

ASSEMBLY, No. 154

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

Assemblywoman MARY PAT ANGELINI

District 11 (Monmouth)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:

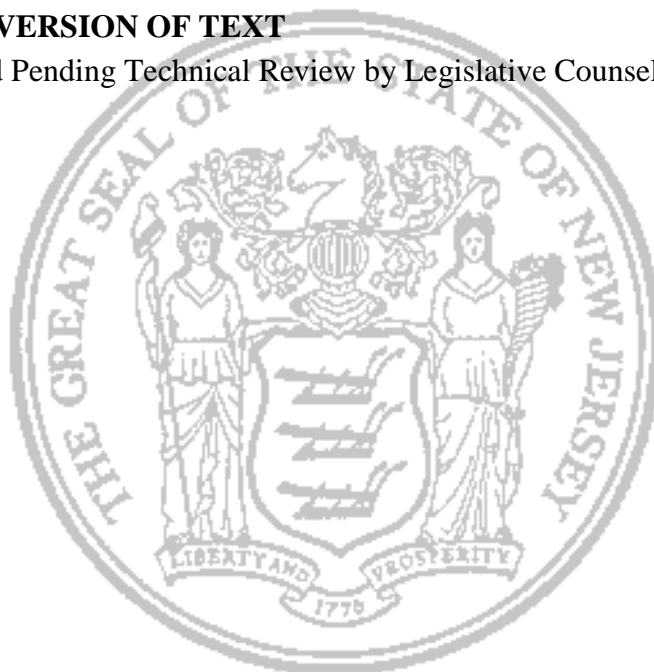
Assemblymen Giblin, Chiusano, Singleton, Rumpf, Assemblywomen Gove, Schepisi, Assemblyman DeAngelo, Assemblywomen N.Munoz, Simon and Assemblyman Webber

SYNOPSIS

Revises child pornography law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 11/19/2013)

1 AN ACT concerning child pornography and amending various parts
2 of the statutory law.

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

6
7 1. N.J.S.2C:24-4 is amended to read as follows:

8 2C:24-4. Endangering Welfare of Children.

9 a. Any person having a legal duty for the care of a child or who
10 has assumed responsibility for the care of a child who engages in
11 sexual conduct which would impair or debauch the morals of the
12 child, or who causes the child harm that would make the child an
13 abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and
14 P.L.1974, c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second
15 degree. Any other person who engages in conduct or who causes
16 harm as described in this subsection to a child under the age of 16 is
17 guilty of a crime of the third degree.

18 b. (1) As used in this subsection and subsection c. of this
19 section:

20 "Child" means any person under 16 years of age.

21 "Distribute" means to sell, give, provide, lend, trade, mail, send,
22 deliver, publish, circulate, disseminate, present, exhibit, display,
23 make available or transfer, in any manner, including through the
24 Internet, and it shall not be relevant that the distribution was not for
25 compensation or any other benefit.

26 "Internet" means the international computer network of both
27 federal and non-federal interoperable packet switched data
28 networks.

29 "Intimate parts" shall have the meaning set forth in
30 N.J.S.2C:14-1.

31 "Prohibited sexual act" means

32 (a) Sexual intercourse; or

33 (b) Anal intercourse; or

34 (c) Masturbation; or

35 (d) Bestiality; or

36 (e) Sadism; or

37 (f) Masochism; or

38 (g) Fellatio; or

39 (h) Cunnilingus; or

40 (i) Nudity, if depicted for the purpose of sexual stimulation or
41 gratification of any person who may view such depiction; or

42 (j) Any act of sexual penetration or sexual contact as defined in
43 N.J.S.2C:14-1.

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 **["Reproduction"]** Reproduce means to copy or duplicate, and
2 includes, but is not limited to, copying or printing computer
3 generated images or posting these images on the Internet.

4 (2) (Deleted by amendment, P.L.2001, c.291).

5 (3) A person commits a crime of the **["second"]** first degree if he
6 causes or permits a child to engage in a prohibited sexual act or in
7 the simulation of such an act if the person knows, has reason to
8 know or intends that the prohibited act may be photographed,
9 filmed, reproduced, or reconstructed in any manner, including on
10 the Internet, or may be part of an exhibition or performance. **["If the**
11 **person is a parent, guardian or other person legally charged with the**
12 **care or custody of the child, the person shall be guilty of a crime of**
13 **the first degree.】**

14 (4) Any person who knowingly photographs or films a child in a
15 prohibited sexual act or in the simulation of such an act or who uses
16 any device, including a computer, to produce, create, reproduce, or
17 reconstruct the image of a child in a prohibited sexual act or in the
18 simulation of such an act is guilty of a crime of the second degree.

19 It shall be no defense to a prosecution for a violation of this
20 paragraph that the defendant did not intend to distribute, advertise,
21 offer or agree to offer the photograph, film, videotape, computer
22 program or file, video game or other reproduction or reconstruction.

23 (5) (a) Any person who knowingly possesses or receives for the
24 purpose of **["selling"]** distributing or who knowingly **["sells, procures,**
25 **manufactures, gives, provides, lends, trades, mails, delivers,**
26 **transfers, publishes,】** distributes **["**, circulates, disseminates,
27 presents, exhibits】, advertises, offers or agrees to offer, through any
28 means, including the Internet, any photograph, film, videotape,
29 computer program or file, video game or any other reproduction or
30 reconstruction which depicts a child engaging in a prohibited sexual
31 act or in the simulation of such an act, is guilty of a crime of the
32 second degree.

33 (b) Any person who knowingly possesses, **["receive or**
34 **knowingly"]** , receives or views any photograph, film, videotape,
35 computer program or file, video game or any other reproduction or
36 reconstruction which depicts a child engaging in a prohibited sexual
37 act or in the simulation of such an act, including on the Internet, is
38 guilty of a crime of the **["fourth"]** third degree.

39 (6) For the purposes of this subsection **["**, **a】** and subsection c. of
40 this section:

41 (a) Any photograph, film, videotape, computer program or file,
42 video game or any other reproduction or reconstruction which
43 depicts the face or any of the intimate parts of a child depicts a
44 child;

45 (b) A person who is depicted as or presents the appearance of
46 being under the age of 16 in any photograph, film, videotape,

1 computer program or file, video game or any other reproduction or
2 reconstruction shall be rebuttably presumed to be under the age of
3 16[.];

4 (c) A person who is depicted as or presents the appearance of
5 being an actual child in any photograph, film, videotape, computer
6 program or file, video game or any other reproduction or
7 reconstruction shall be rebuttably presumed to be an actual child;
8 and

9 (d) If the child who is depicted as engaging in, or who is caused
10 to engage in, a prohibited sexual act or simulation of a prohibited
11 sexual act is under the age of 16, the actor shall be strictly liable
12 and it shall not be a defense that the actor did not know that the
13 child was under the age of 16, nor shall it be a defense that the actor
14 believed that the child was 16 years of age or older, even if such a
15 mistaken belief was reasonable.

16 (e) In any prosecution under this section, hearsay evidence may
17 be admitted to prove the existence, identity, age or other personal
18 identifying information of a child. This evidence may be in the
19 form of an affidavit, a certification, a public record or an official
20 report by a public official, as defined in the Rules of Evidence, or a
21 public official of a foreign jurisdiction. This evidence shall be
22 admissible and shall constitute a permissive inference as to the facts
23 contained therein. The State shall not be precluded from proving
24 the existence, identity, age or other personal identifying information
25 of a child by any other means.

