

ASSEMBLY, No. 1795

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

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Assemblymen Giblin, Rumpf, Assemblywoman Gove, Assemblyman DeAngelo, Assemblywoman N.Munoz, Assemblymen Webber and Wimberly

SYNOPSIS

Revises child pornography law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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.

44 **["Reproduction"]** Reproduce means to copy or duplicate, and

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 includes, but is not limited to, copying or printing computer
2 generated images or posting these images on the Internet.

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

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

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

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

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

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

38 (6) For the purposes of this subsection**【, a】** and subsection c. of
39 this section:

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

44 (b) A person who is depicted as or presents the appearance of
45 being under the age of 16 in any photograph, film, videotape,
46 computer program or file, video game or any other reproduction or

1 reconstruction shall be rebuttably presumed to be under the age of
2 16[.];

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

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

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

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

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

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

43 (2) (a) Any person who knowingly possesses or receives for the
44 purpose of distributing or who knowingly distributes, advertises,
45 offers or agrees to offer, through any means, including the Internet,
46 any photograph, film, videotape, computer program or file, video
47 game or any other reproduction or reconstruction which depicts an
48 image which appears to be a child engaging in a prohibited sexual

1 act or in the simulation of such an act, is guilty of a crime of the
2 second degree if the depiction is obscene.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 b. For the purposes of this act a sex offense shall include the
20 following:

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

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

1 offender is serving a sentence of incarceration, probation, parole or
2 other form of community supervision as a result of the offense or is
3 confined following acquittal by reason of insanity or as a result of
4 civil commitment on the effective date of this act;

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

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 days after commencing such attendance, employment or
23 vocation, register with the law enforcement unit of the educational
24 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 fourth
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 fourth
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. One year after the effective
8 date of this act, the Attorney General shall review, evaluate and, if
9 warranted, modify pursuant to the "Administrative Procedure Act,"
10 P.L.1968, c.410 (C.52:14B-1 et seq.) the verification requirement.
11 Any person who knowingly provides false information concerning
12 his place of residence or who fails to verify his address with the
13 appropriate law enforcement agency or other entity, as prescribed
14 by the Attorney General in accordance with this subsection, is
15 guilty of a crime of the fourth degree.

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

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

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

34

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

36 2C:14-6. If a person is convicted of a second or subsequent
37 offense under **sections** N.J.S.2C:14-2 or **2C:14-3a.** subsection
38 a. of N.J.S.2C:14-3, the sentence imposed under those sections for
39 the second or subsequent offense shall**,** unless the person is
40 sentenced pursuant to the provisions of 2C:43-7,**]** include a fixed
41 minimum sentence of not less than 5 years, during which the
42 defendant shall not be eligible for parole. The court may not
43 suspend or make any other non-custodial disposition of any person
44 sentenced as a second or subsequent offender pursuant to this
45 section. For the purpose of this section, an offense is considered a
46 second or subsequent offense**,** if the actor has at any time been
47 convicted under **sections** P.L.1993, c.291 (C.2C:13-6);

1 N.J.S.2C:14-2 [or 2C:14-3a.]; subsection a. of N.J.S.2C:14-3;
 2 N.J.S.2C:24-4; or under any similar statute of the United States, this
 3 **【state】** State, or any other state for an offense that is substantially
 4 equivalent to **【sections】** P.L.1993, c.291 (C.2C:13-6); N.J.S.2C:14-
 5 2 [or 2C:14-3a.]; subsection a. of N.J.S.2C:14-3; or N.J.S.2C:24-4.
 6 (cf: N.J.S.2C:14-6)

7
 8 4. N.J.S.2C:41-1 is amended to read as follows:
 9 2C:41-1. Definitions.

