

# 2C:43-6.4

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 267

**NJSA:** 2C:43-6.4            (Lifetime community supervision for sex offenders)

**BILL NO:** S2659            (Substituted for A3784)

**SPONSOR(S)** Sarlo and others

**DATE INTRODUCED:** June 12, 2003

**COMMITTEE:**            **ASSEMBLY:** -----

**SENATE:** Law and Public Safety and Veterans Affairs

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** January 12, 2004

**SENATE:** January 8, 2004

**DATE OF APPROVAL:** January, 14 2004

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (1<sup>st</sup> reprint enacted)

(Amendments during passage denoted by asterisks)

**S2659**

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A3784**

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** [Yes](#)

**SENATE:** No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2003, CHAPTER 267, *approved January 14, 2004*  
Senate, No. 2659 (*First Reprint*)

1 **AN ACT** concerning the special sentence of community supervision for  
2 life and amending P.L.1994, c.130, P.L.1997, c.117, P.L.1979,  
3 C.441<sup>1</sup>, N.J.S.2C:43-2<sup>1</sup> and N.J.S.2C:43-7.

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

7  
8 1. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to read  
9 as follows:

10 2. a. Notwithstanding any provision of law to the contrary, a  
11 **[court] judge** imposing sentence on a person who has been convicted  
12 of aggravated sexual assault, sexual assault, aggravated criminal sexual  
13 contact, kidnapping pursuant to paragraph (2) of subsection c. of  
14 N.J.S.2C:13-1, endangering the welfare of a child by engaging in  
15 sexual conduct which would impair or debauch the morals of the child  
16 pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare  
17 of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4,  
18 luring or an attempt to commit any [such offense] of these offenses  
19 shall include, in addition to any [sentence] <sup>1</sup>[term of imprisonment]  
20 sentence<sup>1</sup> authorized by this Code, a special sentence of [community]  
21 parole supervision for life.

22 b. The special sentence of **[community] parole supervision for life**  
23 required by this section shall commence immediately upon **[completion**  
24 **of the sentence imposed pursuant to other applicable provisions of the**  
25 **Code of Criminal Justice] the defendant's release from incarceration.**  
26 If the defendant is serving a sentence of incarceration for another  
27 offense at the time he completes the custodial portion of the sentence  
28 imposed on the present offense, the special sentence of parole  
29 supervision for life shall not commence until the defendant is actually  
30 released from incarceration for the other offense. Persons serving a  
31 special sentence of **[community] parole supervision for life** shall **[be**  
32 **supervised as if on parole and] remain in the legal custody of the**  
33 **Commissioner of Corrections, shall be supervised by the Division of**  
34 **Parole of the State Parole Board, shall be subject to the provisions and**  
35 **conditions set forth in subsection c. of section 3 of P.L.1997, c.117**  
36 **(C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979,**  
37 **c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and**  
38 **shall be** subject to conditions appropriate to protect the public and  
39 foster rehabilitation. If the defendant violates a condition of 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.**

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

<sup>1</sup> Senate SLP committee amendments adopted November 24, 2003.

1 sentence of parole supervision for life, the defendant shall be subject  
2 to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441  
3 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and <sup>1</sup>for the  
4 purpose of calculating the limitation on time served pursuant to  
5 section 21 of P.L.1979, c.441 (C.30:4-123.65)<sup>1</sup> the custodial term  
6 imposed upon the defendant related to the special sentence of parole  
7 supervision for life shall be deemed to be a term of life imprisonment.  
8 <sup>1</sup>When the court suspends the imposition of sentence on a defendant  
9 who has been convicted of any offense enumerated in subsection a. of  
10 this section, the court may not suspend imposition of the special  
11 sentence of parole supervision for life, which shall commence  
12 immediately, with the Division of Parole of the State Parole Board  
13 maintaining supervision over that defendant, including the defendant's  
14 compliance with any conditions imposed by the court pursuant to  
15 N.J.S.2C:45-1, in accordance with the provisions of this subsection.  
16 Nothing contained in this subsection shall prevent the court from at  
17 any time proceeding under the provisions of N.J.S. 2C:45-1 through  
18 2C:45-4 against any such defendant for a violation of any conditions  
19 imposed by the court when it suspended imposition of sentence, or  
20 prevent the Division of Parole from proceeding under the provisions  
21 of sections 16 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.60  
22 through 30:4-123.63 and C. 30:4-123.65) against any such defendant  
23 for a violation of any conditions of the special sentence of parole  
24 supervision for life, including the conditions imposed by the court  
25 pursuant to N.J.S.2C:45-1. In any such proceeding by the Division of  
26 Parole, the provisions of subsection c. of section 3 of P.L.1997 c.117  
27 (C.30:4-123.51b) authorizing revocation and return to prison shall be  
28 applicable to such a defendant, notwithstanding that the defendant may  
29 not have been sentenced to or served any portion of a custodial term  
30 for conviction of an offense enumerated in subsection a. of this  
31 section.<sup>1</sup>

32 c. A person sentenced to a term of [community] parole  
33 supervision for life may petition the Superior Court for release from  
34 [community] that parole supervision. The [court shall] judge may  
35 grant a petition for release from a special sentence of [community]  
36 parole supervision for life only upon proof by clear and convincing  
37 evidence that the person has not committed a crime for 15 years since  
38 the last conviction or release from incarceration, whichever is later,  
39 and that the person is not likely to pose a threat to the safety of others  
40 if released from parole supervision. Notwithstanding the provisions  
41 of section 22 of P.L.1979, c.441 (C.30:4-123.66), <sup>1</sup>[the appropriate  
42 board panel shall not give]<sup>1</sup> a person sentenced to a term of parole  
43 supervision for life <sup>1</sup>[a complete discharge] may be released<sup>1</sup> from  
44 <sup>1</sup>that<sup>1</sup> parole <sup>1</sup>supervision term only by court order as provided in this  
45 subsection<sup>1</sup> .

46 d. A person who violates a condition of a special sentence [of

1 community supervision] imposed pursuant to this section without  
2 good cause is guilty of a crime of the fourth degree. Notwithstanding  
3 any other law to the contrary, a person sentenced pursuant to this  
4 <sup>1</sup>[section] subsection<sup>1</sup> shall be sentenced to a term of imprisonment,  
5 unless the court is clearly convinced that the interests of justice so far  
6 outweigh the need to deter this conduct and the interest in public  
7 safety that a sentence to imprisonment would be a manifest injustice.  
8 <sup>1</sup>Nothing in this subsection shall preclude subjecting a person who  
9 violates any condition of a special sentence of parole supervision for  
10 life to the provisions of sections 16 through 19 and 21 of P.L.1979,  
11 c.441 (C.30:4-123.60 through 30:4-123.63 and C.30:4-123.65)  
12 pursuant to the provisions of subsection c. of section 3 of P.L.1997,  
13 c.117 (C.30:4-123.51b).<sup>1</sup>

14 e. <sup>1</sup>[(1)]<sup>1</sup> A person who, while serving a special sentence of  
15 [community] parole supervision for life imposed pursuant to this  
16 section [who], commits a violation of N.J.S.2C:11-3, N.J.S.2C:11-4,  
17 [section] N.J.S.2C:11-5, subsection b. of N.J.S.2C:12-1,  
18 N.J.S.2C:13-1, N.J.S.2C:13-6, N.J.S.2C:14-2, N.J.S.2C:14-3,  
19 N.J.S.2C:24-4, [a crime of the second degree under] N.J.S.2C:18-2  
20 when the offense is a crime of the second degree, or subsection a. of  
21 N.J.S.2C:39-4[,] shall be sentenced to an extended term of  
22 imprisonment as set forth in N.J.S.2C:43-7, which term shall,  
23 notwithstanding the provisions of N.J.S.2C:43-7 or any other law, be  
24 served in its entirety prior to the person's resumption of the term of  
25 parole supervision for life.

