

ASSEMBLY, No. 3353

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Assemblywoman AURA K. DUNN

District 25 (Morris and Somerset)

SYNOPSIS

“One Strike, You’re Ours;” adds use of Internet as aggravating factor in child sex crimes and requires lifetime electronic monitoring of offender.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2020)

1 AN ACT concerning sex offenses against children and amending
2 P.L.2007, c.128 and N.J.S.2C:44-1.

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

6
7 1. Section 3 of P.L.2007, c.128 (C.30:4-123.91) is amended to
8 read as follows:

9 3. a. As used in this act:

10 "Chairman" means the Chairman of the State Parole Board.

11 "Monitored subject" means:

12 (1) a person whose risk of reoffense has been determined to be
13 high pursuant to section 3 of P.L.1994, c.128 (C.2C:7-8); **[and]**

14 (2) a person who has been convicted of or adjudicated
15 delinquent for a sex offense enumerated in subsection b. of section
16 2 of P.L.1994, c.133 (C.2C:7-2), where the victim of the offense
17 was under 18 years of age, and the person used the Internet in the
18 commission of the act, regardless of the date of conviction, and who
19 shall be monitored for life under the provisions of this act; and

20 (3) a person who the chairman deems appropriate for continuous
21 satellite-based monitoring pursuant to the provisions of this act and
22 who:

23 (a) was subject to civil commitment as a "sexually violent
24 predator" in accordance with the provisions of P.L.1998, c.71
25 (C.30:4-27.24 et seq.) and has been conditionally discharged or
26 discharged pursuant to section 13 of P.L.1998, c.71 (C.30:4-27.36);

27 (b) has been sentenced to a term of community or parole
28 supervision for life pursuant to section 2 of P.L.1994, c.130
29 (C.2C:43-6.4); or

30 (c) has been convicted of or adjudicated delinquent for a sex
31 offense enumerated in subsection b. of section 2 of P.L.1994, c.133
32 (C.2C:7-2) and the victim of the offense was under 18 years of age
33 or 60 years of age or older, regardless of the date of conviction.

34 b. In addition to those offenders whose risk of reoffense has
35 been determined to be high pursuant to section 3 of P.L.1994, c.128
36 (C.2C:7-8), the chairman, in exercising his discretion in
37 determining subjects to monitor through time correlated or
38 continuous tracking of their geographic location under the program
39 authorized by this act, shall consider the risk to the public posed by
40 the subject, based on relevant risk factors such as the seriousness of
41 the offense, the age of the victim or victims, the degree of force and
42 contact, and any other factors the chairman deems appropriate.
43 Time correlated or continuous tracking of the offender's geographic
44 location shall not be provided during the time a monitored subject is
45 in custody due to arrest, incarceration or civil commitment.

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 c. Nothing in this act shall be construed to preclude a judge
2 from ordering time correlated or continuous tracking of the person's
3 geographic location or other electronic monitoring as a condition of
4 discharge of a person committed pursuant to P.L.1998, c.71
5 (C.30:4-27.24 et seq.), or as a condition or requirement of
6 supervision for any other person sentenced pursuant to N.J.S.2C:45-
7 1 or sentenced to a term of community or parole supervision for life
8 pursuant to section 2 of P.L.1994, c.130 (C.2C:43-6.4).
9 (cf: P.L.2007, c.128, s.3)

10
11 2. N.J.S.2C:44-1 is amended to read as follows:

12 2C:44-1. Criteria for withholding or imposing sentence of
13 imprisonment.

14 2C:44-1. a. In determining the appropriate sentence to be
15 imposed on a person who has been convicted of an offense, the
16 court shall consider the following aggravating circumstances:

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

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

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

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

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

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

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

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

- 1 (9) The need for deterring the defendant and others from
2 violating the law;
- 3 (10) The offense involved fraudulent or deceptive practices
4 committed against any department or division of State government;
- 5 (11) The imposition of a fine, penalty or order of restitution
6 without also imposing a term of imprisonment would be perceived
7 by the defendant or others merely as part of the cost of doing
8 business, or as an acceptable contingent business or operating
9 expense associated with the initial decision to resort to unlawful
10 practices;
- 11 (12) The defendant committed the offense against a person who
12 he knew or should have known was 60 years of age or older, or
13 disabled;
- 14 (13) The defendant, while in the course of committing or
15 attempting to commit the crime, including the immediate flight
16 therefrom, used or was in possession of a stolen motor vehicle;
- 17 (14) The offense involved an act of domestic violence, as that
18 term is defined in subsection a. of section 3 of P.L.1991, c.261
19 (C.2C:25-19), committed in the presence of a child under 16 years
20 of age; and
- 21 (15) The offense involved an act of domestic violence, as that
22 term is defined in subsection a. of section 3 of P.L.1991, c.261
23 (C.2C:25-19) and the defendant committed at least one act of
24 domestic violence on more than one occasion.
- 25 (16) The defendant committed a sex offense as defined in section
26 2 of P.L.1994, c.133 (C.2C:7-2) against a person under 18 years of
27 age and used the Internet in the commission of the act.
- 28 b. In determining the appropriate sentence to be imposed on a
29 person who has been convicted of an offense, the court may
30 properly consider the following mitigating circumstances:
 - 31 (1) The defendant's conduct neither caused nor threatened
32 serious harm;
 - 33 (2) The defendant did not contemplate that his conduct would
34 cause or threaten serious harm;
 - 35 (3) The defendant acted under a strong provocation;
 - 36 (4) There were substantial grounds tending to excuse or justify
37 the defendant's conduct, though failing to establish a defense;
 - 38 (5) The victim of the defendant's conduct induced or facilitated
39 its commission;
 - 40 (6) The defendant has compensated or will compensate the
41 victim of his conduct for the damage or injury that he sustained, or
42 will participate in a program of community service;
 - 43 (7) The defendant has no history of prior delinquency or
44 criminal activity or has led a law-abiding life for a substantial
45 period of time before the commission of the present offense;
 - 46 (8) The defendant's conduct was the result of circumstances
47 unlikely to recur;

