



## ***LEGISLATIVE HISTORY CHECKLIST***

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**LAWS OF:** 1998

**CHAPTER:**126

**NJSA:** 2C:24-4

"Computer pornography, child pornography"

**BILL NO:** A1332 (Substituted for S1320)

**SPONSOR(S):** Heck and Talarico

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:**

***ASSEMBLY:*** Policy and Regulatory Oversight

***SENATE:*** Law and Public Safety

**AMENDED DURING PASSAGE:**Yes

**DATE OF PASSAGE:**

***ASSEMBLY:*** June 29, 1998

***SENATE:*** September 28, 1998

**DATE OF APPROVAL:** November 9, 1998

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### **THE FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** 1<sup>st</sup> Reprint

(Amendments during passage denoted by superscript numbers)

**A1332**

**SPONSORS STATEMENT:** *Yes* (Begins on page 4 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:***Yes*

**SENATE:***Yes*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**S1320**

**SPONSORS STATEMENT:** *Yes* (Begins on page 3 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *No*

**SENATE:** *Yes*

(Identical to Senate Statement for A1332)

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**VETO MESSAGE:** *No*

**GOVERNOR'S PRESS RELEASE ON SIGNING:** *Yes*

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**THE FOLLOWING WERE PRINTED:**

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**REPORTS:**

**974.90 C536 1997a**

*New Jersey. Legislature. General Assembly. Policy and Regulatory Oversight Committee.*

**Committee meeting of Assembly Policy and Regulatory Oversight Committee : the safety and protection of children using the Internet.**

November 17, 1997, Trenton, New Jersey

**HEARINGS:** *No*

**NEWSPAPER ARTICLES:** *No*

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[First Reprint]

**ASSEMBLY, No. 1332**

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblywoman ROSE MARIE HECK**

**District 38 (Bergen)**

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**Co-Sponsored by:**

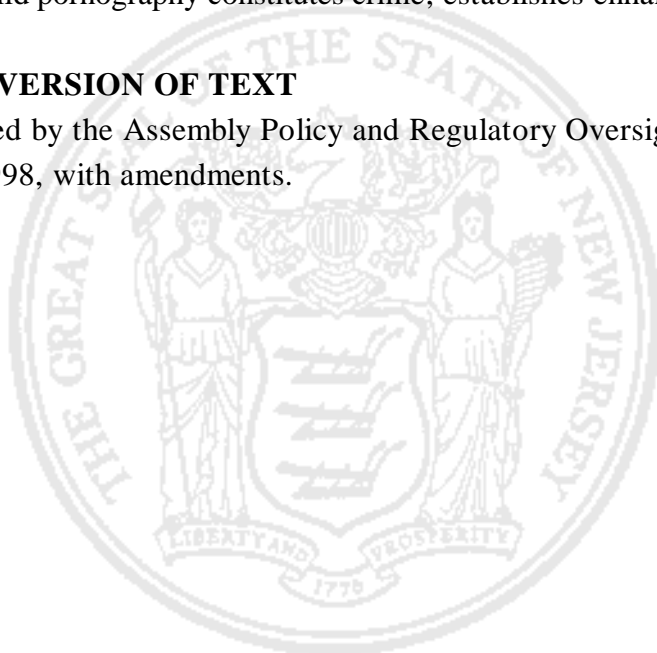
**Assemblyman LeFevre, Senators Bucco and Kyrillos**

**SYNOPSIS**

Clarifies that depiction and dissemination of images or simulations on the Internet of child pornography constitutes crime; establishes enhanced penalties.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Policy and Regulatory Oversight Committee on May 4, 1998, with amendments.



**(Sponsorship Updated As Of: 9/29/1998)**

A1332 [1R] HECK, TALARICO

2

1 AN ACT concerning protecting children on the Internet <sup>1</sup> [,  
2 supplementing Title 2C of the New Jersey Statutes] <sup>1</sup> and amending  
3 <sup>1</sup> [P.L.1992, c.7 and] <sup>1</sup> N.J.S.2C:24-4.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 <sup>1</sup> [1. (New section) This act shall be known, and may be cited, as  
9 the "Computer Pornography and Child Exploitation Prevention Act of  
10 1998." ] <sup>1</sup>  
11

12 <sup>1</sup> [2. (New section) a. As used in this act, "child" shall mean any  
13 person under 16 years of age.

14 b. It shall be a crime of the second degree to contact or  
15 communicate with a child when:

16 (1) A person, knowing the character and content of the  
17 communication in whole or in part depicts a child engaging in a  
18 prohibited sexual act pursuant to N.J.S.2C:24-4 or in the simulation  
19 of that act, intentionally uses a computer communication system  
20 allowing input, output, examination or transfer of computer data or  
21 computer programs from one computer to another, including the  
22 Internet, to initiate or engage in communication with or contact a  
23 child;

24 (2) A person, by means of the computer communication system  
25 described in paragraph (1) of this subsection, knowingly importunes,  
26 invites, lures or entices, or attempts to importune, invite, lure or entice  
27 a child or other person believed by the person to be a child to engage  
28 in a prohibited sexual act pursuant to N.J.S.2C:24-4;

29 (3) A person, by means of the computer communication system  
30 described in paragraph (1) of this subsection, knowingly compiles,  
31 enters, transmits, makes, prints, publishes, reproduces, causes, allows,  
32 buys, sells, receives, exchanges or disseminates any notice, statement  
33 or advertisement or a minor's name, telephone number, place of  
34 residence, physical characteristics or other descriptive or identifying  
35 information for the purpose of engaging in, facilitating, encouraging,  
36 offering or soliciting a prohibited sexual act pursuant to N.J.S.2C:24-  
37 4.] <sup>1</sup>  
38

39 <sup>1</sup> [3. Section 3 of P.L.1992, c.7 (C.2A:30B-3) is amended to read  
40 as follows:

41 3. a. A child, through a parent or guardian or child advocacy

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly APR committee amendments adopted May 4, 1998.