26 (7) In a prosecution for a violation of this subsection or
27 subsection c. of this section, a defendant who intends to offer as a
28 defense that any photograph, film, videotape, computer program or
29 file, video game or any other reproduction or reconstruction was
30 created or produced without using an actual person under the age of
31 16, or the face or any of the intimate parts of an actual person under
32 the age of 16, or depicts the image of a person who is 16 years of
33 age or older, shall serve notice of this intention on the prosecuting
34 attorney in accordance with the Rules of Court.

35 c. (1) Any person who knowingly uses any device, including a
36 computer, to produce, create or reproduce an image which appears
37 to depict a child in a prohibited sexual act or in the simulation of
38 such an act is guilty of a crime of the second degree if the depiction
39 is obscene.

40 It shall not be a defense to a prosecution for a violation of this
41 paragraph that the defendant did not intend to distribute, advertise,
42 offer or agree to offer the photograph, film, videotape, computer
43 program or file, video game or other reproduction or reconstruction.

44 (2) (a) Any person who knowingly possesses or receives for the
45 purpose of distributing or who knowingly distributes, advertises,
46 offers or agrees to offer, through any means, including the Internet,
47 any photograph, film, videotape, computer program or file, video

1 game or any other reproduction or reconstruction which depicts an
2 image which appears to be a child engaging in a prohibited sexual
3 act or in the simulation of such an act, is guilty of a crime of the
4 second degree if the depiction is obscene.

5 (b) Any person who knowingly possesses, views, or receives
6 any photograph, film, videotape, computer program or file, video
7 game or any other reproduction or reconstruction which depicts an
8 image which appears to be a child engaging in a prohibited sexual
9 act or in the simulation of such an act, including on the Internet, is
10 guilty of a crime of the third degree if the depiction is obscene.

11 (3) For purposes of this subsection, a depiction is obscene if it:

12 (a) depicts the prohibited sexual act in a patently offensive way;

13 (b) lacks serious literary, artistic, political or scientific value,
14 when taken as a whole; and

15 (c) is a part of a work which, to the average person applying
16 contemporary community standards, has a dominant theme, taken as
17 a whole, which appeals to the prurient interest.

18 If the depiction is obscene, the defendant shall be strictly liable
19 and it shall not be a defense that the actor did not know that the
20 depiction was obscene, nor shall it be a defense that the actor
21 believed that the depiction was not obscene, even if such a mistaken
22 belief was reasonable.

23 (4) For purposes of this subsection, “knowingly” means:

24 (a) Having knowledge of the character and content of any
25 photograph, film, videotape, computer program or file, video game
26 or any other reproduction or reconstruction which depicts an image
27 which appears to be a child described herein; or

28 (b) Having failed to exercise reasonable inspection which would
29 disclose its character and content.

30 d. Sentencing. If a person is convicted of a second or
31 subsequent offense of engaging in sexual conduct which would
32 impair or debauch the morals of a child in violation of subsection a.
33 of this section, or a second or subsequent offense under subsections
34 b. or c. of this section, the sentence imposed under this section for
35 the second or subsequent offense shall include a fixed minimum
36 sentence of one-third to one-half of the sentence imposed by the
37 court, during which the defendant shall be ineligible for parole.
38 The court may not suspend or make any other non-custodial
39 disposition of any person sentenced as a second or subsequent
40 offender pursuant to this section. For the purpose of this section, an
41 offense is considered a second or subsequent offense if the actor has
42 at any time been convicted under P.L.1993, c.291 (C.2C:13-6);
43 N.J.S.2C:14-2; subsection a. of N.J.S.2C:14-3; N.J.S.2C:24-4; or
44 under any similar statute of the United States, this State, or any
45 other state for an offense that is substantially equivalent to
46 P.L.1993, c.291 (C.2C:13-6); N.J.S.2C:14-2; subsection a. of

1 N.J.S.2C:14-3; or N.J.S.2C:24-4.

2 (cf: P.L.2001, c.291, s.1)

3

4 2. Section 2 of P.L.1994, c.133 (C.2C:7-2) is amended to read
5 as follows:

6 2. a. (1) A person who has been convicted, adjudicated
7 delinquent or found not guilty by reason of insanity for commission
8 of a sex offense as defined in subsection b. of this section shall
9 register as provided in subsections c. and d. of this section.

10 (2) A person who in another jurisdiction is required to register
11 as a sex offender and (a) is enrolled on a full-time or part-time basis
12 in any public or private educational institution in this State,
13 including any secondary school, trade or professional institution,
14 institution of higher education or other post-secondary school, or
15 (b) is employed or carries on a vocation in this State, on either a
16 full-time or a part-time basis, with or without compensation, for
17 more than 14 consecutive days or for an aggregate period exceeding
18 30 days in a calendar year, shall register in this State as provided in
19 subsections c. and d. of this section.

20 (3) A person who fails to register as required under this act shall
21 be guilty of a crime of the third degree.

22 b. For the purposes of this act a sex offense shall include the
23 following:

24 (1) Aggravated sexual assault, sexual assault, aggravated
25 criminal sexual contact, kidnapping pursuant to paragraph (2) of
26 subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these
27 crimes if the court found that the offender's conduct was
28 characterized by a pattern of repetitive, compulsive behavior,
29 regardless of the date of the commission of the offense or the date
30 of conviction;

31 (2) A conviction, adjudication of delinquency, or acquittal by
32 reason of insanity for aggravated sexual assault; sexual assault;
33 aggravated criminal sexual contact; kidnapping pursuant to
34 paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the
35 welfare of a child by engaging in sexual conduct which would
36 impair or debauch the morals of the child pursuant to subsection a.
37 of N.J.S.2C:24-4; endangering the welfare of a child pursuant to
38 paragraph (3) or (4) or subparagraph (a) of paragraph (5) of
39 subsection b. of N.J.S.2C:24-4; endangering the welfare of a child
40 pursuant to paragraph (1) or subparagraph (a) of paragraph (2) of
41 subsection c. of N.J.S.2C:24-4; luring or enticing pursuant to
42 section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact
43 pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping
44 pursuant to N.J.S.2C:13-1, criminal restraint pursuant to
45 N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if
46 the victim is a minor and the offender is not the parent of the
47 victim; knowingly promoting prostitution of a child pursuant to

1 paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1; or
2 an attempt to commit any of these enumerated offenses if the
3 conviction, adjudication of delinquency or acquittal by reason of
4 insanity is entered on or after the effective date of this act or the
5 offender is serving a sentence of incarceration, probation, parole or
6 other form of community supervision as a result of the offense or is
7 confined following acquittal by reason of insanity or as a result of
8 civil commitment on the effective date of this act;

9 (3) A conviction, adjudication of delinquency or acquittal by
10 reason of insanity for an offense similar to any offense enumerated
11 in paragraph (2) or a sentence on the basis of criteria similar to the
12 criteria set forth in paragraph (1) of this subsection entered or
13 imposed under the laws of the United States, this State or another
14 state.