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

3 (10) The defendant is particularly likely to respond affirmatively
4 to probationary treatment;

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

7 (12) The willingness of the defendant to cooperate with law
8 enforcement authorities;

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

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

14 (2) When imposing a sentence of imprisonment the court shall
15 consider the defendant's eligibility for release under the law
16 governing parole, including time credits awarded pursuant to Title
17 30 of the Revised Statutes, in determining the appropriate term of
18 imprisonment.

19 d. Presumption of imprisonment. The court shall deal with a
20 person who has been convicted of a crime of the first or second
21 degree, or a crime of the third degree where the court finds that the
22 aggravating factor in paragraph (5), (14) or (15) of subsection a.
23 applies, by imposing a sentence of imprisonment unless, having
24 regard to the character and condition of the defendant, it is of the
25 opinion that his imprisonment would be a serious injustice which
26 overrides the need to deter such conduct by others.
27 Notwithstanding the provisions of subsection e. of this section, the
28 court shall deal with a person who has been convicted of theft of a
29 motor vehicle or of the unlawful taking of a motor vehicle and who
30 has previously been convicted of either offense by imposing a
31 sentence of imprisonment unless, having regard to the character and
32 condition of the defendant, it is of the opinion that his imprisonment
33 would be a serious injustice which overrides the need to deter such
34 conduct by others.

35 e. The court shall deal with a person convicted of an offense
36 other than a crime of the first or second degree, who has not
37 previously been convicted of an offense, without imposing a
38 sentence of imprisonment unless, having regard to the nature and
39 circumstances of the offense and the history, character and
40 condition of the defendant, it is of the opinion that his imprisonment
41 is necessary for the protection of the public under the criteria set
42 forth in subsection a., except that this subsection shall not apply if
43 the court finds that the aggravating factor in paragraph (5), (14) or
44 (15) of subsection a. applies or if the person is convicted of any of
45 the following crimes of the third degree: theft of a motor vehicle;
46 unlawful taking of a motor vehicle; eluding; strict liability vehicular
47 homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if
48 the person is convicted of a crime of the third degree constituting

1 use of a false government document in violation of subsection c. of
2 section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is
3 convicted of a crime of the third degree constituting distribution,
4 manufacture or possession of an item containing personal
5 identifying information in violation of subsection b. of section 6 of
6 P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a
7 crime of the third or fourth degree constituting bias intimidation in
8 violation of N.J.S.2C:16-1; if the person is convicted of a crime of
9 the third degree under paragraph (12) of subsection b. of
10 N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if
11 the person is convicted of a crime of the third or fourth degree
12 under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-
13 29 or C.2C:33-30).

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

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

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

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

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

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

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

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

47 In imposing a minimum term pursuant to subsection b. of
48 N.J.S.2C:43-7, the sentencing court shall specifically place on the

1 record the aggravating factors set forth in this section which justify
2 the imposition of a minimum term.

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

14 g. Imposition of Noncustodial Sentences in Certain Cases. If
15 the court, in considering the aggravating factors set forth in
16 subsection a., finds the aggravating factor in paragraph (2), (5),
17 (10), or (12) of subsection a. and does not impose a custodial
18 sentence, the court shall specifically place on the record the
19 mitigating factors which justify the imposition of a noncustodial
20 sentence.

21 h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-
22 11), the presumption of imprisonment as provided in subsection d.
23 of this section shall not preclude the admission of a person to the
24 Intensive Supervision Program, established pursuant to the Rules
25 Governing the Courts of the State of New Jersey.
26 (cf: P.L.2017, c.165, s.6)

27
28 3. This act shall take effect immediately.
29
30

31 STATEMENT

32
33 This bill provides that persons who have been convicted of a sex
34 offense under Megan's Law, where the victim of the offense was
35 under 18 years of age and the person used the Internet in the
36 commission of the sex offense, would be monitored for life under
37 the "Sex Offender Monitoring Act." Under the act, sex offenders
38 are subject to continuous 24-hour per day monitoring by global
39 positioning system (GPS) devices.

40 The bill also adds as an aggravating factor for the court to
41 consider in determining a sentence, whether the defendant used the
42 Internet in committing a sex offense against a person under the age
43 of 18. This provision would be used to enhance penalties against
44 child predators.

45 Under this "One Strike, You're Ours" approach, predators who
46 use the Internet in committing crimes against children would
47 receive enhanced penalties and, once they leave prison, be
48 monitored for life by GPS technology.