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

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

- 15 (a) murder
- 16 (b) kidnapping
- 17 (c) gambling
- 18 (d) promoting prostitution
- 19 (e) obscenity
- 20 (f) robbery
- 21 (g) bribery
- 22 (h) extortion
- 23 (i) criminal usury
- 24 (j) violations of Title 33 of the Revised Statutes
- 25 (k) violations of Title 54A of the New Jersey Statutes and Title
- 26 54 of the Revised Statutes
- 27 (l) arson
- 28 (m) burglary
- 29 (n) theft and all crimes defined in chapter 20 of Title 2C of the
- 30 New Jersey Statutes
- 31 (o) forgery and fraudulent practices and all crimes defined in
- 32 chapter 21 of Title 2C of the New Jersey Statutes
- 33 (p) fraud in the offering, sale or purchase of securities
- 34 (q) alteration of motor vehicle identification numbers
- 35 (r) unlawful manufacture, purchase, use or transfer of firearms
- 36 (s) unlawful possession or use of destructive devices or
- 37 explosives
- 38 (t) violation of sections 112 through 116 inclusive of the
- 39 "Casino Control Act," P.L.1977, c.110 (C.5:12-112 through 5:12-
- 40 116)
- 41 (u) violation of N.J.S.2C:35-4, N.J.S.2C:35-5 or N.J.S.2C:35-6
- 42 and all crimes involving illegal distribution of a controlled
- 43 dangerous substance or controlled substance analog, except
- 44 possession of less than one ounce of marijuana
- 45 (v) violation of subsection b. of N.J.S.2C:24-4 except for
- 46 subparagraph (b) of paragraph (5) of subsection b.
- 47 (w) violation of section 1 of P.L.1995, c.405 (C.2C:39-16),
- 48 leader of firearms trafficking network

1 (x) violation of section 1 of P.L.1983, c.229 (C.2C:39-14),
2 weapons training for illegal activities
3 (y) violation of section 2 of P.L.2002, c.26 (C.2C:38-2),
4 terrorism~~【.】~~
5 (z) violation of section 1 of P.L.2005, c.77 (C.2C:13-8), human
6 trafficking~~【.】~~
7 (aa) violation of subsection c. of N.J.S.2C:24-4 except for
8 subparagraph (b) of paragraph (2) of subsection c.
9 (2) any conduct defined as "racketeering activity" under Title
10 18, U.S.C. s.1961(1)(A), (B) and (D).
11 b. "Person" includes any individual or entity or enterprise as
12 defined herein holding or capable of holding a legal or beneficial
13 interest in property.
14 c. "Enterprise" includes any individual, sole proprietorship,
15 partnership, corporation, business or charitable trust, association, or
16 other legal entity, any union or group of individuals associated in
17 fact although not a legal entity, and it includes illicit as well as licit
18 enterprises and governmental as well as other entities.
19 d. "Pattern of racketeering activity" requires
20 (1) Engaging in at least two incidents of racketeering conduct
21 one of which shall have occurred after the effective date of this act
22 and the last of which shall have occurred within 10 years (excluding
23 any period of imprisonment) after a prior incident of racketeering
24 activity; and
25 (2) A showing that the incidents of racketeering activity
26 embrace criminal conduct that has either the same or similar
27 purposes, results, participants or victims or methods of commission
28 or are otherwise interrelated by distinguishing characteristics and
29 are not isolated incidents.
30 e. "Unlawful debt" means a debt
31 (1) Which was incurred or contracted in gambling activity
32 which was in violation of the law of the United States, a state or
33 political subdivision thereof; or
34 (2) Which is unenforceable under state or federal law in whole
35 or in part as to principal or interest because of the laws relating to
36 usury.
37 f. "Documentary material" includes any book, paper,
38 document, writing, drawing, graph, chart, photograph, phonorecord,
39 magnetic or recording or video tape, computer printout, other data
40 compilation from which information can be obtained or from which
41 information can be translated into useable form or other tangible
42 item.
43 g. "Attorney General" includes the Attorney General of New
44 Jersey, his assistants and deputies. The term shall also include a
45 county prosecutor or his designated assistant prosecutor if a county
46 prosecutor is expressly authorized in writing by the Attorney
47 General to carry out the powers conferred on the Attorney General
48 by this chapter.

