

**SENATE, No. 1429**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MARCH 29, 2004

**Sponsored by:**

**Senator PAUL SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**SYNOPSIS**

Makes it a crime to lure or entice another for the purpose of committing a crime via electronic or any other means including the Internet; adds as an aggravating factor that the defendant used the Internet to commit the crime.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/7/2004)**

1 AN ACT concerning luring or enticing another, amending N.J.S.  
2 2C:44-1 and supplementing Title 2C of the New Jersey Statutes.

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

6  
7 1. (New section) A person commits a crime of the third degree if  
8 he attempts, via electronic or any other means, to lure or entice  
9 another person to meet or appear at any place, with a purpose to  
10 commit a criminal offense against any person.

11 "Electronic means" as used in this section includes, but is not  
12 limited to, the Internet. "Internet" means the international computer  
13 network of both federal and non-federal interoperable packet switched  
14 data networks.

15 Notwithstanding the provisions of N.J.S.2C:1-8 or any other law,  
16 a conviction under this section shall not merge with a conviction of  
17 any other criminal offense, nor shall such other conviction merge with  
18 a conviction under this section, and the court shall impose separate  
19 sentences upon each violation of this section and any other criminal  
20 offense. The court may not suspend or make any other non-custodial  
21 disposition of any person sentenced pursuant to this section.

22 Nothing in this act shall preclude an indictment and conviction for  
23 any other offense defined by the laws of this State.

24  
25 2. N.J.S. 2C:44-1 is amended to read as follows:

26 2C:44-1. Criteria for Withholding or Imposing Sentence of  
27 Imprisonment. a. In determining the appropriate sentence to be  
28 imposed on a person who has been convicted of an offense, the court  
29 shall consider the following aggravating circumstances:

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

33 (2) The gravity and seriousness of harm inflicted on the victim,  
34 including whether or not the defendant knew or reasonably should  
35 have known that the victim of the offense was particularly vulnerable  
36 or incapable of resistance due to advanced age, ill-health, or extreme  
37 youth, or was for any other reason substantially incapable of exercising  
38 normal physical or mental power of resistance;

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

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

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

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

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

8 (8) The defendant committed the offense against a police or other  
9 law enforcement officer, correctional employee or fireman, acting in  
10 the performance of his duties while in uniform or exhibiting evidence  
11 of his authority; the defendant committed the offense because of the  
12 status of the victim as a public servant; or the defendant committed the  
13 offense against a sports official, athletic coach or manager, acting in  
14 or immediately following the performance of his duties or because of  
15 the person's status as a sports official, coach or manager;

16 (9) The need for deterring the defendant and others from violating  
17 the law;

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

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

25 (12) The defendant committed the offense against a person who he  
26 knew or should have known was 60 years of age or older, or disabled;  
27 [and]

28 (13) The defendant, while in the course of committing or attempting  
29 to commit the crime, including the immediate flight therefrom, used or  
30 was in possession of a stolen motor vehicle; and

31 (14) The defendant, by electronic or other means, including the  
32 Internet, committed the offense against a person.

33 As used in this paragraph, "electronic means" includes, but is not  
34 limited to, the Internet. "Internet" means the international computer  
35 network of both federal and non-federal interoperable packet switched  
36 data networks.

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

40 (1) The defendant's conduct neither caused nor threatened serious  
41 harm;

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

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

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

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

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

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

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

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

13 (10) The defendant is particularly likely to respond affirmatively to  
14 probationary treatment;

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

17 (12) The willingness of the defendant to cooperate with law  
18 enforcement authorities;

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

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

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

27 d. Presumption of imprisonment. The court shall deal with a  
28 person who has been convicted of a crime of the first or second degree  
29 by imposing a sentence of imprisonment unless, having regard to the  
30 character and condition of the defendant, it is of the opinion that his  
31 imprisonment would be a serious injustice which overrides the need to  
32 deter such conduct by others. Notwithstanding the provisions of  
33 subsection e. of this section, the court shall deal with a person who has  
34 been convicted of theft of a motor vehicle or of the unlawful taking of  
35 a motor vehicle and who has previously been convicted of either  
36 offense by imposing a sentence of imprisonment unless, having regard  
37 to the character and condition of the defendant, it is of the opinion that  
38 his imprisonment would be a serious injustice which overrides the need  
39 to deter such conduct by others.

40 e. The court shall deal with a person convicted of an offense other  
41 than a crime of the first or second degree, who has not previously been  
42 convicted of an offense, without imposing a sentence of imprisonment  
43 unless, having regard to the nature and circumstances of the offense  
44 and the history, character and condition of the defendant, it is of the  
45 opinion that his imprisonment is necessary for the protection of the  
46 public under the criteria set forth in subsection a., except that this

1 subsection shall not apply if the person is convicted of any of the  
2 following crimes of the third degree: theft of a motor vehicle; unlawful  
3 taking of a motor vehicle; eluding; if the person is convicted of a crime  
4 of the third degree constituting use of a false government document  
5 in violation of subsection c. of section 1 of P.L.1983, c.565  
6 (C.2C:21-2.1); if the person is convicted of a crime of the third degree  
7 constituting distribution, manufacture or possession of an item  
8 containing personal identifying information in violation of subsection  
9 b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); or if the person is  
10 convicted of a crime of the third or fourth degree constituting bias  
11 intimidation in violation of N.J.S.2C:16-1; or if the person is convicted  
12 of a crime of the third or fourth degree under the provisions of section  
13 1 or 2 of P.L.1997, c.111 (C.2C:11-5.1 or 2C:12-1.1).

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

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

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

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

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

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

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

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

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

45 (2) In cases of convictions for crimes of the first or second degree  
46 where the court is clearly convinced that the mitigating factors

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

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

15 h. Except as provided in section 2 of P.L.1993, c.123  
16 (C.2C:43-11), the presumption of imprisonment as provided in  
17 subsection d. of this section shall not preclude the admission of a  
18 person to the Intensive Supervision Program, established pursuant to  
19 the Rules Governing the Courts of the State of New Jersey.

20 (cf: P.L.2003, c.184, s.4).

21  
22 3. This act shall take effect immediately .

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25 STATEMENT

26  
27 This bill would make it a crime of the third degree for a person to  
28 attempt, via electronic or any other means, to lure or entice another  
29 person to meet or appear at any place, with a purpose to commit a  
30 criminal offense against any person. In addition, the bill would add, as  
31 another aggravating factor for the court to consider in determining a  
32 sentence, whether the defendant used the Internet to commit the  
33 offense.

34 This bill was prompted by a case in Wood-Ridge where prosecutors  
35 say that a woman was menaced by a stranger who parked his van near  
36 her home, leered at her and frightened her into calling the police. The  
37 man had allegedly intended to commit a sexual assault against her after  
38 being enticed into coming to her home by a message he thought she  
39 had posted in an Internet chat room. In actuality the message had not  
40 been posted by the woman, who knew nothing about it, but according  
41 to prosecutors, had been posted by Jonathan Gilberti, who had posed  
42 as the woman in the chat room. Mr. Gilberti had allegedly posted the  
43 woman's name, address, physical description and the hours she would  
44 likely be home alone, saying that "she" was inviting men to come to  
45 her home to rape her.