

SENATE, No. 294

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Senator Holzapfel

SYNOPSIS

Requires person convicted, or fleeing charge, of sex offense in foreign country to register under Megan's Law; requires law enforcement to inquire about immigration status of sex offenders and cooperate with federal immigration authorities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning sex offenders, amending P.L.1994, c.133, and
2 supplementing Title 2C of the New Jersey Statutes.

3

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

6

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

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

13 (2) A person who in another jurisdiction is required to register
14 as a sex offender and (a) is enrolled on a full-time or part-time basis
15 in any public or private educational institution in this State,
16 including any secondary school, trade or professional institution,
17 institution of higher education or other post-secondary school, or
18 (b) is employed or carries on a vocation in this State, on either a
19 full-time or a part-time basis, with or without compensation, for
20 more than 14 consecutive days or for an aggregate period exceeding
21 30 days in a calendar year, shall register in this State as provided in
22 subsections c. and d. of this section.

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

25 b. For the purposes of this act a sex offense shall include the
26 following:

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

34 (2) A conviction, adjudication of delinquency, or acquittal by
35 reason of insanity for aggravated sexual assault; sexual assault;
36 aggravated criminal sexual contact; kidnapping pursuant to
37 paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the
38 welfare of a child by engaging in sexual conduct which would
39 impair or debauch the morals of the child pursuant to subsection a.
40 of N.J.S.2C:24-4; endangering the welfare of a child pursuant to
41 paragraph (3) or (4), subparagraph (a), or sub-subparagraph (i) or
42 (ii) of subparagraph (b) of paragraph (5) of subsection b. of
43 N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993,
44 c.291 (C.2C:13-6); criminal sexual contact pursuant to
45 **【N.J.S.2C:14-3b.】** subsection b. of N.J.S.2C:14-3 if the victim is a

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 minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint
2 pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to
3 N.J.S.2C:13-3 if the victim is a minor and the offender is not the
4 parent of the victim; knowingly promoting prostitution of a child
5 pursuant to paragraph (3) or paragraph (4) of subsection b. of
6 N.J.S.2C:34-1; leader of a child pornography network pursuant to
7 section 8 of P.L.2017, c.141 (C.2C:24-4.1); or an attempt to commit
8 any of these enumerated offenses if the conviction, adjudication of
9 delinquency or acquittal by reason of insanity is entered on or after
10 the effective date of this act or the offender is serving a sentence of
11 incarceration, probation, parole or other form of community
12 supervision as a result of the offense or is confined following
13 acquittal by reason of insanity or as a result of civil commitment on
14 the effective date of this act;

15 (3) A conviction, adjudication of delinquency, or acquittal by
16 reason of insanity for an offense similar to any offense enumerated
17 in paragraph (2) or a sentence on the basis of criteria similar to the
18 criteria set forth in paragraph (1) of this subsection entered or
19 imposed under the laws of the United States, this State, or another
20 state; or a charge, except when the charge was dismissed or the
21 person was found not guilty, conviction, adjudication of
22 delinquency, or acquittal by reason of insanity for an offense
23 similar to any offense enumerated in paragraph (2) or a sentence on
24 the basis of criteria similar to the criteria set forth in paragraph (1)
25 of this subsection entered or imposed under the laws of any foreign
26 government.

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

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

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

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

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

45 (1) A person who is required to register and who is under
46 supervision in the community on probation, parole, furlough, work
47 release, or a similar program, shall register at the time the person is
48 placed under supervision or no later than 120 days after the

1 effective date of this act, whichever is later, in accordance with
2 procedures established by the Department of Corrections, the
3 Department of Human Services, the Juvenile Justice Commission
4 established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170)
5 or the Administrative Office of the Courts, whichever is responsible
6 for supervision;

7 (2) A person confined in a correctional or juvenile facility or
8 involuntarily committed who is required to register shall register
9 prior to release in accordance with procedures established by the
10 Department of Corrections, the Department of Human Services or
11 the Juvenile Justice Commission and, within 48 hours of release,
12 shall also register with the chief law enforcement officer of the
13 municipality in which the person resides or, if the municipality does
14 not have a local police force, the Superintendent of State Police;

15 (3) A person moving to or returning to this State from another
16 jurisdiction shall register with the chief law enforcement officer of
17 the municipality in which the person will reside or, if the
18 municipality does not have a local police force, the Superintendent
19 of State Police within 120 days of the effective date of this act or 10
20 days of first residing in or returning to a municipality in this State,
21 whichever is later;