15 c. A person required to register under the provisions of this act
16 shall do so on forms to be provided by the designated registering
17 agency as follows:

18 (1) A person who is required to register and who is under
19 supervision in the community on probation, parole, furlough, work
20 release, or a similar program, shall register at the time the person is
21 placed under supervision or no later than 120 days after the
22 effective date of this act, whichever is later, in accordance with
23 procedures established by the Department of Corrections, the
24 Department of Human Services, the Juvenile Justice Commission
25 established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170)
26 or the Administrative Office of the Courts, whichever is responsible
27 for supervision;

28 (2) A person confined in a correctional or juvenile facility or
29 involuntarily committed who is required to register shall register
30 prior to release in accordance with procedures established by the
31 Department of Corrections, the Department of Human Services or
32 the Juvenile Justice Commission and, within 48 hours of release,
33 shall also register with the chief law enforcement officer of the
34 municipality in which the person resides or, if the municipality does
35 not have a local police force, the Superintendent of State Police;

36 (3) A person moving to or returning to this State from another
37 jurisdiction shall register with the chief law enforcement officer of
38 the municipality in which the person will reside or, if the
39 municipality does not have a local police force, the Superintendent
40 of State Police within 120 days of the effective date of this act or 10
41 days of first residing in or returning to a municipality in this State,
42 whichever is later;

43 (4) A person required to register on the basis of a conviction
44 prior to the effective date who is not confined or under supervision
45 on the effective date of this act shall register within 120 days of the
46 effective date of this act with the chief law enforcement officer of
47 the municipality in which the person will reside or, if the

1 municipality does not have a local police force, the Superintendent
2 of State Police;

3 (5) A person who in another jurisdiction is required to register
4 as a sex offender and who is enrolled on a full-time or part-time
5 basis in any public or private educational institution in this State,
6 including any secondary school, trade or professional institution,
7 institution of higher education or other post-secondary school shall,
8 within ten days of commencing attendance at such educational
9 institution, register with the chief law enforcement officer of the
10 municipality in which the educational institution is located or, if the
11 municipality does not have a local police force, the Superintendent
12 of State Police;

13 (6) A person who in another jurisdiction is required to register
14 as a sex offender and who is employed or carries on a vocation in
15 this State, on either a full-time or a part-time basis, with or without
16 compensation, for more than 14 consecutive days or for an
17 aggregate period exceeding 30 days in a calendar year, shall, within
18 ten days after commencing such employment or vocation, register
19 with the chief law enforcement officer of the municipality in which
20 the employer is located or where the vocation is carried on, as the
21 case may be, or, if the municipality does not have a local police
22 force, the Superintendent of State Police;

23 (7) In addition to any other registration requirements set forth in
24 this section, a person required to register under this act who is
25 enrolled at, employed by or carries on a vocation at an institution of
26 higher education or other post-secondary school in this State shall,
27 within ten days after commencing such attendance, employment or
28 vocation, register with the law enforcement unit of the educational
29 institution, if the institution has such a unit.

30 d. (1) Upon a change of address, a person shall notify the law
31 enforcement agency with which the person is registered and shall
32 re-register with the appropriate law enforcement agency no less
33 than 10 days before he intends to first reside at his new address.
34 Upon a change of employment or school enrollment status, a person
35 shall notify the appropriate law enforcement agency no later than
36 five days after any such change. A person who fails to notify the
37 appropriate law enforcement agency of a change of address or status
38 in accordance with this subsection is guilty of a crime of the fourth
39 degree.

40 (2) A person required to register under this act shall provide the
41 appropriate law enforcement agency with information as to whether
42 the person has routine access to or use of a computer or any other
43 device with Internet capability. A person who fails to notify the
44 appropriate law enforcement agency of such information or of a
45 change in the person's access to or use of a computer or other
46 device with Internet capability or who provides false information
47 concerning the person's access to or use of a computer or any other

1 device with Internet capability is guilty of a crime of the fourth
2 degree.

3 e. A person required to register under paragraph (1) of
4 subsection b. of this section or under paragraph (3) of subsection b.
5 due to a sentence imposed on the basis of criteria similar to the
6 criteria set forth in paragraph (1) of subsection b. shall verify his
7 address with the appropriate law enforcement agency every 90 days
8 in a manner prescribed by the Attorney General. A person required
9 to register under paragraph (2) of subsection b. of this section or
10 under paragraph (3) of subsection b. on the basis of a conviction for
11 an offense similar to an offense enumerated in paragraph (2) of
12 subsection b. shall verify his address annually in a manner
13 prescribed by the Attorney General. One year after the effective
14 date of this act, the Attorney General shall review, evaluate and, if
15 warranted, modify pursuant to the "Administrative Procedure Act,"
16 P.L.1968, c.410 (C.52:14B-1 et seq.) the verification requirement.
17 Any person who knowingly provides false information concerning
18 his place of residence or who fails to verify his address with the
19 appropriate law enforcement agency or other entity, as prescribed
20 by the Attorney General in accordance with this subsection, is
21 guilty of a crime of the fourth degree.

22 f. Except as provided in subsection g. of this section, a person
23 required to register under this act may make application to the
24 Superior Court of this State to terminate the obligation upon proof
25 that the person has not committed an offense within 15 years
26 following conviction or release from a correctional facility for any
27 term of imprisonment imposed, whichever is later, and is not likely
28 to pose a threat to the safety of others.

29 g. A person required to register under this section who has
30 been convicted of, adjudicated delinquent, or acquitted by reason of
31 insanity for more than one sex offense as defined in subsection b. of
32 this section or who has been convicted of, adjudicated delinquent,
33 or acquitted by reason of insanity for aggravated sexual assault
34 pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault
35 pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not
36 eligible under subsection f. of this section to make application to
37 the Superior Court of this State to terminate the registration
38 obligation.

39 (cf: P.L.2007, c.219, s.2)

40

41 3. N.J.S.2C:14-6 is amended to read as follows:

42 2C:14-6. If a person is convicted of a second or subsequent
43 offense under **sections** N.J.S.2C:14-2 or **2C:14-3a.** subsection
44 a. of N.J.S.2C:14-3, the sentence imposed under those sections for
45 the second or subsequent offense shall**,** unless the person is
46 sentenced pursuant to the provisions of 2C:43-7,**]** include a fixed
47 minimum sentence of not less than 5 years, during which the

1 defendant shall not be eligible for parole. The court may not
2 suspend or make any other non-custodial disposition of any person
3 sentenced as a second or subsequent offender pursuant to this
4 section. For the purpose of this section, an offense is considered a
5 second or subsequent offense~~[,]~~ if the actor has at any time been
6 convicted under ~~sections~~ P.L.1993, c.291 (C.2C:13-6);
7 N.J.S.2C:14-2 [or 2C:14-3a.]; subsection a. of N.J.S.2C:14-3;
8 N.J.S.2C:24-4; or under any similar statute of the United States, this
9 ~~state~~ State, or any other state for an offense that is substantially
10 equivalent to ~~sections~~ P.L.1993, c.291 (C.2C:13-6); N.J.S.2C:14-
11 2 [or 2C:14-3a.]; subsection a. of N.J.S.2C:14-3; or N.J.S.2C:24-4.
12 (cf: N.J.S.2C:14-6)

13

14 4. N.J.S.2C:41-1 is amended to read as follows:

15 2C:41-1. Definitions.