26 <sup>1</sup>[(2) The [court] judge shall [not] impose a sentence [of  
27 imprisonment] pursuant to this subsection [unless] if the judge finds  
28 that the ground therefor has been established by a preponderance of  
29 the evidence at a hearing [after the conviction of the defendant and on  
30 written notice to the defendant of the ground proposed. The  
31 defendant shall have the right to hear and controvert the evidence  
32 against him and to offer evidence upon the issue], which may occur at  
33 the time of sentencing. In making the required finding, the judge shall  
34 take judicial notice of any evidence, testimony or information adduced  
35 at the trial, plea hearing, or other court proceedings and also shall  
36 consider the presentence report and any other relevant information.  
37 The finding of the judge shall be incorporated in the record.]<sup>1</sup>

38 (cf: P.L.1994, c.130, s.2)

39

40 2. Section 3 of P.L.1997, c.117 (C.30:4-123.51b) is amended to  
41 read as follows:

42 3. a. A person who has been sentenced to a term of parole  
43 supervision and is on release status in the community pursuant to  
44 section 2 of P.L.1997, c.117 (C.2C:43-7.2) shall, during the term of  
45 parole supervision, remain on release status in the community, in the

1 legal custody of the Commissioner of the Department of Corrections,  
2 and shall be supervised by the [parole officers in] Division of Parole  
3 of the State Parole Board as if on parole, and shall be subject to the  
4 provisions and conditions set by the appropriate board panel. The  
5 appropriate board panel shall have the authority, in accordance with  
6 the procedures and standards set forth in sections 15 through 21 of  
7 P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.65), to revoke the  
8 person's release status and return the person to custody for the  
9 remainder of the term or until it is determined, in accordance with  
10 regulations adopted by the board, that the person is again eligible for  
11 release consideration pursuant to section 9 of P.L.1979, c.441  
12 (C.30:4-123.53).

13 b. The Parole Board shall promulgate rules and regulations  
14 necessary to carry out the purposes of this act pursuant to the  
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
16 seq.).

17 c. A person who has been sentenced to a term of parole  
18 supervision for life pursuant to section 2 of P.L.1994, c.130 (C.2C:43-  
19 6.4) shall, during the term of parole supervision, remain in the legal  
20 custody of the Commissioner of Corrections, be supervised by the  
21 Division of Parole of the State Parole Board, and be subject to the  
22 provisions and conditions set by the appropriate board panel in  
23 accordance with the procedures and standards set forth in sections 15  
24 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-  
25 123.63 and 30:4-123.65). If the parolee violates a condition of a  
26 special sentence of parole supervision for life, the parolee shall be  
27 subject to the provisions of sections 16 through 19 and 21 of  
28 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-  
29 123.65), and may be returned to prison. If revocation and return to  
30 custody are desirable pursuant to the provisions of section 19 of  
31 P.L.1979, c.441 (C.30:4-123.63), the appropriate board panel shall  
32 revoke parole and return the parolee to prison for a specified length of  
33 time between 12 and 18 months, which shall not be reduced by  
34 commutation time for good behavior pursuant to R.S.30:4-140 or  
35 credits for diligent application of work and other institutional  
36 assignments pursuant to R.S.30:4-92; provided, however, that nothing  
37 contained in this subsection shall be construed or applied to reduce the  
38 time that must be served after revocation of parole by a parolee  
39 returned to prison for a violation of a condition of any other term of  
40 parole supervision. Upon the parolee's release from prison, the  
41 parolee shall continue to serve the special sentence of parole  
42 supervision for life until released by the Superior Court pursuant to  
43 subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4). For the  
44 purpose of calculating the limitation on time served pursuant to  
45 section 21 of P.L.1979, c.441 (C.30:4-123.65), the custodial term  
46 imposed upon the parolee related to the special sentence of parole

1 supervision for life shall be deemed to be a term of life imprisonment.  
2 For the purpose of establishing a primary parole eligibility date  
3 pursuant to subsection h. of section 7 of P.L.1979, c. 441 (C.30:4-  
4 123.51), the specific period of incarceration required to be served  
5 pursuant to this subsection shall not be aggregated with a term of  
6 imprisonment imposed on the parolee for <sup>1</sup>[an] the commission of any  
7 other<sup>1</sup> offense <sup>1</sup>[committed while serving parole supervision for life]<sup>1</sup> .  
8 Nothing in this section shall be construed to preclude or limit the  
9 prosecution or conviction for any crime defined in any law of this  
10 State, or to limit in any manner the State's ability to pursue both a  
11 criminal action and a parole violation pursuant to the provisions of this  
12 section or any other law.

13 (cf: P.L.2001, c.79, s.6)

14

15 3. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to  
16 read as follows:

17 22. ~~[The] Except as otherwise provided in subsection c. of section~~  
18 ~~2 of P.L.1994, c.130 (C.2C:43-6.4), the~~ appropriate board panel may  
19 give any parolee a complete discharge from parole prior to the  
20 expiration of the full maximum term for which he was sentenced or as  
21 authorized by the disposition, provided that such parolee has made a  
22 satisfactory adjustment while on parole, provided that continued  
23 supervision is not required, and provided the parolee has made full  
24 payment of any fine or restitution.

25 (cf: P.L.1995, c.280, s.45)

26

27 4. N.J.S.2C:43-7 is amended to read as follows:

28 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

29 a. In the cases designated in section 2C:44-3, a person who has  
30 been convicted of a crime may be sentenced, and in the cases  
31 designated in subsection e. of section 2 of P.L.1994, c.130  
32 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126  
33 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,  
34 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall  
35 be sentenced, to an extended term of imprisonment, as follows:

36 (1) In case of aggravated manslaughter sentenced under subsection  
37 c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the  
38 first degree under paragraph (1) of subsection c. of 2C:13-1; or  
39 aggravated sexual assault if the person is eligible for an extended term  
40 pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a  
41 specific term of years which shall be between 30 years and life  
42 imprisonment;

43 (2) Except for the crime of murder and except as provided in  
44 paragraph (1) of this subsection, in the case of a crime of the first  
45 degree, for a specific term of years which shall be fixed by the court  
46 and shall be between 20 years and life imprisonment;

1 (3) In the case of a crime of the second degree, for a term which  
2 shall be fixed by the court between 10 and 20 years;

3 (4) In the case of a crime of the third degree, for a term which shall  
4 be fixed by the court between five and 10 years;

5 (5) In the case of a crime of the fourth degree pursuant to  
6 2C:43-6c., ~~2C:43-6g~~ and 2C:44-3d. for a term of five years, and in  
7 the case of a crime of the fourth degree pursuant to [2C:43-6f. and  
8 2C:43-6g.] any other provision of law for a term which shall be fixed  
9 by the court between three and five years;

10 (6) In the case of the crime of murder, for a specific term of years  
11 which shall be fixed by the court between 35 years and life  
12 imprisonment, of which the defendant shall serve 35 years before being  
13 eligible for parole;

14 (7) In the case of kidnapping under paragraph (2) of subsection c.  
15 of 2C:13-1, for a specific term of years which shall be fixed by the  
16 court between 30 years and life imprisonment, of which the defendant  
17 shall serve 30 years before being eligible for parole.

18 b. As part of a sentence for an extended term and notwithstanding  
19 the provisions of 2C:43-9, the court may fix a minimum term not to  
20 exceed one-half of the term set pursuant to subsection a. during which  
21 the defendant shall not be eligible for parole or a term of 25 years  
22 during which time the defendant shall not be eligible for parole where  
23 the sentence imposed was life imprisonment; provided that no  
24 defendant shall be eligible for parole at a date earlier than otherwise  
25 provided by the law governing parole.