22 (4) A person required to register on the basis of a conviction
23 prior to the effective date who is not confined or under supervision
24 on the effective date of this act shall register within 120 days of the
25 effective date of this act with the chief law enforcement officer of
26 the municipality in which the person will reside or, if the
27 municipality does not have a local police force, the Superintendent
28 of State Police;

29 (5) A person who in another jurisdiction is required to register
30 as a sex offender and who is enrolled on a full-time or part-time
31 basis in any public or private educational institution in this State,
32 including any secondary school, trade or professional institution,
33 institution of higher education or other post-secondary school shall,
34 within **【ten】** 10 days of commencing attendance at such educational
35 institution, register with the chief law enforcement officer of the
36 municipality in which the educational institution is located or, if the
37 municipality does not have a local police force, the Superintendent
38 of State Police;

39 (6) A person who in another jurisdiction is required to register
40 as a sex offender and who is employed or carries on a vocation in
41 this State, on either a full-time or a part-time basis, with or without
42 compensation, for more than 14 consecutive days or for an
43 aggregate period exceeding 30 days in a calendar year, shall, within
44 **【ten】** 10 days after commencing such employment or vocation,
45 register with the chief law enforcement officer of the municipality
46 in which the employer is located or where the vocation is carried
47 on, as the case may be, or, if the municipality does not have a local
48 police force, the Superintendent of State Police;

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

8 d. (1) Upon a change of address, a person shall notify the law
9 enforcement agency with which the person is registered and shall
10 re-register with the appropriate law enforcement agency no less
11 than 10 days before he intends to first reside at his new address.
12 Upon a change of employment or school enrollment status, a person
13 shall notify the appropriate law enforcement agency no later than
14 five days after any such change. A person who fails to notify the
15 appropriate law enforcement agency of a change of address or status
16 in accordance with this subsection is guilty of a crime of the third
17 degree.

18 (2) A person required to register under this act shall provide the
19 appropriate law enforcement agency with information as to whether
20 the person has routine access to or use of a computer or any other
21 device with Internet capability. A person who fails to notify the
22 appropriate law enforcement agency of such information or of a
23 change in the person's access to or use of a computer or other
24 device with Internet capability or who provides false information
25 concerning the person's access to or use of a computer or any other
26 device with Internet capability is guilty of a crime of the third
27 degree.

28 e. A person required to register under paragraph (1) of
29 subsection b. of this section or under paragraph (3) of subsection b.
30 due to a sentence imposed on the basis of criteria similar to the
31 criteria set forth in paragraph (1) of subsection b. shall verify his
32 address with the appropriate law enforcement agency every 90 days
33 in a manner prescribed by the Attorney General. A person required
34 to register under paragraph (2) of subsection b. of this section or
35 under paragraph (3) of subsection b. on the basis of a conviction for
36 an offense similar to an offense enumerated in paragraph (2) of
37 subsection b. shall verify his address annually in a manner
38 prescribed by the Attorney General. In addition to address
39 information, the person shall provide as part of the verification
40 process any additional information the Attorney General may
41 require. One year after the effective date of this act, the Attorney
42 General shall review, evaluate and, if warranted, modify pursuant to
43 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
44 1 et seq.) the verification requirement. Any person who knowingly
45 provides false information concerning his place of residence or who
46 fails to verify his address with the appropriate law enforcement
47 agency or other entity, as prescribed by the Attorney General in

1 accordance with this subsection, is guilty of a crime of the third
2 degree.

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

10 g. A person required to register under this section who has
11 been convicted of, adjudicated delinquent, or acquitted by reason of
12 insanity for more than one sex offense as defined in subsection b. of
13 this section or who has been convicted of, adjudicated delinquent,
14 or acquitted by reason of insanity for aggravated sexual assault
15 pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault
16 pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not
17 eligible under subsection f. of this section to make application to
18 the Superior Court of this State to terminate the registration
19 obligation.

20 (cf: P.L.2017, c.141, s.3)

21

22 2. (New section) a. As used in this section:

23 “Federal immigration authority” means any officer, employee, or
24 person otherwise paid by or acting as an agent of United States
25 Immigration and Customs Enforcement or United States Customs and
26 Border Protection, or any division thereof, or any officer, employee, or
27 person otherwise paid by or acting as an agent of the United States
28 Department of Homeland Security who is charged with immigration
29 enforcement.