16 For purposes of this section and N.J.S.2C:41-2 through
17 N.J.S.2C:41-6:

18 a. "Racketeering activity" means (1) any of the following
19 crimes which are crimes under the laws of New Jersey or are
20 equivalent crimes under the laws of any other jurisdiction:

21 (a) murder

22 (b) kidnapping

23 (c) gambling

24 (d) promoting prostitution

25 (e) obscenity

26 (f) robbery

27 (g) bribery

28 (h) extortion

29 (i) criminal usury

30 (j) violations of Title 33 of the Revised Statutes

31 (k) violations of Title 54A of the New Jersey Statutes and Title
32 54 of the Revised Statutes

33 (l) arson

34 (m) burglary

35 (n) theft and all crimes defined in chapter 20 of Title 2C of the
36 New Jersey Statutes

37 (o) forgery and fraudulent practices and all crimes defined in
38 chapter 21 of Title 2C of the New Jersey Statutes

39 (p) fraud in the offering, sale or purchase of securities

40 (q) alteration of motor vehicle identification numbers

41 (r) unlawful manufacture, purchase, use or transfer of firearms

42 (s) unlawful possession or use of destructive devices or
43 explosives

44 (t) violation of sections 112 through 116 inclusive of the
45 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-
46 116)

- 1 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6
- 2 and all crimes involving illegal distribution of a controlled
- 3 dangerous substance or controlled substance analog, except
- 4 possession of less than one ounce of marijuana
- 5 (v) violation of subsection b. of N.J.S.2C:24-4 except for
- 6 subparagraph (b) of paragraph (5) of subsection b.
- 7 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),
- 8 leader of firearms trafficking network
- 9 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),
- 10 weapons training for illegal activities
- 11 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),
- 12 terrorism[.]
- 13 (z) violation of section 1 of P.L.2005,c.77 (C.2C:13-8), human
- 14 trafficking[.]
- 15 (aa) violation of subsection c. of N.J.S.2C:24-4 except for
- 16 subparagraph (b) of paragraph (2) of subsection c.
- 17 (2) any conduct defined as "racketeering activity" under Title
- 18 18, U.S.C.s.1961(1)(A), (B) and (D).
- 19 b. "Person" includes any individual or entity or enterprise as
- 20 defined herein holding or capable of holding a legal or beneficial
- 21 interest in property.
- 22 c. "Enterprise" includes any individual, sole proprietorship,
- 23 partnership, corporation, business or charitable trust, association, or
- 24 other legal entity, any union or group of individuals associated in
- 25 fact although not a legal entity, and it includes illicit as well as licit
- 26 enterprises and governmental as well as other entities.
- 27 d. "Pattern of racketeering activity" requires
- 28 (1) Engaging in at least two incidents of racketeering conduct
- 29 one of which shall have occurred after the effective date of this act
- 30 and the last of which shall have occurred within 10 years (excluding
- 31 any period of imprisonment) after a prior incident of racketeering
- 32 activity; and
- 33 (2) A showing that the incidents of racketeering activity
- 34 embrace criminal conduct that has either the same or similar
- 35 purposes, results, participants or victims or methods of commission
- 36 or are otherwise interrelated by distinguishing characteristics and
- 37 are not isolated incidents.
- 38 e. "Unlawful debt" means a debt
- 39 (1) Which was incurred or contracted in gambling activity
- 40 which was in violation of the law of the United States, a state or
- 41 political subdivision thereof; or
- 42 (2) Which is unenforceable under state or federal law in whole
- 43 or in part as to principal or interest because of the laws relating to
- 44 usury.
- 45 f. "Documentary material" includes any book, paper,
- 46 document, writing, drawing, graph, chart, photograph, phonorecord,
- 47 magnetic or recording or video tape, computer printout, other data

1 compilation from which information can be obtained or from which
2 information can be translated into useable form or other tangible
3 item.

4 g. "Attorney General" includes the Attorney General of New
5 Jersey, his assistants and deputies. The term shall also include a
6 county prosecutor or his designated assistant prosecutor if a county
7 prosecutor is expressly authorized in writing by the Attorney
8 General to carry out the powers conferred on the Attorney General
9 by this chapter.

10 h. "Trade or commerce" shall include all economic activity
11 involving or relating to any commodity or service.
12 (cf: P.L.2005, c.77, s.3)

13

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

15 2C:44-1. Criteria for Withholding or Imposing Sentence of
16 Imprisonment. a. In determining the appropriate sentence to be
17 imposed on a person who has been convicted of an offense, the
18 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

38 (7) The defendant committed the offense pursuant to an
39 agreement that he either pay or be paid for the commission of the
40 offense and the pecuniary incentive was beyond that inherent in the
41 offense itself;

42 (8) The defendant committed the offense against a police or
43 other law enforcement officer, correctional employee or fireman,
44 acting in the performance of his duties while in uniform or
45 exhibiting evidence of his authority; the defendant committed the
46 offense because of the status of the victim as a public servant; or the
47 defendant committed the offense against a sports official, athletic

1 coach or manager, acting in or immediately following the
2 performance of his duties or because of the person's status as a
3 sports official, coach or manager;

4 (9) The need for deterring the defendant and others from
5 violating the law;

6 (10) The offense involved fraudulent or deceptive practices
7 committed against any department or division of State government;

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

14 (12) The defendant committed the offense against a person who
15 he knew or should have known was 60 years of age or older, or
16 disabled; and

17 (13) The defendant, while in the course of committing or
18 attempting to commit the crime, including the immediate flight
19 therefrom, used or was in possession of a stolen motor vehicle.

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

23 (1) The defendant's conduct neither caused nor threatened
24 serious harm;

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

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

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

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

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

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

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

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

42 (10) The defendant is particularly likely to respond affirmatively
43 to probationary treatment;

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

46 (12) The willingness of the defendant to cooperate with law
47 enforcement authorities;

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

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

6 (2) When imposing a sentence of imprisonment the court shall
7 consider the defendant's eligibility for release under the law
8 governing parole, including time credits awarded pursuant to Title
9 30 of the Revised Statutes, in determining the appropriate term of
10 imprisonment.

11 d. Presumption of imprisonment. The court shall deal with a
12 person who has been convicted of a crime of the first or second
13 degree by imposing a sentence of imprisonment unless, having
14 regard to the character and condition of the defendant, it is of the
15 opinion that his imprisonment would be a serious injustice which
16 overrides the need to deter such conduct by others. Notwithstanding
17 the provisions of subsection e. of this section, the court shall deal
18 with a person who has been convicted of theft of a motor vehicle or
19 of the unlawful taking of a motor vehicle and who has previously
20 been convicted of either offense by imposing a sentence of
21 imprisonment unless, having regard to the character and condition
22 of the defendant, it is of the opinion that his imprisonment would be
23 a serious injustice which overrides the need to deter such conduct
24 by others.