1 organization or personally upon reaching the age of majority, may  
2 bring a civil action in the Superior Court, in any county where venue  
3 lies, for monetary damages or injunctive relief or both, against a  
4 person who:

5 (1) Permits, entices or coerces the child to engage in a prohibited  
6 sexual act or in the simulation of such an act if the person knows, has  
7 reason to know or intends that the prohibited act may be  
8 photographed, filmed, reproduced, or reconstructed in any manner,  
9 including on the Internet, or may be part of an exhibition or  
10 performance;

11 (2) Photographs or films the child in a prohibited sexual act or in  
12 the simulation of such an act or who uses any device, including the  
13 Internet, to reproduce or reconstruct the image of the child in a  
14 prohibited sexual act or in the simulation of such an act;

15 (3) Knowingly receives for the purpose of selling or who  
16 knowingly sells, procures, manufactures, gives, provides, lends, trades,  
17 mails, delivers, transfers, publishes, distributes, circulates,  
18 disseminates, presents, exhibits, advertises, offers or agrees to offer,  
19 including on the Internet, any photograph, film, videotape or any  
20 other reproduction or reconstruction which depicts the child engaging  
21 in a prohibited sexual act or in the simulation of such an act.

22 (4) Violates any provision of P.L. , c. (C. ) (now pending before  
23 the Legislature as this bill).

24 b. In any action brought pursuant to this act, the court shall, upon  
25 a finding for the plaintiff, award recovery of three times the amount of  
26 damages consisting of financial gains to the defendant resulting from  
27 the conduct described in paragraphs (1), (2) and (3) of subsection a.  
28 of this section, together with full costs and reasonable attorney's fees.  
29 (cf: P.L.1992, c.7, s.3)]<sup>1</sup>

30

31 <sup>1</sup>[4.] 1.<sup>1</sup> N.J.S.2C:24-4 is amended to read as follows:

32 2C:24-4. Endangering Welfare of Children.

33 a. Any person having a legal duty for the care of a child or who has  
34 assumed responsibility for the care of a child who engages in sexual  
35 conduct which would impair or debauch the morals of the child, or  
36 who causes the child harm that would make the child an abused or  
37 neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974,  
38 c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any  
39 other person who engages in conduct or who causes harm as described  
40 in this subsection to a child under the age of 16 is guilty of a crime of  
41 the third degree.

42 b. <sup>1</sup>(1)<sup>1</sup> As used in this subsection:

43 <sup>1</sup>[(1)]<sup>1</sup> "Child" <sup>1</sup>[shall mean] means<sup>1</sup> any person under 16 years  
44 of age.

45 <sup>1</sup>"Internet" means the international computer network of both  
46 Federal and non-Federal interoperable packet switched data

- 1 networks.<sup>1</sup>
- 2 <sup>1</sup>[(2)]<sup>1</sup> "Prohibited sexual act" means
- 3 (a) Sexual intercourse; or
- 4 (b) Anal intercourse; or
- 5 (c) Masturbation; or
- 6 (d) Bestiality; or
- 7 (e) Sadism; or
- 8 (f) Masochism; or
- 9 (g) Fellatio; or
- 10 (h) Cunnilingus; <sup>1</sup>[or]<sup>1</sup>
- 11 (i) Nudity, if depicted for the purpose of sexual stimulation or
- 12 gratification of any person who may view such depiction <sup>1</sup>; or<sup>1</sup>
- 13 (j) Any act of sexual penetration or sexual contact as defined in
- 14 N.J.S.2C:14-1<sup>1</sup>.
- 15 <sup>1</sup>"Reproduction" means, but is not limited to, computer generated
- 16 images.<sup>1</sup>
- 17 <sup>1</sup>[(3) Any] (2) A<sup>1</sup> person <sup>1</sup>[, including any parent, guardian, or
- 18 other person legally charged with the care or custody of a child, who]
- 19 commits a crime of the second degree if he<sup>1</sup> causes or permits a child
- 20 to engage in a prohibited sexual act or in the simulation of such an act
- 21 if the person knows, has reason to know or intends that the prohibited
- 22 act may be photographed, filmed, reproduced, or reconstructed in any
- 23 manner, including on the Internet, or may be part of an exhibition or
- 24 performance <sup>1</sup>[is guilty of a crime of the second degree] . If the
- 25 person is a parent, guardian or other person legally charged with the
- 26 care or custody of the child, the person shall be guilty of a crime of the
- 27 first degree<sup>1</sup>.
- 28 <sup>1</sup>[(4) ] (3)<sup>1</sup> Any person who photographs or films a child in a
- 29 prohibited sexual act or in the simulation of such an act or who uses
- 30 any device, including <sup>1</sup>[ on the Internet] a computer<sup>1</sup> , to reproduce
- 31 or reconstruct the image of a child in a prohibited sexual act or in the
- 32 simulation of such an act is guilty of a crime of the second degree.
- 33 <sup>1</sup>[(5)] (4)<sup>1</sup> (a) Any person who knowingly receives for the
- 34 purpose of selling or who knowingly sells, procures, manufactures,
- 35 gives, provides, lends, trades, mails, delivers, transfers, publishes,
- 36 distributes, circulates, disseminates, presents, exhibits, advertises,
- 37 offers or agrees to offer <sup>1</sup>, through any means<sup>1</sup> , including <sup>1</sup>[on]<sup>1</sup>
- 38 the Internet, any photograph, film, videotape, computer program <sup>1</sup>or<sup>1</sup>
- 39 file<sup>1</sup>, video game or any other reproduction or reconstruction which
- 40 depicts a child engaging in a prohibited sexual act or in the simulation
- 41 of such an act, is guilty of a crime of the second degree.
- 42 (b) Any person who knowingly possesses or knowingly views any
- 43 photograph, film, videotape, computer program <sup>1</sup>or file<sup>1</sup> , video game
- 44 or any other reproduction or reconstruction which depicts a child
- 45 engaging in a prohibited sexual act or in the simulation of such an act,