30 “Immigration enforcement” means any efforts to investigate, or
31 enforce any federal civil immigration law, and the investigation or
32 enforcement of any federal criminal immigration law that penalizes a
33 person’s presence, entry, or employment in the United States.

34 “Law enforcement agency” means a State, county, or municipal law
35 enforcement agency, and State or county correctional facility.

36 b. Every county prosecutor shall notify the appropriate law
37 enforcement agency when a person has been convicted, adjudicated
38 delinquent, or acquitted by reason of insanity for the commission of a
39 sex offense as defined in subsection b. of section 2 of P.L.1994, c.133
40 (C.2C:7-2). Upon notification, the law enforcement agency shall
41 inquire about the immigration status of the person who has been
42 convicted.

43 For the purposes of this subsection, the appropriate law
44 enforcement agency is the correctional facility in which the convicted
45 person is held or, if the convicted person is not in the custody of a
46 correctional facility, the agency or official best suited to notify and
47 cooperate with federal immigration authorities with respect to the
48 convicted person, including but not limited to any parole or probation

1 officer with a supervisory role over the convicted person or the State,
2 county, or local police department with jurisdiction over the convicted
3 person's place of residence.

4 c. If, based upon the inquiry required pursuant to subsection b. of
5 this section, a law enforcement agency is unable to confirm that the
6 sex offender's presence in the United States is authorized under federal
7 law, the law enforcement agency shall provide notification to a federal
8 immigration authority and shall cooperate with any immigration
9 enforcement initiated by the federal immigration authority, including
10 but not limited to:

11 (1) participating in civil immigration enforcement operations;

12 (2) providing any non-public personally identifying information
13 regarding an individual;

14 (3) providing access to any State, county, or local law enforcement
15 equipment, office space, database, or property not available to the
16 general public;

17 (4) providing access to a detained individual for an interview;

18 (5) providing notice of a detained individual's upcoming release
19 from custody; and

20 (6) continuing the detention of an individual past the time the
21 individual would otherwise be eligible for release from custody based
22 solely on a civil immigration detainer request.

23 d. Upon inquiry by a federal immigration authority, a law
24 enforcement agency shall cooperate with any immigration
25 enforcement initiated by a federal immigration authority in the case of
26 a person who has registered because that person was convicted of a sex
27 offense as defined in section 2 of P.L.1994, c.133 (C.2C:7-2) under the
28 laws of any foreign government, or was charged with a sex offense
29 and absconded from that jurisdiction prior to the charge being
30 adjudicated or resolved, and the law enforcement agency is unable to
31 confirm that the sex offender's presence in the United States is
32 authorized under federal law. This cooperation shall include, but not
33 be limited to:

34 (1) participating in civil immigration enforcement operations;

35 (2) providing any non-public personally identifying information
36 regarding an individual;

37 (3) providing access to any State, county, or local law enforcement
38 equipment, office space, database, or property not available to the
39 general public;

40 (4) providing access to a detained individual for an interview;

41 (5) providing notice of a detained individual's upcoming release
42 from custody; and

43 (6) continuing the detention of an individual past the time the
44 individual would otherwise be eligible for release from custody based
45 solely on a civil immigration detainer request.

46 If a law enforcement agency has knowledge that a sex offender who
47 has registered with that law enforcement agency was convicted of a
48 sex offense as defined in section 2 of P.L.1994, c.133 (C.2C:7-2)

1 under the laws of any foreign government, or was charged with a sex
2 offense by a foreign government and absconded from that jurisdiction
3 prior to the charge being adjudicated or resolved, and the law
4 enforcement agency is unable to confirm that the sex offender's
5 presence in the United States is authorized under federal law, the law
6 enforcement agency shall provide notification to a federal immigration
7 authority.

8
9 3. This act shall take effect on the first day of the fourth month
10 after enactment.

11 12 13 STATEMENT

14
15 This bill requires persons who have been convicted, or fled a
16 charge, of a sex offense in a foreign country to register as a sex
17 offender under Megan's Law under certain circumstances. In
18 addition, contrary to a recent directive issued by the New Jersey
19 Attorney General, the bill requires law enforcement agencies to
20 inquire about the immigration status of a convicted sex offender and
21 notify and cooperate with federal immigration authorities when the
22 law enforcement agency is unable to confirm that the sex offender's
23 presence in the United States is authorized under federal law.

