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RH/CL

P.L. 2017, CHAPTER 333, *approved January 16, 2018*

Senate, No. 3566

1 **AN ACT** concerning the sentencing of certain child pornography
2 offenders and amending P.L.1994, c.130.

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.130 (C.2C:43-6.4) is amended to
8 read as follows:

9 2. a. Notwithstanding any provision of law to the contrary, a
10 judge imposing sentence on a person who has been convicted of
11 aggravated sexual assault, sexual assault, aggravated criminal
12 sexual contact, kidnapping pursuant to paragraph (2) of subsection
13 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging
14 in sexual conduct which would impair or debauch the morals of the
15 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
16 welfare of a child pursuant to paragraph (3) or sub-subparagraph (i)
17 or (ii) of subparagraph (b) of paragraph (5) of subsection b. of
18 N.J.S.2C:24-4, luring, violating a condition of a special sentence of
19 community supervision for life pursuant to subsection d. of this
20 section, or an attempt to commit any of these offenses shall include,
21 in addition to any sentence authorized by this Code, a special
22 sentence of parole supervision for life. Notwithstanding any
23 provision of law to the contrary, a court imposing sentence on a
24 person who has been convicted of endangering the welfare of a
25 child pursuant to paragraph (4) or subparagraph (a) or sub-
26 subparagraph (iii) of subparagraph (b) of paragraph (5) of
27 subsection b. of N.J.S.2C:24-4, leader of a child pornography
28 network pursuant to section 8 of P.L.2017, c.141 (C.2C:24-4.1), or
29 an attempt to commit either of these offenses shall include, upon
30 motion of the prosecutor, a special sentence of parole supervision
31 for life in addition to any sentence authorized by Title 2C of the
32 New Jersey Statutes, unless the court finds on the record that the
33 special sentence is not needed to protect the community or deter the
34 defendant from future criminal activity.

35 b. The special sentence of parole supervision for life required
36 by this section shall commence immediately upon the defendant's
37 release from incarceration. If the defendant is serving a sentence of
38 incarceration for another offense at the time he completes the
39 custodial portion of the sentence imposed on the present offense,
40 the special sentence of parole supervision for life shall not
41 commence until the defendant is actually released from
42 incarceration for the other offense. Persons serving a special

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 sentence of parole supervision for life shall remain in the legal
2 custody of the Commissioner of Corrections, shall be supervised by
3 the Division of Parole of the State Parole Board, shall be subject to
4 the provisions and conditions set forth in subsection c. of section 3
5 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and
6 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and
7 30:4-123.65), and shall be subject to conditions appropriate to
8 protect the public and foster rehabilitation. Such conditions may
9 include the requirement that the person comply with the conditions
10 set forth in subsection f. of this section concerning use of a
11 computer or other device with access to the Internet. If the
12 defendant violates a condition of a special sentence of parole
13 supervision for life, the defendant shall be subject to the provisions
14 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60
15 through 30:4-123.63 and 30:4-123.65), and for the purpose of
16 calculating the limitation on time served pursuant to section 21 of
17 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon
18 the defendant related to the special sentence of parole supervision
19 for life shall be deemed to be a term of life imprisonment. When the
20 court suspends the imposition of sentence on a defendant who has
21 been convicted of any offense enumerated in subsection a. of this
22 section, the court may not suspend imposition of the special
23 sentence of parole supervision for life, which shall commence
24 immediately, with the Division of Parole of the State Parole Board
25 maintaining supervision over that defendant, including the
26 defendant's compliance with any conditions imposed by the court
27 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this
28 subsection. Nothing contained in this subsection shall prevent the
29 court from at any time proceeding under the provisions of
30 N.J.S.2C:45-1 through N.J.S.2C:45-4 against any such defendant
31 for a violation of any conditions imposed by the court when it
32 suspended imposition of sentence, or prevent the Division of Parole
33 from proceeding under the provisions of sections 16 through 19 and
34 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and
35 C.30:4-123.65) against any such defendant for a violation of any
36 conditions of the special sentence of parole supervision for life,
37 including the conditions imposed by the court pursuant to
38 N.J.S.2C:45-1. In any such proceeding by the Division of Parole,
39 the provisions of subsection c. of section 3 of P.L.1997, c.117
40 (C.30:4-123.51b) authorizing revocation and return to prison shall
41 be applicable to such a defendant, notwithstanding that the
42 defendant may not have been sentenced to or served any portion of
43 a custodial term for conviction of an offense enumerated in
44 subsection a. of this section.