25 e. The court shall deal with a person convicted of an offense
26 other than a crime of the first or second degree, who has not
27 previously been convicted of an offense, without imposing a
28 sentence of imprisonment unless, having regard to the nature and
29 circumstances of the offense and the history, character and
30 condition of the defendant, it is of the opinion that his imprisonment
31 is necessary for the protection of the public under the criteria set
32 forth in subsection a., except that this subsection shall not apply if
33 the person is convicted of any of the following crimes of the third
34 degree: theft of a motor vehicle; unlawful taking of a motor vehicle;
35 eluding; if the person is convicted of a crime of the third degree
36 constituting use of a false government document in violation of
37 subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the
38 person is convicted of a crime of the third degree constituting
39 distribution, manufacture or possession of an item containing
40 personal identifying information in violation of subsection b. of
41 section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is
42 convicted of a crime of the third or fourth degree constituting bias
43 intimidation in violation of N.J.S.2C:16-1; or if the person is
44 convicted of a crime of the third degree under section 2 of
45 P.L.1997, c.111 (C.2C:12-1.1).

46 f. Presumptive Sentences. (1) Except for the crime of murder,
47 unless the preponderance of aggravating or mitigating factors, as set

1 forth in subsections a. and b., weighs in favor of a higher or lower
2 term within the limits provided in N.J.S.2C:43-6, when a court
3 determines that a sentence of imprisonment is warranted, it shall
4 impose sentence as follows:

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

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

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

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

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

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

18 Unless the preponderance of mitigating factors set forth in
19 subsection b. weighs in favor of a lower term within the limits
20 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
21 presumptive term of life imprisonment. Unless the preponderance
22 of aggravating and mitigating factors set forth in subsections a. and
23 b. weighs in favor of a higher or lower term within the limits
24 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
25 presumptive term of 50 years' imprisonment; sentences imposed
26 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
27 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
28 shall have a presumptive term of seven years' imprisonment.

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

33 (2) In cases of convictions for crimes of the first or second
34 degree where the court is clearly convinced that the mitigating
35 factors substantially outweigh the aggravating factors and where the
36 interest of justice demands, the court may sentence the defendant to
37 a term appropriate to a crime of one degree lower than that of the
38 crime for which he was convicted. If the court does impose
39 sentence pursuant to this paragraph, or if the court imposes a
40 noncustodial or probationary sentence upon conviction for a crime
41 of the first or second degree, such sentence shall not become final
42 for 10 days in order to permit the appeal of such sentence by the
43 prosecution.

44 g. Imposition of Noncustodial Sentences in Certain Cases. If
45 the court, in considering the aggravating factors set forth in
46 subsection a., finds the aggravating factor in paragraph a.(2) or
47 a.(12) and does not impose a custodial sentence, the court shall

1 specifically place on the record the mitigating factors which justify
2 the imposition of a noncustodial sentence.

3 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
4 11), the presumption of imprisonment as provided in subsection d.
5 of this section shall not preclude the admission of a person to the
6 Intensive Supervision Program, established pursuant to the Rules
7 Governing the Courts of the State of New Jersey.
8 (cf: P.L. 2007, c.83, s.3.)
9

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

11 2C:44-6. Procedure on Sentence; Presentence Investigation and
12 Report.

13 a. The court shall not impose sentence without first ordering a
14 presentence investigation of the defendant and according due
15 consideration to a written report of such investigation when
16 required by the Rules of Court. The court may order a presentence
17 investigation in any other case.

18 b. The presentence investigation shall include an analysis of
19 the circumstances attending the commission of the offense, the
20 defendant's history of delinquency or criminality, family situation,
21 financial resources, including whether or not the defendant is an
22 enrollee or covered person under a health insurance contract, policy
23 or plan, debts, including any amount owed for a fine, assessment or
24 restitution ordered in accordance with the provisions of Title 2C,
25 employment history, personal habits, the disposition of any charge
26 made against any codefendants, the defendant's history of civil
27 commitment, any disposition which arose out of charges suspended
28 pursuant to N.J.S.2C:4-6 including the records of the disposition of
29 those charges and any acquittal by reason of insanity pursuant to
30 N.J.S.2C:4-1, and any other matters that the probation officer deems
31 relevant or the court directs to be included. The defendant shall
32 disclose any information concerning any history of civil
33 commitment. The report shall also include a medical history of the
34 defendant and a complete psychological evaluation of the defendant
35 in any case in which the defendant is being sentenced for a first or
36 second degree crime involving violence and:

37 (1) the defendant has a prior acquittal by reason of insanity
38 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
39 N.J.S.2C:4-6; or

40 (2) the defendant has a prior conviction for murder pursuant to
41 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
42 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
43 endangering the welfare of a child which would constitute a crime
44 of the first or second degree pursuant to N.J.S.2C:24-4, or stalking
45 which would constitute a crime of the third degree pursuant to
46 P.L.1992, c.209 (C.2C:12-10); or

47 (3) the defendant has a prior diagnosis of psychosis.

1 The court, in its discretion and considering all the appropriate
2 circumstances, may waive the medical history and psychological
3 examination in any case in which a term of imprisonment including
4 a period of parole ineligibility is imposed. In any case involving a
5 conviction of N.J.S.2C:24-4, endangering the welfare of a child;
6 N.J.S.2C:18-3, criminal trespass, where the trespass was committed
7 in a school building or on school property; section 1 of P.L.1993,
8 c.291 (C.2C:13-6), attempting to lure or entice a child with purpose
9 to commit a criminal offense; section 1 of P.L.1992, c.209
10 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the
11 victim of the offense is a child under the age of 18, the investigation
12 shall include a report on the defendant's mental condition.

13 The presentence report shall also include a report on any
14 compensation paid by the Victims of Crime Compensation Board as
15 a result of the commission of the offense and, in any case where the
16 victim chooses to provide one, a statement by the victim of the
17 offense for which the defendant is being sentenced. The statement
18 may include the nature and extent of any physical harm or
19 psychological or emotional harm or trauma suffered by the victim,
20 the extent of any loss to include loss of earnings or ability to work
21 suffered by the victim and the effect of the crime upon the victim's
22 family. The probation department shall notify the victim or nearest
23 relative of a homicide victim of his right to make a statement for
24 inclusion in the presentence report if the victim or relative so
25 desires. Any such statement shall be made within 20 days of
26 notification by the probation department.

27 The presentence report shall specifically include an assessment
28 of the gravity and seriousness of harm inflicted on the victim,
29 including whether or not the defendant knew or reasonably should
30 have known that the victim of the offense was particularly
31 vulnerable or incapable of resistance due to advanced age,
32 disability, ill-health, or extreme youth, or was for any other reason
33 substantially incapable of exercising normal physical or mental
34 power of resistance.

35 c. If, after the presentence investigation, the court desires
36 additional information concerning an offender convicted of an
37 offense before imposing sentence, it may order any additional
38 psychological or medical testing of the defendant.

39 d. Disclosure of any presentence investigation report or
40 psychiatric examination report shall be in accordance with law and
41 the Rules of Court, except that information concerning the
42 defendant's financial resources shall be made available upon request
43 to the Victims of Crime Compensation Board or to any officer
44 authorized under the provisions of section 3 of P.L.1979, c.396
45 (C.2C:46-4) to collect payment on an assessment, restitution or fine
46 and that information concerning the defendant's coverage under any
47 health insurance contract, policy or plan shall be made available, as

1 appropriate to the Commissioner of the Department of Corrections
2 and to the chief administrative officer of a county jail in accordance
3 with the provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

4 e. The court shall not impose a sentence of imprisonment for
5 an extended term unless the ground therefor has been established at
6 a hearing after the conviction of the defendant and on written notice
7 to him of the ground proposed. The defendant shall have the right
8 to hear and controvert the evidence against him and to offer
9 evidence upon the issue.

