

SENATE, No. 3219

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 18, 2017

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Senator JAMES W. HOLZAPFEL

District 10 (Ocean)

SYNOPSIS

Establishes additional penalties related to child pornography and expands crime to include portrayal of child in sexual manner; establishes crime of leader of child pornography network.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the sexual exploitation of children, amending
2 various parts of the statutory law, and supplementing Title 2C of
3 the New Jersey Statutes.

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

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

9 2C:24-4. Endangering Welfare of Children.

10 a. (1) Any person having a legal duty for the care of a child or
11 who has assumed responsibility for the care of a child who engages
12 in sexual conduct which would impair or debauch the morals of the
13 child is guilty of a crime of the second degree. Any other person
14 who engages in conduct or who causes harm as described in this
15 paragraph to a child is guilty of a crime of the third degree.

16 (2) Any person having a legal duty for the care of a child or who
17 has assumed responsibility for the care of a child who causes the
18 child harm that would make the child an abused or neglected child
19 as defined in R.S.9:6-1, R.S.9:6-3, and section 1 of P.L.1974,
20 c.119**], s.1** (C.9:6-8.21) is guilty of a crime of the second degree.
21 Any other person who engages in conduct or who causes harm as
22 described in this paragraph to a child is guilty of a crime of the third
23 degree.

24 b. (1) As used in this subsection:

25 "Child" means any person under 18 years of age.

26 "Distribute" means to sell, or to manufacture, give, provide, lend,
27 trade, mail, deliver, publish, circulate, disseminate, present, exhibit,
28 display, share, advertise, offer, or make available via the Internet or
29 by any other means, whether for pecuniary gain or not. The term
30 also includes an agreement or attempt to distribute.

31 "File-sharing program" means a computer program, application,
32 software or operating system that allows the user of a computer on
33 which such program, application, software or operating system is
34 installed to designate files as available for searching by and copying
35 to one or more other computers, to transmit such designated files
36 directly to one or more other computers, and to request the
37 transmission of such designated files directly from one or more
38 other computers. The term "file-sharing program" includes but is
39 not limited to a computer program, application or software that
40 enables a computer user to participate in a peer-to-peer network.

41 "Internet" means the international computer network of both
42 federal and non-federal interoperable packet switched data
43 networks.

44 "Item depicting the sexual exploitation or abuse of a child"
45 means a photograph, film, video, an electronic, electromagnetic or

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 digital recording, an image stored or maintained in a computer
2 program or file or in a portion of a file, or any other reproduction or
3 reconstruction which ;

4 (a) depicts a child engaging in a prohibited sexual act or in the
5 simulation of such an act; or

6 (b) portrays a child in a sexually suggestive manner.

7 "Peer-to-peer network" means a connection of computer systems
8 through which files are shared directly between the systems on a
9 network without the need of a central server.

10 "Portray a child in a sexually suggestive manner" means: (a) to
11 depict a child's less than completely and opaquely covered intimate
12 parts, as defined in N.J.S.2C:14-1, or any form of contact with the
13 intimate parts in a manner that, by means of the posing,
14 composition, format, or animated sensual details, emits sensuality
15 with sufficient impact to concentrate prurient interest on the child;
16 or (b) to otherwise depict a child for the purpose of sexual
17 stimulation or gratification of any person who may view the
18 depiction where the depiction does not have serious literary, artistic,
19 political, or scientific value.

20 "Prohibited sexual act" means

21 (a) Sexual intercourse; or

22 (b) Anal intercourse; or

23 (c) Masturbation; or

24 (d) Bestiality; or

25 (e) Sadism; or

26 (f) Masochism; or

27 (g) Fellatio; or

28 (h) Cunnilingus; or

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

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

33 "Reproduction" means, but is not limited to, computer generated
34 images.

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

36 (3) A person commits a crime of the first degree if he causes or
37 permits a child to engage in a prohibited sexual act or in the
38 simulation of such an act or to be portrayed in a sexually suggestive
39 manner if the person knows, has reason to know or intends that the
40 prohibited act or portrayal may be photographed, filmed,
41 reproduced, or reconstructed in any manner, including on the
42 Internet, or may be part of an exhibition or performance.

43 (4) A person commits a crime of the second degree if he
44 photographs or films a child in a prohibited sexual act or in the
45 simulation of such an act or for portrayal in a sexually suggestive
46 manner or who uses any device, including a computer, to reproduce
47 or reconstruct the image of a child in a prohibited sexual act or in

1 the simulation of such an act or for portrayal in a sexually
2 suggestive manner.

3 (5) (a) A person commits a crime **【of the second degree】** if, by
4 any means, including but not limited to the Internet, he:

5 (i) knowingly distributes an item depicting the sexual
6 exploitation or abuse of a child;

7 (ii) knowingly possesses an item depicting the sexual
8 exploitation or abuse of a child with the intent to distribute that
9 item; or

10 (iii) knowingly stores or maintains an item depicting the sexual
11 exploitation or abuse of a child using a file-sharing program which
12 is designated as available for searching by or copying to one or
13 more other computers.