45 c. A person sentenced to a term of parole supervision for life
46 may petition the Superior Court for release from that parole
47 supervision. The judge may grant a petition for release from a
48 special sentence of parole supervision for life only upon proof by

1 clear and convincing evidence that the person has not committed a
2 crime for 15 years since the last conviction or release from
3 incarceration, whichever is later, and that the person is not likely to
4 pose a threat to the safety of others if released from parole
5 supervision. Notwithstanding the provisions of section 22 of
6 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of
7 parole supervision for life may be released from that parole
8 supervision term only by court order as provided in this subsection.

9 d. A person who violates a condition of a special sentence of
10 community supervision for life or parole supervision for life
11 imposed pursuant to this section without good cause is guilty of a
12 crime of the third degree. Notwithstanding any other law to the
13 contrary, a person sentenced pursuant to this subsection shall be
14 sentenced to a term of imprisonment, unless the court is clearly
15 convinced that the interests of justice so far outweigh the need to
16 deter this conduct and the interest in public safety that a sentence to
17 imprisonment would be a manifest injustice. Nothing in this
18 subsection shall preclude subjecting a person who violates any
19 condition of a special sentence of parole supervision for life to the
20 provisions of sections 16 through 19 and 21 of P.L.1979, c.441
21 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to
22 the provisions of subsection c. of section 3 of P.L.1997, c.117
23 (C.30:4-123.51b).

24 e. A person who, while serving a special sentence of parole
25 supervision for life imposed pursuant to this section, commits a
26 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,
27 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of
28 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,
29 N.J.S.2C:24-4, section 8 of P.L.2017, c.141 (C.2C:24-4.1),
30 N.J.S.2C:18-2 when the offense is a crime of the second degree, or
31 subsection a. of N.J.S.2C:39-4 shall be sentenced to an extended
32 term of imprisonment as set forth in N.J.S.2C:43-7, which term
33 shall, notwithstanding the provisions of N.J.S.2C:43-7 or any other
34 law, be served in its entirety prior to the person's resumption of the
35 term of parole supervision for life.

36 f. The special sentence of parole supervision for life required
37 by this section may include any of the following Internet access
38 conditions:

39 (1) Prohibit the person from accessing or using a computer or
40 any other device with Internet capability without the prior written
41 approval of the court except the person may use a computer or any
42 other device with Internet capability in connection with that
43 person's employment or search for employment with the prior
44 approval of the person's parole officer;

45 (2) Require the person to submit to periodic unannounced
46 examinations of the person's computer or any other device with
47 Internet capability by a parole officer, law enforcement officer or
48 assigned computer or information technology specialist, including

1 the retrieval and copying of all data from the computer or device
2 and any internal or external peripherals and removal of such
3 information, equipment or device to conduct a more thorough
4 inspection;

5 (3) Require the person to submit to the installation on the
6 person's computer or device with Internet capability, at the person's
7 expense, one or more hardware or software systems to monitor the
8 Internet use;

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

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

16 (cf: P.L.2017, c.141, s.5)

17

18 2. This act shall take effect immediately.

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STATEMENT

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23 This bill addresses an omission in recently enacted legislation
24 that would, upon the legislation's effective date of February 1,
25 2018, inadvertently change the law to render the State's lifetime
26 parole supervision sentencing law inapplicable to certain convicted
27 sex offenders to whom it currently applies.

28 Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole
29 supervision law, *requires* a judge imposing a sentence on any
30 person who has been convicted of certain enumerated sex crimes to
31 include a special sentence of parole supervision for life. The law
32 also *allows* the judge, upon motion of the prosecutor, to impose this
33 special sentence for other enumerated sex crimes.

34 Numerous changes were made to the State's child pornography
35 law pursuant to P.L.2017, c.141, which is effective on February 1,
36 2018. The changes include establishing more precisely graded child
37 pornography distribution crimes based on the number of items
38 involved. The new law divides subparagraph (b) of paragraph (5)
39 of subsection b. of N.J.S.2C:24-4, which involves distribution and
40 possession of items depicting the sexual exploitation of a child, into
41 three sub-subparagraphs based on the number of items involved.