24 Under current State law, a person who is convicted, adjudicated
25 delinquent, or acquitted by reason of insanity under the laws of the
26 United States, this State, or another state of an offense similar to
27 those classified as sex offenses under current law is required to
28 register as a sex offender.

29 This bill expands the requirement to register in this State as a sex
30 offender to also include persons who were convicted, adjudicated
31 delinquent; or acquitted by reason of insanity under the laws of any
32 foreign government of an offense similar to those classified as sex
33 offenses under current law, and persons who were charged with
34 such offenses by a foreign government, but fled the jurisdiction
35 prior to the adjudication of those charges.

36 The Attorney General Directive No. 2018-6 generally prohibits
37 State, county, and municipal law enforcement agencies from
38 providing certain types of assistance to federal immigration
39 authorities charged with enforcing federal civil immigration law,
40 with certain limited exceptions. The directive also prohibits, with
41 certain limited exceptions, a State, county, or municipal law
42 enforcement agency from inquiring about the immigration status of
43 any individual. Furthermore, the directive does not mandate that
44 law enforcement officials provide assistance in any particular
45 circumstance, even when, under the limited exceptions of the
46 directive, they are permitted to do so. Thus, when an offender who
47 is not authorized to be in the United States has been convicted of a
48 Megan's Law offense, under the directive, local law enforcement is

1 under no obligation to cooperate with federal authorities that may
2 be seeking to enforce federal immigration laws with respect to that
3 offender.

4 In contrast to the directive, the bill requires every county
5 prosecutor to notify the appropriate law enforcement agency when a
6 person has been convicted, adjudicated delinquent, or acquitted by
7 reason of insanity for the commission of a sex offense, as defined
8 under current law. Upon notification, the law enforcement agency
9 is required to inquire about the immigration status of the person
10 who has been convicted.

11 The bill provides that if, based upon the inquiry required by the
12 bill, a law enforcement agency is unable to confirm that the
13 person's presence in the United States is authorized under federal
14 law, the law enforcement agency is to provide notification to a
15 federal immigration authority.

16 Under the bill, the law enforcement agency also is to cooperate
17 with any immigration enforcement initiated by the federal
18 immigration authority, which includes but is not limited to: (1)
19 participating in civil immigration enforcement operations with
20 respect to the sex offender; (2) providing any non-public personally
21 identifying information regarding the sex offender; (3) providing
22 access to any State, county, or local law enforcement equipment,
23 office space, database, or property not available to the general
24 public; (4) providing access to a detained sex offender for an
25 interview; (5) providing notice of a detained sex offender's
26 upcoming release from custody; and (6) continuing the detention of
27 a sex offender past the time the sex offender would otherwise be
28 eligible for release from custody when presented with a civil
29 immigration detainer request.

30 Finally, the bill requires the cooperation of a New Jersey law
31 enforcement agency with any immigration enforcement upon an
32 inquiry by a federal immigration authority concerning a registered
33 sex offender convicted of a sex offense by a foreign government, or
34 who was charged with a sex offense by a foreign government and
35 absconded from that jurisdiction prior to the charge being
36 adjudicated or resolved, and if the law enforcement agency is
37 unable to confirm that the sex offender's presence in the United
38 States is authorized under federal law. This cooperation is to
39 include, but not be limited to, participating in civil immigration
40 enforcement operations; providing any non-public personally
41 identifying information regarding an individual; providing access to
42 any State, county, or local law enforcement equipment, office
43 space, database, or property not available to the general public;
44 providing access to a detained individual for an interview;
45 providing notice of a detained individual's upcoming release from
46 custody; and continuing the detention of an individual past the time
47 the individual would otherwise be eligible for release from custody
48 based solely on a civil immigration detainer request. The bill

1 further requires a law enforcement agency that registers a sex
2 offender and has knowledge that the sex offender was (1) convicted
3 by a foreign government, or (2) charged with a sex offense by a
4 foreign government and absconded prior to the charges being
5 adjudicated or resolved, to provide notification to a federal
6 immigration authority if the agency is unable to confirm that the sex
7 offender's presence in the United States is authorized under federal
8 law.

9 It is the sponsor's firmly held belief that because sex offenders
10 pose a grave danger to public safety, especially for women and
11 children, law enforcement officials should be required to cooperate
12 with immigration enforcement actions initiated by a federal
13 immigration authority, in order to ensure that dangerous predators
14 are not permitted to find safe harbor in New Jersey.