1 h. "Trade or commerce" shall include all economic activity
2 involving or relating to any commodity or service.
3 (cf: P.L.2005, c.77, s.3)
4

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

6 2C:44-1. Criteria for Withholding or Imposing Sentence of
7 Imprisonment. a. In determining the appropriate sentence to be
8 imposed on a person who has been convicted of an offense, the
9 court shall consider the following aggravating circumstances:

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

13 (2) The gravity and seriousness of harm inflicted on the victim,
14 including whether or not the defendant knew or reasonably should
15 have known that the victim of the offense was particularly
16 vulnerable or incapable of resistance due to advanced age, ill-
17 health, or extreme youth, or was for any other reason substantially
18 incapable of exercising normal physical or mental power of
19 resistance;

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

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

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

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

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

33 (8) The defendant committed the offense against a police or
34 other law enforcement officer, correctional employee or fireman,
35 acting in the performance of his duties while in uniform or
36 exhibiting evidence of his authority; the defendant committed the
37 offense because of the status of the victim as a public servant; or the
38 defendant committed the offense against a sports official, athletic
39 coach or manager, acting in or immediately following the
40 performance of his duties or because of the person's status as a
41 sports official, coach or manager;

42 (9) The need for deterring the defendant and others from
43 violating the law;

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

46 (11) The imposition of a fine, penalty or order of restitution
47 without also imposing a term of imprisonment would be perceived
48 by the defendant or others merely as part of the cost of doing

1 business, or as an acceptable contingent business or operating
2 expense associated with the initial decision to resort to unlawful
3 practices;

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

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

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

13 (1) The defendant's conduct neither caused nor threatened
14 serious harm;

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

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

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

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

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

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

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

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

32 (10) The defendant is particularly likely to respond affirmatively
33 to probationary treatment;

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

36 (12) The willingness of the defendant to cooperate with law
37 enforcement authorities;

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

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

43 (2) When imposing a sentence of imprisonment the court shall
44 consider the defendant's eligibility for release under the law
45 governing parole, including time credits awarded pursuant to Title
46 30 of the Revised Statutes, in determining the appropriate term of
47 imprisonment.

1 d. Presumption of imprisonment. The court shall deal with a
2 person who has been convicted of a crime of the first or second
3 degree by imposing a sentence of imprisonment unless, having
4 regard to the character and condition of the defendant, it is of the
5 opinion that his imprisonment would be a serious injustice which
6 overrides the need to deter such conduct by others. Notwithstanding
7 the provisions of subsection e. of this section, the court shall deal
8 with a person who has been convicted of theft of a motor vehicle or
9 of the unlawful taking of a motor vehicle and who has previously
10 been convicted of either offense by imposing a sentence of
11 imprisonment unless, having regard to the character and condition
12 of the defendant, it is of the opinion that his imprisonment would be
13 a serious injustice which overrides the need to deter such conduct
14 by others.

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

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

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

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

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

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

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

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

7 Unless the preponderance of mitigating factors set forth in
8 subsection b. weighs in favor of a lower term within the limits
9 authorized, sentences imposed pursuant to 2C:43-7a.(1) shall have a
10 presumptive term of life imprisonment. Unless the preponderance
11 of aggravating and mitigating factors set forth in subsections a. and
12 b. weighs in favor of a higher or lower term within the limits
13 authorized, sentences imposed pursuant to 2C:43-7a.(2) shall have a
14 presumptive term of 50 years' imprisonment; sentences imposed
15 pursuant to 2C:43-7a.(3) shall have a presumptive term of 15 years'
16 imprisonment; and sentences imposed pursuant to 2C:43-7a.(4)
17 shall have a presumptive term of seven years' imprisonment.

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

22 (2) In cases of convictions for crimes of the first or second
23 degree where the court is clearly convinced that the mitigating
24 factors substantially outweigh the aggravating factors and where the
25 interest of justice demands, the court may sentence the defendant to
26 a term appropriate to a crime of one degree lower than that of the
27 crime for which he was convicted. If the court does impose
28 sentence pursuant to this paragraph, or if the court imposes a
29 noncustodial or probationary sentence upon conviction for a crime
30 of the first or second degree, such sentence shall not become final
31 for 10 days in order to permit the appeal of such sentence by the
32 prosecution.

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

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

45

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

47 2C:44-6. Procedure on Sentence; Presentence Investigation and
48 Report.