1 including on the Internet, is guilty of a crime of the fourth degree.

2 <sup>1</sup>~~[(6)]~~ (5)<sup>1</sup> For purposes of this subsection, a person who is  
3 depicted as or presents the appearance of being under the age of 16 in  
4 any photograph <sup>1</sup>~~[or]~~ <sup>1</sup> film <sup>1</sup>, videotape, computer program or file,  
5 video game or any other reproduction or reconstruction<sup>1</sup> shall be  
6 rebuttably presumed to be under the age of 16. <sup>1</sup>If the child who is  
7 depicted as engaging in, or who is caused to engage in, a prohibited  
8 sexual act or simulation of a prohibited sexual act is under the age of  
9 16, the actor shall be strictly liable and it shall not be a defense that the  
10 actor did not know that the child was under the age of 16, nor shall it  
11 be a defense that the actor believed that the child was 16 years of age  
12 or older, even if such a mistaken belief was reasonable.<sup>1</sup>

13 (cf: P.L.1995, c.109, s.1)

14

15 <sup>1</sup>~~[5.]~~ 2.<sup>1</sup> This act shall take effect on the first day of the sixth  
16 month after enactment.

# ASSEMBLY, No. 1332

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## STATE OF NEW JERSEY

### 208th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblywoman ROSE MARIE HECK**

**District 38 (Bergen)**

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**SYNOPSIS**

"Computer Pornography and Child Exploitation Prevention Act of 1998."

**CURRENT VERSION OF TEXT**

As Introduced.



**(Sponsorship Updated As Of: 2/11/1998)**



A1332 HECK, TALARICO

2

1 AN ACT concerning protecting children on the Internet, supplementing  
2 Title 2C of the New Jersey Statutes and amending P.L.1992, c.7  
3 and N.J.S.2C:24-4.

4

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

7

8 1. (New section) This act shall be known, and may be cited, as the  
9 "Computer Pornography and Child Exploitation Prevention Act of  
10 1998."

11

12 2. (New section) a. As used in this act, "child" shall mean any  
13 person under 16 years of age.

14 b. It shall be a crime of the second degree to contact or  
15 communicate with a child when:

16 (1) A person, knowing the character and content of the  
17 communication in whole or in part depicts a child engaging in a  
18 prohibited sexual act pursuant to N.J.S.2C:24-4 or in the simulation  
19 of that act, intentionally uses a computer communication system  
20 allowing input, output, examination or transfer of computer data or  
21 computer programs from one computer to another, including the  
22 Internet, to initiate or engage in communication with or contact a  
23 child;

24 (2) A person, by means of the computer communication system  
25 described in paragraph (1) of this subsection, knowingly importunes,  
26 invites, lures or entices, or attempts to importune, invite, lure or entice  
27 a child or other person believed by the person to be a child to engage  
28 in a prohibited sexual act pursuant to N.J.S.2C:24-4;

29 (3) A person, by means of the computer communication system  
30 described in paragraph (1) of this subsection, knowingly compiles,  
31 enters, transmits, makes, prints, publishes, reproduces, causes, allows,  
32 buys, sells, receives, exchanges or disseminates any notice, statement  
33 or advertisement or a minor's name, telephone number, place of  
34 residence, physical characteristics or other descriptive or identifying  
35 information for the purpose of engaging in, facilitating, encouraging,  
36 offering or soliciting a prohibited sexual act pursuant to N.J.S.2C:24-  
37 4.