42 Prior to the enactment of P.L.2017, c.141, all violations of
43 paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included
44 in the enumerated crimes that allowed a judge to impose
45 supervision for life upon motion of the prosecutor. That law, among
46 other reforms, specified that certain child pornography possession
47 crimes delineated in subparagraph (b) of paragraph (5) of
48 subsection b. involving large quantities of items are included in the

1 category for which a judge is required to impose a sentence that
2 includes parole supervision for life without a prosecutor's motion.
3 In making this change, the legislation inadvertently omitted adding
4 a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

5 This omission will have the effect of preventing judges from
6 imposing lifetime parole supervision when motioned by the
7 prosecutor on certain child pornography distributors who currently
8 would otherwise be subject to sentencing under the lifetime parole
9 supervision law.

10 Any impact of this omission would be avoided by this bill if
11 enacted before the February 1, 2018 effective date of P.L.2017,
12 c.141.

13

14

15

16

17 Authorizes court to impose lifetime parole supervision on certain
18 child pornography offenders.

SENATE, No. 3566

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED DECEMBER 4, 2017

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

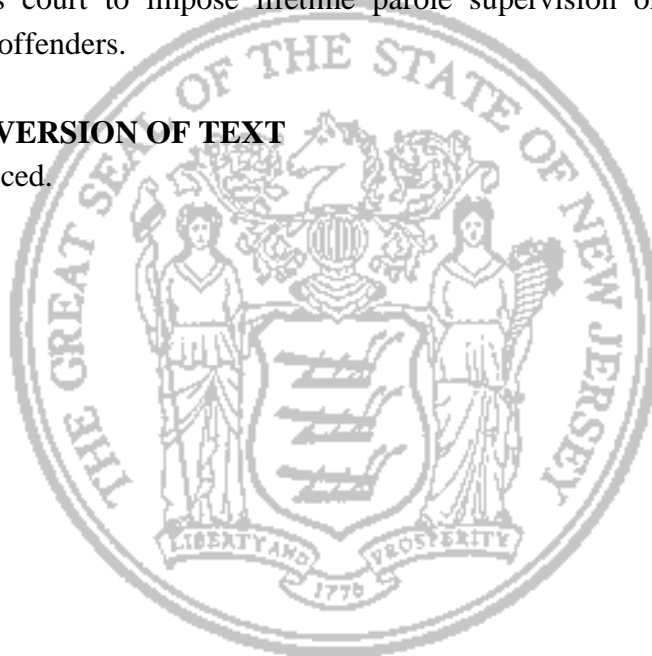
Assemblyman Space

SYNOPSIS

Authorizes court to impose lifetime parole supervision on certain child pornography offenders.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning the sentencing of certain child pornography
2 offenders and amending P.L.1994, c.130.

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.130 (C.2C:43-6.4) is amended to
8 read as follows:

9 2. a. Notwithstanding any provision of law to the contrary, a
10 judge imposing sentence on a person who has been convicted of
11 aggravated sexual assault, sexual assault, aggravated criminal
12 sexual contact, kidnapping pursuant to paragraph (2) of subsection
13 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging
14 in sexual conduct which would impair or debauch the morals of the
15 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
16 welfare of a child pursuant to paragraph (3) or sub-subparagraph (i)
17 or (ii) of subparagraph (b) of paragraph (5) of subsection b. of
18 N.J.S.2C:24-4, luring, violating a condition of a special sentence of
19 community supervision for life pursuant to subsection d. of this
20 section, or an attempt to commit any of these offenses shall include,
21 in addition to any sentence authorized by this Code, a special
22 sentence of parole supervision for life. Notwithstanding any
23 provision of law to the contrary, a court imposing sentence on a
24 person who has been convicted of endangering the welfare of a
25 child pursuant to paragraph (4) or subparagraph (a) or sub-
26 subparagraph (iii) of subparagraph (b) of paragraph (5) of
27 subsection b. of N.J.S.2C:24-4, leader of a child pornography
28 network pursuant to section 8 of P.L.2017, c.141 (C.2C:24-4.1), or
29 an attempt to commit either of these offenses shall include, upon
30 motion of the prosecutor, a special sentence of parole supervision
31 for life in addition to any sentence authorized by Title 2C of the
32 New Jersey Statutes, unless the court finds on the record that the
33 special sentence is not needed to protect the community or deter the
34 defendant from future criminal activity.