14 In a prosecution under sub-subparagraph (iii) of this
15 subparagraph, the State shall not be required to offer proof that an
16 item depicting the sexual exploitation or abuse of a child had
17 actually been searched, copied, transmitted or viewed by another
18 user of the file-sharing program, or by any other person, and it shall
19 be no defense that the defendant did not intend to distribute the item
20 to another user of the file-sharing program or to any other person.
21 Nor shall the State be required to prove that the defendant was
22 aware that the item depicting the sexual exploitation or abuse of a
23 child was available for searching or copying to one or more other
24 computers, and the defendant shall be strictly liable for failing to
25 designate the item as not available for searching or copying by one
26 or more other computers.

27 A violation of this subparagraph that involves 1,000 or more
28 items depicting the sexual exploitation or abuse of a child is a crime
29 of the first degree; otherwise it is a crime of the second degree.

30 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
31 6, a person whose offense under this subparagraph involved at least
32 25 【or more】 but less than 1,000 items depicting the sexual
33 exploitation or abuse of a child shall be sentenced to a mandatory
34 minimum term of imprisonment, which shall be fixed at, or
35 between, one-third and one-half of the sentence imposed by the
36 court or five years, whichever is greater, during which the
37 defendant shall be ineligible for parole.

38 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
39 6, a person whose offense under this subparagraph involved 1,000
40 or more items depicting the sexual exploitation or abuse of a child
41 shall be sentenced to a mandatory minimum term of imprisonment,
42 which shall be fixed at, or between, one-third and one-half of the
43 sentence imposed by the court or 10 years, whichever is greater,
44 during which the defendant shall be ineligible for parole.

45 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
46 6, a person convicted of a second or subsequent offense under this
47 subparagraph shall be sentenced to an extended term of
48 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this

1 subparagraph, an offense is considered a second or subsequent
2 offense if the actor has at any time been convicted pursuant to
3 paragraph (3), (4), or (5) of this subsection, or under any similar
4 statute of the United States, this State, or any other state for an
5 offense that is substantially equivalent to paragraph (3), (4), or (5)
6 of this subsection.

7 For purposes of this subparagraph, the term "possess" includes
8 receiving, viewing, or having under one's control, through any
9 means, including the Internet.

10 (b) (i) A person commits a crime of the first degree if he
11 knowingly possesses, knowingly views, or knowingly has under his
12 control, through any means, including the Internet, 100,000 or more
13 items depicting the sexual exploitation or abuse of a child.

14 (ii) A person commits a crime of the second degree if he
15 knowingly possesses, knowingly views, or knowingly has under his
16 control, through any means, including the Internet, at least 1,000
17 but less than 100,000 items depicting the sexual exploitation or
18 abuse of a child.

19 (iii) A person commits a crime of the third degree if he
20 knowingly possesses, knowingly views, or knowingly has under his
21 control, through any means, including the Internet, [an item] less
22 than 1,000 items depicting the sexual exploitation or abuse of a
23 child.

24 Notwithstanding the provisions of subsection e. of N.J.S.2C:44-
25 1, in any instance where a person was convicted of an offense under
26 this subparagraph that involved 100 or more items depicting the
27 sexual exploitation or abuse of a child, the court shall impose a
28 sentence of imprisonment unless, having regard to the character and
29 condition of the defendant, it is of the opinion that imprisonment
30 would be a serious injustice which overrides the need to deter such
31 conduct by others.

32 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-
33 6, a person convicted of a second or subsequent offense under this
34 subparagraph shall be sentenced to an extended term of
35 imprisonment as set forth in N.J.S.2C:43-7. For the purposes of this
36 subparagraph, an offense is considered a second or subsequent
37 offense if the actor has at any time been convicted pursuant to
38 paragraph (3), (4), or (5) of this subsection, or under any similar
39 statute of the United States, this State, or any other state for an
40 offense that is substantially equivalent to paragraph (3), (4), or (5)
41 of this subsection.

42 Nothing in this subparagraph shall be construed to preclude or
43 limit any prosecution or conviction for the offense set forth in
44 subparagraph (a) of this paragraph.

45 (6) For purposes of this subsection, a person who is depicted as
46 or presents the appearance of being under the age of 18 in any
47 photograph, film, videotape, computer program or file, video game,
48 or any other reproduction or reconstruction shall be rebuttably

1 presumed to be under the age of 18. If the child who is depicted as
2 engaging in, or who is caused to engage in, a prohibited sexual act
3 or simulation of a prohibited sexual act or portrayed in a sexually
4 suggestive manner is under the age of 18, the actor shall be strictly
5 liable and it shall not be a defense that the actor did not know that
6 the child was under the age of 18, nor shall it be a defense that the
7 actor believed that the child was 18 years of age or older, even if
8 such a mistaken belief was reasonable.

9 (7) For aggregation purposes, each depiction of the sexual
10 exploitation or abuse of a child shall be considered a separate item,
11 provided that each depiction that is in the form of a photograph,
12 picture, image, or visual depiction of a similar nature shall be
13 considered to be one item and each depiction that is in the form of a
14 film, video, video-clip, movie, or visual depiction of a similar
15 nature shall be considered to be 10 separate items, and each
16 individual act of distribution of an item depicting the sexual
17 exploitation or abuse of a child shall be considered a separate item.
18 For purposes of determining the number of items depicting the
19 sexual exploitation or abuse of a child for purposes of sentencing
20 pursuant to subparagraph (a) of paragraph (5) of this subsection, the
21 court shall aggregate all items involved, whether the act or acts
22 constituting the violation occurred at the same time or at different
23 times and, with respect to distribution, whether the act or acts of
24 distribution were to the same person or several persons or occurred
25 at different times, provided that each individual act was committed
26 within the applicable statute of limitations. For purposes of
27 determining the number of items depicting the sexual exploitation
28 or abuse of a child for purposes of sentencing pursuant to
29 subparagraph (b) of paragraph (5) of this subsection, the court shall
30 aggregate all items involved, whether the possession of such items
31 occurred at the same time or at different times, provided that each
32 individual act was committed within the applicable statute of
33 limitations.