26 c. In the case of a person sentenced to an extended term pursuant  
27 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a  
28 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)  
29 according to the degree or nature of the crime for which the defendant  
30 is being sentenced, which sentence shall include a minimum term which  
31 shall, except as may be specifically provided by N.J.S.2C:43-6f., be  
32 fixed at or between one-third and one-half of the sentence imposed by  
33 the court or five years, whichever is greater, during which the  
34 defendant shall not be eligible for parole. Where the sentence imposed  
35 is life imprisonment, the court shall impose a minimum term of 25  
36 years during which the defendant shall not be eligible for parole,  
37 except that where the term of life imprisonment is imposed on a person  
38 convicted for a violation of N.J.S.2C:35-3, the term of parole  
39 ineligibility shall be 30 years.

40 d. In the case of a person sentenced to an extended term pursuant  
41 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges  
42 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the  
43 degree or nature of the crime for which the defendant is being  
44 sentenced, which sentence shall include a minimum term which shall  
45 be fixed at 15 years for a crime of the first or second degree, eight  
46 years for a crime of the third degree, or five years for a crime of the



1 fourth degree during which the defendant shall not be eligible for  
2 parole. Where the sentence imposed is life imprisonment, the court  
3 shall impose a minimum term of 25 years during which the defendant  
4 shall not be eligible for parole, except that where the term of life  
5 imprisonment is imposed on a person convicted of a violation of  
6 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.  
7 (cf: P.L.2001, c.443, s.6)

8

9 15. N.J.S. 2C:43-2 is amended to read as follows:

10 Sentence in accordance with code; authorized dispositions. a.  
11 Except as otherwise provided by this code, all persons convicted of an  
12 offense or offenses shall be sentenced in accordance with this chapter.

13 b. Except as provided in subsection a. of this section and subject  
14 to the applicable provisions of the code, the court may suspend the  
15 imposition of sentence on a person who has been convicted of an  
16 offense, or may sentence him as follows:

17 (1) To pay a fine or make restitution authorized by N.J.S.2C:43-3  
18 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

19 (2) ~~Except as provided in subsection g. of this section, to be~~  
20 placed on probation and, in the case of a person convicted of a crime,  
21 to imprisonment for a term fixed by the court not exceeding 364 days  
22 to be served as a condition of probation, or in the case of a person  
23 convicted of a disorderly persons offense, to imprisonment for a term  
24 fixed by the court not exceeding 90 days to be served as a condition  
25 of probation; or

26 (3) To imprisonment for a term authorized by sections 2C:11-3,  
27 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

28 (4) To pay a fine, make restitution and probation, or fine,  
29 restitution and imprisonment; or

30 (5) To release under supervision in the community or to require the  
31 performance of community-related service; or

32 (6) To a halfway house or other residential facility in the  
33 community, including agencies which are not operated by the  
34 Department of Human Services; or

35 (7) To imprisonment at night or on weekends with liberty to work  
36 or to participate in training or educational programs.

37 c. Instead of or in addition to any disposition made according to  
38 this section, the court may postpone, suspend, or revoke for a period  
39 not to exceed two years the driver's license, registration certificate, or  
40 both of any person convicted of a crime, disorderly persons offense,  
41 or petty disorderly persons offense in the course of which a motor  
42 vehicle was used. In imposing this disposition and in deciding the  
43 duration of the postponement, suspension, or revocation, the court  
44 shall consider the severity of the crime or offense and the potential  
45 effect of the loss of driving privileges on the person's ability to be  
46 rehabilitated. Any postponement, suspension, or revocation shall be

1 imposed consecutively with any custodial sentence.

2 d. This chapter does not deprive the court of any authority  
3 conferred by law to decree a forfeiture of property, suspend or cancel  
4 a license, remove a person from office, or impose any other civil  
5 penalty. Such a judgment or order may be included in the sentence.

6 e. The court shall state on the record the reasons for imposing the  
7 sentence, including its findings pursuant to the criteria for withholding  
8 or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3,  
9 where imprisonment is imposed, consideration of the defendant's  
10 eligibility for release under the law governing parole and the factual  
11 basis supporting its findings of particular aggravating or mitigating  
12 factors affecting sentence.

13 f. The court shall explain the parole laws as they apply to the  
14 sentence and shall state:

15 (1) the approximate period of time in years and months the  
16 defendant will serve in custody before parole eligibility;

17 (2) the jail credits or the amount of time the defendant has already  
18 served;

19 (3) that the defendant may be entitled to good time and work  
20 credits; and

21 (4) that the defendant may be eligible for participation in the  
22 Intensive Supervision Program.

23 g. Notwithstanding the provisions of paragraph (2) of subsection  
24 b. of this section, a court imposing sentence on a defendant who has  
25 been convicted of any offense enumerated in subsection a. of section  
26 2 of P.L.1994, c.130 (C.2C:43-6.4) may not sentence the defendant to  
27 be placed on probation.<sup>1</sup>

28 (cf: P.L.1997, c.253, s.1.)

29

30 <sup>1</sup>[5.] 6.<sup>1</sup> This act shall take effect immediately.

31

32

33

34

35 Clarifies that lifetime community supervision for sex offenders is  
36 parole supervision.

**SENATE, No. 2659**

---

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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INTRODUCED JUNE 12, 2003

**Sponsored by:**

**Senator PAUL SARLO**

**District 36 (Bergen, Essex and Passaic)**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Clarifies that lifetime community supervision for sex offenders is parole supervision.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the special sentence of community supervision for  
2 life and amending P.L.1994, c.130, P.L.1997, c.117, P.L.1979,  
3 C.441 and N.J.S.2C:43-7.

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

7  
8 1. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to read  
9 as follows:

10 2. a. Notwithstanding any provision of law to the contrary, a  
11 [court] judge imposing sentence on a person who has been convicted  
12 of aggravated sexual assault, sexual assault, aggravated criminal sexual  
13 contact, kidnapping pursuant to paragraph (2) of subsection c. of  
14 N.J.S.2C:13-1, endangering the welfare of a child by engaging in  
15 sexual conduct which would impair or debauch the morals of the child  
16 pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare  
17 of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4,  
18 luring or an attempt to commit any [such offense] of these offenses  
19 shall include, in addition to any [sentence] term of imprisonment  
20 authorized by this Code, a special sentence of [community] parole  
21 supervision for life.

22 b. The special sentence of [community] parole supervision for life  
23 required by this section shall commence immediately upon [completion  
24 of the sentence imposed pursuant to other applicable provisions of the  
25 Code of Criminal Justice] the defendant's release from incarceration.  
26 If the defendant is serving a sentence of incarceration for another  
27 offense at the time he completes the custodial portion of the sentence  
28 imposed on the present offense, the special sentence of parole  
29 supervision for life shall not commence until the defendant is actually  
30 released from incarceration for the other offense. Persons serving a  
31 special sentence of [community] parole supervision for life shall [be  
32 supervised as if on parole and] remain in the legal custody of the  
33 Commissioner of Corrections, shall be supervised by the Division of  
34 Parole of the State Parole Board, shall be subject to the provisions and  
35 conditions set forth in subsection c. of section 3 of P.L.1997, c.117  
36 (C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979,  
37 c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and  
38 shall be subject to conditions appropriate to protect the public and  
39 foster rehabilitation. If the defendant violates a condition of a special  
40 sentence of parole supervision for life, the defendant shall be subject  
41 to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441  
42 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and the

**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 custodial term imposed upon the defendant shall be deemed to be a  
2 term of life imprisonment.

3 c. A person sentenced to a term of [community] parole  
4 supervision for life may petition the Superior Court for release from  
5 [community] that parole supervision. The [court shall] judge may  
6 grant a petition for release from a special sentence of [community]  
7 parole supervision for life only upon proof by clear and convincing  
8 evidence that the person has not committed a crime for 15 years since  
9 the last conviction or release from incarceration, whichever is later,  
10 and that the person is not likely to pose a threat to the safety of others  
11 if released from parole supervision. Notwithstanding the provisions  
12 of section 22 of P.L.1979, c.441 (C.30:4-123.66), the appropriate  
13 board panel shall not give a person sentenced to a term of parole  
14 supervision for life a complete discharge from parole.