35 b. The special sentence of parole supervision for life required
36 by this section shall commence immediately upon the defendant's
37 release from incarceration. If the defendant is serving a sentence of
38 incarceration for another offense at the time he completes the
39 custodial portion of the sentence imposed on the present offense,
40 the special sentence of parole supervision for life shall not
41 commence until the defendant is actually released from
42 incarceration for the other offense. Persons serving a special
43 sentence of parole supervision for life shall remain in the legal
44 custody of the Commissioner of Corrections, shall be supervised by
45 the Division of Parole of the State Parole Board, shall be subject to

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 the provisions and conditions set forth in subsection c. of section 3
2 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and
3 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and
4 30:4-123.65), and shall be subject to conditions appropriate to
5 protect the public and foster rehabilitation. Such conditions may
6 include the requirement that the person comply with the conditions
7 set forth in subsection f. of this section concerning use of a
8 computer or other device with access to the Internet. If the
9 defendant violates a condition of a special sentence of parole
10 supervision for life, the defendant shall be subject to the provisions
11 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60
12 through 30:4-123.63 and 30:4-123.65), and for the purpose of
13 calculating the limitation on time served pursuant to section 21 of
14 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon
15 the defendant related to the special sentence of parole supervision
16 for life shall be deemed to be a term of life imprisonment. When the
17 court suspends the imposition of sentence on a defendant who has
18 been convicted of any offense enumerated in subsection a. of this
19 section, the court may not suspend imposition of the special
20 sentence of parole supervision for life, which shall commence
21 immediately, with the Division of Parole of the State Parole Board
22 maintaining supervision over that defendant, including the
23 defendant's compliance with any conditions imposed by the court
24 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this
25 subsection. Nothing contained in this subsection shall prevent the
26 court from at any time proceeding under the provisions of
27 N.J.S.2C:45-1 through N.J.S.2C:45-4 against any such defendant
28 for a violation of any conditions imposed by the court when it
29 suspended imposition of sentence, or prevent the Division of Parole
30 from proceeding under the provisions of sections 16 through 19 and
31 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and
32 C.30:4-123.65) against any such defendant for a violation of any
33 conditions of the special sentence of parole supervision for life,
34 including the conditions imposed by the court pursuant to
35 N.J.S.2C:45-1. In any such proceeding by the Division of Parole,
36 the provisions of subsection c. of section 3 of P.L.1997, c.117
37 (C.30:4-123.51b) authorizing revocation and return to prison shall
38 be applicable to such a defendant, notwithstanding that the
39 defendant may not have been sentenced to or served any portion of
40 a custodial term for conviction of an offense enumerated in
41 subsection a. of this section.

42 c. A person sentenced to a term of parole supervision for life
43 may petition the Superior Court for release from that parole
44 supervision. The judge may grant a petition for release from a
45 special sentence of parole supervision for life only upon proof by
46 clear and convincing evidence that the person has not committed a
47 crime for 15 years since the last conviction or release from
48 incarceration, whichever is later, and that the person is not likely to

1 pose a threat to the safety of others if released from parole
2 supervision. Notwithstanding the provisions of section 22 of
3 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of
4 parole supervision for life may be released from that parole
5 supervision term only by court order as provided in this subsection.

6 d. A person who violates a condition of a special sentence of
7 community supervision for life or parole supervision for life
8 imposed pursuant to this section without good cause is guilty of a
9 crime of the third degree. Notwithstanding any other law to the
10 contrary, a person sentenced pursuant to this subsection shall be
11 sentenced to a term of imprisonment, unless the court is clearly
12 convinced that the interests of justice so far outweigh the need to
13 deter this conduct and the interest in public safety that a sentence to
14 imprisonment would be a manifest injustice. Nothing in this
15 subsection shall preclude subjecting a person who violates any
16 condition of a special sentence of parole supervision for life to the
17 provisions of sections 16 through 19 and 21 of P.L.1979, c.441
18 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to
19 the provisions of subsection c. of section 3 of P.L.1997, c.117
20 (C.30:4-123.51b).

21 e. A person who, while serving a special sentence of parole
22 supervision for life imposed pursuant to this section, commits a
23 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,
24 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of
25 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,
26 N.J.S.2C:24-4, section 8 of P.L.2017, c.141 (C.2C:24-4.1),
27 N.J.S.2C:18-2 when the offense is a crime of the second degree, or
28 subsection a. of N.J.S.2C:39-4 shall be sentenced to an extended
29 term of imprisonment as set forth in N.J.S.2C:43-7, which term
30 shall, notwithstanding the provisions of N.J.S.2C:43-7 or any other
31 law, be served in its entirety prior to the person's resumption of the
32 term of parole supervision for life.