1 a. The court shall not impose sentence without first ordering a
2 presentence investigation of the defendant and according due
3 consideration to a written report of such investigation when
4 required by the Rules of Court. The court may order a presentence
5 investigation in any other case.

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

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

28 (2) the defendant has a prior conviction for murder pursuant to
29 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
30 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
31 endangering the welfare of a child which would constitute a crime
32 of the first or second degree pursuant to N.J.S.2C:24-4, or stalking
33 which would constitute a crime of the third degree pursuant to
34 P.L.1992, c.209 (C.2C:12-10); or

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

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

1 The presentence report shall also include a report on any
2 compensation paid by the Victims of Crime Compensation Board as
3 a result of the commission of the offense and, in any case where the
4 victim chooses to provide one, a statement by the victim of the
5 offense for which the defendant is being sentenced. The statement
6 may include the nature and extent of any physical harm or
7 psychological or emotional harm or trauma suffered by the victim,
8 the extent of any loss to include loss of earnings or ability to work
9 suffered by the victim and the effect of the crime upon the victim's
10 family. The probation department shall notify the victim or nearest
11 relative of a homicide victim of his right to make a statement for
12 inclusion in the presentence report if the victim or relative so
13 desires. Any such statement shall be made within 20 days of
14 notification by the probation department.

15 The presentence report shall specifically include an assessment
16 of the gravity and seriousness of harm inflicted on the victim,
17 including whether or not the defendant knew or reasonably should
18 have known that the victim of the offense was particularly
19 vulnerable or incapable of resistance due to advanced age,
20 disability, ill-health, or extreme youth, or was for any other reason
21 substantially incapable of exercising normal physical or mental
22 power of resistance.

23 c. If, after the presentence investigation, the court desires
24 additional information concerning an offender convicted of an
25 offense before imposing sentence, it may order any additional
26 psychological or medical testing of the defendant.

27 d. Disclosure of any presentence investigation report or
28 psychiatric examination report shall be in accordance with law and
29 the Rules of Court, except that information concerning the
30 defendant's financial resources shall be made available upon request
31 to the Victims of Crime Compensation Board or to any officer
32 authorized under the provisions of section 3 of P.L.1979, c.396
33 (C.2C:46-4) to collect payment on an assessment, restitution or fine
34 and that information concerning the defendant's coverage under any
35 health insurance contract, policy or plan shall be made available, as
36 appropriate to the Commissioner of the Department of Corrections
37 and to the chief administrative officer of a county jail in accordance
38 with the provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

39 e. The court shall not impose a sentence of imprisonment for
40 an extended term unless the ground therefor has been established at
41 a hearing after the conviction of the defendant and on written notice
42 to him of the ground proposed. The defendant shall have the right
43 to hear and controvert the evidence against him and to offer
44 evidence upon the issue.

45 f. (Deleted by amendment, P.L.1986, c.85).
46 (cf: P.L.1997, c.216, s.2)

47

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

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

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

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

27

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

29 2C:52-2. Indictable Offenses. a. In all cases, except as herein
30 provided, wherein a person has been convicted of a crime under the
31 laws of this State and who has not been convicted of any prior or
32 subsequent crime, whether within this State or any other
33 jurisdiction, and has not been adjudged a disorderly person or petty
34 disorderly person on more than two occasions may, after the
35 expiration of a period of 10 years from the date of his conviction,
36 payment of fine, satisfactory completion of probation or parole, or
37 release from incarceration, whichever is later, present a duly
38 verified petition as provided in **【section】** N.J.S.2C:52-7 to the
39 Superior Court in the county in which the conviction was entered
40 praying that such conviction and all records and information
41 pertaining thereto be expunged.

42 Although subsequent convictions for no more than two
43 disorderly or petty disorderly offenses shall not be an absolute bar
44 to relief, the nature of those conviction or convictions and the
45 circumstances surrounding them shall be considered by the court
46 and may be a basis for denial of relief if they or either of them
47 constitute a continuation of the type of unlawful activity embodied
48 in the criminal conviction for which expungement is sought.

1 b. Records of conviction pursuant to statutes repealed by this
2 Code for the crimes of murder, manslaughter, treason, anarchy,
3 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
4 robbery, embracery, or a conspiracy or any attempt to commit any
5 of the foregoing, or aiding, assisting or concealing persons accused
6 of the foregoing crimes, shall not be expunged.