34 (cf: P.L.2013, c.136, s.1)

35
36 2. Section 2 of P.L.2011, c.128 (C.2A:4A-71.1) is amended to
37 read as follows:

38 2. a. Where a complaint against a juvenile pursuant to section
39 11 of P.L.1982, c.77 (C.2A:4A-30) alleges that the juvenile has
40 committed an eligible offense as defined in subsection c. of this
41 section and the court has approved diversion of the complaint
42 pursuant to section 4 of P.L.1982, c.81 (C.2A:4A-73), the resolution
43 of the complaint shall include the juvenile's participation in a
44 remedial education or counseling program. The parents or guardian
45 of the juvenile shall bear the cost of participation in the program,
46 except that the court shall take into consideration the ability of the
47 juvenile's parents or guardian to pay and the availability of such a
48 program in the area in which the juvenile resides and, where

1 appropriate, may permit the juvenile to participate in a self-guided
2 awareness program in lieu of a remedial education or counseling
3 program provided that it satisfies the requirements of subsection b.
4 of this section.

5 b. A remedial education or counseling program satisfies the
6 requirements of this act if the program is designed to increase the
7 juvenile's awareness of:

8 (1) the legal consequences and penalties for sharing sexually
9 suggestive or explicit materials, including applicable federal and
10 State statutes;

11 (2) the non-legal consequences of sharing sexually suggestive or
12 explicit materials including, but not limited to, the effect on
13 relationships, loss of educational and employment opportunities,
14 and being barred or removed from school programs and
15 extracurricular activities;

16 (3) the potential, based upon the unique characteristics of
17 cyberspace and the Internet, of long-term and unforeseen
18 consequences for sharing sexually suggestive or explicit materials;
19 and

20 (4) the possible connection between bullying and cyber-bullying
21 and juveniles sharing sexually suggestive or explicit materials.

22 c. As used in this act, "eligible offense" means an offense in
23 which:

24 (1) the facts of the case involve the creation, exhibition or
25 distribution of a photograph depicting nudity or portraying a child
26 in a sexually suggestive manner, as defined in N.J.S.2C:24-4,
27 through the use of an electronic communication device, an
28 interactive wireless communications device, or a computer; and

29 (2) the creator and subject of the photograph are juveniles or
30 were juveniles at the time of its making.

31 (cf: P.L.2011, c.128, s.2)

32

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

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

39 (2) A person who in another jurisdiction is required to register
40 as a sex offender and (a) is enrolled on a full-time or part-time basis
41 in any public or private educational institution in this State,
42 including any secondary school, trade or professional institution,
43 institution of higher education or other post-secondary school, or
44 (b) is employed or carries on a vocation in this State, on either a
45 full-time or a part-time basis, with or without compensation, for
46 more than 14 consecutive days or for an aggregate period exceeding
47 30 days in a calendar year, shall register in this State as provided in
48 subsections c. and d. of this section.

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

3 b. For the purposes of this act a sex offense shall include the
4 following:

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

12 (2) A conviction, adjudication of delinquency, or acquittal by
13 reason of insanity for aggravated sexual assault; sexual assault;
14 aggravated criminal sexual contact; kidnapping pursuant to
15 paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the
16 welfare of a child by engaging in sexual conduct which would
17 impair or debauch the morals of the child pursuant to subsection a.
18 of N.J.S.2C:24-4; endangering the welfare of a child pursuant to
19 paragraph (3) or (4), **or** subparagraph (a), or sub-subparagraph (i)
20 or (ii) of subparagraph (b) of paragraph (5) of subsection b. of
21 N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993,
22 c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-
23 3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1,
24 criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment
25 pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender
26 is not the parent of the victim; knowingly promoting prostitution of
27 a child pursuant to paragraph (3) or paragraph (4) of subsection b.
28 of N.J.S.2C:34-1; leader of a child pornography network pursuant to
29 section 8 of P.L. c. (C.) (pending before the Legislature as
30 this bill); or an attempt to commit any of these enumerated offenses
31 if the conviction, adjudication of delinquency or acquittal by reason
32 of insanity is entered on or after the effective date of this act or the
33 offender is serving a sentence of incarceration, probation, parole or
34 other form of community supervision as a result of the offense or is
35 confined following acquittal by reason of insanity or as a result of
36 civil commitment on the effective date of this act;

37 (3) A conviction, adjudication of delinquency, or acquittal by
38 reason of insanity for an offense similar to any offense enumerated
39 in paragraph (2) or a sentence on the basis of criteria similar to the
40 criteria set forth in paragraph (1) of this subsection entered or
41 imposed under the laws of the United States, this State, or another
42 state.