33 f. The special sentence of parole supervision for life required
34 by this section may include any of the following Internet access
35 conditions:

36 (1) Prohibit the person from accessing or using a computer or
37 any other device with Internet capability without the prior written
38 approval of the court except the person may use a computer or any
39 other device with Internet capability in connection with that
40 person's employment or search for employment with the prior
41 approval of the person's parole officer;

42 (2) Require the person to submit to periodic unannounced
43 examinations of the person's computer or any other device with
44 Internet capability by a parole officer, law enforcement officer or
45 assigned computer or information technology specialist, including
46 the retrieval and copying of all data from the computer or device
47 and any internal or external peripherals and removal of such

1 information, equipment or device to conduct a more thorough
2 inspection;

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

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

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

14 (cf: P.L.2017, c.141, s.5)

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill addresses an omission in recently enacted legislation
22 that would, upon the legislation's effective date of February 1,
23 2018, inadvertently change the law to render the State's lifetime
24 parole supervision sentencing law inapplicable to certain convicted
25 sex offenders to whom it currently applies.

26 Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole
27 supervision law, *requires* a judge imposing a sentence on any
28 person who has been convicted of certain enumerated sex crimes to
29 include a special sentence of parole supervision for life. The law
30 also *allows* the judge, upon motion of the prosecutor, to impose this
31 special sentence for other enumerated sex crimes.

32 Numerous changes were made to the State's child pornography
33 law pursuant to P.L.2017, c.141, which is effective on February 1,
34 2018. The changes include establishing more precisely graded child
35 pornography distribution crimes based on the number of items
36 involved. The new law divides subparagraph (b) of paragraph (5)
37 of subsection b. of N.J.S.2C:24-4, which involves distribution and
38 possession of items depicting the sexual exploitation of a child, into
39 three sub-subparagraphs based on the number of items involved.

40 Prior to the enactment of P.L.2017, c.141, all violations of
41 paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included
42 in the enumerated crimes that allowed a judge to impose
43 supervision for life upon motion of the prosecutor. That law, among
44 other reforms, specified that certain child pornography possession
45 crimes delineated in subparagraph (b) of paragraph (5) of
46 subsection b. involving large quantities of items are included in the
47 category for which a judge is required to impose a sentence that
48 includes parole supervision for life without a prosecutor's motion.

S3566 GREENSTEIN

6

1 In making this change, the legislation inadvertently omitted adding
2 a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

3 This omission will have the effect of preventing judges from
4 imposing lifetime parole supervision when motioned by the
5 prosecutor on certain child pornography distributors who currently
6 would otherwise be subject to sentencing under the lifetime parole
7 supervision law.

8 Any impact of this omission would be avoided by this bill if
9 enacted before the February 1, 2018 effective date of P.L.2017,
10 c.141.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 3566

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2017

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 3566.

As reported by the committee, this bill addresses an omission in recently enacted legislation that would, upon the legislation's effective date of February 1, 2018, inadvertently change the law to render the State's lifetime parole supervision sentencing law inapplicable to certain convicted sex offenders to whom it currently applies.

Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole supervision law, *requires* a judge imposing a sentence on any person who has been convicted of certain enumerated sex crimes to include a special sentence of parole supervision for life. The law also *allows* the judge, upon motion of the prosecutor, to impose this special sentence for other enumerated sex crimes.

Numerous changes were made to the State's child pornography law pursuant to P.L.2017, c.141, which is effective on February 1, 2018. The changes include establishing more precisely graded child pornography distribution crimes based on the number of items involved. The new law divides subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4, which involves distribution and possession of items depicting the sexual exploitation of a child, into three sub-subparagraphs based on the number of items involved.

Prior to the enactment of P.L.2017, c.141, all violations of paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included in the enumerated crimes that allowed a judge to impose supervision for life upon motion of the prosecutor. That law, among other reforms, specified that certain child pornography possession crimes delineated in subparagraph (b) of paragraph (5) of subsection b. involving large quantities of items are included in the category for which a judge is required to impose a sentence that includes parole supervision for life without a prosecutor's motion. In making this change, the legislation inadvertently omitted adding a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

This omission will have the effect of preventing judges, when motioned by the prosecutor, from imposing lifetime parole supervision on certain child pornography distributors who currently would otherwise be subject to sentencing under the lifetime parole supervision law.

Any impact of this omission would be avoided by this bill if enacted before the February 1, 2018 effective date of P.L.2017, c.141.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3566

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3566.

This bill addresses an omission in recently enacted legislation that would, upon the legislation's effective date of February 1, 2018, inadvertently change the law to render the State's lifetime parole supervision sentencing law inapplicable to certain convicted sex offenders to whom it currently applies.

Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole supervision law, *requires* a judge imposing a sentence on any person who has been convicted of certain enumerated sex crimes to include a special sentence of parole supervision for life. The law also *allows* the judge, upon motion of the prosecutor, to impose this special sentence for other enumerated sex crimes.

Numerous changes were made to the State's child pornography law pursuant to P.L.2017, c.141, which is effective on February 1, 2018. The changes include establishing more precisely graded child pornography distribution crimes based on the number of items involved. The new law divides subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4, which involves distribution and possession of items depicting the sexual exploitation of a child, into three sub-subparagraphs based on the number of items involved.

Prior to the enactment of P.L.2017, c.141, all violations of paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included in the enumerated crimes that allowed a judge to impose supervision for life upon motion of the prosecutor. That law, among other reforms, specified that certain child pornography possession crimes delineated in subparagraph (b) of paragraph (5) of subsection b. involving large quantities of items are included in the category for which a judge is required to impose a sentence that includes parole supervision for life without a prosecutor's motion. In making this change, the legislation inadvertently omitted adding a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

This omission will have the effect of preventing judges, when motioned by the prosecutor, from imposing lifetime parole supervision on certain child pornography distributors who currently would otherwise be subject to sentencing under the lifetime parole supervision law.

Any impact of this omission would be avoided by this bill if enacted before the February 1, 2018 effective date of P.L.2017, c.141.

FISCAL IMPACT:

This bill has not been certified as requiring a Fiscal Note.

ASSEMBLY, No. 5277

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED DECEMBER 7, 2017

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblyman Space

SYNOPSIS

Authorizes court to impose lifetime parole supervision on certain child pornography offenders.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning the sentencing of certain child pornography
2 offenders and amending P.L.1994, c.130.

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.130 (C.2C:43-6.4) is amended to
8 read as follows:

9 2. a. Notwithstanding any provision of law to the contrary, a
10 judge imposing sentence on a person who has been convicted of
11 aggravated sexual assault, sexual assault, aggravated criminal
12 sexual contact, kidnapping pursuant to paragraph (2) of subsection
13 c. of N.J.S.2C:13-1, endangering the welfare of a child by engaging
14 in sexual conduct which would impair or debauch the morals of the
15 child pursuant to subsection a. of N.J.S.2C:24-4, endangering the
16 welfare of a child pursuant to paragraph (3) or sub-subparagraph (i)
17 or (ii) of subparagraph (b) of paragraph (5) of subsection b. of
18 N.J.S.2C:24-4, luring, violating a condition of a special sentence of
19 community supervision for life pursuant to subsection d. of this
20 section, or an attempt to commit any of these offenses shall include,
21 in addition to any sentence authorized by this Code, a special
22 sentence of parole supervision for life. Notwithstanding any
23 provision of law to the contrary, a court imposing sentence on a
24 person who has been convicted of endangering the welfare of a
25 child pursuant to paragraph (4) or subparagraph (a) or sub-
26 subparagraph (iii) of subparagraph (b) of paragraph (5) of
27 subsection b. of N.J.S.2C:24-4, leader of a child pornography
28 network pursuant to section 8 of P.L.2017, c.141 (C.2C:24-4.1), or
29 an attempt to commit either of these offenses shall include, upon
30 motion of the prosecutor, a special sentence of parole supervision
31 for life in addition to any sentence authorized by Title 2C of the
32 New Jersey Statutes, unless the court finds on the record that the
33 special sentence is not needed to protect the community or deter the
34 defendant from future criminal activity.

35 b. The special sentence of parole supervision for life required
36 by this section shall commence immediately upon the defendant's
37 release from incarceration. If the defendant is serving a sentence of
38 incarceration for another offense at the time he completes the
39 custodial portion of the sentence imposed on the present offense,
40 the special sentence of parole supervision for life shall not
41 commence until the defendant is actually released from
42 incarceration for the other offense. Persons serving a special
43 sentence of parole supervision for life shall remain in the legal
44 custody of the Commissioner of Corrections, shall be supervised by
45 the Division of Parole of the State Parole Board, shall be subject to