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

28 Records of conviction for any crime committed by a person
29 holding any public office, position or employment, elective or
30 appointive, under the government of this State or any agency or
31 political subdivision thereof and any conspiracy or attempt to
32 commit such a crime shall not be subject to expungement if the
33 crime involved or touched such office, position or employment.

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

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

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

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

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

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

3 1. a. Whenever an inmate who has been convicted of murder;
4 manslaughter; vehicular homicide; aggravated sexual assault; sexual
5 assault; aggravated assault; aggravated criminal sexual contact;
6 robbery; kidnapping pursuant to paragraph (2) of subsection c. of
7 N.J.S.2C:13-1; endangering the welfare of a child by engaging in
8 sexual conduct which would impair or debauch the morals of the
9 child pursuant to subsection a. of N.J.S.2C:24-4; endangering the
10 welfare of a child pursuant to paragraph (3) or paragraph (4) of
11 subsection b. or paragraph (1) of subsection c. of N.J.S.2C:24-4;
12 luring or enticing pursuant to section 1 of P.L.1993, c.291
13 (C.2C:13-6); or any crime of the first or second degree involving
14 serious bodily injury is subject to a review by an Institutional
15 Classification Committee which may result in participation in any
16 residential community release program, the Department of
17 Corrections shall provide written notice of that review in
18 accordance with the provisions of subsection b. of this section.

19 b. (1) Upon the scheduling of a review subject to the
20 notification requirement of this section, the Department of
21 Corrections shall so notify the prosecutor of the county in which the
22 inmate was convicted or, if the matter was prosecuted by the
23 Attorney General, the Attorney General.

24 Upon receipt of such notice, the county prosecutor or Attorney
25 General, as the case may be, shall have 10 working days in which to
26 submit comments. If the county prosecutor or Attorney General
27 does not provide comments within those 10 working days, the
28 Department of Corrections may presume that the prosecutor or
29 Attorney General, as the case may be, does not wish to submit any
30 comments on the matter. The notice shall include the inmate's
31 name, identifying factors and offense history.

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

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

44 Upon receipt of such notice, the victim or the victim's nearest
45 relative, as the case may be, shall have 10 working days in which to
46 submit comments. If the victim or the victim's nearest relative, as
47 the case may be, does not provide comments within those 10
48 working days, the Department of Corrections may presume that the

1 victim or victim's nearest relative, as the case may be, does not wish
2 to submit any comments on the matter.

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

6 Comments submitted pursuant to this subsection shall be deemed
7 confidential and shall not be disclosed to any person who is not
8 authorized to receive or review them.

9 c. Whenever the Department of Corrections receives comments
10 from a prosecutor or the Attorney General, as the case may be, or
11 from a victim or a victim's nearest relative, as the case may be,
12 concerning the participation of an inmate in accordance with this
13 act, it shall give all due consideration to the information contained
14 in those comments when considering the participation of that
15 inmate.

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

21
22 10. Section 1 of P.L.1994, c.135 (C.30:4-123.53a) is amended to
23 read as follows:

24 1. a. As used in this act: "Prosecutor" means the county
25 prosecutor of the county in which the defendant was convicted
26 unless the matter was prosecuted by the Attorney General, in which
27 case "prosecutor" means the Attorney General.

28 "Office of Victim Witness Advocacy" means the Office of
29 Victim Witness Advocacy of the county in which the defendant was
30 convicted.

31 b. Notwithstanding any other provision of law to the contrary,
32 the State shall provide written notice to the prosecutor of the
33 anticipated release from incarceration in a county or State penal
34 institution or the Adult Diagnostic and Treatment Center of a
35 person convicted of murder; manslaughter; aggravated sexual
36 assault; sexual assault; aggravated assault; aggravated criminal
37 sexual contact; kidnapping pursuant to paragraph (2) of subsection
38 c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging
39 in sexual conduct which would impair or debauch the morals of the
40 child pursuant to subsection a. of N.J.S.2C:24-4; endangering the
41 welfare of a child pursuant to paragraph (3) or paragraph (4) of
42 subsection b. or paragraph (1) of subsection c. of N.J.S.2C:24-4;
43 luring or enticing pursuant to section 1 of P.L.1993, c.291
44 (C.2C:13-6); any other offense involving serious bodily injury or an
45 attempt to commit any of the aforementioned offenses. In cases
46 involving a release on parole, the State Parole Board shall provide
47 the notice required by this subsection. In all other cases, including
48 but not limited to release upon expiration of sentence or release

1 from incarceration due to a change in sentence, the Department of
2 Corrections shall provide the notice required by this subsection.