43 (4) Notwithstanding the provisions of paragraph (1), (2), or (3)
44 of this subsection, a sex offense shall not include an adjudication of
45 delinquency for endangering the welfare of a child pursuant to
46 paragraph (4) or (5) of subsection b. of N.J.S.2C:24-4, provided that
47 the actor demonstrates that:

1 (a) the facts of the case are limited to the creation, exhibition or
2 distribution of a photograph depicting nudity or portraying a child
3 in a sexually suggestive manner, as defined in N.J.S.2C:24-4,
4 through the use of an electronic communications device, an
5 interactive wireless communications device, or a computer;

6 (b) the creator and subject of the photograph are juveniles or
7 were juveniles at the time of its making; and

8 (c) the subject of the photograph whose nudity is depicted or
9 who is portrayed in a sexually suggestive manner, as the case may
10 be, knowingly consented to the making of the photograph.

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

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

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

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

39 (4) A person required to register on the basis of a conviction
40 prior to the effective date who is not confined or under supervision
41 on the effective date of this act shall register within 120 days of the
42 effective date of this act with the chief law enforcement officer of
43 the municipality in which the person will reside or, if the
44 municipality does not have a local police force, the Superintendent
45 of State Police;

46 (5) A person who in another jurisdiction is required to register
47 as a sex offender and who is enrolled on a full-time or part-time
48 basis in any public or private educational institution in this State,

1 including any secondary school, trade or professional institution,
2 institution of higher education or other post-secondary school shall,
3 within ten days of commencing attendance at such educational
4 institution, register with the chief law enforcement officer of the
5 municipality in which the educational institution is located or, if the
6 municipality does not have a local police force, the Superintendent
7 of State Police;

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

18 (7) In addition to any other registration requirements set forth in
19 this section, a person required to register under this act who is
20 enrolled at, employed by or carries on a vocation at an institution of
21 higher education or other post-secondary school in this State shall,
22 within **ten** 10 days after commencing such attendance,
23 employment or vocation, register with the law enforcement unit of
24 the educational institution, if the institution has such a unit.

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

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

45 e. A person required to register under paragraph (1) of
46 subsection b. of this section or under paragraph (3) of subsection b.
47 due to a sentence imposed on the basis of criteria similar to the
48 criteria set forth in paragraph (1) of subsection b. shall verify his

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

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

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

36 (cf: P.L.2013, c.214, s.1)

37
38 4. Section 1 of P.L.2009, c.143 (C.2C:43-3.8) is amended to
39 read as follows:

40 1. a. In addition to any disposition authorized by this Title, the
41 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any
42 other statute indicating the dispositions that can be ordered for an
43 adjudication of delinquency, every person convicted of or
44 adjudicated delinquent for a violation of **【subparagraph (b) of 】**
45 **paragraph (3), (4), or (5) of subsection b. of N.J.S.2C:24-4【.】;**
46 **section 8 of P.L. c. (C.) (pending before the Legislature as**
47 **this bill;** N.J.S.2C:34-3**【.】;** or an offense involving computer

1 criminal activity in violation of any provision of chapter 20 of this
2 title shall be assessed for each such offense a penalty fixed at:

- 3 (a) \$2,000 in the case of a crime of the first degree;
4 (b) \$1,000 in the case of a crime of the second degree;
5 (c) \$750 in the case of a crime of the third degree;
6 (d) \$500 in the case of a crime of the fourth degree;
7 (e) \$250 in the case of a disorderly persons or petty disorderly
8 persons offense.

9 b. All penalties provided for in this section shall be collected as
10 provided for collection of fines and restitutions in section 3 of
11 P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the
12 Department of the Treasury as provided in subsection c. of this
13 section.

14 c. All moneys collected pursuant to this section shall be
15 forwarded to the Department of the Treasury to be deposited in a
16 nonlapsing revolving fund to be known as the "Computer Crime
17 Prevention Fund." Moneys in the fund shall be appropriated by the
18 Legislature to the Department of Law and Public Safety on an
19 annual basis for the purposes of investigating and prosecuting
20 computer-related crime, and funding continuing educational
21 programs on high technology crimes and the 24-hour toll-free
22 computer crime hotline telephone service established pursuant to
23 section 3 of P.L.1998, c.134 (C.52:17B-193) and publicizing
24 thereof, as well as other programs designed to enhance public
25 awareness of computer-related crime, including but not limited to
26 use of the Internet to facilitate sexual predatory acts, cyber-stalking
27 and cyberbullying, online child pornography, threats of violence in
28 schools or other institutions, Internet fraud, and unauthorized
29 intrusions into computer systems.

30 d. There is created in the Department of Treasury a non-lapsing
31 fund entitled the "Computer Crime Prevention Fund." The fund
32 shall be the depository for assessments collected pursuant to
33 subsection a. of this section, to be appropriated and used in
34 accordance with the purposes set forth in subsection c. of this
35 section.

36 (cf: P.L.2009, c.143, s.1)

37
38 5. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to
39 read as follows:

40 2. a. Notwithstanding any provision of law to the contrary, a
41 judge imposing sentence on a person who has been convicted of
42 aggravated sexual assault, sexual assault, aggravated criminal
43 sexual contact, kidnapping pursuant to paragraph (2) of subsection
44 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging
45 in sexual conduct which would impair or debauch the morals of the
46 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
47 welfare of a child pursuant to paragraph (3) or sub-subparagraph (i)
48 or (ii) of subparagraph (b) of paragraph (5) of subsection b. of

1 N.J.S.2C:24-4, luring, violating a condition of a special sentence of
2 community supervision for life pursuant to subsection d. of this
3 section, or an attempt to commit any of these offenses shall include,
4 in addition to any sentence authorized by this Code, a special
5 sentence of parole supervision for life. Notwithstanding any
6 provision of law to the contrary, a court imposing sentence on a
7 person who has been convicted of endangering the welfare of a
8 child pursuant to paragraph (4) or sub-subparagraph (iii) of
9 subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-
10 4, leader of a child pornography network pursuant to section 8 of
11 P.L. c. (C.) (pending before the Legislature as this bill), or
12 an attempt to commit either of these offenses shall include, upon
13 motion of the prosecutor, a special sentence of parole supervision
14 for life in addition to any sentence authorized by Title 2C of the
15 New Jersey Statutes, unless the court finds on the record that the
16 special sentence is not needed to protect the community or deter the
17 defendant from future criminal activity.