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 the provisions and conditions set forth in subsection c. of section 3
2 of P.L.1997, c.117 (C.30:4-123.51b) and sections 15 through 19 and
3 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.63 and
4 30:4-123.65), and shall be subject to conditions appropriate to
5 protect the public and foster rehabilitation. Such conditions may
6 include the requirement that the person comply with the conditions
7 set forth in subsection f. of this section concerning use of a
8 computer or other device with access to the Internet. If the
9 defendant violates a condition of a special sentence of parole
10 supervision for life, the defendant shall be subject to the provisions
11 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60
12 through 30:4-123.63 and 30:4-123.65), and for the purpose of
13 calculating the limitation on time served pursuant to section 21 of
14 P.L.1979, c.441 (C.30:4-123.65) the custodial term imposed upon
15 the defendant related to the special sentence of parole supervision
16 for life shall be deemed to be a term of life imprisonment. When the
17 court suspends the imposition of sentence on a defendant who has
18 been convicted of any offense enumerated in subsection a. of this
19 section, the court may not suspend imposition of the special
20 sentence of parole supervision for life, which shall commence
21 immediately, with the Division of Parole of the State Parole Board
22 maintaining supervision over that defendant, including the
23 defendant's compliance with any conditions imposed by the court
24 pursuant to N.J.S.2C:45-1, in accordance with the provisions of this
25 subsection. Nothing contained in this subsection shall prevent the
26 court from at any time proceeding under the provisions of
27 N.J.S.2C:45-1 through N.J.S.2C:45-4 against any such defendant
28 for a violation of any conditions imposed by the court when it
29 suspended imposition of sentence, or prevent the Division of Parole
30 from proceeding under the provisions of sections 16 through 19 and
31 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and
32 C.30:4-123.65) against any such defendant for a violation of any
33 conditions of the special sentence of parole supervision for life,
34 including the conditions imposed by the court pursuant to
35 N.J.S.2C:45-1. In any such proceeding by the Division of Parole,
36 the provisions of subsection c. of section 3 of P.L.1997, c.117
37 (C.30:4-123.51b) authorizing revocation and return to prison shall
38 be applicable to such a defendant, notwithstanding that the
39 defendant may not have been sentenced to or served any portion of
40 a custodial term for conviction of an offense enumerated in
41 subsection a. of this section.

42 c. A person sentenced to a term of parole supervision for life
43 may petition the Superior Court for release from that parole
44 supervision. The judge may grant a petition for release from a
45 special sentence of parole supervision for life only upon proof by
46 clear and convincing evidence that the person has not committed a
47 crime for 15 years since the last conviction or release from
48 incarceration, whichever is later, and that the person is not likely to

1 pose a threat to the safety of others if released from parole
2 supervision. Notwithstanding the provisions of section 22 of
3 P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of
4 parole supervision for life may be released from that parole
5 supervision term only by court order as provided in this subsection.

6 d. A person who violates a condition of a special sentence of
7 community supervision for life or parole supervision for life
8 imposed pursuant to this section without good cause is guilty of a
9 crime of the third degree. Notwithstanding any other law to the
10 contrary, a person sentenced pursuant to this subsection shall be
11 sentenced to a term of imprisonment, unless the court is clearly
12 convinced that the interests of justice so far outweigh the need to
13 deter this conduct and the interest in public safety that a sentence to
14 imprisonment would be a manifest injustice. Nothing in this
15 subsection shall preclude subjecting a person who violates any
16 condition of a special sentence of parole supervision for life to the
17 provisions of sections 16 through 19 and 21 of P.L.1979, c.441
18 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65) pursuant to
19 the provisions of subsection c. of section 3 of P.L.1997, c.117
20 (C.30:4-123.51b).

21 e. A person who, while serving a special sentence of parole
22 supervision for life imposed pursuant to this section, commits a
23 violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5,
24 subsection b. of N.J.S.2C:12-1, N.J.S.2C:13-1, section 1 of
25 P.L.1993, c.291 (C.2C:13-6), N.J.S.2C:14-2, N.J.S.2C:14-3,
26 N.J.S.2C:24-4, section 8 of P.L.2017, c.141 (C.2C:24-4.1),
27 N.J.S.2C:18-2 when the offense is a crime of the second degree, or
28 subsection a. of N.J.S.2C:39-4 shall be sentenced to an extended
29 term of imprisonment as set forth in N.J.S.2C:43-7, which term
30 shall, notwithstanding the provisions of N.J.S.2C:43-7 or any other
31 law, be served in its entirety prior to the person's resumption of the
32 term of parole supervision for life.