3 c. Notwithstanding any other provision of law to the contrary,
4 the Juvenile Justice Commission established pursuant to section 2
5 of P.L.1995, c.284 (C.52:17B-170) shall provide written notice to
6 the prosecutor of the anticipated release from incarceration of a
7 juvenile adjudicated delinquent on the basis of an offense which, if
8 committed by an adult, would constitute murder; manslaughter;
9 aggravated sexual assault; sexual assault; aggravated assault;
10 aggravated criminal sexual contact; kidnapping pursuant to
11 paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the
12 welfare of a child by engaging in sexual conduct which would
13 impair or debauch the morals of the child pursuant to subsection a.
14 of N.J.S.2C:24-4; endangering the welfare of a child pursuant to
15 paragraph (3) or paragraph (4) of subsection b. or paragraph (1) of
16 subsection c. of N.J.S.2C:24-4; luring or enticing pursuant to
17 section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense
18 involving serious bodily injury or an attempt to commit any of the
19 aforementioned offenses.

20 d. If available, the notice shall be provided to the prosecutor 90
21 days before the inmate's anticipated release; provided however, the
22 notice shall be provided at least 30 days before release. The notice
23 shall include the person's name, identifying factors, offense history,
24 and anticipated future residence. The prosecutor shall notify the
25 Office of Victim and Witness Advocacy and that office shall use
26 any reasonable means available to them to notify the victim of the
27 anticipated release unless the victim has requested not to be
28 notified.

29 e. Upon receipt of notice, the prosecutor shall provide notice to
30 the law enforcement agency responsible for the municipality where
31 the inmate will reside, the municipality in which any victim resides,
32 and such other State and local law enforcement agencies as
33 appropriate for public safety.

34 (cf: P.L.2001, c.79, s.8)

35
36 11. Section 10 of P.L.1979, c.441 (C.30:4-123.54) is amended to
37 read as follows:

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

43 b. (1) The report filed pursuant to subsection a. shall contain
44 preincarceration records of the inmate, including any history of civil
45 commitment, any disposition which arose out of any charges
46 suspended pursuant to N.J.S.2C:4-6 including records of the
47 disposition of those charges and any acquittals by reason of insanity
48 pursuant to N.J.S.2C:4-1, state the conduct of the inmate during the

1 current period of confinement, include a complete report on the
2 inmate's social and physical condition, include an investigation by
3 the Division of Parole of the inmate's parole plans, and present
4 information bearing upon the likelihood that the inmate will commit
5 a crime under the laws of this State if released on parole. The
6 report shall also include a complete psychological evaluation of the
7 inmate in any case in which the inmate was convicted of a first or
8 second degree crime involving violence and:

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

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

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

20 The inmate shall disclose any information concerning any history
21 of civil commitment.

22 The preincarceration records of the inmate contained in the
23 report shall include any psychological reports prepared in
24 connection with any court proceedings.

25 (2) At the time of sentencing, the prosecutor shall notify any
26 victim injured as a result of a crime of the first or second degree or
27 the nearest relative of a murder victim of the opportunity to present
28 a written or videotaped statement for the parole report to be
29 considered at the parole hearing or to testify to the parole board
30 concerning his harm at the time of the parole hearing. Each victim
31 or relative shall be responsible for notifying the board of his
32 intention to submit such a statement and to provide an appropriate
33 mailing address.