10 f. (Deleted by amendment, P.L.1986, c.85).

11 (cf: P.L.1997, c.216, s.2)

12
13 7. N.J.S.2C:47-1 is amended to read as follows:

14 2C:47-1. Referral to Adult Diagnostic and Treatment Center;
15 Commitment; Examination.

16 Whenever a person is convicted of the offense of aggravated
17 sexual assault, sexual assault, aggravated criminal sexual contact,
18 kidnapping pursuant to paragraph (2) of subsection c. of
19 N.J.S.2C:13-1, luring or enticing pursuant to P.L.1993, c.291
20 (C.2C:13-6), endangering the welfare of a child by engaging in
21 sexual conduct which would impair or debauch the morals of the
22 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
23 welfare of a child pursuant to paragraph (3), paragraph (4) or
24 subparagraph (a) of paragraph (5) of subsection b. or paragraph (1)
25 or subparagraph (a) of paragraph (2) of subsection c. of
26 N.J.S.2C:24-4, or an attempt to commit any such crime, the judge
27 shall order the Department of Corrections to complete a
28 psychological examination of the offender, except the judge shall
29 not require a psychological examination if the offender is to be
30 sentenced to a term of life imprisonment without eligibility for
31 parole. The examination shall include a determination of whether
32 the offender's conduct was characterized by a pattern of repetitive,
33 compulsive behavior and, if it was, a further determination of the
34 offender's amenability to sex offender treatment and willingness to
35 participate in such treatment. The court's order shall contain a
36 determination of the offender's legal settlement in accordance with
37 subdivision D of article 3 of chapter 4 of Title 30 of the Revised
38 Statutes.

39 (cf: P.L.1998, c.72, s.1)

40
41 8. N.J.S.2C:52-2 is amended to read as follows:

42 2C:52-2. Indictable Offenses. a. In all cases, except as herein
43 provided, wherein a person has been convicted of a crime under the
44 laws of this State and who has not been convicted of any prior or
45 subsequent crime, whether within this State or any other
46 jurisdiction, and has not been adjudged a disorderly person or petty
47 disorderly person on more than two occasions may, after the

1 expiration of a period of 10 years from the date of his conviction,
2 payment of fine, satisfactory completion of probation or parole, or
3 release from incarceration, whichever is later, present a duly
4 verified petition as provided in **[section]** N.J.S.2C:52-7 to the
5 Superior Court in the county in which the conviction was entered
6 praying that such conviction and all records and information
7 pertaining thereto be expunged.

8 Although subsequent convictions for no more than two
9 disorderly or petty disorderly offenses shall not be an absolute bar
10 to relief, the nature of those conviction or convictions and the
11 circumstances surrounding them shall be considered by the court
12 and may be a basis for denial of relief if they or either of them
13 constitute a continuation of the type of unlawful activity embodied
14 in the criminal conviction for which expungement is sought.

15 b. Records of conviction pursuant to statutes repealed by this
16 Code for the crimes of murder, manslaughter, treason, anarchy,
17 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
18 robbery, embracery, or a conspiracy or any attempt to commit any
19 of the foregoing, or aiding, assisting or concealing persons accused
20 of the foregoing crimes, shall not be expunged.

21 Records of conviction for the following crimes specified in the
22 New Jersey Code of Criminal Justice shall not be subject to
23 expungement: **[Section]** N.J.S.2C:11-1 et seq. (Criminal
24 Homicide), except death by auto as specified in **[section]** N.J.S.
25 2C:11-5; **[section]** N.J.S.2C:13-1 (Kidnapping); **[section]**
26 P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); **[section]** N.J.S.
27 2C:14-2 (Aggravated Sexual Assault); **[section 2C:14-3a]**
28 subsection a. of N.J.S.2C:14-3 (Aggravated Criminal Sexual
29 Contact); if the victim is a minor, **[section 2C:14-3b]** subsection b.
30 of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor
31 and the offender is not the parent of the victim, **[section]**
32 N.J.S.2C:13-2 (Criminal Restraint) or section 2C:13-3 (False
33 Imprisonment); section 2C:15-1 (Robbery); section 2C:17-1 (Arson
34 and Related Offenses); **[section 2C:24-4a]** subsection a. of
35 N.J.S.2C:24-4; (Endangering the welfare of a child by engaging in
36 sexual conduct which would impair or debauch the morals of the
37 child); **[section 2C:24-4b(4)]** paragraphs (3) or (4) of subsection b.
38 or paragraph (1) of subsection c. of N.J.S.2C:24-4 (Endangering the
39 welfare of a child); **[section]** N.J.S.2C:28-1 (Perjury); **[section]**
40 N.J.S.2C:28-2 (False Swearing) and conspiracies or attempts to
41 commit such crimes.

42 Records of conviction for any crime committed by a person
43 holding any public office, position or employment, elective or
44 appointive, under the government of this State or any agency or
45 political subdivision thereof and any conspiracy or attempt to

1 commit such a crime shall not be subject to expungement if the
2 crime involved or touched such office, position or employment.

3 c. In the case of conviction for the sale or distribution of a
4 controlled dangerous substance or possession thereof with intent to
5 sell, expungement shall be denied except where the crimes relate to:

6 (1) Marijuana, where the total quantity sold, distributed or
7 possessed with intent to sell was 25 grams or less, or

8 (2) Hashish, where the total quantity sold, distributed or
9 possessed with intent to sell was five grams or less.

10 d. In the case of a State licensed physician or podiatrist
11 convicted of an offense involving drugs or alcohol or pursuant to
12 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
13 court shall notify the State Board of Medical Examiners upon
14 receipt of a petition for expungement of the conviction and records
15 and information pertaining thereto.

16 (cf: P.L.1994, c.133, s.6)

17

18 9. Section 1 of P.L.1998, c.68 (C.30:4-91.8) is amended to read
19 as follows:

20 1. a. Whenever an inmate who has been convicted of murder;
21 manslaughter; vehicular homicide; aggravated sexual assault; sexual
22 assault; aggravated assault; aggravated criminal sexual contact;
23 robbery; kidnapping pursuant to paragraph (2) of subsection c. of
24 N.J.S.2C:13-1; endangering the welfare of a child by engaging in
25 sexual conduct which would impair or debauch the morals of the
26 child pursuant to subsection a. of N.J.S.2C:24-4; endangering the
27 welfare of a child pursuant to paragraph (3) or paragraph (4) of
28 subsection b. or paragraph (1) of subsection c. of N.J.S.2C:24-4;
29 luring or enticing pursuant to section 1 of P.L.1993, c.291
30 (C.2C:13-6); or any crime of the first or second degree involving
31 serious bodily injury is subject to a review by an Institutional
32 Classification Committee which may result in participation in any
33 residential community release program, the Department of
34 Corrections shall provide written notice of that review in
35 accordance with the provisions of subsection b. of this section.

36 b. (1) Upon the scheduling of a review subject to the
37 notification requirement of this section, the Department of
38 Corrections shall so notify the prosecutor of the county in which the
39 inmate was convicted or, if the matter was prosecuted by the
40 Attorney General, the Attorney General.