18 b. The special sentence of parole supervision for life required
19 by this section shall commence immediately upon the defendant's
20 release from incarceration. If the defendant is serving a sentence of
21 incarceration for another offense at the time he completes the
22 custodial portion of the sentence imposed on the present offense,
23 the special sentence of parole supervision for life shall not
24 commence until the defendant is actually released from
25 incarceration for the other offense. Persons serving a special
26 sentence of parole supervision for life shall remain in the legal
27 custody of the Commissioner of Corrections, shall be supervised by
28 the Division of Parole of the State Parole Board, shall be subject to
29 the provisions and conditions set forth in subsection c. of section 3
30 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and
31 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and
32 30:4-123.65), and shall be subject to conditions appropriate to
33 protect the public and foster rehabilitation. Such conditions may
34 include the requirement that the person comply with the conditions
35 set forth in subsection f. of this section concerning use of a
36 computer or other device with access to the Internet. If the
37 defendant violates a condition of a special sentence of parole
38 supervision for life, the defendant shall be subject to the provisions
39 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60
40 through 30:4-123.63 and 30:4-123.65), and for the purpose of
41 calculating the limitation on time served pursuant to section 21 of
42 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon
43 the defendant related to the special sentence of parole supervision
44 for life shall be deemed to be a term of life imprisonment. When the
45 court suspends the imposition of sentence on a defendant who has
46 been convicted of any offense enumerated in subsection a. of this
47 section, the court may not suspend imposition of the special
48 sentence of parole supervision for life, which shall commence

1 immediately, with the Division of Parole of the State Parole Board
2 maintaining supervision over that defendant, including the
3 defendant's compliance with any conditions imposed by the court
4 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this
5 subsection. Nothing contained in this subsection shall prevent the
6 court from at any time proceeding under the provisions of
7 N.J.S.2C:45-1 through **[2C:45-4]** N.J.S.2C:45-4 against any such
8 defendant for a violation of any conditions imposed by the court
9 when it suspended imposition of sentence, or prevent the Division
10 of Parole from proceeding under the provisions of sections 16
11 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-
12 123.63 and C.30:4-123.65) against any such defendant for a
13 violation of any conditions of the special sentence of parole
14 supervision for life, including the conditions imposed by the court
15 pursuant to N.J.S.2C:45-1. In any such proceeding by the Division
16 of Parole, the provisions of subsection c. of section 3 of P.L.1997,
17 c.117 (C.30:4-123.51b) authorizing revocation and return to prison
18 shall be applicable to such a defendant, notwithstanding that the
19 defendant may not have been sentenced to or served any portion of
20 a custodial term for conviction of an offense enumerated in
21 subsection a. of this section.

22 c. A person sentenced to a term of parole supervision for life
23 may petition the Superior Court for release from that parole
24 supervision. The judge may grant a petition for release from a
25 special sentence of parole supervision for life only upon proof by
26 clear and convincing evidence that the person has not committed a
27 crime for 15 years since the last conviction or release from
28 incarceration, whichever is later, and that the person is not likely to
29 pose a threat to the safety of others if released from parole
30 supervision. Notwithstanding the provisions of section 22 of
31 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of
32 parole supervision for life may be released from that parole
33 supervision term only by court order as provided in this subsection.

34 d. A person who violates a condition of a special sentence of
35 community supervision for life or parole supervision for life
36 imposed pursuant to this section without good cause is guilty of a
37 crime of the third degree. Notwithstanding any other law to the
38 contrary, a person sentenced pursuant to this subsection shall be
39 sentenced to a term of imprisonment, unless the court is clearly
40 convinced that the interests of justice so far outweigh the need to
41 deter this conduct and the interest in public safety that a sentence to
42 imprisonment would be a manifest injustice. Nothing in this
43 subsection shall preclude subjecting a person who violates any
44 condition of a special sentence of parole supervision for life to the
45 provisions of sections 16 through 19 and 21 of P.L.1979, c.441
46 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to
47 the provisions of subsection c. of section 3 of P.L.1997, c.117
48 (C.30:4-123.51b).

1 e. A person who, while serving a special sentence of parole
2 supervision for life imposed pursuant to this section, commits a
3 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,
4 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of
5 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,
6 N.J.S.2C:24-4, section 8 of P.L. c. (C.) (pending before the
7 Legislature as this bill), N.J.S.2C:18-2 when the offense is a crime
8 of the second degree, or subsection a. of N.J.S.2C:39-4 shall be
9 sentenced to an extended term of imprisonment as set forth in
10 N.J.S.2C:43-7, which term shall, notwithstanding the provisions of
11 N.J.S.2C:43-7 or any other law, be served in its entirety prior to the
12 person's resumption of the term of parole supervision for life.