34 The report may include a written or videotaped statement
35 concerning the continuing nature and extent of any physical harm or
36 psychological or emotional harm or trauma suffered by the victim,
37 the extent of any loss of earnings or ability to work suffered by the
38 victim and the continuing effect of the crime upon the victim's
39 family. At the time public notice is given that an inmate is being
40 considered for parole pursuant to this section, the board shall also
41 notify any victim or nearest relative who has previously contacted
42 the board of the availability to provide a written or videotaped
43 statement for inclusion in the parole report or to present testimony
44 at the parole hearing.

45 The board shall notify such person at his last known mailing
46 address.

47 c. A copy of the report filed pursuant to subsection a. of this
48 section, excepting those documents which have been classified as

1 confidential pursuant to rules and regulations of the board or the
2 Department of Corrections, shall be served on the inmate at the time
3 it is filed with the board panel. The inmate may file with the board
4 panel a written statement regarding the report, but shall do so within
5 105 days prior to the primary parole eligibility date.

6 d. Upon receipt of the public notice pursuant to section 1 of
7 P.L.1979, c.441 (C.30:4-123.45), a county prosecutor may request
8 from the parole board a copy of the report on any adult inmate
9 prepared pursuant to subsection a. of this section, which shall be
10 expeditiously forwarded to the county prosecutor by the parole
11 board by mail, courier, or other means of delivery. Upon receipt of
12 the report, the prosecutor has 10 working days to review the report
13 and notify the parole board of the prosecutor's comments, if any, or
14 notify the parole board of the prosecutor's intent to provide
15 comments. If the county prosecutor does not provide comments or
16 notify the parole board of the prosecutor's intent to provide
17 comments within the 10 working days, the parole board may
18 presume that the prosecutor does not wish to provide comments and
19 may proceed with the parole consideration. Any comments
20 provided by a county prosecutor shall be delivered to the parole
21 board by the same method by which the county prosecutor received
22 the report. The confidentiality of the contents in a report which are
23 classified as confidential shall be maintained and shall not be
24 disclosed to any person who is not authorized to receive or review a
25 copy of the report containing the confidential information.

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

30 f. Notwithstanding any provision of this section, the board may
31 modify the time periods for submitting the reports required pursuant
32 to this section in processing an inmate whose parole eligibility date
33 is accelerated pursuant to section 11 of P.L.1979, c.441 (C.30:4-
34 123.55).

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

36
37 12. This act shall take effect immediately.
38
39

40 STATEMENT

41
42 This bill revises the State's laws governing child pornography.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 Other provisions of the bill: require defendants to be reviewed
42 for referral to the Adult Diagnostic and Treatment Center if
43 convicted of certain real and virtual child pornography crimes;
44 prohibit expungement of criminal records; provide for notification
45 to the prosecuting agency and victim when a defendant is placed in
46 a community release program or released from incarceration; and
47 require certain repeat offender’s presentence and parole eligibility
48 report to include a complete psychological evaluation for repeat

1 offenders. The bill also eliminates the presumption of
2 nonincarceration, normally applicable to third degree crimes, for the
3 crime of possessing real or virtual child pornography.

4 The bill includes a fixed mandatory minimum term of
5 imprisonment for certain recidivists who violate N.J.S.2C:24-4.
6 Defendants convicted of engaging in sexual conduct which would
7 impair or debauch the morals of a child in violation of subsection a.
8 of N.J.S.2C:24-4 or of child pornography crimes under subsection
9 b. or c. of N.J.S.2C:24-4 must be sentenced to prison and serve
10 one-third to one-half of their sentences before being eligible for
11 parole if they have previously been convicted of other sex crimes
12 including luring or enticing a child, sexual assault, aggravated
13 criminal sexual contact, or child endangerment. The bill also makes
14 a prior conviction under N.J.S.2C:24-4 the basis for a mandatory
15 minimum term of imprisonment pursuant to N.J.S.2C:14-6, and
16 provides that the minimum term must be imposed regardless of
17 whether the defendant is sentenced to an extended term of
18 imprisonment.

19 Finally, the bill amends various other statutes to ensure that
20 virtual child pornographers are subject to the same penalties as real
21 child pornographers. Thus, wherever a statute specifically refers to
22 a provision of subsection b. of N.J.S.2C:24-4, this bill adds
23 subsection c. to the statute.