15 d. A person who violates a condition of a special sentence [of  
16 community supervision] imposed pursuant to this section without  
17 good cause is guilty of a crime of the fourth degree. Notwithstanding  
18 any other law to the contrary, a person sentenced pursuant to this  
19 section shall be sentenced to a term of imprisonment, unless the court  
20 is clearly convinced that the interests of justice so far outweigh the  
21 need to deter this conduct and the interest in public safety that a  
22 sentence to imprisonment would be a manifest injustice.

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

35 (2) The [court] judge shall [not] impose a sentence [of  
36 imprisonment] pursuant to this subsection [unless] if the judge finds  
37 that the ground therefor has been established by a preponderance of  
38 the evidence at a hearing [after the conviction of the defendant and on  
39 written notice to the defendant of the ground proposed. The  
40 defendant shall have the right to hear and controvert the evidence  
41 against him and to offer evidence upon the issue], which may occur at  
42 the time of sentencing. In making the required finding, the judge shall  
43 take judicial notice of any evidence, testimony or information adduced  
44 at the trial, plea hearing, or other court proceedings and also shall  
45 consider the presentence report and any other relevant information.

1 The finding of the judge shall be incorporated in the record.

2 (cf: P.L.1994, c.130, s.2)

3

4 2. Section 3 of P.L.1997, c.117 (C:30:4-123.51b) is amended to  
5 read as follows:

6 3. a. A person who has been sentenced to a term of parole  
7 supervision and is on release status in the community pursuant to  
8 section 2 of P.L.1997, c.117 (C.2C:43-7.2) shall, during the term of  
9 parole supervision, remain on release status in the community, in the  
10 legal custody of the Commissioner of the Department of Corrections,  
11 and shall be supervised by the [parole officers in] Division of Parole  
12 of the State Parole Board as if on parole, and shall be subject to the  
13 provisions and conditions set by the appropriate board panel. The  
14 appropriate board panel shall have the authority, in accordance with  
15 the procedures and standards set forth in sections 15 through 21 of  
16 P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.65), to revoke the  
17 person's release status and return the person to custody for the  
18 remainder of the term or until it is determined, in accordance with  
19 regulations adopted by the board, that the person is again eligible for  
20 release consideration pursuant to section 9 of P.L.1979, c.441  
21 (C.30:4-123.53).

22 b. The Parole Board shall promulgate rules and regulations  
23 necessary to carry out the purposes of this act pursuant to the  
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.).

26 c. A person who has been sentenced to a term of parole  
27 supervision for life pursuant to section 2 of P.L.1994, c.130 (C.2C:43-  
28 6.4) shall, during the term of parole supervision, remain in the legal  
29 custody of the Commissioner of Corrections, be supervised by the  
30 Division of Parole of the State Parole Board, and be subject to the  
31 provisions and conditions set by the appropriate board panel in  
32 accordance with the procedures and standards set forth in sections 15  
33 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-  
34 123.63 and 30:4-123.65). If the parolee violates a condition of a  
35 special sentence of parole supervision for life, the parolee shall be  
36 subject to the provisions of sections 16 through 19 and 21 of  
37 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-  
38 123.65), and may be returned to prison. If revocation and return to  
39 custody are desirable pursuant to the provisions of section 19 of  
40 P.L.1979, c.441 (C.30:4-123.63), the appropriate board panel shall  
41 revoke parole and return the parolee to prison for a specified length of  
42 time between 12 and 18 months, which shall not be reduced by  
43 commutation time for good behavior pursuant to R.S.30:4-140 or  
44 credits for diligent application of work and other institutional  
45 assignments pursuant to R.S.30:4-92; provided, however, that nothing  
46 contained in this subsection shall be construed or applied to reduce the

1 time that must be served after revocation of parole by a parolee  
2 returned to prison for a violation of a condition of any other term of  
3 parole supervision. Upon the parolee's release from prison, the  
4 parolee shall continue to serve the special sentence of parole  
5 supervision for life until released by the Superior Court pursuant to  
6 subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4). For the  
7 purpose of calculating the limitation on time served pursuant to  
8 section 21 of P.L.1979, c.441 (C.30:4-123.65), the custodial term  
9 imposed upon the parolee shall be deemed to be a term of life  
10 imprisonment. For the purpose of establishing a primary parole  
11 eligibility date pursuant to subsection h. of section 7 of P.L.1979, c.  
12 441 (C.30:4-123.51), the specific period of incarceration required to  
13 be served pursuant to this subsection shall not be aggregated with a  
14 term of imprisonment imposed on the parolee for an offense  
15 committed while serving parole supervision for life. Nothing in this  
16 section shall be construed to preclude or limit the prosecution or  
17 conviction for any crime defined in any law of this State, or to limit in  
18 any manner the State's ability to pursue both a criminal action and a  
19 parole violation pursuant to the provisions of this section or any other  
20 law.

21 (cf: P.L.2001, c.79, s.6)

22

23 3. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to  
24 read as follows:

25 22. **[The]** Except as otherwise provided in subsection c. of section  
26 2 of P.L.1994, c.130 (C.2C:43-6.4), the appropriate board panel may  
27 give any parolee a complete discharge from parole prior to the  
28 expiration of the full maximum term for which he was sentenced or as  
29 authorized by the disposition, provided that such parolee has made a  
30 satisfactory adjustment while on parole, provided that continued  
31 supervision is not required, and provided the parolee has made full  
32 payment of any fine or restitution.

33 (cf: P.L.1995, c.280, s.45)

34

35 4. N.J.S.2C:43-7 is amended to read as follows:

36 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

37 a. In the cases designated in section 2C:44-3, a person who has  
38 been convicted of a crime may be sentenced, and in the cases  
39 designated in subsection e. of section 2 of P.L.1994, c.130  
40 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126  
41 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997,  
42 c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall  
43 be sentenced, to an extended term of imprisonment, as follows:

44 (1) In case of aggravated manslaughter sentenced under subsection  
45 c. of N.J.S.2C:11-4; or kidnapping when sentenced as a crime of the  
46 first degree under paragraph (1) of subsection c. of 2C:13-1; or

1 aggravated sexual assault if the person is eligible for an extended term  
2 pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a  
3 specific term of years which shall be between 30 years and life  
4 imprisonment;

5 (2) Except for the crime of murder and except as provided in  
6 paragraph (1) of this subsection, in the case of a crime of the first  
7 degree, for a specific term of years which shall be fixed by the court  
8 and shall be between 20 years and life imprisonment;

9 (3) In the case of a crime of the second degree, for a term which  
10 shall be fixed by the court between 10 and 20 years;

11 (4) In the case of a crime of the third degree, for a term which shall  
12 be fixed by the court between five and 10 years;

13 (5) In the case of a crime of the fourth degree pursuant to  
14 2C:43-6c., 2C:43-6g and 2C:44-3d. for a term of five years, and in  
15 the case of a crime of the fourth degree pursuant to [2C:43-6f. and  
16 2C:43-6g.] any other provision of law for a term which shall be fixed  
17 by the court between three and five years;

18 (6) In the case of the crime of murder, for a specific term of years  
19 which shall be fixed by the court between 35 years and life  
20 imprisonment, of which the defendant shall serve 35 years before being  
21 eligible for parole;

22 (7) In the case of kidnapping under paragraph (2) of subsection c.  
23 of 2C:13-1, for a specific term of years which shall be fixed by the  
24 court between 30 years and life imprisonment, of which the defendant  
25 shall serve 30 years before being eligible for parole.

26 b. As part of a sentence for an extended term and notwithstanding  
27 the provisions of 2C:43-9, the court may fix a minimum term not to  
28 exceed one-half of the term set pursuant to subsection a. during which  
29 the defendant shall not be eligible for parole or a term of 25 years  
30 during which time the defendant shall not be eligible for parole where  
31 the sentence imposed was life imprisonment; provided that no  
32 defendant shall be eligible for parole at a date earlier than otherwise  
33 provided by the law governing parole.

