :13-1, :43-7, :44-1.

The theories of criminal punishment include prevention, restraint, deterrence, and retribution,¹ and apparently these theories were considered when the legislature enacted S-1661 on December 8, 1986.² In adopting the legislation, New Jersey has increased penalties for the commission of aggravated manslaughter³ and kidnapping⁴ under certain circumstances.⁵ Its revisions refine extended term sentencing⁶ as well as the criteria used for imposing imprisonment⁷ in these criminal activities.

Traditionally, aggravated manslaughter,⁸ a crime of first degree, has been assigned an ordinary period of incarceration of between ten and twenty years.⁹ Under this amending legislation, the ordinary term for aggravated manslaughter has been lengthened to a maximum of thirty years.¹⁰ The ten year increase is also reflected in the presumptive measure of sentencing as shown by a five year enhancement.¹¹ These augmentations continue into extended term sentencing.

Invoked in cases involving persistent offenders, professional criminals, defendants seeking receipt for their wrongdoing, and a

¹ See generally W. LAFAVE & A. SCOTT, CRIMINAL LAW 23-26 (1986).

² P.L. 1986, ch. 172.

³ N.J. STAT. ANN. § 2C:11-4 (West 1982).

⁴ *Id.* § 2C:13-1.

⁵ N.J. STAT. ANN. § 2C:13-1(c)(2) (West Supp. 1987).

⁶ N.J. STAT. ANN. § 2C:43-7 (West 1982).

⁷ *Id.* § 2C:44-1.

⁸ Aggravated manslaughter is a criminal homicide highlighted by a defendant's recklessness and extreme indifference to human life. N.J. STAT. ANN. § 2C:11-4(a) (West 1982).

⁹ N.J. STAT. ANN. § 2C:43-6(a)(1) (West 1982). An ordinary sentence is a statutorily established grouping of the number of years of possible imprisonment used by the court as a guide in determining an appropriate penalty for a defendant's criminal actions, for example, from ten to thirty years. These periods vary with the degree of the crime. See generally *id.* § 2C:43-6.

¹⁰ N.J. STAT. ANN. § 2C:11-4(c) (West Supp. 1987).

¹¹ Using a presumptive sentence, a midpoint between the minimum and maximum years of ordinary imprisonment, a judge will incorporate aggravating or mitigating factors, listed in subsections (a) and (b) of 2C:44-1, to increase or decrease a convicted defendant's jail time. Under S-1661, aggravated manslaughter would begin with a twenty year presumption, a five year increase over its previous first degree average of fifteen years. N.J. STAT. ANN. § 2C:44-1(f)(a) (West Supp. 1987).

second offense involving a firearm,¹² extended terms of imprisonment are viable options for the courts. Prior to the passage of this amendatory Act, aggravated manslaughter was subject to a first degree extension of twenty years to life, but now thirty years to life is the statutory standard.¹³

Probably the amendments' greatest effect will be felt in the area of setting sentences for kidnapping. As with aggravated manslaughter, kidnapping, also a first degree offense, saw a comparable increase in extended terms, ranging from thirty years to life,¹⁴ and an identical presumptive sentence of twenty years.¹⁵ Yet, when the victim involved is less than sixteen years of age, a new mandatory length of imprisonment is applicable in certain instances.

If during captivity the abductee is sexually assaulted,¹⁶ used in the production of pornographic material,¹⁷ or transferred to a party for financial gain, other than as part of the process of reuniting the victim with his guardian,¹⁸ the defendant is subject to a mandatory jail term of twenty-five years. A specific sentence between twenty-five years and life imprisonment may be sought. However, under either choice, there is no parole eligibility for the first twenty-five years.¹⁹ The future effects of this legislation will only be seen with time, but it serves as a present statement of New Jersey's attempt to deter as well as punish violent crimes.

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¹² N.J. STAT. ANN. § 2C:44-3 (West 1982).

¹³ N.J. STAT. ANN. § 2C:43-7(a)(1) (West Supp. 1987).

¹⁴ *Id.* It should be noted kidnapping incorporates an ordinary sentence of fifteen to thirty years which has remained unchanged under S-1661. *See id.* § 2C:13-1(c) (West Supp. 1987).

¹⁵ *See* note 11 *supra*.

¹⁶ N.J. STAT. ANN. §§ 2C:14-2, -3(a) (West 1982).

¹⁷ *Id.* § 2C:24-4(b).

¹⁸ N.J. STAT. ANN. § 2C:13-1(c)(2)(c) (West Supp. 1987).

¹⁹ The elemental crimes of Sexual Assault, Criminal Sexual Contact, and sale for pecuniary gain merge, for sentencing purposes, into this special kidnapping category. However, in the event of a criminal homicide, penalties for the kidnapping and homicide will be served consecutively versus concurrently. N.J. STAT. ANN. § 2C:13-1(c)(2) (West Supp. 1987).