41 Upon receipt of such notice, the county prosecutor or Attorney
42 General, as the case may be, shall have 10 working days in which to
43 submit comments. If the county prosecutor or Attorney General
44 does not provide comments within those 10 working days, the
45 Department of Corrections may presume that the prosecutor or
46 Attorney General, as the case may be, does not wish to submit any

1 comments on the matter. The notice shall include the inmate's
2 name, identifying factors and offense history.

3 (2) Immediately upon receipt of such notice, the county
4 prosecutor or Attorney General in accordance with the provisions of
5 paragraph (1) of this subsection shall notify the Office of Victim
6 and Witness Advocacy of the county in which the inmate was
7 convicted and that office shall use any reasonable means available
8 to it to give notice within 10 working days to the victim of the
9 crime or the victim's nearest relative if the crime resulted in death.

10 The notice required under this paragraph shall be given only if a
11 request for such notification has been made by the victim or the
12 victim's nearest relative, as the case may be, to the county
13 prosecutor or Attorney General, as the case may be, at the time the
14 inmate was sentenced.

15 Upon receipt of such notice, the victim or the victim's nearest
16 relative, as the case may be, shall have 10 working days in which to
17 submit comments. If the victim or the victim's nearest relative, as
18 the case may be, does not provide comments within those 10
19 working days, the Department of Corrections may presume that the
20 victim or victim's nearest relative, as the case may be, does not wish
21 to submit any comments on the matter.

22 (3) Any comments provided pursuant to paragraph (1) or (2) of
23 this subsection shall be in writing and shall be delivered to the
24 Department of Corrections.

25 Comments submitted pursuant to this subsection shall be deemed
26 confidential and shall not be disclosed to any person who is not
27 authorized to receive or review them.

28 c. Whenever the Department of Corrections receives comments
29 from a prosecutor or the Attorney General, as the case may be, or
30 from a victim or a victim's nearest relative, as the case may be,
31 concerning the participation of an inmate in accordance with this
32 act, it shall give all due consideration to the information contained
33 in those comments when considering the participation of that
34 inmate.

35 d. The Commissioner of Corrections, in accordance with the
36 provisions of the "Administrative Procedure Act," P.L.1968, c.410
37 (C.52:14B-1 et seq.), may promulgate rules and regulations to
38 effectuate the provisions of this act.
39 (cf: P.L.1998, c.68, s.1)

40

41 10. Section 1 of P.L.1994, c.135 (C.30:4-123.53a) is amended
42 to read as follows:

43 1. a. As used in this act: "Prosecutor" means the county
44 prosecutor of the county in which the defendant was convicted
45 unless the matter was prosecuted by the Attorney General, in which
46 case "prosecutor" means the Attorney General.

1 "Office of Victim Witness Advocacy" means the Office of
2 Victim Witness Advocacy of the county in which the defendant was
3 convicted.

4 b. Notwithstanding any other provision of law to the contrary,
5 the State shall provide written notice to the prosecutor of the
6 anticipated release from incarceration in a county or State penal
7 institution or the Adult Diagnostic and Treatment Center of a
8 person convicted of murder; manslaughter; aggravated sexual
9 assault; sexual assault; aggravated assault; aggravated criminal
10 sexual contact; kidnapping pursuant to paragraph (2) of subsection
11 c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging
12 in sexual conduct which would impair or debauch the morals of the
13 child pursuant to subsection a. of N.J.S.2C:24-4; endangering the
14 welfare of a child pursuant to paragraph (3) or paragraph (4) of
15 subsection b. or paragraph (1) of subsection c. of N.J.S.2C:24-4;
16 luring or enticing pursuant to section 1 of P.L.1993, c.291
17 (C.2C:13-6); any other offense involving serious bodily injury or an
18 attempt to commit any of the aforementioned offenses. In cases
19 involving a release on parole, the State Parole Board shall provide
20 the notice required by this subsection. In all other cases, including
21 but not limited to release upon expiration of sentence or release
22 from incarceration due to a change in sentence, the Department of
23 Corrections shall provide the notice required by this subsection.

24 c. Notwithstanding any other provision of law to the contrary,
25 the Juvenile Justice Commission established pursuant to section 2
26 of P.L.1995, c.284 (C.52:17B-170) shall provide written notice to
27 the prosecutor of the anticipated release from incarceration of a
28 juvenile adjudicated delinquent on the basis of an offense which, if
29 committed by an adult, would constitute murder; manslaughter;
30 aggravated sexual assault; sexual assault; aggravated assault;
31 aggravated criminal sexual contact; kidnapping pursuant to
32 paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the
33 welfare of a child by engaging in sexual conduct which would
34 impair or debauch the morals of the child pursuant to subsection a.
35 of N.J.S.2C:24-4; endangering the welfare of a child pursuant to
36 paragraph (3) or paragraph (4) of subsection b. or paragraph (1) of
37 subsection c. of N.J.S.2C:24-4; luring or enticing pursuant to
38 section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense
39 involving serious bodily injury or an attempt to commit any of the
40 aforementioned offenses.

41 d. If available, the notice shall be provided to the prosecutor 90
42 days before the inmate's anticipated release; provided however, the
43 notice shall be provided at least 30 days before release. The notice
44 shall include the person's name, identifying factors, offense history,
45 and anticipated future residence. The prosecutor shall notify the
46 Office of Victim and Witness Advocacy and that office shall use
47 any reasonable means available to them to notify the victim of the

1 anticipated release unless the victim has requested not to be
2 notified.

3 e. Upon receipt of notice, the prosecutor shall provide notice to
4 the law enforcement agency responsible for the municipality where
5 the inmate will reside, the municipality in which any victim resides,
6 and such other State and local law enforcement agencies as
7 appropriate for public safety.
8 (cf: P.L.2001, c.79, s.8)
9

10 11. Section 10 of P.L.1979, c.441 (C.30:4-123.54) is amended to
11 read as follows:

12 10. a. At least 120 days but not more than 180 days prior to the
13 parole eligibility date of each adult inmate, a report concerning the
14 inmate shall be filed with the appropriate board panel, by the staff
15 members designated by the superintendent or other chief executive
16 officer of the institution in which the inmate is held.

17 b. (1) The report filed pursuant to subsection a. shall contain
18 preincarceration records of the inmate, including any history of civil
19 commitment, any disposition which arose out of any charges
20 suspended pursuant to N.J.S.2C:4-6 including records of the
21 disposition of those charges and any acquittals by reason of insanity
22 pursuant to N.J.S.2C:4-1, state the conduct of the inmate during the
23 current period of confinement, include a complete report on the
24 inmate's social and physical condition, include an investigation by
25 the Division of Parole of the inmate's parole plans, and present
26 information bearing upon the likelihood that the inmate will commit
27 a crime under the laws of this State if released on parole. The
28 report shall also include a complete psychological evaluation of the
29 inmate in any case in which the inmate was convicted of a first or
30 second degree crime involving violence and:

31 (a) the inmate has a prior acquittal by reason of insanity
32 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
33 N.J.S.2C:4-6; or

34 (b) the inmate has a prior conviction for murder pursuant to
35 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
36 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
37 endangering the welfare of a child which would constitute a crime
38 of the first or second degree pursuant to N.J.S.2C:24-4, or stalking
39 which would constitute a crime of the third degree pursuant to
40 P.L.1992, c.209 (C.2C:12-10); or

41 (c) the inmate has a prior diagnosis of psychosis.