34 c. In the case of a person sentenced to an extended term pursuant  
35 to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a  
36 sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5)  
37 according to the degree or nature of the crime for which the defendant  
38 is being sentenced, which sentence shall include a minimum term which  
39 shall, except as may be specifically provided by N.J.S.2C:43-6f., be  
40 fixed at or between one-third and one-half of the sentence imposed by  
41 the court or five years, whichever is greater, during which the  
42 defendant shall not be eligible for parole. Where the sentence imposed  
43 is life imprisonment, the court shall impose a minimum term of 25  
44 years during which the defendant shall not be eligible for parole,  
45 except that where the term of life imprisonment is imposed on a person  
46 convicted for a violation of N.J.S.2C:35-3, the term of parole



1 ineligibility shall be 30 years.

2 d. In the case of a person sentenced to an extended term pursuant  
3 to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges  
4 permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the  
5 degree or nature of the crime for which the defendant is being  
6 sentenced, which sentence shall include a minimum term which shall  
7 be fixed at 15 years for a crime of the first or second degree, eight  
8 years for a crime of the third degree, or five years for a crime of the  
9 fourth degree during which the defendant shall not be eligible for  
10 parole. Where the sentence imposed is life imprisonment, the court  
11 shall impose a minimum term of 25 years during which the defendant  
12 shall not be eligible for parole, except that where the term of life  
13 imprisonment is imposed on a person convicted of a violation of  
14 N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.  
15 (cf: P.L.2001, c.443, s.6)

16

17 5. This act shall take effect immediately.

18

19

20

#### STATEMENT

21

22 This bill amends section 2 of P.L.1994, c.130 (C.2C:43-6.4) to  
23 clarify that the lifetime community supervision required by this section  
24 is parole supervision, which commences upon the defendant's actual  
25 release from incarceration, and is to be supervised like any other  
26 period of parole. A person serving a special sentence of parole  
27 supervision for life pursuant to this section would be subject to the  
28 standard provisions and conditions of parole, as determined by the  
29 State Parole Board.

30 Under current law, a person who violates the terms or conditions  
31 of the special sentence of community supervision without good cause  
32 is guilty of a crime of a fourth degree crime. This bill clarifies that a  
33 person who violates a special sentence would receive a term of  
34 imprisonment, except for extraordinary cases where the court is clearly  
35 convinced that imprisonment would be a manifest injustice. In  
36 addition, the bill permits State Parole Board to treat such a violation  
37 like any other parole violation. The bill also clarifies current law  
38 specifying that where the conduct underlying the violation of a  
39 condition of a special sentence is itself criminal, the State may  
40 prosecute that conduct in a criminal action in addition to revoking  
41 parole.

42 In the case of a violation of lifetime parole, the parole board would  
43 have the authority, after a parole revocation hearing, to impose  
44 additional conditions of parole, or return the offender to prison for a  
45 specific period of time between 12 and 18 months, which could not be  
46 reduced by credits for good behavior or work. This specific period of

1 incarceration would in no manner limit the period of imprisonment that  
2 could be imposed for a violation of any other term of parole  
3 supervision the parolee is also serving, such as the term of parole  
4 required for violators of the No Early Release Act (section 2 of  
5 P.L.1997, c.117; C.2C:43-7.2). Nor could this specific period of  
6 incarceration be aggregated with a term of imprisonment imposed on  
7 the parolee for an offense committed while serving parole supervision  
8 for life for the purpose of establishing a primary parole eligibility date  
9 for the other offense.

10 The bill also adds to the list of crimes that must receive a sentence  
11 of parole supervision for life the crime of facilitating the creation of  
12 child pornography by causing or permitting a child to engage in a  
13 prohibited sexual act.

14 In addition, the bill adds vehicular homicide to the enumerated  
15 crimes in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4)  
16 for which a mandatory extended term of imprisonment would be  
17 imposed on a person who commits one of those crimes while serving  
18 a special sentence of parole supervision for life.

19 The bill further clarifies that the judge rather than the jury makes  
20 the requisite finding by a preponderance of the evidence to impose an  
21 extended term under that subsection. An offender sentenced to an  
22 extended term would be required to serve the term of imprisonment in  
23 its entirety before resuming service of his imprisonment and lifetime  
24 parole supervision on the original sentence.

25 In order to ensure that the public is protected, the bill also amends  
26 subsection c. of N.J.S.2C:43-6.4 to articulate that the offender must  
27 satisfy the clear and convincing evidence standard of proof before a  
28 judge may discharge him from a special sentence of parole supervision  
29 for life.

30 Finally, the bill clarifies that a person serving a sentence of  
31 community supervision for life who commits criminal sexual contact  
32 may be sentenced to an extended term of imprisonment under  
33 N.J.S.2C:43-7.

[Corrected Copy]

SENATE LAW AND PUBLIC SAFETY AND VETERANS'  
AFFAIRS COMMITTEE

STATEMENT TO

**SENATE, No. 2659**

with committee amendments

**STATE OF NEW JERSEY**

DATED: NOVEMBER 24, 2003

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably and with committee amendments Senate Bill No. 2659.

This bill amends section 2 of P.L.1994, c.130 (C.2C:43-6.4) to clarify that the lifetime community supervision required by this section is parole supervision, which commences upon the defendant's actual release from incarceration, and is to be supervised like any other period of parole. A person serving a special sentence of parole supervision for life pursuant to this section would be subject to the standard provisions and conditions of parole, as determined by the State Parole Board.

Under current law, a person who violates the terms or conditions of the special sentence of community supervision without good cause is guilty of a fourth degree crime. This bill clarifies that a person who is convicted of this fourth degree crime would receive a term of imprisonment, except for extraordinary cases where the court is clearly convinced that imprisonment would be a manifest injustice. More significantly, the bill enables the State Parole Board to treat such a violation like any other parole violation, thereby providing a more efficient and effective manner of enforcing compliance with the terms and conditions of the special sentence of parole supervision for life. It is anticipated and intended that the administrative exercise of parole supervisory authority under Title 30, rather than prosecution for a fourth degree crime, will be the primary means of ensuring compliance with and addressing violations of the terms and conditions of the special sentence of parole supervision for life.

The bill also clarifies current law specifying that where the conduct underlying the violation of a condition of a special sentence is itself criminal, the State may prosecute that conduct in a criminal action in addition to revoking parole.

In the case of a violation of lifetime parole, the parole board would

have the authority, after a parole revocation hearing, to impose additional conditions of parole, or return the offender to prison for a specific period of time between 12 and 18 months, which could not be reduced by credits for good behavior or work. This specific period of incarceration would in no manner limit the period of imprisonment that could be imposed for a violation of any other term of parole supervision the parolee is also serving, such as the term of parole required for violators of the No Early Release Act (section 2 of P.L.1997, c.117; C.2C:43-7.2). Nor could this specific period of incarceration be aggregated with a term of imprisonment imposed on the parolee for an offense committed while serving parole supervision for life for the purpose of establishing a primary parole eligibility date for the other offense.

The bill also adds to the list of crimes for which a sentence of parole supervision for life must be imposed the crime of facilitating the creation of child pornography by causing or permitting a child to engage in a prohibited sexual act.

In addition, the bill adds vehicular homicide to the enumerated crimes in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) for which a mandatory extended term of imprisonment would be imposed on a person who commits one of those crimes while serving a special sentence of parole supervision for life. An offender sentenced to an extended term would be required to serve the term of imprisonment in its entirety before resuming service of his imprisonment and lifetime parole supervision on the original sentence.

In order to ensure that the public is protected, the bill also amends subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) to articulate that the offender must satisfy the clear and convincing evidence standard of proof before a judge may discharge him from a special sentence of parole supervision for life.