13 f. The special sentence of parole supervision for life required
14 by this section may include any of the following Internet access
15 conditions:

16 (1) Prohibit the person from accessing or using a computer or
17 any other device with Internet capability without the prior written
18 approval of the court except the person may use a computer or any
19 other device with Internet capability in connection with that
20 person's employment or search for employment with the prior
21 approval of the person's parole officer;

22 (2) Require the person to submit to periodic unannounced
23 examinations of the person's computer or any other device with
24 Internet capability by a parole officer, law enforcement officer or
25 assigned computer or information technology specialist, including
26 the retrieval and copying of all data from the computer or device
27 and any internal or external peripherals and removal of such
28 information, equipment or device to conduct a more thorough
29 inspection;

30 (3) Require the person to submit to the installation on the
31 person's computer or device with Internet capability, at the person's
32 expense, one or more hardware or software systems to monitor the
33 Internet use;

34 (4) Require the person to submit to any other appropriate
35 restrictions concerning the person's use or access of a computer or
36 any other device with Internet capability; and

37 (5) Require the person to disclose all passwords used by the
38 person to access any data, information, image, program, signal or
39 file on the person's computer or any other device with Internet
40 capability.

41 (cf: P.L.2013, c.214, s.4)

42

43 6. N.J.S.2C:47-1 is amended to read as follows:

44 2C:47-1. Referral to Adult Diagnostic and Treatment Center;
45 Commitment; Examination.

46 Whenever a person is convicted of the offense of aggravated
47 sexual assault, sexual assault, aggravated criminal sexual contact,
48 kidnapping pursuant to paragraph (2) of subsection c. of

1 N.J.S.2C:13-1, endangering the welfare of a child by engaging in
2 sexual conduct which would impair or debauch the morals of the
3 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
4 welfare of a child pursuant to paragraph (4) or (5) of subsection b.
5 of N.J.S.2C:24-4, leader of a child pornography network pursuant to
6 section 8 of P.L. c. (C.) (pending before the Legislature as
7 this bill), or an attempt to commit any such crime, the judge shall
8 order the Department of Corrections to complete a psychological
9 examination of the offender, except the judge shall not require a
10 psychological examination if the offender is to be sentenced to a
11 term of life imprisonment without eligibility for parole. The
12 examination shall include a determination of whether the offender's
13 conduct was characterized by a pattern of repetitive, compulsive
14 behavior and, if it was, a further determination of the offender's
15 amenability to sex offender treatment and willingness to participate
16 in such treatment. The court's order shall contain a determination
17 of the offender's legal settlement in accordance with subdivision D
18 of article 3 of chapter 4 of Title 30 of the Revised Statutes.
19 (cf: P.L.1998, c.72, s.1)

20
21 7. N.J.S.2C:52-2 is amended to read as follows:

22 2C:52-2. Indictable Offenses.

23 a. In all cases, except as herein provided, wherein a person has
24 been convicted of a crime under the laws of this State and who has
25 not been convicted of any prior or subsequent crime, whether within
26 this State or any other jurisdiction, and has not been convicted of a
27 disorderly persons or petty disorderly persons offense on more than
28 two occasions may, after the expiration of a period of 10 years from
29 the date of his most recent conviction, payment of fine, satisfactory
30 completion of probation or parole, or release from incarceration for
31 that crime or for any disorderly persons or petty disorderly persons
32 offense, whichever is later, present an expungement application to
33 the Superior Court in the county in which the conviction for the
34 crime was adjudged, which contains a duly verified petition as
35 provided in N.J.S.2C:52-7 for the criminal conviction sought to be
36 expunged, and may also contain additional duly verified petitions
37 for no more than two convictions for any disorderly persons or petty
38 disorderly persons offenses, praying that the conviction, or
39 convictions if applicable, and all records and information pertaining
40 thereto be expunged. The petition for each conviction appended to
41 an application shall comply with the requirements set forth in
42 N.J.S.2C:52-1 et seq.

43 Notwithstanding the provisions of the preceding paragraph, a
44 petition may be filed and presented, and the court may grant an
45 expungement pursuant to this section, although less than 10 years
46 has expired in accordance with the requirements of the preceding
47 paragraph where the court finds:

1 (1) less than 10 years has expired from the satisfaction of a fine,
2 but the ten-year time requirement is otherwise satisfied, and the
3 court finds that the person substantially complied with any payment
4 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so
5 due to compelling circumstances affecting his ability to satisfy the
6 fine; or

7 (2) at least five years has expired from the date of his
8 conviction, payment of fine, satisfactory completion of probation or
9 parole, or release from incarceration, whichever is later; the person
10 has not been convicted of a crime, disorderly persons offense, or
11 petty disorderly persons offense since the time of the conviction;
12 and the court finds in its discretion that expungement is in the
13 public interest, giving due consideration to the nature of the
14 offense, and the applicant's character and conduct since conviction.

15 In determining whether compelling circumstances exist for the
16 purposes of paragraph (1) of this subsection, a court may consider
17 the amount of the fine or fines imposed, the person's age at the time
18 of the offense, the person's financial condition and other relevant
19 circumstances regarding the person's ability to pay.