33 f. The special sentence of parole supervision for life required
34 by this section may include any of the following Internet access
35 conditions:

36 (1) Prohibit the person from accessing or using a computer or
37 any other device with Internet capability without the prior written
38 approval of the court except the person may use a computer or any
39 other device with Internet capability in connection with that
40 person's employment or search for employment with the prior
41 approval of the person's parole officer;

42 (2) Require the person to submit to periodic unannounced
43 examinations of the person's computer or any other device with
44 Internet capability by a parole officer, law enforcement officer or
45 assigned computer or information technology specialist, including
46 the retrieval and copying of all data from the computer or device
47 and any internal or external peripherals and removal of such

1 information, equipment or device to conduct a more thorough
2 inspection;

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

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

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

14 (cf: P.L.2017, c.141, s.5)

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill addresses an omission in recently enacted legislation
22 that would, upon the legislation's effective date of February 1,
23 2018, inadvertently change the law to render the State's lifetime
24 parole supervision sentencing law inapplicable to certain convicted
25 sex offenders to whom it currently applies.

26 Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole
27 supervision law, *requires* a judge imposing a sentence on any
28 person who has been convicted of certain enumerated sex crimes to
29 include a special sentence of parole supervision for life. The law
30 also *allows* the judge, upon motion of the prosecutor, to impose this
31 special sentence for other enumerated sex crimes.

32 Numerous changes were made to the State's child pornography
33 law pursuant to P.L.2017, c.141, which is effective on February 1,
34 2018. The changes include establishing more precisely graded child
35 pornography distribution crimes based on the number of items
36 involved. The new law divides subparagraph (b) of paragraph (5)
37 of subsection b. of N.J.S.2C:24-4, which involves distribution and
38 possession of items depicting the sexual exploitation of a child, into
39 three sub-subparagraphs based on the number of items involved.

40 Prior to the enactment of P.L.2017, c.141, all violations of
41 paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included
42 in the enumerated crimes that allowed a judge to impose
43 supervision for life upon motion of the prosecutor. That law, among
44 other reforms, specified that certain child pornography possession
45 crimes delineated in subparagraph (b) of paragraph (5) of
46 subsection b. involving large quantities of items are included in the
47 category for which a judge is required to impose a sentence that
48 includes parole supervision for life without a prosecutor's motion.

1 In making this change, the legislation inadvertently omitted adding
2 a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

3 This omission will have the effect of preventing judges from
4 imposing lifetime parole supervision when motioned by the
5 prosecutor on certain child pornography distributors who currently
6 would otherwise be subject to sentencing under the lifetime parole
7 supervision law.

8 Any impact of this omission would be avoided by this bill if
9 enacted before the February 1, 2018 effective date of P.L.2017,
10 c.141.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5277

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2017

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5277.

This bill addresses an omission in recently enacted legislation that would inadvertently change the law to render the State's lifetime parole supervision sentencing law inapplicable to certain convicted sex offenders to whom it currently applies. The enactment takes effect February 1, 2018.

Section 2 of P.L.1994, c.130 (C.2C:43-6.4), the lifetime parole supervision law, requires a judge imposing a sentence on any person who has been convicted of certain enumerated sex crimes to include a special sentence of parole supervision for life. The law also provides that the court, upon motion of the prosecutor, shall impose this special sentence for other enumerated sex crimes unless the court finds on the record that the special sentence is not needed to protect the community or deter the defendant from future criminal activity.

P.L.2017, c.141, which is effective on February 1, 2018, made numerous changes to the State's child pornography law. The changes include establishing more precisely graded child pornography distribution crimes based on the number of items involved. The new law divides subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4, which involves distribution and possession of items depicting the sexual exploitation of a child, into three sub-subparagraphs based on the number of items involved.

Prior to the enactment of P.L.2017, c.141, all violations of paragraph (5) of subsection b. of N.J.S.2C:24-4 had been included in the enumerated crimes that allowed a judge to impose parole supervision for life upon motion of the prosecutor. That enactment, among other provisions, specified that certain child pornography possession crimes delineated in subparagraph (b) of paragraph (5) of subsection b. involving large quantities of items are included in the category for which a judge is required to impose a sentence that includes parole supervision for life without a prosecutor's motion. In making this change, the legislation inadvertently omitted adding a reference to subparagraph (a) of paragraph (5) of N.J.S.2C:24-4.

This omission will have the effect of preventing judges from imposing lifetime parole supervision on certain child pornography distributors, upon motion of the prosecutor. These child

pornography distributors currently would otherwise be subject to sentencing under the lifetime parole supervision law.

Any impact of this omission would be avoided if this bill is enacted before the February 1, 2018 effective date of P.L.2017, c.141.