42 The inmate shall disclose any information concerning any history
43 of civil commitment.

44 The preincarceration records of the inmate contained in the
45 report shall include any psychological reports prepared in
46 connection with any court proceedings.

1 (2) At the time of sentencing, the prosecutor shall notify any
2 victim injured as a result of a crime of the first or second degree or
3 the nearest relative of a murder victim of the opportunity to present
4 a written or videotaped statement for the parole report to be
5 considered at the parole hearing or to testify to the parole board
6 concerning his harm at the time of the parole hearing. Each victim
7 or relative shall be responsible for notifying the board of his
8 intention to submit such a statement and to provide an appropriate
9 mailing address.

10 The report may include a written or videotaped statement
11 concerning the continuing nature and extent of any physical harm or
12 psychological or emotional harm or trauma suffered by the victim,
13 the extent of any loss of earnings or ability to work suffered by the
14 victim and the continuing effect of the crime upon the victim's
15 family. At the time public notice is given that an inmate is being
16 considered for parole pursuant to this section, the board shall also
17 notify any victim or nearest relative who has previously contacted
18 the board of the availability to provide a written or videotaped
19 statement for inclusion in the parole report or to present testimony
20 at the parole hearing.

21 The board shall notify such person at his last known mailing
22 address.

23 c. A copy of the report filed pursuant to subsection a. of this
24 section, excepting those documents which have been classified as
25 confidential pursuant to rules and regulations of the board or the
26 Department of Corrections, shall be served on the inmate at the time
27 it is filed with the board panel. The inmate may file with the board
28 panel a written statement regarding the report, but shall do so within
29 105 days prior to the primary parole eligibility date.

30 d. Upon receipt of the public notice pursuant to section 1 of
31 P.L.1979, c.441 (C.30:4-123.45), a county prosecutor may request
32 from the parole board a copy of the report on any adult inmate
33 prepared pursuant to subsection a. of this section, which shall be
34 expeditiously forwarded to the county prosecutor by the parole
35 board by mail, courier, or other means of delivery. Upon receipt of
36 the report, the prosecutor has 10 working days to review the report
37 and notify the parole board of the prosecutor's comments, if any, or
38 notify the parole board of the prosecutor's intent to provide
39 comments. If the county prosecutor does not provide comments or
40 notify the parole board of the prosecutor's intent to provide
41 comments within the 10 working days, the parole board may
42 presume that the prosecutor does not wish to provide comments and
43 may proceed with the parole consideration. Any comments
44 provided by a county prosecutor shall be delivered to the parole
45 board by the same method by which the county prosecutor received
46 the report. The confidentiality of the contents in a report which are
47 classified as confidential shall be maintained and shall not be

disclosed to any person who is not authorized to receive or review a copy of the report containing the confidential information.

e. Any provision of this section to the contrary notwithstanding, the board shall by rule or regulation modify the scope of the required reports and time periods for rendering such reports with reference to county penal institutions.

f. Notwithstanding any provision of this section, the board may modify the time periods for submitting the reports required pursuant to this section in processing an inmate whose parole eligibility date is accelerated pursuant to section 11 of P.L.1979, c.441 (C.30:4-123.55).

(cf: P.L.2001, c.141, s.3)

12. This act shall take effect immediately.

STATEMENT

This bill revises the State's laws governing child pornography.

The bill modifies subsection b. of N.J.S.2C:24-4, concerning "real" child pornography to include:

(1) upgrading to a first degree crime for all persons, not just parents and guardians, causing or permitting a child to engage in or simulation of a prohibited sexual act knowing that the act would be photographed or reproduced;

(2) explicitly stating that an intent to distribute, advertise, offer or agree to offer is not an element of creating or reproducing child pornography and clarifying that the elements of this offense include producing, creating, copying or duplicating images of child pornography, or posting those images on the Internet;

(3) clarifying that possessing child pornography for the purpose of distributing it is a second degree crime and streamlining the definition of "distribute";

(4) upgrading possession of child pornography to a crime of the third degree; and

(5) establishing a rebuttable presumption that a person appearing to be a child in a photo, video, or computer file, is in fact an actual child;

(6) requiring defendants who intend to defend a charge of child pornography by claiming that it was created without using an actual child, or the face or any of the intimate parts of an actual child, or depicts the image of a person who is not a child, to notify the prosecutor of that claim in accordance with the Rules of Court; and

(7) allowing the admissibility of hearsay evidence to be used to establish the existence, identity and age of an actual child depicted in child pornography.

1 The bill also adds a new subsection c. to N.J.S.2C:24-4 to
2 establish the crime of “virtual” child pornography, the provisions of
3 which parallel the provisions of subsection b. concerning “real”
4 child pornography. This new subsection:

5 (1) makes it a crime of the second degree to use any device,
6 including a computer, to produce, create, or reproduce an image
7 which appears to depict a child in a obscene prohibited sexual act or
8 in a simulation of such an act;

9 (2) makes it a crime of the second degree to knowingly
10 distribute obscene virtual child pornography;

11 (3) makes it a crime of the third degree to knowingly possess
12 obscene virtual child pornography;

13 (4) defines an “obscene” depiction to be one in which: a sexual
14 act is patently offensive; lacks serious literary, artistic, political or
15 scientific value when taken as a whole; and is part of a work which,
16 taken as a whole in light of contemporary community standards,
17 appeals to the prurient interest; and

18 (5) specifies that when virtual child pornography is obscene, the
19 defendant is strictly liable;

20 Other provisions of the bill: require defendants to be reviewed
21 for referral to the Adult Diagnostic and Treatment Center if
22 convicted of certain real and virtual child pornography crimes;
23 prohibit expungement of criminal records; provide for notification
24 to the prosecuting agency and victim when a defendant is placed in
25 a community release program or released from incarceration; and
26 require certain repeat offender’s presentence and parole eligibility
27 report to include a complete psychological evaluation for repeat
28 offenders. The bill also eliminates the presumption of
29 nonincarceration, normally applicable to third degree crimes, for the
30 crime of possessing real or virtual child pornography.

31 The bill includes a fixed mandatory minimum term of
32 imprisonment for certain recidivists who violate N.J.S.2C:24-4.
33 Defendants convicted of engaging in sexual conduct which would
34 impair or debauch the morals of a child in violation of subsection a.
35 of N.J.S.2C:24-4 or of child pornography crimes under subsection
36 b. or c. of N.J.S.2C:24-4 must be sentenced to prison and serve
37 one-third to one-half of their sentences before being eligible for
38 parole if they have previously been convicted of other sex crimes
39 including luring or enticing a child, sexual assault, aggravated
40 criminal sexual contact, or child endangerment. The bill also makes
41 a prior conviction under N.J.S.2C:24-4 the basis for a mandatory
42 minimum term of imprisonment pursuant to N.J.S.2C:14-6, and
43 provides that the minimum term must be imposed regardless of
44 whether the defendant is sentenced to an extended term of
45 imprisonment.

46 Finally, the bill amends various other statutes to ensure that
47 virtual child pornographers are subject to the same penalties as real

1 child pornographers. Thus, wherever a statute specifically refers to
2 a provision of subsection b. of N.J.S.2C:24-4, this bill adds
3 subsection c. to the statute.