38

39 3. Section 3 of P.L.1992, c.7 (C.2A:30B-3) is amended to read as  
40 follows:

41 3. a. A child, through a parent or guardian or child advocacy  
42 organization or personally upon reaching the age of majority, may  
43 bring a civil action in the Superior Court, in any county where venue

**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 lies, for monetary damages or injunctive relief or both, against a  
2 person who:

3 (1) Permits, entices or coerces the child to engage in a prohibited  
4 sexual act or in the simulation of such an act if the person knows, has  
5 reason to know or intends that the prohibited act may be  
6 photographed, filmed, reproduced, or reconstructed in any manner,  
7 including on the Internet, or may be part of an exhibition or  
8 performance;

9 (2) Photographs or films the child in a prohibited sexual act or in  
10 the simulation of such an act or who uses any device, including the  
11 Internet, to reproduce or reconstruct the image of the child in a  
12 prohibited sexual act or in the simulation of such an act;

13 (3) Knowingly receives for the purpose of selling or who  
14 knowingly sells, procures, manufactures, gives, provides, lends, trades,  
15 mails, delivers, transfers, publishes, distributes, circulates,  
16 disseminates, presents, exhibits, advertises, offers or agrees to offer,  
17 including on the Internet, any photograph, film, videotape or any  
18 other reproduction or reconstruction which depicts the child engaging  
19 in a prohibited sexual act or in the simulation of such an act.

20 (4) Violates any provision of P.L. , c. (C.) (now pending before  
21 the Legislature as this bill).

22 b. In any action brought pursuant to this act, the court shall, upon  
23 a finding for the plaintiff, award recovery of three times the amount of  
24 damages consisting of financial gains to the defendant resulting from  
25 the conduct described in paragraphs (1), (2) and (3) of subsection a.  
26 of this section, together with full costs and reasonable attorney's fees.  
27 (cf: P.L.1992, c.7, s.3)

28

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

30 2C:24-4. Endangering Welfare of Children.

31 a. Any person having a legal duty for the care of a child or who has  
32 assumed responsibility for the care of a child who engages in sexual  
33 conduct which would impair or debauch the morals of the child, or  
34 who causes the child harm that would make the child an abused or  
35 neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974,  
36 c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any  
37 other person who engages in conduct or who causes harm as described  
38 in this subsection to a child under the age of 16 is guilty of a crime of  
39 the third degree.

40 b. As used in this subsection:

41 (1) "Child" shall mean any person under 16 years of age.

42 (2) "Prohibited sexual act" means

43 (a) Sexual intercourse; or

44 (b) Anal intercourse; or

45 (c) Masturbation; or

46 (d) Bestiality; or

- 1 (e) Sadism; or  
2 (f) Masochism; or  
3 (g) Fellatio; or  
4 (h) Cunnilingus; or  
5 (i) Nudity, if depicted for the purpose of sexual stimulation or  
6 gratification of any person who may view such depiction.

7 (3) Any person, including any parent, guardian, or other person  
8 legally charged with the care or custody of a child, who causes or  
9 permits a child to engage in a prohibited sexual act or in the simulation  
10 of such an act if the person knows, has reason to know or intends that  
11 the prohibited act may be photographed, filmed, reproduced, or  
12 reconstructed in any manner, including on the Internet, or may be part  
13 of an exhibition or performance is guilty of a crime of the second  
14 degree.

15 (4) Any person who photographs or films a child in a prohibited  
16 sexual act or in the simulation of such an act or who uses any device,  
17 including on the Internet, to reproduce or reconstruct the image of a  
18 child in a prohibited sexual act or in the simulation of such an act is  
19 guilty of a crime of the second degree.

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

29 (b) Any person who knowingly possesses or knowingly views any  
30 photograph, film, videotape, computer program, video game or any  
31 other reproduction or reconstruction which depicts a child engaging  
32 in a prohibited sexual act or in the simulation of such an act, including  
33 on the Internet, is guilty of a crime of the fourth degree.

34 (6) For purposes of this subsection, a person who is depicted as or  
35 presents the appearance of being under the age of 16 in any  
36 photograph or film shall be rebuttably presumed to be under the age  
37 of 16.

38 (cf: P.L.1995, c.109, s.1)

39

40 5. This act shall take effect on the first day of the sixth month after  
41 enactment.

42

43

#### STATEMENT

44

45 This bill is known as the "Computer Pornography and Child  
46 Exploitation Prevention Act of 1998." The bill would establish as a

1 second degree crime the act of communicating with or contacting a  
2 child via computer, including on the Internet, in the following  
3 circumstances:

4 -when a person, knowing the character and content of the  
5 communication in whole or in part depicts a child engaging in a  
6 prohibited sexual act or in the simulation of such an act, does so to  
7 initiate or engage in communication or contact with a child;

8 -when a person importunes, invites, lures or entices, or attempts to  
9 importune, invite, lure or entice a child or other person believed by the  
10 person to be a child to engage in a prohibited sexual act;

11 -when a person transmits, receives, buys or sells any notice,  
12 statement or advertisement, or a child's name or other descriptive  
13 information for the purpose of engaging in, facilitating, encouraging,  
14 offering or soliciting a prohibited sexual act.

15 A crime of the second degree is punishable by five to 10 years  
16 imprisonment, up to a \$100,000 fine, or both.

17 The bill also amends current law to include the Internet in the  
18 methods, devices and communications vehicles which when used  
19 unlawfully to contact a child may be the basis for a civil court action  
20 by a parent, guardian, child advocacy organization or the child, upon  
21 reaching the age of majority. Those unlawful contacts include:

22 -Permitting, enticing or coercing a child to engage in a prohibited  
23 sexual act or in the simulation of such an act if the person knows, has  
24 reason to know or intends that the prohibited act may be  
25 photographed, filmed, reproduced, or reconstructed in any manner, or  
26 may be part of an exhibition or performance;

27 -Photographing or filming the child in a prohibited sexual act or in  
28 the simulation of such an act or using any device to reproduce or  
29 reconstruct the image of the child in a prohibited sexual act or in the  
30 simulation of such an act;

31 -Knowingly receiving for the purpose of selling or knowingly  
32 selling, procuring, manufacturing, giving, providing, lending, trading,  
33 mailing, delivering, transferring, publishing, distributing, circulating,  
34 disseminating, presenting, exhibiting, advertising, offering or agreeing  
35 to offer any photograph, film, videotape or any other reproduction or  
36 reconstruction which depicts the child engaging in a prohibited sexual  
37 act or in the simulation of such an act.