20 Although subsequent convictions for no more than two
21 disorderly or petty disorderly persons offenses shall not be an
22 absolute bar to relief, the nature of those conviction or convictions
23 and the circumstances surrounding them shall be considered by the
24 court and may be a basis for denial of relief if they or either of them
25 constitute a continuation of the type of unlawful activity embodied
26 in the criminal conviction for which expungement is sought.

27 b. Records of conviction pursuant to statutes repealed by this
28 Code for the crimes of murder, manslaughter, treason, anarchy,
29 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
30 robbery, embracery, or a conspiracy or any attempt to commit any
31 of the foregoing, or aiding, assisting or concealing persons accused
32 of the foregoing crimes, shall not be expunged.

33 Records of conviction for the following crimes specified in the
34 New Jersey Code of Criminal Justice shall not be subject to
35 expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except
36 death by auto as specified in N.J.S.2C:11-5; N.J.S.2C:13-1
37 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or
38 Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human
39 Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual
40 Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal
41 Sexual Contact); if the victim is a minor, subsection b. of
42 N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor
43 and the offender is not the parent of the victim, N.J.S.2C:13-2
44 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment);
45 N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related
46 Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare
47 of a child by engaging in sexual conduct which would impair or
48 debauch the morals of the child, or causing the child other harm);

1 paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or
2 filming a child in a prohibited sexual act or for portrayal in a
3 sexually suggestive manner); paragraph (3) of subsection b. of
4 N.J.S.2C:24-4 (Causing or permitting a child to engage in a
5 prohibited sexual act or the simulation of an act, or to be portrayed
6 in a sexually suggestive manner); subparagraph (a) of paragraph (5)
7 of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with
8 intent to distribute or using a file-sharing program to store items
9 depicting the sexual exploitation or abuse of a child); subparagraph
10 (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing
11 or viewing items depicting the sexual exploitation or abuse of a
12 child); section 8 of P.L. c. (C.) (pending before the
13 Legislature as this bill) (Leader of a child pornography network);
14 N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph
15 (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the
16 prostitution of the actor's child); section 2 of P.L.2002, c.26
17 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002,
18 c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons,
19 Biological Agents or Nuclear or Radiological Devices); and
20 conspiracies or attempts to commit such crimes.

21 Records of conviction for any crime committed by a person
22 holding any public office, position or employment, elective or
23 appointive, under the government of this State or any agency or
24 political subdivision thereof and any conspiracy or attempt to
25 commit such a crime shall not be subject to expungement if the
26 crime involved or touched such office, position or employment.

27 c. In the case of conviction for the sale or distribution of a
28 controlled dangerous substance or possession thereof with intent to
29 sell, expungement shall be denied except where the crimes involve:

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

32 (2) Hashish, where the total quantity sold, distributed or
33 possessed with intent to sell was five grams or less; or

34 (3) Any controlled dangerous substance provided that the
35 conviction is of the third or fourth degree, where the court finds that
36 expungement is consistent with the public interest, giving due
37 consideration to the nature of the offense and the petitioner's
38 character and conduct since conviction.

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

45 (cf: P.L.2015, c.261, s.2)

46
47 8. (New section) a. A person is a leader of a child pornography
48 network if he knowingly conspires with others as an organizer,

1 moderator, administrator, programmer, recruiter, or facilitator to
2 engage in a scheme or course of conduct to establish or maintain an
3 interconnected network through which files containing one or more
4 items depicting the sexual exploitation or abuse of a child are in any
5 way made available to or accessible among an organized group of
6 users or participants.

7 b. Leader of a child pornography network is a crime of the first
8 degree if the offense involves 100,000 or more items depicting the
9 sexual exploitation or abuse of a child; a crime of the second degree
10 if the offense involves at least 1,000 but less than 100,000 items
11 depicting the sexual exploitation or abuse of a child; and a crime of
12 the third degree if the offense involves less than 1,000 items
13 depicting the sexual exploitation or abuse of a child.

14 c. For aggregation purposes, each item depicting the sexual
15 exploitation or abuse of a child made available or accessible
16 through a distribution network shall be considered a separate item,
17 provided that each item that is in the form of a photograph, picture,
18 image, or visual depiction of a similar nature shall be considered to
19 be one item and each depiction that is in the form of a film, video,
20 video-clip, movie, or visual depiction of a similar nature shall be
21 considered to be 10 separate items.

22 d. Notwithstanding the provisions of N.J.S.2C:1-8, a conviction
23 of leader of a child pornography network shall not merge with the
24 conviction for any offense which is the object of the conspiracy, nor
25 shall the other conviction merge with a conviction under this
26 section. Nothing contained in this section shall be construed in any
27 way to preclude or limit the prosecution or conviction of any person
28 for conspiracy under the provisions of N.J.S.2C:5-2, or any
29 prosecution or conviction for endangering the welfare of children
30 under the provisions of N.J.S.2C:24-4 or any other provision of law.

31 e. As used in this section:

32 “Interconnected network” means a set of computer nodes,
33 including but not limited to personal computers, mobile devices,
34 and physical or virtual servers that are linked together to facilitate
35 the transmission of data between users.

36 “Item depicting the sexual exploitation or abuse of a child” shall
37 have the same meaning as provided in subsection b. of N.J.S.2C:24-
38 4.

39
40 9. This act shall take effect on the first day of the seventh
41 month following enactment.