The bill also clarifies, by amending paragraph (5) of subsection a. of N.J.S. 2C:43-7 to provide specific authorization for such a sentence, that a person who commits criminal sexual contact while serving a special sentence of supervision for life may be sentenced to an extended term of imprisonment, consistent with the current statutory authority for such a sentence in N.J.S.2C:43-6. This change addresses the holding in the recent case of *State v. Olsvary*, 357 N.J. Super. 206 (App. Div. 2003), where the court found that the failure to reference the extended term in both statutes created ambiguity that led it not to impose the extended term as intended by the Legislature. Additionally, the bill addresses an inconsistency in the current law applicable to those convicted of a crime of the fourth degree under subsection g. of N.J.S.2C:43-6 by making the extended term sentence provision consistent with the five-year parole ineligibility term provided under current law.

The committee amendments are clarifying and technical in nature. Specifically, the amendments:

\* Clarify the applicable calculation for discharging a parolee at the

end of his sentence;

- \* Clarify that when there is no prison term, parole supervision for life begins immediately and that supervision is to be provided by the Division of Parole, not Probation;
- \* Clarify that the Parole Board may not discharge a defendant on parole supervision for life unless the court grants a petition to terminate the supervision;
- \* Clarify that the presumption of imprisonment in section 1 applies only to the fourth degree crime established for a violation of a condition of a special sentence without good cause and not to the enumerated crimes which subject the defendant to lifetime parole supervision;
- \* Delete the provision contemplating a separate hearing to determine whether to impose an extended term of imprisonment upon a person who commits an enumerated offense while on parole supervision for life; this provision may have raised considerations relevant to the United States Supreme Court's ruling in *Apprendi v. New Jersey*, and the provision for such a hearing would be superfluous, as the extended term may be imposed upon conviction for the original offense;
- \* Provide a broader range for crimes other than the parole supervision for life crime originally committed to which parole aggregation cannot be calculated;
- \* Remove the sentencing option of probation as an authorized disposition for parole supervision for life enumerated crimes. The majority of crimes for which a defendant may receive the special sentence of lifetime supervision are first or second degree offenses which carry a presumption of incarceration. If, in the case of an enumerated lifetime supervision crime, the court determines that incarceration is not an appropriate sentence or decides to suspend the imposition of sentence, the individual would immediately be placed in the custody and supervision of parole in the executive branch, rather than probation in the Judiciary. This will ensure that only a single entity will be responsible for providing supervision from the time the individual is released into the community, thereby eliminating the potential for duplicative and potentially inconsistent dual supervision by both entities. The amendment also prevents situations where responsibility for supervision of an individual serving the special sentence of lifetime supervision will shift from probation to parole, with attendant disruption and possible regression related to additional or inconsistent terms and conditions imposed and the substitution of new supervisory personnel and mechanisms.
- \* Clarify that a parolee may be sent to prison for a violation of parole supervision for life even if the court may have suspended imposition of the custodial sentence. This amendment makes clear that a person serving a special sentence of lifetime parole supervision whose sentence was suspended by the court is subject

nevertheless to parole revocation and return to custody for 12 to 18 months by administrative action of the Parole Board for a violation of the terms and conditions of the special sentence of parole supervision for life. The parolee may be sent to prison in such cases even though he has not yet been sentenced by the court and is not actually being “returned” to prison because of the sentence suspension.

# ASSEMBLY, No. 3784

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 12, 2003

**Sponsored by:**

**Assemblyman PETER J. BARNES, JR.**

**District 18 (Middlesex)**

**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**Co-Sponsored by:**

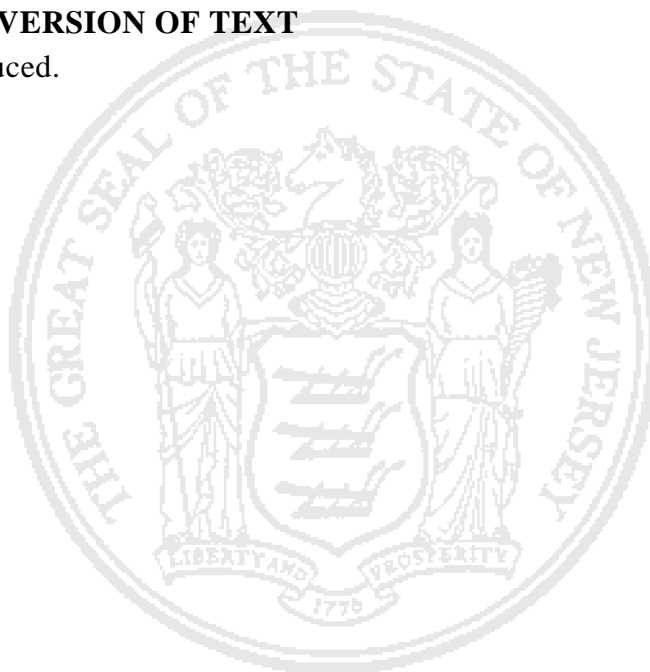
**Assemblyman Holzapfel**

**SYNOPSIS**

Clarifies that lifetime community supervision for sex offenders is parole supervision.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/17/2003)**

1 AN ACT concerning the special sentence of community supervision for  
2 life and amending P.L.1994, c.130, P.L.1997, c.117 and P.L.1979,  
3 c.441.

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

7  
8 1. Section 2 of P.L.1994, c.130 (C.2C:43-6.4) is amended to read  
9 as follows:

10 2. a. Notwithstanding any provision of law to the contrary, a  
11 [court] judge imposing sentence on a person who has been convicted  
12 of aggravated sexual assault, sexual assault, aggravated criminal sexual  
13 contact, kidnapping pursuant to paragraph (2) of subsection c. of  
14 N.J.S.2C:13-1, endangering the welfare of a child by engaging in  
15 sexual conduct which would impair or debauch the morals of the child  
16 pursuant to subsection a. of N.J.S.2C:24-4, endangering the welfare  
17 of a child pursuant to paragraph (3) of subsection b. of N.J.S.2C:24-4,  
18 luring or an attempt to commit any [such offense] of these offenses  
19 shall include, in addition to any [sentence] term of imprisonment  
20 authorized by this Code, a special sentence of [community] parole  
21 supervision for life.

22 b. The special sentence of [community] parole supervision for life  
23 required by this section shall commence immediately upon [completion  
24 of the sentence imposed pursuant to other applicable provisions of the  
25 Code of Criminal Justice] the defendant's release from incarceration.  
26 If the defendant is serving a sentence of incarceration for another  
27 offense at the time he completes the custodial portion of the sentence  
28 imposed on the present offense, the special sentence of parole  
29 supervision for life shall not commence until the defendant is actually  
30 released from incarceration for the other offense. Persons serving a  
31 special sentence of [community] parole supervision for life shall [be  
32 supervised as if on parole and] remain in the legal custody of the  
33 Commissioner of Corrections, shall be supervised by the Division of  
34 Parole of the State Parole Board, shall be subject to the provisions and  
35 conditions set forth in subsection c. of section 3 of P.L.1997, c.117  
36 (C.30:4-123.51b) and sections 15 through 19 and 21 of P.L.1979,  
37 c.441 (C.30:4-123.59 through 30:4-123.63 and 30:4-123.65), and  
38 shall be subject to conditions appropriate to protect the public and  
39 foster rehabilitation. If the defendant violates a condition of a special  
40 sentence of parole supervision for life, the defendant shall be subject  
41 to the provisions of sections 16 through 19 and 21 of P.L.1979, c.441  
42 (C.30:4-123.60 through 30:4-123.63 and 30:4-123.65), and the

**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 custodial term imposed upon the defendant shall be deemed to be a  
2 term of life imprisonment.

3 c. A person sentenced to a term of [community] parole  
4 supervision for life may petition the Superior Court for release from  
5 [community] that parole supervision. The [court shall] judge may  
6 grant a petition for release from a special sentence of [community]  
7 parole supervision for life only upon proof by clear and convincing  
8 evidence that the person has not committed a crime for 15 years since  
9 the last conviction or release from incarceration, whichever is later,  
10 and that the person is not likely to pose a threat to the safety of others  
11 if released from parole supervision. Notwithstanding the provisions  
12 of section 22 of P.L.1979, c.441 (C.30:4-123.66), the appropriate  
13 board panel shall not give a person sentenced to a term of parole  
14 supervision for life a complete discharge from parole.