38 The bill also allows a child, through a parent or guardian or child  
39 advocacy organization, or personally upon reaching the age of  
40 majority, to bring a civil action for monetary damages or injunctive  
41 relief or both against a person who violates any of the criminal  
42 provisions of the Computer Pornography and Child Exploitation  
43 Prevention Act of 1998.

44 Finally, the bill clarifies that the crime of endangering the welfare  
45 of children, N.J.S.2C:24-4, includes these crimes when committed via  
46 the Internet.

ASSEMBLY POLICY AND REGULATORY OVERSIGHT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1332**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 4, 1998

The Assembly Policy and Regulatory Oversight Committee reports favorably and with committee amendments Assembly Bill No. 1332.

Assembly Bill No. 1332, as amended by the committee, clarifies that the depiction and dissemination of child pornography on the Internet constitutes a crime under N.J.S.2C:24-4, the statute establishing the crime of endangering the welfare of a child.

The amended bill also provides enhanced penalties for parents, guardians and other persons legally charged with the care and custody of a child who they permit to engage in a prohibited sexual act, or in the simulation of such an act, which they know, or should know, is being photographed, filmed, reproduced or reconstructed in any manner, including on the Internet. Such parents, guardians and legally responsible persons are guilty of a crime of the first degree. Any other person guilty of permitting a child to engage in a prohibited sexual act, or simulation of such an act, is guilty of a crime of the second degree. A crime of the first degree is punishable by a fine of up to \$200,000; imprisonment for a term of 10 to 20 years; or both. A crime of the second degree is punishable by a fine of up to \$150,000; imprisonment for a term of five to 10 years; or both.

The addition of references to the Internet, computer programs and files, and "other reproduction or reconstruction" throughout N.J.S.2C:24-4 broaden the scope of the statute and address the dramatic changes which have occurred in technology and communications networks.

Finally, the amendatory language specifies that if a child who is depicted as engaging in a prohibited sexual act, or simulation of a prohibited sexual act, is under the age of 16, the responsible party is to be held strictly liable. The language further specifies that it is not a defense that the responsible party did not know the child was under 16 years of age or believed that the child was 16 or older.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 1332**

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 17, 1998

The Senate Law and Public Safety Committee reports favorably Assembly Bill No. 1332 (1R).

This bill clarifies that the depiction and dissemination of child pornography on the Internet constitutes a crime under N.J.S.2C:24-4, the statute establishing the crime of endangering the welfare of a child.

The bill also provides enhanced penalties for parents, guardians and other persons legally charged with the care and custody of a child who they permit to engage in a prohibited sexual act, or in the simulation of such an act, which they know, or should know, is being photographed, filmed, reproduced or reconstructed in any manner, including on the Internet. Such parents, guardians and legally responsible persons are guilty of a crime of the first degree. Any other person guilty of permitting a child to engage in a prohibited sexual act, or simulation of such an act, is guilty of a crime of the second degree. A crime of the first degree is punishable by a fine of up to \$200,000; imprisonment for a term of 10 to 20 years; or both. A crime of the second degree is punishable by a fine of up to \$150,000; imprisonment for a term of five to 10 years; or both.

The addition of references to the Internet, computer programs and files, and "other reproduction or reconstruction" throughout N.J.S.2C:24-4 broaden the scope of the statute and address the dramatic changes which have occurred in technology and communications networks.

Finally, the bill specifies that if a child who is depicted as engaging in a prohibited sexual act, or simulation of a prohibited sexual act, is under the age of 16, the responsible party is to be held strictly liable. The bill further specifies that it is not a defense that the responsible party did not know the child was under 16 years of age or believed that the child was 16 or older.

This bill is identical to Senate Bill No. 1320, which also was released by the committee on this date.

**SENATE, No. 1320**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED SEPTEMBER 17, 1998

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**SYNOPSIS**

Clarifies that depiction and dissemination of images or simulations on the Internet of child pornography constitutes crime; establishes enhanced penalties.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning protecting children on the Internet and amending  
2 N.J.S.2C:24-4.

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 has  
10 assumed responsibility for the care of a child who engages in sexual  
11 conduct which would impair or debauch the morals of the child, or  
12 who causes the child harm that would make the child an abused or  
13 neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974,  
14 c.119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any  
15 other person who engages in conduct or who causes harm as described  
16 in this subsection to a child under the age of 16 is guilty of a crime of  
17 the third degree.

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

19 **[(1)]** "Child" **[shall mean]** means any person under 16 years of  
20 age.

21 "Internet" means the international computer network of both  
22 Federal and non-Federal interoperable packet switched data networks.