42 43 44 STATEMENT

45
46 This bill establishes additional penalties for child pornography
47 crimes. Specifically, the bill expands the definition of child
48 pornography to include the portrayal of a child in a sexual manner;

1 establishes the crime of “leader of child pornography network”; and
2 enhances penalties and revises the sentencing provisions for these
3 crimes. The provisions of the bill address changes in the child
4 pornography industry which are not adequately addressed by
5 current law.

6 The bill criminalizes the possession and distribution of “child
7 erotica,” which refers to images that depict nearly naked,
8 suggestively-posed, and inappropriately sexualized children. New
9 Jersey’s child pornography statute currently does not criminalize
10 “child erotica.” The bill amends the definition of child
11 pornography, or an “item depicting the sexual exploitation or abuse
12 of a child,” to include an item which portrays a child in a sexually
13 suggestive manner. The bill defines the term “portray a child in a
14 sexually suggestive manner” to mean: (1) to depict a child’s less
15 than completely and opaquely covered intimate parts, as defined in
16 N.J.S.2C:14-1, or any form of contact with the intimate parts in a
17 manner that, by means of the posing, composition, format, or
18 animated sensual details, emits sensuality with sufficient impact to
19 concentrate prurient interest on the child; or (2) to otherwise depict
20 a child for the purpose of sexual stimulation or gratification of any
21 person who may view the depiction where the depiction does not
22 have serious literary, artistic, political, or scientific value.

23 Under the bill, a person is guilty of the crime of “leader of a
24 child pornography network” if the person knowingly conspires with
25 others to establish or maintain a child pornography distribution
26 network through which files containing child pornography are made
27 available to an organized group. Leader of a child pornography
28 network is a crime of the first degree if the offense involves
29 100,000 or more child pornography items; a crime of the second
30 degree if the offense involves at least 1,000 but less than 100,000
31 items; and a crime of the third degree if the offense involves less
32 than 1,000 items. A crime of the first degree is punishable by a
33 term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or
34 both; a crime of the second degree is punishable by a term of
35 imprisonment of five to 10 years, a fine of up to \$150,000, or both;
36 a crime of the third degree is punishable by a term of imprisonment
37 of three to five years, a fine of up to \$15,000, or both; and a crime
38 of the fourth degree is punishable by a term of imprisonment of up
39 to 18 months, a fine of up to \$10,000, or both.

40 Under current law, possession of child pornography is increased
41 from a crime of the fourth degree to a crime of the third degree and
42 carries a presumption of imprisonment if a person possesses 100 or
43 more items of child pornography. Due to rapid advancements in
44 technology, enormous numbers of digital files are able to be
45 downloaded at very high speeds and hard drive memory storage has
46 been greatly expanded. As a result, there has been an increase in
47 the number of individuals or “super-possessors” who possess
48 thousands to hundreds of thousands of items of child pornography.

1 These advances also have facilitated exponential growth in both the
2 quantity and frequency of distribution of child pornography.

3 According to the sponsor, current law does not provide adequate
4 penalties for child pornography super-possessors, who may
5 currently face the same penalties as a defendant possessing 100
6 items of child pornography. In addition, it does not differentiate
7 between a single still image of child pornography and an extended
8 video sequence, which could consist of thousands of digital images.
9 This bill creates enhanced penalties for super-possessors by making
10 possession of 100,000 or more items of child pornography a crime
11 of the first degree; possession of less than 100,000 items but greater
12 than 1,000 items a crime of the second degree; and possession of
13 1,000 items a crime of the third degree. The bill also promotes
14 more equitable sentencing for video images by providing that each
15 video or video segment of child pornography is the equivalent of 10
16 separate items.

17 Under current law, a person convicted of distribution of child
18 pornography is guilty of a crime of the second degree with a
19 mandatory minimum sentence of one-third to one-half the sentence
20 imposed or five years, whichever is greater. A distributor who is
21 caught transmitting 25 child pornography files currently faces the
22 same penalties as a distributor caught sending 10,000 files. The bill
23 revises the penalties for distribution of child pornography to
24 provide that a person who distributes 1,000 or more items of child
25 pornography is guilty of a crime of the first degree. Distribution of
26 less than 1,000 would remain a crime of the second degree.

27 An offender will be referred to the Adult Diagnostic and
28 Treatment Center (ADTC) for sex offender treatment if the court
29 finds that the offender's conduct is characterized by a pattern of
30 repetitive, compulsive behavior and the offender is amenable and
31 willing to participate in sex offender treatment. A psychological
32 examination is ordered for offenders convicted of a number of sex
33 offenses which include the distribution of child pornography, but
34 not possession of child pornography. Currently, a prosecutor may
35 make a motion requesting that the court impose a special sentence
36 of parole supervision for life on a person who possesses any amount
37 of child pornography. Judges are currently required to order a
38 psychological examination of certain sex offenders to determine if
39 referral to the ADTC is appropriate. The provisions of the bill
40 provide that if a person is convicted of possessing 1,000 or more
41 items of child pornography: the court is required to consider
42 imposing a sentence of parole supervision for life; the person is
43 subject to evaluation for ADTC commitment; and the person is
44 required to register as a sex offender and be subject to the
45 community notification and Internet publication requirements under
46 Megan's Law.

47 Finally, the bill clarifies that for all child pornography
48 manufacturing and distribution offenses, including the crime of

- 1 leader of a child pornography network established under the bill, a
- 2 fine is to be imposed and deposited into the Computer Crime
- 3 Prevention Fund.