15 d. A person who violates a condition of a special sentence [of  
16 community supervision] imposed pursuant to this section without  
17 good cause is guilty of a crime of the fourth degree. Notwithstanding  
18 any other law to the contrary, a person sentenced pursuant to this  
19 section shall be sentenced to a term of imprisonment, unless the court  
20 is clearly convinced that the interest of justice so far outweigh the  
21 need to deter this conduct and the interest in public safety that a  
22 sentence to imprisonment would be a manifest injustice.

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

35 (2) The [court] judge shall [not] impose a sentence [of  
36 imprisonment] pursuant to this subsection [unless] if the judge finds  
37 that the ground therefor has been established by a preponderance of  
38 the evidence at a hearing [after the conviction of the defendant and on  
39 written notice to the defendant of the ground proposed. The  
40 defendant shall have the right to hear and controvert the evidence  
41 against him and to offer evidence upon the issue], which may occur at  
42 the time of sentencing. In making the required finding, the judge shall  
43 take judicial notice of any evidence, testimony or information adduced  
44 at the trial, plea hearing, or other court proceedings and also shall  
45 consider the presentence report and any other relevant information.

1 The finding of the judge shall be incorporated in the record.

2 (cf: P.L.1994, c.130, s.2)

3

4 2. Section 3 of P.L.1997, c.117 (C:30:4-123.51b) is amended to  
5 read as follows:

6 3. a. A person who has been sentenced to a term of parole  
7 supervision and is on release status in the community pursuant to  
8 section 2 of P.L.1997, c.117 (C.2C:43-7.2) shall, during the term of  
9 parole supervision, remain on release status in the community, in the  
10 legal custody of the Commissioner of the Department of Corrections,  
11 and shall be supervised by the [parole officers in] Division of Parole  
12 of the State Parole Board as if on parole, and shall be subject to the  
13 provisions and conditions set by the appropriate board panel. The  
14 appropriate board panel shall have the authority, in accordance with  
15 the procedures and standards set forth in sections 15 through 21 of  
16 P.L.1979, c.441 (C.30:4-123.59 through 30:4-123.65), to revoke the  
17 person's release status and return the person to custody for the  
18 remainder of the term or until it is determined, in accordance with  
19 regulations adopted by the board, that the person is again eligible for  
20 release consideration pursuant to section 9 of P.L.1979, c.441  
21 (C.30:4-123.53).

22 b. The Parole Board shall promulgate rules and regulations  
23 necessary to carry out the purposes of this act pursuant to the  
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.).

26 c. A person who has been sentenced to a term of parole  
27 supervision for life pursuant to section 2 of P.L.1994, c.130 (C.2C:43-  
28 6.4) shall, during the term of parole supervision, remain in the legal  
29 custody of the Commissioner of Corrections, be supervised by the  
30 Division of Parole of the State Parole Board, and be subject to the  
31 provisions and conditions set by the appropriate board panel in  
32 accordance with the procedures and standards set forth in sections 15  
33 through 19 and 21 of P.L.1979, c.441 (C.30:4-123.59 through 30:4-  
34 123.63 and 30:4-123.65). If the parolee violates a condition of a  
35 special sentence of parole supervision for life, the parolee shall be  
36 subject to the provisions of sections 16 through 19 and 21 of  
37 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.63 and 30:4-  
38 123.65), and may be returned to prison. If revocation and return to  
39 custody are desirable pursuant to the provisions of section 19 of  
40 P.L.1979, c.441 (C.30:4-123.63), the appropriate board panel shall  
41 revoke parole and return the parolee to prison for a specified length of  
42 time between 12 and 18 months, which shall not be reduced by  
43 commutation time for good behavior pursuant to R.S.30:4-140 or  
44 credits for diligent application of work and other institutional  
45 assignments pursuant to R.S.30:4-92; provided, however, that nothing  
46 contained in this subsection shall be construed or applied to reduce the

1 time that must be served after revocation of parole by a parolee  
2 returned to prison for a violation of a condition of any other term of  
3 parole supervision. Upon the parolee's release from prison, the  
4 parolee shall continue to serve the special sentence of parole  
5 supervision for life until released by the Superior Court pursuant to  
6 subsection c. of section 2 of P.L.1994, c.130 (C.2C:43-6.4). For the  
7 purpose of calculating the limitation on time served pursuant to  
8 section 21 of P.L.1979, c.441 (C.30:4-123.65), the custodial term  
9 imposed upon the parolee shall be deemed to be a term of life  
10 imprisonment. For the purpose of establishing a primary parole  
11 eligibility date pursuant to subsection h. of section 7 of P.L.1979, c.  
12 441 (C.30:4-123.51), the specific period of incarceration required to  
13 be served pursuant to this subsection shall not be aggregated with a  
14 term of imprisonment imposed on the parolee for an offense  
15 committed while serving parole supervision for life. Nothing in this  
16 section shall be construed to preclude or limit the prosecution or  
17 conviction for any crime defined in any law of this State, or to limit in  
18 any manner the State's ability to pursue both a criminal action and a  
19 parole violation pursuant to the provisions of this section or any other  
20 law.

21 (cf: P.L.2001, c.79, s.6)

22

23 3. Section 22 of P.L.1979, c.441 (C.30:4-123.66) is amended to  
24 read as follows:

25 22. **[The]** Except as otherwise provided in subsection c. of section  
26 2 of P.L.1994, c.130 (C.2C:43-6.4), the appropriate board panel may  
27 give any parolee a complete discharge from parole prior to the  
28 expiration of the full maximum term for which he was sentenced or as  
29 authorized by the disposition, provided that such parolee has made a  
30 satisfactory adjustment while on parole, provided that continued  
31 supervision is not required, and provided the parolee has made full  
32 payment of any fine or restitution.

33 (cf: P.L.1995, c.280, s.45)

34

35 4. This act shall take effect immediately.

36

### 37 STATEMENT

38

39 This bill amends section 2 of P.L.1994, c.130 (C.2C:43-6.4) to  
40 clarify that the lifetime community supervision required by this section  
41 is parole supervision, which commences upon the defendant's actual  
42 release from incarceration, and is to be supervised like any other  
43 period of parole. A person serving a special sentence of parole  
44 supervision for life pursuant to this section would be subject to the  
45 standard provisions and conditions of parole, as determined by the  
46 State Parole Board.

1 Under current law, a person who violates the terms or conditions  
2 of the special sentence of community supervision without good cause  
3 is guilty of a crime of a fourth degree crime. This bill clarifies that a  
4 person who violates a special sentence would receive a term of  
5 imprisonment, except for extraordinary cases where the court is clearly  
6 convinced that imprisonment would be a manifest injustice. In  
7 addition, the bill permits the State Parole Board to treat such a  
8 violation like any other parole violation. The bill also clarifies current  
9 law specifying that where the conduct underlying the violation of a  
10 condition of a special sentence is itself criminal, the State may  
11 prosecute that conduct in a criminal action in addition to revoking  
12 parole.

13 In the case of a violation of lifetime parole, the parole board would  
14 have the authority, after a parole revocation hearing, to impose  
15 additional conditions of parole, or return the offender to prison for a  
16 specific period of time between 12 and 18 months, which could not be  
17 reduced by credits for good behavior or work. This specific period of  
18 incarceration would in no manner limit the period of imprisonment that  
19 could be imposed for a violation of any other term of parole  
20 supervision the parolee is also serving, such as the term of parole  
21 required for violators of the No Early Release Act (section 2 of  
22 P.L.1997, c.117; C.2C:43-7.2). Nor could this specific period of  
23 incarceration be aggregated with a term of imprisonment imposed on  
24 the parolee for an offense committed while serving parole supervision  
25 for life for the purpose of establishing a primary parole eligibility date  
26 for the other offense.