23 **[(2)]** "Prohibited sexual act" means

24 (a) Sexual intercourse; or

25 (b) Anal intercourse; or

26 (c) Masturbation; or

27 (d) Bestiality; or

28 (e) Sadism; or

29 (f) Masochism; or

30 (g) Fellatio; or

31 (h) Cunnilingus; **[or]**

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

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

36 "Reproduction" means, but is not limited to, computer generated  
37 images.

38 **[(3) Any]** **(2) A person**, including any parent, guardian, or other  
39 person legally charged with the care or custody of a child, who  
40 commits a crime of the second degree if he causes or permits a child  
41 to engage in a prohibited sexual act or in the simulation of such an act  
42 if the person knows, has reason to know or intends that the prohibited

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**



1 act may be photographed, filmed, reproduced, or reconstructed in any  
2 manner, including on the Internet, or may be part of an exhibition or  
3 performance **[is guilty of a crime of the second degree]**. **If the person**  
4 **is a parent, guardian or other person legally charged with the care or**  
5 **custody of the child, the person shall be guilty of a crime of the first**  
6 **degree.**

7 **[(4)] (3)** Any person who photographs or films a child in a  
8 prohibited sexual act or in the simulation of such an act or who uses  
9 any device, including a computer, to reproduce or reconstruct the  
10 image of a child in a prohibited sexual act or in the simulation of such  
11 an act is guilty of a crime of the second degree.

12 **[(5)] (4) (a)** Any person who knowingly receives for the purpose  
13 of selling or who knowingly sells, procures, manufactures, gives,  
14 provides, lends, trades, mails, delivers, transfers, publishes, distributes,  
15 circulates, disseminates, presents, exhibits, advertises, offers or agrees  
16 to offer, through any means , including the Internet, any photograph,  
17 film, videotape, computer program or file, video game or any other  
18 reproduction or reconstruction which depicts a child engaging in a  
19 prohibited sexual act or in the simulation of such an act, is guilty of a  
20 crime of the second degree.

21 (b) Any person who knowingly possesses or knowingly views any  
22 photograph, film, videotape, computer program or file , video game or  
23 any other reproduction or reconstruction which depicts a child  
24 engaging in a prohibited sexual act or in the simulation of such an act,  
25 including on the Internet, is guilty of a crime of the fourth degree.

26 **[(6)] (5)** For purposes of this subsection, a person who is depicted  
27 as or presents the appearance of being under the age of 16 in any  
28 photograph **[or]**, film, videotape, computer program or file, video  
29 game or any other reproduction or reconstruction shall be rebuttably  
30 presumed to be under the age of 16. If the child who is depicted as  
31 engaging in, or who is caused to engage in, a prohibited sexual act or  
32 simulation of a prohibited sexual act is under the age of 16, the actor  
33 shall be strictly liable and it shall not be a defense that the actor did  
34 not know that the child was under the age of 16, nor shall it be a  
35 defense that the actor believed that the child was 16 years of age or  
36 older, even if such a mistaken belief was reasonable.

37 (cf: P.L.1995, c.109, s.1)

38

39 2. This act shall take effect on the first day of the sixth month after  
40 enactment.

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42

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#### STATEMENT

44

45 This bill clarifies that the depiction and dissemination of child  
46 pornography on the Internet constitutes a crime under N.J.S.2C:24-4,

1 the statute establishing the crime of endangering the welfare of a child.

2 The bill also provides enhanced penalties for parents, guardians and  
3 other persons legally charged with the care and custody of a child who  
4 they permit to engage in a prohibited sexual act, or in the simulation  
5 of such an act, which they know, or should know, is being  
6 photographed, filmed, reproduced or reconstructed in any manner,  
7 including on the Internet. Such parents, guardians and legally  
8 responsible persons are guilty of a crime of the first degree. Any other  
9 person guilty of permitting a child to engage in a prohibited sexual act,  
10 or simulation of such an act, is guilty of a crime of the second degree.  
11 A crime of the first degree is punishable by a fine of up to \$200,000;  
12 imprisonment for a term of 10 to 20 years; or both. A crime of the  
13 second degree is punishable by a fine of up to \$150,000; imprisonment  
14 for a term of five to 10 years; or both.

15 The addition of references to the Internet, computer programs and  
16 files, and "other reproduction or reconstruction" throughout  
17 N.J.S.2C:24-4 broaden the scope of the statute and address the  
18 dramatic changes which have occurred in technology and  
19 communications networks.

20 Finally, the bill specifies that if a child who is depicted as engaging  
21 in a prohibited sexual act, or simulation of a prohibited sexual act, is  
22 under the age of 16, the responsible party is to be held strictly liable.  
23 The bill further specifies that it is not a defense that the responsible  
24 party did not know the child was under 16 years of age or believed  
25 that the child was 16 or older.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE, No. 1320

# STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 1998

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 1320.

This bill clarifies that the depiction and dissemination of child pornography on the Internet constitutes a crime under N.J.S.2C:24-4, the statute establishing the crime of endangering the welfare of a child.

The bill also provides enhanced penalties for parents, guardians and other persons legally charged with the care and custody of a child who they permit to engage in a prohibited sexual act, or in the simulation of such an act, which they know, or should know, is being photographed, filmed, reproduced or reconstructed in any manner, including on the Internet. Such parents, guardians and legally responsible persons are guilty of a crime of the first degree. Any other person guilty of permitting a child to engage in a prohibited sexual act, or simulation of such an act, is guilty of a crime of the second degree. A crime of the first degree is punishable by a fine of up to \$200,000; imprisonment for a term of 10 to 20 years; or both. A crime of the second degree is punishable by a fine of up to \$150,000; imprisonment for a term of five to 10 years; or both.

The addition of references to the Internet, computer programs and files, and "other reproduction or reconstruction" throughout N.J.S.2C:24-4 broaden the scope of the statute and address the dramatic changes which have occurred in technology and communications networks.

Finally, the bill specifies that if a child who is depicted as engaging in a prohibited sexual act, or simulation of a prohibited sexual act, is under the age of 16, the responsible party is to be held strictly liable. The bill further specifies that it is not a defense that the responsible party did not know the child was under 16 years of age or believed that the child was 16 or older.

This bill is identical to Assembly Bill No. 1332 (1R), which also was released by the committee on this date.

*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: November 10, 1998

Gov. Christie Whitman today signed the following legislation:

**A-63** allows beneficiaries of the Pharmaceutical Assistance for the Aged and Disabled (PAAD) program to receive the longer of 100 pills or a 34-day supply of medication for both the initial prescription and refills. Changes in the Fiscal Year 1999 Appropriations bill had limited to a 34-day maximum supply.

The bill was sponsored by Assembly Members Francis J. Blee (R-Atlantic), John C. Gibson (R-Cape May/Atlantic/Cumberland) and Kenneth C. LeFevre (R-Atlantic) and Guy F. Talarico (R-Bergen) and Senators Norman M. Robertson (R-Essex/Passaic) and Robert W. Singer (R-Burlington/Monmouth/Ocean).

**A-809**, sponsored by Assembly Member Charlotte Vandervalk (R-Bergen) and Senator Jack Sinagra (R-Middlesex), permits physician assistant to order or prescribe drugs, excluding controlled dangerous substances, both outpatient and inpatient settings. The bill requires that a supervising physician countersign and order or prescription for drugs within 48 hours of its entry by a physician assistant in an outpatient setting. The bill changes current law, which permits physician assistants to order or prescribe drugs only in an inpatient setting.

**A-1332**, sponsored by Assembly Members Rose Marie Heck (R-Bergen) and Guy F. Talarico (R-Bergen) and Senators Anthony R. Bucco (R-Morris) and Joseph M. Kyrillos, Jr. (R-Middlesex/Morris), clarifies that the depiction and dissemination of child pornography on the Internet is a crime under the endangering the welfare of a child statute. Endangering the welfare of a child is a second-degree crime when, among other things, a person causes or permits a child under 16 to engage in a sexual act knowing the act will be photographed or otherwise reproduced; photographs or reproduces a child engaged in a sexual act; or receives for the purpose of selling, sells or transfers a photograph of a child engaged in a sexual act.

The bill also upgrades to a crime of the first degree the offense of causing or permitting a child to engage in a sexual act knowing the act will be photographed, filmed or otherwise reproduced when the defendant is the child's parent or guardian. A first-degree crime is punishable by a prison term of between 10 and 20 years, a fine of \$200,000 or both, while a second-degree crime is punishable by a prison term of between five and 10 years and a fine of up to \$150,000 or both.

**A-1511** amends current law to require that certain parents undergo substance abuse assessment when a court makes a finding of abuse or neglect and orders out-of-home

placement for a child. If the law reveals positive evidence of substance abuse, the parent must demonstrate that he or she is receiving treatment and complying with the treatment program before the child is returned to the parental home. Under previous law, a parent was required to demonstrate progress in reaching the goals that Division of Youth and Family Services established as part of a treatment program in order for a child to be returned to the home. The bill also appropriates \$50,000 for substance abuse treatment.

The bill was sponsored by Assembly Members Joseph R. Malone, 3d (R-Burlington/Monmouth/Ocean and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senator Robert W. Singer (R-Burlington/Monmouth/Ocean).

**A-1632**, sponsored by Assembly Members Gerald J. Luongo (R-Camden/Gloucester) and Peter J. Biondi (R-Morris/Somerset) and Senators Diane B. Allen (R-Burlington/Camden) and Norman M. Robertson (R-Essex/Passaic), establishes the Senior and Disabled Cooperative Housing Finance Incentive Program. The bill assists non-profit corporations in providing cooperative living opportunities for low and moderate-income senior citizens and citizens with disabilities.

The bill authorizes the New Jersey Housing and Mortgage Finance Agency to set aside some portion of its bonding capacity in order to provide mortgage loans to eligible purchasers and to assist qualified non-profit corporations in creating eligible projects.

**A-1976**, sponsored by Assembly Members Joseph V. Doria, Jr. (D-Hudson) and Alex DeCroce (R-Essex/Morris/Passaic), provides that surcharges levied by the Division of Motor Vehicles (DMV) are extinguished upon an individual's death once the DMV obtains a copy of the driver's death certificate. The bill also requires that the DMV obtain a death certificate when the decedent's family or estate representative does not provide the DMV with a copy of the document. Under previous practice, the DMV extinguished a decedent's surcharges when a death certificate was provided by the family of the deceased. If the certificate was not received from the family, the DMV continued to mail surcharge notices to the decedent's family

**A-2077** rectifies a problem created by a previous law, A-2323, which inadvertently changed the definitions regarding modifications of open-ended and close-ended loans.