27 The bill also adds to the list of crimes that must receive a sentence  
28 of parole supervision for life the crime of facilitating the creation of  
29 child pornography by causing or permitting a child to engage in a  
30 prohibited sexual act.

31 In addition, the bill adds vehicular homicide to the enumerated  
32 crimes in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4)  
33 for which a mandatory extended term of imprisonment would be  
34 imposed on a person who commits one of those crimes while serving  
35 a special sentence of parole supervision for life.

36 The bill further clarifies that the judge rather than the jury makes  
37 the requisite finding by a preponderance of the evidence to impose an  
38 extended term under that subsection. An offender sentenced to an  
39 extended term would be required to serve the term of imprisonment in  
40 its entirety before resuming service of his imprisonment and lifetime  
41 parole supervision on the original sentence.

42 Finally, in order to ensure that the public is protected, the bill  
43 amends subsection c. of N.J.S.2C:43-6.4 to articulate that the offender  
44 must satisfy the clear and convincing evidence standard of proof  
45 before a judge may discharge him from a special sentence of parole  
46 supervision for life.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3784**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 16, 2003

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 3784.

As amended and released by the committee, Assembly Bill No. 3784 amends section 2 of P.L.1994, c.130 (C.2C:43-6.4) to clarify that the lifetime community supervision required by this section is parole supervision, which commences upon the defendant's actual release from incarceration, and is to be supervised like any other period of parole. A person serving a special sentence of parole supervision for life pursuant to this section would be subject to the standard provisions and conditions of parole, as determined by the State Parole Board.

Under current law, a person who violates the terms or conditions of the special sentence of community supervision without good cause is guilty of a fourth degree crime. This bill clarifies that a person who violates a special sentence would receive a term of imprisonment, except for extraordinary cases where the court is clearly convinced that imprisonment would be a manifest injustice. In addition, the bill permits the State Parole Board to treat such a violation like any other parole violation. The bill also clarifies current law specifying that where the conduct underlying the violation of a condition of a special sentence is itself criminal, the State may prosecute that conduct in a criminal action in addition to revoking parole.

In the case of a violation of lifetime parole, the parole board would have the authority, after a parole revocation hearing, to impose additional conditions of parole, or return the offender to prison for a specific period of time between 12 and 18 months, which could not be reduced by credits for good behavior or work. This specific period of incarceration would in no manner limit the period of imprisonment that could be imposed for a violation of any other term of parole supervision the parolee is also serving, such as the term of parole required for violators of the No Early Release Act (section 2 of P.L.1997, c.117; C.2C:43-7.2). Nor could this specific period of incarceration be aggregated with a term of imprisonment imposed on the parolee for an offense committed while serving parole supervision

for life for the purpose of establishing a primary parole eligibility date for the other offense.

The bill also adds to the list of crimes that must receive a sentence of parole supervision for life the crime of facilitating the creation of child pornography by causing or permitting a child to engage in a prohibited sexual act.

In addition, the bill adds vehicular homicide to the enumerated crimes in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4) for which a mandatory extended term of imprisonment would be imposed on a person who commits one of those crimes while serving a special sentence of parole supervision for life. The bill further clarifies that the judge rather than the jury makes the requisite finding by a preponderance of the evidence to impose an extended term under that subsection. An offender sentenced to an extended term would be required to serve the term of imprisonment in its entirety before resuming service of his imprisonment and lifetime parole supervision on the original sentence.

In order to ensure that the public is protected, the bill amends subsection c. of N.J.S.2C:43-6.4 to articulate that the offender must satisfy the clear and convincing evidence standard of proof before a judge may discharge him from a special sentence of parole supervision for life.

Finally, the bill clarifies that a person serving a sentence of community supervision for life who commits criminal sexual contact may be sentenced to an extended term of imprisonment under N.J.S.2C:43-7.

As amended, the bill is identical to Senate Bill No. 2659.

**COMMITTEE AMENDMENTS:**

The committee amended the bill by adding a new section 4 to clarify that a person serving a sentence of community supervision for life who commits criminal sexual contact may be sentenced to an extended term of imprisonment under N.J.S.2C:43-7.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3784**

with Assembly Floor Amendments  
(Proposed By Assemblymen BARNES and VAN DREW)

ADOPTED: DECEMBER 15, 2003

Assembly Bill No. 3784 (1R) clarifies that the lifetime community supervision required under section 2 of P.L.1994, c.130 (C.2C:43-6.4) is parole supervision, which commences upon the defendant's actual release from incarceration and is supervised as any other period of parole.

Under current law, a person who violates the terms or conditions of the special sentence of community supervision without good cause is guilty of a fourth degree crime. This amended bill clarifies that a person who is convicted of this fourth degree crime would receive a term of imprisonment, except for extraordinary cases where the court is clearly convinced that imprisonment would be a manifest injustice. More significantly, the amended bill enables the State Parole Board to treat such a violation like any other parole violation, thereby providing a more efficient and effective manner of enforcing compliance with the terms and conditions of the special sentence of parole supervision for life. It is anticipated and intended that the administrative exercise of parole supervisory authority under Title 30, rather than prosecution for a fourth degree crime, will be the primary means of ensuring compliance with and addressing violations of the terms and conditions of the special sentence of parole supervision for life.

The bill also clarifies current law specifying that where the conduct underlying the violation of a condition of a special sentence is itself criminal, the State may prosecute that conduct in a criminal action in addition to revoking parole.

These Assembly amendments are clarifying and technical in nature, and will make the provisions of this bill identical to Senate Bill No. 2659 (1R).

Specifically, these amendments:

- \* Clarify the applicable calculation for discharging a parolee at the end of his sentence;
- \* Clarify that when there is no prison term, parole supervision for life begins immediately and that supervision is to be provided by the Division of Parole, not Probation;
- \* Clarify that the Parole Board may not discharge a defendant on Parole Supervision for Life unless the court grants a petition to terminate the supervision;
- \* Clarify that the presumption of imprisonment in section 1 applies only to the fourth degree crime established for a violation of a

condition of a special sentence without good cause and not to the enumerated crimes which subject the defendant to lifetime parole supervision;

- \* Delete the provision contemplating a separate hearing to determine whether to impose an extended term of imprisonment upon a person who commits an enumerated offense while on Parole Supervision for Life; this provision may have raised considerations relevant to the United States Supreme Court's ruling in *Apprendi v. New Jersey*, and the provision for such a hearing would be superfluous as the extended term may be imposed upon conviction for the original offense;
- \* Provide a broader range for crimes other than the Parole Supervision for Life crime originally committed to which parole aggregation cannot be calculated;
- \* Remove the sentencing option of probation as an authorized disposition for Parole Supervision for Life enumerated crimes. The majority of crimes for which a defendant may receive the special sentence of lifetime supervision are second or first degree offenses which carry a presumption of incarceration. These amendments ensure that, where the court determines that incarceration would not be an appropriate sentence to impose, or decides to suspend the imposition of sentence, for conviction of an enumerated lifetime supervision crime, the individual would immediately be placed in the custody and supervision of Parole in the executive branch rather than Probation in the Judiciary. This will ensure that only a single entity will be responsible for providing supervision from the time the individual is released into the community, thereby eliminating the potential for duplicative and potentially inconsistent dual supervision by both entities, as well as preventing the situation where responsibility for supervision of an individual serving the special sentence of lifetime supervision will shift from Probation to Parole, with attendant disruption and possible regression related to additional or inconsistent terms and conditions imposed and the substitution of new supervisory personnel and mechanisms.
- \* Clarify that a parolee may be sent to prison for a violation of parole supervision for life even if the court may have suspended imposition of the custodial sentence. This amendment makes clear that a person serving a special sentence of lifetime parole supervision as to whom the court suspended imposition of sentence is nonetheless subject to parole revocation and return to custody for 12 to 18 months by administrative action of the Parole Board for a violation of the terms and condition of the special sentence for parole supervision for life, even though technically the person has yet to be sentenced by the court and is not actually being "returned" to prison because the person has not yet been in prison due to the sentence suspension.