The bill clarifies that an advance of principal made with respect to any mortgage (open-ended or close-ended) other than a line of credit does not have the lien priority of the original mortgage and is not a mortgage modification.

The bill was sponsored by Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset) and Peter J. Biondi (R-Morris/Somerset) and Senators Walter J. Kavanaugh (R-Morris/Somerset) and Peter A. Inverso (R-Mercer/Middlesex).

A-2223, expands the number of persons eligible to receive the New Jersey Distinguished Service Medal (DSM) from the Governor to include any state resident who was a resident of the state at the time of entry into active military service and saw active military service in a combat theater and received an honorable discharge. The expansion would also apply to deceased persons. The bill also gives the Governor the

authority to issue the DSM to residents who saw active combat service and were officially listed as a POW/MIA by the United States Department of Defense. The Department of Military and Veterans' Affairs will establish regulatory standards requiring a finding of distinguished service prior to its recommendation to the Governor to award the medal.

Under previous law, the Governor, on behalf of the state, could issue a DSM to persons who distinguished themselves by especially meritorious service and who had been cited or were expected to be cited in orders for distinguished service by the Governor or appropriate federal authority.

The legislation was sponsored by Assembly Members Louis D. Greenwald (D-Camden) and Joseph Azzolina (R-Middlesex/Morris) and Senators Diane B. Allen (R-Burlington/Camden) and John J. Mattheusen (R-Camden/Gloucester).

**S-158**, sponsored by Senators Joseph M. Kyrillos, Jr. (R-Middlesex/Monmouth) and Andrew R. Ciesla (R-Monmouth/Ocean) and Assembly Members Joseph Azzolina (R-Middlesex/Monmouth) and Michael J. Arnone (R-Monmouth), exempts certain shops operated to raise money for charity from state sales and use tax. The bill applies to shops run in support of organizations that are already exempt from paying the sales tax. The exemption includes any organization operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. It also exempts any organizations operated for the prevention of cruelty to children or animals; any voluntary fire, rescue, ambulance, first aid or emergency company or squad, and any parent-teachers association.

**S-700**, sponsored by Senator Diane B. Allen (R-Burlington/Camden), allows Burlington Island to enter into a long-term lease to promote development designed only for recreational, conservational, educational and cultural purposes. The island's charter, established in 1852, limited to five the number of years island property could be leased for any purpose.

**S-877**, sponsored by Senator Shirley K. Turner (D-Mercer), requires the State Board of Education, in consultation with the Commissioner of the Department of Health and Senior Services (DHSS) to promulgate rules and regulations for the certification of persons employed by boards of education to teach swimming in public schools. The bill requires that the regulations include appropriate swimming and first aid skills necessary to protect the health and safety of students. Currently, safety standards specified in DHSS regulations require the presence of at least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR). That person must be available and readily accessible when the pool is in use. Additionally, the regulations require that at least one lifeguard be on duty for 60 or less swimmers or 2,000 square feet of surface space at all times when the pool is in use. Additional lifeguards are required based on a variety of specified factors.

**S-888**, sponsored by Senator Norman M. Robertson (R-Essex/Passaic) and Assembly Members Kenneth C. LeFevre (R-Atlantic) and Francis J. Blee (R-Atlantic), permits the release of certain account information by a financial institution under certain

circumstances. The bill allows the release of account information to a law enforcement agency or a county protective adult services provider if the customer account is held by a senior citizen or "vulnerable" person -- defined in the bill as a person over 18 that appears to have a physical or mental illness, disability or deficiency, etc. The bill parallels federal law allowing financial institutions to release account information to certain federal law enforcement officials.

**S-955**, revises the Garage Keepers Lien Act by eliminating the requirement that a motor vehicle owner post the full amount of a disputed bill or a double bond before a pre-sale hearing. The bill provides that if possession of a vehicle is refused because of a dispute over the amount owned or nonpayment, the owner may immediately bring an action in court for possession of the vehicle. The bill was sponsored by Senator John Q. Bennett (R-Monmouth) and Assembly Members Richard A. Merkt (R-Morris) and Michael Patrick Carroll (R-Morris).

**S-1055**, sponsored by Senator Leonard T. Connors, Jr. (R-Atlantic/Burlington/Ocean) and Gerald Cardinale (R-Bergen), prohibits charitable organizations from misleading contributors to believe their donations are to be used for charitable purposes when, in fact, the donations are used to fund legal costs and other administrative costs of the charitable organization. The bill also prohibits organizations from presenting truthful information, statements and communications in such a way that the contributor is misled into making a contribution.

**AJR-21**, sponsored by Assembly Member Alex DeCroce (R-Essex/Morris/Passaic), establishes an 18-member Regional Intergovernmental Transportation Coordinating Study Commission to increase regional transportation decision-making among various levels of government and to identify incentives to promote cooperation. The commission will consist of 12 public members to be appointed by the Governor; two members of both the Senate and the General Assembly; Commissioner of the Department of Transportation and the Director of the Office of State Planning.

**AJR-30**, sponsored by Assembly Members Marion Crecco (R-Essex/Passaic) and Gerald J. Luongo (R-Camden/Gloucester), designates November 20 of each year as "Bill of Rights Day" in New Jersey. The first ten amendments of the U. S. Constitution, known as the Bill of Rights, were ratified by the State of New Jersey on November 20, 1789.